Setting up a company abroad: international tax aspects

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SUMMARY

Anyone who sets up or controls from Italy a company in another State must check four aspects before the deed of incorporation. The first is residence: the company is considered resident in Italy if, for the greater part of the tax period, it has in Italy its registered office, its place of effective management (sede di direzione effettiva) or its principal day-to-day management (gestione ordinaria in via principale) (Article 73(3) of the Italian Income Tax Code, TUIR, in the text applicable from 2024); in that case its income is taxed in Italy. The second is the CFC regime: if the controlled foreign company does not pass the 15% test on its certified financial statements and has an effective tax rate lower than half of the one it would have borne in Italy, and more than one third of its revenue consists of passive income, its income is attributed to the Italian shareholder, unless the company carries on a substantive economic activity (Article 167 TUIR). The third is taxation in the foreign State, to be checked under local law and under the tax treaty with Italy. The fourth is the withholding taxes on dividends, interest and royalties paid to the Italian shareholder, which tax treaties limit and which, between companies, the EU directives and the EU-Switzerland Agreement may exclude, subject to the anti-abuse rules and the beneficial owner requirement. From 1 January 2027 the TUIR references move to the Consolidated Act approved by Legislative Decree No. 117 of 19 June 2026.

Foreign subsidiary or permanent establishment

To operate in another State an Italian business can set up a subsidiary, which is a separate legal entity, or open a permanent establishment, that is, a fixed place of business through which the business carries on all or part of its activity in the other State, without creating a separate entity (Article 162 TUIR, from 2027 Article 183 of Legislative Decree No. 117/2026, and Article 5 of the double tax treaties). The choice affects the taxation of the income earned abroad.

- **Subsidiary.** The income is taxed in the State in which the company is resident; in Italy the shareholder is taxed on the profits distributed. Sham foreign residence and the CFC regime, described below, remain applicable.
- **Permanent establishment.** The income is taxed in the foreign State and is also included in the income of the Italian company, with a credit for the taxes paid abroad (Article 165 TUIR; from 2027 Article 185 of Legislative Decree No. 117/2026). Alternatively, the Italian company may opt for the exemption of the profits and losses of all its foreign permanent establishments (branch exemption): the option is irrevocable and is exercised when the permanent establishment is set up; for low-taxed permanent establishments with passive income it requires the CFC exemption (Article 168-ter(1)-(4) TUIR; from 2027 Article 184).
- **Transfer pricing.** In both cases dealings with the Italian company must be valued at arm's length: for the subsidiary the transfer pricing rules apply (Article 110(7) TUIR; from 2027 Article 119(8) of Legislative Decree No. 117/2026); for the permanent establishment under the branch exemption regime, the criteria of Article 152 TUIR, referred to in Article 168-ter(10).

Where the company is resident: the three criteria of Article 73 TUIR

For income tax purposes, companies and entities are resident in Italy if, for the greater part of the tax period, they have at least one of the following in the territory of the State (Article 73(3) TUIR, replaced by Article 2 of Legislative Decree No. 209 of 27 December 2023; from 2027 Article 82 of Legislative Decree No. 117/2026):

- **the registered office**;

- **the place of effective management**, that is, the place of the «continuous and coordinated taking of strategic decisions concerning the company or entity as a whole» (our translation);
- **the principal day-to-day management**, that is, the place of the «continuous and coordinated performance of the acts of current management concerning the company or entity as a whole» (our translation).

The criteria are alternative: one is enough, provided it exists for the greater part of the tax period (Revenue Agency (Agenzia delle Entrate) circular No. 20/E of 4 November 2024, Part II). The new rules apply from the tax period following the one in progress on 29 December 2023: for companies whose financial year coincides with the calendar year, from 1 January 2024 (Article 7(2) of Legislative Decree No. 209/2023; circular No. 20/E/2024, § 2.3). The criteria of the «place of administration» (sede dell'amministrazione) and of the «main object» (oggetto principale) are no longer in force and remain relevant only for earlier tax periods.

According to circular No. 20/E/2024, shareholders' decisions are not relevant for the place of effective management, except those with management content, and supervision and monitoring activities are not relevant either. Technological development makes it possible to take decisions in a place other than the one in which the business is carried on, so the assessment must be made case by case. The words «in via principale» (principally) distinguish the company's day-to-day management from the activity carried on through a permanent establishment.

If the company is resident both in Italy and in the other State, the dual residence is resolved under the rule of the applicable double tax treaty: in most treaties the tie-breaker rule gives priority to the place of effective management in the treaty sense (luogo di direzione effettiva), while some recent treaties refer to a mutual agreement procedure between the tax authorities, as in the current Article 4(3) of the OECD Model Tax Convention (circular No. 20/E/2024, § 3).

