TMC
TAX | ADVISORY | LEGAL
www.tmcadvisory.com
VERONA
MILANO
FERRARA
VARESE
BOLOGNA
MUNCHEN
KOLN
GIJÓN

INTERNATIONAL
TAX FOCUS

Italian tax treatment of inbound and outbound dividends

1.	Foreword	2
2.	Outbound dividends	2
2.1	Exemption under the “Parent-Subsidiary” Directive	2
2.2	1.20% EU/EEA reduction	3
2.3	Tax Treaty Reduction	3
2.4	Domestic Withholding Tax	4
3.	Inbound dividends	4
3.1	Individuals	4
3.2	Companies	4
4.	Glossary	7

1. Foreword

Italian tax rules on cross-border taxation of dividends consist of different set of provisions that must be combined and read in conjunction also with international rules and principles.

The following paragraphs will summarize the main tax regimes and treatment of both outbound and inbound dividends.

2. Outbound dividends

There are four main tax regimes that may apply with respect to outbound dividends.

First off, according to Art. 23 of Presidential Decree no. 917/1986 ("TUIR") dividends are considered to be sourced from Italy to the extent that they are paid by the persons resident in Italy or by permanent establishments of non-resident entities that are located in Italy.

Dividends that are considered to have their source in Italy may be subject to tax therein pursuant to one of the following regimes.

Where the relevant fact pattern may fall within the scope of more than one of the regimes described below, then the relevant foreign recipient person may benefit from the most beneficial one.

2.1 Exemption under the "Parent-Subsidiary" Directive

The "Parent-Subsidiary" Directive (Council Directive 2011/96/EU of 30 November 2011) has been implemented in Italy through Art. 27-bis of the Presidential Decree no. 600/1973.

Art. 27-bis provides for an exemption from Italian withholdings on dividends to the extent that the foreign parent entity holds a participation equal at least to 10% of the capital in the Italian distributing entity and all the following requirements are met:

- the non-resident shareholder receiving the dividends is a company incorporated under the law of an EU country having one of the legal forms listed in the Annex of the Parent-Subsidiary Directive itself;
- the non-resident shareholder is resident for tax purposes in an EU country and is not considered to be resident outside the EU pursuant to a double tax treaty signed with a third country;
- the non-resident shareholder is subject to tax in its country of residence without benefiting from specific exemption regimes that are not limited from a temporal or territorial stand-point;
- the non-resident shareholder does maintain the participation in the Italian company for an uninterrupted period of at least 1 year (the Italian legislation provides for a shorter holding period compared to the Parent-Subsidiary Directive, which provides for a 2-year holding period).

The benefits of Art. 27-bis may alternatively be granted:

- directly by the Italian withholding agent (under its own responsibility) by not applying any withholding;
- through a refund request.

In both cases, it is necessary to collect the documentation proving that the requirements provided for by Art. 27-bis are met before the dividend payments occur. The Italian Tax Authorities have issued a specific form to that extent (Form E, issued by Ordinance no. 84404 approved and published on 10 July 2013).

With respect to that, the Italian Tax Authorities repeatedly stated that the Italian withholding agent may directly apply the exemption from withholding only to the extent that the holding period is met at the date of the distribution (see, among the others, resolution no. 109 of 29 July 2005 and ruling no. 695 of 11 October 2021).

When the holding period is met after the relevant dividend distribution, the non-resident recipient entity will only be entitled to claim for a refund of the withholding suffered.

Dividends paid to Swiss companies

A similar set of rules is also provided for by outbound dividend payments having Swiss companies as recipients. Indeed, the EU and Switzerland have entered into an agreement related to cross-border dividends that contains provisions that are similar to those contained in the Parent-Subsidiary Directive.

The main differences between the EU-Switzerland agreement and the provisions of Art. 27-bis lie in the minimum participation threshold (in the EU-Switzerland agreement it is equal to 25%) and the holding period (in the EU-Switzerland agreement it is equal to 2 years).

