DECEMBER TAX NEWS

News on IRPEF and IRES - Legislative Decree No. 192 of December 13, 2024

INTRODUCTION

With Legislative Decree No. 192 of December 13, 2024, published in the Official Gazette No. 294 of December 16, 2024, implementing the delegation law for the tax reform under Law No. 111 of August 9, 2023, an important revision of the taxation system for income purposes (IRPEF and IRES) has been made.

Legislative Decree 192/2024 entered into force on December 31, 2024, but specific starting dates for its application are provided.

The following outlines the main changes regarding income from land, employment income, self-employment income, business income, and other income.

2 NEW DEVELOPMENTS REGARDING INCOME FROM LAND

Topic | Description

Revision of the Regulation on Income from Land

Regarding income derived from agricultural activities, several provisions are introduced to extend the scope of application:

• Agricultural income under Article 32 of the TUIR (Consolidated Income Tax Act);

• Business income determined on a flat-rate basis under Article 56-bis of the TUIR.

Potential Link to the Land

The first paragraph of Article 32 of the TUIR is reworded, aligning the concept of "agricultural income" with the civil law definition of "agricultural entrepreneur" as per Article 2135 of the Civil Code.
This reform allows for the inclusion of activities that generate agricultural income, even if they do not have a direct link to the land, such as modern agricultural production techniques that do not require land use, as long as they are activities aimed at the care and development of one or more phases of the biological cycle of plants or animals.

“Soil-less” Cultivation

Among the productive activities generating agricultural income under Article 32 of the TUIR, the production of plants using buildings classified in the cadastral categories C/1, C/2, C/3, C/6, C/7, D/1, D/7, D/8, D/9, and D/10 (so-called "soil-less" cultivation) is now included.
In particular, for "soil-less" cultivation activities:

• If the production area does not exceed twice the "reference agricultural area" (which will be defined by a specific ministerial decree), the income derived is classified as agricultural income, determined on a cadastral basis (Article 32, paragraph 2, letter b-bis of the TUIR);

• Beyond this limit, the "extra-threshold" income is determined on a flat-rate basis (unless opted otherwise) and contributes to the business income in an amount corresponding to the agricultural income

relative to the "reference area," in proportion to the exceeding area (Article 56-bis, paragraph 1 of the TUIR).

Regarding the buildings used for "soil-less" cultivation:

• If leased, they remain subject to taxation according to the ordinary rules for property income under Articles 36 et seq. of the TUIR;

• If not leased (since they are used directly by the owner for "soil-less" cultivation), they generate income from ownership.

Finally, specific rules are set for the determination of ownership and agricultural income derived from "soil-less" cultivation. In particular, it is established that:

• Under the regular regime, such incomes will be determined (on a cadastral basis) based on new classes and qualities of cultivation identified by a specific ministerial decree;

• On a transitional basis, until the ministerial decree is issued, such incomes will be determined by applying the highest cadastral rate in force in the province where the property is located, increased by 400%.

• In any case, the income from land related to “off-soil” cultivation (determined in accordance with the aforementioned ministerial decree or by applying the “transitional” rules outlined above) cannot be lower than the cadastral income attributed to the building intended for such cultivation.

Sale of carbon dioxide quotas Among the productive activities, within certain limits, of agricultural income as per Article 32 of the TUIR, are also included the "activities aimed at producing goods, even intangible, carried out through cultivation, breeding, and forestry that contribute to environmental protection and the fight against climate change." For example, income earned from the sale of carbon credits obtained through carbon dioxide capture falls into this new category of agricultural income.

Such activities, if carried out:

• within the limit of the amounts from the sale of goods, registered or subject to registration for VAT purposes, resulting from the exercise of agricultural activities as per Article 2135 of the Civil Code, produce agricultural income, determined on a cadastral basis (Article 32, paragraph 2, letter b-ter of the TUIR);

• beyond the aforementioned limit, produce business income determined forfaitarily (unless opted otherwise), applying a 25% profitability coefficient to the amount of the payments from registered transactions or those subject to registration for VAT purposes (Article 56-bis, paragraph 3-ter of the TUIR).

Forfait tax regimes for agricultural companies with cadastral option The forfait tax regimes for determining business income from agricultural activities as per Article 56-bis of the TUIR are also extended to agricultural companies that have opted for taxation on a cadastral basis according to Article 1, paragraph 1093 of Law 296/2006. Therefore, agricultural companies referred to in Article 2 of Legislative Decree 99/2004 (in the form of partnerships – snc and sas –, limited liability companies, or cooperative societies) that have exercised the aforementioned option, determine business income from agricultural activities:

• as per Article 32 of the TUIR (carried out within the limits provided therein), on a cadastral basis;
• as per Article 56-bis of the TUIR, applying the forfait tax determination criteria set out in that article (unless opted otherwise).