The presumption of residence for a foreign holding company

Article 73(5-bis) TUIR (from 2027 Article 82(6) of Legislative Decree No. 117/2026) presumes resident in Italy, unless proven otherwise, foreign companies and entities that hold controlling interests within the meaning of Article 2359(1) of the Civil Code in resident companies limited by shares or commercial entities, if, alternatively:

- they are controlled, also indirectly, by persons resident in Italy; or
- they are managed by a board of directors, or other equivalent body, composed mainly of directors resident in Italy.

Control is checked on the closing date of the foreign company's financial year and, for individuals, the votes of family members are also taken into account (Article 73(5-ter) TUIR). The presumption reverses the burden of proof: it is the taxpayer who must prove that the company is resident abroad.

The presumption requires the foreign company to control an Italian company. The Italian Supreme Court (Corte di cassazione) has clarified that it operates only where the «twofold requirement» (our translation) of control of an Italian company and of control or management by residents is met (Supreme Court, Tax Section (Sezione V), judgment No. 3386/2024); the Revenue Agency has excluded the application of the rule to a foreign company with no controlling interests in Italian companies (ruling No. 27 of 17 January 2022). For a foreign company without Italian subsidiaries, the three criteria of paragraph 3 must still be checked.

How the Supreme Court assesses sham foreign residence

Sham foreign residence (esterovestizione) is the «fictitious location of the tax residence of a company abroad, in particular in a country with a more favourable tax treatment than the domestic one» (our translation) (Supreme Court, Tax Section, judgment No. 16697/2019). The available decisions concern tax periods before 2024, and therefore the previous text of Article 73, which referred to the «place of administration»; there are as yet no decisions on the current text. The Supreme Court has identified the place of administration with the effective seat, that is, the place where administrative and management activities are actually carried on and where the corporate bodies and offices are centralised for the

conduct of business (Supreme Court, Tax Section, judgment No. 2869/2013). The same interpretative key is useful for the «place of effective management».

According to the Supreme Court, the connecting criteria of Article 73 are «equal and alternative» and their presence for the greater part of the tax period determines residence in Italy «irrespective of any finding of an avoidance purpose» (our translation) (Supreme Court, Tax Section, order No. 23150/2022). Other decisions, for transactions within the European Union, link sham foreign residence to a wholly artificial arrangement, referring to the judgment of the Court of Justice of the EU of 12 September 2006, case C-196/04 (Supreme Court, Tax Section, judgment No. 2869/2013; Supreme Court, Tax Section, order No. 15424/2021).

The Supreme Court has listed, «by way of example and not exhaustively» (our translation), the indicators from which the effective seat can be inferred (Supreme Court, Tax Section, judgment No. 32743/2025):

- the place where the directors meet and where the will of the management bodies is formed;
- the residence or citizenship of the directors;
- the actual availability of premises suitable for the declared management or operational functions;
- the place where the mandatory accounting records are kept, at least in part;
- substantial and continuous communications showing that the foreign company is directed by others;
- the life span of the foreign company and the investment made to set it up, start it and maintain it.

In a case of a foreign company wholly controlled by an Italian company, in which according to the Revenue Agency the foreign directors merely carried out decisions taken in Italy, the Supreme Court set aside the decision of the lower court that had considered the foreign tax residence certificate alone “decisive” (our translation): the certificate is a «marginal and recessive» element (our translation) and the indications of sham foreign residence must be assessed as a whole, according to the criteria of seriousness, precision and consistency (Supreme Court, Tax Section, judgment No. 2458/2025).

What to document to support foreign residence

If the company is considered resident in Italy, its income is taxed in Italy and, where no tax return has been filed, a penalty of 120% of the taxes due applies, with a minimum of EUR 250 (Article 1(1) of Legislative Decree No. 471 of 18 December 1997, for violations committed from 1 September 2024; from 2027 Article 27 of Legislative Decree No. 173/2024). To support foreign residence, the following should be evidenced by documents bearing a certain date:

- the board meetings held in the foreign State, with minutes recording the strategic decisions and the place where they were taken;
- directors with the skills and powers to decide, and not only to carry out instructions received from Italy;
- premises, staff and equipment suitable for the activity carried on;
- the keeping and storage of the accounting records in the foreign State;
- relationships with banks, customers and suppliers managed by the foreign company;
- the distinction between shareholders' decisions, taken at the shareholders' meeting, and the management of the company.

CFC: when the income of the foreign company is taxed in Italy

The CFC (Controlled Foreign Companies) regime applies to individuals, partnerships, resident companies and entities and Italian permanent establishments of non-residents that control a foreign company (Article 167 TUIR; from 2027 Article 186 of Legislative Decree No. 117/2026). Control exists if the interest is held «directly or indirectly, also through a fiduciary company or a nominee» (our translation), within the meaning of Article 2359 of the Civil Code, or if more than 50% of the participation in profits is held (Article 167(2)). The foreign permanent establishments of the controlled companies and those for which the branch exemption option has been exercised are also included (Article 167(3)). The same rules apply to controlled companies in EU and non-EU States.

