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INTERNATIONAL PARTNERS

ITALY | INTERNATIONAL TAX | FOCUS UPDATE

CFC OPTIONAL REGIME | GUIDANCE

April 2026

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OVERVIEW

The Guidance of the Director of the Italian Revenue Agency (*Agenzia delle Entrate*) No. 106520 of 31 March 2026 entirely replaces the previous Guidance No. 213637/2024 and redefines the operational framework of the election provided for under Article 167(4-ter) of the Italian Income Tax Code (*TUIR*) concerning Controlled Foreign Companies (CFC). The most significant amendments relate to: (i) the recharacterisation of the election from a *substitute tax* into a *simplified method for computing the effective tax rate*; (ii) the full taxability of dividends distributed by controlled entities, subject to taxation under the ordinary rules of Articles 47 and 89 TUIR (with entitlement to a foreign tax credit); (iii) the obligation to redetermine taxable income for FY 2024 for taxpayers who had excluded profits from the tax base, without the application of penalties and interest. The Ruling has retroactive effect from 1 January 2024 (for taxpayers with a calendar-year tax period).

This Focus Update examines the principal changes introduced by the Ruling, with particular attention to the practical implications and the actions to be undertaken.

1. Regulatory background and rationale

Article 167(4-ter) TUIR – introduced by Article 3 of Legislative Decree No. 209 of 27 December 2023 (International Tax Reform) – established an elective regime aimed at simplifying the compliance burden associated with the effective tax rate (*ETR*) test applicable to controlled foreign entities. Where the ETR falls below the 15% threshold, the Italian CFC rules apply.

Decree-Law No. 84 of 17 June 2025 (converted into Law No. 108 of 30 July 2025) amended the primary legislation, transforming the election from a mechanism that dispensed with the ETR verification (a substitute tax “alternative” to the test) into an instrument enabling the taxpayer to satisfy the ETR test *ex lege* by paying an amount equal to 15% of the net accounting profit. The amendment, while apparently formal, carries

significant substantive implications, particularly as regards the treatment of distributed profits (see Section 7 below).

2. The new definition of “election”

Point 2(5) of the Ruling defines the election as the “right under Article 167(4-ter) TUIR to adopt a **simplified method for computing the effective taxation** of the controlled entity, through the payment of an amount equal to 15 per cent of the net accounting profit for the fiscal year”.

Compared with the previous Ruling No. 213637/2024, which characterised the election as the right to apply a “substitute tax” of 15% “irrespective of the verification of the foreign effective tax rate”, the difference is fundamental: the 15% levy is no longer a substitute tax that extinguishes all further tax liabilities, but rather a payment that satisfies the ETR test and, consequently, does not preclude the ordinary taxation of dividends upon distribution.

3. Scope of application

The election may be exercised by the controlling entity (individuals, corporate taxpayers, and Italian permanent establishments of non-resident entities) in respect of **all** controlled entities that **simultaneously** satisfy the following conditions (Point 3.1):

- (a) **Passive income test:** income classifiable as *passive income* (Article 167(4)(b) TUIR) must exceed one third of the total revenues of the controlled entity;
- (b) **Audited financial statements:** the controlled entity must prepare financial statements subject to audit and certification by professionally qualified operators authorised in the foreign jurisdiction of establishment, whose findings are relied upon by the auditor of the controlling entity for the purposes of the annual or consolidated financial statements.

Critical point: if even a single controlled entity, while meeting the passive income test,

fails to satisfy the audited financial statements requirement, the election **cannot be exercised** in respect of any controlled entity within the group (Point 3.2). This constitutes a “blocking” condition of particular stringency, requiring a preliminary assessment of all entities within the CFC perimeter.

4. Exercise, duration and revocation of the election

The election is exercised in the **FC schedule** (“Redditi dei soggetti controllati non residenti”) of the income tax return, taking effect from the tax period to which the return relates (Point 4.1). In cases of indirect control through resident entities, the election lies with the ultimate-level controlling entity (Point 4.2).

The election has a **three-year term and is irrevocable**; upon expiry of the three-year period, it is tacitly renewed unless revoked (Point 4.3). Revocation must be notified in the FC schedule of the return relating to the fourth tax period following the exercise or renewal of the election (Point 4.5).

The election automatically extends, without the need for a further election, to controlled entities acquired during the period of validity, provided they satisfy the passive income test and the audited financial statements requirement (Point 4.4).

Transitional safeguard clause: an election already exercised under Ruling No. 213637/2024 is deemed validly exercised also for the purposes of the new regime and remains irrevocable until the expiry of the original three-year term (Point 4.6).

