

## Tax Rules on Debt Securities Issued by Non-Listed Companies Amended

October 4, 2012

Today, the Italian Government issued a law decree (the “Decree”) that, among other things, amends the tax regime applicable to the issuance of notes and commercial paper by certain non-listed companies, recently introduced with Article 32 of Law Decree No. 83 of June 22, 2012, converted into law with Law No. 143 of August 7, 2012 (“Article 32”).

The amendments approved with the Decree are intended to either clarify or slightly modify the scope of the new regime (yet, within the boundaries of the rationale underlying Article 32) which, as described in our previous memoranda of June 15 and August 9, 2012 (attached hereto for immediate reference), is aimed at ensuring that certain securities issued by non-listed companies benefit from the same, more favorable, tax regime previously applicable solely to debt issued by banks and listed corporations.

The Decree encompasses, among others, the following main tax changes:

- The Interest Expense Allowance Limitation Exclusion Has Been Clarified and Widened: Article 32 provides that the special rule limiting the tax deductibility of interest expense accrued on notes and commercial paper issued by non-listed companies no longer applies, provided that the securities are subscribed to by qualified investors that are not direct or indirect shareholders of the issuer.

The Decree clarifies that (i) qualified investors are the investors identified in Article 100 of Legislative Decree No. 58 of February 24, 1998 (the Italian Consolidated Financial Services Act)<sup>1</sup>, and (ii) the exemption from the interest expense limitation rule applies also to securities similar to bonds.

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<sup>1</sup> The definition of qualified investors, for purposes of this rule, would generally include, among others, banks, investment firms, insurance companies, collective investment undertakings, pension funds, broker dealers and other institutional investors as well as large corporations.

In addition, the Decree seems to widen the scope of the exemption by setting a 2% threshold, of either vote or value of the issuer, for the maximum shareholding material to ensure the exemption, and to limit the notion of indirect holding.

While such changes appear to improve the regime, clear guidance from the tax administration as to the procedures to be adopted to ensure compliance with such requirements and, hence, deductibility of the interest expense, seems still necessary.

- The Subordinated Profit Participating Notes' Remuneration Allowance Has Been Narrowed: the tax allowance of the variable portion of the remuneration accrued on certain contingent, subordinated, profit participating notes, would require, in addition to the features already contemplated in Article 32, that (i) the securities be subscribed to by qualified investors that do not hold a shareholding representing vote or value in excess of 2% (according to the revised rule, as illustrated above), and (ii) the remuneration on such notes not be only variable.

The Decree, however, does not state the tax characterization of subordinated profit participating notes as notes or debentures similar to notes. Such characterization would have ensured immediate access to the withholding tax exemption for white-listed investors, the lack or uncertainty of which could hinder their use on international capital markets.

- The Scope of the Withholding Tax Exemption Has Been Clarified: the Decree clarifies that the withholding tax exemption available to investors resident or located in white-listed countries applies also to debentures similar to notes in addition to notes and commercial paper.

The Decree shall be converted into law within sixty days from its publication on the Official Gazette, expected to occur in the coming days, otherwise it will lapse with retroactive effect. During the conversion, the Decree could also be amended.

This memorandum is based on the draft released today, which, though unlikely, could differ from the version to be published on the Official Gazette.

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CLEARY GOTTLIEB STEEN & HAMILTON LLP

## Italy's new rules on notes and commercial paper

August 9, 2012

On August 3, 2012 the Italian Parliament adopted a law (the "Law")<sup>1</sup> to convert, with amendments, Law Decree No. 83 of June 22, 2012 (the "Decree"), that introduced important measures aimed at stimulating the Italian economy (the so called "*decreto sviluppo*" or "development decree"). This memorandum outlines the new rules introduced by the Decree, as amended by the Law,<sup>2</sup> on: (i) the exemption from the limitations on the issuance of notes provided for in Article 2412, paragraph 1 of the Civil Code; (ii) the issuance of commercial paper (*cambiali finanziarie*); (iii) the issuance of notes with a subordination clause and/or with a profit participation clause; and (iv) the tax regime applicable to notes and commercial paper issued by Non-Listed Companies (as defined below).

The new regime promotes the issuance of commercial paper and listed notes seeking to expand capital-raising alternatives, thus creating a competitive alternative to loan financing, in particular for non-listed companies.

