

Banca Mediolanum: Turning conflict into change (and refunds)

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In August 2025, the Court of Justice of the European Union (ECJ) issued its [decision](#) in the case of *Banca Mediolanum SpA and Others v. Agenzia delle Entrate – Direzione Regionale della Lombardia* (Joined Cases C-92/24, C-93/24 and C-94/24). The case examined whether the Italian regional tax on productive activities (*imposta regionale sulle attività produttive*, IRAP) was within the material scope of the [Parent-Subsidiary Directive \(2011/96\)](#). Almost a year after the ECJ's decision, the author reflects on the effects thereof.

1. The “conflict”

Banca Medionalum (BM) received dividends from its subsidiaries residing in other EU Member States. BM included 50% of those dividends in the taxable base for IRAP purposes, on account of being treated as a financial intermediary. BM then sought a refund for the IRAP paid on the dividends received from its EU subsidiaries.

The BM refund request was based on the argument that including said dividends in the IRAP taxable base is incompatible with the provisions of the [Parent-Subsidiary Directive \(2011/96\)](#) (the Directive). Article 4 of the Directive provides that EU Member States must either exempt dividends received by a parent company from its subsidiary (at least 95% of the distributed income, as 5% can be excluded from the exemption) or relieve economic double taxation by granting an indirect tax credit. Article 2 of the Directive defines a company of an EU Member State as a company which is subject to one of the corporation taxes listed in Annex I to the Directive, or “any other tax which may be substituted for any of those taxes”.

Practically, the issue in this case was whether the applicable Italian rules are incompatible with the Directive, considering that:

- 95% of the dividends received by Italian parent companies are exempt from corporate income tax (IRES) (which is permissible under article 4 of the Directive); BUT
- financial intermediaries are liable to IRAP, which requires them to include 50% of the dividends received from EU subsidiaries and pay tax on that portion of dividends (IRAP applies uniformly, irrespective of the origin of the dividends).

In an [opinion](#) delivered in March 2025, Advocate General (AG) Kokott of the ECJ opined that the exemption provided through article 4 of the Directive (broadly allowing taxation of dividends up to 5%) applies if the additional

tax (surpassing the 5%) is either a corporation tax or anything comparable to that. In other words, taxing dividends under IRAP is incompatible with the Directive only if IRAP is found to be comparable to IRES. The tax comparability test should investigate the nature of IRAP and its object of taxation and should be answered by reference to the domestic law at hand. Hence, the AG suggested referring the question back to the national court.

2. The “decision”

In its [decision](#), delivered in August 2025, the ECJ:

- before addressing the substance, reformulated the question referred to it in a manner that would assist the referring court, while preserving the elements of EU law requiring interpretation in light of the dispute (paragraph 26). In essence, the Court framed the issue as whether the effective taxation of dividends received from EU subsidiaries in excess of 5% – not through their inclusion in corporate income tax, but by incorporating them into the taxable base of another levy – is compatible with the Directive (paragraph 30);
- first noted that article 4(1)(a) of the Directive must be interpreted as meaning that the exemption system concerns any tax which includes in its basis of assessment the dividends a parent company receives from its EU subsidiaries. The emphasis here is that the exemption applies to any tax, and not just a tax comparable to a corporate income tax (paragraphs 32-35);
- second, with respect to article 2(a), highlighted that said article is relevant only to determine the personal scope of the Directive (*ratione personae*) and not the material scope thereof (*ratione materiae*). The fact that IRAP is not specifically listed in the taxes set out in part B of annex I to the Directive does not mean that it is excluded from the material scope, and therefore it can apply despite the restrictions set out in the Directive (paragraphs 36-38); and
- third, looking at the Directive from a teleological angle, determined that its purpose is to eliminate economic double taxation at the level of the parent entity with respect to dividends from EU subsidiaries (paragraphs 39-41).

Following the above, the Court concluded that article 4 of the Directive precludes national legislation that provides for the inclusion of dividends received by a parent company from EU subsidiaries in the taxable base of a levy such as IRAP, in addition to the inclusion of 5% of said dividends in the corporate income tax base.

The decision is different from what the AG had opined, in that the AG opinion stated that article 4 applies *only when* the additional tax (leading to more than 5% tax) *is a corporate income tax or comparable to it*, while the ECJ ruled that article 4 applies when *any tax* applied to the distributed dividends leads to more than 5% tax.

