



# Italy: Supreme Court affirms parity in dividend tax treatment for foreign non-commercial entities

Tax & Legal Alert  
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The Italian Supreme Court, in Decision no. 16281 of 26 May 2026, has ruled that treating dividends paid to a non-resident charitable trust less favorably than those paid to a comparable Italian non-commercial entity (“NCE”) constitutes a restriction on the free movement of capital (a restriction prohibited by article 63 TFEU).

The decision clarifies that comparability between entities must be assessed on the basis of their functions and purposes, **irrespective of their legal form or tax residency**.

## Highlights

- **Non-discrimination and equal treatment:** applying a higher withholding tax (WHT) to dividends paid to non-resident entities than that applied to those paid to comparable Italian NCEs breaches EU law on the free movement of capital, in cases where their situations are objectively comparable.
- **Substance-over-form approach and trust/foundation equivalence:** the assessment of comparability must be based on the entity’s actual functions and purposes, **rather than its formal attributes such as its legal form, governance structure or tax residency**. Consequently, a foreign charitable trust can be considered functionally equivalent to an Italian foundation or NCE, given their shared philanthropic purposes and asset segregation.
- **Irrelevance of foreign tax treatment and activity classification:** a trust’s taxability in its country of residence and its effective taxation are not relevant for Italian tax purposes. Moreover, the mere holding of shares does not amount to a commercial activity, or affect the entity’s non-commercial status.
- **Extension of the dividend exemption:** the 50 percent exemption available under article 1(1) of Law no. 78/2020 applies to **all comparable NCEs**, including non-resident ones, which are therefore entitled to an equivalent effective tax burden (12 percent).
- **Alignment with EU case law:** the decision is consistent with the settled case law of the Court of Justice of the European Union, which endorses a substance-over-form approach and prohibits unjustified tax restrictions on foreign non-profit entities.

## Next steps

Following this decision, foreign NCEs (trusts, foundations, charities, etc.) are in a strong position to claim refunds of WHT on dividends distributed by Italian companies. Therefore, they should consider whether to:

- **Map dividend flows:** identify Italian-source dividends received in periods still eligible for refund claims (the refund claim window closes 48 months after the date the WHT is paid).
- **Quantify the refund:** calculate the difference between the WHT applied and the effective Italian tax rate (12 percent).
- **Gather supporting documentation:** collect evidence of the entity's non-commercial nature and tax residency, as well as dividend vouchers.
- **File refund claims:** relying on EU principles and Supreme Court case law, submit claims to the Italian Revenue Agency to recover excess WHT.
- **Start tax litigation:** in the event of claims being denied or 'silently rejected' by the Italian Revenue Agency, start litigation before the Italian tax courts.

## How we can help

The KPMG office in Pescara is on hand to provide end-to-end legal assistance to charities, foundations and non-profit entities interested in claiming WHT refunds in Italy.

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