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**To the Regional and Provincial
Directorates of the Revenue Agency**

To the Offices of the Revenue Agency

SUBJECT: Advance Tax Ruling on new investments.

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INTRODUCTION

The newly introduced advance tax ruling on new investments enables the investors (both resident and non-resident in Italy) intending to make long-term and significant investments within the Italian territory, to obtain the preventive opinion from the Italian Revenue Agency about the tax treatment applicable to business plans and related extraordinary operations.

Being a different institute from the general taxpayer's advance ruling, the advance tax ruling on new investments is intended only for large investors, and not for most of the taxpayers.

It pursues the main objective to give more certainty to economic operators when appraising the fiscal burdens connected to significant investments in Italy, thus making our country more attractive and competitive, and facilitating the internationalization and growth of enterprises.

1. QUALIFYING PERSONS

1.1 Persons investing in the context of a business activity

The advance tax ruling application on new investments can be submitted by persons carrying out business activities and promoting the realization of a significant investment during the exercise of such activities.

Persons entitled to submit an application are: individual entrepreneurs, corporations and other resident entities, as well as *trusts*, having as their sole or main purpose the exercise of commercial activities; resident entities, as well as *trusts*, not having as their sole or main purpose the exercise of commercial activities, to the limited extent of any commercial activities carried out; partnerships, excluding simple partnerships (*società semplici*), and other equivalent resident individuals;

non-resident companies and institutions of all kinds, as well as *trusts*, regardless of whether they have a permanent establishment in the State or not.

1.2 Persons investing outside the scope of a business activity

In order to give wider access to this legal tool, the advance ruling application may be submitted also by individuals or persons not running business activities, as long as they plan to carry out a new entrepreneurial activity in Italy or to participate in the equity of a pre-existing enterprise.

According to the aforementioned definition, individuals and persons intending to promote an investment on a "*target*" Italian company (by means of either asset deal or share deal operations) are therefore admitted to the tax advance ruling on new investments, even though they act outside any business activity at the moment of the application.

For instance, banking foundations and collective investment schemes (CIS) – both regarded in Italy as non-commercial entities – are entitled to submit the application for an advance ruling on new investments. CIS are allowed to file the request for ruling even if they are not resident in Italy, provided that they are subject to control in the country of residence.

1.3 Company groups or groupings of enterprises

To make the advance tax ruling on new investments accessible to a larger number of parties, the application may be submitted also by company groups or groupings of enterprises. A single investment can indeed be planned and realized by a plurality of investors: in this way it is easier to reach the investment threshold required by law (not less than thirty million euros).

Company groups are intended as aggregations of companies which are legally separate but economically dependent on each other.

Groupings of enterprises are associations of enterprises such as 1) networks of enterprises, 2) consortia between companies, 3) industrial districts, joint ventures, 4) temporary company associations and 5) European Economic Interest Groupings.

The definition of "Groupings of enterprises" also includes forms of collaboration or aggregation among non-commercial bodies in order to make a joint investment in Italy.

2. OBJECTIVE SCOPE OF APPLICATION

2.1 Definition of investment plan

The definition of "investment" includes any project aiming at developing an economic initiative of a lasting nature, as well as for restructuring, optimizing or streamlining an existing business, and any initiatives aimed at the participation in the equity of an enterprise".

The above-mentioned definition is capable of covering both projects providing new liquidity and projects involving the reuse of financial resources already available to the enterprise.

All investments must have a company located in the Italian territory as their *target*, and may also consist in *share deal* transactions.

In particular, the investment must necessarily have the following characteristics which have to be specified when filing the application:

1) it must be made in the Italian territory and entail favourable quantitative consequences for the local tax system;

2) it must have a significant and long-lasting impact on employment levels: the existence of this requirement shall be assessed by the Italian Revenue Agency on a case-by-case basis, considering the specific activity in which the investment is made and analysing the information provided by the investor. In this context, the Tax Office can positively evaluate not only the increase in levels of employment

(the creation of new jobs), but also the maintenance of employment levels, where the investment is aimed at avoiding layoff plans or any other scheme producing similar consequences. Furthermore, positive effects on employment may involve not only the enterprise realizing the investment, but also outsource service providers;

3) it must be worth at least thirty million euros: the applicant shall quantify the value of the investment, providing evidence of the chosen method for monetary quantification, in order to enable the Italian Revenue Agency to verify the minimum investment threshold. The minimum investment amount can be realized in more than one tax year: indeed, the investment plan can be executed over several years.

