FAZZINI HOLZMILLER & PARTNERS

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Italian tax news

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SWISS PUBLIC REMUNERATION IS TAXABLE ONLY IN SWITZERLAND EVEN IN DUAL CITIZENSHIPS CASES

Ruling no. 177 of 23 September 2026 of the Italian tax authorities clarified that a public pension paid by Switzerland to a person with both Swiss and Italian citizenship, about to transfer his or her tax residence to Italy, is taxable only in Switzerland.

In the present case, the public nature of the pension was established in the light of the fact that the former employer (the Federal Department of Defence, Civil Protection and Sport of the Swiss Confederation, which is one of the bodies of the Swiss central administration) was a public entity.

According to the Italian tax authorities, the tax treaty rule that applies to the case at stake is Art. 19(1) of the ItalySwitzerland tax treaty. According to such provision, remunerations borne by a public body, including pensions, and paid by a contracting State to a natural person who has the nationality of that State are taxable only in the contracting State from which such remuneration originate.

This applies both in the case where the beneficiary has only Swiss citizenship and in the case (as the one in the ruling) in which the beneficiary has citizenship of both contracting States.

IT IS POSSIBLE TO AMEND THE ITALIAN DIGITAL SERVICE TAX RETURNS

With its statement of practice no. 2 of 22 September 2026, the Italian tax authorities have clarified that it is possible to submit amended returns for the Italian digital services tax, even where such amended return is more favourable for the taxpayer. Indeed, according to the Italian tax authorities:

- Art. 6.3 of Ordinance no. 13185 of 15 January 2021, implementing the provisions of the Italian digital service tax, confirms that the provisions of Presidential Decree 322/98 are applicable to the digital service tax to the extent that they are compatible. These include the provisions related to amended returns;
- in general terms, for the purposes of assessment, penalties and collection of the tax, the provisions on VAT are applied insofar as they are compatible. Such rules also provide for the possibility of amending the original returns.

Any credit deriving from an amended return submitted for the Italian digital services tax purposes cannot be used to offset other taxes and contributions but must be requested for reimbursement or carried forward to subsequent years.

SUBSTITUTE TAX ON FINTECH BONDS CANNOT BE LEVIED BY THE COMPANY MANAGING THE REGISTER

Through ruling no. 170 of 10 September 2026, the Italian tax authorities analyzed the application of the substitute tax on interest and other income from bonds and other similar securities, issued and circulating digitally.

For the purposes of levying the substitute tax on the related proceeds with respect to these securities, it was clarified that the entity responsible for managing the register for its digital issuance and circulation

(tokenized) does not qualify as a qualified intermediary and does not assume the role of the so-called "first-level bank".

Accordingly, in connection to the case of the ruling, it was clarified that the company responsible for the digital circulation register is not considered entitled to collect the selfcertifications of non-resident holders and to transmit data and information to the Italian tax authorities in connection with the potential substitute tax levy (ordinarily 26%).

THE RW FORM NEEDS TO BE FILED EVEN WHERE THE FOREIGN INCOME HAS BEEN DECLARED

According to decision no. 24972 of 3 September 2026 of the Italian Supreme Court, individuals residing in Italy in accordance with Italian domestic provisions (Art. 2 of the TUIR) are required to fill in the RW form of the relevant tax return in order to declare assets held abroad even if the income derived from such income has been declared.

In the specific case, it was ascertained that the person, an Italian citizen, had not registered with AIRE following her transfer to San Marino. Hence, from a tax perspective, her transfer to San Marino was never effective. Being the individual still an Italian tax resident according to Italian tax law, she should have complied with the RW reporting rules and duties.

As a consequence, according to the Italian Supreme Court, the penalties arising in connection with omission to fill the RW form must be applied despite the fact that the foreign income deriving from the activities not indicated in the form has been correctly declared in Italy.

CONTRIBUTIONS IN TRUSTS MAY BE TAXED WHEN THE CONTRIBUTION OCCURS EVEN WHERE AN EXEMPTION APPLIES

During the videoconference of 24 September 2025, the Italian tax authorities clarified that the option that a trustee may exercise in order to pay inheritance and gift tax, as well as mortgage and cadastral taxes, at the moment a given asset is contributed in a trust may also be exercised when no tax arises by virtue of the application of exemptions (e.g. when inheritance and gift tax are not due to the circumstance that the value of the assets is below a certain threshold).

THE TAX TREATY'S RELIEF PREVENTS THE FREE MOVEMENT OF CAPITAL PRINCIPLE INFRINGEMENT

According to the decision of the European Court of Justice C-139/25 (Ishares Europe ETF) of 17 September 2026, the levy of a withholding tax on dividends distributed to a non-European fund which creates higher tax burden than that provided for distributions to resident funds amounts to a restriction of the free movement of capital principle which is enshrined in Art. 63 TFEU.

However, the restriction to free movement of capital is deemed to be neutralised where a tax treaty applies to reduce the higher tax burden. This principle applies even if the foreign income is not subject to corporate tax in the fund State, but is passed on to its unitholders, who are subject to tax on their share of the income.

This principle, however, applies to the extent the two following conditions are met:

- the quota-holders are treaty entitled;
- such quota-holders may deduct the taxes paid on dividends in the source State in full.

OECD PUBLISHES THE 2025 UPDATED OECD MODEL AND RELATED COMMENTARY

On 30 September 2026, the OECD published the new Model Tax Convention on Income and on Capital and the related consolidated Commentaries, updated with the amendments approved on 18 November 2025 with the document "The 2025 Update to the OECD Model Tax Convention".

The most significant changes are as below:

- the introduction of § 44.1-44.21 to the OECD Commentary on Art. 5 of the OECD Model, introducing the criteria for qualifying home offices as permanent establishments;
- the introduction of § 170-203 to the OECD Commentary on Art. 5 of the model, entitled "The taxation of activities in connection with the exploration and exploitation of extractible natural resources";
- the introduction of par. 6 to Art. 25 of the OECD Model, concerning the relationship between the Double Taxation Treaties and the General Agreement on Trade in Services (GATS), and the addition of the relevant § 92.1 et seq. to the Commentary on Art. 25 of the OECD Model Convention;
- the modification of § 11 and 12 to the Commentary on Art. 26.

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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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