The regime applies if two conditions are met together (Article 167(4), as amended by Article 3 of Legislative Decree No. 209/2023 and by Article 4 of Decree-Law No. 84 of 17 June 2025, converted by Law No. 108 of 30 July 2025):

- **low effective taxation.** The first check is the ratio between the current taxes, deferred tax assets and deferred tax liabilities recorded in the controlled company's financial statements and its profit before tax: if it is at least 15% and the financial statements are audited and certified by authorised professionals in the foreign State, the condition is not met. If the financial statements are not certified or the ratio is below 15%, it must be checked whether the effective taxation is lower than half of the one the controlled company would have borne in Italy, according to Revenue Agency Director's Measure No. 376652 of 27 December 2021, which takes into account IRES and not IRAP. The calculation also includes the qualified domestic minimum top-up tax (QDMTT) that may be due by the controlled company in its own State (Article 167(4-bis));
- **passive income.** More than one third of the controlled company's revenue must derive from interest and other income from financial assets, royalties and other income from intellectual property, dividends and capital gains on shareholdings, financial leasing, insurance, banking and financial activities, or from intra-group sales of goods and services with little or no economic value added.

If the regime applies, the income of the controlled company, determined under the IRES rules, is attributed to the Italian shareholder in proportion to its share of the profits and is taxed separately at the average rate applied to its income, which may not be lower than the ordinary IRES rate (Article 167(6)-(8)). The taxes paid abroad by the controlled company are recognised as a credit (paragraph 9) and the profits subsequently distributed are not included in the shareholder's income up to the amount of income already taxed on a look-through basis (paragraph 10).

CFC: exemption, ruling and the FC section of the tax return

The CFC regime does not apply if the shareholder proves that the controlled company «carries on a substantive economic activity, through the use of staff, equipment, assets and premises» (our translation) (Article 167(5)). For this proof Article 167(5) provides for the

evidentiary ruling (interpello probatorio) (Article 11(1)(e) of Law No. 212 of 27 July 2000), which, however, after the reform introduced by Legislative Decree No. 219 of 30 December 2023, may be submitted only by businesses that take part in the cooperative compliance regime (adempimento collaborativo) and by those submitting the new investments ruling (interpello sui nuovi investimenti) (Article 11(2) of Law No. 212/2000). Other shareholders prove the exemption with documentation, also in reply to the notice that the Revenue Agency must serve before issuing an assessment.

The reference administrative practice remains Revenue Agency circular No. 18/E of 27 December 2021 (§ 6 and Annexes 4 and 5):

- the structure must have an «economic substance adequate to the activity carried on» (our translation);
- the controlled company is no longer required to be rooted in the foreign market;
- for holding companies and companies managing assets, the exemption is not granted if staff, premises and equipment are provided by domiciliation companies under management service contracts;
- Annexes 4 and 5 list the documentation useful to prove the exemption.

Those who do not apply the CFC regime without having obtained a favourable reply to a ruling request must report the interest in the tax return, in the FC section (quadro FC) (Article 167(11)). Before issuing an assessment, the Revenue Agency must serve a notice and allow 90 days to provide evidence of the exemption. Failure to report, or incomplete reporting, is punished with a penalty of 10% of the income of the controlled company attributable to the shareholder in proportion to its interest, with a minimum of EUR 1,000 and a maximum of EUR 30,000 for violations committed from 1 September 2024; the minimum penalty applies even if the income of the controlled company is negative (Article 8(3-quater) of Legislative Decree No. 471/1997, as amended by Article 2 of Legislative Decree No. 87 of 14 June 2024; from 2027 Article 33(6) of Legislative Decree No. 173 of 5 November 2024).

CFC: the 15% option on accounting profit

The shareholder may opt for a simplified method of checking the effective taxation: the taxation of the controlled company is deemed to be not lower than 15% if the shareholder pays an amount equal to 15% of the net accounting profit for the year (Article 167(4-ter) TUIR, as amended by Decree-Law No. 84/2025). After the amendment, the rule no longer describes the payment as a «substitute tax» (imposta sostitutiva).

- Net accounting profit is determined without taking into account taxes, write-downs of assets and provisions to risk and charge funds.
- The amount paid is not deductible for income tax and IRAP purposes.
- As long as control continues, the option lasts three financial years and is irrevocable; on expiry it is tacitly renewed for a further three-year period, unless revoked, and it covers all controlled companies with passive income exceeding one third of revenue.
- The financial statements of the controlled companies must be audited and certified (Article 167(4-quater)).
- The option is exercised in the FC section (Revenue Agency Director's Measure No. 106520 of 31 March 2026, which replaces Measure No. 213637 of 30 April 2024).

