

Italy: Tax Regime of Capital Gains Realised by Non-Residents on the Sale of Domestic Shareholdings

By Roberto M. Cagnazzo

According to the Italian Income Tax Code, non-resident individuals and companies (without a permanent establishment in Italy) are subject to taxation only on income produced in the territory of the State in application of the territorial principle of taxation. In line with the provisions of the

mentioned territorial principle, the domestic tax law provides that capital gains realised by non-residents on the sale of Italian shareholdings are considered to be produced in Italy and, therefore, subject to taxation in Italy with the sole exception of:

- capital gains arising from the sale of “nonqualified”

shareholdings in domestic listed companies (investor resident in any foreign country);

- capital gains arising from the sale of “nonqualified” shareholdings in domestic unlisted companies (investor resident in a white-list country).

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The Italian Income Tax Code considers a shareholding as “nonqualified” if it represents:

- no more than 2% of the voting rights or no more than 5% of the share capital of a listed company;
- no more than 20% of the voting rights or no more than 25% of the share capital of an unlisted company.

It is obvious that, if the previous thresholds are exceeded, the shareholding must be considered as “qualified”. Beginning 01 January 2019, capital gains are subject to a 26% substitute tax rate if they arise from the sale of:

- “qualified” shareholdings in domestic companies (investor resident in any country);
- “non-qualified” shareholdings in domestic unlisted companies (investor resident in black-list or grey-list countries).

It is important to point out, however, that if a double-taxation agreement is existing and effective

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Studio Tributario Cagnazzo is a ‘boutique’ firm mainly focused on providing integrated tax advice and assistance all over Italy to resident and non-resident corporations, banks, multinational groups and high-net-worth individuals on a wide range of domestic and international tax and corporate issues. The Firm provides its clients with specialist knowledge for strategic advice

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between Italy and the investor’s country of residence, and Article 13 of that agreement is in line with the provisions of the OECD

Model, the foreign state will tax the capital gain on the sale of Italian shareholdings on an exclusive basis, whereas no tax will be due in Italy.