

*Tax and Legal Issues, June 2017*

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## New tax regime of carried interest

Law Decree No. 50 of April 24, 2017<sup>1</sup> (the “**Decree**”) was converted by Law No. 96 of June 21, 2017 (the “**Conversion Law**”). The Conversion Law *does not significantly modify* Art. 60 of the Decree providing a new regime to regulate the taxation of carried interest schemes. The Conversion Law entered into force on the day following its publication<sup>2</sup> (i.e. June 24, 2017).

### **I. General overview**

1. Under the converted Art. 60 of the Decree, income from direct or indirect participation in companies, entities or undertakings for collective investment (resident or established in Italy or in a jurisdiction allowing an adequate exchange of information) derived by their employees or directors or employees/directors of their related parties or managers (the “**Beneficiaries**”), and arising from shares or other similar financial instruments *having enhanced economic rights* (the “**Qualified Instruments**”) is deemed as financial income subject to a 26% flat tax.
2. The application of the new regime is subject to the following conditions:
  - a) the total investment commitment of all Beneficiaries represents an actual investment of at least 1% of the total investment made by the undertakings for collective investment or net equity in case of companies and other entities<sup>3</sup>;
  - b) income from the Qualified Instruments accrues to the Beneficiaries only after all the shareholders/unitholders have received a return equal to the invested capital plus a minimum yield as provided in the by-laws or regulations or, in case of change of control, to the extent that the other shareholders or investors have realized a sales price equal at least to the invested capital plus such minimum yield;
  - c) the Qualified Instruments are held by the Beneficiaries (or by their heirs) for at least 5 years, or for a shorter period in the case of a change of control or change of management.

<sup>1</sup> Published in Official Gazette No. 95 of April 24, 2017.

<sup>2</sup> Published in Official Gazette No. 144 of June 23, 2017.

<sup>3</sup> The relevant investment of all Beneficiaries is calculated by taking into account (i) the amount that is taxed as fringe benefit when the Qualified Instruments are granted or, in case of non-resident Beneficiaries, the amount that would have been taxed in the event that such Beneficiaries were subject to tax in Italy; (ii) the amount related to other investments of the Beneficiaries in financial instruments of the undertaking/company without enhanced economic rights.

## **II. Tax treatment of the income arising from the Qualified Instruments**

1. If the above mentioned conditions are met, the qualifying carried interest schemes are taxed on the basis of the rules provided for income having a financial nature. More in details, the qualification of the carried interest (*rectius*, income arising from the Qualified Instruments) as financial income gives rise to the application of a 26% substitute tax<sup>4</sup>.
2. In the absence of such conditions the income arising from the Qualified Instruments will be considered, on a case-by-case basis, as income having a financial nature or employment income (with the application of progressive tax rates up to 43% plus surcharges) pursuant to the different circumstances.

## **III. Entry into force**

1. The new regime will apply to proceeds deriving from the Qualified Instruments that are received/realized following the entry into force of the Decree (i.e. April 24, 2017). No modifications were implemented in this respect by the Conversion Law.

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<sup>4</sup> With regard to non-listed companies, provided the shareholding represents not more than 20% of the voting rights or 25% of the share capital.