

German Partnerships May Directly Claim Benefits of Tax Treaty Between Germany and Italy

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The Italian tax authorities (ITA) have clarified that partnerships established in Germany, despite being treated as fiscally transparent in the state of residence, may directly claim the benefits of the [Germany - Italy Income and Capital Tax Treaty \(1989\)](#), subject to conditions (Ruling Answer [No. 418/2023](#) of 16 August 2023).

This ruling examines the case of a German limited partnership (*Kommanditgesellschaft*, hereafter 'the taxpayer') having both the general and the limited partner resident in Germany and selling its 100% participation in an Italian entity. Under German law, the taxpayer is treated as fiscally transparent, with the partnership income being directly attributed to partners, irrespective of actual distributions.

Per article 13(4) of the treaty, the capital gain is taxable only in Germany. However, the taxpayer asked the ITA to clarify whether the partnership can directly claim treaty benefits, or only its partners may do so in proportion to their respective interests.

The ITA referred to the provision of paragraph 2 of the Protocol (1989) to the treaty, according to which a partnership may qualify as a resident of one of the contracting states but the treaty limitations to the source state's taxing rights apply only insofar as the partnership income is taxed in the other contracting state. Since in the case at hand all the partners are resident in Germany, the partnership may directly invoke the provisions of article 13(4) of the treaty.