

# TAX ALERT 2020/06

AMENDMENTS TO THE TAX REGIME OF DIVIDENDS  
RECEIVED BY ITALIAN NON-COMMERCIAL PARTNERSHIPS

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Law Decree 23/2020 (“Law Decree”), enacted by the Italian Government on 8 April 2020 to strengthen the measures for coping with the COVID-19 emergency, also includes amendments to the tax treatment of dividends received by resident non-commercial partnerships (“*società semplici*”). As *società semplici* cannot conduct business activities, they are frequently used by individuals as vehicles for holding financial assets. As a general rule, they are regarded as transparent entities for income tax purposes. The main reason of the changes introduced by the Law Decree was to eliminate some uncertainties in the application of the tax regime introduced in 2019 with respect to dividends received by *società semplici*, specifically in cross-border situations.

In 2019, dividends received by *società semplici* held by individuals were subject to progressive taxation in the hands of partners and therefore treated less favourably than dividends directly received by individuals who could enjoy a 26 per cent flat taxation. Such differential treatment was also a clear departure from the principle of tax transparency of the entity.

In order to remove such discriminatory tax treatment, Decree 124/2019 introduced (as from 1 January 2020) the principle according to which dividends received by *società semplici* shall be treated for tax purposes as if they were received directly by the partners (“look-through approach”). Such amendment raised, however, interpretative issues including the treatment of foreign source dividends paid to *società semplici* for which the application of the 26 per cent tax compared to progressive taxation was unclear.

The rules as amended by the Law Decree (with Article 28) now state expressly the application to *società semplici* of the look-through approach also with respect to dividends paid by foreign participated companies and for reasons of clarity provide the summary of the tax regime applicable to the relevant proportion of dividends received depending on the status of the partners of *società semplici*:

1. Italian-resident companies and other business entities: 95 per cent exemption;
2. Italian-resident commercial or non-commercial partnerships: 41.86 per cent exemption;
3. Italian-resident individuals not conducting a business activity: application of 26 per cent flat tax;
4. Italian-resident non-commercial entities including opaque trusts: full inclusion in the tax base;
5. Non-residents (individuals or companies): application of the 26 per cent flat tax except for situations in which the partners are companies resident of EU/EEA Member States, in which case the tax rate is reduced to 1.2 per cent.

Foreign source dividends distributed to *società semplici* by entities subject to low-tax regimes continue to be included in the taxable income for their full amount, unless specific exceptions apply.

The new rules do not specifically deal with certain relevant cases. In particular, they do not clarify whether foreign source dividends received by *società semplici* and attributed to non-resident partners are taxable in Italy; while Article 23 of the Income Tax Code provides that income of *società semplici* is deemed to be Italian source income, it is unclear whether the new rules derogate from this general provision. Second, Article 32-quater of Decree 124/2019 does not deal with the application of tax treaties and, in particular, does not explain whether the participation held through the *società semplice* may be regarded as held directly by the foreign partners. Third, the new rules do not clarify whether the exemption from withholding tax provided for by Article 27-bis of the Presidential Decree 600/1973, which implements in the Italian legal system Article 5 of the Parent-Subsidiary Directive, applies also to dividends received by EU Parent companies holding the participation through *società semplici* (thus expanding the scope of application of the Directive).

The new rules generally apply to dividends paid as from 1 January 2020. Nonetheless, mainly in order to counteract the tax discriminations occurred in the past, a specific transitional rule provides that the regime that was applicable before 2018 (i.e. the partial inclusion of the dividends in the taxable base of the *società semplici*) shall apply to dividend distributions, from both substantial and portfolio shareholdings, (i) paid out of profits accrued up to the tax year of the distributing company as of 31 December 2019 and (ii) declared by 31 December 2022.

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