



The Minister of Economy and Finance

Having regard to Legislative Decree No 147 of 14 September 2015, laying down measures for the growth and internationalization of enterprises, and in particular Article 2, entitled “*Interpello sui nuovi investimenti*” (Advance rulings on new investments);

Having regard to Article 2, paragraph 6, of Legislative Decree No 147 of 14 September 2015, which provides that: "The implementing procedures for the advance rulings referred to in this Article shall be identified by decree of the Minister of Economy and Finance, issued within sixty days from the date of entry into force of this Decree”;

Having regard to Legislative Decree No 156 of 24 September 2015, laying down "Measures for the review of the legal framework for advance rulings and tax litigation, in implementation of Articles 6, paragraph 6, and 10, paragraph 1, letters a) and b) of Law No 23 of 11 March 2014";

Having regard to Decree of the President of the Republic No 600 of 29 September 1973;

Having regard to Decree of the President of the Republic No 633 of 26 October 1972;

Having regard to Law No 212 of 27 July 2000, laying down provisions on the *Statuto dei diritti del contribuente* (Charter of Taxpayers' Rights);

Having regard to Decree of the President of the Republic No 917 of 22 December 1986;

Decrees

Article 1 (Definitions)

1. For the purposes of this Decree, the following definitions shall apply:

- a) "decree" means Legislative Decree No 147 of 14 September 2015, "Provisions laying down measures for the growth and internationalization of enterprises", regulating, in Article 2, advance rulings on new investments;
- b) "enterprises", within the meaning of Article 2 of the decree, shall mean the following persons intending to make investments within the Italian territory:
 - 1) individuals carrying on commercial enterprises in accordance with Article 55 of Decree of the President of the Republic No 917 of 22 December 1986;
 - 2) the persons referred to in Article 73, paragraph 1, letters a) and b) of Decree of the President of the Republic No 917 of 22 December 1986;

- 3) the persons referred to in Article 73, paragraph 1, letter c) of Decree of the President of the Republic No 917 of 22 December 1986, concerning the business activity carried out, if any;
 - 4) the persons referred to in Article 5, paragraph 1 of Decree of the President of the Republic No 917 of 22 December 1986, except in the case of partnerships;
 - 5) the persons referred to in Article 73, paragraph 1, letter d) of Decree of the President of the Republic No 917 of 22 December 1986, with or without a permanent establishment in Italy;
 - 6) company groups or groupings of enterprises;
 - 7) individuals other than those identified at point 1), provided that the investment involves carrying out a business activity or results in the participation in the equity of persons carrying out business activities;
 - 8) the persons identified in Article 73, paragraph 1, letter c) of Decree of the President of the Republic No 917 of 22 December 1986, in cases other than those listed under point 3), provided that the investment involves carrying out a business activity or results in the participation in the equity of entities carrying out business activities;
- c) "investment plan" means an investment project in the Italian territory, as described in Article 2, paragraph 1 of the decree, namely any project to develop an economic initiative of a lasting nature, as well as for the restructuring, optimization or streamlining of an existing business, and any initiatives aimed at the participation in the equity of the enterprise. Such investment must have a significant and long-lasting impact on employment levels in relation to the activity in which it is made and the relevant implementation can be multiannual.

Article 2

(Types of investment and criteria for quantifying them)

1. The investment referred to in Article 1, paragraph 1, letter c), may involve:
 - a) the creation of new business activities or the expansion of existing ones;
 - b) the diversification of production of an existing production unit;
 - c) the restructuring of an existing business activity in order to enable the company to overcome or prevent a crisis situation;
 - d) operations involving participation in an enterprise.
2. For the purposes of determining the investment value, it is necessary to take into account all financial resources, including those of third parties, needed by the enterprise to implement the investment plan. In the case of investments made by company groups or groupings of enterprises, the total value of the single investments should be considered, resulting from the sum of the value of the individual investments of all participants in the initiative.
3. For the purposes of verifying the minimum investment threshold, the applicant explains the chosen method for the relevant quantification in monetary terms.

Article 3

(Procedure for the submission of advance ruling applications for new investments and their contents)

1. Enterprises submit to the relevant office of the Agenzia delle entrate, identified in a subsequent Order of the Director of the Agenzia delle entrate, a specific application on unstamped paper to be sent by registered mail with return receipt or delivered directly to the office, which shall acknowledge receipt. Copies of the application and related documents are filed electronically. The application may also be submitted electronically through the use of the certified email referred to in Decree of the President of the Republic No 68 of 11 February 2005, or otherwise as prescribed by the Order of the Director of Revenue of 4 January 2016. In the case of investments made by company groups or groupings of enterprises, the participants in the investment give one of the companies of the group or the grouping a special power of attorney for submitting the application.