Parent-Subsidiary Directive (European companies as recipients)

Requirements (Art. 27-bis P.D. 600/1973)	
Residence for tax purposes	In a EU country or in Switzerland
Legal form	The recipient must be incorporated under one of the legal forms listed in the Annex of the Directive
Subject-to-tax requirement	The recipient must be subject to one the taxes listed in the Annex of the Directive
Minimum participation requirement	At least 10% (25%, for the Swiss companies)
Minimum holding period	At least one year (two years, for the Swiss companies)

Dividends paid to EU funds

An exemption from domestic withholding also applies with respect to dividens paid to:

- investment funds compliant with Directive 2009/65/EC (UCITS IV Directive), or
- funds not compliant with the above mentioned Directive but whose management company is subject to forms of supervision in the country of establishment in accordance with Directive 2011/61/EU (AIFM Directive),

to the extent that they are established in a EU Member State EEA State allowing for an adequate exchange of information with Italy.

2.2 1.20% EU/EEA reduction

Art. 27(3-ter) of the Presidential Decree no. 600/1973 provides for a final 1.20% withholding to be applied with respect to infra-EU dividends distributions, regardless of any minimum participation threshold.

As clarified by the Italian Tax Authorities (circular letter no. 26 of 21 May 2009), this regime applies where the relevant dividends are paid by an Italian company to companies and entities that are:

- tax resident in white-listed EU or EEA countries;
- liable to tax therein. The Italian Tax Authorities have clarified that a general potential liability to tax in the country of establishment is sufficient to meet this requirement (circular letter no. 26/2009).

2.3 Tax Treaty Reduction

The tax treaties Italy has entered into with several countries usually provides for a reduction of the domestic withholding with respect to outbound dividends (usually, to 10%-15%, sometimes with reduced rates if the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends).

In order for a treaty reduction to apply, it is necessary that all the requirements set forth therein are met. Usually, the most important and common requirements provided for by the relevant treaties are that the recipient must qualify as a person resident in the other Contracting State and as the beneficial owner of the relevant income.

Usually, these kinds of reductions are claimed where the requirements for the (more beneficial) regimes described under 2.1 and 2.2 above are not met.

The Italian Tax Authorities have issued a specific form to that extent (Form A, issued by Ordinance no. 84404 approved and published on 10 July 2013).

Where an Italian withholding is applied under a specific tax treaty, the residence State of the

recipient is usually bound to provide a relief for the potential juridical double taxation that may arise (either as a foreign tax credit or an exemption).

2.4 Domestic Withholding Tax

Where none of the regimes described above may apply, Art. 27(3) of the Presidential Decree no. 600/1973 provides for the application of a final 26% rate withholding on outbound dividends payments.

The same provision also grants to the relevant dividend recipients the right to a reimburse equal to 11/26ths of the withholding suffered to the extent that they are able to prove (to the Italian Tax Authorities) that the dividends received have been subject to tax in their country of residence.

Outbound dividends

Recipient	Tax treatment	Forms (to claim exemption/reduced rates/refund)
EU companies	Exemption under Parent-Subsidiary Directive	Form E (to the withholding agent, or to the competent Italian Office for non-residents in Pescara to claim for refunds) containing a residence certification issued by the foreign Tax Authority
	1.20% withholding tax	Claim to the withholding agent, declaring that all the requirements to reduce the amount withheld at source are met, attaching residence certification issued by the foreign Tax Authority Claim to the competent Italian Office for non-residents in Pescara, in the event of refund
Non-EU companies and individuals (Tax Treaty Reduction)	Withholding tax provided in the Tax Treaty (usually, 10% or 15%), if all the requirements set forth therein are met	Form A (to the withholding agent, or to the competent Italian Office for non-residents in Pescara to claim for refunds) containing a residence certification issued by the foreign Tax Authority
Non-EU companies and individuals (Domestic Withholding Tax)	Withholding tax provided in the domestic legislation (26%)	None
EU or EEA funds	Exemption where some regulatory requirements are met	None

3. Inbound dividends

The tax treatment of inbound dividends varies depending on the nature of the recipient and the nature of the distributing entity.

