

Dividend exemption

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Is the Italian dividend exemption set to partially disappear? Franco Pozzi and Gloria Strappa of Studio Biscozzi Nobili and Partners discuss on proposed amendments of Italian taxation of dividend under 2026 Budget Law.

The draft 2026 Budget Law under discussion (hereinafter, “2026 Draft Budget Law”) intends to modify the *dividend exemption regime*, introduced by the tax reform of 2003 and regulated by Article 89 of the Presidential Decree no. 917/1986 (hereinafter, “CIT”).

Under the current provisions, dividends distributed by corporate taxpayers are excluded from the taxable income of the Italia recipient entity by 95 percent of their amount; therefore, a final tax burden of 1.2 percent applies (i.e., 5 percent of 24 percent – ordinary corporate tax rate).

According to the new provision, the dividend exemption regime would be applicable only upon the condition that the shareholding to the company that distributes the dividends is at least 10 percent. The amendment would also apply to dividends received by individuals operating as businesses (“*regime d’impresa*”) that currently apply a regime that provides a limited exemption, pursuant to Article 59 of CIT. The proposed provision is inspired by European legislation (i.e. the “parent-subsidiary” directive) and it seems to be in line with the practice adopted among several EU states (see France, Germany, Spain, Belgium); nevertheless, numerous EU jurisdiction do not provide for a minimum participating threshold.

More in detail, below some information are provided in relation to the tax regime of domestic dividends in EU countries:

- Austria, Bulgaria, Croatia, Cyprus, Denmark, Latvia, Slovenia, Slovakia, Romania, Sweden and Hungary do not require any minimum shareholding threshold;
- France, Ireland, Malta, the Netherlands and Spain apply a threshold of 5 percent;
- Belgium, Estonia, Finland, Greece, Lithuania, Luxembourg, Poland, Portugal and the Czech Republic have a threshold of 10 percent;

- Germany applies different thresholds depending on the type of tax or distribution.

The proposal provision could be approved by the end of the year, with effects on dividend distributions declared from 1 January 2026 (i.e. distribution of dividends declared before 31 December 2025, but paid from 1 January 2026, would fall outside the scope of 2026 Draft Budget Law).

The proposed 10 percent threshold would be calculated taking also into account shareholdings held indirectly through controlled subsidiaries according to Article 2359, paragraph 1, no. 1 of the Italian Civil Code (legal control, i.e., when the majority of votes exercisable at the ordinary shareholders' meeting are held). This implies that any (de)multiplier effect ("*effetto demoltiplicativo*") arising from the chain of control must be considered.

The rule is also applicable to dividend distributions of non-resident entities to Italian shareholders. More in detail, the described 10 percent threshold would be required in order to apply the dividend exemption both in the case of profits distributed by entities resident in "white-list" countries or by entities located in jurisdictions with a privileged tax regime, if the taxpayer can demonstrate that the non-resident entity carries on substantive economic activity supported by staff, equipment, assets and premises or if the taxpayer can prove that from the investment, they do not derive the effect of localising the income in countries with privileged tax regimes.

Although the measure appears primarily aimed at increasing the taxation applicable in respect to portfolio minority interests (e.g., trading investments), its effects would also apply to other categories of investors, such as club-deals and start-up investors.

Moreover, from an international taxation perspective, there is a mismatch between the tax treatment applicable to inbound dividends versus outbound dividends paid by Italian entities, as at this stage no restrictions would be introduced in respect to distributions to EU shareholders (pursuant to Article 27, paragraph 3 ter, of Presidential Decree 600/73). In other words, EU shareholders would continue to be entitled to a Italian source state taxation limited to 1.2 percent without satisfying the 10 percent threshold condition.

Conclusions

The aim of the proposed provision is to target speculative shareholdings, whose returns would be subject to a material tax increase starting in 2026. Amendments during the parliamentary process would be highly desirable also considering that Italian shareholders could consider the creation of wholly owned *sub-holding* aimed at investing in minority equity interests.

Under the described scenario, rumours of possible amendments are the following:

- reduction the minimum shareholding threshold from 10 percent to 5 percent;
- exclusion of listed companies from the scope of the provision;
- introduction a minimum *holding period* of at least one year.

Finally, a mismatch could arise between the dividend exemption and capital gain exemption rules, as the current framework seems to be in favour to the sale of shareholdings rather than maintaining the shareholding within the company. Capital gains from the sale of equity interest under 10 percent would continue to benefit from the 1.2 percent tax rate, whereas dividends paid by the same shareholding would be taxed at 24 percent. Such effect creates a distortion that could bring to monetization of equity interest through the sale of the shareholding rather than through dividend distribution.

[1] See Law Decree no. 344/2003

[1] The dividend exemption would be limited to 50% of the dividend distributed.