

Italy: Open for business

Overview

With Circular no. 7/E of 28 March 2023 (the “**Circular**”), the Italian Tax Authority (“**ITA**”) issued important clarifications in relation to the tax ruling procedure for new investments (the “**Large Investment Ruling**”)¹. The new Circular confirms an open and cooperative approach of the ITA, aimed at favoring large investments in Italy, as also discussed during a recent ITA event in Milan.

The Large Investment Ruling in a nutshell

The Large Investment Ruling procedure is available to investors (including non-residents, with or without a PE in Italy, and groups of entities) that intend to make investments of at least EUR 15 million² in Italy, provided certain conditions are met, such as that the investment has a significant and long-standing impact on the employment rates of the business activity that is the target of the investments. The EUR 15 million threshold is computed by taking into account all financial resources (including borrowing from third parties) that are necessary for the enterprise/group to implement the investment plan in Italy.

Qualifying investments include: (i) the start of a new business or the expansion of an existing one; (ii) the diversification of existing production facilities; (iii) the restructuring of an existing business to overcome or prevent a crisis; and (iv) transactions involving the purchase of equity interests.

¹ Introduced by Art. 2 of Legislative Decree No. 147 of 14 September 2015, as implemented by the Ministerial Decree of 29 April 2016 and in Commissioner’s Regulation no. 77220/2016.

² The threshold originally provided was Euro 20 million as amended by Art. 8 paragraph 6 of Law No. 130/2022 and it applies to Large Investment Rulings filed as of 1 January 2023, even if referred to investments performed prior to such date.

The ITA must issue the ruling within 120 days from the receipt of the application. The ITA may request additional information and documentation. In this case, the ITA have 90 days from the receipt of the additional documentation to issue the tax ruling.

The ruling is binding for the tax authorities as long as the facts and circumstances represented in the application remain unchanged. Notices of deficiency or other notices or acts of the tax authorities that are inconsistent with the tax ruling (including the case where the tax authorities have not replied to the applicant within the statutory terms, thereby implicitly accepting the applicant's proposed solution) are void.

Any office of the ITA that intends to audit the position of a taxpayer that has obtained a new investment ruling must liaise with the office that has issued such ruling before serving a tax audit report (or notice of deficiency) on the taxpayer.

Through the Large Investment Ruling enterprises obtain full clarity regarding the tax treatment of the entire investment plan (including any reorganization that has to be carried out to implement the investment plan). The Large Investment Ruling may also confirm (i) whether a going concern exists, (ii) that the statutory GAAR or other specific anti-avoidance rules do not apply, and (iii) the eligibility for specific tax regimes.

In 2022 the ITA issued Rulings on **19 Large Investment**, which are expected to bring about **2,500** jobs and multi-year investments of more than Euro **10 billion**³.

Main clarifications

On 27 June 2022, the ITA launched a public consultation on the Large Investment Ruling. Along other stakeholders, Chiomenti submitted comments based on the Firm's expertise on the matter⁴.

The Circular provides several important clarifications, namely:

- **Relevance of foreign investments** (*Par. 1.1. and Par. 1.3.*): The concept of “*relevant investment*” also includes the acquisition of assets or shareholdings of non-resident entities, provided that the investor is located in Italy and that there are positive economic and revenue effects from an Italian perspective. The same applies for investments in Italy that have also a foreign component⁵;
- **Qualifying Investments** (*Par. 1.2.*): In addition to asset deals and share deals, the circular expressly mentions as qualifying investments: (i) the relocation in Italy of assets previously transferred abroad; (ii) the transfer of the tax residency in Italy of foreign taxpayers;
- **Employment test** (*Par. 2.*): The Circular clarifies that, for the purposes of the employment test, all the entities involved in the investment should be taken into account, i.e., not only the lead investor. In such a case, the involved entities are required to provide an explicit mandate to the investor submitting the request for the Large Investment Ruling;

³ Press conference of 9 March 2023 of the ITA, Ministry of Economy and Finance and Revenue Agency. Further details at the following link: https://www.agenziaentrateriscossione.gov.it/export/.files/it/news/slides-risultati_2022.pdf

⁴ Our contribution is available [here](#).

⁵ Such conclusion overcome its previous interpretation issued by Circular no. 25/E of 1 June 2016, par. 2.1.

- **Timing issues (Par. 3):** Large Investment Rulings concerning the existence of a PE in Italy are considered timely if submitted before the deadline for filing the first relevant income tax return, meaning the first tax return relating to the tax period in which the factual and/or legal circumstances under which the existence of the PE is to be assessed occur.

A toolkit of measures to attract investments

The clarifications included in the Circular are in line with the discussions held during the event “*Cooperative Compliance and Other Instrument to Boost Investments*”, organized in Milan by the Italian Revenue Agency and Assonime, the Italian Association of Listed Companies. The event took place on 28 March 2023, the day before the publication of the Circular, in a packed meeting room of the Regional offices of the ITA in Milan.

Opened by the Vice-Minister in charge of Taxation, the Director General of Assonime, the ITA Commissioner and the Head of ITA Regional Office in Milan, the event saw the participation of senior officials from the ITA and representatives of the business and professional community. Participants discussed the key instruments to attract investments and provide predictability to investors, such as: the Cooperative Compliance Regime, the Tax Incentives for the Attraction of Human Capital, the Carried Interest Regime, as well as the newly introduced Investment Management Exemption.

Key take aways from the meeting include that several companies have used the Large Investment Ruling as a fast-track for accessing cooperative compliance. Further, it was underlined that a competent and reliable tax administration, together with incentives to boost investments, are particularly relevant in current times given the focus of many players on “reshoring” and “friendshoring”.

Stay Tuned

It is clear that the current government is fully aware of the importance of attracting investments and providing a stable legal framework, also in relation to the incentives to attract human capital. As it emerged from the event in Milan, consideration at the political level will be given to the introduction of a cooperative compliance regime for individuals.

In terms of next steps, an English version of the Circular is expected to be released in the next few weeks.

Coming soon are also the Implementing Decree and Guidelines in relation to the Investment Management Exemption introduced by the 2023 Budget law.

Further, the Decree for strengthening the administrative capacity of the Public Administration (*Decreto per il rafforzamento della capacità amministrativa della Pubblica Amministrazione*) approved on 6 April 2023 by the Council of Ministers, established a one-stop-shop within the Ministry of Enterprises and Made in Italy, aimed at facilitating, directing and streamlining the procedures for attracting investments in Italy.

This is in line with the envisaged tax reform, whose Bill was approved on 16 March 2023 by the Council of Ministers and is currently under discussion in Parliament.

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For any further clarification please do not hesitate to contact Chiomenti's Tax Practice Area at tax@chiomenti.net