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Italian tax news

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SEVERAL PROVISIONS HAVE BEEN CONFIRMED AFTER THE CONVERSION OF THE LAW DECREE 38/2026

Law Decree no. 38 of 27 March 2026 was converted into Law no. 88 of 22 May 2026. Such Law Decree contains several tax provisions, including:

• the prohibition of benefiting simultaneously of the Italian res non-dom regime referred to in Art. 24-bis of the TUIR and the in-bound workers regime;

• the repeal of the amendments to the Italian participation exemption and Italian dividend exemption that had been provided for by the 2026 Budget Law;

• the exemption from IRES and IRAP of income produced by Italian companies and Italian permanent establishments of non-resident companies, for 2026 and 2027, for activities related to the America's Cup in Naples;

• the exemption from IRPEF on employment and selfemployment income received in 2026 and 2027 by non-residents in Italy for services related to the America's Cup in Naples, as well as the taxation limited to 35% for employment and self-employment income received in 2026 and 2027 by subjects who move from abroad to Italy for the same sporting event;

• the elimination of the condition that the assets falling within the scope of the Italian hyper-depreciation regime had to be produced in one of the Member States or the Countries of European Economic Area; however, this restriction remains in place for photovoltaic systems;

• the postponement to 1 July 2026 of the levy of the 2 euro contribution on shipments of goods from non-EU countries with a declared value not exceeding 150 euros.

TAX PAYMENT DEADLINE HAS BEEN EXTENDED TO JULY OR AUGUST

With the Legislative Decree no. 89 of 22 May 2026, the deadlines related to the tax payments that would have come due within 30 June 2026 were extended to 20 July 2026 without any penalties or interest to be paid. In alternative, the above-mentioned payments may be executed within the 20 August 2026 by adding 0.8% of the relevant amount due as interest. The postponement concerns persons carrying out business and self-employment activities (entrepreneurs, companies, etc.), with some exceptions, which declare revenues or fees of an amount not exceeding 5,164,569.00 euros.

UPDATED THE MINISTERIAL DECREE WITH THE COUNTRIES WITH WHICH ITALY EXCHANGES INFORMATION

With the Ordinance of the Ministry of Economy and Finance of 12 May 2026 the lists of States and territories with which Italy automatically exchanges financial account data (current accounts, securities accounts, equity investments, bonds, etc.) have been updated. The lists of the States involved are contained in the Annexes to the Ministerial Decree of 28 December 2015. In particular:

• Annex C contains the list of States and territories to which the Italian Administration undertakes to provide the data of the accounts held in Italy by their respective residents;

• Annex D contains the list of States and territories from which Italy receives the data of the accounts held with local intermediaries by Italian residents.

As a result of the amendments made by the abovementioned ordinance:

• Belize, Rwanda and Senegal have been added to Annex C;

• Rwanda, Senegal and Trinidad and Tobago have been added to Annex D.

FOREIGN TAX CREDIT SHALL BE GRANTED EVEN WHEN THE TAX RETURN HAS NOT BEEN SUBMITTED

With its decision no. 16134 of 26 May 2026, the Italian Supreme Court confirmed some of its prior decisions according to which the foreign tax credit shall be granted regardless of the submission of the tax return in Italy, as the obligation deriving from the bilateral double taxation treaty stipulated with the other State (in this specific case, Germany) prevails over domestic provisions.

The latter (Art. 165(8) of the TUIR), which instead limits the credit only where a tax return is submitted, cannot therefore limit the application of tax treaty rules or conflict with them.

ITALIAN DOMESTIC RULES PREVAIL OVER TAX TREATY'S PROVISIONS IF MORE FAVOURABLE

The Italian Supreme Court decision no. 13519 of 10 May 2026 established that, if the domestic provisions provide for a rate for the levy of tax on non-residents that is more favourable than that found in the corresponding rules of the tax treaty, the withholding tax must be levied according to the domestic provisions.

In the specific case, the 12.50% withholding tax provided for by Art. 26(5) of Presidential Decree no. 600/73, in force at the time of the facts for interest on loans paid to the shareholders resident in Belgium, was lower than that of 15% provided for by Art. 11 of the Italy-Belgium tax treaty. Hence the first should have been applied.

THE ITALIAN SUPREME COURT RULES AGAIN ON THE BENEFICIAL OWNERSHIP CONCEPT

The Italian Supreme Court decision no. 11744 of 29 April 2026 analysed the beneficial owner criteria for the purposes of applying the tax treaty rates on royalties paid to a Luxembourg company under a licence agreement.

According to the Italian Tax Authorities, the 10% withholding tax provided for by Art. 12 of the Italy-Luxembourg tax treaty was not applicable, since the Luxembourg company was not the actual beneficiary of the payments. As a consequence, the 30% withholding tax provided for by Art. 25(4) of Presidential Decree 600/73 should have been applied.

