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Tax update

September 2026

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TAX LAW UPDATE

Large energy groups and the gaming sector: advance payments on profits and deductibility of expenditure (Law No. 166 of 25 September 2026)

Law No. 166 of 25 September 2026, which entered into force on 26 September 2026, converted Decree-Law No. 133 of 27 July 2026 into law, with amendments, introducing tax provisions for large energy groups and the gambling sector. Article 2-bis requires resident parent companies operating in the energy sector that are required to prepare consolidated financial statements and have consolidated revenue exceeding EUR 20 billion to make an advance payment equal to 39 per cent of the withholding taxes and substitute taxes that would be due on profits whose distribution was approved in the financial year preceding the financial year of payment. The advance payment is due by 30 November and may not be offset against tax credits; the amount paid gives rise to a credit that may be used when the profits are distributed. For the first period of application, only distributions approved before 27 September 2026 and scheduled for payment after 31 December 2026 are covered. The ordinary rules governing the taxation of recipients remain unchanged.
Article 2-ter amends Article 108 of Presidential Decree No. 917 of 22 December 1986 ("**TUIR**"), classifying certain investments by gambling concessionaires as business representation expenses. It also disallows, for income tax and regional tax on productive activities (IRAP) purposes, the deduction of expenditure on sponsorships and similar contracts specified in the provision, incurred by persons or entities linked to licensed gambling operators. The amendments apply to expenditure incurred from the tax period following the tax period in progress on 31 December 2025.

MINISTERIAL PRACTICE

RESOLUTIONS

Inheritance, gifts and mortgage and cadastral services: new payment codes for voluntary correction, reassessment and audits (Resolution No. 30/E of 16 September 2026)

The Italian Tax Authorities, with Resolution No. 30/E of 16 September 2026, introduced payment codes for form F24 to pay amounts arising from applications for voluntary correction and reassessment relating to inheritance returns, gift tax and fees for mortgage and cadastral services. The Resolution also covers payments arising from audits and settlements concerning gifts and mortgage and cadastral services.
The full code tables are contained in the Resolution.

VAT where the annual return is omitted: payment codes for notices (Resolution No. 34/E of 30 September 2026)

The Italian Tax Authorities, with Resolution No. 34/E of 30 September 2026, introduced payment code "9005" for the aggregate payment of amounts requested by notices issued under Article 54-bis.1 of Presidential Decree No. 633 of 26 October 1972 where the annual VAT return has not been filed.

Codes "95AA", "95BB" and "95CC" enable the separate payment of tax, interest and penalties respectively. Payments must follow the instructions in the notice and cannot be made through set-off or by instalments.

REPLIES TO THE REQUESTS FOR ADVANCE TAX RULING

Single Special Economic Zone: commencement of a project and the incentive effect (Reply No. 169 of 3 September 2026 to the request for advance tax ruling)

The Italian Tax Authorities, in Ruling No. 169 of 3 September 2026, examined compliance with the incentive-effect requirement for the tax credit for investments in the Single Special Economic Zone ("**ZES**

unica") under Article 16 of Decree-Law No. 124/2023, as extended by Article 1, paragraph 438, of Law No. 199/2025.
For this automatic tax measure, what matters is that the project starts after the aid scheme enters into force, rather than merely that the investment takes place after submission of the required communication. In the circumstances described, the investment project meets the incentive-effect requirement because it was started after the measure was introduced. Compliance with the other requirements remains subject to verification, and the communication procedures prescribed by the applicable rules continue to apply.

Digital bonds: substitute tax and the role of the register operator (Reply No. 170 of 10 September 2026 to the request for advance tax ruling)

The Italian Tax Authorities, in Reply to the request for advance tax ruling No. 170 of 10 September 2026, clarified that interest and other returns on bonds and similar securities issued and circulated digitally and subject to Legislative Decree No. 239 of 1 April 1996 follow the mechanism in Article 5(2) of that decree. Where securities are not deposited with authorised intermediaries, the tax is applied by the intermediary paying the returns or, for direct payments, by the issuer. In the absence of an express statutory provision, the digital circulation register operator is not an authorised intermediary and cannot act as a first-level bank. The Reply also examines the tax treatment applicable to recipients carrying on a business activity and to non-residents entitled to the exemption.

