



The Italian Revenue Agency rules on the application of the *Partnership Report* principles in relation to dividends paid to foreign fiscally transparent entities

With Ruling Reply no. 258 of 19 April 2021, the Italian Revenue Agency endorsed the principles of the *Partnership Report* concluding that a partner of a fiscally transparent entity may claim the application of the treaty between Italy and its State of residence if this State considers the entity as transparent and attributes to the partner the entity's income, regardless of distribution. The case concerned the application of the reduced 15% withholding tax rate under Article 10 of the Italy-Switzerland tax treaty ("**Treaty**") to dividends that Italian resident companies paid to a Swiss *Fond Commun de Placement* ("**FCP**") participated by a foundation resident in Switzerland. Under Swiss legislation, the FCP was fiscally transparent and its income was allocated to its participants (including the foundation) and taxed in their hands.

The Italian Revenue Agency ruled that, according to the principles set forth by the OECD in its 1999 Report on "*The Application of the OECD Model Tax Convention to Partnerships*", (i) the FCP could not benefit from the Treaty because, being a fiscally transparent entity, it was not liable to income tax in Switzerland and did not therefore qualify as a Swiss resident person for the purposes of the Treaty, and (ii) the foundation could claim the application of Article 10 of the Treaty because, under Swiss law, the FCP was transparent and its income was attributed to the foundation and taxed in its hands, regardless of any actual distribution. Citing to previous administrative practice on the matter (Ruling no. 17/E of 27 January 2006; Ruling no. 167/E of 21 April 2008 and Circular letter no. 6/E of 30 March 2016), the Italian Revenue Agency confirmed that participants in foreign investment vehicles are entitled to invoke the benefits granted by the tax treaty signed by their residence State with Italy not only in cases of tax transparency but also in cases in which, although the vehicle is not fiscally transparent under the law of the participants' State of residence, the income of the vehicle is actually distributed to its participants at least once a year pursuant to specific bylaw provisions and taxed at the level of the participants (so-called "economic transparency").

The Italian Revenue Agency also confirmed that the Swiss foundation is entitled to benefit from the Treaty only if it qualifies as a person resident of Switzerland under the Treaty and the beneficial owner of the dividends. The Italian Revenue Agency found the first requirement to be met based on the certificate issued by the Swiss Tax Authorities, which certified that the foundation was liable to Swiss corporate income tax, although not subject to tax because it benefited from an exemption under Swiss tax law. It did not express its view on the beneficial ownership requirement, whose assessment requires a factual analysis that cannot be carried out in the context of a standard ruling procedure.

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