



NEWSLETTER NO. 11 - 2025

September 22 2025 Page 1/3

DIRECT TAXES

DE-MERGER BY SPIN OFF

Under the regulations applicable prior to the amendments introduced by the Italian legislative decree 88/2025, the tax neutral scheme of a de-merger by spin off pursuant to article 2506 (1) of the Italian civil code was applicable to de-mergers by spin off in favour of newly incorporated beneficiaries only (Italian tax authority, answer to request for advance ruling 225 of 21 August 2025).

However, after the amendment of article 2506 (1) of the Italian civil code by the aforementioned decree, a de-merger by spin off may occur not only in favour of newly incorporated but also in favour of pre-existing companies. As a consequence, the tax neutral rules may apply even in the event of a de-merger by spin off in favour of pre-existing companies.

PATENT BOX

The Italian tax authority provides clarifications on the option for the so-called patent box scheme under article 6 of the Italian law-decree 146/2021, relating to research and development expenses on certain intangible assets, with reference to copyright protected software (Italian tax authority, answer to request for advance ruling 223 of 21 August 2025).

OPEN-END COLLECTIVE INVESTMENT COMPANIES (SICAV)

Shares of open-end collective investment companies

(SICAV) recorded amongst the financial assets of current assets are included, for tax purposes, among "other securities in series or masses other than those" pursuant to article 85 (1.e) of the Italian income tax code (TUIR), whose valuation and more specifically minimum value for corporate tax purposes (IRES) is governed by the provisions under article 94 (4) in combination with article 92 (5) of the Italian income tax code (TUIR) (Italian tax authority, answer to request for advance ruling 222 of 20 August 2025).

USE OF REVALUATION BALANCE TO COVER LOSSES

The revaluation surplus used to cover losses - not only losses carried forward but also operating losses - is not subject to taxation.

Moreover, if the revaluation surplus is subsequently reduced by a corresponding amount pursuant to a resolution of a general meeting, the related tax restriction on its distribution shall cease to apply to the same extent (Italian tax authority, answer to request for advance ruling 219 of 20 August 2025).

CROSS-BORDER CONTRIBUTION OF SHAREHOLDINGS

In case of a simultaneous contribution of

- equity interests held in an Italian company,
- in favour of a non-resident transferee company (France),
- by two transferring parties, where one of them "X" is resident in Italy (and transfers a minority interest) and the other "Y" is resident in France

NEWSLETTER NO. 11 - 2025

September 22 2025 Page 2/3

(and transfers a controlling interest),

the transferor "X" resident in Italy does not benefit from the tax neutral scheme set forth under article 179 (4) of the Italian income tax code (TUIR). This is due to the fact that the transfer of control of the contributed company occurs by virtue of the contribution of the equity interests held by the transferor resident in France, whereas the transferor resident in Italy transfers only a minority interest (Italian tax authority, answer to request for advance ruling 217 of 19 August 2025).

EMPLOYEE BONUS

Employees

- who were resident abroad until 2023,
- who worked abroad until 2023,
- who accrued a bonus at the end of the 2021-2022-2023 vesting period for the work carried out abroad,
- who became fiscally resident in Italy in 2024,
- who cashed in the bonus in 2024,

must subject the bonus cashed in during 2024 to taxation in Italy, even if it was accrued when they were resident abroad and in relation to the work carried out abroad (Italian tax authority, answer to request for advance ruling 199 of 4 August 2025 rectifying the previous answer 81/2025).

SHELL COMPANIES

In order for the rules on shell companies pursuant to article 30 Italian law 724/1994 to be applicable, the company must have been established at least since 4 years. This is due to the fact that for the 'operativeness test' the revenues and the values of goods and fixed assets are assumed based on the average results <<of the business year and the two previous business years>>: since the first year of a company's existence is irrelevant under these provision, in order to carry out the operativeness test - and hence to calculate the average results of the three business years - companies must have been in existence for at least 4 years.

As a consequence, shell company rules are not applicable in the year $x+2$ with respect to a company incorporated in the year x , because - when counting

backwards starting from year $x+2$ and disregarding the first year - the "two preceding accounting periods" required for the tax period under review do not exist (Italian Supreme Court, judgement 22007 of 30 July 2025).

REGIONAL TAX ON PRODUCTIVE ACTIVITIES (IRAP)

Article 6 (1.a) of the Italian legislative decree 446/97, which subjects dividends paid by daughter companies resident in other EU countries to taxation of more than 5 percent for financial intermediaries is contrary to the "mother-daughter" directive.

This is true even if such taxation is made by a tax other than corporation tax that - as the regional tax on productive activities (IRAP) - includes such dividends or part thereof in its tax base (ECJ, C-794/2023 of 1 August 2025).

DEDUCTION FOR IRAP PURPOSES OF DEPRECIATION OF CAPITAL GOODS

The lump-sum criteria set forth under article 36 (7) of the Italian law-decree n. 223/2006, for the exclusion of the cost of an area, on which a commercial building is located, do not apply for IRAP purposes. That means that depreciation is deductible based on accounting criteria (Italian Supreme Court, judgement 22822 of 7 August 2025).

