



## NEWSLETTER NO. 4

Friday, 15<sup>th</sup> May 2026

### DIRECT TAXES

#### COMMERCIAL ACTIVITY FOR PARTICIPATION EXEMPTION

If a special purpose vehicle acquires projects under development in the electricity industry:

- but does not carry out >>that set of activities concerning financing operations, site selection, design, and construction of plants, expressly referred to in newsletter 7/E/2013, and considered as a whole and, with reference to companies operating in the electric energy sector, as constituting (even if only partial) implementation of the corporate purpose<<, insofar as such activities have already been performed by the transferor,

and furthermore

- is not yet >>able to (even if only potentially) meet market demand within reasonably foreseeable technical timeframes, having regard to the specific characteristics of the relevant economic industries<<,

the requirement of commercial activity cannot be deemed satisfied for the purpose of applying the participation exemption scheme under article 87 of the Italian Income Tax Code (TUIR).

This is because the company is neither in a start-up phase that would satisfy the requirement of

commercial activity, nor in the phase of carrying out its actual business activity (Italian tax authority, answer to request for advance ruling 97 of 1 April 2026).

#### CLASSIFICATION AS FIXED FINANCIAL ASSETS FOR PARTICIPATION EXEMPTION

Upon application of the participation exemption scheme the tax authorities may challenge the recognition of the equity interest as a financial fixed asset, where the equity interest:

- constitutes an investment driven by purely speculative intentions,
- or in any case
- is intended for disposal in the short term,

in which case its recognition must therefore be made under current assets (Italian Supreme Court, judgement 11695 of 29 April 2026).

#### CONTRACTUAL PENALTIES

Contractual penalties agreed upon pursuant to section 1382 of the Italian civil code are deductible from business income, if they are related to the business activity. Therefore, deductibility may be challenged by the tax authorities, where the contractual penalties display characteristics of economic unreasonableness, as the manifest disproportion (or economic irrationality of the contractual arrangement) of the penalties operates as an indicative element of the lack of relevance of the cost to the business

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activity (Italian Supreme Court, judgement 12400 of 3 May 2026).

### BENEFICIAL OWNER

The notion of beneficial owner is determined through the three following "cascade" tests:

- the substantive business activity test, aimed at verifying that the recipient company carries out a genuine economic activity and does not constitute an artificial arrangement;
- the dominion test, aimed at verifying that the recipient company may freely dispose of the income received, without any obligation to redirect the income flow to a third party;
- the business purpose test, aimed at verifying the economic reason for the interposition of the recipient company in the income flow;

and applies both within the framework of the Interest and Royalties Directive and for the purposes of double taxation agreements (Italian Supreme Court, judgement 11744 of 29 April 2026).

### INTRA-GROUP COSTS

For intra-group costs to be deductible, a mere formal indication of the percentage of costs set out in a framework agreement valid for multiple years is not sufficient, nor is the mere existence of signed advisory agreements. Instead, evidence of the specific costs incurred in relation to the transactions actually carried out in the relevant tax period is required (Italian Supreme Court, judgement 10456 of 21 April 2026).

### FUTURE CAPITAL INCREASE PAYMENTS

Future capital increase payments do not increase the tax acquisition cost of the equity interest held by the shareholder until the resolution approving the capital increase has been adopted (Italian Supreme Court, judgement 9629 of 15 April 2026).

### VAT

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#### LOGISTICAL ORGANIZATION OF FESTIVALS AND CONCERTS

The logistical organization of festivals, concerts, and other similar events carried out under an undisclosed agency agreement, pursuant to which the Italian company undertakes to book restaurants, hotels, transport services, etc., must be invoiced as follows:

- The Italian organizing company re-invoices the principal for the services purchased from Italian suppliers according to the place-of-supply rules applicable to each individual service: e.g. for accommodation and restaurant services according to the place where such services are carried out by way of derogation from article 7-quater of the Italian DPR 633/1972, therefore by applying VAT at 10 % if carried out in Italy; whereas for services not falling under any specific derogation, the place of supply is determined according to the place where the customer is established pursuant to article 7-ter of the Italian DPR 633/1972, and therefore without applying VAT if the customer is established abroad;
- the Italian organizing company invoices the principal for a mark-up without VAT, if the customer is established abroad pursuant to article 7-ter of the Italian DPR 633/1972 (Italian tax authority, answer to request for advance ruling 94 of 1 April 2026).

#### VIRTUAL CURRENCY

The exchange of fiat currency for units of virtual currency used solely for an online video game as a means of payment does not fall within the VAT exemption scheme (ECJ C-472/24 of 5 March 2026).

#### EVIDENCE OF INTRA-COMMUNITY SUPPLY

For the purpose of applying the VAT exemption scheme, a set of documents consisting of the following is sufficient to prove that the goods have left the national territory and entered the territory of another EU Member State: (i) CMR documents, signed either by both the carriers and the recipients of the goods or solely by the carriers; (ii) sales invoices; (iii) bank transfer records of payments made by the purchasers;

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(iv) and acknowledgements of receipt of the goods issued by the purchasers (Italian Supreme Court, order 8726 of 8 April 2026).

### REGISTRATION FEES

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#### TRANSFER OF PARTNERSHIP SHARES HELD IN A PROFESSIONAL PARTNERSHIP

The transfer of partnership shares held in a professional partnership is subject to proportional registration fees, and not to the fixed-amount registration fees applicable to the transfer of corporate shareholdings (Italian Supreme Court, judgement 12671 of 5 May 2026).

#### REGISTRATION FEES (“PREZZO VALORE”) FOR APPURTENANT LAND

As regards registration fees, the spatial distance between the principal asset and the asset allegedly qualifying as an appurtenance does not constitute a decisive factor for excluding the appurtenant relationship, provided that such distance is not unreasonable, since it must be assessed together with the other relevant factors – such as the functional purpose and the actual use of the assets (Italian Supreme Court, Tax Section, order 13553 of 10 May 2026).

Yours sincerely,

HAGER & PARTNERS

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