2. The application shall contain the following details:

- a) the name of the enterprise, the personal details of its legal representative, registered office or tax domicile if different from the registered office, the tax identification number or VAT registration number or any other company identification code, as well as its contact details, including email address, of the addressee for any communication relating to the advance ruling procedure requested. In the event that several persons wish to participate in the investment, the application should contain the name and the identification details of all the enterprises participating in the investment;
- b) the detailed description of the investment plan upon which the Agenzia is called to assess its tax treatment and the corporate operations scheduled for its implementation. Such description must necessarily specify: the amount of the investment, not less than thirty million Euros, and the methodology for quantifying it; the timing and procedures for its implementation; any significant impact on employment, in terms of increasing or maintaining the level of employment, to be assessed in relation to the activities in which the investment is made, as well as any long-lasting impact; and the consequences, also in quantitative terms, of the relevant investment on the Italian tax system;
- c) the specific tax provisions that require interpretation, or in relation to which ruling on the unlawful nature of the operations related to the investment plan is requested, as well as those specific anti-avoidance provisions that are required to be disregarded and the specific schemes or arrangements to which access is requested;
- d) the explanation, in a clear and unambiguous manner, of the tax treatment that the taxpayer believes to be correct with respect to the investment plan, with a clarification of the solutions and behaviors that the applicant intends to adopt for its implementation;
- e) the signature of the applicant or its legal representative or the general or special attorney appointed under Article 63 of Decree of the President of the Republic No 600 of 29 September 1973. In the latter case, if the power of attorney is not indicated at the bottom or in the margin of the application, it shall be attached to the same.

3. A copy of the documentation not held by the requested administration or other public authorities listed by the applicant, and that is relevant to the ruling, shall be attached.

4. Where an advance ruling application is submitted to an office other than the competent one pursuant to Article 3, paragraph 1, the former shall forward it promptly to the competent one, immediately informing the taxpayer. In this case, the deadline stipulated in Article 5, paragraph 1, shall commence from the date on which the application was received by the competent office.

5. The submission of the advance ruling application does not affect the deadline laid down by tax law or the commencement of limitation periods and does not involve interruption and suspension of prescription periods.

Article 4
(Inadmissibility of the application)

1. The application referred to in Article 3 shall be inadmissible:
 - a) if it is totally devoid of the requirements referred to in letters a) and b) of paragraph 2 of Article 3, if not regularized in accordance with Article 5, paragraph 2, within thirty days of filing the application;
 - b) if it is not forwarded prior to the expiry of statutory deadlines for submission of the declaration to which the tax provisions being the subject of the advance ruling application must apply or for the fulfilment of other tax obligations, related to the above provisions, which have as their subject-matter or however related to the case referred to by the application;
 - c) in so far as it has as its subject-matter the same issue on which the applicant has already obtained an opinion, unless it includes matters of fact or of law that were not previously presented;
 - d) in so far as it concerns issues covered by the procedures referred to in Article 31-ter of Decree of the President of the Republic No 600 of 29 September 1973, introduced by Article 1 of the Decree, except for questions that require the prior assessment as to the existence or not of a company which constitutes a permanent establishment;
 - e) if it concerns issues for which monitoring activities have already been initiated on the date of submission of the application of which the taxpayer is formally notified.

Article 5
(Fulfilments by the Agenzia delle entrate)

1. The written and reasoned reply from the Agenzia delle entrate shall be served or notified using the same procedures as for submission of the advance ruling application within one hundred twenty days of receipt, which may be extended, if it is not possible to formulate the reply on the basis of documents attached or otherwise provided by the applicant, or the information elements learned during the discussions or access referred to in paragraphs 3 and 4, for a further ninety days, running from the date of collection of the necessary information as well as of the additional documentation. The documentation shall be transmitted using the same procedures for submitting the application, preferably in electronic form. As an alternative, the taxpayer is required to explain the reasons for the failure to provide the required documentation.

2. In cases where the application lacks the requirements referred to in letters a) and b) of paragraph 2 of Article 3, the *Agenzia delle entrate* shall request the enterprise to undertake regularization within thirty days. The integration of the application shall take place within thirty days from receipt of the request using the same procedures for submitting the advance ruling application. In cases where the application does not indicate the taxpayer's contact details, the request to regularize shall be served or notified at the addresses from the official records of certified email or the tax registers. The time limits for the reply shall start to run from the date on which regularization takes place. If regularization is not made within the said period of thirty days, the application shall be declared inadmissible pursuant to Article 4, paragraph 1, letter a).