5. Termination of the election

The election ceases to have effect, even before the expiry of the three-year term, in relation to an **individual controlled entity** in the event of (Point 5.1): (a) loss of control within the meaning of Article 167(2) and (3) TUIR; (b) failure to meet the requirements for the *branch exemption* regime in respect of permanent establishments.

The election ceases instead for **all controlled entities** where the audited financial statements requirement is no longer met by

even a single entity (Point 5.2): consistently with the “blocking” mechanism under Point 3.2, a supervening deficiency produces a systemic effect.

6. Determination of net accounting profit and payment

The net accounting profit is calculated from the accounting result derived from the application of accounting standards used for the preparation of the **consolidated financial statements** (or, in the absence thereof, the statutory financial statements), **without taking into account** (Point 6.1): consolidation adjustments; impairment losses on assets; provisions for risks and charges.

Compared with the previous Ruling, the innovation lies in the express inclusion of **provisions for future charges** among the items to be neutralised, in line with the amendment introduced by Decree-Law No. 84/2025 to the primary legislation. The treatment of value reinstatements and utilisations of provisions remains, however,

unregulated: a gap that may give rise to asymmetries in practice.

The 15% payment is proportional to the **share of entitlement to profits** directly or indirectly attributable to the controlling entity (Point 6.2), is **non-deductible** for corporate income tax (IRES) and regional production tax (IRAP) purposes (Point 6.5), and must be made within the deadlines and in accordance with the procedures applicable to income tax payments (Point 6.6). A separate line of the RM schedule must be completed for each controlled entity (Point 6.4).

7. The new regime for distributed profits: the most significant change

This is by far the most consequential amendment from a practical standpoint. Point 7.1 provides that dividends distributed by foreign controlled entities and accrued during the three-year period of validity of the election shall be deemed to originate from States or territories **other than** those subject to a privileged tax regime (Article 167(4)(a)

TUIR) and shall be subject to taxation under **Articles 47 and 89 TUIR**.

The paradigm shift relative to the previous regime is stark:

Previous regime (Ruling 213637/2024): the net accounting profit subjected to the substitute tax was entirely excluded from the income of the controlling entity upon distribution (no further taxation, no foreign tax credit).

New regime (Ruling 106520/2026): the distributed profit has the character of **non-privileged income** and is taxed under the ordinary rules. For corporate controlling entities, taxation applies to the extent of 5% of the dividend amount (Article 89 TUIR). A credit for taxes paid abroad is available under Article 165 TUIR, within the limits of paragraph 10 (Point 7.4).

Practical impact: the overall cost of the election is no longer limited to the 15% levy on net accounting profit, but also encompasses the taxation of the dividend in

the hands of the resident shareholder. The benefit of the election is therefore confined to the simplification of the ETR test and the avoidance of full CFC transparency taxation, while the dividend reverts to being taxable: a factor that necessitates an update of the cost-benefit analyses previously conducted under the former regime.

8. Transitional regime: redetermination for FY 2024

Point 7.2 requires taxpayers who, in respect of FY 2024, excluded the net accounting profits from the tax base – in reliance on Point 6.1 of Ruling 213637/2024 – to **redetermine their taxable income**, with consequent settlement of the additional taxes due.

In protection of legitimate expectations, Point 7.3 excludes the application of **penalties and interest** for taxpayers who complied with the guidance of the previous Ruling, pursuant to Article 10(2) of Law No. 212 of 27 July 2000 (Taxpayer Bill of Rights).

The Revenue Agency thus adopts a unitary view of the election exercised, the legal basis for which resides in the retroactive effect that Article 4 of Decree-Law No. 84/2025 attributed to the amendment of Article 167(4-ter), operative from FY 2024. The retroactivity is mitigated – but not eliminated – by the disapplication of the penalty regime.

9. Monitoring of tax attributes

The Ruling abandons the automatic suspension of monitoring that characterised the previous regime. Point 8.1 provides that, where the controlling entity has not tracked tax attributes during the validity of the election, it may opt for the reinstatement of monitoring upon revocation or cessation: in that case, the opening values shall be zero and foreign tax losses accrued prior to the election shall not be taken into account.

Where the controlling entity intends to preserve the ability to utilise residual virtual losses, excess interest and/or ROL, and updated tax attributes in the event of subsequent CFC transparency taxation, it is

nevertheless required to maintain monitoring throughout the validity of the election (Point 8.2). In substance, the simplification afforded by the election concerns only the computation of the ETR, not the tracking obligations – an element to be carefully evaluated in any cost-benefit analysis.