Profits distributed by the controlled companies and accrued during the three-year option period are deemed to come from States other than those with a preferential tax regime and are taxed under the ordinary rules of Articles 47 and 89 TUIR, with the credit for foreign taxes under Article 165 TUIR (Measure No. 106520/2026, points 7.1 and 7.4). Those who, for 2024, had excluded the profits by applying the previous measure must recalculate their income and pay the additional taxes, without penalties or interest (points 7.2 and 7.3).

Taxation of the company in its own State

Before setting up the company, the following must be checked in the foreign State:

- the headline rate and any special regimes, for example for free zones, holding companies or intellectual property;
- when profits are taxed: some States tax profits only when they are distributed;
- the withholding taxes on dividends, interest and royalties paid to non-residents;
- the double tax treaty with Italy.

Foreign taxation affects Italy in three ways: the effective taxation test for CFC purposes; the regime for dividends from States with a preferential tax regime (Article 47-bis TUIR; from 2027 Article 162 of Legislative Decree No. 117/2026): the profits are fully included in income, unless the shareholder proves that, from the first period of ownership, the shareholding has not had the effect of locating income in those States, in which case the ordinary regime applies; if instead the shareholder proves only that the investee carries on a substantive economic activity, the profits remain fully taxable for individuals and taxable at 50% for companies, with a credit for the taxes paid by the investee (Articles 47(4), 47-bis(2) and 89(3) TUIR); and foreign withholding taxes that cannot be recovered in Italy.

The global minimum tax rules (Pillar 2) concern businesses belonging to groups with annual revenue of EUR 750 million or more in the consolidated financial statements in at least two of the four preceding financial years (Article 10(1) of Legislative Decree No. 209/2023). For entrepreneurs and small and medium-sized businesses, as a rule only the domestic minimum tax that may be paid in the foreign State is relevant, as it enters the calculation of the effective taxation for CFC purposes.

Withholding taxes on dividends, interest and royalties paid to the Italian shareholder

The State of the foreign company may apply a withholding tax on dividends, interest and royalties paid to the Italian shareholder. The rate depends on local law and on the tax treaty with Italy; the treaties signed by Italy often depart from the OECD Model as regards rates, holding periods and the treatment of royalties. In the OECD Model Tax Convention (as it read on 21 November 2017) the limits are as follows:

- **dividends:** the withholding tax of the source State may not exceed 5% if the beneficial owner is a company that holds directly at least 25% of the capital throughout a 365-day period that includes the day of payment, and 15% in all other cases (Article 10(2));
- **interest:** the withholding tax may not exceed 10% (Article 11(2));
- **royalties:** they are taxable only in the State of residence of the beneficial owner (Article 12(1)); many treaties instead provide for a reduced withholding tax.

The OECD Model also provides for the principal purpose test anti-abuse clause: the treaty benefit is not granted if it is reasonable to conclude that obtaining it was one of the principal purposes of the arrangement or transaction, unless it is in accordance with the object and purpose of the treaty (Article 29(9)). The clause applies only if it is contained in the applicable treaty: in 2017 Italy signed the OECD Multilateral Convention that introduces it into existing treaties but, as at 12 November 2026, has not ratified it, so Italian treaties contain the clause only where it has been negotiated bilaterally.

Where the shareholder is an Italian company, the dividend received is included in income for 5% of its amount (Article 89(2) TUIR), unless it comes from a State with a preferential tax regime. For an individual shareholder, the foreign dividend and the credit for the foreign withholding tax are covered in the guide on foreign dividends received by Italian-resident individuals.

EU directives and beneficial owner

If the foreign company is established in a Member State of the European Union and the shareholder is an Italian company, the EU directives may exclude the withholding tax:

- **dividends.** Profits distributed by a subsidiary to its parent company are exempt from withholding tax (Article 5 of Directive 2011/96/EU). The parent company must hold at least 10% of the capital of the subsidiary and the Member State may require an uninterrupted holding period of up to two years (Article 3);
- **interest and royalties.** Payments between associated companies of different Member States are exempt from any tax in the source State if the beneficial owner is the company of another Member State (Article 1(1) of Directive 2003/49/EC). Companies are associated if one holds directly at least 25% of the other, or a third company holds at least 25% of both (Article 3); the State may require a holding period of at least two years (Article 1(10)).

