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Italian Regulatory Update¹

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To: Primary contacts
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Re: Italian Ministerial Decree of 30 April 2019 – New requirements for the eligible investments of Italian “PIR”

1 The “PIR”

The Italian Budget Law for 2017 (Law no. 232 of December 11, 2016) has provided for the first time some tax exemptions for the benefit of Italian investment vehicles, called “PIR” (acronym for “*Piani Individuali di Risparmio*” or “Personal Savings Plans” hereinafter, PIR), investing in some categories of companies domiciled or with a branch in Italy (see our Regulatory Update no 2017 02). PIR may include UCITS.

As discussed in our Regulatory Update no 2017 02, these benefits consist of an exemption from the taxation of capital gains and dividend/coupon distributions in case of investments in eligible PIR by individuals. These investment would ordinarily be subject to a withholding of 26% or 12.50% (the reduced rate applies to investments in Italian or “white list” countries governmental and municipal bonds).

The Italian Budget Law for 2019 (Law no. 145 of December 30, 2018, hereinafter, the “Law”) has changed some types of securities and the relevant ratios in order to have a PIR eligible for the above-mentioned tax benefits. The Law also deferred to a Decree of the Government the determination of the specifications of the eligible securities.

¹ **IMPORTANT INFORMATION** This memorandum is not given in performance of a professional engagement during an attorney-client relationship and is only given for a general information to the reader regarding the matters discussed herein. Therefore, this document should not be relied upon as a legal opinion and no action should be taken on the basis of the information herein contained.

Through the Decree of April 30, 2019, issued by the Ministers of Economic Development and of Economy and Finance (the “Decree”), the Government eventually determined these requirements.

It should be noted that the new requirements set out by the Law and the Decree only apply to PIR started from January 1, 2019, while the PIR started until December 31, 2018 continue to be governed by the previous requirements of the 2017 Budget Law.

2 The new eligible investments for PIR

The Law did not change the general requirement provided by the 2017 Budget Law to have at least 70% of the PIR assets invested in financial instruments (either listed/traded on regulated markets/multilateral trading facilities or not listed/traded in such venues) issued by or entered into with companies not engaged in real estate business which are resident in Italy or in an EU or EEA Member State with a permanent establishment in Italy.

The Law also maintained the requirement to have at least 30% of the above 70% of the PIR assets (thus corresponding to 21% of the total assets of the PIR) invested in financial instruments issued by companies other than the components of the FTSE MIB Index of the Italian Stock Exchange (*Borsa Italiana*) or equivalent indexes of other regulated markets.

The innovation of the Law and of the Decree are that within the above 70% of the PIR assets: (i) at least 5% (thus corresponding to 3.5% of the entire PIR) has to be invested in eligible small and medium-sized companies traded on multilateral trading facilities and (ii) at least another 5% (thus corresponding to another 3.5% of the entire PIR) in venture capital funds or funds of venture capital funds.

With regard to the definition of “eligible small and medium-sized companies”, and in particular that of small and medium-sized company, the Decree refers to the definition contained in Annex I, article 2 of the Regulation no 651/2014/EU (“Regulation 614”), i.e., companies “which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million”.

As to the “eligibility” of these small and medium-sized companies, the Decree provides that they must:

- i. be unlisted;
- ii. be domiciled in Italy or in a Member State of the EU or the EEA with a permanent establishment in Italy;

- iii. not have received financial resources as risk finance aid (as set out in article 21(6) of Regulation 614) for an amount exceeding EUR 15 million;
- iv. satisfy at least one of the following conditions:
 - a) not having operated on any market;
 - b) operating on any market from less than seven years;
 - c) need of initial financial resources as risk finance in connection with a new product or access to a new geographic area for an amount exceeding 50% of the average annual turnover in the last five years.

For the purpose of the Decree, a “venture capital fund” is a collective investment scheme domiciled in Italy or in an EU or EEA Member State which invests at least 70% of its assets in “eligible small and medium-sized companies”, as above defined.

It should be noted that according to the Decree, the qualification of the relevant target small or medium-sized company as “eligible” must be certified by its representatives to the PIR when the latter makes the relevant investment.

2 Preliminary comments

It seems that the new requirements - especially those on unlisted small and medium-sized companies and venture capital funds - are liable to make even more “illiquid” the investments eligible for the tax benefits linked to the PIR. This circumstance emphasizes the asymmetry between the purpose of the PIR law – i.e., the financing of small to medium-sized companies - and the characteristics of the funds for the general public - like the UCITS - which due to the fact of being “open end”, need to be liquid in order to allow subscriptions and redemptions on a continuous basis.

One of the main issues of the Italian Government with the requirements for eligible PIR originally established by the Budget Law for 2017 was that most of the investments were made in companies which, although small to medium-sized and other than blue chips, were listed on regulated markets. Therefore, the Law and the Decree introduced an express obligation to have a part of the assets invested in unlisted companies, and in funds investing in these companies.

As a result, it may be inferred that the new requirements for the PIR increase the risk profile for the investors.

Please contact crocenzifp@crocenzilex.com for any clarification.

Best regards

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