- ***Exemption from the limitations on the issuance of notes***

Article 2412 of the Civil Code, which sets forth limits on the total principal amount of notes that an Italian corporate issuer may have outstanding from time to time, discouraged the issuance of notes by companies that are not listed on a regulated market.<sup>3</sup> The Law amended this provision in order to allow all issuers (*i.e.*, both listed companies and companies not listed on a regulated market) that issue notes to be listed on a regulated market or on a multilateral trading facility or notes that include a right to subscribe to or purchase the issuer's stock, to benefit from an exemption from the above limits.

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<sup>1</sup> The Law is expected to be published on the Italian Official Gazette on August 11, 2012.

<sup>2</sup> For an overview of the rules on notes and commercial paper introduced by Article 32 of the Decree before the amendments adopted by the Law, please refer to our previous Alert Memorandum dated June 15, 2012.

<sup>3</sup> According to Article 2412, paragraph 1 of the Civil Code, a company may not have outstanding notes whose aggregate amount exceeds twice the aggregate of its share capital, its legal reserve and the available reserves as shown in the latest approved financial statements.

- ***New rules on commercial paper***

The Law re-launches the instrument of commercial paper (*cambiali finanziarie*) by: (i) reducing the minimum period of maturity to one month, and extending the maximum period of maturity to 36 months;<sup>4</sup> (ii) allowing the issuance of commercial paper<sup>5</sup> by joint stock companies (*società di capitali*), cooperative companies (*società cooperative*), mutual insurance companies (*società mutue assicuratrici*) other than banks and micro-sized enterprises (as defined by European Commission Recommendation No. 2003/361 of May 6, 2003);<sup>6</sup> and (iii) allowing the issuance of commercial paper in dematerialized form.<sup>7</sup>

The issuance of commercial paper by companies and other entities whose shares are not admitted to trading on regulated or non regulated markets is subject to the following requirements:

- i. the issuer's latest annual financial statements must be audited;<sup>8</sup>

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<sup>4</sup> Under law No. 43 of January 13, 1994, commercial paper could be issued with maturities from three months to one year.

<sup>5</sup> Under the previous regime, commercial paper could be issued only by banks, listed companies and non-listed companies that fulfilled certain requirements (such as the realization of profits during each of the three previous years).

<sup>6</sup> European Commission Recommendation No. 2003/361 of May 6, 2003 concerning the definition of micro, small and medium-sized enterprises provides that "1. [t]he category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million. 2. Within the SME category, a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million. 3. Within the SME category, a micro-sized enterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million."

<sup>7</sup> In order to be able to issue commercial paper in dematerialized form, the company must send a request to an authorized centralized deposit system (*società autorizzata alla prestazione del servizio di gestione accentrata di strumenti finanziari*), which must contain certain information, including the company's unconditional undertaking to pay all amounts due at maturity.

<sup>8</sup> Such obligation can be exempted for a period of 18 months from the date of entering into force of such requirement, if the issuance is guaranteed, in an amount no lower than 50% of the issuance value of the commercial paper, by a bank, an investment company, or a collective overdraft guarantee consortium (*consorzio di garanzia collettiva dei fidi*), in the latter case, with respect to commercial paper issued by companies participating in the consortium. In case of reliance on this exemption, the commercial paper cannot have a maturity longer than the above-mentioned 18-month period.

- ii. commercial paper are offered to, and may be endorsed only by, qualified investors that are not direct or indirect shareholders of the issuer;<sup>9</sup> and
- iii. a sponsor<sup>10</sup> must be involved in the issuance and placement of commercial paper issued by small or medium-sized enterprises.<sup>11</sup> Other companies may choose not to appoint a sponsor.

The sponsor must hold in its portfolio, until maturity, an amount of commercial paper issued no lower than: at least 5% of the first Euro 5 million of the value of the securities issued, plus an additional 3% of the value of the securities issued greater than Euro 5 million but lower than or equal to Euro 10 million, plus an additional 2% of the value of the securities issued that exceeds Euro 10 million. The sponsor can be exempted from such obligation in the event that the issuance is guaranteed, in an amount no lower than 25% of the value of the issuance, by a bank, an investment company, or a collective overdraft guarantee consortium (*consorzio di garanzia collettiva dei fidi*), in the latter case, with respect to commercial paper issued by companies participating in the consortium. Furthermore, the sponsor must: (i) report, for each issuer, whether the amount of outstanding commercial paper exceeds the company's current assets as shown in the latest approved financial statements; (ii) classify the issuer's creditworthiness, at the time of the issuance, distinguishing between at least five risk categories (strong, good, satisfactory, weak, and bad) to be matched, for guaranteed or secured transactions, with a guarantee level classification of high, normal, or low; and (iii) make the description of the adopted classification public.

