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Italian Tax Authorities clarify that UK banks and other non-EU banks do not qualify for the withholding tax exemption on interest and other proceeds from medium-long-term loans

With answer to ruling no. 839 of 21 December 2021 (the **Ruling 839/2021**), the Italian Tax Authorities (**ITA**) clarify that credit institutions established in the United Kingdom (**UK**) cannot benefit from the withholding tax exemption on interest and other proceeds from medium-long term loans provided for by Article 26, para. 5-bis, of Presidential Decree no. 600/1973 (the **Decree 600/1973**).

1. Background

Article 26, para. 5-bis, of Decree 600/1973 provides for a withholding tax exemption on interest and other proceeds deriving from medium-long term loans made to Italian businesses by certain qualified intermediaries, including (among others):

- a. credit institutions established in a EU Member State and
- b. foreign institutional investors, as defined by Article 6, par. 1, let. b) of Legislative Decree no. 239 of 1 April 1996, which are (x) resident or established in a Country guaranteeing an adequate exchange of information with Italy on tax matters (**white-list countries**) and (y) subject to forms of regulatory supervision in the State of incorporation.

In Ruling 839/2021 ITA express the view that neither of the definitions depicted above includes UK credit institutions, for the following reasons.

1) The UK is no longer a EU Member State, thus UK credit institutions cannot be considered as EU credits institutions for the purposes of Article 26, para. 5-bis, of Decree no. 600/73

Because of Brexit, and after the end of the transition period established under the withdrawal agreement (30 January 2020), the UK (i) is no longer a Member State of the EU and therefore (ii) its credit institutions cannot access rights and benefits recognized to other EU Member States.

Indeed, none of the principles lay down by the EU-UK Trade and Cooperation Agreement (**TCA**) provide for any assimilation of the UK credit institutions with those of EU Member States.

The above, in ITA's view, does not represent an arbitrary or unjustifiable discrimination against UK credit institutions as they would be treated exactly as all other non-EU credit institutions.

2) Non-EU credit institutions cannot be considered as white-listed *institutional investors* for the purposes of the withholding tax exemption

Under general principles of Italian tax law, tax provisions laying down favourable tax regimes shall be interpreted in a strict way.

Article 26, para. 5-bis, of Decree 600/73 makes explicit reference to "*credits institutions established in a EU Member State*", on one side, and to "*institutional investors subject to supervision*" resident or established in a white-list country, on the other side. The wording is therefore precise and does not leave ground to extensive interpretation.

In ITA's view, by making reference to EU credit institutions Article 26, para. 5-bis, of Decree 600/73 makes apparent the intention of the Italian legislator to exclude from the scope of application non-EU banks.

Starting as of 1 January 2021, therefore, UK credit institutions cannot access the withholding tax exemption neither in their capacity as credit institutions (since they cannot be treated similarly to EU banks) nor as white-listed "institutional investors subject to supervision" under Article 26, para. 5-bis, of Decree 600/73.

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