The exemption is granted by the Member State in which the paying company is established, under its own implementing rules, which may provide for specific thresholds, holding periods, documents and anti-abuse rules. The Italian implementing rules (Articles 27-bis and 26-quater of Presidential Decree No. 600 of 29 September 1973; from 2027 Articles 56 and 53 of the Consolidated Act approved by Legislative Decree No. 33 of 24

March 2025) concern payments made by Italian companies to companies of other Member States. The directives do not apply to an individual shareholder, for whom only the tax treaty remains. With the proposal for a directive COM(2026) 560 final of 24 June 2026, under discussion in the Council, the European Commission proposes to simplify the direct taxation directives, among other things by removing the minimum holding in the Interest and Royalties Directive, amending the Parent-Subsidiary Directive and amending the CFC rules of Directive (EU) 2016/1164. It is not in force and may change.

The benefits of the Parent-Subsidiary Directive are not granted to an arrangement put into place for the main purpose, or one of the main purposes, of obtaining a tax advantage that defeats the object or purpose of the directive, and that is not genuine; an arrangement is regarded as not genuine to the extent that it is not put into place for valid commercial reasons which reflect economic reality (Article 1(2) and (3) of Directive 2011/96/EU, inserted by Directive (EU) 2015/121). The Interest and Royalties Directive does not preclude domestic or agreement-based anti-fraud and anti-abuse provisions (Article 5). For interest and royalties, the beneficial owner is the company that receives the payments «for its own benefit and not as an intermediary, such as an agent, trustee or authorised signatory, for some other person» (Article 1(4) of Directive 2003/49/EC).

The Court of Justice of the EU has ruled that exemptions must be refused in the event of abuse even where there are no national or treaty provisions providing for this. Among the indications of abuse it lists the existence of conduit companies without economic justification and the purely formal nature of the structure of the group and of the financing; beneficial owners are the entities that actually benefit, from an economic standpoint, from the income received and can freely decide on its use (CJEU, Grand Chamber, judgments of 26 February 2019, joined cases C-116/16 and C-117/16 and joined cases C-115/16, C-118/16, C-119/16 and C-299/16).

The Supreme Court applies the same principles:

- the burden of proving beneficial owner status lies with the taxpayer and is based on three autonomous tests: substantive business activity, free disposal of the income received (dominion test) and the check that the company is not a mere conduit company (Supreme Court, Tax Section, judgments No. 6005/2023 and No. 8612/2024);
- for parent-subsidiary dividends, the fact that the recipient is not the beneficial owner is an element to be assessed in classifying the structure as abusive (Supreme Court, Tax

Section, judgment No. 16173/2023);

- for a holding company it is not enough to note the absence of an operational structure: the free disposal of the dividends must be checked, taking into account the features of a pure holding company (Supreme Court, Tax Section, order No. 32149/2025);
- the foreign tax residence certificate is not sufficient to recognise beneficial owner status, which must be established in substantive terms (Supreme Court, Tax Section, order No. 32467/2025);
- for royalties covered by a treaty, even a company with a real and operational structure may be a mere intermediary if it passes the royalties on to another group company without actually having them at its disposal (Supreme Court, Tax Section, judgment No. 1635/2026).

Companies in Switzerland: Article 9 of the EU-Switzerland Agreement

The Agreement between the European Community and the Swiss Confederation of 26 October 2004, amended by the Protocol signed on 27 May 2015 and in force since 1 January 2017, contains in Article 9 (formerly Article 15 of the original text) the exemption from taxation in the source State of dividends, interest and royalties paid between companies of a Member State and Swiss companies.

For dividends paid by a subsidiary to its parent company (Article 9(1)), all the following conditions must be met:

- the parent company holds directly at least 25% of the capital of the subsidiary for at least two years;
- one company is resident for tax purposes in a Member State and the other in Switzerland;
- neither company is resident in a third State under a double tax treaty with that State;
- both are subject to corporation tax without being exempted and both are companies limited by shares (for Switzerland, the société anonyme, the société à responsabilité limitée and the société en commandite par actions).

For interest and royalties between associated companies or their permanent establishments (Article 9(2)) the conditions are similar: a minimum direct holding of 25% for at least two years, or a holding of at least 25% in both companies by a third company for at least two years, with the same requirements as to residence, subjection to tax and legal form.

The exemption applies without prejudice to the Swiss and Member State provisions for the prevention of fraud and abuse, whether domestic or agreement-based. Treaties between Switzerland and the Member States providing for more favourable treatment remain applicable (Article 9(3)). Like the directives, Article 9 concerns only relationships between companies: for an individual shareholder the Italy-Switzerland tax treaty remains.

