TAX BILL FOR REAL ESTATE COMPANIES MAY INCREASE CONSIDERABLY AS ITALIAN GOVERNMENT CURBS DEDUCTION OF INTEREST EXPENSES ON MORTGAGE LOANS

The Italian Government has finally approved the Legislative Decree (the "Decree") implementing the EU "anti-tax avoidance" Directive (ATAD) 2016/1164. The Decree, which has not yet been published in the official gazette, contains significant tax measures, including a new limitation on the deduction of interest expenses on loans secured by mortgage on properties held to be rented out

Until today, interest expenses incurred on loans secured by mortgage on properties to be rented out were fully deductible for corporate income tax purposes, not being subject to the so-called "interest barrier rule". The provision is applicable to property investment companies:

- if their assets (at fair market value) mainly comprise properties to be rented out; and
- at least two thirds of their revenues comprise rents from the lease of properties (or property-intensive going concerns).

Under the Decree, **such interest expenses will become subject to the ordinary "interest barrier rule"**, i.e. the amount of interest expenses, net of interest income, will be deductible up to the amount of 30% of company's EBITDA for tax purposes. Any excess of interest expenses not deducted in a given fiscal year will be available for carry forward.

The new regime will be effective as from the fiscal year starting after 31 December 2018 (i.e. generally **from 1 January 2019**) and should impact any interest expenses accrued after such date, without grandfathering for existing loans.

The new regime has stirred widespread controversy and **will significantly impact the economics of Italian real estate companies**. For new investments the use of real estate funds, whenever practicable, will constitute an even more appealing structuring solution. Existing structures might instead have to be reconsidered and reorganised to protect returns, possibly incurring additional costs (mitigating solutions might be available).

CONTACTS

Carlo Galli
Partner

T +39 02 806341
E carlo.galli@cliffordchance.com

Sara Mancinelli
Senior Associate

T +39 02 806341
E sara.mancinelli@cliffordchance.com

Andrea Sgrilli
Senior Associate

T +39 02 806341
E andrea.sgrilli@cliffordchance.com