

Tax & Legal Issues, March 2019

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Italy's Brexit tax provisions enter into force

1) Overview

On 20 March 2019, the Italian Council of Ministers approved a Law Decree No. 22 of 25 March 2019 (the “**Decree**”) laying down urgent measures to ensure financial stability and market integrity in the event of a no-deal Brexit. The Decree was published in the Official Gazette no. 71 of 25 March 2019 (<https://www.gazzettaufficiale.it/eli/id/2019/03/25/19G00032/sg>) and is effective as from 26 March 2019. In particular, the provisions cover a transitional period of 18 months following the date from which Brexit becomes effective (the “**Transition Period**”).

However, the Italian Parliament will be required to approve the Decree and transform it into law within the following 60-days.

2) Tax provisions

The relevant tax provisions are set forth by Art. 13 of the Decree, stating that during (and until the end of) the Transition Period:

1. domestic tax provisions shall continue to apply to the UK, as were provided in its capacity as an EU Member State (including those deriving from EU Directives);
2. domestic tax provisions derived from VAT and excise duties EU Directive and Regulations shall continue to apply, as far as compatible;
3. the Decree shall be implemented by way of one or more decrees to be issued by the Ministry of Economy and Finance.

3) What's going on for income tax purposes?

Pending the publication of the implementing Ministerial decrees, it looks like that during the Transition Period:

1. interest and royalty paid to UK qualifying companies should continue to benefit from the withholding exemption provided for by the Interest – Royalty EU Directive;
2. interest paid to UK qualifying entities should continue to benefit from the domestic withholding exemption provided for medium/long term loans;
3. dividends paid to UK qualifying companies should benefit from the withholding exemption provided for by the Parent – Subsidiary EU Directive;
4. the reduced 1.20% final withholding tax should apply to dividends paid to companies resident and liable to tax in the UK, in case the conditions required by the Parent – Subsidiary EU Directive are not met.

In any case, the relevant provisions of the UK - Italy Double Tax Treaty still apply to the extent that all the relevant requirements are met.