

International Tax Focus

MONTHLY UPDATE - DECEMBER 2023

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ITALIAN LEGISLATION AND CASE LAW

1. Implementation in Italy of EU Directive 2020/284 to combat VAT fraud

Legislative Decree 153/2023, implementing EU Directive 2020/284 on the obligations of payment service providers (PSPs), has been published in the Italian Official Journal. This normative update leads to the introduction of Arts. 40-*bis* to 40-*sexies* in Presidential Decree no. 633/72, which shall come into effect as from 1 January 2024.

The rules shall provide for new record-keeping and reporting obligations on information regarding cross-border payment transactions, i.e., qualifying transactions in which the payer is in a Member State of the European Union and the payee is located in another Member State, third territory or third Country. The data flows into a Central Electronic System of Payment (“CESOP”).

PSPs resident in Italy will have to report sufficiently detailed records of payees and of payments in relation to the payment services they provide for each calendar quarter to enable the competent authorities of the Member States to carry out controls of the supplies of goods and services which are deemed to take place in a Member State, in order to achieve the objective of combating VAT fraud. Subsequently the [Italian Tax Authorities](#), in turn, will be required to forward the data using the CESOP.

The technical rules for sending the data were approved by the Italian Tax Authorities in [Ordinance](#) no. 406675 on 20 November 2023.

ITALIAN LEGISLATION AND CASE LAW

2. Implementation in Italy of the DAC 7

Ordinance no. 406671, published on 20 November 2023 by the Italian Tax Authorities, implements Legislative Decree no. 32/2023 on the reporting obligations for digital platform operators under EU Directive 2021/514/EU ([DAC 7](#)).

The Ordinance, in particular establishes:

- the operators who are required to report;
- the choice of which EU Member State to send the data in cases where the operator has “links” to more than one jurisdiction;
- the data required to be exempted from reporting obligations;
- the data to be reported.

The first communications are to be submitted to the Italian Tax Authorities no later than 31 January 2024, with reference to transactions in 2023.

ITALIAN LEGISLATION AND CASE LAW

3. Request for a tax refund under the Italy-Switzerland Tax Treaty

Decision on. 30779 of 6 November 2023 issued by the [Italian Supreme Court](#) clarified that a tax residence certificate is sufficient to meet the conditions of Art. 29(2) of the Italy-Switzerland [Tax Treaty](#) on the request for a tax refund. It is not necessary that the certificate contains explicit references to that Tax Treaty. It merely serves to give evidence of the taxpayer’s residence and that the taxpayer’s income and assets were subject to Swiss taxation.

ITALIAN LEGISLATION AND CASE LAW

4. Interest exemption regime for securitization companies resident in white-listed jurisdictions

The Italian Tax Authorities, in its answer to tax [ruling](#) no. 454, published on 7 November 2023, clarified that a securitization company under Luxembourg law can benefit from the exemption on the interest and other income it receives from invested securities under Art. 6(1) of Legislative Decree no. 239/96, as it is resident in a white-listed jurisdiction.

In the case at stake, the taxpayer is resident in Luxembourg, a Country included in the Italian white-list, and subject to tax in accordance with Luxembourg legislation.

The latter does not provide for an exemption from income tax for securitization companies incorporated as corporations. Therefore, the taxpayer falls within the entities referred to in Art. 6 of Legislative Decree no. 239/96.

ITALIAN LEGISLATION AND CASE LAW

5. Tax monitoring obligations for foreign insurance companies operating in Italy

The Italian Tax Authorities’ [statement of practice](#) no. 62 of 13 November 2023 confirms that foreign insurance companies operating in Italy under the Freedom of Provisions Services regime, without the intervention of a

resident intermediary and with respect to life insurance contracts concluded with Italian policyholders are required to comply with tax monitoring obligations as per Art. 1 of Law Decree 167/90.

ITALIAN LEGISLATION AND CASE LAW

6. Extension of inbound workers regime also for taxpayers not registered in AIRE

The [Court of Tax Justice](#) of Milan, with its decision no. 3889/2023, recognized the possibility for workers who transferred their tax residence to Italy before 30 April 2019 to extend the inbound workers regime, even where the requirement of the [AIRE](#) registration was not met.

According to the Court, the registration is a purely formal requirement and thus the exclusion from the extension of the regime in the event of the failure to register would lead to the unlawful discrimination between workers.

ITALIAN LEGISLATION AND CASE LAW

7. Evidence of an intra-Community supply

Decision no. 30889 of 6 November 2023 of the Italian Supreme Court clarifies that evidence of the intra-Community supply of goods can also be provided by means of supporting invoices (which are deemed to be equivalent to transport documentation), payments for services made using verifiable methods, declarations of third-party customers and INTRASTAT lists.

