



The Italian Revenue Agency confirms the eligibility for the withholding tax exemption on dividends paid by an Italian subsidiary to its Swiss parent after 1 January 2020

On 2 March 2021, the Italian Revenue agency issued Ruling no. 135 concerning the exemption from dividend withholding tax pursuant to the 2004 agreement between the European Community and the Swiss Confederation (the “**Agreement**”). Under the Agreement, no withholding tax applies on dividends paid by companies residing in Member States of the European Union to their Swiss parent companies if conditions similar to those set forth in the Parent Subsidiary Directive (Council Directive 2011/96/EU) are met. In particular, one of these conditions is that both the parent and the subsidiary must be subject to corporation tax without being exempted.

Pursuant to an established practice of the Italian Revenue Agency (see Rulings no. 93 of 2007 and no. 57 of 2019), companies qualifying for the Swiss “holding companies” tax regime did not meet the condition of being subject to corporation tax without being exempt for the purposes of the Agreement. This is because companies enjoying such special regime were exempt from municipal and cantonal income taxes and only subject to federal income tax, a privileged regime which the European Commission found to be a State aid in breach of the 1972 Free Trade Agreement between the European Economic Community and the Swiss Confederation.

The applicant represented that: (i) it was a company resident in Italy; (ii) it was wholly owned by a company resident in Switzerland; (iii) it had a significant amount of retained profits, which it wanted to distribute to its Swiss parent. Moreover, the applicant indicated that, although the Swiss parent enjoyed the “holding companies” preferential tax regime in Switzerland until 2019, it became subject to ordinary Swiss taxation starting from 1 January 2020 because the special regime was abolished. The Italian Revenue Agency confirmed that, since Switzerland repealed the special exemption from municipal and cantonal taxes with effect from 1 January 2020, the Swiss parent had to be considered subject to corporation tax without being exempt in 2020 for the purposes of the Agreement being now subject to all three levels of income taxation in Switzerland. Consequently, the dividends paid by the Italian subsidiary to its parent company were eligible for the withholding tax exemption under the Agreement.

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