

Withholding tax exemption on profits distributions made by Italian REIFs to foreign CIVs

With ruling No. 147 issued on December 28, 2018, the Italian Tax Authorities have provided some clarifications on the conditions to benefit from the exemption from a 26% withholding tax on distribution of profits made by an Italian real estate fund (“**REIF**”) to a foreign collective investment vehicle (“**CIV**”).

Pursuant to the applicable law, proceeds distributed by a REIF are exempt from the mentioned withholding tax¹ where the investor is a CIV or a pension fund established in a State or territory that allows an adequate exchange of information with the Italian Tax Authorities (“**White Listed Countries**”)².

To benefit from the withholding tax exemption, qualified CIVs must have the same investment purposes and meet the same substantial requirements of an Italian CIV; i.e., a) plurality of investors, b) independence of the manager from the investors and c) either the CIV or its manager being “subject to an adequate regulatory supervision”. According to the Italian Tax Authorities condition under c) is met when the commencement of the relevant activity is subject to prior authorization and the activity itself is subject to mandatory continuing controls in accordance with the applicable rules.

Questions of the taxpayer

A company incorporated as a *société à responsabilité limitée* in Luxembourg (“**Luxco**”) holds all the issued units of a REIF. Luxco’s interests are fully, through indirectly, held by CIVs incorporated as limited partnerships respectively under the laws of the United States, Canada and Cayman Islands (“**Limited Partnerships**”); their general partners are located in the same jurisdictions of the CIVs (“**GPs**”).

The Limited Partnerships hold jointly and indirectly the whole share capital, profits and voting rights of Luxco through four companies incorporated under the laws of Luxembourg and one limited partnership incorporated under the law of Cayman Islands.

Each of Limited Partnership has got two investment advisers (“**Advisers**”), appointed by the GPs. The Advisers, which are companies incorporated under the laws of the United States and registered with the US Securities and Exchange Commission (“**SEC**”), manage independently the CIVs.

Based on all the above, Luxco requested to the Italian Tax Authorities the following clarifications:

- (i) whether the SEC registration of the Advisers is sufficient to prove that the Limited Partnerships are subject to an adequate regulatory supervision or, on the contrary, such condition have to be met also (or exclusively) by the GPs; and
- (ii) whether the circumstance that the Limited Partnerships hold the REIF indirectly is sufficient or, on the contrary, the REIF have to be held directly.

¹ Article 7, para. 3 of Law Decree 25 September 2001, no. 351, converted with amendments by Law 23 November 2001, no. 410.

² Listed in the Ministerial Decree of 4 September 1996, as subsequently amended.

The ruling

The Italian Tax Authorities have stated that, so long as all the other conditions are met³, the exemption from Italian withholding tax on profit distributions made by the REIF to Luxco applies provided that:

- (i) the Advisors are registered with the SEC. This circumstance is sufficient to prove that the Limited Partnerships are “subject to an adequate regulatory supervision”. In this case, the GPs, which are established in White Listed Countries, do not need to be registered with the SEC; and
- (ii) the Limited Partnerships hold the 100% of the equity of the vehicles in the corporate chain through which the units of the REIF are indirectly held and each of the relevant vehicle is also established in a White Listed Country.




³ I.e., the Limited Partnerships (i) are established in White Listed Countries, (ii) have the same investment purposes as an Italian CIV and (iii) meet the same substantial requirements of an Italian CIV.

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