

Tax ruling n. 500/2021: Tax treatment of interest on loans granted by non-resident banks

THE CASE

- A bank, tax resident in Liechtenstein with no PE in Italy, grants loans to some Italian tax resident individuals.
- With the money received, the individuals invest in foreign financial assets or foreign immovable properties.
- According to the bank, the interests paid by the Italian resident individuals are not sourced in Italy and, therefore, are not taxable therein, because the individuals have “employed” (i.e. invested) the capital abroad.
- Indeed, in the bank’s opinion – recalling the Circular Letter no. 207/1999 – an interest should be deemed to be sourced in Italy if (i) the related capital is employed in Italy and (ii) the interest is paid from the Italian State, an Italian resident person or Italian PE of non-Italian residents.

THE REPLY OF THE ITALIAN TAX AUTHORITY

- The Italian tax authorities have clarified, that employment of capital should be read from the perspective of the lender and not from the borrower’s one.
- The combined provisions of articles of 151 (3) and 23 point out that non-resident company, with no PE in Italy, are taxed only on income sourced in Italy and are computed according to the rules applicable to each single class of income.
- Therefore, considering that the bank has employed the capital in Italy and the interests are paid by an Italian tax resident person, such income will be taxable in Italy.
- Finally, since Italian individuals do not act as withholding agents, the bank shall declare the aforementioned interest by filing the tax return.