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Recent clarification on the exemption from Italian taxes on distributions of profits made by Italian real estate funds

With Resolution no. 78/E of 27 June 2017, the Italian Tax Authorities have provided significant clarification on one of the conditions that needs to be met to benefit from the exemption from Italian taxes on distribution of profits made by Italian real estate funds (**REIF**) to non-Italian tax resident investment funds.

By way of background, proceeds from periodic distributions or realised on redemption of units are exempt from Italian taxation¹, provided that the investor (i) is a collective investment fund or a pension fund established in a State or territory that allows an adequate exchange of information (*white listed countries*), (ii) or its manager, is subject to adequate regulatory supervision.

For these purposes, a collective investment fund may be considered to be “subject to adequate regulatory supervision” when the commencement of the relevant activity is subject to prior authorisation and the activity itself is subject to mandatory continuing controls in accordance with the applicable rules.

Under the previous interpretation by the Italian Tax Authorities, the regulatory supervision had to be evidenced by a certificate issued by the local regulatory authority, confirming that the fund, or the manager, was subject to regulatory supervision. Obtaining this certificate has proven difficult in a number of jurisdictions, such as the US.

In Resolution no. 78/E, an investment fund incorporated as a limited partnership in the Cayman Islands and managed by a general partner located in the same jurisdiction was subscribing for units of a REIF. The fund benefited from the advice of an investment adviser located in the US. The *fund manager* and the investment adviser had been both registered with the US Securities and Exchange Commission (SEC) through the Form ADV, under a sort of umbrella registration.

The question posed was whether evidence of the submission of the Form ADV was sufficient to prove that the fund manager was subject to the regulatory supervision of the US authority?

With Resolution no. 78/E, the Italian Tax Authorities have confirmed that providing evidence of the submission of the ADV Form is sufficient to prove that the fund manager of the investment fund is subject to the regulatory supervision of the SEC and, therefore, investment in REIFs are exempt from Italian taxation so long as all the other conditions are met.

¹ Article 7, para. 3 of Law Decree 25 September 2001, no. 351, converted with amendments by Law 23 November 2001, no. 410