

Tax Pills

Management Exemption (IME)

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The Budget Law for 2023 has introduced a provision that could be considered an attraction for our country. The purpose is therefore laudable. I am referring in particular to the so-called "*Investment Management Exemption*" contained in the *paragraph 255* of the already mentioned new Budget Law. Its purpose is mainly to point out the conditions under which managers of foreign investment vehicles may no longer constitute automatically, as provided for in the current legislation, a permanent establishment of the same vehicle although it is considered an "independent agent". In doing this, *paragraph 255*, therefore, intervenes on the provision of Article 162 of the TUIR, which, as is well known, outlines the cases of the existence or non-existence of a permanent establishment in our country.

The general goal of the measure - The introduction of a "safe harbour" from Permanent Establishment (PE) issues aimed at encouraging the transfer of fund's managers in Italy. The reduction of the risk connected to the presence of fund's managers in Italy, whether they are traders, deal teams, local partners or other, work as a good calamite to attract and tax fund's income, especially of non-resident investors, in Italy. Why? Just allowing the operations of sponsor's management companies (and PE) in Italy (with regular taxation of the business income of management companies) but granting the fund (and therefore the investors) the maintenance of the tax regime of the country of residence/location. Indeed, the Italian Ministry of Economy and Finance shall implement the regulation through a decree.

The reformulation of the concept of Permanent Establishment or PE - The provision, in its principle, provides that the manager (i.e., any entity operating in the manager's value chain) be always considered an independent agent of the foreign investment vehicle only if certain conditions are met. Specifically:

- the investment vehicle and its subsidiaries must be located in a country that is white-listed for the purposes of the regulation of securities of large issuers (Legislative Decree No. 239/1996)
- the investment vehicle must meet certain independence requirements that will be identified by a special ministerial decree. On this matter, usually the manager's independence is measured *vis-à-vis* investors, and therefore where the fund is held by a plurality of investors (i.e., the fund units have been offered for subscription by special fundraising activities), the manager's independence is in *re ipsa* existing
- the manager or the person carrying out the management activity of the foreign investment vehicle must not participate in the economic results of the same investment vehicle to an extent of more than 25 percent. This rule, too, evidently tends to intercept situations of "non-independence" of the manager, configuring himself as a "relevant" and as an effective investor in the vehicle. It is interesting to note that, according to the corresponding English rules, the relevance threshold is 20 percent
- the person acting as manager must not hold positions on the board of directors or supervisory board of the foreign investment vehicle or companies controlled by it
- the managing entity, i.e., the entity belonging to the managing entity's value chain, must prepare "transfer pricing" documentation that qualifies for the penalty exculpation provided for in Legislative Decree No. 471/1997.

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