3. From conflict to change and refunds

In a [previous EU Tax Focus](#) note, the author predicted that a positive decision for the taxpayer would produce various effects, such as:

- requiring Italy to amend its IRAP legislation for the purposes of aligning it with article 4 of the Directive; and
- opening the road to refund requests by taxpayers who were subject to additional IRAP on their qualifying dividends.

> The domestic change

The decision in favour of the taxpayer was published in August 2025, and 4 months later – in January 2026 – Italy [amended](#) the relevant legislation (through [budget law 2026](#)). The relevant update provides that, as of tax years starting on 1 January 2026, dividends distributed by EU/EEA companies to resident banks, financial intermediaries and insurance companies are excluded from the IRAP taxable base for 95% of their amount.

This exemption applies provided that the recipient entity holds a direct participation of at least 10% in the capital of the distributing company for an uninterrupted period of at least 1 year and that dividends are not deductible from the subsidiary's income tax base. For prior tax years, qualifying entities may apply for a refund of the excess IRAP paid (subject to applicable statute of limitation provisions).

> The refund

In April 2026, the Italian tax authorities [approved](#) the application form through which banks, financial intermediaries and insurance companies may submit a refund request of the excess IRAP paid on dividends received from EU/EEA companies (following the changes enacted by the budget law 2026). The refund request is governed by specific instructions, filing guidelines and prescribed form. It also applies retroactively, allowing claims in respect of final payments made up to 4 years prior to the filing deadline. In practice, this results in a look-back period starting from final payments due in June 2022, beyond which new claims are time-barred.

4. Expert insights

Although the budget law 2026 addresses the incompatibility identified by the Court, it also leaves two important issues unresolved.

First, the new legislation preserves the inclusion in the IRAP taxable base of 5% of dividends distributed by EU/EEA subsidiaries to resident banks, financial intermediaries and insurance companies. At first sight, this solution appears to be consistent with article 4(3) of the Directive, which allows Member States to deny the deduction from the taxable profits of the parent company of management costs relating to the holding of the subsidiary in a fixed amount not exceeding 5 % of the profits distributed by the subsidiary. At the same time, however, the Court expressly stated that the Directive precludes the inclusion of dividends in the taxable base of a tax such as IRAP "in addition to" their inclusion, to the extent of 5%, in the taxable base of IRES (paragraph 44). It therefore remains to be seen whether the continued IRAP taxation of that same 5% is fully consistent with the Court's reasoning.

Second, the reform applies only to dividends distributed by EU/EEA subsidiaries, while dividends distributed by Italian subsidiaries to resident banks, financial intermediaries and insurance companies continue to be subject to IRAP for 50% of their amount. This distinction has already generated a new wave of refund claims. Taxpayers argue that, once the exemption has been recognized for EU-source dividends, maintaining taxation for comparable domestic dividends creates an unjustified disparity of treatment, contrary to the constitutional principles of equality and ability to pay laid down in articles 3 and 53 of the Italian Constitution. They also rely on article 14 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights in [Galbert Defforey et autres v. France](#) (22 August 2025), arguing that the different treatment of domestic and EU-source dividends amounts to unjustified discrimination.

The 2026 Budget Law has undoubtedly brought the Italian legislation into line with the core holding of *Banca Mediolanum*. Whether it has also resolved all the broader issues arising from the judgment is, however, likely to be the subject of the next phase of litigation before the Italian courts.

IBFD references:

- > EU tax law developments are reported on the daily IBFD [Tax News Service](#) page.
- > For IBFD summaries of ECJ judgments, see the [ECJ Case Law](#) IBFD collection.
- > F. De Lillo, [Italy – Corporate Taxation sec. 3.](#), Country Tax Guides IBFD.

- > C. (Cesare) Silvani & F. Semonella, [Italy – Corporate Taxation sec. 2.](#), Country Tax Guides IBFD.
- > A. Xygka, [Corporate Tax or Not? The IRAP Puzzle and the Parent-Subsidiary Directive](#), EU Tax Focus (17 June 2025)
- > G.W. Kofler et al., [Exemption of Inbound Dividends from Non-Corporate Taxes under the EU Parent-Subsidiary Directive – Opinion Statement ECJ-TF 4/2025 on the Decision of the CJEU of 1 August 2025 in Banca Mediolanum \(Joined Cases C-92/24 to C-94/24\)](#), 66 Eur. Taxn. 1 (2026), Journal Articles & Opinion Pieces IBFD.