Effective Date All the provisions outlined above apply to income generated from the tax period starting on December 31, 2024 (the effective date of Legislative Decree 192/2024).

Land Registry Update.

Regarding the update of the Land Registry, taxpayers are exempt from the obligation to report changes related to the types and classes of cultivation, under Articles 30 and 34 of the TUIR, for all land under monitoring by the Agency for Agricultural Payments (AGEA).

Therefore, with regard to the aforementioned agricultural changes, as identified in Article 29 of the TUIR (which result in increases or decreases in land and agricultural income), the reporting is handled as follows:

- For land under AGEA monitoring, the Agency itself is responsible for the report, according to the methods outlined in Article 2, paragraph 33 of DL 262/2006;
- For land not monitored, the taxpayer is responsible for the report.

Implementing Provisions

The implementing provisions for this regulation will be defined by a specific Ministerial Decree.

3 NEW DEVELOPMENTS REGARDING EMPLOYEE INCOME

Deductibility of Contributions Paid to Supplementary Healthcare Funds

The conditions for deducting contributions paid to supplementary healthcare funds (SSN) are modified. These funds must:
• Be registered in the appropriate registry established by Article 2 of DM 31.3.2008;
• Operate according to the principle of mutuality and solidarity among their members.

In particular, the new formulation of Article 10, paragraph 1, letter e-ter) of the TUIR (Consolidated Income Tax Act) provides that contributions paid to SSN supplementary funds, if not already deductible in the calculation of individual incomes that form the total income, may be deducted from the total income. The funds must be established or adjusted in accordance with Article 9 of Legislative Decree 30.12.92 n. 502 (and subsequent amendments), registered in the Registry of Supplementary Healthcare Funds established by DM 31.3.2008, and operate based on the principle of mutuality and solidarity among their members. The contribution deduction is capped at €3,615.20, considering healthcare assistance contributions under Article 51, paragraph 2, letter a) of the TUIR, which is similarly modified by Legislative Decree 192/2024.

Thus, it is no longer necessary for funds to provide services in the areas defined by DM 31.3.2008 for the deduction to apply.

Healthcare Assistance Contributions
In reference to the exclusion from the income of employment income of healthcare assistance

contributions, the modification of Article 51, paragraph 2, letter a) of the TUIR includes a reference to entities or funds registered in the Registry of Supplementary Healthcare Funds of the National Health Service (SSN), which operate according to the principle of mutuality and solidarity among their members. These changes apply to employment income components received starting from January 1, 2025.

Contributions and Premiums for Non-Self-Sufficiency Risk and Serious Diseases
The regime of non-contribution to employment income under Article 51, paragraph 2, letter f-quater) of the TUIR for contributions and premiums for the risk of non-self-sufficiency and serious diseases is extended to financially dependent family members. These modifications apply to employment income components received starting from January 1, 2025.

Fringe Benefits - Determination of Value for Goods and Services Produced by the Company
Article 51, paragraph 3, second sentence of the TUIR is replaced, establishing that the value of goods and services produced by the employer's business activity and provided to employees is determined based on the average market price at the same stage of commercialization in which goods are sold or services provided to employees or, in the absence of such data, based on the cost incurred by the employer. These modifications apply to employment income components received starting from January 1, 2025.

Fringe Benefits - Limit of €258.23
The third sentence of paragraph 3 of Article 51 of the TUIR, indicating the "ordinary" threshold for non-taxability of fringe benefits, is modified by updating the amount in euros, changing from 500,000 lira to €258.23. These changes apply to employment income components received starting from January 1, 2025.

Travel Allowances
With a modification to the fourth sentence of paragraph 5 of Article 51 of the TUIR, travel allowances or reimbursements for expenses within the municipality are included in the taxable income, excluding travel and transport reimbursements that are supported by documented evidence (no longer just by documents from the carrier). These modifications apply to employment income components received starting from January 1, 2025.

4 New Developments Regarding Self-Employment Income

Concept of income derived from the practice of arts and professions
A comprehensive concept of income from self-employment is introduced, according to which, unless stated otherwise, income derived from the practice of arts and professions is determined by the difference between:

- All sums and values of any kind received during the tax period in relation to the artistic or professional activity;
- The amount of expenses incurred during the same period for the exercise of the activity.

Transfer of clientele
Included in the aforementioned sums and values are also the fees received for the transfer of clientele (or other intangible assets related to the artistic or professional activity), for which the

separate taxation regime has been confirmed, unless the option for the ordinary regime is chosen, provided that the payment is made, even in installments, within the same tax period.

Timing Criterion for Accounting

The reform confirms the cash basis principle as the timing criterion for recognizing income and expenses, except as specified below.