Reverse merger following an equity-funded acquisition: carry-forward of tax positions (Reply No. 172 of 15 September 2026 to the request for advance tax ruling)

The Italian Tax Authorities, in Reply to the request for advance tax ruling No. 172 of 15 September 2026, accepted, in the specific circumstances, that the restrictions on carrying forward tax positions under Article 172(7) to (7-ter) of the TUIR did not apply to the reverse merger of an acquisition vehicle into the target company following an equity-funded acquisition.
The vehicle, which by its nature had no independent economic operations, failed the so-called vitality test. Nevertheless, the Italian Tax Authorities acknowledged that it had been established for the acquisition, had actually deployed the shareholders' resources to complete it and had tax positions attributable to the related costs. The specific assessment therefore ruled out the avoidance effect targeted by the economic vitality and net-asset restrictions.

DURF: withholding taxes and foreign tax credits in the payment requirement (Reply No. 174 of 16 September 2026 to the request for advance tax ruling)

The Italian Tax Authorities, in Reply to the request for advance tax ruling No. 174 of 16 September 2026, clarified which tax payments should be taken into account for the purposes of meeting the threshold equal to 10% of the revenues or fees earned over the three-year period, in order to satisfy the "relevant payments" requirement for the issuance of the Tax Compliance Certificate ("**DURF**"), pursuant to Article 17-bis, paragraph 5(a), of Legislative Decree No. 241 of 9 July 1997.
For the purposes of this calculation, withholding taxes on interest income arising from bank balances and deposits, paid by withholding agents, as well as foreign tax credits up to the amount of the credit granted pursuant to Article 165 of the TUIR, should also be taken into account. These items represent forms of tax payment other than payments made directly through the taxpayer's tax account. The calculation must avoid any double counting and remains subject to the fulfilment of the other requirements for obtaining the DURF.
Data centres: VAT place of supply for colocation services with a private cage (Reply No. 175 of 17 September 2026 to the request for advance tax ruling)

The Italian Tax Authorities, in Reply to the request for advance tax ruling No. 175 of 17 September 2026, considered colocation services supplied to a foreign company at an Italian data centre, including an area enclosed by a private cage housing the customer's equipment.

Under the contractual arrangement described, the allocation of an identified, reserved area brings the supply within services connected with immovable property. The place-of-supply rule in Article 7-quater(1)(a) of Presidential Decree No. 633 of 26 October 1972 therefore applies, making the supply relevant for VAT in Italy. The classification depends on the actual characteristics of the allocated area and the rights granted to the customer, rather than merely the commercial description of the service.

Contribution of shareholdings to a simple partnership: controlled realisation unavailable (Reply No. 176 of 21 September 2026 to the request for advance tax ruling)

The Italian Tax Authorities, in Reply to the request for advance tax ruling No. 176 of 21 September 2026, held that the "controlled realization" regime under Article 177(2) of the Italian Income Tax Code does not apply to the contribution of shareholdings to a newly incorporated società semplice. Accordingly, the fair market value criterion under Article 9 of the Italian Income Tax Code applies. Even following the legislative amendments, the realization value remains linked to the increase in the accounting net equity of the transferee. However, a società semplice is not subject to a standardized accounting framework enabling such value to be determined objectively, and the statement provided to its quotaholders cannot be regarded as equivalent to statutory financial statements.

JURISPRUDENTIAL UPDATE

Property contributions without new shares: VAT and transfers of a totality of assets (General Court, Judgment of 2 September 2026, T-413/25, FR)

The General Court of the European Union, in its judgment of 2 September 2026 in Case T-413/25, clarified that Article 19 of Directive 2006/112/EC must be interpreted as precluding national legislation that limits the rule laid down in that article, under which no supply of goods is deemed to have taken place upon the transfer of a totality of assets or part thereof to a taxable person, to contributions of certain business assets or parts of a business used to generate specific types of income, unless that restriction is justified on one of the grounds set out in the second paragraph of Article 19 of that Directive.

Business transfer and exempt letting of the property: adjustment of VAT deductions (General Court, Judgment of 2 September 2026, T-397/25, A&P Deco NV)

The General Court of the European Union, in its Judgment of 2 September 2026, T-397/25, considered a business transfer accompanied by an exempt lease of the property, retained by the transferor, to the person continuing the taxable business.
The transferee's continued use of the property for the acquired business does not prevent adjustment of the transferor's deduction. The transferor uses the property for an exempt letting: VAT deducted must therefore be adjusted under Articles 184 to 190 of the VAT Directive.

