THREE & PARTNERS
ACCOUNTING TAX LEGAL

ITALIAN & INTERNATIONAL TAX FOCUS (01/2026)

Italian Legislation and Case Law

EU Legislation and Case Law

DTT/MLI/OECD

ITALIAN LEGISLATION AND CASE LAW

1. Distinctions between public and private pension treatment under tax treaty law

The Parliamentary question time no. 5-04807 addressed the issue of the different tax treatment applied to pensioners residing abroad based on the public or private nature of the pension received.

It should be recalled that, when the tax treaty between Italy and the other States follows the OECD Model Convention, private pensions are taxable exclusively in the State of residence of the beneficiary (Art. 18). Conversely, for public pensions, when the treaty between Italy and the other State conforms to the OECD Model, taxation lies, as a general rule, exclusively with the paying State (Art. 19).

In line with established case law on the matter (Europe-an Court of Justice joined Cases C 168/19 and C 169/19 and Italian Supreme Court Order no. 3343 of 23 February 2023), it was clarified that there are no technical grounds supporting the need to amend the treaty-based allocation criteria of taxing rights with respect to pensions received by public-sector employees.

ITALIAN LEGISLATION AND CASE LAW

2. Concept of Beneficial Ownership under the Parent-Subsidiary Directive

The Italian Supreme Court has addressed twice the issue of identifying the beneficial owner for the purposes of withholding tax exemption under the Parent-Subsidiary Directive.

In both cases, the dispute concerned the failure to apply withholding tax on dividends paid by the Italian subsidiary to the intermediate Danish holding company, which was itself owned by a U.S. parent company.

In the decision no. 32149/2025, the Italian Supreme Court noted that, in carrying out the so-called substantive business activity test, the Court of second instance erred in excluding that the Danish company carried out genuine economic activity on the grounds of the "substantial absence" of an operational structure.

The judges failed to take into account the specific features of a pure holding or sub-holding company, which does not directly conduct commercial activities but merely manages shareholdings in other companies.

In this way, the Italian Supreme Court appears to acknowledge that, in the context of dividend-exemption provisions, beneficial ownership may still be recognised even where the entity has a lighter structure than what might be considered adequate for exemption in the parallel context of interest and royalty payments.

In decision no. 32467/2025, however, the Italian Supreme Court denied beneficial-owner status to the Danish sub-holding, identifying the U.S. parent company as the actual beneficial owner. As a result, a 5% withholding tax applied pursuant to Article 10 of the Italy-U.S. Tax Treaty.

The Danish company did not have material or legal availability of the dividends received from the Italian subsidiary, as the funds were pooled into a common cash account. Moreover, the Danish company did not carry out any real economic activity, not even that typical of a pure sub-holding, and the effective management of the European business segment originated from the U.S. parent company.

ITALIAN LEGISLATION AND CASE LAW

3. Italy Suspends Tax Treaty Benefits with Russia and Belarus

Article 10 of Legislative Decree no. 192/2025 establishes that if a foreign jurisdiction unilaterally suspends the application of one or more provisions of a double tax treaty in force with Italy, the application of those same provisions is likewise suspended in the Italian legal system, as a countermeasure, with the same effective date.

This issue directly concerns relations with the Russian Federation and Belarus, both of which have unilaterally suspended their respective tax treaties signed with Italy.

As a result of the new rule, outbound income flows from Italy are subject to withholding tax at the full domestic rates, rather than at the reduced tax treaty rates.

EU LEGISLATION AND CASE LAW

4. Implementation and transposition of DAC 8 Directive

The Legislative Decree no. 194/2025, implementing Directive (EU) 2023/2226 (DAC 8) on the automatic exchange of data relating to crypto-assets, has been published in the Italian Official Gazette.

The new provisions entered into force on 1 January 2026, as from when information concerning holders of crypto-assets within the European Union, as well as data relating to those assets, will be automatically exchanged among the tax authorities of the Member States.

The Legislative Decree also:

- extends the "traditional" categories of income (employment income, directors' fees, etc.) from four to five for which Italy undertakes to transmit data on its residents to other Member States;
- broadens the range of cross-border rulings that must be reported;
- introduces stricter requirements for collecting and reporting the TIN (tax identification number) of non-resident taxpayers, to be phased in gradually between 2028 and 2030.

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5. Italy joins the Multilateral Competent Authority Agreement on the Exchange of Readily Available Information on Immovable Property (IPI MCAA)

In a press release issued on 4 December 2025, Italy announced that it has joined the Multilateral Competent Authority Agreement on the Exchange of Readily Available Information on Immovable Property (IPI MCAA), a framework that will govern the automatic exchange of information on properties located abroad and on the related purchase and sale transactions.

The first 25 participating jurisdictions include:

- 14 EU Member States: Belgium, Finland, France, Germany, Greece, Ireland, Italy, Lithuania, Malta, Portugal, Romania, Slovenia, Spain and Sweden;
- 4 non-EU States and territories within geographical Europe: Iceland, Norway, the United Kingdom and Gibraltar;
- 7 non-European States: Brazil, Chile, Costa Rica, Korea, New Zealand, Peru and South Africa.

The IPI MCAA is structured into two modules:

- the first covers information on immovable property held, sold, or purchased by non-residents;
- the second concerns information on "recurring income" generated by the property (e.g., rental income).

The new measures are expected to become fully effective in 2029 or 2030.

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6. Remote Working - Implications for Income Sourcing, Corporate Residence, Permanent Establishments, and Transfer Pricing

The OECD document "Global Mobility of Individuals", which analyses a series of issues relating to worker mo-bility that may have consequences for the application of various treaty provisions, was open for public consulta-tion until 22 December 2025.

With regard to the position of employees, the main issues concern:

- the individual's tax residence;
- the territoriality of the income generated;
- the possible divergent qualification of the income (as employment income or self-employment income) in the jurisdictions involved;
- the interaction with national incentive regimes aimed at attracting highly skilled workers or digital nomads.

With regard to the employer's position, the issues examined include:

- whether a remote worker could create a permanent establishment (physical, agency, or service PE) in the other State;
- the company's tax residence, particularly in situations where the board of directors and/or shareholders' meetings are held remotely;
- transfer pricing implications.

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