



# Italy: Draft of the Italian Budget Law 2021 - No withholding tax on dividends distributed to EU/EEA investment funds from 2021

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The draft of the Italian Budget Law 2021 introduces a favorable set of provisions for foreign funds investing in shares of Italian resident companies, aimed at repealing the discriminatory tax treatment of dividends distributed to foreign investment funds and also of capital gains realized by these funds.

Under the current rules, if Italian investment funds or their management companies are subject to prudential supervision they are not subject to tax, while foreign investment funds are subject to a withholding tax rate of 26 percent.

Pursuant to the proposed provisions, dividends distributed by Italian companies to eligible foreign funds and capital gains realized from the disposal of Italian qualifying equities<sup>(1)</sup> by those funds will not be subject to tax in Italy.

This favorable tax treatment will only apply to foreign collective investment undertakings established in an EU or EEA Member State allowing an adequate exchange of information for tax purposes, to the extent that:

- i. they comply with Directive 2009/65/EC (so-called UCITS Directive); or
- ii. they do not comply with the UCITS Directive, but are managed by an AIFM subject to regulatory supervision in the State in which it is established in accordance with Directive 2011/61/EU (so-called AIFM Directive).

Should the provisions in the Italian Budget Law be approved, the new measures will apply to dividends distributed and capital gains realized from 1 January 2021.

The draft law illustrative report explains that the purpose of the new measures is to overcome the differences in the tax treatment of domestic collective investment undertakings and foreign ones. This confirms that the previous regulations were discriminatory in the context of EU law.

(1) Pursuant to article 67(1)(c) of the Italian Income Tax Consolidated Act, 'qualifying equity investments' are those rights or securities that represent more than 2 or 20 percent of the voting rights that can be exercised in an ordinary meeting, or more than 5 or 25 percent of the capital or assets, depending on whether or not the companies are listed on regulated markets.

For this reason, we strongly recommend that foreign collective investment undertakings file refund claims for the years up to 2020 or refresher letters for which the statutory time limit (ten years from the filing date of the claim) will expire by 31 December 2020.

As soon as these provisions become law, the KPMG Italy team will be at your disposal to discuss the subsequent steps (including any potential tax litigation) required to recover the WHT applied until the end of 2020.

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