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AIFI

Italian Private Equity, Venture Capital and Private Debt Association

THE ITALIAN BUDGET LAW FOR 2021, LAW NO. 178/2020, INTRODUCED A REVOLUTIONARY CHANGE IN LAW.

In essence, it provides for a tax exemption in the hands of EU/EEA investment funds on capital gains on substantial shareholdings[1] and dividends from their direct investment into Italian resident companies.

The new tax exemption removes existing tax obstacles and uncertainty over direct investment of qualified EU/EEA funds into Italian companies. This is expected to attract foreign investment into Italian private equity, and to shape a more investor-friendly environment.

In particular, this tax exemption applies to alternative investment funds set up in an EU Member State or EEA Member State exchanging adequate information for tax purposes, and managed by an AIFM subject to regulatory supervision in the country where it is established in accordance with Directive 2011/61/EU (AIFM Directive)[2].
The change in law is effective with regards to dividends distributed and capital gains realised starting from the entry into force of the Budget Law for 2021 (1 January 2021).
It is worth mentioning that the tax exemption follows an investigation procedure carried out by the EU Commission towards the Republic of Italy aimed at eliminating the tax discrimination suffered by such foreign "investment funds" vis-à-vis Italian investment funds that was contrary to EU law (i.e., free movement of capital).

The new tax exemption raises the following questions:

What is the tax treatment of indirect investments carried out by qualified EU/EEA alternative investment funds via European holding companies?

Are there legal grounds for submitting tax refund claims with regards to withholding taxes applied in the past?

Is the exclusion of "qualified" foreign investment funds established in third countries compliant with EU law?

1 Substantial shareholdings are shares representing more than 2% of voting rights or, alternatively, 5% of capital of an Italian tax resident company with shares listed on a regulated market. Such thresholds are increased to 20% and 25%, respectively, for unlisted shares.

2 The tax exemption applies also to undertakings for collective investment set up in compliance with Directive 2009/65/EC (UCITS IV Directive).

A tax panel represented by **Angelo Bonissoni**, managing partner at CBA, and **Raffaele Villa**, counsel at CBA, is available to address these queries and to answer any questions you might have.





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