

ITALIAN UPDATES ON BENEFICIAL OWNERSHIP AND INVESTMENT STRUCTURES

Background

In cross-border investments targeting Italy, carried out by alternative investment funds established in EU or non-EU jurisdictions (“AIFs”) and triggering financial income such as dividends, interest, royalties and capital gains, one of the preliminary aspects to assess from an Italian tax standpoint concerns the envisaged investment structure which often features intermediate companies incorporated in an EU Member State (the “SPVs”).

In this context, one of the main challenges is assessing whether the SPVs may enjoy tax exemptions or reductions under the EU Directives (“parent-subsidiary” and “interest & royalty”), the applicable double tax treaties and local regimes, considering the developments in their application by the tax authorities and the tax courts.

This adds to the fact that different challenges and opportunities arise in case the income from investments in Italy is received directly by the AIFs, which cannot benefit from the EU directives and in most cases are unable to claim tax treaty reliefs, but have easier access to domestic tax exemptions which do not appear available to SPVs.

Key concepts

In Italy, a foreign SPV is treated as an opaque entity for corporate income tax purposes, meaning that it is treated as an autonomous taxpayer and that income from the Italian investment is generally subject to a final domestic taxation at the standard 26% rate by withholding agents resident or established in Italy.

The above rule could be derogated should the SPV be deemed as a “fictitiously interposed person”. This concept stems from a domestic provision concerning tax authorities’ assessments of income taxes, pursuant to which a taxpayer is attributed the income formally derived by other subjects

when there is evidence (or there are qualified presumptions) that it is the effective owner of such income. Over the years, such provision has been widely interpreted by the Italian tax administration and the tax courts which emphasized its far-reaching scope.

Moreover, the official guidelines of the Italian tax authorities addressed the case where a foreign AIF not entitled to the benefits of domestic tax exemptions, EU directives or tax treaties, invests through SPVs. Notably, the SPV would be denied the access to those tax benefits should it be considered as either:

- A **conduit entity**: *i.e.* an entity which, among others, (i) has “light substance” (e.g. space, personnel and other facilities are provided by a service provider under a management service agreement), (ii) does not conduct an effective business, and (iii) does not put in place any real decision making process with respect to its investments; or
- A **conduit scheme**: *i.e.* a pass-through financial structure whereby cash-in and cash-out are structured as back-to-back arrangements or the like.

Finally, according to the recent jurisprudence of the Italian Supreme Court concerning the identification of the beneficial owner for the purposes of the application of the tax exemptions under the EU directives, the following three independent and separate tests have been identified along the principles of the European Court of Justice’s decision on the so called “Danish cases” (from C-115/16 to C-119/16):

- **Substantive business activity test**, aiming at verifying whether the SPV is an artificial arrangement (*i.e.* it does not carry out an actual economic activity). If the test is failed, the SPV is not only precluded from enjoying the EU directives and the tax treaties, but also from availing itself of the EU freedoms;

- **Dominion test**, focusing on the economic substance of the transaction (substantial economic effect) to assess the SPV's ability to freely dispose of the income received, without being required to remit the income stream to a third party. If the test is failed, the SPV cannot be considered the beneficial owner, but is not precluded from enjoying the EU freedoms;
- **Business purpose test**, investigating the reasons for the deviation of the income flow to ascertain whether the "triangulation" is aimed solely at tax savings or whether it responds to other economic motivations.

Domestic exemptions

At domestic level, depending on the characterisation of the income deriving from the inbound investments, selected tax exemptions may apply to the SPV, subject to several conditions which include the assessment of an adequate level of substance.

On one hand, the SPV benefits from some tax reductions or exemptions provided that it qualifies as the beneficial owner of the income, save particular cases examined by the tax authorities.

On the other hand, the tax authorities' official guidelines do not treat the SPV as an "institutional investor" which is entitled to a broad range of domestic tax exemptions (applicable to AIFs instead, as they qualify as institutional investors). Notably, institutional investors are entities whose activity consists of making or managing investments on their own behalf or on behalf of third parties, even if they are not liable to tax in the whitelisted country of establishment. In the Italian tax authorities' view, institutional investors are deemed as beneficial owners on certain interest income and capital gains deriving from Italian investments.

The latest Italian case law on look-through

In February 2025 the Italian Supreme Court issued a landmark decision allowing a look-through approach in the application of the domestic withholding tax exemption on interest payments deriving from medium-long term loans granted to

Italian enterprises by institutional investors established in whitelisted countries. The case examined by the Court was a loan indirectly granted by a Luxembourg AIF to an Italian company, *i.e.* granted through a SPV based in Luxembourg and operating on a back-to-back basis. In principle, there are valid arguments to extend this Court's decisions to other domestic tax exemptions such as on dividends.

Furthermore, in December 2025 the Italian Supreme Court addressed the concept of beneficial ownership in the context of the Denmark-Italy tax treaty, in a case involving a multinational group headquartered in US. The dispute concerned the alleged abusive use of a Danish holding company to obtain the exemption (0%) from the Italian withholding tax on dividend distributions. After finding that the Danish holding company failed the abovementioned three test, the Court held that under a look-through approach the US ultimate parent company was the beneficial owner of the Italian dividends and was entitled to benefit from the reduced (5%) withholding tax under the Italy-US double tax treaty.

Such approach could also rely on some of the principles upheld by the European Court of Justice's decisions on the "Danish cases" and on the more recent "Nordcurrent case" (C-228/24).

Going forward

In an ever-evolving tax landscape where recent Supreme Court rulings pave the way for new interpretations of the look-through principle, planning cross-border investments in Italy requires a **highly calibrated and well-informed approach** focused not just on compliance but on sound structural optimization. Our team support investors in analysing economic substance and beneficial ownership tests, turning regulatory complexities into strategic opportunities.

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