From 1 January 2027: the new statutory references

Legislative Decree No. 117 of 19 June 2026 approves the new Consolidated Income Tax Act, which replaces the TUIR from 1 January 2027. The main correspondences for this guide are:

- Article 73 TUIR (residence of companies) → Article 82; paragraph 5-bis becomes paragraph 6 and paragraph 5-ter becomes paragraph 7;
- Article 167 TUIR (CFC) → Article 186; in particular paragraphs 4-ter, 5 and 11 become paragraphs 6, 8 and 14;
- Article 47-bis TUIR (dividends from preferential regimes) → Article 162;
- Article 165 TUIR (credit for foreign taxes) → Article 185;
- Article 168-ter TUIR (branch exemption) → Article 184;
- Article 162 TUIR (permanent establishment) → Article 183;
- Article 110(7) TUIR → Article 119(8);
- Article 47 TUIR → Article 49; Article 89 TUIR → Article 98;
- Article 166 TUIR (exit taxation) → Article 193;
- Article 1 of Legislative Decree No. 471/1997 (failure to file a tax return) → Article 27 of the Consolidated Act on tax penalties approved by Legislative Decree No. 173 of 5

November 2024; Article 8(3-quater) of Legislative Decree No. 471/1997 (CFC reporting) → Article 33(6) of the same Consolidated Act, which applies from 1 January 2027.

Articles 26-quater and 27-bis of Presidential Decree No. 600/1973 are repealed from 1 January 2027 and the relevant rules move to Articles 56 (dividends) and 53 (interest and royalties) of the Consolidated Act approved by Legislative Decree No. 33 of 24 March 2025.

What to do in practice

1. Choose between a subsidiary and a permanent establishment on the basis of the activity to be carried on, the tax credit or branch exemption regime and the relationships with the Italian company.
2. Check in the foreign State the rate, special regimes, when profits are taxed, outbound withholding taxes and the tax treaty with Italy.
3. Establish where strategic decisions will be taken and current management carried out; appoint directors able to decide in the foreign State and provide the company with suitable premises, staff and equipment.
4. If the foreign company will control an Italian company, check the presumption of Article 73(5-bis) TUIR (control by residents or a board composed mainly of residents) and prepare the evidence to the contrary.
5. Calculate the expected effective taxation for CFC purposes, with audited and certified financial statements, and the share of passive income in revenue.
6. If the CFC regime may apply, gather the documentation of the substantive economic activity (Annexes 4 and 5 of circular No. 18/E/2021), check whether you have access to the ruling (only cooperative compliance or new investments), assess the 15% option on accounting profit and report the interest in the FC section.
7. For flows to Italy, check the applicable tax treaty, the conditions of the EU directives or of Article 9 of the EU-Switzerland Agreement in the State of the company and the beneficial owner requirements.
8. Keep, with a certain date, minutes, contracts, correspondence and documents showing where decisions are taken and who manages the company, and update them every year.

9. From 2027, update the statutory references in deeds, opinions and documentation to Legislative Decree No. 117/2026, Legislative Decree No. 33/2025 and the Consolidated Act on tax penalties (Legislative Decree No. 173/2024).

Risks to assess

- **Sham foreign residence.** If the place of effective management or the day-to-day management is in Italy, the company is resident in Italy and its income is taxed in Italy; where no tax return has been filed, a penalty of 120% of the taxes due applies, with a minimum of EUR 250. If the tax evaded exceeds EUR 50,000 for any single tax, failure to file a tax return is also a criminal offence, punishable by imprisonment from two to five years (Article 5 of Legislative Decree No. 74 of 10 March 2000; from 2027 Article 77 of Legislative Decree No. 173/2024).
- **Presumption for the foreign holding company.** If the foreign company controls an Italian company and is controlled, or mainly managed, by residents, Italian residence is presumed and the burden of proving the contrary lies with the taxpayer.
- **CFC.** With low effective taxation and passive income exceeding one third of revenue, the income of the controlled company is attributed to the Italian shareholder even if not distributed; failure to report it in the FC section entails a penalty of 10% of the income of the controlled company attributable to the shareholder, from EUR 1,000 to EUR 30,000.
- **Dividends from a preferential regime.** Profits from a controlled company with low effective taxation are fully included in the shareholder's income; the ordinary regime applies again only if it is proven that, from the first period of ownership, the shareholding has not located income in a State with a preferential regime.
- **Non-recoverable withholding taxes.** If the conditions of the tax treaty, the directives or the EU-Switzerland Agreement are not met, the foreign withholding tax may remain final in whole or in part.
- **Beneficial owner and abuse.** An interposed company without economic justification or without free disposal of the income loses the benefits of the directives and of the treaties; the foreign residence certificate is not sufficient.

- **Documentation.** Foreign residence and the substantive economic activity are proven with documented facts, not with the registered office alone.

