

# International Tax Focus

MONTHLY UPDATE - NOVEMBER 2023

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## ITALIAN LEGISLATION AND CASE LAW

### 1.

## Foreign profits paid out by a European Economic Interest Grouping are fully taxable

In its decision no. 28154 of October 6, 2023, the [Italian Supreme Court](#) affirmed that profits distributed by a French-regulated [EEIG](#) (European Economic Interest Grouping) to an Italian participating company are fully taxable: the corporate income tax exclusion (of 95 percent) provided for in Art. 89(3) of the [TUIR](#) is not applicable.

The Court ruled out the applicability of the [Parent-Subsidiary directive](#) in the case at hand, in which the profits were remitted to the beneficiary company by an EEIG: this is due to the fact that the entity does not fall within the subjective scope of the directive, since EEIG's are not listed as one of the legal forms in Annex I of Directive 2011/96/EU.

## ITALIAN LEGISLATION AND CASE LAW

### 2.

## Participation exemption on capital gains arising from the sale of shareholdings in Italian companies

The draft 2024 [Budget Law](#) extends the [participation exemption regime](#) (upon compliance with the requirements of Article 87 of the TUIR) to capital gains realized by foreign companies from the sale of equity investments in Italian companies.

However, the extension is limited to:

- capital gains arising from the disposal of non-portfolio shareholdings;
- capital gains realized by companies resident in countries of the European Union and the European Economic Area.

The provisions of [Tax Treaties](#) that reserve the exclusive right to tax capital gains to the Residence State remain unaffected.

## ITALIAN LEGISLATION AND CASE LAW

### 3.

## Investment Management Exemption Draft Ministerial Decree

The draft Ministerial Decree implementing the Italian investment management exemption has been issued for

public consultation.

This exemption, amongst others, regards foreign funds; the draft decree states that the following are considered independent:

- EU collective investment undertakings that comply with Directive 2009/65/EC (UCITS Directive) or whose manager is subject to forms of supervision under Directive 2011/61/EU (AIFMD);
- non-EU CIVs established in white-listed countries whose assets are collected from a plurality of investors and subject to a supervisory regime assimilated to that of European funds; and
- institutions whose exclusive or main purpose is to carry out the business of investing the capital raised from third parties.

The [Italian Tax Authority](#)'s draft Implementing Measure also sets out rules for assessing the asset manager's remuneration, distinguishing between investment management services and services that are instrumental to investment management.

## ITALIAN LEGISLATION AND CASE LAW

### 4.

## Global minimum tax implementation draft has been published

In the context of a broad international tax reform, the Italian government has issued the draft of Legislative Decree containing, among the others, the implementing provisions of the EU Directive 2022/2523 on the [global minimum tax](#).

In order to ensure a minimum level of taxation for certain multinational or domestic groups of companies (according to the Pillar Two rules), certain new levies will be introduced as follows:

- the [IIR](#), which will be due by Italian resident parent entities with respect to group entities that are subject to low taxation;
- the [UTPR](#), payable by one or more entities of a multinational group located in Italy with respect to low taxed constituent entities of the group located in other jurisdiction. This rule applies as a back-stop rule where the IIR has not been levied (or has been levied only partly) in other jurisdictions;
- the [QDMTT](#), a domestic levy calculated with respect to low-taxed entities of a multinational or domestic group that are located in Italy for Pillar Two purposes.

## 5. Amendments to the rules for identifying Italian tax resident individuals

The draft of the Legislative Decree of the proposed Italian tax reform also envisages amendments to the criteria for establishing the Italian [tax residence of individuals](#). In particular, such new criteria should be:

- the domicile (being “the place where the individual’s personal and family are primarily located”);
- the residence; or
- the presence in the territory of Italy.

An individual is considered to be resident in Italy if at least one of these criteria is met for majority of the tax period (including also portions of days).

The new provisions shall be applicable from 1 January 2024.

## 6. Amendments to the rules for identifying Italian tax resident entities

The envisaged Italian tax reform also provides for amendments to the rules to ascertain the [tax residence of companies](#) (Art. 73(3) of the TUIR).

The current rule provides that companies are considered resident if they have their legal seat, place of administration or the place where the main object of the entity activity is carried out in Italy for the majority of the tax period.

The new rules retain only the criterion of registered office, eliminating place of administration and the main activity object test while introducing two new requirements:

- the “[place of effective management](#)”, which is the place where the company’s strategic decisions are made;
- the “principal place of ordinary management,” i.e. the place where acts of day-to-day management are carried out.