REAL ESTATE RIGHTS

Income from the granting in usufruct or the establishment of other real rights of enjoyment on real estate constitutes:

- other taxable income pursuant to article 67 (h) of the Italian tax code (TUIR) if the grantor maintains a real right on the property;
- a taxable capital gain pursuant to article 67 (b) and (b-bis) of the Italian tax code (TUIR), if the grantor simultaneously and completely renounces to all rights on the real estate (article 1 (1-bis) of the Italian law-decree 84 of 17 June 2025, added upon conversion by the Italian law 108 of 30 July 2025, published in the Italian official gazette 177 of 1 August 2025).

NEWSLETTER NO. 11 - 2025

September 22 2025 Page 3/3

ADDITIONAL TAX ON STOCK OPTIONS AND VARIABLE REMUNERATION

Starting from 2025, the additional IRPEF of 10% on bonuses and stock options provided for by art. 33 of Legislative Decree 78/2010 is applied only by those subjects indicated in art. 162-bis, c. 1, letters a) and b), TUIR, and therefore by managers and directors of financial intermediaries and financial holding companies. On the other hand, variable remuneration paid to managers and directors of industrial holding companies is excluded (Art. 1-bis of Legislative Decree 84/2025, added at the time of conversion by Law 108/2025).

VAT

AMOUNT PAID TO LEAVING CONCESSIONAIRES

The sum paid by a new concessionaire to the leaving concessionaire as compensation (provided for by art. 703 of Royal Decree 327/1942 - Navigation Code), corresponding to the residual net book value of the properties under concession, must be subject to VAT (Revenue Agency, answer to ruling no. 226 of 21.08.2025).

INDEMNITY FOR DELAYS ATTRIBUTABLE TO THE CUSTOMER

The compensation paid to the contractor for the greater direct and indirect costs incurred due to the delay attributable to the contracting entity in adopting the agreed variants necessary to continue the works, is subject to VAT as it constitutes an integration of the agreed consideration (Revenue Agency, answer to ruling no. 215 of 19.08.2025).

DEDUCTION

Importers can deduct the VAT paid at customs on goods of which they are not the owner, if the cost of such goods (in this case, the component of a drug) is related to his trading activity (in this case drugs) (Revenue Agency, answer to ruling no. 213 of 19.08.2025).

TRANSFER OF TRADEMARKS

The transfer of a trademark, jointly with related IP rights for the exploitation of the same, does not constitute a transfer of business, but a supply of services subject to

VAT (Italian tax authority, answer to request for advance ruling 210 of 19 August 2025).

WRONG VAT RATE

A VAT subject who applied a higher VAT rate than the one due is not required to pay the VAT to the tax agency, if wrongly invoiced to a subject who is not liable for VAT, provided that such latter subject did not deduct the tax (ECJ, C-794/2023 of 1 August 2025).

VAT CEILING

The VAT ceiling may be transferred in the context of a sale or a contribution of a business or part of a business, provided that:

- the purchaser/ transferee continues the activity of the transferred or contributed business previously carried out by the seller/the transferor, without interruption;
- the purchaser/ transferee succeeds in the legal relationships (assets and liabilities) of the business transferred or contributed.

Furthermore, the transfer must be provided for in the agreement on the business sale. Finally, the purchaser (if resident abroad) must be identified for VAT purposes in Italy either directly or through a fiscal representative (Italian tax authority, answer to request for advance ruling 220 of 4 August 2025).

ART OBJECTS

Art objects, antiques and collectibles, mentioned under letters a), b), and c) of the table annexed to the Italian law-decree 41/1995 are subject to a 5 percent VAT rate, unless the special VAT scheme for dealers in second-hand goods, art objects, antiques or collectibles pursuant to article 36 of the aforementioned decree applies (no. 1-novies of table II-bis annexed to the Italian DPR 633/1972, added by article 9 (2.a) of the Italian law-decree 95/2025, amended and converted by the Italian law 118/2025).

Yours sincerely,

HAGER & PARTNERS

Member of  Nexia

HAGER & PARTNERS is a member of Nexia, a leading, global network of independent accounting and consulting firms. Please see the [Member firm disclaimer](#) for further details.

DOTTORI COMMERCIALISTI AVVOCATI REVISORI CONTABILI

I - 20122 MILAN . Via Borgogna 2 . Tel. 02 7780711 . Fax 02 778071233 . info.mi@hager-partners.it

I - 39100 BOZEN/BOLZANO . Musterplatz 2 P.zza della Mostra . Tel. 0471 971197 . Fax 0471 980202 . info@hager-partners.it

I - 00186 ROME . P.zza della Rotonda 2 . Tel. 06 68805843 . Fax 06 68211765 . info@hager-partners.it

www.hager-partners.it