3. The *Agenzia delle entrate* may hold discussions with the applicant, also summoning him to appear through his legal representative or an attorney, in order to verify the regularity of application and the completeness of information provided and to acquire additional information elements.

4. Where it is deemed necessary, officials of the *Agenzia delle entrate* can access the premises where the company's business is conducted or of the permanent establishment, subject to prior agreement with the applicant and according to the timing agreed upon with him, in order to take direct cognizance of the information elements useful from a procedural standpoint. Minutes shall be drawn up of each activity conducted on an inter partes basis, a copy of which shall be given to the applicant.

5. When the documentation requested pursuant to paragraph 1 is not submitted within one year from the date of request, the *Agenzia delle entrate* shall take note of the advance ruling waiver and provide for the service or notification of documents without delay. During the period within which the preliminary investigation of the advance ruling is completed, the possibility remains for taxpayers to file the express waiver of the advance ruling using the procedures allowed.

6. In the case that the advance ruling application refers to taxes not falling within the scope of responsibilities of the *Agenzia delle entrate*, the latter shall forward, within thirty days from receipt of the application, the request to the competent Tax Authorities which send a reply on an autonomous basis to the taxpayer, in accordance with the general rules on advance ruling referred to in Article 11 of Law No 212 of 27 July 2000, concerning provisions on the *Statuto dei diritti del contribuente* (Charter of Taxpayers' Rights), and subsequent amendments and additions.

Article 6

(Effectiveness of the reply to the application for advance ruling)

1. The reply shall be binding on the *Agenzia delle entrate* with respect to the investment plan as described in advance ruling application and shall be valid in so far as the circumstances of law and of fact on the basis of which it was given remain unchanged.

2. Availing itself of the ordinary powers of investigation referred to in Articles 32 of Decree of the President of the Republic No 600 of 29 September 1973, and 52 of Decree of the President of the Republic No 633 of 26 October 1972, the *Agenzia delle entrate* may verify the absence of changes in the circumstances of law and of fact which are relevant for issuing the reply, and the correct application of the indications provided therein. Should changes in the circumstances of law and of facts, or untruthful or incomplete circumstances of law and of facts indicated by the enterprise, be identified in the course of the exercise of the above powers of

investigation, the *Agenzia delle Entrate's* reply shall not have the same effects as those referred to in paragraph 1

3. Bodies responsible for carrying out investigations on enterprises with respect to which the effects referred to in paragraph 1 do apply shall be required to co-ordinate with the Office that provided the reply by consulting it for that purpose prior to any drafting of the minutes or other acts whose contents relate to taxes or penalties.

4. If the *Agenzia delle entrate's* reply concerning applications deemed admissible and indicating the interpretative solution referred to in Article 3, paragraph 2, letter d), does not reach the applicant enterprise within the time limits referred to in Article 5, paragraph 1, it is understood that the Tax Authorities agree with the interpretation or behaviour proposed by the applicant. Limited to the issues being the subject-matter of advance ruling, the administrative acts of any kind, also where their content relates to taxation or penalties, issued by the Tax Authorities in contravention of the reply given by *Agenzia delle entrate*, or of the interpretation on which "silence means assent" is adopted, are null and void.

Article 7

(Co-ordination with investigation and litigation activities)

1. The exercise of the ordinary powers of supervision referred to in Article 32 of Decree of the President of the Republic No 600 of 29 September 1973 and in Article 52 of Decree of the President of the Republic No 633 of 26 October 1972, remains for the competent Tax Authority structures only with respect to issues other than those covered by the opinion.

Article 8

(Co-ordination with the legal institute of collaborative compliance)

1. The taxpayer complying with the contents of the *Agenzia delle entrate's* reply may, regardless of the amount of turnover or proceeds, have access to the legal institute of collaborative compliance referred to in Articles 3 to 7 of Legislative Decree No 128 of 5 August 2015, provided that the other requirements necessary for access to the said institute are fulfilled.

2. The right to have access to the collaborative compliance scheme under the conditions laid down in paragraph 1 is recognized only to the enterprises making the investment.

3. In the case referred to in Article 2, paragraph 1, letter d), the right provided for in paragraph 1 of this Article is recognized to the enterprise whose equity is the subject of the investment.

Article 9

(Reference provisions)

1. Without prejudice to this Decree, the provisions on taxpayer's advance ruling referred to in Title I of Legislative Decree No 156 of 24 September 2015, *mutatis mutandis*, shall apply.

This Decree shall be published in the Official Gazette of the Italian Republic.

Rome, 29 April 2016

The Minister of Economy and Finance

