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Italian tax news

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RATIFICATION OF THE NEW DOUBLE TAX TREATY BETWEEN ITALY AND PEOPLE'S REPUBLIC OF CHINA

Law no. 182 of 18 November 2024 on the ratification and execution of the new double taxation agreement between Italy and the People's Republic of China was published in the Official Gazette no. 283 of the 3 December 2024.

The new tax treaty will replace the one that is currently, and has been, in force since 1986. Among the main updates, there is:

- the reduction to 5% of the withholding tax for intragroup dividends;
- the reconfiguration of the possibility to exempt certain types of interest;
- the reduction of the taxable base in the calculation of withholding taxes on royalties.

For entities following the calendar year, the new treaty, however, takes effect no earlier than 1 January 2026.

NO TAXABLE CAPITAL GAIN ON THE TRANSFER OF A FOREIGN CURRENCY TO ANOTHER FOREIGN CURRENT ACCOUNT

According to the statement of practice no. 60, published on the 9 December 2024 by the Italian Tax Authorities, the transfer of money between two bank accounts held abroad, in the name of the same person and both in the same foreign currency, does not generate any taxable capital gain in Italy, pursuant to Art. 67(1)letter c-ter) of the TUIR.

This is because the transfer of money between two bank accounts held abroad, both in the same foreign currency, cannot be assimilated to a withdrawal (which is considered to be, where certain conditions are met, a taxable event).

NEWLY IMPLEMENTED HYBRID MISMATCH DOCUMENTATION REWARDED BY PENALTY PROTECTION REGIME

The Ministerial Decree published on the 6 December 2024 implements Art. 1(6-bis) of the Legislative Decree 471/97 by providing that, in the event of disputes on hybrid mismatches, the sanction for filing an unfaithful tax return does not apply if, during a tax inspection, verification or other assessment, the taxpayer produces timestamped hybrid-mismatch documentation demonstrating the taxpayer's effort in verifying and attempting to neutralise hybrid mismatches. The Ministerial Decree regulates:

- the persons required to submit the documentation;
- the form, content and requirements related to the documentation be dated with certainty;
- the methods and terms to communicate to the Tax Authorities that the relevant person has drafted and stored the documentation;
- the transitional regime provided for fiscal years prior to 2023;
- certain peculiar provision for entities that have joined the cooperative compliance regime.

NEW CRITERIA FOR TAX RESIDENCE OF INDIVIDUALS IN ITALY

Circular no. 25/2024 published by Assonime examined the new criteria to establish tax residence in Italy of individuals referred to in Art. 2 of the TUIR as amended by Legislative Decree 209/2023.

With regard to the new notion of domicile, the “place where the person’s personal and family relationships are mainly developed”, it is clarified that personal and social relationships must be backed up by factual elements, including the significant presence of the individual and/or his or her family in the Italian territory and through the use of the services and infrastructures available in Italy.

ITALIAN RESIDENT BENEFICIARY OF TRUSTS ESTABLISHED IN THE UNITED STATES OF AMERICA

With ruling no. 258 of 16 December 2024, the Italian Tax Authorities examined the tax classification (pursuant to Art. 73 of the TUIR) of three trusts established in the United States of America by a deceased settlor, administered by the same trustee and having only one beneficiary (an American citizen who is tax resident in Italy).

The Tax Authorities qualified two trusts as disregarded for tax purposes, identifying in the powers of the beneficiary (e.g. power of revocation) a compelling limit to the trustee’s autonomy: the income of the two trusts is therefore taxed in the hands of the resident beneficiary.

The Italian Tax Authorities, on the other hand, qualified the third trust as a transparent trust, given the absence of discretion on the timing and amount of the distributions to the beneficiaries: the income of the trust must therefore be taxed directly in the hands of the beneficiary as income from capital, regardless of whether the trust is resident in Italy or not.

EMPLOYMENT INCOME DERIVED IN THE USA IS SUBJECT TO DOUBLE TAXATION

According to the Italian Supreme Court decision no. 30800 of 2 December 2024, the income that an employee residing in Italy derives from the work activities carried out in the U.S.A. is subject to the tax sharing clause provided for by under Art. 15(1) of the tax treaty concluded between Italy and the United States of America.

In such cases, in order to eliminate the double taxation that would arise, it is necessary to resort to the tax credit granted for by Art. 165 of the TUIR.

ITALY ISSUES A DECREE CONCERNING THE TRANSITION YEAR FOR PILLAR TWO PURPOSES

The Ministerial Decree dated 27 December 2024 regulates the treatment of deferred taxes in the transition year (i.e. in the first year in which the GloBE rules apply with respect to a given jurisdiction) for Pillar Two purposes. The main provisions of the Ministerial Decree are as follows:

- the recognition in the transition year of deferred tax assets (DTAs) relating to tax losses or temporary differences accrued before the transitional period;
- the tax regime of tax credits accrued before the transition year;
- the treatment of intra-group transfers of fixed assets that took place in the period between 1 December 2021 and the last day of the financial year prior to the transition year.

