

DEMERGER BY SPIN-OFF (*SCISSIONE CON SCORPORO*): LIMITATIONS TO THE PRINCIPLE OF TAX NEUTRALITY

Italian Tax Authorities Ruling No. 225 of 21 August 2025

- ✓ Italian Tax Authorities (hereinafter, «ITA») provided clarifications on the tax treatment applicable to a demerger by spin-off – pursuant to Article 2506.1 of the Italian Civil Code - between two companies, in particular Alfa (the parent company) and Beta (fully - owned by Alfa and already existing), concerning a real estate property owned by the parent company and leased to the subsidiary (Beta) for the purpose of its business activities. ITA clarified that, under the civil law provision in force at the time (*ratione temporis*), as recently amended by Article 2, paragraph 1, letter a, of Legislative Decree 88/2025, the tax neutrality does not apply to the specific case, because the civil law in force at the time only allowed its application to demergers by spin-off in favour of newly established beneficiary companies.
- ✓ In detail, ITA clarified that:
 - Tax rules for the new demerger by spin-off, pursuant to Article 2506.1 of the Italian Civil Code, are set forth in paragraph 15-ter of Article 173 of the Presidential Decree No. 917/1986 (CIT), introduced by Article 16 of Legislative Decree 192/2024 (hereinafter, the «Decree»). The civil law provision in force at the time expressly referred only to newly incorporated beneficiary companies, excluding pre-existing companies. In accordance with the civil law provision (Article 2506.1 of the Italian Civil Code) to which the tax provision directly refers, paragraph 15-ter of Article 173 of CIT therefore confirmed that tax neutrality applies exclusively to demergers by spin-off in favour of newly incorporated beneficiaries.
 - Given the civil law in force at the time, the limitations set forth in paragraph 10 of Article 173 of CIT, concerning the carry-forward of tax losses and other «tax surpluses» (e.g., interest expense from previous financial years, «ACE») do not apply, as also clarified in the explanatory report to the Decree (*Relazione illustrativa*). In fact, limitation on the carry-forward of losses and other «tax surpluses» in traditional demergers presupposes the prior existence of the beneficiary company, which, «according to the civil law (in force at the time - *ratione temporis*), does not seem to be the case in the event of a demerger by spin-off».
- ✓ The Ruling seems to have been superseded in light of the recent amendment to Article 2506.1 of the Italian Civil Code, under which a demerger by spin-off may now take place both in favour of newly established and pre-existing beneficiary companies.

