Holding companies that do not distribute dividends: the risk of abuse of law

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IN SHORT

A holding company that collects dividends from its subsidiaries and does not distribute them to individual shareholders does not, by that fact alone, carry out an abusive transaction. The exclusion from income of 95% of the dividends received by the holding (Article 89 TUIR) defers the shareholder's tax, at 26%, until distribution: it is an effect provided for by the system, and Article 10-bis of Law 212/2000 preserves the freedom to choose among transactions with a different tax burden. The Revenue Agency, recalling the policy instruction (atto di indirizzo) of the Ministry of Economy and Finance of 27 February 2025, conducts the abuse inquiry starting from the search for an undue tax advantage (ruling no. 155/2026). The critical point is the use of the cash: in the same ruling the finding of non-abusiveness is subject to the actual use of the dividends in a business activity and to the condition that the transaction is not prearranged for the repayment of shareholder loans in place of a distribution. In an earlier ruling the Agency treated as a condition of non-abusiveness that the company's assets are not used for the shareholders' personal or family purposes and that there are no financial flows to the shareholders other than dividends, for example loans or guarantees (ruling no. 496/2022). As at November 2026 there are no decisions of the Supreme Court (Corte di cassazione) specifically concerning a holding that retains profits. The holding's position is supported by documenting the extra-fiscal

> reasons and the programme for the use of the cash; in doubtful cases an anti-abuse ruling request is available.

Dividends received by the holding and the shareholder's tax: a deferral provided for by the system

A holding subject to IRES excludes from income 95% of the dividends received from its subsidiaries: only 5% forms part of taxable income (Article 89(2) TUIR). The individual shareholder is taxed at the rate of 26% (Article 27(1) of Presidential Decree 600/1973) when the holding distributes the profits to him or her; for so long as the profits remain in the company, the shareholder's tax is not due.

On dividends of EUR 1,000,000 received by the holding, for example, the IRES base is EUR 50,000 and the tax, at the ordinary rate of 24% (Article 77 TUIR), is EUR 12,000. The same amount received directly by the individual shareholder would bear tax of EUR 260,000. When the holding distributes the profits, the shareholder pays 26% on the amount distributed. The difference is therefore a deferral of the shareholder's tax, which lasts as long as the profits remain in the holding, with the additional cost of IRES on the 5%.

The formation of the holding by a contribution at a controlled realisation (Article 177 TUIR), the distinction between a financial and an industrial holding and the exemption of capital gains (Article 87 TUIR) are dealt with in the guide Generational transfer through a family holding company in Italy.

Abuse of law: Article 10-bis of Law 212/2000 and the order of the inquiry

Abuse of law is constituted by one or more transactions lacking economic substance which, while formally complying with the tax rules, essentially achieve undue tax advantages (Article 10-bis(1) of Law 212/2000). Undue tax advantages are benefits, including non-immediate benefits, achieved in contrast with the purposes of the tax rules or with the principles of the tax system (paragraph 2(b)). The elements must all be present:

lack of economic substance, an undue tax advantage and the essential character of the advantage.

Abuse is excluded:

- for transactions justified by «valid non-marginal extra-fiscal reasons, including organisational or managerial reasons, that serve the purpose of a structural or functional improvement of the enterprise or of the taxpayer's professional activity» (paragraph 3);
- in the choice among optional regimes offered by the law and among transactions that involve a different tax burden, which remains free (paragraph 4).

According to the policy instruction of the Ministry of Economy and Finance of 27 February 2025, prot. no. 7, the inquiry into the three elements «is to be conducted by giving priority to the search for the undue tax advantage»: if the undue advantage is lacking, abuse is excluded «ab origine», without examination of the other elements. The Revenue Agency recalls this order in ruling no. 155/2026.

If abuse is established, the transactions are not enforceable against the tax administration, which disallows the advantages and determines the taxes on the basis of the rules and principles that were avoided, taking into account what the taxpayer paid as a result of those transactions (paragraph 1).