IN-BOUND WORKERS REGIME FORMAL REQUIREMENTS ARE NOT NEEDED IN CASE OF A REFUND REQUEST

According to the Italian Supreme Court decision no. 34655 dated 27 December 2024, the formal requirements needed for the direct application of the benefits of the in-bound workers regime (written request to the employer or indication of the reduced taxable amount in the tax return) are irrelevant when the benefit is required through a reimbursement request, as such formal requirements are not needed for the refund procedure (for which the taxpayer only needs to prove the existence of the substantive requirements required for by the law) but, on the contrary, to obtain the tax benefits directly through a request to the relevant employer that has to apply its withholding at source based on a lower taxable base.

DECREE SETTING NEW RULES FOR GUARANTEES TO BE GRANTED BY NON-EU VAT PERSONS

The Ministerial Decree of 4 December 2024, relating to the new obligations for persons not established in the EU or EEA, provides for the conditions that the financial guarantee needs to meet for such persons and/or their EU VAT to carry out intra-Community transactions. These persons, who intend to sell goods or services in Italy through e-commerce using a tax representative, are required to provide a three-year guarantee when registering with the VIES.

Operators not established in the EU or EEA who are already included in VIES must also provide a similar guarantee, under penalty of exclusion from such database.

TRANSFER PRICING ADJUSTMENTS RELEVANT FOR VAT PURPOSES

According to the Italian Tax Authorities' ruling no. 266 of 18 December 2024, transfer pricing adjustment between two companies established in different countries but party to the same group are relevant for VAT purposes if:

- a consideration (in cash or in kind) is provided for the transaction;
- the adjustment refers to specific and identified intragroup supplies of goods or services subject to VAT;
- there is a direct link between the adjustments and the consideration originally agreed for the intercompany transaction.

NECESSITY OF A VIES REGISTRATION FOR THE APPLICATION OF VAT EXEMPTION ON SHIPPED ON-BOARD EQUIPMENT

The Italian Tax Authorities' publication of ruling no. 244 on the 5 December 2024, relating to the supply of marine paints to both Italian and foreign shipowners or shipping companies, clarified that:

- if the goods are shipped from Italy and delivered to another EU Member State, the supplies could benefit from the VAT exemption regime only if the conditions provided for intra-EU supplies pursuant to Art. 41 of Legislative Decree 331/93, including the obligation of the transferee to communicate to the supplier its VIES registration number, are met;

- if the goods are shipped from Italy and delivered to a non-EU Country and are not considered as provisions or on-board equipment, the supplies constitute exports for customs purposes and no VAT is applied pursuant to Art. 8 of Presidential Decree 633/72;
- if the goods are sold to an intermediary (who does not take possession of the goods) and shipped directly to the final transferee, the first supply can also be considered not subject to VAT if the conditions of Art. 8-bis of Presidential Decree 633/72 are met.

VAT COMMUNICATION RELATED TO THE THRESHOLD EXEMPTION REGIME

The Italian Tax Authorities have issued the ordinance no. 460166 of 30 December 2024, implementing the crossborder VAT threshold exemption regime.

The ordinance contains guidelines for the compilation and transmission of the communication for opting in for such scheme, in which the relevant taxable person must indicate:

- its tax code, denomination or surname and first name, legal status and tax domicile;
- the Member State(s) in which the taxable person intends to avail itself of the exemption scheme;
- any other VAT identification number already assigned to it;
- its turnover with respect to the activities which are considered to be relevant in the territory of the State and in the other EU Member States in the two years preceding the communication and in the period of the current year preceding the communication.

The transmission of the document of which the features have been just described is allowed as of 1 January 2025.

EU MEMBER STATES MAY LIMIT THE ABILITY TO CARRY FORWARD VAT CREDITS

With its decision dated 5 December 2024 on case C680/23, the European Court of Justice ruled that a national legislation according to which a VATable person, who has ceased its economic activity, cannot carry forward its accrued VAT credit but only request it for reimbursement within 12 months from the date of cessation of the activity (in compliance with the principles of equivalence and effectiveness) is compatible with Art. 183(1) of Directive 2006/112/EC.

ITALY ALLOWED TO KEEP ITS MANDATORY E-INVOICING SYSTEM

The EU Council, with EU Implementing Decision no. 3150 of 10 December 2024, authorized Italy to adopt mandatory e-invoicing until 31 December 2027 or until the time, whichever is earlier, when a general e-invoicing system will be adopted at an European level.



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