



# Italy: Tax Authority grants a refund of withholding tax on outbound dividends

**Tax & Legal Alert**  
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In a judicial settlement reached by KPMG Italy and the Italian Tax Authority (“ITA”), the latter has agreed to refund withholding tax (“WHT”) applied to dividends received by a non-resident company.

## Background

On the grounds of unfair discrimination between Italian and foreign companies, a life insurance company incorporated under English law filed two different refund claims connected with a 15 percent withholding tax levied on dividends it received between 2005 and 2008.

As ITA did not reply to the refund claims within 90 days of their filing date, the company launched two different appeals before the first-level Tax Court of Pescara, against their implicit rejection.

The appeals invoked EU law and infringement of the principles set out in the judgment of the Court of Justice in Case C-540/07 (“European Commission v. Italy”), arguing that foreign companies were discriminated against because they had to pay 15 percent WHT rather than the 1.65 percent WHT (in the period 2005-2007) or 1.375 percent WHT (in 2008) paid by Italian companies under domestic law.

## The tax court proceedings and the agreement

In its counter-appeals ITA argued that there was no evidence of discrimination between the dividends distributed to an Italian company and those distributed to the English company.

According to ITA, discrimination had to be clearly demonstrated by evidence that the dividends distributed by the Italian companies were taxed in the UK and that the life insurance company did not benefit from any WHT credit.

Before the hearing date the appellant submitted an HMRC tax certificate stating that, according to the rules in force between 2005 and 2008, the **company was subject to corporate income tax and no WHT paid on foreign dividends** was recoverable in the UK.

After verifying the certificate, ITA decided that the additional WHT resulting from the difference between the tax rates could be refunded with interest and proposed a judicial settlement. In the agreement, filed with the Tax Court of Pescara, ITA declared that the refunds were due and asked the judge to dismiss the case.

## KPMG comments

In view of this settlement, we advise foreign companies to continue filing WHT refund claims and, with a view to forestalling the litigation phase, to attach a certificate from their tax authority stating that:

- the company is subject to corporate income tax, and
- no WHT paid on foreign dividends is recoverable in the company's country of residence.

KPMG tax specialists are on hand to assist you with filing initial WHT claims within 48 months of the payment date. If you have already submitted a claim, and can obtain the above certificate, we will be able to initiate a dialogue with the ITA and a procedure to facilitate the payment.

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