The evidence may also be provided by alternative elements derived from “secondary facts” that allow to infer that the goods arrived in a different jurisdiction from that of the Member State of departure.

ITALIAN LEGISLATION AND CASE LAW

8. Tax exemption on cross-border interest payments

Decision no. 31078 of 8 November 2023 of the Italian

Supreme Court established that, to apply the tax exemption on interest paid by an Italian-resident company to an Irish-registered company under Art. 26-*quater* of Presidential Decree 600/73, the certificate issued by the Irish Tax Administration is sufficient proof of the beneficiary company’s residency and its tax liability in Ireland.

The taxation of interest in the recipient’s country is deemed to be proven by additional documentation produced by the company such as, for example, a declaration of the beneficial owner, tax returns, financial statements.

ITALIAN LEGISLATION AND CASE LAW

9. Italy joins the Crypto-Asset Reporting Framework (CARF)

As announced by the Ministry of Economy and Finance of Italy in a press release on 10 November 2023, Italy has joined 47 other Countries in the implementation phase of the “[Crypto-Asset](#) Reporting Framework” (CARF).

The new tax transparency framework for collecting information on financial transactions with digital instruments modifies the current plurilateral system of automatic exchange of information (Common Reporting Standard).

The goal is to promote transparency of cryptocurrency transactions through an automated data exchange system between tax administrations.

EU LEGISLATION AND CASE LAW

10. CJEU rules on indiscriminatory treatment on the taxation of capital gains

In its decision no. C-472/22 of 16 November 2023, the [European Court of Justice](#) found domestic practices of Member States that treat capital gains realized by individuals from the disposal of shares in companies’ resident in the same State and residents of another Member State differently to be incompatible with the free movement of capital principle enshrined in Art. 63 TFEU.

The Court held that the divergence in the treatment resulted in unwarranted differences to investment choices without any merited overriding reason of general interest.

11. CJEU rules on tax neutrality under the EU Tax Merger Directive

In its decision no. C-318/22 of 16 November 2023, the European Court of Justice ruled on Art. 8(2) of the EU Tax Merger Directive (Directive 2009/133/EC) which states that, on a partial division, the allotment to a shareholder of the transferring company of securities representing the capital of the receiving company shall not, of itself, give rise to any taxation of the income, profits or capital gains of that shareholder.

The Court held that the neutrality regime under this Article is not subject to conditions such as the reduction of the capital of the company being divided.

In fact, a reading of the law clearly establishes the requirement that the participations held by the shareholder in the partially divided company and in the new established company should not be given a higher tax value than the shareholdings in the partially divided company prior to the transaction.

The neutrality regime is, therefore, applicable even if, as a result of the partial division, the demerged company sustains its share capital, reducing only its reserves.

12. Transitional agreement for 2023 and 2024 for remote working between Italy and Switzerland

Italy and Switzerland have signed two transitional Agreements for the tax treatment of working remotely for [frontier workers](#); the final Agreement is to be signed by the two Countries by 31 May 2024.

In further detail, an initial agreement of a provisional nature ("2024 Agreement") that covers the period from 1 January 2024 to the effective date of the final agreement (and in any case, no later than 31 December 2025) provides for the possibility to work remotely up to 25% of the working hours, without the individual losing the status of a frontier worker.

This option applies to all frontier workers as defined by Art. 2(b) of the Agreement signed by the two jurisdictions on 23 December 2020, including those who benefit from the transitional regime under Art. 9 of the said Agreement.

The second transitional agreement regulated the period between 1 February 2023 to 30 June 2023 and granted the possibility to work remotely up to a maximum of 40% of the working hours, without any subjective limitations. For the period between 1 July 2023 to 31 December 2023, a similar option applies for only those frontier workers who had already been working remotely as of 31 March 2022.

GLOSSARY

AIRE (Anagrafe degli italiani residenti all'estero)

Register for Italian citizens living abroad. Enrollment is mandatory if the person resides in the other State for more than of 12 months.

Crypto-Assets

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

DAC 7

Council Directive 2021/514/EU of 22 March 2021, laying down reporting obligations for digital platform operators.

European Court of Justice

It is the highest court of the European Union in matters of European Union law and currently its established in Luxembourg. Its decision cannot be appealed.

Frontier workers

Individuals with tax residence in Italy who work on a continuous basis as employees in border areas or in States bordering the national territory.

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.

Ordinance

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

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 treaty

International Convention concluded between two States for the avoidance of double taxation and double non-taxatio.