10. Practical guidance

Cost-benefit assessment: it is necessary to update the analyses previously conducted under the former regime, taking into account that the cost of the election now includes the ordinary taxation of dividends in the hands of the resident shareholder (5% for corporate taxpayers, full ordinary regime for individuals). The comparison should be drawn with the alternative of full CFC transparency taxation (analytical determination of the ETR and taxation of the CFC income).

Perimeter verification: the audited financial statements requirement is a “blocking” condition: non-compliance by even a single controlled entity (that meets the passive income test) prevents the exercise of the

election for all entities and, if supervening, triggers its cessation. Constant monitoring of all entities within the perimeter is therefore essential.

FY 2024 compliance: taxpayers who exercised the election and entirely excluded profits from the FY 2024 tax base must proceed with the redetermination of income. The ordinary filing deadline for FY 2024 may have already expired or be imminent: it is advisable to verify as a matter of urgency whether an amended return is required.

Monitoring of tax attributes: careful consideration should be given to maintaining the tracking of tax attributes during the validity of the election, bearing in mind that failure to track results in the resetting of opening values to zero and the forfeiture of prior foreign tax losses upon cessation or revocation.

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The Firm remains at your disposal for any clarifications and further analysis, including a more comprehensive examination of the

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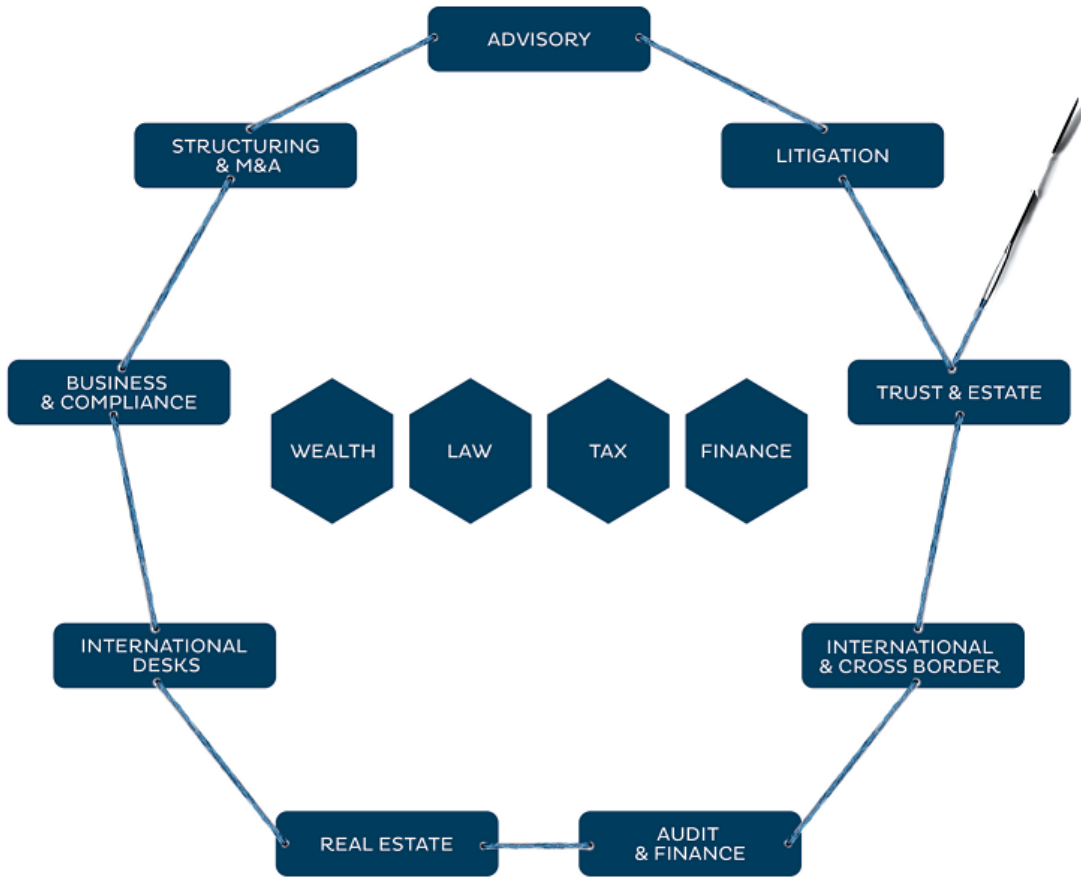
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