- ***Issuance of notes with a subordination clause and/or with a profit participation clause***

Under the Law, companies, other than banks and micro-sized enterprises (as defined by European Commission Recommendation No. 2003/361 of May 6, 2003), that have no securities listed on a regulated market or a multilateral trading facility ("Non-Listed Companies") may issue notes: (i) with a subordination clause, which establishes the priority of the claims of the

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<sup>9</sup> The Law clarifies that the placement of commercial paper with qualified investors controlling the sponsor is subject to the existing rules on conflict of interest.

<sup>10</sup> The sponsor can be a bank, investment company, asset management company (*società di gestione del risparmio*), harmonized asset management company (*società di gestione del risparmio armonizzata*), or investment company with variable capital (*società di investimento con capitale variabile*), provided that it has a branch in Italy.

<sup>11</sup> As defined by European Commission Recommendation No. 2003/361 of May 6, 2003, see footnote 5 above.

issuer's creditors (other than the shareholders) over those of the noteholders<sup>12</sup> and/or (ii) with a profit participation clause, provided in each case that such notes have a maturity of at least 36 months. Profit participating notes represent a type of floating rate notes whose coupon reflects a fixed component and a variable component linked to the profits of the issuer. In accordance with Article 32, paragraph 21 of the Law, the fixed interest rate component cannot be lower than the applicable Official Rate of Reference (*Tasso Ufficiale di Riferimento*), whereas the variable interest rate component must be paid annually by the issuer to the noteholders within 30 days after the approval of the financial statements.<sup>13</sup>

- ***New Tax Rules on Issuance of Securities by Non-Listed Companies Confirmed.***

In confirming the Decree, the Law partially amended the tax provisions contemplated by the Decree, which, as illustrated in our previous alert memo of June 15, 2012, aimed at ensuring that commercial paper (*cambiali finanziarie*) and notes (the "Securities") issued by Non-Listed Companies benefit from the same, more favorable tax regime currently applicable to securities issued by banks and listed corporations.<sup>14</sup>

As a result, as of the effective date of the Law, the following tax regime will apply to the issuance of the Securities by Non-Listed Companies:

- **No Special Limits on Deductibility of Interest Expense:** the special rule currently limiting the tax deductibility of interest expense accrued on Securities issued by non-listed companies<sup>15</sup> will no longer apply to issuances made by Non-Listed Companies, provided that the Securities, regardless of whether they are listed or not, are subscribed to by qualified

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<sup>12</sup> As specified in Article 32, paragraph 20 of the Law, Non-Listed Companies that issue notes with a subordination clause must comply with Article 2435 of the Civil Code, which provides that, within 30 days after the approval of the financial statements, Non-Listed Companies must file with the Italian Companies' Registry a list of the shareholders as of the date of such approval, detailing the number of shares owned by such shareholders, as well as a list of the persons, other than shareholders, who benefit from any rights or security over the shares.

<sup>13</sup> The methods of calculation of the variable component of the interest rate are set at the moment of issuance, cannot be amended until the note matures, are calculated on the basis of objective criteria, and cannot be influenced by resolutions of the board of directors or at shareholders' meetings of the issuer. As provided for in Article 32, paragraph 25 of the Law, Italian usury law No. 108/1996 does not apply to the variable interest rate component of profit participating notes.

<sup>14</sup> The Law has repealed the monitoring obligations previously set for the issuance of non-listed Securities, whereby issuers were obliged to communicate to the tax administration the issuance of such Securities within thirty days.

<sup>15</sup> Pursuant to Article 3, paragraph 115, of Law No. 549 of December 28, 1995, tax-deductible interest expense accrued on securities issued by non-listed companies cannot exceed the official reference rate set, at the time of issuance, by the European Central Bank increased by two-thirds if the securities are not listed, or doubled, if they are listed.

investors that are not direct or indirect shareholders of the issuer.<sup>16</sup> Although the black letter rule only requires that the Securities be subscribed by the above-mentioned qualified investors, it appears reasonable to infer that such condition would be met if the Securities are not only subscribed to but also held by such qualified investors. In order to have absolute certainty on the application of such regime, which is a key feature to ensure the success of the Securities on the market, issuers will need clear administrative guidance as to the evidence to be provided to demonstrate compliance with the above-mentioned holding requirements that conceivably should contemplate a stream-lined and not too cumbersome procedure.

