Updates on China-Italy bilateral double tax agreement (DTA)

On 23 March 2019 Italian Prime Minister Giuseppe Conte and Chinese President Xi Jinping signed at Villa Madama (Rome, Italy) a Memorandum of Understanding ("**Memorandum**") setting forth, inter alia, the support of Italy to the Chinese *Belt and Road Initiative* ("**BRI**"). The BRI, promoted by President Xi in 2013, aims at facilitating global trade and commerce by connecting China and other countries across Asia, the Middle East and Europe through a massive network of interconnecting land and maritime routes and infrastructures, including ports, bridges, railways and power plants.

The Memorandum represents the legal framework of 29 bilateral cooperation agreements (10 commercial and 19 institutional agreements) between Italy and China, which are intended to formalise the strategic partnership between the two countries in different commercial sectors, including taxation, health, innovation, culture and food & beverage.

Regarding taxation, press release No. 58 dated March 23 2019 issued by the Italian Ministry of Economy and Finance, announced a new agreement ("**Agreement**") between Italy and China which refreshes the previous one signed by the two countries in 1986.

Double taxation treaties are entered into with the purpose of reducing taxes applied by a treaty country for the residents in the other treaty country and, general, to avoid double taxation or prevent tax evasion.

The Agreement substantially updates the Convention against double taxation between Italy and China signed in 1986 and came into effect on 13 December 1990.

The main keys changes are[1]:

- Taxation on dividends paid by a company of one treaty country to resident shareholders of the other treaty country is reduced from 10% to 5%, if the receiving shareholders have held the 25% of the share capital of the company that pays the dividends for no less than 365 days. Italian companies receiving dividends from Chinese sources are expected to further benefit from such reduction. Furthermore such reduction may encourage the capitalization of Chinese companies in Italy through equity investments. Payment of dividends relating to shareholdings not meeting the above threshold shall continue to be taxed at the rate of 10%;
- Taxation on interests remitted from residents of a treaty country to the other treaty country shall be subject to a withholding tax of 10% on the gross amount of the interests paid. In addition, the Agreement provides for a reduced withholding tax of 8% on interests paid to financial institutions in relation to loans of at least three years. Such reduction is aimed at financing investment projects. The Agreement still provides for an exemption from the withholding tax on interest paid by, or to, the Government or local authorities, Central Bank, public bodies, or institutions whose capital is wholly owned by the Government. This provision allows, among other things, to reinstate the taxation exemption on interest payments from China to certain Italian public financial institutions which, according to the previous agreement, were not entitled to it as they were not 100 % held by public ownership (e.g. Cassa Depositi e Prestiti, SACE, SIMEST). Furthermore, the Agreement provides for an exemption in Italy of the withholding tax on interests paid to Chinese residents on securities issued by *Cassa Depositi e Prestiti*, such as the so-called "*Panda Bond*" (as well as securities issued by other public companies such as SACE, SIMEST, and Bank of Italy);

[1] *(Source: Ministero dell'Economia e delle Finanze, Comunicato Stampa, N. 58, 23/03/2019)*

- The general taxation rate applied on royalties paid by a treaty country to residents of the other treaty country shall be 10% on the fees paid for the use, or license, of a copyright on (artistic or scientific) literary works, including software, motion pictures, movies, television recordings or radio broadcasts, as well as patents, trademarks, designs or models, secret formulas or processes, or information concerning industrial, commercial or scientific experiences. An effective tax rate of 5% (the nominal rate of 10% applies to the amount of 50% of the royalties) will be instead applied to payments relating to the use, or right to use, of industrial, commercial or scientific equipment. It is worth nothing that this rate is lower than that provided in bilateral agreements entered into between China with other major European countries for the same type of payments, where the maximum reduction is 6%;
- Taxation of 25% on capital gains deriving from the sale of shareholdings of no less than 25% of the share capital of a company, remains unchanged. The Agreement provides, however, that such taxation applies to capital gains when the shareholdings in question are held in the 12 months prior to the sale. Furthermore, all capital gains not expressly ruled by the 1986 Convention shall be taxable only in the country of residence of the seller.

Please note that the above is simply an overview of the subject matter and it is not, nor is it intended to be, a legal opinion or legal advice. Should you have any questions concerning the new law's requirements set out above or should you wish to receive information on our annual package, please do not hesitate to contact us.

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