

NON-PROPORTIONAL DEMERGER OF A SIMPLE PARTNERSHIP: ANTI-ABUSE ANALYSIS

Italian Revenue Agency Ruling No. 124 of 30.04.2025

- ✓ The Italian Revenue Agency (hereinafter, «Revenue Agency») provided clarifications on the tax treatment applicable to a demerger of a simple partnership (holding) - whose quotas are initially equally held (1/3) by three heirs and a so-called «*socio d'opera*» - in favour of three Newco (simple partnerships) each held by one of the heirs and the «*socio d'opera*». Pursuant to Article 10-bis of Law No. 212/2000, the complete non-proportional demerger is considered “not abusive” given that the tax values of the assets (participations) received by the beneficiaries preserve the same value recognised by the demerged company.
- ✓ With reference to the case in exam, the Revenue Agency remarked that:
 - on the basis of previous Rulings (No. 309/2021 and No. 91/2018) and pursuant to Article 173 of Presidential Decree No. 917/1986, the demerger of a simple partnership is not considered a tax-neutral transaction as the simple partnership does not produce corporate income («*reddito d'impresa*»); however as the transfer of participations takes place in favour of the beneficiaries preserving the same value for tax purposes as that of the demerged company, and there is no provision for compensation - in cash or in kind - among the exchanging shareholders, the non-proportional demerger does not fall under any of the cases provided by Article 67 of Presidential Decree No. 917/1986 and is considered irrelevant from a tax point of view both for the demerger and shareholders;
 - from an “anti-abuse” point of view and in line with the recent «*Guideline Act*» issued by the Ministry of Economy and Finance No. 7 of 27/02/2025, the analysis to be conducted shall consider the «*undue tax advantage*», the «*absence of economic substance*» and «*the attainment of an undue tax advantage*». In any case, even in the case the symptomatic elements of abuse are verified, it is always necessary to investigate the valid non-marginal tax reasons which can exclude the assumption of abuse pursuant to Article 10-bis of Law No. 212/2000;
 - lastly, the proposed transaction determines the dissolution of the co-ownership of the total shareholding held by the three shareholders in the demerged company and, therefore, constitutes a deed of division by means of which each co-owner becomes the exclusive owner of its own share in each Newco. For registration tax purposes, such deed is considered as a «*declaratory deed*», thus subject to a 1% rate.