- Tax Exemption on Interest Income Earned by Certain Foreign Investors: the scope of Legislative Decree No. 239 of April 1, 1996 (“Decree No. 239”) is extended to include Securities listed on a regulated market that are issued as of the effective date of the Decree (*i.e.*, June 26, 2012).

This is an important development as it enables non-listed issuers to access international capital markets without having to bear a tax gross-up cost: under Decree No. 239, foreign Securities’ holders resident in white-listed countries will benefit from an exemption from the ordinary 20% final tax applicable on the relating interest income if, among other things, they are the beneficial owners and comply with certain standard certification procedures.

- Full Deductibility of Issuance Expenses: any expenses (other than interest expenses) resulting from the issuance of securities falling within the scope of Decree No. 239 are now fully deductible in the year in which they are paid, regardless of any different timing imputation for accounting purposes.
- Special Rules on Subordinated Profit Participating Notes: the variable portion of the remuneration accrued on subordinated contingent profit participating notes issued by Non-Listed Companies whereby capital distributions would be limited to the dividend amounts paid out of the annual profits, shall be accounted for as a special profit and loss account provision and, as such, treated as an expense that, while not deductible under ordinary rules, would instead be fully deductible for corporate income tax purposes.

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<sup>16</sup> The ordinary interest expense limitation rules, including the deductibility up to 30% of the company’s EBITDA for any amount in excess on interest receivables, would apply.



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## Italy's new rules on notes and commercial paper

June 15, 2012

The Italian Cabinet adopted today a Law Decree (the “Decree”)<sup>1</sup> introducing important measures aimed at stimulating the Italian economy. The Decree introduces, *inter alia*, new rules on: (i) the exemption from the limitations on the issuance of notes provided for in Article 2412, paragraph 1 of the Civil Code; (ii) the issuance of Non-Listed Securities (as defined below) by Non-Listed Companies (as defined below); (iii) commercial paper (*cambiali finanziarie*); and (iv) the tax regime applicable to Securities (as defined below) issued by Non-Listed Companies.

The new regime promotes the issuance of notes and commercial paper by corporate issuers that are not listed on a regulated market, and their placement with professional investors, creating a competitive alternative to loan financing. It prevents direct or indirect shareholders of such issuers from subscribing to non-listed notes or commercial paper, and, as a consequence, promotes shareholders' capitalization of the companies.

Within 60 days of publication on the Italian Official Journal (which is expected in the next few days), the Decree must be converted into law by the Italian Parliament.<sup>2</sup> The Decree has been adopted “subject to further revisions” and therefore the text may still be amended in the next few days.

- ***Exemption from the limitations on the issuance of notes***

Article 2412 of the Civil Code, which sets forth limits on the total principal amount of notes that an Italian corporate issuer may have outstanding from time to time, discouraged the issuance of notes by companies which are not listed on a regulated market.<sup>3</sup> With the entry into force of the Decree, all issuers (*i.e.*, both listed companies and companies not listed on a regulated

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<sup>1</sup> The new rules described in this memorandum are included in Article 32 of the Decree.

<sup>2</sup> Law Decrees enter into force, unless otherwise specified, on the day following their publication on the Official Journal; however, they must be converted into Law by Parliament within 60 days of this publication, otherwise they cease to be effective retroactively.

<sup>3</sup> According to Article 2412, paragraph 1 of the Civil Code, a company may not issue notes whose aggregate amount exceeds twice the aggregate of its share capital, its legal reserve and the available reserves as shown in the latest approved financial statements.

market) that issue notes to be listed on a regulated market or on a multilateral trading facility or notes that include a right to subscribe to or purchase the issuer's stock, will be able to benefit from the exemption.