Profits deriving from shares held in foreign entities qualify as dividends for Italian tax purposes to the extent that such dividends distribution is not considered to be a deductible cost from the foreign distributing entity tax base.

3.1 Individuals

The taxation varies depending on the following features:

- if an individual is engaged in an entrepreneurial activity and the relevant participation is connected to such activity, dividends received are taxable only with respect to 58.14% of their

amount, to the extent that such dividends are paid out of profits registered by the foreign distributing entity after 2016 (lower rates apply to dividends paid out of profits registered in previous years). The taxable base so determined is taxed pursuant to a progressive Income Tax rate;

- if an individual is not engaged in an entrepreneurial activity, dividends received are subject to tax at a 26% rate, both in case of portfolio and non-portfolio participations. Taxes are collected by the relevant intermediary intervening in the payment (if any). Where there is no intermediary, taxes are paid directly by the taxpayer. In any case, if taxes are levied abroad on the relevant dividend distribution, no foreign tax credit is granted with respect to this kind of income. A temporary regime is also provided with respect to non-portfolio participations; dividends distributed out of profits registered up to 2017 and distributed pursuant to company's resolutions issued within 31 December 2022 are subject to tax pursuant to a different regime which was previously in place (i.e. the progressive individual Income Tax rates are applied on a reduced tax base. Foreign taxes suffered on such dividends may be offset against taxes due in Italy).

3.2 Companies

Dividends received by italian resident companies from foreign entities are ordinarily subject to corporate income tax (and also to the regional tax on productive activities – IRAP – if the recipient carries out some specific kind of activities, e.g. banks).

However, pursuant to Art. 89(3) of the TUIR, if the relevant dividend distribution is not deductible from the taxable base of the distributing company in its country of establishment, then such dividends are actually subject to tax in Italy only with respect to 5% of their amount (at a corporate tax rate currently equal to 24%, this will result in an overall taxation of 1.20%).

Dividends received from black-listed jurisdictions

Particular rules are set forth for dividends received by Italian residents with respect to participations held in entities located in black-listed jurisdictions.

Pursuant to Art. 47-bis of the TUIR, a foreign jurisdiction is deemed to be a black-listed jurisdiction where:

- if the Italian shareholder controls the relevant foreign entity, the distributing entity has an effective tax rate lower than 50% of the effective tax rate it would have registered if it was resident in Italy;
- if the Italian shareholder does not control the relevant foreign entity, the nominal tax rate of the foreign jurisdiction is lower than 50% of the Italian corporate income tax rate. In this case, in order to assess and make a comparison between nominal rates, special regimes that are not granted in favour of all the entities carrying out the same activity of the distributing company must be taken into consideration.

When, pursuant to the criteria reported above, a jurisdiction is considered to be a low-tax jurisdiction, the Italian shareholder may still avoid (entirely or partially) the consequences of such qualification by proving (even through a specific ruling request) that:

- the foreign entity carries out a real economic activity in its Country, through assets, personnel and equipment located therein (Art. 47-bis (2)(a) of the TUIR);
- holding the foreign entity does not have the effect of shifting the relevant income to a black-listed jurisdiction (Art. 47-bis (2)(b) of the TUIR).

The main consequence of a foreign distributing entity to be considered located in a black-list jurisdiction is that dividends received by Italian persons are fully taxable in their hands, but if:

- the resident recipient is able to prove that the foreign distributing entity carries out a real economic activity in its country, through assets, personnel and equipment located therein then such recipient is entitled to an indirect foreign tax credit for the taxes levied on the foreign entity's profits in its jurisdiction. In addition, where the resident recipient is a company (pursuant to Art. 89(3) of the TUIR), the relevant dividend is considered to be taxable only for 50% of its entire amount;

- the resident recipient is able to prove that holding the participation in the foreign entity does not have the effect of shifting the relevant income to a black-listed jurisdiction. In such cases, the normal regimes apply to the dividends received (i.e., taxable dividends amount equal to 5% if the recipient is a company and 26% tax rate with respect to individuals not engaged in entrepreneurial activities).