2.2 Types of investment

Investments can be as follows:

a) creation of new economic activities (*e.g.* establishment of a new company, also through participation in public tenders) or expansion of existing ones, with consequent reorganization of productive, commercial or administrative structures;

b) diversification of production of an existing production unit, with respect to the size of the activity currently carried out, or the types of goods or services provided, and/or the target markets;

c) restructuring of an existing business activity in order to enable the company to overcome or prevent a crisis situation, through the specific instruments provided by law (*e.g.* agreements with creditors, debt restructuring agreements, etc.);

d) operations involving participation in the equity of a company.

The eligible investment may also result from a combination of these operations, when satisfied that they are aimed at the development of an "*economic initiative*" and inclusive of extraordinary operations. Therefore, the definition of

investment also includes *leveraged buyout* transactions, consisting in a complex series of operations (establishment of a Newco and signing of a loan agreement; share deal transactions in a target company; merger between the target company and the vehicle company or exercise of the option for the consolidated tax regime).

Investments leading to the reorganization of undertakings in crisis (referred to in letter c) must comply with the general requirements for the access to the procedure of advance tax ruling on new investments (identified in the previous paragraph), as well as with significant and long-lasting effects on occupational levels. As set out above, the positive impact on employment is to be assessed in terms not only of increasing but also maintaining the level of employment, where the investment planned by the enterprise in crisis avoids layoffs, ‘mobility list’ redeployment schemes and similar repercussions leading to a reduction of jobs.

The company in crisis has to illustrate its “recovery plan”, indicating the recovery strategy and related goals, besides the investment project. In addition, the company must provide an “action plan” indicating the specific investment-related operations. As regards the operations under letter d) (share deal transactions), the investment may result in the acquisition of shares or quotas of the *target* company. These operations may also concern participating financial instruments, provided that these are qualified, for civil law purposes, as *equity* instruments.

2.3. Quantification criteria

When determining the monetary value of the investment (not less than thirty million euros, as noted above), it is necessary to take into account all financial resources, including those of third parties, needed by the enterprise to implement the investment plan.

Costs and requirements to be included in the monetary quantification of the investment are:

a) acquisition and/or construction costs related to tangible fixed assets (*e.g.* property, plant and equipment, office furnishings, motor vehicles, computers), including all necessary charges to make the assets operative (*e.g.* installation, assembly, transportation and testing);

b) acquisition and/or implementation costs related to intangible fixed assets (purely by way of example, software, patents, licenses, trademarks and similar rights, costs of establishing);

c) acquisition costs related to financial fixed assets (purely by way of example, participation in companies, deposits for property rental and utilities);

d) needs arising from increases in operating working capital (increases in trade receivables and inventories).

If the investment is jointly planned by company groups or groupings of enterprises (as above identified), the investment amount to be considered shall be the sum of the value of each individual investment.

3. PROCEDURE FOR THE SUBMISSION OF ADVANCE RULING APPLICATIONS

The advance tax ruling application shall be submitted on unstamped paper to the *Agenzia delle Entrate – Direzione Centrale Normativa – Ufficio Interpelli Nuovi Investimenti* (“Italian Revenue Agency – Central Directorate for Tax Legislation – Office for Rulings on New Investments”), with the exception of the applications from enterprises eligible for the “cooperative compliance” regime referred to in paragraph 10 below, in one of the following ways (also for additional documentation, and data and documents required to regularize the application):

a) hand delivery;

b) registered mail with return receipt;

c) certified electronic mail;

d) online telematic services provided by the Italian Revenue Agency (not yet operational).

Other means of communication (such as fax and free email accounts) are not allowed and, if used, will prevent the application from producing its legal effects (except as prescribed for non-residents without addressee in Italy: see hereinafter). The advance ruling application must be submitted in Italian, where any accompanying documents are accepted if submitted in English, French, Spanish or German.

Non-resident persons are not required to submit the advance ruling application by means of a permanent establishment in Italy. Therefore, they may appoint an addressee in Italy for this specific purpose and the application shall be submitted in one of the above-listed ways. In all other cases, in which a non-resident applicant has not appointed a domiciliary in Italy, the application for advance ruling on new investments shall be sent by free email to the following address: dc.norm.interpello@agenziaentrate.it.

In case of investments made by company groups or groupings of enterprises, the participants in the investment shall give one of the companies a special mandate for submitting the application.

Wherever the grouping of enterprises gives rise to the formation of an independent entity, as is the case with an “entity-network” of enterprises and consortia with external activities (doing business with third parties), the application shall be filed by the said independent entity (with no need for a special mandate) since it will act, in any case, in the interest and on behalf of the other enterprises by virtue of a broader power of representation (including the submission of requests for ruling).

