

Tax ruling on proposed investments

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In order to attract investment and promote economic development, Art. 2 of Legislative Decree no. 147/2015 (the "Internationalisation Decree") introduced a new form of early hearing between the Tax Italian Authorities (*Agenzia delle Antrate*, "AdE") and companies.

Specifically, it introduced a new ruling procedure under which businesses can submit a proposal to AdE to rule in advance on the tax treatment of a specific planned investment.

The application of the new procedure is set out in Ministerial Decree of 29 April 2016 published in the Italian Official Gazette no. 110 of 12 May 2016 and in the regulation ("*Provvedimento*") issued by the Director of the Italian Revenue Agency dated 20 May 2016.

1. The Applicant

Any entity, whether or not it resides in Italy for tax purposes, that intends to make a "qualified investment" in Italy may apply for a ruling.

In the case of an investment made in a group (or under an ATI - Temporary Association of Enterprises), all companies that contribute to the investment can benefit from the ruling.

2. Other Requirements

A "qualified investment" is an investment plan, which may be over several years, of a minimum total amount (financed by equity or debt) of Euro 30 million able to promote significant and sustained "occupational effects".

"Occupational effects" means the creation and maintenance of jobs (for example in the case of an investment in a restructuring transaction). They must be long term and significant (i.e. not marginal) taking into account the particular nature of the investment. This means that an investment in a traditionally capital intensive area will be considered in a different way to investment in a labour intensive sector.

The investment can consist of:

- a. the creation of a new business or businesses;
- b. the expansion of an existing business or businesses;
- c. the diversification of an existing manufacturing plant;
- d. the restructuring of an existing business to allow it to overcome or prevent an economic crisis;
- e. transactions involving the purchase of shares in a company.

3. Scope of the Ruling

The ruling will deal with the tax treatment of all the transactions envisaged in the investment plan.

4. Timeframe for Response by AdE

The AdE must respond within 120 days. If the AdE asks for additional documents, it must give its response within 90 days of filing of those documents.

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In the absence of a response, the tax treatment proposed in the application for a ruling is deemed approved by AdE.

5. Effectiveness and Validity of the Response by AdE

The ruling is binding on the tax authorities and any notice of assessment which is issued in violation of the ruling is void. In any event, the ordinary competent tax authorities, before issuing formal notices of (i) assessments or (ii) investigation proceedings or the imposition of sanctions, must coordinate with the office of the AdE to which the applicant submitted the application for a ruling, to ensure that the matter is treated in the same way by all the relevant tax bodies.

The AdE ruling does not have an “expiration date”; it will lose its effectiveness if and when with reference to a specific aspect the law or the relevant factual circumstances change.

The ruling must be submitted to the competent tax office¹ of the AdE prior to the filing of the relevant tax return.

6. Brief Comments on the New Procedure

This legislation represents an important step forward given that it is meant to provide certainty in relation to the tax aspects of investments (domestic or foreign) in Italy. Moreover, in the absence of regulatory changes and where the taxpayer acts in accordance with the ruling that is in place, the ruling is not time limited and can, therefore, regulate the whole life of the investment.

The unification of the procedure for administrative rulings with that for investment transactions is also an important simplification of the process, which should contribute to its widespread use.

The new procedure is of particular interest in private equity transactions because it means that confirmation of the tax aspects of the investment can be obtained at the initial phase, during the life of the investment itself as well as at the exit.

¹ The *Provvedimento* issued by the Director of the Italian Revenue Agency dated 20 May 2016 identifies the relevant office.