

# Investing in Italy: opportunity of applying advance investment rulings

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By *Alessandro Valente* May 23, 2023



**Alessandro Valente of Valente Associati GEB Partners/Crowe Valente outlines the opportunities for businesses in Italy who take advantage of advance investment rulings.**

 Italian tax revenue agency provided further clarifications on the advance tax ruling on new investments (A.I.R.) with Circular No. 7 of March 28, 2023.

Here's a summary of the applicable law on new investments:

- The ATRNI enables resident and non-resident investors, willing to realise long-lasting and relevant investments in Italy, to obtain a preventive opinion from the Italian Revenue Agency regarding the tax treatment applicable to business plans and related extraordinary operations.
- The ATRNI was introduced in Italy with Article 2 of Legislative Decree No. 147/2015 (the so-called "Internationalization Decree"). It is addressed to the Revenue Agency and prepared by investors who intend to make major investments in Italy, worth above €15 million, with significant and lasting employment effects.
- The ATRNI's main goal is to give more certainty to economic operators in determining fiscal burdens connected to Italian investments, and to reduce tax uncertainty in the planning of foreign investments.

With the issuance of Circular No. 7 of March 28, 2023, the Italian Revenue Agency provided further clarifications on the subject matter:

- a) The definition of relevant investment: it should encompass any project for the realisation of an economic initiative having a lasting nature. Activities aimed at restructuring a company in crisis, optimising, or improving the efficiency of an existing business structure, or the participation in the assets of a company must be considered included. This is provided that the eligibility requirements to access the procedure are met. The value of the investment must not be less than €15 million.
- b) Regarding investments consisting of acquisitions of assets or participations, if the acquisition refers to a foreign entity, the "link with the Italian territory" requirement can be met by the investor being located in Italy. It is always necessary to quantify the value of the investment through the data of the resident buyer's balance sheet, and verify the employment-related impact and the positive economic effects on revenue in Italy.
- c) For asset or share deals that are not acquisitions of assets or participation in the assets of resident companies, or that do not imply the existence of a permanent establishment in Italy: any economic initiative that is capable of determining the inflow of financial resources into Italy and, in any case, capital, is considered relevant. For example: operations of "re-entry" of activities previously located abroad or the return of the same subjects, or the transfer to Italy of the tax residence of foreign subjects.

Furthermore, among the various topics covered, the Circular No. 7 provides significant clarifications on the so called "preemptiveness" of the ruling application. It includes an in-depth discussion on the deemed permanent establishment of a non-resident entity in Italy. The Italian Revenue Agency emphasises that having already started the execution of the business plan is not preclusive to the submission of the ruling's application. However, the ordinary deadlines for filing the declaration related to the tax period in which the investment plan started shall not have expired. In fact, a filed application is only considered 'prior to the expiry date' prior to the ordinary deadline for filing the first return related to the tax period in which the deemed permanent establishment to be assessed occurs.

Particularly interesting are cases in which the foreign entity carries out a pre-existing activity in Italy (with reference to the date of submission of the application for a ruling aimed at assessing the existence of its permanent establishment in Italy). In essence:

- A new investment plan whose object can be considered related, in several respects, to the pre-existing activity;
- An investment plan subject to so-called 'progressive implementation', the preliminary stages of which, prior to the start of the actual business, have already been completed; and
- An amendment of a pre-existing business.

In such cases, for the purpose of assessing the preemptiveness of the application, we may consider only ‘new’ facts and circumstances compared to the situation in previous tax periods.

If an investment plan is subject to a progressive implementation (activities related to the start of the enterprise's own activity), the element of novelty regarding the existence of the permanent establishment must be assessed based on the main activity carried out. This takes into consideration the clarifications provided by the Commentary to the OECD Model Convention. The application cannot be considered preventive in those cases in which the foreign company, which is already operating in Italy, carries out its activity in continuity with the past. For example, when there are changes in existing contracts that are irrelevant because they are not significant to the presence of the foreign entity in the territory of the state (e.g., contract extensions or assignment of new orders for activities already carried out, in identical ways, in previous tax periods).

The Circular also offers clarity on the interaction of the new investment policy with the prior agreement procedures (for example, Art. 31-ter Presidential Decree 600/1973).

Priority (in processing the application) will be granted to those taxpayers:

- Who file an application for an investment ruling on new investments; and
- Who, for the same business plan, also intend to enter into an advance pricing agreement (pursuant to Article 31-ter of Presidential Decree No. 600/1973) to define relevant matters, like TP.

Considering the recent clarifications from the Italian Revenue Agency sheds light on some of the long-lasting uncertainties about the ATRNI, an increase in submitting rulings to secure the applicable tax treatment on new investments in Italy is expected.

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