Superbonus: concurrence of tax offences and fraud against the State (Criminal Supreme Court, Decision No. 33224 of 10 September 2026)

The Criminal Supreme Court, in Decision No. 33224 of 10 September 2026, considered, in precautionary proceedings, allegations concerning invoices and tax credits for subsidised building works. The invoice is a necessary step in activating the tax-credit mechanism and the circulation of the credit.
The Court reiterated that tax offences and fraud against the State may concur where false documentation produces an additional benefit distinct from tax evasion, such as obtaining public funding. The actual structure of the conduct and the benefit sought must therefore be assessed, rather than automatically treating the matter as a mere tax-return infringement. The decision reviews precautionary measures and is not a final finding of criminal liability.

Demerger: VAT collection against the beneficiary (Supreme Court, Judgment No. 25437 of 16 September 2026)

The Supreme Court, in Judgment No. 25437 of 16 September 2026, clarified that, for the collection of VAT relating to obligations predating a demerger, no separate preliminary act needs to be served on the beneficiary company before the payment notice.
The beneficiary company's status as successor to, and beneficiary of, the demerged company is sufficient, even where it did not file the return subject to automated checks and was not the party that forfeited the benefit of payment by instalments. What matters is that the events generating the debt preceded the restructuring, not whether the beneficiary knew of the debt.

Transparent foreign funds: neutralising higher dividend withholding tax (CJEU, Judgment of 17 September 2026, C-139/25, Ishares Europe ETF)

On 17 September 2026, the Court of Justice of the European Union, in Case C-139/25, examined the application, to a non-EU collective investment undertaking, of withholding tax on dividends at a higher rate than that applicable to distributions made to resident investment funds, finding that such different treatment constitutes a restriction on the free movement of capital under Article 63 of the Treaty on the Functioning of the European Union ("TFEU").
Such restriction may nevertheless be neutralised by a double tax treaty, even where the foreign-source income is not subject to corporate income tax at the level of the investment fund in its State of residence but is instead attributed to its unitholders. This is subject to the conditions that the unitholders are entitled to benefit from the relevant tax treaty and that the tax levied on the dividends in the source State can be fully credited against the tax payable by the unitholders.

Conversions without new contributions and taxes on the raising of capital (CJEU, Judgment of 17 September 2026, C-197/25)

The Court of Justice of the European Union, in its judgment of 17 September 2026 in Case C-197/25, clarified the limits of the Member States' power to exclude certain entities from being treated as capital companies for the purposes of Directive 2008/7/EC.
Such power does not allow Member States to subject to indirect taxation a corporate conversion that does not involve any new contribution of capital between two profit-making entities that do not fall within Article 2(1) of the Directive.
The Court therefore distinguishes a mere change in legal form from the actual raising of new capital, without prejudice to the application of the taxes expressly permitted under the Directive.

Future property and voluntary mortgage: different tax timing (Supreme Court, Order No. 25539 of 18 September 2026)

The Italian Supreme Court, in Order No. 25539 of 18 September 2026, distinguished, for mortgage tax purposes, the sale of a property under construction from the creation of a voluntary mortgage. The former produces deferred *in rem* effects until completion of the construction and is initially subject to registration, mortgage and cadastral taxes at fixed amounts, without prejudice to the subsequent application of proportional taxation upon completion of the building.
By contrast, the creation of a voluntary mortgage produces immediate *in rem* effects upon registration with the Land Registers and is subject to proportional mortgage tax. The two transactions therefore remain separate for tax purposes: the deferral of the transfer effects of the sale does not affect the taxation of the separate mortgage security.

VAT and registration tax: commencement of the refund time limit (Supreme Court, Order No. 25549 of 18 September 2026)

The Supreme Court, in Order No. 25549 of 18 September 2026, clarified that the three-year period for claiming a refund of proportional registration tax begins with the original payment where the transaction was subject to VAT from the outset.
In the case examined, an amount originally classified by the parties as compensation for damage had been subject to proportional registration tax. Following a tax audit, the Italian Tax Authorities instead classified it as consideration subject to VAT. According to the Supreme Court, that subsequent determination merely reclassified the transaction and did not create a new entitlement, since registration tax had not been due *ab initio*. The right to a refund could therefore have been exercised from the time of payment, and the subsequent settlement of the VAT assessment did not trigger a new time limit.
A subsequent reclassification in a tax settlement does not create the right to a refund and does not postpone the time limit under Article 77 of Presidential Decree No. 131 of 26 April 1986. The principle of alternativity between VAT and registration tax does not override expiry of the refund claim.

