

WITHHOLDING TAXES NOT RELEVANT FOR TAXATION OF FOREIGN DIVIDENDS

Italian Tax Authorities Ruling No. 131 of May 13, 2025

- ✓ With the ruling in exam Italian Tax Authorities (hereinafter “ITA”) provided clarifications regarding the Italian taxation of foreign dividends distributed by a Moroccan company (the “Subsidiary”), which locally benefits from a five-year corporate income tax exemption until 2025 (followed by an 8.75% tax rate for the next 20 years). A 15% withholding tax is applied in Morocco on dividends related to profits earned until 2022, 13.75% on dividends from 2023 profits, and 10% on 2026 profits.
- ✓ In detail, to determine if dividends received in 2024 and distributed by the Subsidiary shall be considered as whitelist or blacklist profits, and consequently the applicable amount of the tax credit pursuant to Article 165 of Presidential Decree No. 917/1986 (“TUIR”), the company — resident in Italy and holding a minority stake in the Moroccan company – asked ITA:
 - How to determine “*the nominal level of taxation (...) applicable in Italy*” and, in particular, if it is necessary to consider the regional tax on productive activities (“IRAP”) or if it is sufficient to consider only the corporate income tax (“CIT”).
 - How to determine «*the nominal level of taxation*» of tax regimes of non-EU/EEA countries or territories.
- ✓ ITA:
 - In relation to the first question, they clarify that, to determine the nominal level of taxation applicable in Italy, it is necessary to consider CIT only.
 - With regard to the second question, they clarify that only income taxes applied in the foreign country are relevant, with the consequence that, since the Subsidiary benefits from a five-year corporate income tax exemption and withholding taxes are not relevant, dividends received must be considered coming from a privileged tax jurisdiction and, therefore, fully taxable pursuant to Article 89, paragraph 3, of the TUIR (unless the first or second “*esimente*” is demonstrated). Consequently, the reduction referred to in Article 165, paragraph 10, of the TUIR does not apply and withholding taxes are therefore fully relevant for the purposes of determining the tax credit.

