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Important opportunities for the market of short-term bonds and securitisation notes in Italy

Exemption for eligible non-resident investors as of 1 January 2012

New tax legislation should open up great opportunities for Italian issuers to tap into the short term capital markets by removing the withholding tax discrimination currently existing vis-à-vis long term bonds.

One of the (possibly unintended) consequences of the new measures proposed by the Italian Government to reform the taxation of interest (and capital gains) on securities is a significant widening of the scope of the tax regime applicable under Legislative Decree 239 of 1 April 1996 (the "**239 Regime**"). The new measures are contained in a decree law currently before Parliament for conversion into law. Once the conversion is accomplished as expected (in the next few weeks), the new regime will apply as of 1 January 2012.

The main features of the current 239 Regime are as follows:

- application of a 12.5% (to be increased to 20%) substitute tax on interest derived by the so called "net recipients";
- no taxation at source on interest derived by the so-called "gross recipients", which include:
  - Italian resident businesses;
  - beneficial owners resident of states and territories allowing an adequate exchange of information (the "**White-Listed States**");
  - institutional investors, whether or not subject to tax, established in White-Listed States;
  - supranational organisations established through instruments ratified by Italy;
  - central banks and other entities managing the official reserves of a State.

Under the 239 Regime, the taxation (or exemption) may be administered by financial intermediaries other than the issuer (including Euroclear and Clearstream), thus significantly facilitating trades on the secondary market.

Key Issues

Exemption for eligible non-resident investors as of 1 January 2012

The limitation should be gone effective 1 January 2012

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Currently, the 239 Regime applies only to interest and other proceeds on bonds issued by banks (including covered bonds), companies whose shares are listed on a regulated market and securitisation vehicles (the "**Eligible Issuers**"), provided that the original maturity of the bonds is not shorter than 18 months. Interest on bonds with a shorter original maturity is subject to a 27% withholding tax and does not benefit from the exemption when received by Eligible Issuers. The detrimental tax regime applicable to such short term bond has so far severely limited the ability for issuers to tap into the short term capital market.

The limitation should be gone effective 1 January 2012

As a result of the law-making technique, the new measures, if confirmed, will not only replace the two original rates – 12.5% in the case of maturity of 18 months or more, 27% in the case of shorter maturity – with one single 20% rate, but also determine the extension of the 239 Regime to all the bonds issued by Eligible Issuers, regardless of their original maturity. Moreover, no 20% surcharge shall apply in the case of early redemption by issuers (thus relieving securitisation transactions from the lock-up and negative carry constraints).

As a consequence, banks, listed companies and securitisation vehicles will be in a position to issue short-term debt securities paying interest gross to a wide range of investors that would be currently suffering withholding tax on the same securities unless complex and expensive structures are implemented.

This Client briefing does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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