CFC rules

In cases where foreign distributing entities are located in a low-tax jurisdiction, the tax treatment of the dividends may be also affected by the application of the Italian controlled foreign company regime (Art. 167 of the TUIR).

In a nutshell, such regime provides that Italian persons controlling foreign entities that:

- are subject in their country of establishment to an effective tax rate that is lower than 50% of the one it would have been applicable to them if it were resident or located in Italy; and
- derive more than one third of its revenues from passive income;

are subject to tax in Italy with respect to the income of the controlled entities in proportion to their entitlement to the profits of such foreign entities, even in the absence of an actual distribution.

Where the CFC rules apply (and, as a consequence, the income of the relevant foreign entities is attributed to the resident controlling person), subsequent dividend distributions are not considered to be taxable in the hands of the Italian controlling persons up to the amount of the income previously attributed to them and taxed in their hands.

Inbound dividends (non black-listed) - Individuals

<table>
<tr><th>Recipient</th><th>Tax treatment</th><th>Foreign tax credit</th></tr>
<tr><td>Portfolio participations (up to 20% of the voting rights, or up to 25% of the share capital)</td><td>Withholding tax (26%), if perceived through an Italian bank (tax collected by the bank)
Substitute tax (26%), if not perceived through an Italian bank (tax assessed in the annual tax return)</td><td>No</td></tr>
<tr><td rowspan="2">Non-portfolio participations (more than 20% of the voting rights, or more than 25% of the share capital)</td><td>Dividends paid out of profits accrued from 2018 onwards:
• Withholding tax (26%), if received through an Italian intermediary (tax collected by the bank)
• Substitute tax (26%), if not received through an Italian bank (tax assessed in the annual tax return)</td><td>No</td></tr>
<tr><td>Dividends paid out of profits accrued up to 2017:
Individual Income Tax (IRPEF) on the following tax basis:
• 40% (profits accrued up to 2007);
• 49.72% (profits accrued from 2008 to 2016);
• 58.14% (profits accrued in 2017).</td><td>Yes (40%, 49.72% or 58.14% of the foreign tax levied)</td></tr>
</table>

4. Glossary

Beneficial owner

Recipient of the income with right to use and to enjoy it, unconstrained by contractual or legal obligations to pass on the payment to another person.

Controlled foreign companies

Controlled entities mainly deriving passive income and whose effective tax rate is lower than 50% of the Italian one.

Corporate Tax rates

Italian Corporate Tax (IRES) is a 24% flat rate, reduced to 12% for some no-profit organisations and increased to 27.5% for banks and other financial institutions.

Form A

Form needed to claim for the application of reduced rates or refund on dividends derived by non-residents recipients pursuant to a Double Tax Convention.

Form E

Form needed to claim for the exemption or refund on dividends derived by non-residents recipients pursuant to the Parent-Subsidiary Directive.

Income Tax rates

Italian Income Tax (IRPEF) has the following rates and brackets (2022):

- 23% (0 to 15.000 EUR);
- 25% (15.001 to 28.000 EUR);
- 35% (28.001 to 50.000 EUR);
- 43% (over 50.000 EUR).

IRAP

Regional tax on productive activities levied on companies and individual businesses with a 3.9% rate.

Italian Office for non-residents (“Centro Operativo di Pescara”)

Competent Italian Office for claims of refund of taxes paid by non-residents on Italian-sourced income.

Italian Tax Authorities (“Agenzia delle Entrate”)

Agency, under control of the Ministry of Finance, which performs all the functions and tasks assigned by the law in the field of tax revenue and tax duties.

Ordinance

Official document issued by the Italian Tax Authorities containing rules aiming at implementing and supplementing provisions of tax law (tax returns, etc.).

Parent-Subsidiary Directive

Council Directive 2011/96/EU, preventing double taxation on dividends between associated companies of different member States.

Substitute Tax on dividends

Tax assessed in the annual tax return (RM form, section V) with a 26% rate, if the foreign-sourced dividend is not perceived through an Italian intermediary.

TUIR (“Testo Unico delle imposte sui redditi”)

Italian Income Tax Code, enacted through Presidential Decree no. 917/1986.