The Italian Supreme Court refers to the tests developed in its own case law (substantive business activity test, dominion test and business purpose test) to overturn the decision of second instance

ENGLISH FOUNDATIONS SHOULD BE TREATED AS THE ITALIAN ONES

According to decision no. 16281 of 26 May 2026 of the talian Supreme Court, it is discriminatory – and hence not applicable – the provision of a levy on Italian-source dividends received by a foundation established under English law in an amount greater than the one that would have been borne by an Italian foundations carrying out the same activities. In fact:

• such a provision is, in itself, detrimental to the freedom of establishment principle and free movement of capital principle referred to in Art. 49 and 63 TFEU;

• the treatment granted to the English foundation by its State of residence (in this case, the exemption from taxes) is not relevant for the purposes of the taxation regime in Italy;

• the holding by the English foundation of shares in profitmaking companies does not mean that the foundation itself assumes the nature of a profit-making entity;

• the equivalence between the English foundation and the Italian foundations must be assessed in terms of the concrete purpose pursued by the entity (not, therefore, of equality of legal form, but of analogy of the functions pursued).

PARENT-SUBSIDIARY DIRECTIVE EXEMPTION MUST BE GRANTED ALSO WITH LATE CERTIFICATIONS

According to the Italian Supreme Court decision no. 13128 of 7 May 2026, the exemption from withholding tax on dividends paid by an Italian company to its parent company resident in the European Union referred to in Art. 27-bis of Presidential Decree 600/73, implementing ParentSubsidiary Directive, can be granted even if the certifications of the non-resident recipient are produced to the Italian company after the payment of dividends.

The provision contained in Art. 27-bis(3), according to which the documentation must be acquired by the date of payment of the dividends, in fact, is placed in the interest of the resident subsidiary company, which can waive it, accepting its liability as withholding agent; on the contrary, what is relevant for the purposes of entitlement to the exemption is the possession of the requirements established by the law, which were met in the case at stake.

FURTHER CLARIFICATION ON THE PENSIONS PAID TO NON RESIDENTS

With a series of answers to rulings, the Italian Tax Authorities has provided some clarifications on the conventional regime of public and private pensions. More precisely:

• in ruling no. 106 of 25 May 2026, it was confirmed that a public pension paid by Italy to a Luxembourg resident is taxed only in Italy pursuant to Art. 19 of the Italy-Luxembourg tax treaty;

• with ruling no. 112 of 29 May 2026, it was specified that the pension received by a Luxembourg resident, an Italian and Luxembourg citizen, is taxed only in Luxembourg (State of residence) for the portion relating to the contributions paid in relation to selfemployment activities (Article 22

of the ItalyLuxembourg tax treaty), while it is taxed only in Italy (source State) for the portion relating to pension contributions relating to income derived while working to the Italian ASL (Article 19(1)(a) of the tax treaty);

• in ruling answer no. 113 of 29 May 2026, it was clarified that the pension paid by a French pension institution (the Casse Nationale des Industries Electriques et Gassières, so-called CNIEG) to an Italian resident in relation to the termination of employment with EDF (Eléctricité de France) qualifies as a pension paid under social security legislation and is therefore subject to shared taxing rights based on Art. 18(2) of that tax treaty.

DIVIDEND DISTRIBUTIONS OVER THE CORPORATE CHAIN ARE NOT PER SE ABUSIVE

According to the Opinion of the Advocate General of the European Court of Justice on case n. C-203/25 dated 21 May 2026:

• the circumstance that dividends are distributed up to the holding structure chain to the group's highest-level holding companies and the short time lapse between receipt and redistribution in the chain are not per se indictive of an abuse under the Parent-Subsidiary Directive;

• however, abusive profiles come into existence if the distribution is part of a global project that has as its purpose the abuse (in this specific case, as the corporate structure has been deemed preordained to bring sums to the ultimate benefit of the natural person at the top of the group);

• it is in the hands of this dominus at the top that knowledge of the existence of the non-genuine construction must be proven, since it is irrelevant that the various companies of the group had knowledge or should have been aware - of such abuse.

OECD PUBLISHED A COMMON UNDERSTANDING ON GIR DEADLINE AND OBLIGATIONS

The OECD document published on 18 May 2026 and named “Global Minimum Tax: Support for Central GloBE Information Return Filing and Exchange (2024 Reporting Fiscal Year)” analyzed the main critical issues related to the first submission of the Global Information Return (GIR).

In the OECD document, the signatory States (including Italy) undertake not to apply penalties for failure to submit the GIR locally, or not to enforce the obligation of local filing within the relevant deadlines for the automatic exchange of the GIR, to the extent that the group has submitted the GIR in one of the countries indicated in the Annex to the OECD document itself (including Italy) and has fulfilled its notification obligations in the other countries within the terms of the law.

The problem related to the absence of provisions in Italian national legislation that formalize this principle remains.

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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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