

# January 2024

## Italian tax news

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## INCREASE OF THE ITALIAN ESTATE TAXES ON FOREIGN ASSETS

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Law no. 213 of 30 December 2023 (**Budget Law** for 2024) provided for an increase in estate tax rates on foreign properties.

In particular, as of 2024, **IVIE**'s rate increases from the previous 0.76% to 1.06%; **IVAFE**'s rate increases from the previous 0.2% to 0.4%, but only with respect to financial products held in blacklisted Countries.

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## ITALIAN PARTICIPATION EXEMPTION REGIME EXTENDED TO NON-RESIDENT COMPANIES

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Law no. 213 of 30 December 2023 (Budget Law 2024) extends the Italian **participation exemption regime** (*i.e.* 95% exemption on capital gains on shares where certain conditions are met) to non-resident companies without a permanent establishment in Italy with respect to capital gains realized on Italian based companies.

In order for the exemption to apply, the seller:

- must be a company or an entity engaged in a commercial activity;
- must be resident for tax purposes in a EU or EEA Country.

In addition, the participation sold:

- shall qualify as a non-portfolio participation;
- shall meet all the requirements set forth in order for the Italian pex to apply in the hands of Italian taxpayers.

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## ITALIAN SOURCED EMPLOYMENT INCOME DERIVED BY A NON-ITALIAN RESIDENT

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The **Italian Supreme Court** decision no. 35284 of 18 December 2023 ruled on the tax treatment of employment income received by a person resident in the United Arab Emirates.

According to the Supreme Court, Article 15(1) of the Italy-UAE Treaty should apply in a case where the employee is never present in the territory of the other State by granting the residence State exclusive right to tax.

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## ITALIAN EXEMPTION ON CIVS' QUOTA SALE

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The **Italian Tax Authorities**, with its statement of practice no. 76 of 22 December 2023, clarified that capital gains realised by foreign **CIVs**, pension funds and other foreign institutional investors located in white-listed Countries (according to the Ministerial Decree 4 September 1996) on the sale of units of Italian real estate CIVs are exempted from Italian capital gain taxes, pursuant to Article 5(5) of Legislative Decree no. 461/97.

This exemption still applies even if the Italian CIVs derives most of its value from real estate properties located in Italy.

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## ITALIAN TAX CONSOLIDATION REGIME AND CROSS-BORDER MERGER

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The Italian Tax Authorities, in its **ruling** no. 486 of 29 December 2023, clarified that the Italian **tax consolidation regime** may continue to apply in case of cross-border merger in which an Italian company Beta is merged into the French company Alfa (outside of the Italian tax consolidation regime), provided that, after the merger, the assets of Beta constitutes a permanent establishment of Alfa in Italy.

In a similar case, the requirements to access the tax consolidation regime are still: with the merger, the consolidated company is “transformed” from a company incorporated under Italian law (Beta) into a permanent establishment of a foreign entity (Alfa Italia), which is eligible to be part of the Italian tax unit pursuant to Article 117 of the TUIR.

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## THE ECJ RULES ON THE TP AMAZON CASE

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The **European Court of Justice** rejected the Commission’s appeal against the judgment of the Court of First Instance in Case C-457/21.

The issue concerned the tax ruling issued by the Luxembourg authorities to the Amazon group in relation to the treatment of two of its subsidiaries established in Luxembourg for corporate income tax purposes.

In the view of the European Commission, the royalty paid by one subsidiary to the other under a licence agreement on the use of intangible assets artificially decreased the tax base of the first subsidiary and, thus, that of the Amazon group.

According to the ECJ, the Commission had not validly demonstrated the undue reduction of the tax burden.

The appeal was dismissed on the grounds that the Commission had wrongly determined the “reference system” (being the local transfer pricing regulation and not the OECD principles) for the purpose of qualifying the national measure as State aid.

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## NEW EU DE MINIMIS RULES ISSUED

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The following regulations has been published in the Official Journal of the European Union on 15 December 2023:

- EU Regulation no. 2831/2023 on *de minimis* aid;
- EU Regulation no. 2832/2023 on *de minimis* aid granted to undertakings providing services of general economic interest.

The new regulations enter into force on 1 January 2024 and apply until 31 December 2030.

For *de minimis* aid per single undertaking, the maximum amount is increased to EUR 300,000 over three years (instead of the EUR 200,000 applicable until 2023).

For undertakings providing services of general economic interest, the “*de minimis*” limit is increased from EUR 500,000 to EUR 750,000 over three years.

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## NEW OECD ADMINISTRATIVE GUIDANCE ON PILLAR TWO

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On 18 December 2023, the OECD published further technical guidelines to assist governments in implementing the global minimum tax under **Pillar 2** and a statement on the timing of the implementation of the Multilateral Convention (MLC) for Pillar One.

The OECD also published another (the third one in 2023) administrative guidance on Pillar Two. This text supplements the OECD Commentary with respect to the application of certain rules related to the application of the Transitional Safe Harbour as well as certain specific topics related to non-material constituent entities.

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We remain at your disposal for any clarification and we take this opportunity to extend our best regards.

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