A holding that does not distribute: physiological deferral and deferral without a time limit

The choice between distributing profits to the shareholders at once and retaining them in the holding falls, in principle, within the freedom of choice in paragraph 4, for so long as the cash remains employed in the circuit of the business. The deferral of the shareholder's tax is the ordinary effect of Article 89 TUIR and of the shareholders' decision on the allocation of profits.

According to the policy instruction of 27 February 2025, the reference in Article 10-bis to benefits «including non-immediate benefits» may lead to including in the tax advantage also deferrals of taxation, «provided it is a deferral of taxation sine die or significantly postponed, and therefore not merely temporary»; it remains in any event to be verified

that the advantage is undue. The instruction does not deal specifically with holdings. According to part of the legal writing, the deferral inherent in the dividends regime is not abusive, whereas the deferral without a time limit of the so-called «static» holding, which retains profits without employing them in an economic activity, could be treated as an undue advantage, with a possible recharacterisation, for example, as a distribution of profits to the shareholders. As at November 2026 there are no decisions of the Supreme Court on the point.

Ruling no. 155/2026: the use of dividends in the business activity

In ruling no. 155 of 7 August 2026 an individual shareholder contributes, under the regime of Article 177(2) TUIR, the shares of a commercial company into a real-estate company wholly owned by him, allocating the contribution to net equity without an increase in capital, and states that he intends to invest the dividends in new real-estate ventures destined for the market.

The Revenue Agency allows the controlled realisation and excludes abuse, because it does not identify an undue tax advantage; repayment of the shareholder's loans was presented by the applicant as «possible» and «residual». The finding of non-abusiveness is however subject to the condition that the contribution «is followed by the actual use of the financial resources arising from the distribution of dividends by the contributed company in the actual carrying on … of a business activity». The contribution must not be «prearranged with the intention of directing the financial resources … to the repayment of the shareholders' loans in place of their direct distribution». If the management of the cash proved «merely instrumental to the repayment of the Loans to the Applicant, a breach of the rationale of the “controlled realisation” regime could be made out».

The ruling is given on the facts represented by the applicant. It follows that the inquiry does not end at the moment of the contribution: what matters is the subsequent management of the cash, which must be consistent with the reasons declared when the holding was formed.

Uses of cash that expose the structure to challenge

Attention shifts from how much the holding retains to how it uses the dividends received. Uses that cause the cash to reach the shareholders without a distribution expose the structure to challenge:

- the use of dividends to repay the shareholders' loans, when the management of the cash proves to be prearranged or «merely instrumental» to that purpose (ruling no. 155/2026);
- financial flows to the shareholders other than dividends, «for example, by way of loan/guarantee»: ruling no. 496 of 6 October 2022 treats this as a condition of non-abusiveness;
- the use of the company's assets for the shareholders' personal or family purposes, for example residential properties, cars or boats: the same ruling requires that no asset be used «to achieve exclusively personal or family objectives or, in general, objectives outside a business context».

Already in ruling no. 215 of 26 April 2022 the Agency had indicated that a company lacking «economic vitality», used for the «mere enjoyment of assets», may prove to be a «mere vehicle» serving to circumvent the withholding on dividends. The rulings are given on the facts represented by the applicants and concern contributions at a controlled realisation (in no. 496/2022, followed by a demerger).

In the uses indicated above the shareholders dispose of the resources without the 26% tax provided for a distribution. For assets registered in the holding's name and used by the shareholders, fictitious interposition may also be relevant, to be assessed case by case: the administration must show, including by serious, precise and consistent presumptions, that the shareholder is the effective owner of the income through an interposed person (Article 37(3) of Presidential Decree 600/1973; from 2027, Article 252(3) of Legislative Decree 141/2026). The aspects of a holding that holds assets made available to family members are recalled in the guide on the family holding company.

If the shareholders need cash, the route consistent with the regime is the distribution of dividends with ordinary taxation.