## 7. Amendments to the in-bound workers regime

Also the so-called [in-bound workers regime](#) is likely to be amended through the draft Legislative Decree on the Italian tax reform. As from 2024, the regime will only concern workers who are highly qualified and specialized.

According to the draft:

- the tax relief for teachers and researchers (Art. 44 of Law Decree no. 78/2010) should not change;
- the general in-bound workers regime will be capped to a 600,000.00 euros limit;
- the benefit will be reduced from a 70% to a 50% reduction of the relevant income;
- to be eligible for the new regime, the relevant individuals must have been resident abroad for the three tax fiscal years prior to moving to Italy (instead of the two fiscal years that are currently required) with a commitment to reside in Italy for at least five years (instead of the two that are currently required);
- the activity upon arriving in Italy must be carried out under a “new” employment contract with a subject that differs from the one with which the worker was employed with abroad (and/or any entities belonging to the same group) before the transfer to Italy.

## 8. New Italian tax relief for the on-shoring of business activities

The draft Legislative Decree on the upcoming Italian tax reform introduces a new regime for business activities and self-employment activities transferring their operations to Italy (reshoring).

The rule stipulates that 50% of the relevant business income, self-employment income related to activities performed in a non-EU country and transferred to Italy may benefit from an exemption from Italian [IRES](#) (corporate income tax) as well as [IRAP](#). This benefit may be enjoyed in the fiscal year in which the transfer occurs and for the the following five fiscal years.

The rule is subject to approval by the European Commission.

#### ITALIAN LEGISLATION AND CASE LAW

### 9.

## Draft 2024 Budget Law envisages increase in IVIE and IVAFE rates

The draft of the 2024 Budget Law provides for an increase in the rates of property taxes on foreign assets ([IVIE](#) and [IVAFA](#)): as of 2024, IVIE increases from the current 0.76% to 1.06%; IVAFA increases from the current 0.2% to 0.4%, but only for financial products held in blacklisted countries, being the countries listed in the Ministerial Decree 4 May 1999 (from which, as of 2024, Switzerland will be removed).

#### ITALIAN LEGISLATION AND CASE LAW

### 10.

## Italian Tax Authority Circular Letter clarifies matters on the tax regime on crypto-assets

With the [Circular Letter](#) no. 30 of 27 October 2023, the [Italian Tax Authorities](#) clarify the tax regime of crypto-assets that was introduced by Law no. 197/2022, which is effective starting from 2023.

In particular, the circular examines:

- the tax regime on such [crypto-assets](#) until 2022 and as from 2023 for income tax purposes;
- the VAT regime applicable to crypto-assets;
- the territoriality criteria of crypto-assets for income tax and [inheritance and gift tax](#) purposes;
- the voluntary disclosure procedure for previously undeclared assets;
- the international framework on the subject (MiCA regulation, DAC 8 Directive and Crypto-Asset Reporting Framework, CARF).

#### ITALIAN LEGISLATION AND CASE LAW

### 11.

## Tax credit for taxes paid abroad by frontier workers

According to the decision no. 944 of 10 October 2023

of Tax Court of Justice of Emilia Romagna, taxes paid abroad are fully deductible against Italian income tax liabilities in the hands of frontier workers. In similar cases, in fact, the limitation of Art. 165(10) of the TUIR for foreign sourced income that are only partially taxable in Italy shall not apply.

This decision goes against the position taken by the Italian Tax Authorities which claim that the foreign tax credit must be reduced given the existence of an exempt income (7,500 euros, or 10,000 euros from 2024) that reduces the taxable income taxed in Italy.

#### EU LEGISLATION AND CASE LAW

### 12.

## Publication of the EU Directive 2023/2226 in the Official Journal of the European Union

On 24 October 2023, the EU Directive 2023/2226 (DAC 8) on the automatic exchange of information for tax purposes between Member States was published in the Official Journal of the European Union.

The directive:

- extends the automatic exchange of information, as from 2026, to crypto-assets;
- provides for the automatic exchange of information, as of 2026, of rulings filed by individuals, if the transaction under scrutiny in the ruling has a value higher than 1.5 million euros or if the ruling concerns the person's tax residence;
- extends the automatic exchange of information, as of 2026, to dividends collected on certain accounts.

Finally, rules on the disclosure of potentially aggressive international transactions are amended to safeguard the attorney-client privilege.