Conversely, wherever tax liability belongs to the grouping itself, without the formation of an independent entity, a special mandate to submit the application for ruling is required.

If the application is submitted to a Tax Office other than the competent one, the former shall promptly forward it to the competent Office, immediately informing the applicant. In this case, the deadline, within which the Italian Revenue Agency is expected to provide a reply, shall commence from the date on which the application is received by the appropriate Tax Office.

The application does not affect the deadlines laid down by tax law or the commencement of limitation periods and does not involve interruption or suspension of prescription periods.

Therefore, the taxpayer could not postpone the fulfilment of tax periodic obligations (*e.g.* VAT payments and filing of income tax return).

4. CONTENT OF THE APPLICATION

The advance ruling application shall contain:

- 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 the VAT registration number or any other enterprise identification code, as well as the contact details (including email address) of the addressee for any communication related to the advance ruling procedure. In the event that several entities wish to realize the investment, the application should contain the name and the identification details of all companies participating in the investment;
- b) the detailed description of the investment plan and of the company operations planned for its implementation, upon which the Italian Revenue Agency's assessment is required. The description must specify: the amount of the investment, which must exceed thirty million euros, and the methodology for its monetary quantification; the timing and procedures for its realization; any significant and long-lasting effects on employment, in terms of increasing or maintaining the level

of employment (to be assessed in relation to the activity in which the investment is made), and the favourable consequences, in quantitative terms, on the Italian tax system;

c) *i*) the specific tax provisions requiring interpretation or *ii*) in relation to which ruling on the unlawful nature of the envisaged operations related to the investment plan is requested, as well as *iii*) the specific anti-avoidance provisions that are required to be disregarded and *iv*) the specific schemes or arrangements to which access is requested;

d) a clear and unambiguous explanation of the tax treatment that the taxpayer considers appropriate with respect to the investment plan, along with the solutions and behaviours that the applicant intends to adopt for its execution;

e) the signature of the applicant or of its legal representative or of the general or special attorney. In the latter case, the power of attorney shall be indicated at the bottom or in the margin of the application and, if not, it shall be attached to the same.

As regards the elements referred to in letter *a*) (personal details of the applicant), non-resident enterprises without a tax identification number or VAT registration number, may indicate in the application any other identifying number assigned by their State of residence.

As for the analytical description, also in quantitative terms, of the effects of the investment on the Italian tax system required under letter *b*), it shall be considered as a constituent element of the application. Even though the investment can be realized by non-resident investors without a permanent establishment in Italy, the investment must in any case develop a new taxable base subject to the Italian taxation power, resulting in the possibility to estimate the increasing of net revenue in the country. The effects on the Italian tax system described by the applicant shall derive directly and immediately from the specific investment plan submitted to the

Italian Revenue Agency and, therefore, there would be no need to mention any additional and more general “cascading” economic effects of the investment.

As for the elements referred to in letter c), given the wide scope of advance ruling application, the applicant is required to specify the tax aspects in respect of which the prior assessment by the Italian Revenue Agency is requested.

The advance ruling on new investments is, in fact, a peculiar kind of ruling through which, by means of a single application, investors can submit (even cumulatively) to the Italian Revenue Agency one or more of the following requests falling within the general category of taxpayer’s advance rulings:

- 1) *"pure" ordinary ruling (i)*, where there are conditions of objective uncertainty on the correct interpretation of tax provisions, and *"qualifying" ordinary ruling (ii)*, where the objective uncertainty is related to the legal and fiscal qualification of a specific case;
- 2) *probatory ruling*, where the request is related to the fulfilment of the conditions and to the assessment of the probatory elements required for the adoption of specific tax regimes, in cases expressly provided by law;
- 3) *anti-abuse ruling*, where the request for ruling pertains to the application of the “abuse of right” principle to a specific case;
- 4) *anti-avoidance ruling*, if the request is aimed at the disapplication of tax provisions limiting (in order to fight evasion) deductions, tax benefits, tax credits or other subjective positions of the taxpayer. This ruling constitutes the only case in which the taxpayer is obliged to refer to the Tax Authority.

Even without a specific qualification in legal terms of the request, the applicant shall explicitly indicate the tax provisions whose interpretation, application or disapplication is required, or in relation to which the Italian Revenue Agency is required to assess whether operations or transactions related to the investment are

abusive, as well as the specific regimes or institutions to which access is requested, providing the necessary evidence.

