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THE NEW ITALIAN

INVESTMENT MANAGEMENT EXEMPTION

The new rule provides more certainty for asset managers operating in Italy

November 2024

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INTRODUCTION

The Italian budget law 2023 (“Budget Law”) has introduced the so-called ‘**Investment Management Exemption**’ (IME) in order to give certainty to Investment Fund Management practices, with a particular focus to the risk for a permanent establishment in Italy (“PE”) for a non-Italian resident fund or its controlled entities.

In such cases, the general risk is that tax authorities may argue that the local activities trigger the threshold for a PE. In such cases, the general risk is that the tax authorities may claim that local activities trigger the threshold of a PE. This could lead to important tax consequences such as local taxation, double taxation and, most likely, administrative and criminal sanctions.

General implications may also involve the need for fund managers (eg. Private equity) to spend time in the country of the target investment. Italy is also experiencing an inflow of high skilled personnel, due to **relocation tax benefits**.

It is exactly here where the new law makes its impact. The IME Italian rules provide that, under certain conditions, investment management activities in Italy do not determine the existence of a permanent establishment (PE). With this provision, the legislator aims to boost Italy’s attractiveness

to foreign investors by offering a ‘safe harbour’ for managers assisting the investor company.

In accordance with the new IME rules, the Minister of Economy and Finance recently **issued the Ministerial Decree providing the condition for the applicability of the abovementioned ‘safe harbour’** and the Italian Tax Authorities provided the **guidelines on how to define the investment manager’s arm’s length remuneration**.

On 19 November 2024, the Italian Tax Authorities issued **Circular Letter n. 23/E/2024** aiming to **clarify the IME rules**, highlighted the Italian Government’s commitment to aligning domestic tax practices with international standards, thereby solidifying Italy’s position as a competitive destination for investment management activities.

THE PRESUMPTION

The new Budget law amends Article 162 of the Italian Consolidated Tax Code ("ICTC"), dedicated to PE, and **provides the conditions under which investment funds/investors can avoid being considered as having a PE in Italy due to the activities carried out by investment and asset managers.**

More specifically, the notions of Agency PE and Physical PE have been updated as following.

Agency PE

The new paragraph 7-ter of Article 162 of the TUIR provides that individuals (including non-residents) who, in the name of or on behalf of the foreign investment vehicle, habitually conclude purchase, sale or negotiation contracts, or contribute to the purchase, sale or negotiation of participations, financial instruments, derivatives and credits, are to be regarded as independent agents.

This provision therefore excludes the possibility of a permanent establishment of the foreign investment vehicle if certain requirements are met, which will be analysed below.

The presumption of independence of such entities, together with the circumstance that

they act in Italy as part of their ordinary business, should result in the foreign investment vehicle being unable to have a permanent establishment in Italy.

Physical PE

The new paragraph 9-bis of Article 162 of the ICTC provides that the fixed place of business at the disposal of a resident enterprise which carries on business activities therein shall not be deemed to be at the disposal of the foreign investment vehicle merely because the activity carried on therein benefits the foreign vehicle.

In this case, **the presumption applies where there is a resident enterprise carrying on activities for the benefit of the investment vehicle.**

The two different disciplines appear to have a partially different objective scope. Indeed, the presumption of permanent establishment of the agency is limited to the performance of certain specific activities (e.g. the conclusion of contracts - or the contribution to their conclusion - in respect of financial instruments and credits).

THE REQUIREMENTS

For both the presumptions on physical and agency permanent establishment to apply some specific requirements need to be met.

1. The residency

The investment vehicle and its foreign subsidiaries **must be resident in one of the jurisdictions that allows an adequate exchange of information** listed in the so-called “white-list” decree set out in the Ministerial Decree of 4 September 1996.

White-list (MD 4.9.96)			
Albany	Czech Republic	Liechtenstein	Seychelles
Alderney	Denmark	Lithuania	Singapore
Algeria	Ecuador	Luxembourg	Slovakia
Andorra	Egypt	Macedonia	Slovenia
Anguilla	Estonia	Malaysia	Spain
Argentina	Ethiopia	Malta	Sri Lanka
Armenia	Faroe Island	Mauritius	South Africa
Aruba	Finland	Mexico	South Korea
Australia	France	Moldova	Syria
Austria	Georgia	Monaco	Sweden
Azerbaijan	Germany	Montenegro	Switzerland
Bangladesh	Ghana	Montserrat	Russia
Barbados	Gibraltar	Morocco	Taiwan
Belgium	Greece	Mozambique	Tajikistan
Belize	Greenland	Nauru	Tanzania
Bermuda	Guernsey	New Zealand	Thailand
Belarus	Herm	Nigeria	The Netherlands
Bosnia Herzegovina	Hong Kong	Niue	Trinidad and Tobago

