Italy: Changes in tax rules for non-commercial partnerships and non-commercial entities

Tax Alert

27 January 2020

Offices

Milan
Via Vittor Pisani 31, 20124
T: +39 02 676441

Ancona
Via I° Maggio 150/a, 60131
T: +39 071 2916378

Bologna
Via Innocenzo Malvasia 6, 40131
T: +39 051 4392711

Florence
Viale Niccolò Machiavelli 29, 50125
T: +39 055 261961

Genoa
P.zza della Vittoria 15/12, 16121
T: +39 010 5702225

Naples
Via F. Caracciolo 17, 80122
T: +39 081 662617

Padua
Piazza Salvemini 2, 35131
T: +39 049 8239611

Perugia
Via Campo di Marte 19, 06124
T: +39 075 5734518

Pescara
P.zza Duca D'Aosta 31, 65121
T: +39 085 4210479

Rome
Via Adelaide Ristori 38, 00197
T: +39 06 809631

Turin
C.so Vittorio Emanuele II 48, 10123
T: +39 011 883166

Verona
Via Leone Pancaldo 68, 37138
T: +39 045 8114111

At the end of last year, Italy published new tax rules[1] that affect, among others, **non-commercial partnerships ('NCP/s') and non-commercial entities ('NCE/s').** More specifically, these measures involve the:

1. introduction of a special system of taxation for Italian dividends received by resident NCPs;
2. extension of IVAFE (the wealth tax on financial assets) and IVIE (the wealth tax on foreign real estate) to resident NCPs and NCEs.

New system of taxation for dividends received by resident non-commercial partnerships

Article 32-*quater* of Law Decree no. 124 of 26 October 2019 has introduced a special system of taxation for Italian dividends received by resident NCPs, thus closing, at least in part, the previous gap in legislation.

To give some background, after the repeal of article 47(1) of the Italian Income Tax Code ('IITC') by the Budget Law for 2018[2] it was possible to argue – based on interpretation of the legislative framework and on the lack of a specific rule – that dividends received by resident NCPs were fully taxable. This approach was endorsed by the Italian Revenue Agency, as can be seen from its instructions on how to fill in Section RL of the *REDDITI SP 2019* tax return. On the other hand, some of the literature took the view that it was not possible to tax the full amount of dividends received by such NCPs (because this would be contrary to the principles of tax law) and had therefore interpreted the rules differently.

Article 32-*quater* has ended this controversy by establishing that '*dividends paid to a non-commercial partnership shall be taxed on a look-through basis to its partners and the corresponding tax regime shall consequently be applied*'.

It is expressly stipulated that this system of taxation will also apply in the following circumstances: withdrawal or exclusion of partners, redemption, reduction of surplus capital, liquidation (even in insolvency proceedings)[3].

(1) Published in the Official Gazette, these tax rules were introduced by Law no. 157/2019 (which converted Law Decree no. 124 of 26 October 2019 into law) and by the Budget Law for 2020 (Law no. 160/2019).

(2) Article 1(1003-1006) of Law no. 205/2017.

(3) These cases are listed in article 47(7) of Presidential Decree no. 917/1986 (the Italian Income Tax Code).

Article 32-*quater* then describes the following cases, based on the principle of look-through taxation.

1. *Dividends paid to an NCP whose partner is a joint-stock company or commercial entity*: 95 percent of the dividends are excluded from the calculation of the partner's total income.
2. *Dividends paid to an NCP whose partner is a sole proprietorship or a commercial partnership*: 41.86 percent of the dividends are excluded from the calculation of the partner's total income, in the financial year in which they are received.
3. *Dividends paid to an NCP whose partner is a resident individual who holds an interest (whether substantial or otherwise) but not in the course of business*: the dividends are subject to a 26 percent withholding tax (the issuers of the shares or financial instruments that have generated the dividend paid to the NCP must apply the withholding tax on the basis of the information supplied by it).

Two points should be noted, however.

First, article 32-*quater* does not specify from which date it will apply (it could be assumed, based on normal practice, that the new system of taxation applies to dividends paid from 24 December 2019).

Second, with regard to Case 3 above, it is not stipulated whether the transitional rules[4] on the taxation of proceeds paid out of profits will apply when individuals do not receive these proceeds in the course of business.

Moreover, despite the introduction of this new regime, there are still situations where dividends received by NCPs are not expressly governed by law - in particular, the following:

1. Receipt of dividends by a resident NCP held by a trust or NCE.
2. Receipt of foreign dividends by a resident NCP.
3. Receipt of dividends by a resident NCP held by non-residents.

In these cases it could be assumed – since there is no express rule – that look-through taxation does not apply and that the NCP must therefore be taxed on the full amount of dividends it receives. However, this tax treatment might, in cross-border cases, be contrary to the EU principle of the free movement of capital.

Extension of IVAFE and IVIE to non-commercial partnerships (*società semplici*) and non-commercial entities (*enti non commerciali*)

IVAFE and IVIE have been extended to resident NCPs and NCEs. This second category includes, if pursuit of business is not their main activity, trusts that are resident for tax purposes in Italy.

This new rule will apply from 2020.

The two wealth taxes are due by those (following the latest changes, this means resident individuals, NCPs and NCEs) who in a given financial year:

- in the case of IVAFE, are holders of foreign financial products, current accounts and savings accounts;
- in the case of IVIE, own, or hold other property rights over, foreign real estate.

IVAFE is an annual tax and is 0.2 percent of the value of the financial products or a fixed amount in the case of current accounts and post office savings accounts.

Instead, IVIE, which is also an annual tax, is 0.76 percent of the value of the real estate.

In both cases there is a tax credit for taxes of the same kind already paid abroad, up to an amount equal to the tax due in Italy.

Finally, it should be remembered that the duty of resident NCPs and NCEs to pay these taxes is additional to their existing tax reporting duties. More specifically, resident individuals, and resident NCPs and NCEs, must – if they have foreign investments or foreign financial assets that could generate income that is taxable in Italy – fulfil certain tax reporting requirements by filling in Section RW of their income tax return. A return must be filed for each year in which they have held (even for one day only) such investments and assets.

(4) The transitional rules are set out in article 1(1006) of the Budget Law for 2018.

(5) By article 1(710) of the Budget Law for 2020 (Law no. 160 of 2019).

(6) According to article 1(711) ibid.

(7) According to article 19 of Law Decree no. 201/2011.

(8) As established by article 4 of Law Decree no. 167/1990.

Contacts

KPMG, Tax & Legal

Antonio Deidda
Partner
Family Office and Private Client
E: adeidda@kpmg.it
T: +39 02 6764 4762

Tomaso de Simone
Partner
Family Office and Private Client
E: tdesimone@kpmg.it
T: +39 06 8096 3552

kpmg.com/it

kpmg.com/it/socialmedia

kpmg.com/app

Tax Alert / KPMG in Italy / 27 January 2020