Among the issues that may be raised in the request in order to clarify the conditions granting “access” to special regimes or other tax benefits, those related to the “maintenance” of the special regime or tax benefits are included, along with those concerning its “termination”.

Given the wide scope of application of the ruling, the question can concern particular aspects of the investment plan and its implementation, and, more generally, the overall tax treatment of a specific business plan, regarding the different tax areas.

If the application includes an “anti-abuse” ruling, the applicant shall also: describe in detail the operation; explain the specific tax sector in relation to which the question is submitted; indicate the tax provisions, as well as the sound non-tax and non-marginal reasons, including managerial and organizational ones, being aimed at improving the structure or the functionality of the business.

Where the application specifies the tax treatment that the taxpayer believes appropriate for the investment plan as well as the interpretative solutions and behaviors required for its implementation, and the Italian Revenue Agency’s reply does not reach the investor within the deadline provided by law, it is understood that the Tax Authority agrees with the interpretation or behaviours proposed by the enterprise ("silence means assent" rule).

In case of joint investments made by company groups or groupings of enterprises, the special mandate required for filing the application on behalf of other companies/enterprises must be attached. Conversely, if the appointment of a representative for filing the request can be deduced by the power of attorney given for the procedure, the aforementioned mandate need not be enclosed in the application.

A copy of the documentation relevant to the advance ruling and not held by the requested administration or other public authorities listed by the applicant shall be attached. Information covered by confidentiality may be omitted in the investment plan attached to the application, as long as it is not directly related to the ruling procedure.

Lastly, as regards the relationship between the advance tax ruling on new investments and the general taxpayer's ruling, the applicant who does not intend to activate the special procedure for advance ruling on new investments (with its peculiarities and effects) is allowed to submit targeted questions by means of a general request for ruling, isolating them from the context of the investment plan.

5. REGULARIZATION OF THE APPLICATION

In cases where the application lacks any information (*i.e.* personal details of the applicant and analytical description of the investment plan, including its amount and the methodology for quantifying it; timing and measures for its implementation; any significant and long-lasting impact on employment; the favourable quantitative consequences of investment on the Italian tax system), it shall be subject to regularization to prevent the total absence of these elements from leading to the application's inadmissibility.

In order to regularize the application, the Italian Revenue Agency shall request the investor to integrate it using the same procedures for submitting the original request. The regularization shall take place within thirty days from receipt of the request. Otherwise, the application shall be declared inadmissible.

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 from the tax registers.

The time limits for the reply shall start to run from the date on which the regularization takes place.

On the contrary, the lack of the other elements of the application (specific tax provisions, explanation of the tax treatment which the taxpayer believes to be correct and signature of the applicant or of its legal representative) does not imply the need to proceed with regularization, unlike the provisions governing the general taxpayer's rulings. The specific procedure for the advance ruling of new investments allows the competent Office to overcome such lack of information by means of discussions or accesses, without extension of the time limits for the reply.

As regards the specific indication of tax provisions for which interpretation is requested, the principles of loyal collaboration and transparency in the relationship between tax authorities and taxpayers, although their relative lack does not lead to regularization, require that the applicant provide the information in question in order to enable the Italian Revenue Agency to provide a complete reply within the terms of law.

6. INADMISSIBILITY OF THE APPLICATION

6.1 Insufficient indication of the identifying elements of the applicant and of the investment plan

The first case of inadmissibility of the application for advance ruling on new investments is due to the total lack of the applicant's personal details. As highlighted in the previous paragraph, such inadmissibility occurs only if the application is not regularized within thirty days from receipt of the request by the Italian Revenue Agency.

It is particularly important to identify all companies and enterprises participating in the investment whenever this is jointly undertaken by several entities belonging to the same group of companies or grouping of enterprises. Therefore,

besides the identification of the applicant, it is essential that the application includes all identifying elements of the other entities involved in the investment plan since the Italian Revenue Agency's reply will produce its effects only in respect of the entities duly identified.

The inadmissibility of the application shall be declared also in cases of total lack of the description of the investment plan to which it refers (provided that the request has not been regularized).

6.2 Preventive nature of the application

Since the aim of the advance ruling at issue is to provide certainty to enterprises on the tax treatment of the investment plan and of its implementation-related operations, the application must be forwarded to the Italian Revenue Agency prior to the deadline for filing the relevant tax return, or prior to the fulfilment of other tax obligations, related to the tax provisions mentioned in the request and connected with its objective scope.

