

Italy

The new Italian 'White List' – tax opportunities for foreign investors



Stefano Serbini and
Alessandro Gonzato,
Belluzzo & Partners

The Italian government updated the so-called “White List” on August 9 2016, to include a number of jurisdictions that were previously deemed to be uncooperative.

The White List enumerates the countries that agree to exchange financial information for tax purposes with Italy and now has 123 countries (the original version had around 70 jurisdictions).

The increasing trend of “cooperative countries” represents a significant step towards transparency in international tax matters, mostly considering the involvement of several former “tax havens” (e.g. Hong Kong, Channel Islands, Cayman Islands, British Virgin Islands, Seychelles, etc.).

The inclusion of such countries is mainly due to their adhesion to the OECD multilateral agreement on the automatic exchange of information and to the bilateral agreements signed as a consequence of the Italian voluntary disclosure procedure.

The government has retained the right to control the effectiveness of the exchange of information with the above mentioned countries and to delete any countries from the White List that commit repeated violations.

Various provisions of law, directly and indirectly, make reference to the White List and some even grant a favourable tax regime to different kinds of financial income realised by persons resident in the referenced countries.

The new White List allows investors resident in countries that were previously deemed to be not cooperative to join the above mentioned favourable tax regime and therefore may allow foreign financial players to access the Italian market and, vice versa, to facilitate Italian companies to find new financial sources.

For example, investors resident in countries included in the new White List will be admitted to invest both in Italian government bonds and bonds issued by Italian private entities (e.g. banks, industrial and trading companies, etc.), under certain conditions, without incurring any taxation at source on interest and other income payable on such instruments (according to Article 6 of Legislative

Decree No. 239/1996).

Such investors will also be entitled to invest in Italian collective funds and “Sicav” or enter into financial transactions such as securities lending and repurchasing agreements with Italian counterparties without being subject to any withholding tax on the related income (according to Article 26-quinquies and Article 26-bis of Presidential Decree No. 600/1973).

Even more important is the opportunity provided for by Article 26, paragraph 5-bis of Presidential Decree No. 600/1973. This provision grants the withholding tax exemption on interest payable by Italian borrowers to foreign lenders on medium-long term loans (i.e. loans with a duration of more than 18 months).

The exemption is granted to EU banks, financial institutions and insurance companies and also to “foreign institutional investors”, even with no tax status, resident or established in a White List country and subject to their supervisory authorities.

According to this provision, the Saudi Arabia sovereign fund (country now included in the new White List), as well as private institutional investors resident in White List countries, may grant medium-long term loans to Italian borrowers, under specific conditions and restrictions, without being subject to (withholding) taxation at source.

Such entities are entitled to the above favourable tax regime irrespective of their tax status in the home country, i.e., even if they are not subject in the residence country to (corporate or other) tax on the interest paid by the Italian borrowers.

By contrast, should such entities be controlled by Italian persons, Italian CFC rules could become applicable and therefore the income realised by them would be subject to taxation in Italy if, in essence:

- The corporate income statutory tax rate in the residence country of the foreign entity is lower than 50% of the Italian statutory rate; or
- The effective tax rate applicable in the foreign country is lower than 50% of the applicable Italian tax rate and more than 50% of the foreign entity’s revenues have a “passive income” nature.

Stefano Serbini (stefano.serbini@belluzzo.net) and
Alessandro Gonzato (alessandro.gonzato@belluzzo.net),
Milan

Belluzzo & Partners
Tel. +39 02 36569657
Website: www.belluzzo.net