Valid extra-fiscal reasons and their documentation

Non-marginal extra-fiscal reasons for retaining profits in the holding may be, for example:

- the financing of investments of the group companies;
- the strengthening of equity as security for bank facilities;
- the concentration of governance in a generational transfer;
- the constitution of cash reserves for documented acquisitions.

The reasons must appear from documents: resolutions and investment plans of the holding, the absence of flows to the shareholders other than taxed dividends, consistency between the reasons declared at the contribution (Article 177 TUIR) and the subsequent management.

The case law of the Supreme Court

As at November 2026 there are no decisions of the Supreme Court specifically concerning a holding that accumulates dividends without distributing them. Recent decisions concern neighbouring transactions. Cass. order no. 6741/2025 (ItalgiureWeb) excluded abuse in a *leveraged cash out* transaction with a family holding, dismissing the Revenue Agency's appeal and recognising valid economic reasons in the reorganisation of the group and in the generational transfer.

Foreign holdings and sub-holdings in the European Union: Article 27-bis of Presidential Decree 600/1973

Article 27-bis of Presidential Decree 600/1973 allows parent companies resident in other Member States of the European Union to obtain a refund of the withholding on dividends or, on request, its non-application. It concerns foreign holdings and ownership chains with a sub-holding in the Union, not an Italian holding owned by resident individuals. In these structures the status of beneficial owner of the dividends and the substance of the

recipient company are relevant; Cass. order no. 32149/2025 (ItalgiureWeb) examined the status of beneficial owner of dividends distributed to an EU sub-holding.

Topics dealt with in the guide on the family holding company

The following are dealt with in the guide Generational transfer through a family holding company in Italy, to which reference is made:

- the contribution of shareholdings at a controlled realisation (Article 177 TUIR);
- the regime of the holding's dividends and capital gains (Articles 89 and 87 TUIR, PEX) and the distinction between a financial and an industrial holding (Article 162-bis TUIR);
- the exemption from inheritance and gift tax for controlling shareholdings (Article 3(4-ter) TUS), in the text replaced by Legislative Decree 139/2024;
- the non-operating company test (società di comodo) (Article 30 of Law 724/1994), to be carried out every year for a holding with cash or non-instrumental assets;
- the family pact, usufruct and bare ownership of the shares;
- abuse of law in the contribution and in the subsequent gift of the shares (rulings no. 42/2026 and no. 115/2026).

From 1 January 2027: new article numbers

From 1 January 2027 the new consolidated laws apply:

- Income Tax Code (Legislative Decree 117 of 19 June 2026): Article 89 becomes Article 98, Article 87 Article 96, Article 77 (IRES rate) Article 86; Article 177 keeps its number;
- Consolidated Law on payments and collection (Legislative Decree 33 of 24 March 2025): the 26% withholding on dividends moves from Article 27 of Presidential Decree 600/1973 to Article 55, and Article 27-bis becomes Article 56;
- Consolidated Law on compliance and assessment (Legislative Decree 141 of 5 August 2026): Article 37(3) of Presidential Decree 600/1973 becomes Article 252(3).

What to do in practice

1. **Function of the holding**: document it at the contribution and then every year, with the programme for the use of the cash (investments in the group, new ventures, shareholdings, reserves for acquisitions).
2. **Allocation of profits**: resolve it consistently with the programme and with the reasons declared at the contribution.
3. **Uses to avoid**: applying the dividends received, in a prearranged or prevailing way, to the repayment of the shareholders' loans; granting loans or guarantees to the shareholders; using the holding's assets for the shareholders' personal or family purposes.
4. **Cash for the shareholders**: if needed, distribute dividends with ordinary taxation.
5. **Non-operating companies**: carry out the test every year, as indicated in the guide on the family holding company.
6. **Anti-abuse ruling request**: in doubtful cases, submit it (Article 11(1)(c) of Law 212/2000; Article 10-bis(5)) before carrying out the transaction, as in the case of ruling no. 155/2026. The law in any event requires the application to be submitted before the deadlines for the return or for the other formalities connected with the situation (Article 2(2) of Legislative Decree 156/2015).
7. **Groups with foreign holdings**: check the beneficial owner and the substance of the companies for the purposes of Article 27-bis of Presidential Decree 600/1973.

