

Tax news

JULY 2017

Taxation of dividends and capital gains – Ministerial Decree published

On 11 July 2017, Ministerial Decree of 26 May 2017 has been published in the Official Gazette No. 160.

The Ministerial Decree, issued by the Ministry of Economy and Finance, amends the exemption percentages of qualifying dividends and capital gains following the decrease in the applicable corporate income tax rate provided by Law No. 208 of 28 December 2015 (Stability Law for 2016).

In particular, qualifying dividends and capital gains are exempt from tax for 41.86% (previously, 50.28%) of their amount.

The remaining 58.14% (previously, 49.72%) is included in the relevant taxable income.

In addition, for resident non-business entities, 100% (previously, 77.74%) of qualifying dividends is included in the relevant taxable income. The new percentages apply to:

- dividends paid out of profits realized starting from the fiscal year following the fiscal year ongoing on 31 December 2016 (i.e. 2017 for taxpayers whose fiscal year coincides with the calendar year); and
- capital gains realized from 1 January 2018.
- the corporate income tax rate is decreased to 24%. In addition, the reduced withholding tax levied on dividends paid out to a company resident and subject to corporate income tax in another EEA country that allows an adequate exchange of information with Italy is decreased to 1.2%;
- interest paid by qualifying banks and financial institutions are fully deductible. However, interest paid by insurance companies, parent companies of insurance groups and qualifying investment fund management companies are only deductible up to 96% of the total amount.
- The applicable allowance for corporate equity (ACE) rate is 2.3% in 2017 and will be increased to 2.7% in 2018.



We recall that the main measures regarding corporate taxation introduced by the Stability Law for 2016 and amended by the Budget Law for 2017 are:

Automatic exchange of information in tax matters – implementing rules issued

The Italian Tax Authorities have published Protocol No. 125650 of 4 July 2017, providing implementing rules with respect to the automatic exchange of information in tax matters enacted by Ministerial Decree of 28 December 2015.

In general, relevant information must be submitted to Italian Tax Authorities by 30 April of the year following the reporting year. However, information related to 2016 must be submitted by 21 August 2017.

Furthermore, qualifying financial institutions subject to the reporting obligation must register in the relevant electronic register (*registro elettronico degli indirizzi, REI*) by 18 September 2017.

The Ministerial Decree enacts implementing rules with regard to the automatic exchange of information in tax matters, as required by Council Directive 2014/107/EU amending the European Union Mutual Assistance Directive (2011) and Law No. 95 of 18 June 2015, implementing the Italy - United States Model 1A Agreement of Foreign Account Tax Compliance Act (FATCA).

In particular, the Ministerial Decree provides for specific measures and definitions with respect to information to be exchanged, reporting obligations of qualifying financial institutions and the required due diligence.

This exchange of information falls within the scope of international cooperation that is emphasized by both the OECD, through the CRS, and the United

States of America with the signing of intergovernmental agreements for the implementation of the US legislation (FATCA).

In general the following personal data must be disclosed: name and surname, jurisdiction of residence, tax code identifying the Country where the person resides, date and place of birth. The financial data that must be exchanged are the account number, the name and tax code of the financial institution that is obliged to send data and the balance or the value of the account as at 31 December 2016.



In the case of custody of financial assets, the gross revenues from portfolio management in addition to the balances must also be shared. The financial intermediary must also indicate the currency in which the data was collected. It will be relevant to all the relationships with banks (i.e. accounts, savings deposit and similar) in place after January 1 2016.

For the relationship existing by 31 December 2015, the law distinguishes between relevant accounts with a balance of \$1,000,000 and non relevant

when the balance is below that amount at the date above.

Depending on whether the account is relevant or not, there are higher or lower requirements regarding the verification to be carried out by the intermediary that has to send the required information.

Financial intermediaries will therefore be obliged to carry out and report on a type of tax due diligence on all accounts held by non-residents where the main duties consist of:

- a) verifying the truthfulness of the tax residence declared by the taxpayer who must show the residence certificates issued by the public institutions of the Country in which he or she claims to be resident;
- b) the correct identification of the “Account Holder” who is the actual beneficiary regardless of the person who has the powers to manage the use of the sums in the account.

The regulation, among other things, provides that every year the actual account holder must be contacted at least once a year to verify the accuracy of the information required by the tax due diligence procedure. This must be done for at least 10 consecutive years from when the account is identified as an account subject to exchange of information on the basis of the rules described above.

It should also be stressed that this regulation applies both to our citizens resident abroad for tax purposes and to foreign tax residents in Italy.

Resolution of pending tax litigations – implementing rules issued

On 21 July 2017, the Italian Tax Authorities issued Protocol No. 140316/2017, providing implementing rules with respect to the procedure for the resolution of pending tax litigations, recently introduced by Law Decree No. 50 of 24 April 2017 converted into Law No. 96 of 21 June 2017.

Under article 11 of the Law Decree, taxpayers may initiate a procedure to settle pending tax litigations against the Italian Tax Authority, at any state of the proceedings, by paying the amount of tax due resulting from the assessment notice as well as related late interest due up to the 60th day after its notifications, without penalties and interest on arrears.

Where the litigation only concerns interest on arrears or penalties, the payment of 40% of the amount due is required.

Only pending tax litigations for which the appeal to the tax court of first instance was served to the Italian Tax Authorities by 24 April 2017 qualify for the favourable procedure. In addition, the procedure does not apply to pending tax litigations concerning traditional own resources of the European Union, as defined by decisions No. 2007/436/EC and No. 2014/335/EU of the Council of the European Union, import VAT and amounts due in relation to the recovery of State aid. Taxpayers must electronically submit a request to the Tax Authorities and pay the amount due by 2 October 2017.

Where the amount due exceeds EUR 2,000, taxpayers may opt to pay it in a maximum of 3 instalments as follows:

- 40% by 2 October 2017;

- 40% by 30 November 2017; and
- 20% by 2 July 2018.

Pending tax litigations are not automatically suspended, unless requested by the taxpayer. Finally, the Italian Tax Authorities may deny the resolution of the dispute by 21 July 2018, and taxpayers may appeal against the decision within 60 days from the notification.



Resolution of pending tax litigations – clarifications issued

On 28 July 2017, the Italian Tax Authorities issued Circular Letter No. 22/E providing clarifications on the procedure for resolving pending tax litigations.

In general, taxpayers may initiate a procedure for settling pending tax litigations, at any state of the proceedings, by paying the amount of tax due and related late payment interest, without being subject to penalties or interest on arrears.

The Circular Letter clarifies that only pending tax litigations

against the Italian Tax Authority qualify for such resolution. Furthermore, taxpayers that have initiated a procedure for settlement of qualifying tax liabilities entrusted to tax collector agents, as introduced by Law Decree No. 193 of 22 October 2016 and converted into Law No. 225 of 1 December 2016 may also opt for the favourable resolution procedure.



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Clients are encouraged to seek appropriate professional advice.

We will be pleased to discuss with you the particular application of the changes to your own circumstances. To this end please contact Alessandro Dragonetti or Gabriele Labombarda at their e-mail address below:
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Some pieces of news herein contained may be material to Advisory Services issues. Clients who are interested in delving into these items are encouraged to contact Stefano Salvadeo, Advisory Services specialist, at the following email address: stefano.salvadeo@bernoni.it.gt.com

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