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«CONTROLLED REALISATION» REGIME: THE ABSENCE OF A SHARE CAPITAL INCREASE BY THE TRANSFEREE COMPANY DOES NOT PRECLUDE THE APPLICATION OF THE REGIME

Italian Tax Authority Ruling No. 9 of 20 January 2026

- ✓ Italian Tax Authority (hereinafter,«ITA») provided clarification on the application of the so-called «controlled realisation» regime pursuant to Article 177, paragraph 2, of the Presidential Decree No. 917/1986 (hereinafter, «CIT») in cases where the contribution of a shareholding is attributed exclusively to the shareholders' equity of the transferee company, without increasing the relevant share capital. The case examined by the Tax Authority concerns an individual, not carrying out a business activity, who owns two wholly-owned companies (Alfa and Beta). The individual intends to contribute the shareholding in Alfa to Beta, without increasing Beta's share capital, allocating the contribution entirely to an equity reserve.
- ✓ In this regard, the ITA clarified that:
  - In principle, also taking into account the changes introduced by Legislative Decree No. 192/2024, access to the «controlled realisation» regime remains subject to two fundamental conditions: (i) the transferring parties must receive, as consideration for the contribution, shares or quotas of the transferee company; and (ii) as a result of these contributions, the transferee company must acquire control of the transferred company pursuant to Article 2359, first paragraph, no. 1) of the Italian Civil Code, or increase an already held controlling interest;
  - The absence of a share capital increase and the non-issuance of new shares quotas not prevent the application of the «controlled realisation» regime where the contribution is made to a company already wholly owned by the transferring party (not carrying out a business activity). In such circumstances, the requirement for the attribution of shareholdings must be considered substantially satisfied, given that any allocation of the contribution to share capital would be merely formal and would not reflect any genuine economic interest of the transferring party. The transaction merely results in a reorganisation of the control structure, converting direct control into indirect control, consistently with the purposes provided by Article 177, paragraph 2, of the CIT.
- ✓ In conclusion, the ITA confirms that, under the above conditions, the absence of a share capital increase and the non-issuance of new shares do not preclude the application of the «controlled realisation» regime. In such cases, the taxable realisation value is identified by the portion of the transferee company's net equity generated as a result of the contribution (an approach consistent with the clarifications provided by Circular No. 33/E of 17 June 2010).

BISCOZZI NOBILI & PARTNERS
Studio legale tributario

FOR FURTHER INFORMATION:
Studio Legale Tributario
Biscozzi Nobili & Partners

Via Torino, 2 (corner of Piazza Duomo) – Milan

+39 02 7636931

Andrea Di Bartolomeo andrea.dibartolomeo@sbnp.it

Andrea Spinzi andrea.spinzi@sbnp.it