



LUXEMBOURG DESK

Legal Update

See what's next in Italy

Stay tuned on the latest news from Italy to Luxembourg

ASSET MANAGEMENT & ALTERNATIVE FUNDS

New trends: ELTIF, venture capital funds and listed AIFs

Based on the amendments introduced by the 2019 Budget Law, it is expected the establishment of new ELTIFs, AIFs with venture capital strategies and listed closed-ended AIFS.

The 2019 Budget Law introduced amendments to the regulation of so called "PIR". PIR are tax-exempt investment plans comparable to the UK individual saving account and the French plans d'épargne. Based on the new rules, the investors of the PIR will benefit from the special tax treatment as long as the relevant portfolio is invested for a portion in not-listed SME and start-up. As a consequence, the main asset manager are structuring new fund "PIR compliant" (including ELTIF) and/or new private equity and venture capital AIFs "PIR eligible" (i.e., with an illiquid strategy in line with PIR requirements).

PRIVATE INSURANCE

IDD implementation in Italy

Following the implementation of the IDD in Italy, some Italian transparency rules apply to EU passported insurance companies, carrying out their activity in Italy both on a freedom of services basis and/or on a freedom of establishment basis, to the extent that they advertise and/or market insurance products in Italy and manufacture these products on their own.

The Italian insurance supervisory authority ("IVASS") has issued the regulation n. 41/2018 ("Regulation 41") implementing the IDD Directive 2016/97 with respect to information, advertising and manufacturing of insurance products. The Regulation 41 sets forth transparency rules which apply almost entirely to EU passported insurance companies, carrying out their activity in Italy both on a freedom of services basis and/or on a freedom of establishment basis, to the extent that they advertise and/or market insurance products in Italy and manufacture these products on their own. One of the main aspects introduced by the Regulation 41 regards the duty of the insurance company to provide information about the insurance agreement to any beneficiaries, unless the policyholder expressly specifies in the proposal form that beneficiaries should not get such information.

Qualification of unit-linked policies

Tax Court of Milan issued an important decision on the tax qualification of unit-linked insurance policies.

The first instance Tax Court of Milan has issued on December 4th 2018 an important decision regarding the tax qualification of unit-linked insurance policies. In particular, the Tax Court has reclassified the policy considering, for tax purposes, the underlying financial activities as part of a sort of managed portfolio belonging directly to the policyholder. The Court has grounded its decision mainly on the circumstances that the insurance company (in this case, a foreign EU undertaking) did not provide for a guarantee of capital conservation at maturity and that the value of the indemnification to be paid to the beneficiaries

upon the death of the insured person was substantially negligible, disregarding completely the fact that in the rest of the EU these are normal features of all unit-linked policies.

Tax reporting obligations for “unaware” beneficiaries

The Italian beneficiaries of insurance EU insurance policies may be required to fulfil tax reporting obligations under the new definition of beneficial owner.

In Italy, tax reporting obligations are mandatory not only for those who directly hold financial activities abroad, but also for those that can be qualified as beneficial owners of such activities. The Legislative Decree n. 90/2017 has significantly amended and extended the definition of beneficial owner. Therefore, at the present it could be argued that, with respect to insurance policies entered into with foreign companies, also the beneficiaries of such policies, and not only the policyholders, are required to fulfil the tax reporting obligations. Obviously, this could be practically impossible for those beneficiaries who are unaware of their status, e.g. because the policyholder never informed them of the existence of the policy. In this case, however, no penalties should be applied, lacking any consciousness and guilt upon the “unaware” beneficiary.

ANTI-MONEY LAUNDERING AND TERRORISM FINANCING (AML)

New rules for EU banks and intermediaries operating cross-border in Italy

Important news on AML provisions are expected in the near feature for EU banks operating on a cross-border basis in Italy.

Italy is still implementing the EU Directive 2015/849 on anti-money laundering: while the AML law n. 231/2007 has been modified (and is now in full force and effect), the Bank of Italy still need to issue the relevant implementing regulatory provisions and has recently published a consultation paper. It has been informally reported that also foreign EU banks operating on a cross-border basis in Italy would need to abide with some relevant Italian AML rules: however, it is not clear to what extent internal rules should be binding for them. It is likely that the Italian Authorities will graduate the duties in order not to duplicate what is done at an home country level.

BREXIT

Italy announced special measures in case of no-deal

The Italian Ministry of Economy and Finance has issued an important press release announcing measures aimed at ensuring the full continuity of markets and intermediaries in the event of withdrawal of the United Kingdom from the EU with no-deal.

The new measures of the Italian Authorities will ground on the introduction of a congruous transitional period during which the intermediaries and other operators will be allowed to continue to operate in accordance with the current legislation. This possibility will be valid for both sides, i.e. Italian operators that carry out business in UK and UK operators that carry out business in Italy. There measures will concern also the trading venues (and the access of the operators to the same) and the investments of the Italian pension funds in British UCIs.

TAX

Individual taxation - Flat tax for foreign retired people

Italy has introduced a new regime aimed at attracting foreign retired people in Southern regions of the Country.

The 2019 Italian Finance Act provided for a new special flat tax regime for foreign retired people who move to Southern Italy in small towns (having less than 20,000 inhabitants). The regime lasts for maximum five years and establishes a 7% flat tax on foreign income of any source (i.e. not only the pension income). It is applicable to taxpayers holding a pension paid by a foreign pension fund/institution who move their residence to one of the regions of Southern Italy (the relevant ones are: Sicily, Calabria, Sardinia, Campania, Basilicata, Abruzzi, Molise and Apulia), on condition that they have not been fiscally resident of Italy in the previous five tax years and that they come from tax cooperating countries.

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