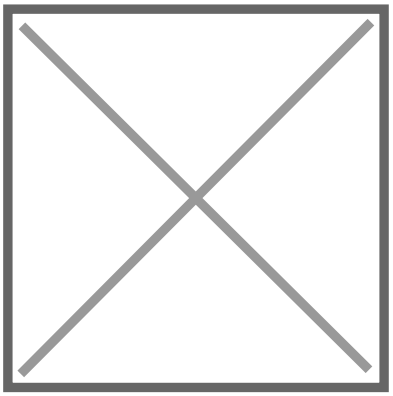

When Is a Foreign Company Really Italian? The Supreme Court Gives a Clear Answer

Descrizione

When Is a Foreign Company Really Italian? The Supreme Court Gives an (almost) Clear Answer

In judgment No. 32441 of 12 December 2025, the Italian Supreme Court confirmed a very important principle for international groups and foreign-based companies connected to Italy.

The case concerned a Luxembourg company that the Italian Tax Agency had tried to treat as tax-resident in Italy under the doctrine of “esterovestizione” — the idea that a company is only formally foreign but is in reality managed from Italy. On that basis, the Tax Agency had tried to tax the Luxembourg company’s profits in Italy for IRES and IRAP.

Both the first-instance tax court and the Lombardy Regional Tax Court rejected the assessment, holding that the Tax Agency had not proven that the company was actually run from Italy and that the Luxembourg company had its own real decision-making structure. The Tax Agency appealed to the Supreme Court, arguing that the lower courts had misunderstood how “effective management” should be assessed.

The Supreme Court rejected the appeal and sided with the taxpayer.

The Court made it very clear that, under Italian law and EU law, a foreign company can be treated as Italian-resident only if its “seat of administration”, meaning its effective management, is actually located in Italy. This is not a formal test and not a question of who owns the shares. It is a factual test based on where the company’s central management and administration really take place.

Most importantly, the Court reaffirmed that, in a group structure, the fact that an Italian parent or Italian shareholders give strategic direction to a foreign subsidiary is not enough to move the subsidiary’s tax residence to Italy. That kind of influence is normal in corporate groups and is protected by EU freedom of establishment. To qualify as esterovestizione, the Tax Agency must show something much stronger: that the foreign company is a purely artificial structure, a “letter-box” company, whose board and management have been effectively replaced by the Italian parent — in other words, that the parent has

taken over the foreign company's entrepreneurial and administrative powers so completely that the foreign entity no longer has real autonomy.

The Court also confirmed that the burden of proof lies with the Tax Agency. It is the tax authorities who must demonstrate that the foreign company is artificial and that its effective management is actually in Italy. If the taxpayer produces evidence of real activity, real directors, real meetings, and real decision-making abroad, that is enough to defeat an esterovestizione assessment unless the authorities can disprove it.

In this case, the courts found that the Luxembourg company had its own premises, directors, corporate governance, and decision-making in Luxembourg, and that the Tax Agency had not proven otherwise. Therefore, the company remained tax-resident in Luxembourg.

From a practical point of view, this judgment is very significant for international groups, holding structures, and expatriate-owned companies. It confirms that having an Italian parent, Italian shareholders, or strategic guidance from Italy does not automatically make a foreign company Italian-resident. What matters is whether the foreign company has real substance and real governance where it is established.

At the same time, it sends a clear message: if a foreign company is only a shell, with all real decisions taken in Italy, then Italian tax residence can still be asserted. But the authorities must prove it, and the proof must show genuine artificiality, not just control or influence.

In short, the Court has drawn a strong line between legitimate international corporate structures and abusive paper companies, giving much greater legal certainty to groups that build real operations abroad.

Tag

1. Foreign companies

Data
11/11/2026
Data di creazione
12/01/2026