

New Tax regime for *Project bonds*

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On 15 June 2012 the Italian Government approved a new decree (still to be published in the Official Gazette as at June 18) with measures designed to encourage economic development which include, *inter alia*, much awaited rules aimed at facilitating bond issues (*obbligazioni*) by Italian infrastructure and energy companies (so-called "project bonds").

Under the decree ("**Decree**"), project companies allowed to issue project bonds under article 157 of the Law of Public Contracts (*i.e.* Legislative Decree no. 163 dated 12 April 2006) will benefit from certain tax advantages set forth in the Decree. Eligible project companies are: (i) companies awarded with public concessions under the Law of Public Contracts and companies under a public-private partnership agreement; (ii) companies authorised to build transport and gas infrastructures or awarded with concessions to operate gas storage infrastructures; (iii) companies authorised to build portions of the Italian electricity grid; and (iv) companies holding licenses for the construction and management of regasification terminals for liquefied natural gas.

No prior authorisation by the regulated bodies is envisaged before the issuance of project bonds. Project bonds can be issued by both *società per azioni* (companies limited by shares) and *società a responsabilità limitata* (limited liability companies). As far as the issuance of project bonds is concerned the following articles of the Italian Civil Code do not apply: (i) 2413 relating to voluntary reduction of share capital and limits on the distribution of reserves and profits; (ii) 2414-*bis* on the granting of guarantees; and (iii) 2420 requiring the selection of bonds by the drawing of lots in the presence of the bondholders' representative or, failing that, a notary public.

Project bonds may, until the completed infrastructure starts to be operated by the concession holder, be guaranteed by the financial system, foundations or private funds.

Project bonds can also be issued to refinance an existing debt that relates to the construction of infrastructures or works connected to public services.

The tax advantages contained in the Decree are the following.

1. Bonds issued by eligible project companies will benefit from the same tax regime generally applicable to bonds issued by the Italian Treasury, with the consequence that, *inter alia*, (i) the withholding tax to be levied under certain conditions on interest and similar income will be lowered from 20% to 12.5% and (ii) if the recipient (being the beneficial owner) of the relevant interest payment is resident in a *white-list* country or territory, no Italian withholding tax will be levied (conditions apply).
2. Companies issuing project bonds will be able to deduct interest expenses under the ordinary applicable rules set forth under article 96 of the Italian income tax act. Otherwise, interest payable on other types of corporate bonds (other than bonds issued by banks and listed companies) suffer from severe restrictions in terms of deductibility in cases where the relevant interest rate is higher than certain parameters.
3. The registration tax (*imposta di registro*), land registry tax (*imposta catastale*) and mortgage tax (*imposta ipotecaria*) that apply to security over the obligations of the issuer vis-à-vis the subscribers of project bonds will apply at fixed amount (equal to Euro 168 for each of them). Otherwise, the provision of such security would have involved significantly higher taxation.
4. Companies will also be allowed to issue project bonds for the purposes of refinancing existing indebtedness. This will allow, for instance, for the refinancing of bridge loans previously granted by one or more banks with the issuance of project bonds (which could also be issued upon completion of the infrastructure).

The taxation regime applicable to project bonds has represented until today one of the obstacles to the take-off of a project bonds market in the Italian infrastructure sector. It is now expected that the Italian infrastructure market will become more attractive for investors.

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