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The Italian Supreme Court affirmed the application of a domestic withholding tax exemption on interest out of financing also in case of a “look-through” approach

On February 20, 2025, the Italian Supreme Court issued landmark decision No. 4427, overturning the Italian Tax Authorities’ interpretation of the application of withholding tax exemption under Article 26, par. 5-bis of Presidential Decree 600/73.

Scope of the withholding tax exemption under Article 26, par. 5-bis of Presidential Decree 600/1973

Article 26, par. 5-bis of Presidential Decree 600/1973 exempts from a 26% withholding tax interest payments on medium-to-long-term loans made available to Italian businesses (*imprese*) by qualified foreign entities (provided they comply with Italian banking regulations on lending activities), including:

- EU banks;
- EU-regulated insurance companies;
- institutional foreign investors subject to regulatory supervision, even if not subject to tax (such as collective investment funds), established in countries allowing a satisfactory exchange of information with Italy.

The case involved an Italian company that received financing from its Luxembourg-based parent company (a SARL), which itself had received the relevant funds from its sole shareholder, a Luxembourg investment fund. The Italian Tax Authorities, in line with their well-established interpretation of the provision at hand, argued that the withholding tax exemption could not apply because the “immediate recipient” of the interest payments (i.e., the parent company) did not qualify as the beneficial owner of such income.

The Supreme Court rejected the Italian Tax Authorities’ position and concluded that in case of “indirect” financing, characterized by the interposition of an entity that physically receives interest payments but it is required to transfer them to a third-party ultimate lender, it is with reference to the latter – considered the beneficial owner of the taxable income – that eligibility for the withholding tax exemption shall be verified (rather than assessing the eligibility of the exemption at the level of the “immediate recipient” of the interest payments).

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