



Recent decision of the Italian Tax Court on the ‘net taxation’ of royalties paid to foreign companies

The Regional Tax Court of Pescara has ruled that the Italian WHT imposed on royalties paid to foreign companies is discriminatory because it is calculated on the gross amount of the royalties while resident companies are able to deduct costs directly related to the acquisition of the same royalties (Regional Tax Court decision no. 363/2019, filed on 15 April 2019).

In the case in question, an Italian company paid royalties for television rights to a Spanish company, which, in turn, incurred costs related to these licenses. The Italian WHT at the DTT rate was applied on the gross amount of the royalties without deducting the costs that the Spanish company had incurred by granting the television rights.

This is the first application in domestic case law of the principle established by the European Court of Justice, C-18/15 (Brisal):
“Article 49 EC precludes national legislation, such as that at issue in the main proceedings, which, as a general rule, taxes non-resident financial institutions on the interest income received within the Member State concerned without giving them the opportunity to deduct business expenses directly related to the activity in question, whereas such an opportunity is given to resident financial institutions”.

According to the Tax Court of Pescara, which cited the Brisal case, the impossibility for the foreign company to deduct costs directly related to the use of television rights, was a form of tax treatment which penalized this entity because a resident company could, instead, reduce its taxable base by deducting these costs.

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