

Italy introduces permanent establishment investment management exemption

At the end of December 2022, the Italian government introduced in the Italian Income Tax Act (IITA) law an investment management exemption (IME), that provides a safe harbour aimed at certainty that foreign investment funds (and controlled entities) will not trigger a permanent establishment (PE) due to activities in Italy of a fund's (senior) asset manager.

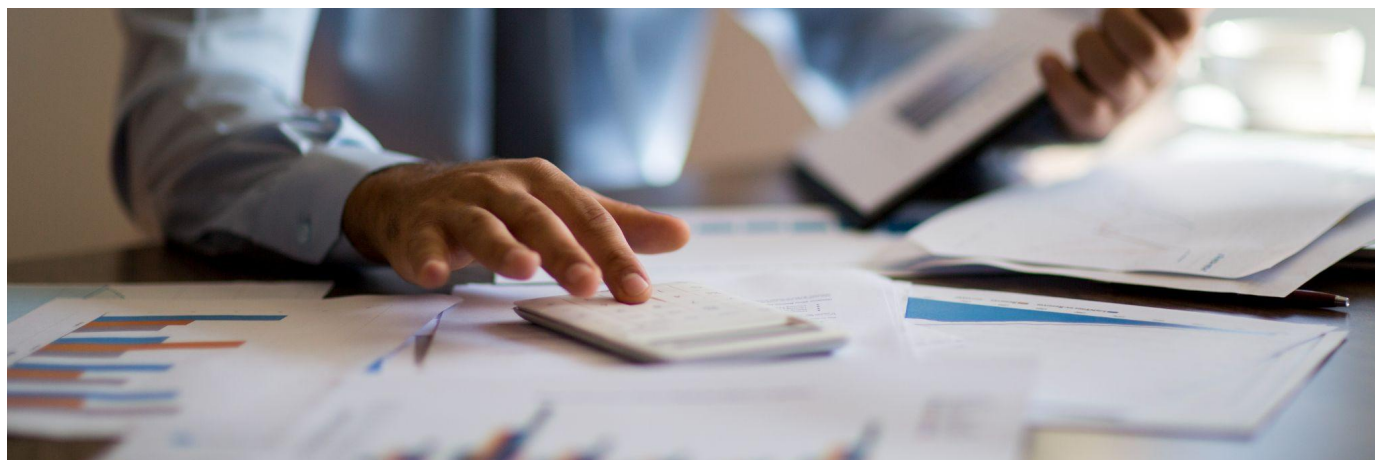
Under the definition of an agency PE, new para. 7ter of Article 162 of IITA, as drafted from the Budget Bill, which provides that a PE does not exist if independent investment managers (both Italian or non-Italian tax residents, including those operating in Italy through a PE), habitually (even if exercising discretionary powers):

1. enter into contracts for purchasing, selling, or negotiating financial assets, derivatives, and receivables on behalf of the foreign investment vehicles (or their direct / indirect controlled companies), or
2. actively contribute, including with preliminary and ancillary activities, to the executions of transactions under the previous point.

For the purposes of the above, investment managers are deemed to be independent from the foreign investment vehicle and its controlled entities if all of the following requirements are met:

1. The foreign investment vehicle (and its subsidiaries) are resident or located in a 'white list' country, i.e. in a country that allows for an adequate exchange of information with the Italian authorities (nowadays, most countries should meet this requirement).
2. The foreign investment vehicle meets the independence requirements to be provided by a forthcoming decree.
3. The asset / investor manager that carries out its activity in Italy, in the name of or on behalf of the foreign investment vehicle does not hold any directorship / managing power on controlling bodies of the investment vehicle (and of its direct or indirect subsidiaries), and is not entitled to more than 25% of the profits of the foreign investment vehicle (also considering profits entitlements held by other entities of the group).
4. The Italian tax resident asset / investor manager or (if any) the Italian PE of the non resident entity should support its remuneration by adequate transfer pricing documentation.

Additionally, the law (para. 9-bis of Article 162 of ITC) also introduced rules regarding the fixed place of business PE exemption for foreign investment vehicles (and their controlled entities). Therefore, if the above conditions are met, the Italian entities that are carrying out activity in Italy through Italian-based personnel, should not constitute an Italian PE fixed place of business of the foreign investment vehicle merely because the activity exercised by the Italian enterprise is providing an advantage to the foreign investment vehicle.



Italy introduces permanent establishment investment management exemption (continued)

Next steps for asset and wealth managers

Asset and wealth managers with operations in Italy should consider whether the new IME rules could be applicable. As part of this impact assessment, managers should analyse their position for Italian tax purposes and consider the benefits of the new exemption.

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