CORPORATE TAX - ITALY

Budget Law 2018 – new regime applicable to tax on blacklisted source dividends

May 04 2018 | Contributed by Studio Legale Tributario Biscozzi Nobili

The Budget Law 2018 introduced, among other things, amendments to the tax regime concerning dividends from non-resident companies located in low-tax jurisdictions (ie, blacklisted companies).

Identifying blacklisted companies

The criteria to identify a blacklisted company is the same as that for the controlled foreign companies (CFC) regime.(1) Therefore, 'blacklisted companies' are entities resident or located in jurisdictions other than EU or European Economic Area (EEA) member states, whose ordinary or special tax regime grants a nominal tax rate that is 50% lower than the Italian one.

For dividend taxation purposes, a foreign entity will not be considered a blacklisted company if the resident taxpayer can demonstrate that it is not a fake structure aimed at obtaining an unjustified tax benefit(2) (the so-called 'second safe-harbour CFC rule').(3)

Tax on dividends

Before the above amendments were made, dividends paid by blacklisted entities were fully taxable in the hands of the Italian receiving company unless:

- the dividends derived from foreign source profits that were already taxed under the Italian CFC regime (ie, dividends paid are therefore not included in an Italian company's taxable base); or
- the second safe-harbour CFC applied (ie, 95% of the amount of dividends paid are tax exempt).(4)

Under the described scenario, the Budget Law 2018 introduced a new rule whereby 50% of the amount of dividends distributed by tax havens are excluded from the IRES (company income tax) taxable base of an Italian receiving company if it is demonstrated that the foreign subsidiary carries out an actual business activity in the market in which it is established(5) (the so-called 'first safe-harbour CFC rule').(6)

Further, as of January 1 2018 foreign source dividends received by Italian companies (as well as those received by non-resident companies subject to the CFC regulations) will be taxed as follows:

- In principle, dividends received from blacklisted companies (under the CFC regime) will be fully taxed. In the event that the second safe-harbour CFC rule applies, 95% of the amount of dividends will be excluded from the Italian taxable base (ie, the ordinary tax regime for dividends).(7)
- In the event that the first safe-harbour CFC rule applies, 50% of the amount of dividends will be excluded from the Italian taxable base.
- If the foreign source profits were already attributed to the Italian parent company under the

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CFC regime, dividends will be not included in the Italian company's taxable base.

Transitional provisions

The Budget Law 2018 also established some relevant transitional provisions. In particular, dividends accrued in previous fiscal years, when blacklisted companies did not qualify as such (according to the different CFC criteria, as indicated in the following chart), are subject to the ordinary tax regime described under the second bullet point above.

The different blacklisted criteria provided for CFC purposes are as follows.

	Until December 31 2014	**From January 1 2015 until December 31 2015**	**From January 1 2016**
Criteria to identify blacklisted entities	• Jurisdictions listed in the Ministerial Decree of November 21 2001	• Jurisdictions listed in the Ministerial Decree of November 21 2001 • A special tax regime with an effective tax rate that is 50% lower than the Italian tax rate • EU and EEA countries are excluded	• A nominal tax rate lower than 50% of that applicable in Italy • A special tax regime with a nominal tax rate lower than 50% of the Italian tax rate • EU and EEA countries are excluded

In addition, dividend distribution is presumed to be formed by profits realised when a foreign company does not qualify as a low-tax jurisdiction.

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Endnotes

(1) Pursuant to Article 167 (1 to 4) of the Income Tax Consolidated Act.

(2) A ruling procedure is required – thus, application of this safe harbour is difficult in practice and no public ruling in this respect is available.

(3) Pursuant to Article 167(5)(b) of the Income Tax Consolidated Act.

(4) A 41.86% exemption applies to dividends received by individual entrepreneurs and resident partnerships.

(5) A ruling procedure is required.

(6) Pursuant to Article 167(5)(a) of the Income Tax Consolidated Act.

(7) A 41.86% exemption applies to dividends received by individual entrepreneurs and resident partnerships.