- ***Issuance of Non-Listed Securities by Non-Listed Companies***

The Decree introduces new requirements for issuances by companies, other than banks and micro-sized enterprises (as defined by European Commission recommendation No. 2003/361 of May 6, 2003)<sup>4</sup>, that have no securities listed on a regulated market or a multilateral trading facility ("Non-Listed Companies"). In particular, issuance by Non-Listed Companies of commercial paper (*cambiali finanziarie*) and/or notes that are not offered to the public nor admitted to trading on an Italian or EU regulated market or multilateral trading facility ("Non-Listed Securities") must satisfy the following conditions: (i) a sponsor must be involved in the issuance and underwriting stages; (ii) the issuer's latest annual financial statements must be audited; and (iii) the Non-Listed Securities must be offered only to qualified investors that are not direct or indirect shareholders of the issuer and thereafter must circulate only amongst such type of investors.<sup>5</sup>

In particular, the sponsor must: (i) ensure the liquidity of the Non-Listed Securities, at least at predefined intervals, until maturity; (ii) hold in its portfolio, until maturity, an amount of the Non-Listed Securities issued not lower than certain thresholds;<sup>6</sup> (iii) periodically assess, at least half-yearly, the value of the Non-Listed Securities; and (iv) classify the issuer, through its formalized models, in a risk category identified through procedures that take into account the enterprises' creditworthiness bearing in mind European Commission Communication 2008/C 14/02, as amended, concerning the

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<sup>4</sup> The European Commission recommendation No. 2003/361 of May 6, 2003 concerning the definition of micro, small and medium-sized enterprises provides that "1. [t]he category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million. 2. Within the SME category, a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million. 3. Within the SME category, a micro-sized enterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million."

<sup>5</sup> The innovation introduced by the new rules is particularly significant considering that under the previous regime commercial paper could be issued only by banks, listed companies and non-listed companies that fulfilled certain requirements (such as the realization of profits during each of the three previous years).

<sup>6</sup> The sponsor must hold at least 5% of the first Euro 5 million of the value of the Non-Listed Securities issued, plus an additional 3% of the value of the Non-Listed Securities issued greater than Euro 5 million but lower than or equal to Euro 10 million, plus an additional 2% of the value of the Non-Listed Securities issued that exceeds 10 million.

revision of the method for setting reference and discount rates.<sup>7</sup> Moreover, the placing of Non-Listed Securities towards qualified investors controlling the sponsor is subject to the existing rules about conflict of interest. Companies other than small or medium-sized enterprises<sup>8</sup> may choose not to appoint a sponsor or may exempt the sponsor from compliance with the sponsor' obligations listed above.

- ***Issuance of notes with a subordination clause and/or with a profit participation clause***

Under the Decree, Non-Listed Companies may issue notes (i) with a subordination clause, which establishes the priority of the claims of the issuer's creditors (other than the shareholders) over those of the noteholders<sup>9</sup> and/or (ii) with a profit participation clause, provided in each case that such notes have a maturity of at least 60 months. Profit participating notes represent a type of floating rate notes whose coupon reflects a fixed component and a variable component linked to the profits of the issuer. In accordance with Article 32, paragraph 21 of the Decree, the fixed interest rate component cannot be lower than the applicable Official Rate of Reference (*Tasso Ufficiale di Riferimento*), whereas the variable interest rate component must be paid annually by the issuer to the noteholders within 30 days after the approval of the financial statements.<sup>10</sup>

- ***New rules on commercial paper***

The Decree promotes the issuance of commercial paper (*cambiali finanziarie*) by introducing the ability for Non-Listed Companies to issue commercial

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<sup>7</sup> The classification must be done at least half-yearly and at anytime extraordinary factors may impact its assessment. There are five risk categories for an issuer's creditworthiness (strong, good, satisfactory, weak, and bad) to be matched, for secured transactions, with a guarantee level classification of high, normal, or low. The sponsor must make the adopted classification public and must timely update its content anytime it is necessary.

<sup>8</sup> As defined by European Commission recommendation No. 2003/361 of May 6, 2003, see footnote 6 above.

<sup>9</sup> As specified in Article 32, paragraph 20 of the Decree, Non-Listed Companies that issue notes with a subordination clause must comply with Article 2435 of the Civil Code, which provides that within 30 days after the approval of the financial statements, Non-Listed Companies must file with the Italian Companies' Register a list of the shareholders as of the date of such approval, detailing the number of shares owned by such shareholders as well as a list of the persons, other than the shareholders, that benefit from any rights or security over such shares.