White-list (MD 4.9.96)			
Brazil	Hungary	Norway	Tunisia
British Virgin Island	India	Oman	Turkey
Bulgaria	Iceland	Pakistan	Turkmenistan
Caicos Island	Indonesia	Philippines Island	UAE
Cameron	Ireland	Polonia	USA
Canada	Isle of Man	Portugal	Uganda
Cayman Island	Israel	Qatar	United Kingdom
Chile	Ivory Coast	Romania	Uruguay
China	Japan	Saint Maarten	Ukraine
Colombia	Jersey	Saint Kitts e Nevis	Uzbekistan
Congo	Jordan	Saint Vincent e Grenadine	Vatican City
Cook Island	Kazakhstan	Samoa	Venezuela
Costa Rica	Kyrgyzstan	San Marino	Vietnam
Croatia	Kuwait	Saudi Arabia	Zambia
Curacao	Latvia	Senegal	
Cyprus	Lebanon	Serbia	

2. The “independence”

The Italian Minister of Economy and Finance issued the Ministerial Decree setting out the conditions for the applicability of the IME. Specifically, the Implementing decree specified the independence criteria related to the foreign investment vehicle and to the investment manager operating in Italy.

2.1 The independence of the investment Vehicle

In order to benefit from the IME, the investment vehicle shall be considered

independent vis-à-vis its investors. **The following investment vehicle are deemed to be independent according to the implementing decree:**

- A. **foreign collective investment undertakings established in EU/EEA States in compliance with EU Directive 2009/65** (“UCITS Directive”), or whose management company is subject to regulatory supervision under Directive 2011/61/EU (“AIFM Directive”) in its State of establishment;
- B. **foreign collective investment undertakings in a white-list State:** if (i) their assets are gathered from a plurality of investors and managed collectively in the interest of investors and independently from the latter, according to a predetermined investment policy; (ii) these entities or their investment managers are subject to prudential supervision and regulated under regulations substantially equivalent to those of UCITS or AIFM Directive;
- C. **entities established in a white-list States** if (i) the entities are subject to prudential supervision; (ii) the entities invest capital collected from third parties based on a predetermined investment policy, and (iii) meet the following conditions: (a) no party

holds a stake in their capital of more than 20% (including “closing related” parties in this computation); (b) the capital raised by such entities is collectively managed in the interest of their investors and independently from them.

Moreover, the decree provides that (i) for the rising capital phase and during the reducing capital phase, the 20% threshold is suspended for a 12 months period for each phase; (ii) for the closing phase, the threshold shall not apply.

The **notion of “foreign investment vehicle”** shall be interpreted broadly, to include any entity primarily or exclusively focused on managing investments on their own or of third parties (such as institutional investors and management companies subject to regulatory supervision in their country of establishment).

2.2 The independence of the investment manager operating in Italy

These presumptions are specifically conditioned to the **manager independence requirements** in relation to the investment vehicle.

This condition applies differently depending on the qualification of the “foreign investment vehicle”.

Specifically:

- investment managers of the “foreign investment vehicle” sub-A or sub-B of the above paragraph will be considered as independent to the extent that they receive a remuneration that is supported by adequate TP documentation;
- investment managers of the “foreign investment vehicle” sub-C of the above paragraph will be considered as independent to the extent that the managers (i) **do not hold any managing or supervisory offices** in the corporate bodies of the foreign investment vehicle and/or of its foreign controlled companies and (ii) **do not have a participation of more than 25% in the profits** of the investment vehicle or in the profits of entities belonging to the same group as such vehicle.

The Implementing decree specified that the application of the IME would be prevented only if the representatives of the investment manager operating in Italy hold positions with general operational responsibilities in non-resident entities. Moreover, it has been clarified that the 25% threshold shall be computed including: (i) participations held in entities belonging to the same group; (ii) the eventual leverage produced by the chain; (iii) participations provided with enhanced economic rights such as carried interest.

In relation to the independence of the investment manager, no relevance shall be given to the fact that the activity carried out in Italy is subject to regulatory restrictions under the relevant regulatory framework.

3. The Asset Manager Remuneration

The remuneration paid to the individuals or entities in Italy carrying out activities for the investment vehicle must be determined on the basis of their **fair market value**, in accordance with the principles set forth by Article 110(7) of the ICTC.