Key risks

- **Uses of cash for the benefit of the shareholders** (prearranged repayment of loans, loans or guarantees, assets for personal or family use): a challenge of abuse, with disallowance of the advantage and determination of the taxes on the basis of the rules that were avoided (Article 10-bis of Law 212/2000; rulings no. 496/2022 and no. 155/2026).

- **Assets of the holding used by the shareholders**: possible attribution of the income to the shareholders for fictitious interposition, to be assessed case by case (Article 37(3) of Presidential Decree 600/1973).
- **Inconsistency between the reasons for the contribution and the subsequent management**: according to ruling no. 155/2026 this may amount to a breach of the rationale of the controlled-realisation regime.
- **Deferral without a time limit («static» holding)**: under the policy instruction of 27 February 2025 a deferral of taxation «sine die or significantly postponed» may constitute a tax advantage, whose undue character must be verified; according to part of the legal writing the risk concerns a holding that retains profits without employing them in an economic activity. There are no decisions of the Supreme Court on the point.
- **Non-operating companies**: presumed minimum income and other penalties if the proceeds are below the statutory minima (Article 30 of Law 724/1994), as indicated in the guide on the family holding company.

Frequently asked questions

If the holding does not distribute the dividends, is there abuse of law?

Not by the mere fact that the profits remain in the holding. The exclusion from income of 95% of the dividends (Article 89 TUIR) defers the shareholder's tax until distribution and is an effect provided for by the system; Article 10-bis of Law 212/2000 preserves the freedom to choose among transactions with a different tax burden. The risk concerns the use of the cash: according to ruling no. 155/2026 the dividends must be used in a business activity.

How much is saved by retaining the dividends in the holding?

On EUR 1,000,000 of dividends the holding bears IRES on the 5%, that is EUR 12,000 at the ordinary rate of 24% (Article 77 TUIR), whereas the individual shareholder who received them directly would pay EUR 260,000. When the holding distributes the

profits, the shareholder pays 26%. It is therefore a deferral of the shareholder's tax, not an exemption.

For how long may the holding retain the profits?

The law does not set a time limit. According to the policy instruction of the Ministry of Economy and Finance of 27 February 2025, a deferral of taxation may also fall within the tax advantage if the deferral is «sine die or significantly postponed, and therefore not merely temporary»; it must in any event be verified that the advantage is undue. According to part of the legal writing the risk concerns the «static» holding that retains profits without employing them in an economic activity, with a possible recharacterisation as a distribution of profits. There are no decisions of the Supreme Court on the point. What matters is the use of the cash and the documented reasons.

May the holding repay the shareholders' loans with the dividends received?

That is the use on which ruling no. 155/2026 dwells. In the case examined the Agency excluded abuse: repayment was presented as possible and residual. The finding of non-abusiveness is however subject to the actual use of the dividends in the carrying on of a business activity and to the condition that the transaction is not prearranged for the repayment of the shareholders' loans in place of a distribution. If the management of the cash proved merely instrumental to the repayment, according to the Agency a breach of the rationale of the controlled-realisation regime could be made out.

May the holding lend to the shareholders or acquire assets for their use?

These are uses that cause the cash to reach the shareholders without a distribution and without the 26% tax. In ruling no. 496/2022 the Revenue Agency treated as a condition of non-abusiveness that no asset of the company be used for the shareholders' personal or family purposes and that there be no financial flows to the shareholders other than dividends, for example loans or guarantees. For assets registered in the holding's name and used by the shareholders, such as residential

properties, cars or boats, fictitious interposition may also be relevant (Article 37(3) of Presidential Decree 600/1973), to be assessed case by case.

What reasons justify the choice not to distribute the profits?