<sup>10</sup> The methods of calculation of the variable component of the interest rate are set at the moment of issuance, cannot be amended until the note matures, are calculated on the basis of objective criteria, and cannot be influenced by resolutions of the board of directors or at shareholders' meetings of the issuer. As provided for in Article 32, paragraph 25 of the Decree, Italian usury law No. 108/1996 does not apply to the variable interest rate component of profit participating notes.

paper, as specified under the section “*Issuances of Non-Listed Securities by Non-Listed Companies*” above. With the entry into force of the Decree, companies can issue such instruments in dematerialized form.<sup>11</sup> In addition, the Decree encourages the issuance of commercial paper by reducing the minimum period of maturity of commercial paper, and extending its maximum period of maturity, providing that such instruments can be issued with maturities from one month to 18 months after the issue date.<sup>12</sup> The total amount of outstanding commercial paper must not exceed the company’s current assets as shown in the latest approved financial statements.<sup>13</sup>

- ***Amendments to tax rules applicable to Securities issued by Non-Listed Companies***

The Decree also contemplates tax amendments aimed at ensuring that commercial paper (*cambiali finanziarie*) and notes issued by Non-Listed Companies (the “Securities”) benefit from the same, more favorable regime currently applicable to securities issued by banks and listed corporations. In particular, the Decree provides for a:

- Full Deductibility of Interest Expense, whereby the rule currently limiting the tax deductibility of interest expense accrued on Securities<sup>14</sup> will not apply to interest accrued on such Securities insofar as they are held by qualified investors that are not direct or indirect shareholders of the issuer.

It is foreseeable that issuers will need clear guidance as to the evidence to be provided to demonstrate compliance with the above-mentioned holding requirement in order to have absolute certainty on the full interest expense allowance, which is a key feature to ensure the success of the Securities on the market. Conceivably, the tax administration will have to devise an effective and stream-lined

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<sup>11</sup> In order to be able to issue commercial paper in dematerialized form, the company must send a request to an authorized centralized deposit system (*società autorizzata alla prestazione del servizio di gestione accentrata*), which must contain certain information, including the company’s unconditional undertaking to pay all amounts due at maturity.

<sup>12</sup> Under law No. 43 of January 13, 1994, commercial paper could be issued with maturities from 3 months to 1 year.

<sup>13</sup> For further details, please see Article 32, paragraph 6 of the Decree.

<sup>14</sup> Pursuant to Article 3, paragraph 115, of Law No. 549 of December 28, 1995, tax-deductible interest expense accrued on securities issued by non-listed companies cannot exceed the official reference rate set, at the time of issuance, by the European Central Bank increased by two-thirds if the securities are not listed, or doubled, if they are listed.

certification procedure, which, for instance, could resort to Decree No. 239 (as defined below) procedures, by simply including in the related certificate form currently used for white-listed country holders the additional information so required, and replicate such procedures for all other holders, including Italian holders.

- Tax Exemption on Interest Income Earned by Certain Foreign Investors: the scope of Legislative Decree No. 239 of April 1, 1996 (“Decree No. 239”) is extended to include Securities listed on a regulated market that are issued as of the effective date of the Decree.

This is an important development as it enables non-listed issuers to access international capital markets without having to bear a tax gross-up cost: under Decree No. 239, foreign Securities’ holders resident in white-listed countries will benefit from an exemption from the ordinary 20% final tax applicable on the relating interest income if, among other things, they are the beneficial owners and comply with certain standard certification procedures.

Moreover, the Decree includes the following tax measures:

- Full Deductibility of Issuance Expenses: any expenses resulting from the issuance of securities falling within the scope of Decree No. 239 are now fully deductible in the year in which they are paid, regardless of any different timing imputation for accounting purposes.
- Monitoring Obligations: the issuance of non-listed Securities will be strictly monitored by the Italian tax authorities for anti-avoidance purposes, as issuer will be obliged, *inter alia*, to communicate to the Italian Tax Agency any data referring to the issuance of such securities within thirty days. Administrative guidance could be issued in connection with such obligation.
- Special Rules on Subordinated Profit Participating Notes: the variable portion of the remuneration accrued on subordinated contingent profit participating notes whereby capital distributions would be limited to the dividend amounts paid out of the annual profits, shall be accounted for as a special profit and loss account provision and, as such, treated as an expense that, while not deductible under ordinary rules, would instead be fully deductible for corporate income tax purposes.

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