New tax rules for dividends and capital gains realised by non-business individuals

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Corporate Tax, Italy

The Budget Law (205/2017), which was approved on December 27 2017, has harmonised the taxation of dividends and capital gains earned by non-business individuals on 'substantial'**(1)** and 'non-substantial'**(2)** participation held in Italian and foreign companies, among other things.

Companies and partnerships will be unaffected by these changes, as the distinction between substantial and non-substantial participation is irrelevant.

Under the previous tax regime,**(3)** capital gains realised by resident and non-resident individuals and dividends received by resident individuals derived from substantial equity interests**(4)** were partially subject to personal income tax with progressive rates (ie, a maximum tax burden of around 25% considering additional regional and municipal taxes).**(5)**

Further, under domestic law, foreign taxes levied on foreign dividends or capital gains realised by resident individuals were creditable against Italian income tax within the limits of the amount of Italian tax due.

Under the new rules, non-business individuals will be taxed on dividends and capital gains with a substitutive or withholding tax at a flat rate of 26% on substantial and non-substantial participation and no foreign tax credit will be available.

The new regime will be applied to:

- capital gains realised as of January 1 2019; and
- dividends received as of January 1 2018.

Nonetheless, the previous tax regime will continue to apply to dividends accrued up to December 31 2017, and declared between January 1 2018 and December 31 2022, which will be taxed at the maximum amount of:

- 17.2% if related to profits accrued up to December 31 2007;
- 21.37% if related to profits accrued from January 1 2008 to December 31 2016; and
- 25% if related to profits accrued from January 1 2017 to December 31 2017.**(6)**

Until this transitional period expires, dividends are deemed to be paid out of the profits accrued in the oldest tax period.

Dividends received after January 1 2018, that were, however, declared before that date would be taxed under the new 26%. This may be regarded as an unintended wording to be amended soon.

The new tax regime for dividends and capital gains is summarised in the following tables.

Dividends

Received by	Substantial participation	**Non-substantial participation**
	Dividends accrued up to December 31 2017 and declared or distributed between January 1 2018 and December 31 2022	Dividends accrued as of January 1 2018
Resident individual	Personal income tax: maximum 25%	Withholding tax: 26%
Non-resident individual	Withholding tax: 26%**(7)**	
Resident company	Company income tax: 1.2%**(8)**	
Foreign company	Withholding tax: 26%**(7)**	
Foreign company qualifying for EU Parent Directive	0%	
EU/EEA company resident in white list country	Withholding tax: 1.2%	

Capital gains		
Received by	Substantial participation	Non-substantial participation
Resident individual	Substitutive tax: 26%**(9)**	
Non-resident individual	Substitutive tax: 26%**(9)**	
Resident company	Company income tax: 1.2%**(10)**or 24%	
Foreign company ineligible for a tax treaty**(11)**	Substitutive tax: 26%**(9)**	

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Endnotes

(1) A substantial participation represents:

- more than 2% of the voting rights in the ordinary shareholders' meeting or more than 2% of the issued capital in companies listed in a regulated market; or
- more than 20% of the voting rights or 25% of the equity in unlisted companies.

(2) Non substantial participations are those below the thresholds indicated under the previous footnote 1.

(3) For further information please see "Changes to withholding and substitute tax on financial income".

(4) Shares, quotas and other financial instruments are considered to be equity assets under Italian tax law.

(5) Capital gains and dividends realised on a substantial participation was exempt from tax for 41.86% of their total amount (the exempt part being 60% in the case of capital gain realised or dividends received out of profits accrued up to 2007 and 50.28% from 2008 to 2016). Consequently, 58.14% of the income (or 40% until 2007 and 49.72% from 2008 to 2016) was taxable under personal progressive rates.

(6) See previous footnote 5.

(7) Unless the applicable withholding tax rate is reduced in accordance with an applicable tax treaty.

(8) Taxation is only 1.2% of the dividend paid out (ie, 5% by 24%).

(9) An exemption is granted for capital gains on non-substantial participations, if realised by persons resident in "white listed" countries which allow an adequate exchange of information with Italy, or deriving from shares traded on regulated markets.

(10) To the extent the conditions for participation exemption are met, capital gains realised are 95% exempt from corporate income tax. The tax payable is therefore 24% (ordinary corporate income tax rate) * 5% (taxable income) = 1.2%.

(11) Tax treaties signed by Italy generally provide for taxation in the state of residence only, unless capital gains are attributable to permanent establishment in Italy. Nonetheless, certain tax treaties (eg. France, Canada, Israel and the United States) provide for taxation in the source State also, under certain circumstances (eg, non-portfolio investments, real estate companies).

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