

PEX REGIME FOR CAPITAL GAINS REALIZED BY NON-RESIDENT COMPANIES

Italian Revenue Agency Circular Letter 29.07.2024 No. 17/E

- ✓ With this circular letter the Italian Revenue Agency provides clarifications regarding the provision introduced by Law 213/2023 (2024 Budget Law) and concerning the tax regime of capital gains on qualified shareholdings realized by non-resident companies.
- ✓ In particular, new paragraph 2-*bis* of Article 68, CIT, establishes that capital gains realized through the transfer of qualified shareholdings fiscally relevant in Italy by companies and commercial entities, without a permanent establishment in Italy, residing in an EU or EEA State and subject to a corporate income tax there, benefit from the participation exemption (PEX) regime – with the consequent taxation of the capital gain only for 5% of its amount – provided they meet the requirements identified by Article 87, paragraph 1, letters a) to d) of CIT. With this provision, the Legislator has resolved the potential conflict of the previous regime with the fundamental freedoms established by the Treaty on the Functioning of the EU (see the judgments of the EU Court of Justice C-540/07 of 19.11.09 and the Court of Cassation no. 27267 of 25.9.23).
- ✓ Italian Revenue Agency confirms that the new provision also applies to foreign companies and entities with a permanent establishment in Italy if the relevant qualified shareholding in Italy transferred is not connected, in accounting and functional terms, to said permanent establishment. However, non-commercial entities, individuals, and non-resident entities that are not subject to corporate taxes do not fall within the scope of application. Capital gains derived from participation in simple partnership or companies with privileged tax regimes are also excluded.
- ✓ Italian Revenue Agency refers to the previous clarifications provided with circular letters 36/E of 2004 and 7/E of 2013 regarding the mentioned requirements of Article 87, specifying that for the requirement of letter b (classification among financial fixed assets in the first balance sheet closed during the holding period) (i) the principle ex Article 85, paragraph 3-*bis*, CIT, and the provision of Article 2 of the Ministerial Decree of 10.1.2018 apply for IAS/IFRS entities, and (ii) the classification of shareholdings adopted in the balance sheet prepared according to local accounting principles is valid.
- ✓ Requirements must be met at the time when the transfer effect of the shareholding occurs regardless of the moment of collection.