As a consequence, the momentous event to determine whether or not an application is admissible in terms of time, is not the beginning of implementation of the investment plan or of any other operation deemed necessary for that purpose, but rather the realization, within the deadlines required by law, of the relevant behavior for tax purposes and, therefore, the application of the specific tax rule to which the application is related.

This notion of prevention allows the investor to start the implementation of the investment plan, performing all those acts which do not interfere directly with the application of tax rules. Even more important, during the first phase of application of the advance ruling at issue, applications are likely to concern business plans whose execution (potentially spanning several years, as already highlighted in paragraph 2.1.) could be started prior to the entry into force of the new ruling itself. As clarified above, such a circumstance does not preclude the submission of an

advance ruling application once it is proved that the application has a preventive nature from a fiscal point of view.

Therefore, for the behaviours being implemented with tax returns, the taxpayer is required to file the application for ruling before the expiry of the ordinary deadline provided by law for submitting the declaration, both for the purposes of income tax and VAT.

Moreover, the application shall be deemed as admissible even if the taxpayer has already made payments before the expiry of the said ordinary deadline. For VAT purposes, the application shall be submitted meeting the deadline of the VAT declaration, also if the applicant has already fulfilled other preliminary obligations. If the application refers to repetitive behaviours or concerns tax provisions whose application produces effects over several tax periods and the question is submitted after the ordinary deadline for filing a tax return, the application will be considered as “admissible” in relation to following tax years.

For behaviours which are not implemented with tax returns, the application shall be considered as admissible, for instance, if it is submitted prior to the presentation of a deed for registration. In the said cases, the applicant shall file the question and attach the deed (or a draft of the deed) before the expiration of the deadline ordinarily envisaged for its registration. Where, pending the Italian Revenue Agency's reply, the applicant registers the deed itself, the payment of the remaining tax amount or the refund shall be made or requested, respectively, after the reply.

The inadmissibility can also be partial, where the application concerns several questions, only some of which cannot be assessed as preventive.

6.3 Reiterations of previous applications and conditions of objective uncertainty

The application shall be inadmissible in so far as it concerns the same issues on which the applicant has already obtained an opinion by the Italian Revenue Agency. Such a case of inadmissibility – in application of the principles of fairness and transparency in the relationship between Tax Authorities and taxpayers – cannot be declared if the application includes matters of fact or law which had not previously come to light.

The application is in any case admissible wherever the applicant, who has already presented a request for ruling on new investments, submits further questions relating to the same investment plan at a later time. Basically, a “*vis attractiva*” is recognized to the advance ruling on new investments procedure wherever the same *business plan* gives raise to new questions (notwithstanding the need to ascertain other inadmissibility aspects).

With specific reference to the applications qualified as "ordinary" rulings (either "pure" or "qualifying"), the questions shall be inadmissible if there are no objective conditions of uncertainty regarding the interpretation of tax provisions or the qualification of cases presented by the applicant. In general, the application shall be deemed as inadmissible because of the lack of objective conditions of uncertainty wherever the Tax Authorities have already provided an interpretive solution for similar cases by means of publicly disclosed replies.

This clause of inadmissibility does not operate if the application is aimed at knowing - more in general - the overall tax treatment applicable to a specific business plan submitted to the Revenue Agency. This will be applicable even if it concerns specific questions individually devoid of the aforementioned objective conditions of uncertainty.

Finally, considering the overarching objective scope of the ruling on new investments, partial inadmissibility cases may occur wherever the application involves more than one issue.

6.4 Relations with advance tax agreements for enterprises with international activities

Advance tax agreements for enterprises with international activities (replacing the former “international standard ruling”) are aimed at promoting the internationalization of companies and making the Italian tax system more attractive. New rules about duration and effectiveness of the agreements have been introduced, with the intent to make them more stable and lasting. Specifically, the following binding agreements can be concluded by enterprises with international activities wishing to reach a prior settlement with the Italian Tax Authorities:

- determination of the arm’s-length price of transactions between an Italian company and a non-resident company belonging to the same group, and definition of entry and exit value of assets in case of transfer of residence;
- attribution of profits and losses to domestic and foreign permanent establishments;
- prior assessment on the existence of a permanent establishment in the territory of the State;
- the application to a specific case of rules, including international treaty rules, concerning the payment to (or the receipt from) non-resident companies of dividends, interests, royalties or other income;
- the application to a specific case of rules, including international treaty rules, in order to define the amount of income attributable to a permanent establishment in Italy of a non-resident company or to a permanent establishment in foreign countries of an Italian resident company.

Any reference to the former institution of international ruling is now deemed to be made to advance tax agreements for enterprises with international activities.