Share disposals: non-deductible provision for repayment of consideration (Supreme Court, Order No. 25836 of 26 September 2026)

The Supreme Court, in Order No. 25836 of 26 September 2026, held that the provision recognised as a liability in the balance sheet to cover the risk of having to repay the purchaser part of the consideration paid under the agreement for the sale of the entire equity interest in the investee company was not tax-deductible.
The accounting recognition of a provision for a merely contingent obligation does not make the corresponding expense tax-deductible. A distinction must be drawn between the prudent recognition of risk for accounting purposes, the accrual of a cost that meets the applicable tax requirements, and provisions expressly allowed under tax law.

Liability for company tax debts: territorial jurisdiction of the competent Tax Office (Supreme Court, Order No. 25873 of 28 September 2026)

The Supreme Court, in Order No. 25873 of 28 September 2026, clarified that territorial jurisdiction to assess the liability of directors, liquidators and shareholders for a company's tax debts remains with the Tax Office competent to audit the company, determined by reference to the tax domicile of the person required to file the relevant tax return.
Extending the claim to the persons liable under Article 36 of Presidential Decree No. 602 of 29 September 1973 does not transfer jurisdiction to the Tax Offices determined by reference to their respective personal tax domiciles. According to the Court, the Tax Office competent in respect of the company may therefore also assess, by means of a reasoned notice, any liability of directors, liquidators and shareholders.

Liquidators, directors and shareholders: scope of liability and temporal limits (Supreme Court, Order No. 25879 of 28 September 2026)

The Supreme Court, in Order No. 25879 of 28 September 2026, reviewed liability under Article 36 of Presidential Decree No. 602 of 29 September 1973, distinguishing liquidators and directors from shareholders who have received company assets.
The extension to taxes other than income taxes introduced by Legislative Decree No. 175 of 21 November 2014 is not retrospective. Shareholders' civil liability under Article 2495 of the Italian Civil Code remains distinct and cannot automatically replace a different basis invoked in the assessment.

Company tax debts: separate assessment and recipients' remedies (Supreme Court, Order No. 25880 of 28 September 2026)

The Italian Supreme Court, in Order No. 25880 of 28 September 2026, confirmed that personal liability for a company's tax debts requires verification of the specific conditions underlying the relevant basis of liability. The prior registration of the company's tax debt in the tax collection roll is not a prerequisite for the issuance of an assessment pursuant to Article 36 of Presidential Decree No. 602 of 29 September 1973. The recipient may also challenge the existence of the company's underlying tax debt before the tax courts. The extension of liability to taxes other than income taxes does not apply retroactively: the Court excluded the application of the new regime to VAT liabilities arising prior to the relevant legislative reform. The respective grounds of liability applicable to liquidators and directors, on the one hand, and shareholders, on the other, remain distinct, with shareholders' liability being linked to the corporate assets received by them.

Declarations of intent: evidence of prior receipt and VAT recovery (Supreme Court, Order No. 25913 of 29 September 2026)

The Supreme Court, in Order No. 25913 of 29 September 2026, clarified, under the rules applicable to 2011, that receipt of a declaration of intent before the transaction is an element of the regime permitting invoicing without VAT, not an obligation automatically reducible to a merely formal infringement.
In the case examined, the Italian Tax Authorities had sought recovery of VAT on transactions invoiced without VAT in 2011, challenging the supplier's failure to prove that the declarations of intent had been received before the transactions were carried out.
The actual occurrence of the transactions alone does not preclude recovery of VAT. The court must verify the subjective and objective conditions for the relief, including prior delivery or dispatch of the declarations, in light of the supporting documents and the Italian Tax Authorities' specific objections.

Additional remuneration: evidence of certainty and accrual of costs (Supreme Court, Order No. 25992 of 30 September 2026)

The Supreme Court, in Order No. 25992 of 30 September 2026, recalled the requirements of accrual, certainty, objective quantifiability and business relevance for the deduction of business expenses.
With respect to additional remuneration, it must be demonstrated that, by the end of the relevant financial year, the obligation had already arisen and was not contingent on a subsequent decision by the customer. Subsequent invoices and payments evidence recognition or performance, but do not alone establish accrual in a previous year. Relevant evidence includes contractual parameters, the services remunerated, applicable rates and resolutions determining the amount or method of calculation.

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