Article 10-bis(3) of Law 212/2000 excludes abuse where there are valid non-marginal extra-fiscal reasons, including organisational or managerial reasons. These may include the financing of the group's investments, the strengthening of equity as security for the banks, the concentration of governance in a generational transfer and reserves for documented acquisitions.

What did the Revenue Agency clarify in ruling no. 155/2026?

In the case of a shareholder who contributes at a controlled realisation the shares of a commercial company into a real-estate company wholly owned by him, the Agency allows the regime of Article 177(2) TUIR, recalls the order of inquiry in the policy instruction of 27 February 2025, excludes abuse for lack of an undue tax advantage and makes the finding subject to the actual use of the dividends in a business activity and to the condition that the transaction is not prearranged for the repayment of the shareholders' loans in place of a distribution (ruling no. 155/2026).

Are there Supreme Court decisions on a holding that does not distribute?

As at November 2026 there are no specific decisions of the Supreme Court. Recent decisions concern neighbouring transactions: Cass. order no. 6741/2025 (ItalgiureWeb) excluded abuse in a *leveraged cash out* transaction with a family holding, recognising valid economic reasons in the reorganisation and in the generational transfer.

How is it documented that the holding is not abusive?

By resolutions and investment plans of the holding, by evidence that there are no flows to the shareholders other than taxed dividends, and by consistency between the reasons declared at the contribution and the subsequent management. In

doubtful cases an anti-abuse ruling request may be submitted (Article 11(1)(c) of Law 212/2000), as a rule before carrying out the transaction and in any event before the deadlines for the return or for the other connected formalities (Article 2(2) of Legislative Decree 156/2015).

Does Article 27-bis of Presidential Decree 600/1973 concern an Italian holding of individual shareholders?

No. Article 27-bis allows parent companies resident in other Member States of the European Union to obtain a refund of the withholding on dividends or, on request, its non-application, and concerns foreign holdings or chains with an EU sub-holding. In these structures the beneficial owner and the substance of the recipient company are relevant, as examined by Cass. order no. 32149/2025 (ItalgiureWeb).

Legal sources

Legislation

- Article 10-bis, Law 212 of 27 July 2000 – Normattiva
- Article 11, Law 212 of 27 July 2000 – Normattiva
- Article 2, Legislative Decree 156 of 24 September 2015 – Normattiva
- Article 77 TUIR – Normattiva
- Article 87 TUIR – Normattiva
- Article 89 TUIR – Normattiva
- Article 162-bis TUIR – Normattiva
- Article 177 TUIR – Normattiva
- Article 27, Presidential Decree 600 of 29 September 1973 – Normattiva
- Article 27-bis, Presidential Decree 600 of 29 September 1973 – Normattiva
- Article 37, Presidential Decree 600 of 29 September 1973 – Normattiva
- Article 3, Legislative Decree 346 of 31 October 1990 – Normattiva
- Legislative Decree 139 of 18 September 2024 – Normattiva

- Article 30, Law 724 of 23 December 1994 – Normattiva
- From 1 January 2027: Legislative Decree 117 of 19 June 2026, Article 86, Article 96, Article 98 and Article 177; Legislative Decree 33 of 24 March 2025, Article 55 and Article 56; Legislative Decree 141 of 5 August 2026, Article 252 – Normattiva

Administrative practice

- Revenue Agency ruling no. 215 of 26 April 2022
- Revenue Agency ruling no. 496 of 6 October 2022
- Policy instruction of the Ministry of Economy and Finance of 27 February 2025, prot. no. 7 – Department of Finance
- Rules on abuse of law or tax avoidance – Department of Finance
- Revenue Agency ruling no. 42 of 18 February 2026
- Revenue Agency ruling no. 115 of 4 June 2026
- Revenue Agency ruling no. 155 of 7 August 2026

Case law

- Cass. order of 14 March 2025, no. 6741 – ItalgiureWeb
- Cass. order of 10 December 2025, no. 32149 – ItalgiureWeb

Related guide

- Generational transfer through a family holding company in Italy

Contact

For the examination of a specific case, the contact page is available.

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