Therefore, the “*patent box*” regulatory regime is also covered by the advance tax agreements procedure.

As a consequence, taxpayers may define by agreement with the Italian Revenue Agency:

- the determination of the economic contribution to the production of income or loss in case of direct exploitation of intangible assets (mandatory ruling);
- the determination of income deriving from the indirect exploitation of intangible assets, realized within transactions with related parties (optional ruling);
- the determination of capital gains deriving from the sale of intangible assets carried out as part of transactions with related parties (optional ruling).

The aforementioned issues are precluded from being the subject-matter of an advance ruling on new investments considering that, for investors with international activities, the requests for new investments "*go side by side*" with the advance tax agreements.

This interpretation derives from the peculiar character of the rulings concerned: the advance tax agreement leads to a binding arrangement concerning the definition of calculation methods and the assessment of factual elements that can be challenged by the Italian Revenue Agency; on the other side, the advance ruling application on new investments culminates in an opinion from the Italian Revenue Agency about the correct tax treatment of an investment plan and its related operations, in order to give more certainty to potential investors, including foreign ones.

Consistently, all interpretative issues other than those whose solution is delegated by law to the specific procedure of advance tax agreements may be the subject-matter of an advance ruling on new investments.

As an exception to the aforementioned rule, the prior assessment on the existence of a permanent establishment in the territory of the State may be included in the scope of an advance ruling application on new investments, given the bearing that the issue has on the tax treatment of foreign investments. In any case, the assessment may be covered by an advance ruling on new investments, unless an

advance tax agreement procedure on this specific point has already been activated by the investor. The inadmissibility of the application on new investments remains to the extent it relates to the attribution of profits and losses to the domestic permanent establishment.

The evaluation about the existence of a permanent establishment can be conducted not only in the field of direct taxation, but also for VAT purposes. This is a relevant difference between the ruling on new investments and the general taxpayer's advance ruling, in relation to which the aforementioned inadmissibility clause includes the assessment about the existence of a permanent establishment in Italy for both direct taxes and VAT.

6.5 Interference with the exercise of the assessment power

The applications for advance ruling on new investments interfering with the exercise of the assessment power shall be declared inadmissible wherever they relate to issues covered by control activities of which the taxpayer has been formally notified on the date of submission of the application. In fact, the preventive nature of the advance ruling requires that the filing of an application shall be considered inadmissible for the sole purpose of verifying the legitimacy of previously undertaken assessment activities concerning the case presented.

The reference to "assessment activities" shall be construed so as to include: refund requests; annulment of an assessment notice, even if partial and under self-protection; and other technical assessment activities under the responsibility of the requested administration.

Any other issue, different from those covered by the assessment activity, may be considered admissible. Wherever the application is filed in the interest of several entities within the context of company groups or groupings of enterprises, the inadmissibility of the question arising from an assessment activity produces effects

in respect of all those involved in the investment (not only of the persons to whom the assessment action is formally directed).

If the assessment activity is directed to the *target* company of a share deal transaction, the application submitted by the investor on the same issue shall be declared inadmissible wherever the *target* company has formal knowledge of the said activity.

7. PROCEDURE

The written and reasoned reply from the Italian Revenue Agency shall be served or notified, using the same procedures as for submission of the advance ruling, within 120 days of receipt.

If it is not possible to formulate the reply on the basis of the documents enclosed or otherwise provided by the applicant (*i.e.* information obtained during discussions or accesses), the Italian Revenue Agency may make a written request for additional documentation. In these cases, the reply must be served or notified within 90 days from the date of acquisition of additional information, regardless of whether the original period of 120 days has expired or not.

According to the general principles of transparency and collaboration between taxpayers and tax authorities, the Italian Revenue Agency may not be in a position to reply without the elements, information and documents deemed as necessary. However, in order to lighten the procedure and provide a timely reply, the Italian Revenue Agency is entitled to ask for additional documentation only if the acquisition of the missing elements is not possible through other instruments envisaged by law, such as discussions and accesses (which, as mentioned before, do not imply a deferral of the reply deadline).

The additional documentation shall be provided through the permitted channels, preferably in electronic form. As an alternative, the applicant is required to

explain the reasons why the required documentation cannot be forwarded to the Revenue Agency.

Wherever the required documentation is not submitted within one year from the date of request, the Italian Revenue Agency shall take note of the advance ruling waiver and provide for the notification or communication to the applicant without delay.

Pending expiration of the time limits for reply, the applicant, using the allowed channels, is entitled to file the express waiver of the advance ruling. In the interests of legal certainty, the Revenue Agency shall give timely notice of it.

