On 23 October 2018, the Italian Revenue Agency (ITA) issued Ruling No. 79/E (the Ruling), clarifying selected tax issues regarding sale-and-repurchase agreements over Government bonds (REPO).

From a legal perspective the REPO addressed by the ITA entails: (i) the transfer of a certain amount of Government bonds to the spot purchaser (SP) from the spot seller (SS) against the payment of the spot price on the buy date; and (ii) the transfer by the SP to the SS of the same amount of bonds of the same kind at a forward price at a future date (sell date).

With the issuance of the Ruling, the ITA has made the following clarifications:

1. Income realized by the SP in the case of positive interest (or by the SS in the case of negative interest) qualifies for direct tax purposes as income from capital (REPO Income).

2. REPO Income is determined for income tax purpose as the difference between the forward price (spot price plus the REPO interest acknowledged to the SP by the SS, if positive, or to the SS by the SP, if negative) and the spot price, with the exclusion of any interest accrued on the underlying bonds (Interest on Bonds). Therefore, the REPO Income for tax purposes corresponds to the REPO interest (REPO Interest). Under Italian law Interest on Bonds is subject to the tax treatment provided for Italian Bonds (Decree 239/1996 Tax Treatment).
3. The REPO Interest is subject to a statutory 26%/12.5\%^{2} withholding tax (WHT) applied by the relevant custodian bank of the recipient of the income (either the SP or the SS) (Custodian Bank). Such WHT: (i) is not applied if the recipient of the income falls under the domestic exemption set forth by Article 26-bis of Decree 600/1973;\textsuperscript{3} or (ii) may be reduced by any applicable double tax treaty. In both cases, the favorable tax regime is subordinated upon the filing with the relevant Custodian Bank by the recipient of the REPO Interest of the documentation requested by the law.

4. The Custodian Bank has to include the data of the income recipient even in cases where no WHT has been levied due to domestic exemptions or double tax treaties, into the WHT agent return (Modello 770).

5. Decree 239/1996 Tax Treatment applies on the interest paid on the underlying securities based on their legal ownership.

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**Endnotes**

1. The spot price includes accrued interest on the underlying bonds.

2. The reduced 12.5\% rate applies when the underlying securities are Italian Government bonds/similar securities or bonds issued by a State or territory listed as allowing for an adequate exchange of information with Italy (the White List).

3. In particular, this domestic exemption applies to the extent that the income recipient is: (a) the beneficial owner of the REPO interest and is resident for tax purposes, in a State or territory included in the White List (please make reference to the footnote above for the relevant definition); or (b) an “institutional investor” - i.e., an entity whose activity consists in making or managing investments on its own behalf or on behalf of other persons - whether or not subject to tax, established in one of the States or territories included in the White List; or (c) an international entity or organization established in accordance with international agreements ratified in Italy; or (d) a Central Bank or an entity which manages, *inter alia*, the official reserves of a State.
For additional information with respect to this Alert, please contact the following:

**Studio Legale Tributario, FSO, International Tax Services, Milan**
- Marco Ragusa  
  marco.ragusa@it.ey.com
- Raffaele Villa  
  raffaele.villa@it.ey.com

**Ernst & Young LLP (United Kingdom), Italian Tax Desk, London**
- Domenico Borzumato  
  dborzumato@uk.ey.com

**Ernst & Young LLP, Italian Tax Desk, New York**
- Emiliano Zanotti  
  emiliano.zanotti2@ey.com
- Fabrizio Iachini  
  fabrizio.iachini1@ey.com
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