

NOTE AHEAD ON:**1. Profit distribution: constraints and obligations for dividends**

The distribution of profit of the year is subject to a series of limitations and limits, in order to protect the company assets and to guarantee all interested parties involved.

The first limits are the obligation to set aside the profits:

- to the legal reserve equal to 5% of the annual net profits, up to the achievement of one fifth of the share capital;
- to any statutory reserve, according to the obligations provided for by the by-laws.

Further limits or restrictions on the distribution of profits may be imposed by the Corporate By-Laws or by the Shareholders' Meeting itself. In fact they can be foreseen:

- privileges in the distribution of profits, depending on the categories of shares;
- profit participation rights for sponsoring members, founding partners, directors or employees.

The Italian civil code puts further limitations on the distribution of profits; in particular:

- Dividends on shares can not be paid, except for profits actually earned and resulting from the regularly approved financial statements.
- If a loss of the issued capital occurs, it can not take place until the capital is reinstated or reduced accordingly.

Finally, it is *not* possible to allocate profits if:

- the assets of the company's balance sheet include expansion costs, research and development costs or advertising costs, not covered by available reserves;
- the company, in the presence of losses deferred from previous years, has outstanding bonds whose amount exceeds twice the sum of the share capital, the legal reserve and the other available reserves for the purposes of covering losses.

Once the aforementioned restrictions have been verified and complied with, the

Shareholders' Meeting, upon approval of the financial statements (or with a specific subsequent Shareholders' Meeting resolution) may resolve the distribution of any remaining profits to the shareholders.

When drafting the financial statements for the year, the proposal for the distribution of profit will be carried out by the administrative body and must be reported in the Directors' report or, in the absence, in the Explanatory Notes. The resolution for the distribution of profits, if contextual to the approval of the financial statements, is subject to the filing, by the directors, in the register of companies within 30 days from the date of adoption.

The same meeting resolution, containing the forecast of a distribution of profits, must be filed to the Tax Authority, as it is subject to registration/stamp duty. The minutes of the Shareholders' Meeting which provides for the distribution of profits is in fact subject to the obligation to register on a fixed term starting from the date of the Shareholders' Meeting, with the payment of a fixed registration tax (€ 200).

2. Taxation of dividends

Dividends paid by resident companies to other resident companies are not subject to withholding tax.

However, a final withholding tax of 26% is applied to dividends paid by a resident company to a *non-resident* company or individual without a permanent establishment in Italy. A partial refund may be claimed by a non-resident recipient who demonstrates, by means of proper documentation issued by the tax authority in his country of residence, that a final tax on the same dividends has been paid. The Italian authorities refund this final tax in the amount of up to 11/26 of the Italian withholding tax. As a result, the effective Italian withholding tax may be reduced up to 15%.

You must also consider that tax treaties usually reduce the above percentage of the withholding tax. However, the above withholding tax on dividends is reduced to 1.375%, provided that the beneficial owner of the dividends is a company that is subject to corporate income tax in another European Union Member State, or in another State of the European Economic Area that allows an adequate exchange of information with the Italian tax authorities.

In addition, under the provisions that make the European Union (EU) Parent-Subsidiary Directive effective in Italy, no withholding tax is levied on dividends paid to a parent company in another Member State if:

- both the parent and the subsidiary are qualifying companies under the Directive (corporations);
- the parent is subject to corporate tax in a Member state without any exemption or limitation;
- the parent has held at least 10% of the capital of the subsidiary for a period of at least 1 year.

Documentation issued by the competent authority of the Member State is required, certifying that the European Union (EU) company meets the conditions necessary to benefit from the withholding tax exemption.

The parent-subsidiary regime is not available for dividends received by EU companies controlled by persons who are not residents of an EU Member State, unless such persons can prove that the participating interest is not held for the sole purpose of benefiting from the special regime for EU outbound dividends.

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