Moreover, for these purposes, **the remuneration must be supported by proper transfer pricing documentation**.

Italian Tax Authorities Provision No. 68665 of 28-2-2024 implemented Article 162 para. 7-quater (d) of the ICTC, according to which, for the purposes of the investment management exemption rules, the asset manager's remuneration must be in line with market criteria, supported by appropriate documentation.

For 'investment management services' (e.g. purchase, sale and negotiation of financial instruments and loans, administration of assets collected, investment marketing activities)

– the most appropriate method is the price comparison method (CUP);

- if, however, the asset manager and the investment vehicle share the assumption of the same economically significant risks and the price comparison method is not applicable with equal reliability, the most appropriate method is the transactional profit-split method;

- if, again, none of these methods leads to reliable results, another method recommended by the OECD Guidelines may be used.

For "services ancillary to investment management" (e.g. advice, study, research and analysis in financial matters, services of an administrative or accounting nature, etc.), the methods are to be selected according to the circumstances of the case from those outlined in the OECD Guidelines.

OVERVIEW OF THE KEY POINTS OF THE CIRCULAR LETTER N. 23/E/2024

The Italian Revenue Agency has recently issued a Circular Letter elaborating on the Investment Management Exemption (IME) framework. This Circular clarifies crucial operational aspects of the regime, addressing both legislative and practical implications.

Below is a summary of its key points.

1. Entry into Force of the IME

The Circular confirms the date from which the IME is operational and provides guidance for entities seeking to qualify under this regime. Specifically, IME applies as from fiscal year 2024, when the implementing provisions were issued. The IME is designed to enhance Italy's attractiveness as a hub for asset management by providing a clear, favorable tax framework.

2. Inclusion of Non-Resident Asset Managers

The provisions explicitly specifies that the safe harbour established under the IME does not apply to non-resident management companies. Instead, it is limited in scope to Foreign Vehicles and their subsidiaries.

3. Independence of Non-EU Collective Investment Undertakings

The Circular specifies the requirements for non-EU Collective Investment Undertakings to qualify under the IME. Independence from Italian investors is a critical factor, ensuring that tax neutrality applies to these vehicles.

4. Master/Feeder Fund Structures

A notable clarification is the applicability of the IME to Master/Feeder structures. Under Article 1, paragraph c) of the Implementing Decree, the IME applies to Foreign Vehicles

located in a White-list State, provided that no individual or entity holds a stake exceeding 20% in their capital. This includes stakes owned by "closely related" parties. The Circular Letter further specifies that for master-feeder structures, the 20% ownership threshold must be assessed using a look-through approach.

5. Temporary Suspension of Threshold Calculations

The Circular introduces a temporary suspension mechanism for calculating the 20% threshold of economic interest. This measure supports entities undergoing transitional periods or corporate restructurings, ensuring their IME eligibility remains intact. Specifically, the application of the 20% limit is temporarily suspended in specific circumstances, such as when the Foreign Vehicle increases or reduces its capital, provided the suspension does not exceed 12 months. Additionally, the threshold is also suspended during the Foreign Vehicle's liquidation process, as it redeems shares or units to its investors.

Lastly, the Circular Letter confirms that the 20% threshold does not apply during the initial phase of the Foreign Vehicle's establishment.

6. Independence and Economic Participation

The Circular defines the independence requirements for asset managers and specifies how the 25% economic participation threshold is calculated. This ensures that managers and vehicles comply with IME provisions while maintaining operational autonomy.

7. Delegation and Sub-Delegation of Activities

The document addresses scenarios where management activities are delegated or sub-delegated. It ensures the IME remains applicable by outlining responsibilities and the required degree of oversight by the delegating manager.

8. Arm's Length Principle for Management Fees

The Circular underscores the importance of ensuring that fees paid by foreign vehicles to asset managers adhere to the arm's length principle. This aligns with international tax standards and prevents potential disputes.

9. Transfer Pricing for Intra-Group Transactions

Transfer pricing (TP) compliance is a cornerstone of the IME. The Circular specifies how TP rules should apply to transactions within the same corporate group, ensuring consistency with broader tax regulations.

10. TP Documentation Requirements

To further strengthen compliance, the Circular outlines detailed documentation requirements for entities under the IME. These include maintaining robust records that justify intra-group pricing and ensure transparency.

The Circular not only clarifies the legislative intent but also establishes a robust operational framework. It highlights the Italian Government's commitment to aligning domestic tax practices with international standards, thereby solidifying Italy's position as a competitive destination for investment management activities.

