C L I F F O R D
C H A N C E

Briefing note

January 2015

Interest withholding tax exemption extended to a wider array of fund types: a missed opportunity?

The Italian Government has published new legislation on 24 January 2015 to widen further the scope of the exemption from withholding tax on interest payments by Italian companies to non-Italian lenders, which was first introduced last summer.

Under current legislation, in terms of non-banks, only collective investment undertakings that are not leveraged and are established in a member state of the EU or EEA allowing for an adequate exchange of information would qualify for exemption.

Under the new legislation, the exemption has been extended to all non Italian institutional investors, whether or not subject to taxation (such as tax transparent or exempt funds), established in a State or territory allowing for an adequate exchange of information, provided that they (or, reasonably, their management company) are subject to "forms of regulatory supervision" in their jurisdiction of establishment.

However, as partners from Clifford Chance's Italian offices explain, there remains considerable uncertainty from a regulatory standpoint, whether and to what extent foreign non-bank investors can lend directly to Italian corporations or even acquire drawn term loans in primary syndication. Therefore, absent further clarification from the authorities on these regulatory aspects, the new reform is unlikely to result in changes to the current lending structures for Italian transactions whereby foreign non bank-investors sub-participate in loans to Italian corporations (as opposed to lend directly). This increases the complexity of Italian lending transactions and inevitably impacts negatively market perception and appetite.

Carlo Galli, head of Tax at Clifford Chance Italy comments *"The proposed legislation widens the scope of the exemption, by expanding it to a wider array of credit providers, continuing the progress made with the 2014 reform. It is a further step in the right direction to remove tax obstacles to new suppliers of credit but hopefully there will be more changes to come."*

However, **Lucio Bonavitacola**, head of the Italian Regulatory team at Clifford Chance Italy points out that: *"While there has undoubtedly been progress in the sphere of tax exemptions, from a regulatory perspective the answer to the core question of whether non-bank financial investors are permitted to engage in direct lending activity to Italian corporations remains unclear. The recent change has not removed this uncertainty. Indeed, the new legislation was published under the following heading: "Indirect lending for foreign institutional investors" and the reference to "indirect" (lending), if anything, suggests that direct lending by foreign institutional investors may be precluded. To many of our clients, Italy continues to be an anomaly since it is possible for non-bank financial investors to purchase and hold bonds issued by listed and non listed Italian corporations but not to extend loans directly to those same corporations".*

Giuseppe De Palma, head of the Italian banking team and office managing partner concludes: *"This latest legislation potentially reduces the cost of international funding for Italian corporations, given the extension in the scope of the withholding tax exemption but it will not help to overcome the long standing debate on if and in what circumstances non-bank institutional investors are allowed to lend directly to Italian companies or purchase drawn loan commitments in primary syndication. The Italian Government's stated aim is to attract foreign investors and to overcome the funding crisis that has plagued Italian businesses for the past five years but Italian corporations continue to pay the price of regulatory uncertainty. The question could be solved easily once and for all by the relevant authorities issuing clear guidelines that would allow debt-funds that invest elsewhere in Europe to make and hold direct loan investments in Italy . Absent further clarification from the authorities, this latest reform is unlikely to result in changes to the "indirect" lending structure for non-bank investors typically seen on Italian transactions but which the international institutional lending market perceives as being over-complicated and potentially risky".*

Contacts

Giuseppe De Palma
giuseppe.depalma@
cliffordchance.com

Carlo Galli
carlo.galli@
cliffordchance.com

Lucio Bonavitacola
lucio.bonavitacola@
cliffordchance.com