

# WAIVER BY SHAREHOLDERS OF THEIR CREDIT TOWARDS THE COMPANY: CLARIFICATION OF ITALIAN TAX AUTHORITIES

## Italian Tax Authority Ruling No. 182 of 8.07.2025

- ✓ Italian Tax Authorities (hereinafter, “ITA”), with the above-mentioned ruling, provided further clarifications on the long-standing issue of the tax treatment of credit waiver.
- ✓ ITA confirmed that, when an individual shareholder waives his right to receive dividends approved by a company, such dividends shall be considered as “legally collected” (“*giuridicamente incassati*”) by the shareholder and, therefore, subjected to taxation. However, the waiver does not generate a taxable gain (“*sopravvenienza attiva*”) for the company.
- ✓ In the case in exam, the company resolved to distribute retained earnings (“*riserve di utili*”) and shareholders, by means of a certified email (PEC), waived of their credits with the purpose of strengthening the company’s capital structure. Even though they were not received, ITA considered them as “legally collected” by shareholders and, therefore, subject to taxation.
- ✓ In detail, ITA clarified that:
  - the waiver of credit by shareholders is considered as a taxable gain for the company only for the portion exceeding the relevant tax value, pursuant to Article 88, paragraph 4-*bis*, of the Presidential Decree No. 917/1986 (TUIR). However, when the waived credit relates to individuals not engaged in business activities, there is no difference between the tax value and the nominal value of such credit. Consequently, no taxable gain arises for the company (see Ruling No. 124/E of 13 October 2017).
  - The waiver can only be made over rights legally available; therefore, only the “legal availability” of the right by the waiving party (in this case, individual shareholders not carrying out business activities) is relevant. Furthermore, it is necessary to consider the taxable moment in which the dividend becomes taxable for the shareholder (taxable person). Therefore, given that dividends being waived were approved by the shareholders’ meeting and that this resolution created the shareholders’ right to a credit for the distribution, as a result of the waiver said dividends are to be considered “legally collected” and therefore subject to a 26% withholding tax pursuant to Article 27 of Presidential Decree No. 600/1973.