Coincidence between the timing of compensation recognition and withholding tax execution

Income received in the tax period following the one in which it was paid by the tax substitute must be recognized in the period in which the tax substitute is obligated to perform the withholding. This change aims to avoid a time discrepancy between the moment of withholding and the moment of its deduction. Previously, in the case of payments for professional services at the end of the year, it could happen that the time when the income was considered received by the recipient did not coincide with the period or month in which the paying entity was required to remit the withholding tax and include it in the Single Certification and in the 770 form. This situation could lead to disputes during formal tax audits (as per article 36-ter of DPR 600/73).

Deductible Expenses by Accrual

Depreciation, leasing fees, and severance pay quotas remain deductible on an accrual basis.

Sale of Leasing Contracts

In the case of the sale of a leasing contract involving real estate and instrumental movable property (excluding art objects, antiques, or collectibles), the income from self-employment includes the difference between:

- The fair market value of the asset;
- The sum of the redemption price and the lease payments for the remaining duration of the contract, discounted to the date of transfer. In the case of real estate, the capital portion of the lease payments already accrued, which is non-deductible because it relates to the land, must also be considered.

Rebilling of Common Office Expenses

Amounts received for recharging other parties for expenses incurred (e.g., telephone, electricity, secretarial services) for the shared use of properties used, even partially, for the exercise of the activity and related services do not contribute to the income.

Social Security and Welfare Contributions Paid by the Provider

As with the previous regulation, social security and welfare contributions required by law, paid by the person making the payment, do not contribute to the income (e.g., the 4% additional contribution owed to the pension and welfare fund for accountants).
However, the 4% surcharge charged to clients by professionals enrolled in the INPS Separate Management is taxable as part of their income.

Reimbursement of Expenses

Reimbursements for expenses incurred by the self-employed person for the execution of an assignment (such as, for example, meals, accommodation, travel, and transportation) and charged individually to the client are not taxable. These expenses are also not deductible from the self-employed income of the person who incurs them.

Expense Reimbursement
Reimbursements for expenses incurred by a self-employed person for carrying out an assignment (such as meals, accommodation, travel, and transportation) and charged specifically to the client are not taxable. These expenses are also not deductible from the self-employed income of the person who incurred them.

Non-Reimbursed Expenses
To prevent the cost from being effectively non-deductible for the self-employed person, it is provided that non-reimbursed expenses from the client can be deducted by the artist or professional from the date when:

- The client has resorted to or been subjected to one of the crisis and insolvency regulation procedures outlined in Legislative Decree 14/2019, or equivalent foreign procedures in countries or territories with which there is an appropriate exchange of information (for each of these procedures, the moment when the client is considered subject to them is specified);
- The individual enforcement procedure against the client has been unsuccessful;
- The right to collect the corresponding credit has expired.

In any case, to avoid engaging in procedures that cost more than the sums to be recovered, expenses of modest amounts (not exceeding 2,500 euros, including the related fee) can be deducted if, within one year from their invoicing, the client has not reimbursed them, starting from the tax period during which this annual period expires.

If the expenses that were deducted are later reimbursed, they will contribute to the formation of self-employed income in the tax period when they are received.

Maintenance Expenses
Expenses related to modernization, restructuring, and extraordinary maintenance of real estate become deductible in equal shares in the tax period in which they are incurred and in the next five periods. For properties used for mixed purposes, the deductible amount decreases to 50%, while keeping the same time frame.
Ordinary maintenance expenses, however, are deductible in the year they are incurred (50% for properties used for mixed purposes), according to general rules.

Depreciation of Instrumental Movable Assets
The depreciation of instrumental movable assets remains governed by the previously applicable rules, but with two new provisions:

- The reduction by half of the deductible depreciation amount in the first tax period;
- The deductibility of the residual cost of the asset, if it has not yet been fully depreciated, in case of its disposal.

Depreciation of Intangible Assets
The cost of purchasing intangible assets, previously deductible on a cash basis, now becomes deductible through depreciation, as specified below.

Copyrights and Patents
Depreciation of the cost of the rights to use creative works, industrial patents, processes,

formulas, and information related to experience gained in the industrial, commercial, or scientific field is deductible up to a maximum of 50% of the cost.

Other Long-Term Rights
Depreciation of the cost of other long-term rights is deductible based on the duration of use provided by the contract or by law.

Client Acquisition Cost
Depreciation of the cost of acquiring a client base and intangible assets related to the name or other distinguishing features of the artistic or professional activity is deductible up to a maximum of one-fifth of the cost.

