

Breakthrough tax and legal measures to enhance credit opportunities for Italian businesses become final through conversion of the Decree Law

Law decree 91 of 24 June 2014, known as the "*Decreto Competitività*" (the "**Decree**")¹, introduced a set of measures to boost access to financing for Italian businesses. These new measures are now final, following the Decree's conversion into law by the Italian Parliament on 6 August 2014. The conversion law is to be published soon in the Official Gazette of the Italian Republic (the "**Conversion Law**").

The Conversion Law consolidated the legal and tax measures already set out in the Decree, a significant step towards greater efficiency of domestic and cross-border financings. As described in our briefing note of June 2014 ([Download PDF](#)), the Decree sets forth new provisions affecting key tax, regulatory and special securitisation laws such as: (i) broader exemptions from interest withholding taxes, including on cross-border loans; (ii) broader scope of the 0.25% substitute tax to include secondary trading; (iii) authorisation for Italian insurance companies to grant financing to borrowers directly (primary market); and (iv) authorisation for Italian securitisation vehicles to grant financing directly within the scope of the Italian securitisation law.

1. The Decree's tax measures remain un-altered

The main tax and regulatory measures on lending and transactions on bonds have been confirmed by the Conversion Law. The tax measures related to financing transactions are as follows.

Tax measures on lending

- As outlined in the briefing note of June 2014 ([Download PDF](#)) the Decree repealed the withholding tax on interest payments made on medium and long term loans by Italian resident businesses to (i) EU banks, (ii) EU insurance companies, and (iii) (unleveraged) collective investment schemes established within the EU or in an EEA State allowing an adequate exchange of information. The Conversion Law confirms this provision.
- The Conversion Law also confirmed that the 0.25% substitute tax applies to medium-term loans, which franks financing transactions from the application of stamp duty and other taxes to funding and related security package, and the

¹ Official Gazette of the Italian Republic of 24 June 2014, number 144.

subsequent transfer of the receivables and other associated security, on the secondary market. The tax is also applicable to loans made by Italian securitisation vehicles, collective investment schemes and insurance companies.

Tax measures on bonds

The Conversion Law has confirmed that the listing of bonds and similar securities issued by Italian non-listed companies (so-called "mini-bonds") is no longer necessary to access a favorable withholding tax regime. More in particular, bonds held by "qualified investors" as defined under article 100 of the Italian Consolidated Financial Act will also be eligible for the tax regime under Legislative Decree 239 of 1 April 1996, which allows full exemption at the source for all eligible white-listed investors.

Moreover, no withholding tax will apply on interest on bonds and similar securities paid to:

- collective investment undertakings established in Italy or another EU member State which invest more than 50% of their assets in such bonds or similar securities and whose investors are solely "qualified investors"; or
- Italian securitisation vehicles which invest more than 50% of their assets in such bonds or similar securities and whose investors are solely "qualified investors".

2. Adjustment to regulatory and securitisation measures

The financing activity by insurance undertakings and securitisation vehicles pursuant to this de-regulation is now subject to 5% asset retention rules

Pursuant to the Conversion Law, Italian **insurance undertakings** and **securitisation vehicles** ("SPVs") are now permitted to grant financing to businesses (but not individuals), provided that the borrower is identified by a bank or other financial intermediary, which must retain at least a 5% interest in the in the transaction until the relevant maturity, and other conditions are met.

The Conversion Law took the opportunity to clarify the wording in the Law Decree, which required the bank or financial intermediary to retain "a significant interest" in the transaction, by stating that (i) the lender must maintain an **economic interest of not less than 5 per cent.** in the financing so granted and (ii) **such net interest will be transferable to other banks or financial intermediaries.**

The Conversion Law has also stated that in the case of financing granted by insurance undertakings, the borrower could be identified by the insurance undertaking itself, subject to the prior approval of IVASS, the regulator of the insurance industry. In such latter case, the borrower identification by a bank or financial intermediary and the additional 5% retention of interest requirements would not apply.

The Conversion Law has been published in the Italian language only; we are available for any further information on the new legislation.

This publication 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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