#### EU LEGISLATION AND CASE LAW

### 13.

## EU list of non-cooperative jurisdictions for tax purposes amended

On 17 October 2023, the Council of the European Union updated the EU black-list of non-cooperative jurisdictions for tax purposes by adding Antigua and Barbuda, Belize and the Seychelles and removing the British Virgin Islands, Costa Rica and the Marshall Islands.

## GLOSSARY

### Budget Law

Law which needs to be enacted every year regarding the State expenditures and revenues for the following calendar year.

### Circular letter

Extensive statements of practice through which the Italian Tax Authorities interprets, in general terms, pieces of legislations. Differently from rulings, in the circular letters the Italian Tax Authorities do not usually address specific cases raised by a given taxpayer.

### Crypto-assets

Crypto-assets are a digital representation that can be stored, transferred or traded only and exclusively by means of blockchain technology, including but not limited to digital coins and digital tokens.

### EEIG

Acronym for European Economic Interest Grouping. It indicates a type of legal entity of European corporate law created under European Community Council Regulation 2137/85. The purpose of the grouping is to facilitate or develop the economic activities of its members by a pooling of resources, activities or skills.

### Global minimum tax

A system of integrative levies introduced in order to ensure a minimum level of taxation for certain multinational or domestic groups of companies, according to the Pillar Two regulation.

### IIR

Acronym for "Income Inclusion Rule". It indicates a tax provided for by the Pillar Two regulation which is levied by the relevant parent entities of a MNE Group or a national Group with respect to the low-taxed constituent entities.

### Inheritance and gift tax

Tax, regulated by Legislative Decree no. 346/90, that applies to inheritance and donations, with rates ranging from 4% to 8% and tax-free thresholds for some relatives.

### IRAP

Regional tax on productive activities charged with a base rate of 3.9% (which may subject to adjustments also based on the activity carried out by the relevant entity).

### IRES

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

### In-bound workers ("impatriates") regime

Tax relief system available to individuals who were previously (at least 2 years) resident for tax purposes in other countries and that transfer their residence to Italy. Under this regime, income from employment and from independent personal services and business profits are exempted from taxation for the 70% of their amount.

### Italian Supreme Court

Highest and apical jurisdictional body of the Italian judicial system. It is the Court of last instance for all the areas of Italian law, including tax law.

### 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.

### IVAFE

Property tax of 0.2% applied to the value of financial products held abroad (art. 19(18) of the DL 201/2011).

### IVIE

Tax of 0.76% due on the value of properties located abroad, for any use intended, by residents (Art. 19(13) of the DL 201/2011).

### QDMTT

Acronym for "Qualified domestic Top-Up Tax". It indicates a domestic levy calculated provided for by the Pillar Two regulation with respect to low-taxed entities of a multinational or domestic group that are located in a given jurisdiction for Pillar Two purposes. It applies prior to the IIR and UTPR.

### Parent-Subsidiary Directive

Council Directive 2011/96/EU of 30 November 2011 on a common system of taxation applicable to dividend payments and other profit distributions made between associated companies of different Member States.

### Participation Exemption Regime

Regime designed to reduced economic double taxation by providing for an exemption from capital gain taxation when a shares sale occurs. With respect to Italian corporate taxes, the regime is provided for by Art. 87 of the TUIR.

### Place of effective management

Place where key management and commercial decisions that are necessary to conduct an entity's business are taken.

## Ruling

Statement of practice issued by the Italian Tax Authorities upon request of a given taxpayer. Through a ruling procedure, a taxpayer may ask for the Italian Tax Authorities' opinion on a specific case concerning his personal position.

## Tax residence (individuals)

According to Art. 2(2) of the TUIR, individuals are deemed to be resident in Italy for tax purposes if, for most of tax period, alternatively: are registered in the municipal registers of resident population; have their domicile in Italy (art. 43(1) of the c.c.); have their residence in Italy (art. 43(2) of the c.c.).

## Tax residence (legal entities)

According to Art. 73(3) of the TUIR, companies and other corporate bodies are deemed to be resident in Italy for tax purposes if, alternatively: their legal seat is located in Italy; their place of effective management is located in Italy; their main business is carried out in Italy.

## Tax Treaty

International Convention concluded between two States for the avoidance of double taxation and double non-taxation in economic transactions involving them.

## TUIR (“Testo Unico delle imposte sui redditi”)

Italian Income Tax Code, enacted through Presidential Decree n. 917/86.

## UTPR

Acronym for “Undertaxed Profit Rule”. It indicates a tax provided for by the Pillar Two regulation which is levied as a back-stop rule where the IIR has not been levied (or has been levied only partly) in other jurisdictions.