



Italy: Supreme Court confirms discrimination in dividend taxation

Tax & Legal Alert
16 March 2026

Office

Milan

Via G.B. Pirelli 38, 20124
T: +39 02 676441

Ancona

Via Sandro Totti 11, 60131
T: +39 071 2916378

Bologna

Via Innocenzo Malvasia 6, 40131
T: +39 051 4392711

Florence

Viale Niccolò Machiavelli 29, 50125
T: +39 055 261961

Genoa

P.zza de Ferrari 4/1 16121
T: +39 010 5702225

Naples

Via F. Caracciolo 17, 80122
T: +39 081 662617

Padua

Piazza Salvemini 2, 35131
T: +39 049 8239611

Perugia

Via Campo di Marte 19, 06124
T: +39 075 5734518

Pescara

P.zza Duca D'Aosta 31, 65121
T: +39 085 4210479

Rome

Via Curtatone 3, 00185
T: +39 06 809631

Turin

C.so Vittorio Emanuele II 48, 10123
T: +39 011 883166

Verona

Via Leone Pancaldo 68, 37138
T: +39 045 8114111

The Italian Supreme Court has issued a landmark ruling further consolidating favorable case law for non-resident investors on dividend withholding tax (WHT). In Decision no. 4761/2026 (filed on 3 March 2026), the court held that the higher Italian WHT applied to outbound dividends, compared with the effective burden borne by comparable Italian corporate recipients, is discriminatory under article 63 TFEU. Crucially, the court excluded any reliance on “compensatory advantages” (e.g. foreign tax credits or reliefs in the investor’s State of residence) to offset the discrimination.

Key highlights

- **Discrimination confirmed:** for historical periods before domestic “alignment” measures, taxing outbound dividends more heavily than comparable domestic dividends breaches the free movement of capital (article 63 TFEU). This applies to EU and non-EU investors, including banks, corporates, investment funds and SICAVs.
- **No “compensatory advantages”:** the Italian Revenue Agency cannot reduce or deny refunds by invoking actual or potential foreign tax credits/exemptions or unrelated domestic benefits. The assessment must be made in Italy, tax-by-tax and item-by-item.
- **Proof requirements clarified:** to claim refunds, it is sufficient to demonstrate corporate residence in an EU Member State or non-EU State and subjection to corporate income tax there; proof of actual foreign taxation of the specific dividends is not required.
- **Conformity with EU and domestic case law:** the ruling follows prior Supreme Court decisions (e.g. Decision no. 13884/2023) and EU case law that prohibit curing a domestic restriction with advantages outside the relevant tax or outside the taxing State.

Next steps

Following this ruling, EU and non-EU investors are in an even stronger position to claim refunds of unfair WHT and should consider whether to take the following steps.

- *Map dividend flows*: identify Italian-source dividends paid to them for years still open for refund claims (48 months from WHT payment date).
- *Quantify claims*: compute the differential between their own WHT burden and the effective burden for comparable Italian corporate recipients in the relevant years; add statutory interest (currently 2 percent p.a. from the withholding date).
- *Prepare evidence*: gather residence and “subject-to-tax” certificates, dividend/WHT documentation, and confirmations of no Italian PE connection for the shares.
- *File/refresh claims*: submit refund claims or refresh previously denied claims, specifically challenging any “compensatory advantage” objections by citing Supreme Court Decision no. 4761/2026.
- *Start the tax litigation process*: if the tax authority tacitly rejects the refund claim (as happens in most cases), lodge an appeal before the Italian tax courts to obtain a favorable decision and speed-up the refund process.

KPMG’s office in Pescara provides full legal assistance to banks, corporates, investment funds and SICAVs interested in claiming WHT refunds in Italy.

Document prepared by [Antonello Cozza](#) and [Alberto Renda](#)

Contacts

KPMG in Italy, Tax & Legal

Tax & Legal Professional Practice Team

E: it-fm-tpp@kpmg.it

kpmg.com/it

kpmg.com/it/socialmedia



Tax & Legal Alert / KPMG in Italy / 16 March 2026

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