OUR SUPPORT

As explained in the Explanatory Report, the Italian Legislator, by introducing the Investment Management Exemption, aims to **reduce the risk that investment managers operating in Italy might trigger a PE** for the investment vehicle or its controlled entities. It is expected, therefore, that investment vehicles will not be discouraged from locating their managers in Italy.

With this measure, investment managers not only would benefit from the a safe harbour against the PE risk for the investment structure, but also might benefit from tax regimes offered in Italy to attract new tax residents.

Our **Italian desk in London** and **our Milan office** will be happy to follow up and support interested parties by providing:

- advice on the legal framework of the investment management exemption provisions
- assistance for the manager's tax obligations and compliance
- accounting and administrative assistance
- advice on immigration and relocation issues for managers.

Our professionals will be happy to provide further specific information and clarification under request.

Our dedicated team:

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Luigi Belluzzo, Equity Partner – Milan

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- International Law Firms and CPAs
- Family Offices
- International Families
- Trustees and/or fiduciary service providers
- Private Equity Private Investors and Club-Deal Investors
- Professional firms

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- International Tax Compliance
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- Immigration & Relocation
- Trust & Estate Planning
- Real Estate & Trophy Assets
- Family Law and Divorce
- AML, CRS, Fatca, UBO Compliance

YOUR CONTACT

If you have received this document, it is likely that you are already in contact with a professional at Belluzzo International Partners.

Please don't hesitate to contact them to be introduced to our Desk Italia professional team.

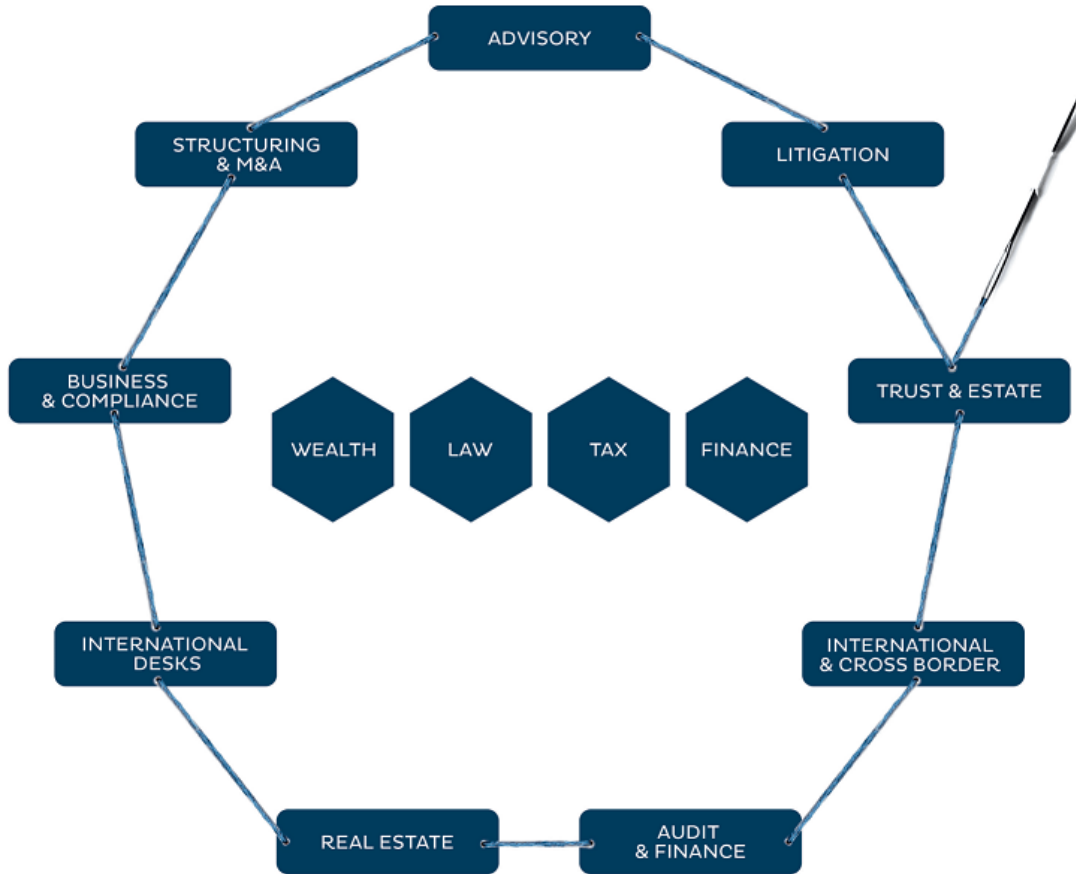
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