



Highlights

- Improvements to the SIIQ regime become law
- New law enacted to remove EU law infringements
- Qatar included in the white list
- Transfer pricing audits on multinationals: Proposed actions by the Italian Joint Stock Company Association (ASSONIME)

These last months of the year have registered an important legislative activity which secured some changes that were long expected by operators. A summary of the main changes that have been enacted is presented below.

1. Improvements to the SIIQ regime become law

With Law No. 164 of 11 November 2014, Parliament has converted Decree Law No. 133/2014, which, inter alia, amends the tax regime of listed Italian real estate investment companies (Società di investimento immobiliare quotata, "SIIQ") in order to make it more appealing and competitive in comparison with other EU States. These amendments (i) loosen some of the eligibility requirements and (ii) broaden the definition of the SIIQ's income that is exempt from corporate income tax (IRES) and regional tax (IRAP). The most relevant improvements are the following:

- a) a SIIQ may now have a single shareholder with up to 60% (in place of 51%) of the voting rights and participation in the profits;
- b) the free float requirement (i.e. the shares held by shareholders each of whom holds no more than 2% of the voting rights and participation in the profits) has been decreased from 35% to 25%;
- c) Units in qualifying real estate investment funds ("REIFs") and income therefrom are now relevant for the SIIQ to meet the minimum asset and minimum revenue tests;
- d) the minimum yearly distribution requirement has been decreased from 85% to 70%;
- e) the IRES and IRAP exemption of the SIIQ has been broadened so as to also include (a) capital gains upon disposal of real property, (b) gains on shares in other SIIQs or unlisted real estate subsidiaries (SIINQs) and (c) proceeds and gains on units in REIFs.

Furthermore, the new law introduces some amendments to the indirect tax regime applicable for transfers to and from SIIQs, particularly with the purpose of enabling tax neutrality, or tax mitigation, of transfers from REIFs to SIIQs.

Finally, the law has confirmed that dividend distributions by a SIIQ may benefit from reduced withholding tax under the applicable tax treaty between Italy and the country of residence of the shareholder.

2. New law removing EU law infringements on wealth tax and tax allowances on non-residents

Parliament approved Law No. 161 of 30 October 2014 which introduced a number of measures applicable as from 2014 that are aimed at removing existing infringements of EU law.

Among others:

- net wealth tax on foreign-held assets (IVAFE) now exempts assets that, if held in Italy, would not be subject to the domestic stamp duty. Among such assets there are quotas of limited liability companies (SRLs);
- following the principles laid down by the Schumacker case (C-279/93), EU or EEA residents can opt to be treated as if they were Italian resident if more than 75% of their overall income is sourced in Italy. Upon the exercise of the option, such qualifying non-residents will have accordingly full entitlement to tax allowances available to Italian residents provided that they do not receive similar allowances in their residence State and that such State ensures an adequate exchange of information. Implementing rules are expected to be enacted through a Ministerial Decree.

3. Qatar becomes white-listed

A ministerial decree published in the Official Gazette on 17 November 2014 included Qatar among white-listed jurisdictions. As a consequence Qatari investors may have access to the regime of exemption at source applicable to income derived from several types of financial investments in Italy.

4. ASSONIME: Proposed actions on transfer pricing audits

Assonime, the Italian Joint Stock Option Association, issued a detailed report on transfer pricing ("TP") audits. Issues raised include lack of expertise by tax auditors and application of high penalties in Italy in the absence of master file documentation.

The report suggests:

- trained teams on TP audits;
- special procedures monitoring compliance of audits with OECD principles;
- improvement of cooperation between taxpayers and tax auditors during a TP audit (i.e. with regard to the selection of the applicable method);
- simplifying documentation requirements;
- stimulating a review of the current penalty system (also with reference to criminal law charges);
- intensifying joint audits;
- increasing the effectiveness of MAPs and the Arbitration Convention.

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