



WHT refunds on dividends distributed by Italian entities to tax-exempt foreign entities

Tax Alert
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The Provincial Tax Court of Pescara has ruled that Italian WHT imposed on dividends paid to foreign foundations is discriminatory because Italian foundations benefit from lower taxation on the same dividends (Provincial Tax Court decision no. 115/2019, filed on 12 February 2019).

In the case in question, Italian companies paid dividends to a German foundation and applied the DTT WHT rate. The German foundation claimed a refund of the difference between the DTT rate and the tax rate imposed on Italian foundations, but the Italian Tax Authorities rejected the refund claim, given that the German foundation was tax-exempt.

The Tax Court has stated that the German foundation is entitled to a refund.

This is another example of the application in domestic case law of the principle established by the European Court of Justice (C-540/07): *"the difference in treatment between dividends distributed to companies established in other Member States and those distributed to resident companies does not totally disappear unless the tax withheld at source under national legislation can be set off against the tax due in the other Member State in the full amount of the difference in treatment arising under the national legislation"*.

Set-off presupposes that dividends coming from Italy are sufficiently taxed in the other Member State. However, when those dividends are tax-exempt, the sum withheld at source in Italy cannot be set off. The difference in treatment arising from the application of national legislation cannot be compensated for by applying the provisions of the DTT and the refund is therefore due in order to eliminate the economic double taxation.

This development in case law is important for the entities that are tax-exempt in their country of residence and wish to recover the WHT paid on dividends distributed by Italian companies.

For foundations and non-profit entities the principle of the Tax Court is only applicable for the WHT on dividends distributed before 31 December 2014 and for which a refund claim has already been submitted to the Italian Tax Authorities. The silent rejection can be appealed before the Tax Court within ten years from the filing date of the claim.

For all the other tax-exempt entities it is possible to submit a claim within 48 months from the WHT payment date or appeal the silent refusal of a previous claim before the Tax Court.

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