Legal sources and administrative practice

- Article 73 TUIR, current text – Normattiva
- Article 167 TUIR, current text – Normattiva
- Article 47 TUIR, current text – Normattiva
- Article 47-bis TUIR, current text – Normattiva
- Article 89 TUIR, current text – Normattiva
- Article 110 TUIR, current text – Normattiva
- Article 152 TUIR, current text – Normattiva
- Article 162 TUIR, current text – Normattiva
- Article 165 TUIR, current text – Normattiva
- Article 168-ter TUIR, current text – Normattiva
- Article 2 of Legislative Decree No. 209 of 27 December 2023 – Normattiva
- Article 3 of Legislative Decree No. 209 of 27 December 2023 – Normattiva
- Article 7 of Legislative Decree No. 209 of 27 December 2023 – Normattiva
- Article 10 of Legislative Decree No. 209 of 27 December 2023 – Normattiva
- Article 4 of Decree-Law No. 84 of 17 June 2025 – Normattiva
- Legislative Decree No. 117 of 19 June 2026 (Consolidated Income Tax Act) – Normattiva
- Article 1 of Legislative Decree No. 471 of 18 December 1997 – Normattiva
- Article 8 of Legislative Decree No. 471 of 18 December 1997 – Normattiva
- Article 2 of Legislative Decree No. 87 of 14 June 2024 – Normattiva
- Article 5 of Legislative Decree No. 87 of 14 June 2024 – Normattiva
- Article 27 of Legislative Decree No. 173 of 5 November 2024 (Consolidated Act on tax penalties) – Normattiva
- Article 33 of Legislative Decree No. 173 of 5 November 2024 – Normattiva

- Article 77 of Legislative Decree No. 173 of 5 November 2024 – Normattiva
- Article 5 of Legislative Decree No. 74 of 10 March 2000 – Normattiva
- Article 11 of Law No. 212 of 27 July 2000 – Normattiva
- Article 26-quater of Presidential Decree No. 600 of 29 September 1973 – Normattiva
- Article 27-bis of Presidential Decree No. 600 of 29 September 1973 – Normattiva
- Article 53 of Legislative Decree No. 33 of 24 March 2025 – Normattiva
- Article 56 of Legislative Decree No. 33 of 24 March 2025 – Normattiva
- Directive 2011/96/EU (Parent-Subsidiary Directive) – EUR-Lex
- Directive (EU) 2015/121 – EUR-Lex
- Directive 2003/49/EC (Interest and Royalties Directive) – EUR-Lex
- EC-Switzerland Agreement of 26 October 2004 – EUR-Lex)
- Amending Protocol of 27 May 2015 – EUR-Lex)
- Council of the European Union, document ST 6767/2017
- CJEU, 26 February 2019, joined cases C-116/16 and C-117/16 – EUR-Lex
- CJEU, 26 February 2019, joined cases C-115/16, C-118/16, C-119/16 and C-299/16 – EUR-Lex
- Proposal for a directive COM(2026) 560 final – EUR-Lex
- Revenue Agency circular No. 20/E of 4 November 2024
- Revenue Agency circular No. 18/E of 27 December 2021
- Revenue Agency Director's Measure No. 376652 of 27 December 2021
- Revenue Agency Director's Measure No. 106520 of 31 March 2026
- Revenue Agency Director's Measure No. 213637 of 30 April 2024
- Revenue Agency – Rulings under the Taxpayers' Statute (evidentiary ruling)
- Revenue Agency ruling No. 27 of 17 January 2022
- Supreme Court, Tax Section, order No. 23150/2022 – Italgiure
- Supreme Court, Tax Section, judgment No. 6005/2023 – Italgiure
- Supreme Court, Tax Section, judgment No. 16173/2023 – Italgiure
- Supreme Court, Tax Section, judgment No. 3386/2024 – Italgiure

- Supreme Court, Tax Section, judgment No. 8612/2024 – Italgiure
- Supreme Court, Tax Section, judgment No. 2458/2025 – Italgiure
- Supreme Court, Tax Section, order No. 32149/2025 – Italgiure
- Supreme Court, Tax Section, order No. 32467/2025 – Italgiure
- Supreme Court, Tax Section, judgment No. 32743/2025 – Italgiure
- Supreme Court, Tax Section, judgment No. 1635/2026 – Italgiure
- Supreme Court, Tax Section, judgment No. 2869/2013, judgment No. 16697/2019 and order No. 15424/2021 (not available in the public SentenzeWeb archive)
- OECD Model Tax Convention on Income and on Capital, articles as they read on 21 November 2017 – OECD
- OECD – Signatories and parties to the Multilateral Convention (MLI)

Frequently asked questions

Is a foreign company managed from Italy resident in Italy?

Yes, if for the greater part of the tax period it has in Italy its place of effective management, that is, the place where strategic decisions are taken on a continuous and coordinated basis, or its principal day-to-day management (Article 73(3) TUIR, in the text applicable from 2024). One criterion is enough, even if the registered office is abroad, and in that case the company's income is taxed in Italy.