The said Tax Authority may hold discussions with the investor, even inviting him\her to appear through his\her legal representative or attorney, in order to verify the regularity of application, the completeness of information provided, and to acquire additional information elements.

Moreover, in order to take direct cognizance of useful information, officials of the Italian Revenue Agency can access the premises where the applicant's business is conducted or the permanent establishment of the enterprise is situated. Accesses and their timing shall be previously agreed. For each activity carried out on an "*inter partes*" basis, minutes shall be drawn up, a copy of which shall be given to the applicant.

Discussions and accesses shall be conducted by the Central Directorate for Tax Legislation - Office for Rulings on New Investments, or by the authorized Office of the Central Directorate for Tax Assessment (for applicants that had access to the "*cooperative compliance*" scheme), which may avail themselves of the Italian Revenue Agency's Offices territorially authorized on the basis of the place where the head office of the enterprise (or of the permanent establishment) involved in the procedure is located.

If the application refers to taxes not falling within the scope of responsibility of the Italian Revenue Agency, the latter shall forward the application to the

competent Tax Authorities within 30 days from receipt, providing written notice to the applicant. The reply shall be given to the applicant by the same Authorities on autonomous basis, within the terms provided by the general rules for taxpayer's advance rulings.

8. EFFECTIVENESS OF THE REPLY TO THE APPLICATION

The reply (express or inferred under the “tacit consent” rule) shall be binding on the Italian Revenue Agency with respect to the investment plan as described by the applicant, and it shall be valid until the circumstances of law and of fact on the basis of which it was given remain unchanged.

The reply produces its legal effects with respect to the applicant and the other entities on behalf of which the applicant has submitted the application to the Italian Revenue Agency for the specific business plan (provided that they have been duly identified).

In case the investment plan leads to the creation of a new entity (for example, a *Newco*, a permanent establishment, etc.), the reply will be effective also with respect to the new entity. In such specific case, the applicant shall communicate the identification details of the *Newco* to the Italian Revenue Agency.

The Italian Revenue Agency cannot amend the reply to the application for advance ruling on the new investments. This constitutes an important difference with the general regulations concerning the taxpayer's advance ruling, according to which the power of amendment of the reply is regarded as a general expression of the immanent power of self-protection of the Tax Administration, which is allowed to notify the applicant of a change of interpretation which supersedes any previous opinion.

The aforesaid power of self-protection may not be exercised in the procedure of ruling on new investments and therefore the reply of the Italian Revenue Agency

remains valid until changes of the legal or factual circumstances are involved, unless the following changes in the legal framework occur: a) regulatory changes; b) judgments of the Italian Constitutional Court and of the Court of Justice of the European Union (wherever it interprets EU provisions with which the domestic ones have complied); c) judgments of the Italian Supreme Court handed down by the United Sections or Simple Sections expressing a consolidated and consistent interpretative orientation, by virtue of the so-called *diritto vivente* ("living law"). In the abovementioned cases, according to the principles of legal certainty and of legitimate expectation, the reply shall produce effects only for the future and therefore the applicant's behaviour in the past is deemed to be correct.

The Italian Revenue Agency shall notify the applicant of such modification in the jurisprudential framework resulting in a change of the original reply.

The Italian Revenue Agency shall use its ordinary powers of investigation to verify the correct application of the reply and the absence of changes in the circumstances of fact or of law which are relevant for issuing the reply.

As regards the advance ruling on new investments, this power of assessment is exclusively recognized to the Italian Revenue Agency's offices.

The reply does not produce its legal effects wherever, in the exercise of the aforementioned powers, the Italian Revenue Agency assesses a modification of the legal and material conditions or if there is evidence of untruthfulness or incompleteness of the circumstances presented by the applicant. The reply shall be unproductive of legal effects running from the moment in which the aforementioned changes occur, while, in cases of incomplete or untruthful representation of the legal or factual circumstances, the reply shall be considered equally unproductive of legal effects from the very beginning.

Authorities responsible for carrying out assessment activities and investigations on the enterprises involved in the investment plan and with respect to which the reply produces its legal effects, shall be required to co-ordinate with the

Office that provided the reply before issuing any formal notice of assessment or other acts with tax content or penalties. This obligation of coordination aims to assess, during discussions with the Office that provided the reply (including cases in which the reply is inferred on the "silence means assent" rule), whether any dispute concerns cases already dealt with in the advance ruling on new investments.

