



CJEU Rules IRAP Tax on Dividends to Italian Financial Intermediaries Infringes EU Law

On August 1, 2025, the Court of Justice of the European Union (CJEU), in the *Banca Mediolanum* case (joined cases [C-92/24](#) to [C-94/24](#)), ruled that Italy's regional tax on production activities ('IRAP tax') on dividends received by Italian financial intermediaries as parent companies from subsidiaries in other Member States violates the Parent Subsidiary Directive ('PSD').

The scope of this judgment is broad, as it is not limited to Italian financial intermediaries who have received dividends subject to IRAP tax, but extends to all parent companies in a Member State that have been taxed on dividends within the scope of the PSD through taxes other than corporate income taxes. Therefore, these companies might consider evaluating the opportunity of filing a refund claim in their Member State.

Background and facts of the case

The case originates from several refund claims submitted to the Italian Tax Authorities by an Italian Bank with respect to the so-called 'IRAP tax' paid on dividends received from subsidiaries in other Member States.

In particular, the request for refund of the IRAP tax paid was based on the fact that such levy was considered to be in breach of the PSD which precludes dividends distributed by subsidiaries from being taxed at more than 5% of their amount in the hands of the receiving parent companies.

In fact, similarly to other Italian corporate taxpayers, dividends received by Italian financial intermediaries are included in the Italian corporate income tax ('IRES') base up to a maximum of 5% of their total but – differently from other Italian corporate taxpayers – such dividends are also included in the IRAP tax base for 50% of their amount. This led to an additional taxation above the 5% of the dividends' amount received.

The Italian Tax Authorities denied the refund requests, arguing, among others, that the IRAP tax is not considered a corporate income tax and therefore does not fall within the scope of the PSD. The taxpayer subsequently appealed the said rejections up to the Tax Court of Appeal of Milan, which decided to refer the matter to the CJEU.

The CJEU's judgment

The CJEU – disagreeing with the earlier position taken by AG Kokott in her opinion on the case – ruled that the PSD must be interpreted as aiming to avoid double taxation of dividends to its broadest extent and it therefore should also cover the prohibition of taxing dividends by more than 5% through IRAP tax.

According to the CJEU the above is supported by the below main argumentations:

- from a literal point of view, Article 4(1)(a) of the PSD states that a Member State applying the exemption system should not tax dividends received by a parent company resident in that Member State from its subsidiaries in other Member States for more than 5% of that amount, without restricting this rule to any specific type of tax;
- from a contextual point of view, the list of corporate taxes contained in Annex I, Part B - which do not mention IRAP tax - is relevant for the identification of the subjective scope of the PSD only and it shall not be interpreted as limiting the scope of the PSD for other means, and
- from a teleological point of view, from recital 3 of the PSD and the relevant CJEU case-law on the matter, it shall be derived that the PSD seek to avoid double taxation of distributed profits 'in economic terms'. Therefore, the exemption provided in the PSD applies with respect to any tax that, in the

Member State of residence of the parent company, includes in its basis of assessment even a part of those dividends, irrespective of the nature of the tax at issue.

On the basis of all the points above, the CJEU concluded, in this particular case where a Member State used the exemption system for the avoidance of double taxation, that the PSD should be interpreted to prevent that Member State from imposing a tax on more than 5% of the dividends received by a resident parent company from subsidiaries in other Member States. This applies even if the tax is not specifically a corporate income tax but includes those dividends or part of them in its tax base.

Takeaway

This judgment, although not the first one on the matter, is innovative to the extent made clear that the scope of the PSD is to avoid double taxation on dividends received by a parent company regardless of the nature of the tax to which such dividends are potentially subject to.

Additionally, the principles outlined in the present judgment might also apply to Member States adopting the credit method for the avoidance of double taxation under the PSD.

With specific reference to Italy, action is now expected from the lawmaker in order to comply with the CJEU judgment. Italian financial intermediaries which are subject to IRAP tax on dividends received in scope of the PSD might consider filing refund claims for the fiscal years not yet statute barred (i.e. from IRAP 2022 first advance onwards, for calendar-year taxpayers) and to evaluate taking further appropriate actions in respect of claims already filed in order to safeguard their rights to the refund of the IRAP tax paid.

Let's talk

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