

Newsalert

Tax department

Real estate investment funds: withholding tax exemption for profits distributed by a real estate fund to a REIT of Singapore (clarifications by the Revenue Agency)

On 26 August 2019, the Italian Revenue Agency published the answer no. 345 to a request of tax ruling, which provides some clarifications on the tax regime applicable to profits distributed by an Italian real estate investment fund to a real estate investment trust (REIT) established in Singapore.

The clarifications will be relevant also for REITs established in other jurisdictions, since the Revenue Agency identifies some requirements that must be satisfied by a REIT in order to benefit from the withholding tax exemption on profits deriving by the investment in an Italian real estate investment fund.

The case analysed by the Revenue Agency

The request of tax ruling has been filed by a company incorporated as Private Limited Company under the laws of Singapore and resident therein for tax purposes (hereinafter the "**Manager**"). The Manager has requested to the Monetary Authority of Singapore (MAS) the authorization for the management of a REIT established under the law of Singapore ("**Alpha REIT**").

Alpha REIT will issue units which will be subscribed for by a plurality of investors. The assets of Alpha REIT will be registered in the name of the trustee of the REIT, but will be managed by the Manager.

Alpha REIT is managed pursuant to an agreement between the Manager and the trustee of Alpha REIT. The Manager will manage the assets of Alpha REIT with discretionary powers in order to realize profits for the investors, following a predetermined investment policy.

Alpha REIT will invest in an Italian real estate investment fund (the **Italian REIF**) managed by an Italian management company (SGR). Such investment will be carried out directly or through a wholly owned (100%) investment vehicle resident in a State included in the Italian "white list" (provided by the ministerial decree 4 September 1996).

Under Italian tax law, pursuant to paragraph 3 of article 7 of the law decree 25 September 2001, no. 351 ("**Decree 351**"), profits distributed by an Italian real estate investment fund to "institutional investors" (as defined by article 32, paragraph 3, of law decree 31 May 2010, no. 78) are exempt from withholding tax in

Italy. Institutional investors include, inter alia, foreign entities established in a white list State, similar to Italian collective investment undertakings.

Such exemption is applicable also if the foreign investor owns the units of the Italian fund through a wholly owned investment vehicle resident for tax purposes in a white list State (as clarified by the Revenue Agency in the Ruling 18 July 2013, no. 54).

The request of tax ruling was aimed at clarifying whether such exemption is applicable to the profits distributed by the Italian REIF to Alpha REIT, i.e. whether Alpha REIT qualifies as “institutional investor” for the purposes of the withholding tax exemption.

Clarifications of the Revenue Agency

The Revenue Agency pointed out that under the Italian financial law (article 1, paragraph 1, letter k) of legislative decree 24 February 1998, no. 58) the fundamental features of a collective investment undertaking are the collective management of the capital collected from a plurality of investors and the independence of the management with respect to the investors.

In particular, the Revenue Agency pointed out that a foreign investor (e.g. a REIT) is entitled to the withholding tax exemption if:

- (i) under the laws of the State of establishment such investor has the same substantial requirements of an Italian collective investment undertaking, including the investment purposes, regardless of the legal status and the tax treatment, and
- (ii) it is subject to supervision either at the level of the collective investment undertaking or at the level of its manager (as clarified by the Revenue Agency in the Circular Letter of 15 February 2012, no. 2/E).

With respect to the Alpha REIT, in the solution proposed by the Manager it is underlined that the Manager is an entity different from the REIT and that a REIT established under the law of Singapore is substantially similar to an Italian real estate investment fund.

In its answer, the Revenue Agency, based on the guidelines of the European Public Real Estate Association (EPRA), underlined that, in principle, a REIT does not satisfy the requirements to be considered similar to a collective investment undertaking established under Italian law.

Therefore, in principle, a REIT would not qualify as “institutional investor” for the purposes of the withholding tax exemption at issue.

As a consequence, a REIT would not benefit from the withholding tax exemption with respect to profits distributed by an Italian real estate fund.

In particular, the Revenue Agency pointed out that an Italian real estate investment fund is a separate pool of assets, deriving from the capital collected from a plurality of investors, managed independently from the investors.

Furthermore, the Revenue Agency underlined that the management of an Italian fund is based on a predetermined investment policy, that cannot be modified by the management company (i.e. the SGR) at its discretion.

On the other hand, according to the Revenue Agency, as a general rule, a REIT does not have a predetermined investment policy nor any “management rules” comparable to those of an investment fund; in particular, according to the tax authority, as a general rule, a REIT has a commercial strategy similar to that of a commercial company, which may be modified by the REIT at its discretion.

However, with respect to the case at issue, the Revenue Agency noted that, under the laws of Singapore and based on the features described in the request of ruling, Alpha REIT is similar to an Italian collective investment undertaking, since:

- (i) the plurality requirement is met, considered that the units will be subscribed by several investors;
- (ii) the investment policy is predetermined by the deed of establishment of the REIT. In particular, the investors are not involved in the management of the REIT nor control the investment policy;
- (iii) the Manager is an entity different from Alpha REIT (and is resident for tax purposes in a white list State, i.e. Singapore);
- (iv) the Manager will manage Alpha REIT under the supervision of the competent authority of Singapore pursuant to a specific authorization issued by such authority.

On such basis, the Revenue Agency stated that Alpha REIT qualifies as “institutional investor” for the purposes of the withholding tax exemption regarding profits distributed by an Italian real estate fund and, therefore, would benefit from such exemption with respect to the profits distributed by the Italian REIF.

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