9. COORDINATION WITH ASSESSMENT AND LITIGATION ACTIVITIES

9.1 Assessment activity

With respect to issues covered by the reply, all administrative acts (also where their content relates to taxation or penalties) issued by the Tax Authorities in contravention of the same reply given by the Italian Revenue Agency (including the interpretation on which "silence means assent" was adopted) shall be null and void.

It follows that the reply (as long as there are no changes in the legal and material conditions on the basis of which it was given) prevents auditors from expressing objections not in line with it; this preclusive effect is limited to the issues presented in the application and, with specific regard to the anti-abuse ruling, to the taxation sectors to which it refers.

The aforesaid constraints on the assessment activities are granted to all the entities involved in the investment plan and with respect to which the reply's effects apply (*e.g.* the target company of a share deal operation or the new entities resulting from other types of investment).

Wherever the reply is published in the form of a circular or a resolution, its effects apply to all taxpayers, even though they are in any case bound to pay the amount of tax, since neither penalties nor interest on arrears are imposed on the taxpayer compliant with the indications contained in acts issued by the Tax Authorities.

The exercise of the ordinary powers of supervision remains for the competent Tax Authority structures only with respect to issues other than those covered by the reply.

In addition, the required documentation not provided by the applicant during the procedure of advance ruling on new investments may be used in favor of the taxpayer during the administrative and litigation procedures.

9.2 Litigation

The replies to the application for advance ruling on new investments are not appealable, since they have the nature of opinions, and they are not likely to be directly and immediately prejudicial to the legal positions of taxpayers.

Where the reply is aimed to the disapplication of specific anti-avoidance rules, the applicant shall appeal them along with the assessment act, which has the features to affect immediately and directly the taxpayer's subjective sphere.

10. COORDINATION WITH THE LEGAL INSTITUTE OF COOPERATIVE COMPLIANCE

The “cooperative compliance program” is a newly introduced elective regime which allows taxpayers meeting the requirements provided by law (*i.e.* an adequate internal audit model to manage and control their tax risks), also with reference to business volume and amount of revenues (not less than 10 million euros or 1 million for taxpayers participating in the pilot project launched by Italy in 2013), to reach with the Italian Revenue Agency a joint assessment of situations likely to generate “tax risks” before submitting the tax return, through a constant and preventive dialogue that implies the possibility of rescheduling the assessment activity to an earlier date.

Under this regime, taxpayers are allowed to follow a shorter advance ruling procedure concerning the application of tax provisions in specific cases in relation to which the applicant envisages “fiscal risks”.

The said taxpayers are also admitted to file an application for advance ruling on new investments. Therefore, taxpayers covered by *cooperative compliance* intending to make relevant investments in Italy may submit a ruling application which shall not be presented to the Central Directorate For Legislation of the Revenue Agency, but to the Central Directorate for Tax Assessment (*Direzione Centrale Accertamento*) responsible for the “cooperative compliance” regime. The latter will process the request following the deadlines and the procedures as described in the previous paragraphs. As an exception, the application submitted by company groups or groupings of enterprises must always be sent to the Central Directorate for Tax Legislation - Office for Rulings on New Investments, even though one or more entities belonging to the group or grouping has had access to the cooperative compliance regime.

The investor complying with the content of the reply to application for ruling on new investments is admitted to the “cooperative compliance” regime regardless of the amount of its turnover or revenues (provided that the other requirements imposed by law are fully met).

Taxpayers complying with the reply given by the Italian Revenue Agency in response to the ruling on new investments are entitled to a "facilitated" access to the *cooperative compliance* regime.

However, taxpayers eligible to benefit from the "facilitated" access the “cooperative compliance” regime do not necessarily coincide with those applying for an advance ruling on new investments.

Such a right is in fact granted to:

- the enterprise making the investment, be it a resident enterprise or a permanent establishment of a non-resident entity;

- the enterprise whose equity is the subject of a share deal investment. If the application is submitted by company groups or groupings of enterprises, the request to join the “cooperative compliance” program must be filed by the potential structure, the resident enterprise or the permanent establishment set up to realize the investment in Italy.

In the absence of such a structure, wherever within groupings of enterprises it is possible to recognize an independent taxpayer (as is the case with “entity-networks” and consortia with external activities: see paragraph no. 3), the application to benefit from the “cooperative compliance” regime shall be submitted by the said autonomous person.

In all other cases, a special mandate must be given to one of the enterprises in the grouping.

The Regional Directorates will ensure that the principles enunciated and the instructions provided by this circular shall be precisely complied with by the Provincial Directorates and the Offices under them.

THE REVENUE AGENCY DIRECTOR
Rossella Orlandi