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Italian withholding taxes on dividends distributed to foreign investment funds incompatible with EU law

The Italian Supreme Court issued seven important judgments in which it ruled that Italian withholding taxes levied on dividends distributed to a German investment fund and six US investment funds are in violation of the EU principles on the free movement of capital (Article 63 (TFEU).

All the funds benefited from the reduced dividend withholding tax of 15% in accordance with the applicable double tax treaty into force between Italy and the respective foreign countries concerned (i. e. Germany and the USA). However, whilst Italian investment funds were not subject to withholding tax and were only subject to a taxation of 12,5% - which could be reduced to 5% or 0% under specific circumstances the Italian Supreme Court held this to be discriminating for the foreign funds.

Notably, the fact that the claimant was fully owned by a German insurance company did not affect the comparability of the **German fund** with an Italian open-end investment fund – which under Italian law requires multiple investors - due to the fact the sole investor, being an institutional investor, was in any case representing a plurality of separate interests, collectively managed.

The Italian Supreme Court further acknowledged that notwithstanding the fact that the claimants were **investment funds governed by US law** and therefore they were not resident in a Member State of the EU, the principle of equal treatment enshrined in Art. 63 TFEU applies also with respect to taxpayers resident in third countries, like the US.

More information and the takeway of this decision will soon be available for download on the **website** of the pwc EU Direct Tax Group.

Keywords

investment funds, withholding tax refund