

# INSTRUCTIONS FOR FILLING IN FORM E CONCERNING THE APPLICATION OF THE PARENT SUBSIDIARY REGIME DIRECTIVE 90/435/EEC

**Form E** is organised in 2 copies

- one for the Italian withholding agent or, in the case of refund requests, for the Centro Operativo di Pescara (competent Italian Office for refunds requested by non-residents);
- one for the beneficiary of the income.

**WHAT IS IT FOR:** in the enforcement of Article 27-*bis* of DPR (Presidential Decree) no. 600, dated 29 September 1973, Form E is to be used in order to obtain

1. the **exemption** from the Italian taxation on dividends and on other equivalent financial tools distributed by a subsidiary company in Italy to its parent company or its permanent establishment located in another Member State of the European Union. Said national provision implements Directive 90/435/EEC and following amendments introduced by Directive 2003/123/EC (cf. respectively Legislative Decree no. 136 dated 06 March 1993, and Legislative Decree no. 49, dated 06 February 2007);
2. the **refund** of the Italian tax withheld if the exemption regime has not been directly applied.

## 1. EXEMPTION

**Conditions for exemption:** for the enforcement of article 27-*bis* mentioned above, the party receiving the dividends must meet the following requirements:

- a) fall within one of the legal status provided for in the Annex to the Directive 90/435/EEC and following amendments;
- b) reside for tax purposes in a Member State of the European Union, without being considered resident outside the European Union pursuant to a Convention for the avoidance of double taxation (DTC) with a third State;
- c) be subject to one of the taxes listed in the mentioned Annex to the Directive 90/435/EEC in its State of residence, without the possibility to benefit from exemption or favourable regimes which are neither territorially nor temporarily limited;
- d) hold a minimum participation of 10% uninterruptedly for at least one year.<sup>1</sup>

The exemption is also applied to parent companies that result to be directly or indirectly controlled by one or more subjects not residing in Member States of the European Union, provided that they prove not to hold the participation with the sole or main scope to benefit from the regime pursuant to the Directive.<sup>2</sup>

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<sup>1</sup> Originally, the minimum threshold of participation required was equal to 25%. Following, from 1 January 2007 to 31 December 2008, the threshold was lowered to 15%, and from 1 January 2009 to date the minimum threshold is equal to 10%.

<sup>2</sup> In order to prove that the extra-EU company's participation in the EU parent company does not have tax avoidance aims, Article 27-*bis*, Paragraph 5 of DPR (Presidential Decree) 600/73, provides the possibility to use the procedures mentioned under Paragraphs 12 and 13 of Article 11 of Law no. 413, dated 30 December 1991, to give relevant evidence. Such procedures envisage the possibility for the taxpayer to prove the reasons for implementing the exemption: 1) by means of a preventive ruling procedure requested by the taxpayer, or 2) following a specific request submitted by the Italian Revenue Agency at the moment of the inspection.

**Who receives the form:** the form must be filled in in all its parts and submitted to the Italian withholding agent (subsidiary company) that can apply the regime provided for by the Directive. The possession of the requirements as mentioned under letters a), b) and c) must be certified by the fiscal authority of the foreign State, while the requirement mentioned under letter d) can be proved through a written statement of the company.

**Storage of documents:** the withholding agent must keep the form together with the necessary documentation for the application of the above mentioned provisions submitted by the non-resident for future controls of the Revenue Agency. All documentation shall be kept at disposal of the Tax administration until the period in which the income is paid falls within the statute of limitation for the tax assessment purposes or until the relative assessments have been concluded.

**Foreign tax authority statement:** for the implementation of the exemption provided for by the Directive, the foreign fiscal authority's certification shall be valid for one year starting on the issuing date of the certification of fiscal residence or of the existence of the permanent establishment, provided that all requirements remain met.

## 2. REFUND

If the subsidiary company resident in Italy did not directly apply the exemption regime provided for by the Directive, Form E can be used also to claim for the refund of the tax applied within the 48 month deadline starting from the payment date of the withholding tax pursuant to Article 38, Paragraphs 1 and 2 of D.P.R. (Presidential Decree) no. 602, dated 29 September 1973.

**Who receives the refund claim:** the form must be filled in and sent to the Agenzia delle Entrate, Centro Operativo di Pescara – via Rio Sparto, 21 65129 Pescara – Italia (fax 085/52145 - email: [cop.pescara.rimborsinonresidenti@agenziaentrate.it](mailto:cop.pescara.rimborsinonresidenti@agenziaentrate.it)).

**Deadline to claim a refund:** within 48 months from the date in which the tax was withheld at source or paid pursuant to Article 38, Paragraphs 1 and 2 of the Presidential Decree no. 602, dated 29 September 1973.

**Documentation:** documentation showing the entitlement to refund is required (e.g.: documentation concerning participation requirements, copy of the Italian company's Meeting Minutes stating the distribution of dividends, copy of the Company Register stating the holding percentage in the Italian company in the whole of the previous twelve month period).

**Foreign tax authority statement:** with reference to the refund request, the foreign authority's statement, contained in the form, can refer to several years when the refund concerns withholding taxes applied in different years.

## Treatment of private data according to Article 13 of the Legislative Decree no. 196/2003

### 1. Aim and modalities of private data treatment

The present form contains private data (i.e., personal data and information about bank account) that Agenzia delle Entrate obtains for processing the refunds.

The requested data shall be provided by the taxpayer in order to process the refund.

The data shall be used exclusively by authorised persons, through computerized methods and with measures aimed at privacy safeguard and avoidance of illegal use by non-authorized persons.

### 2. Persons in charge of data processing

According to the Legislative Decree no. 196/2003, Agenzia delle Entrate is the entity in charge of processing the private data when these become available to it and under its direct control.

Agenzia delle Entrate avails itself of So.ge.i. Spa (Società Generale d'informatica). So.ge.i. is an external partner of Agenzia delle Entrate, which it is in charge of the data processing under its quality of technological partner managing the Tax Register.

### **3. Rights of taxpayer**

According to Article 7 of Legislative Decree no. 196/2003, the taxpayer may have access to his own private data for controlling their use, up-dating them or rectifying them, as the case may be. The taxpayer may delete the data or contest their treatment, if this is carried on in violation of the provisions established by the above Legislative Decree .

These rights may be exercised upon request addressed to:

Agenzia delle Entrate – Via Cristoforo Colombo, 426 c/d – 00145 Roma