Does the residence presumption of Article 73(5-bis) TUIR apply to every foreign company with Italian shareholders?

No. The presumption applies only to a foreign company that controls an Italian company limited by shares or commercial entity and is in turn controlled by residents or managed by a board composed mainly of residents (Supreme Court, Tax Section, judgment No. 3386/2024; ruling No. 27/2022). For other foreign companies, residence is checked under the criteria of paragraph 3.

Does the residence certificate issued by the foreign State rule out sham foreign residence?

No. The Supreme Court assesses in concrete terms where decisions are taken and who manages the company, on the basis of indicators such as the place of the directors' meetings, their residence, the availability of suitable premises and the keeping of the accounting records (Supreme Court, Tax Section, judgment No. 32743/2025), and does not give decisive weight to the foreign certificate (Supreme Court, Tax Section, judgment No. 2458/2025).

What penalty applies if the foreign company turns out to be resident in Italy and has not filed a tax return?

In addition to the taxes due in Italy, the penalty for failure to file a tax return applies, equal to 120% of the taxes due, with a minimum of EUR 250, for violations committed from 1 September 2024 (Article 1(1) of Legislative Decree No. 471/1997; from 2027 Article 27 of Legislative Decree No. 173/2024).

When does the CFC regime apply to a controlled foreign company?

When two conditions are met together: the controlled company does not pass the 15% test (ratio between taxes and profit before tax in the certified financial statements) and its effective taxation is lower than half of the one it would have borne in Italy, and more than one third of its revenue derives from passive income such as interest, royalties, dividends or low value-adding intra-group services (Article 167(4) TUIR). In that case the income of the controlled company is attributed to the Italian shareholder even if not distributed.

How can it be shown that the CFC regime does not apply?

By proving that the controlled company carries on a substantive economic activity, with its own staff, equipment, assets and premises (Article 167(5) TUIR). The advance ruling is reserved for businesses in the cooperative compliance regime and for those submitting the new investments ruling (Article 11(2) of Law No. 212/2000); other

shareholders keep the documentation, listed in Annexes 4 and 5 of circular No. 18/E/2021, and report the interest in the FC section.

What is the 15% option provided for CFCs?

It is a simplified method of checking the effective taxation: by paying an amount equal to 15% of the net accounting profit of the controlled company, its taxation is deemed to be not lower than 15% (Article 167(4-ter) TUIR). After Decree-Law No. 84/2025 the rule no longer describes it as a substitute tax: profits distributed and accrued during the three-year option period are taxed under the ordinary rules of Articles 47 and 89 TUIR (Measure No. 106520/2026, point 7.1).

What penalty applies if the CFC interest is not reported in the FC section?

The penalty is 10% of the income of the controlled company attributable to the shareholder in proportion to its interest, with a minimum of EUR 1,000 and a maximum of EUR 30,000 for violations committed from 1 September 2024, and the minimum applies even if the income of the controlled company is negative (Article 8(3-quater) of Legislative Decree No. 471/1997).

Do the EU directives exclude withholding tax on dividends paid to an individual shareholder?

No. The Parent-Subsidiary Directive and the Interest and Royalties Directive concern only payments between companies, and the same applies to Article 9 of the EU-Switzerland Agreement. For an individual shareholder, the foreign withholding tax is limited only by the applicable double tax treaty.

Who is the beneficial owner of dividends, interest and royalties?

It is the company that receives the payments as the ultimate recipient and not as an intermediary for others, and that can freely decide on their use (Article 1(4) of Directive 2003/49/EC; CJEU, judgments of 26 February 2019). The burden of proof lies with the taxpayer and is based on substantive business activity, free disposal of

the income and the absence of a mere conduit function (Supreme Court, Tax Section, judgment No. 8612/2024); the foreign residence certificate is not enough (Supreme Court, Tax Section, order No. 32467/2025).

Can a Swiss company pay dividends to an Italian company without withholding tax?

Yes, if the Italian company has held directly at least 25% of the capital of the Swiss company for at least two years, neither of them is resident in a third State under a tax treaty and both are companies limited by shares subject to corporation tax without exemptions (Article 9(1) of the EU-Switzerland Agreement of 26 October 2004, as amended by the Protocol of 27 May 2015). The anti-fraud and anti-abuse rules remain applicable.

Other guides

Foreign dividends received by Italian-resident individuals: foreign withholding tax, tax credit and refunds

Holding company or foundation: which structure suits those living in Dubai

All practical guides

Contact

The choice between a subsidiary and a permanent establishment, the check of residence and of the CFC regime and the treatment of flows to Italy depend on the foreign State, the activity and the shareholder structure: for an analysis of the specific case, see the contact page.

Contact form