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Italian dividend whitholding tax exemption on outbound dividends to Swiss tax resident parent company

The opinion of the Italian Revenue Agency dated 2nd March 2021 (Ruling no. 135/2021) recognizes, with effect from 1 January 2020, **the exemption from Italian withholding tax on dividends paid by the subsidiary to a Swiss parent company**, even in case the latter merely holds and administers participations.

This leads to a positive conclusion to a chapter of "tax history", which has been conflictual and prejudicial for Swiss companies holding Italian affiliates, and which has involved Switzerland in decades of tax disputes with Italy concerning the application of the EU Directive which exempts, under certain conditions, the taxation of dividends in an intercompany relationship between subsidiary and related parent company.

It is necessary to go back to the Swiss-EU Agreement on the Taxation of Savings of 16 years ago (entered into force on 1st July 2005), according to which Switzerland succeeded in the negotiations of Article 15 (later included in Article 9 of the amending Protocol published on 19th December 2015) by obtaining a EU recognition for the application of equivalent measures as defined in the EU Directives establishing exemption from withholding tax on intra-group payments of dividends, interest and royalties.

One of the conditions that must necessarily be fulfilled for the tax exemption to be recognized is that both companies (the EU “daughter” company and the Swiss “mother” company) must qualify as tax residents in their respective countries and both companies must be subject to direct tax on profits, without benefiting from exemptions.

Contrary to the tenor of the tax treaties as in force between Switzerland and other EU countries, the Italian-Swiss Convention does not provide for exemption from Italian withholding tax on intra-group dividends (currently 15%) and it is only the Protocol of Amendment to the Savings Agreement that would allow the application of the exemption, provided all the conditions are met.

Switzerland has benefited, on the basis of its various cantonal tax laws, from special tax regimes for holding, domiciliary and auxiliary companies, considered to be harmful by the EU because they distort competition, since such favorable regimes can be equated to state aid.
With the entry into force of the Swiss Federal Act on Tax Reform and AVS Financing (i.e. TRAF) and the respective cantonal reforms, the aforementioned cantonal tax privileges have been repealed with effect from 1st January 2020, allowing the Swiss company (even if a "pure" holding company) to prove the absence of special favorable regimes consisting in the exemption from one of the three levels of direct taxation (federal, cantonal and municipal). The "participation reduction" which, according to Swiss tax law, results in a substantial non-taxation of dividends (by analogy with the well-known EU "participation exemptions") does not affect, as pointed out by the Italian Revenue Agency, the fulfilment of the condition referring to ordinary Swiss taxation.

The decision of the Italian Revenue Agency on 2nd March *de facto* allows Swiss companies to apply the benefits of the EU Parent Subsidiary Directive regime with Italy as of 1st January 2020.
This is a decisive improvement in Italian-Swiss tax relations for direct investments between the two countries.
Thanks to this decision, the attractiveness of Swiss and especially Ticino holding companies is increased. The next step is the alignment of the Italian-Swiss Convention to Article 9 of the Protocol of Amendment to the Switzerland-EU Agreement as signed on 26th October 2004.

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