Aggregation and Reorganization of Professional Activities
With the new Article 177-bis of the TUIR (Italian Income Tax Code), the application of the tax neutrality regime to the aggregation and reorganization of artistic and professional activities is established. In particular, the tax neutrality regime applies to:

- Contributions of professional studios to companies for the exercise of regulated professional activities within the ordination system, even if different from those referred to in Article 10 of Law 183/2011;
- Contributions of professional studios to professional associations or simple companies established for the joint exercise of arts and professions;
- Transformations, mergers, and demergers of companies for the exercise of regulated professional activities within the ordination system, and of professional associations or simple companies established for the joint exercise of arts and professions, as well as to the same operations between the aforementioned entities;
- Transfers due to death or gratuitous acts of individual professional studios.

Definition of Professional Studio
To benefit from the tax neutrality regime, the transferred object must be a unitary complex of tangible and intangible activities, including clientele and any other intangible elements, as well as liabilities, organized for the exercise of artistic or professional activity.

Indirect Taxation
For indirect taxes, the following is foreseen:

- Exclusion from VAT for the transfers and contributions of professional and artistic studios, as well as the transfer of goods made by companies and entities established for the exercise of artistic or professional activities (Article 2, paragraph 3, letters b) and f) of Presidential Decree 633/72);
- Application of a fixed registration tax of 200 euros (Article 4, paragraph 1, of the Tariff, Part I, attached to Presidential Decree 131/86).

Commencement and Transitional Regime
The new provisions apply to the determination of self-employment income produced starting from the tax period ending on 31.12.2024 (2024 for "solo" subjects), unless otherwise specified.

Expense Reimbursements
Until 31.12.2024, expenses incurred by the practitioner for the execution of an assignment (e.g.,

travel and transport, food and accommodation) and analytically charged to the client, as well as the reimbursements received by the client, continue to:

- Be deductible from self-employment income;
- Contribute to the formation of the same income.

Therefore, until that date, the amounts in question continue to be subject to withholding tax by the client if they are also a tax withholding agent.

Accrual of Fees Subject to Withholding
The provision concerning the accrual of fees subject to withholding also applies to tax periods preceding the one ending on 31.12.2024, provided that the related declarations, duly filed, are in compliance with it.
Tax assessments and liquidations that have become final remain unchanged.

5. New Developments Regarding Business Income

New Coefficients for Non-Operational Companies Starting from 2024
The rates to be applied to certain categories of assets in the calculation of minimum presumed revenues and income (Article 30 of Law 724/94) have been recalculated.
Commencement
The new rates apply from the tax period following the one ending on 31.12.2023 (2024, for "solo" subjects).

Calculation of Minimum Presumed Revenues
The following legal percentages should be applied:

- **1%** (instead of 2%) on the value of participations, securities, and financial receivables (Article 85, paragraph 1, letters c), d), and e) of the TUIR);
- **3%** (instead of 6%) on the value of fixed assets consisting of real estate, even if leased. For real estate classified in the cadastral category A/10, the percentage is reduced to **2.5%** (instead of 5%), while for residential properties acquired or revalued during the current and previous two years, the percentage is further reduced to **2%** (instead of 4%). For all real estate located in municipalities with a population of less than 1,000 inhabitants, the percentage is **0.5%** (instead of 1%).

The percentage of **6%** remains unchanged for the cost of ships referred to in Article 8-bis, paragraph 1, letter a) of DPR 633/72 (ships used for commercial activities or fishing, excluding recreational boats), and **15%** for other fixed assets, even those under finance leases.

Calculation of Minimum Presumed Income
The following percentages apply:

- **0.75%** (instead of 1.5%) on the value of participations, securities, and financial receivables;
- **2.38%** (instead of 4.75%) on the value of fixed assets consisting of real estate, even if leased. This percentage is reduced to **2%** (instead of 4%) for properties classified in the A/10 cadastral category and **1.5%** (instead of 3%) for real estate used for residential purposes acquired or revalued during the current and previous two years. For all properties located in municipalities with a population of fewer than 1,000 inhabitants, the percentage is **0.45%** (instead of 0.9%).

The percentage of **4.75%** remains unchanged for ships referred to in Article 8-bis, paragraph 1, letter a) of DPR 633/72, and **12%** for other fixed assets, including those under finance leases.

Extraordinary Redemption of Reserves
All entities with reserves suspended from taxation in their financial statements are offered the possibility to redeem them, thus eliminating the tax constraint, through the payment of a substitute tax for income taxes and IRAP (regional business tax).
With redemption, the reserves will be treated, from a tax perspective, as ordinary profit reserves, which can be distributed to shareholders without any further burden on the company.

Redeemable Reserves
All reserves suspended from taxation can be redeemed, regardless of the law under which they were created. The redemption can apply to all or only some of the reserves suspended from taxation and can be either total or partial.
The reserves must exist in the financial statements for the period ending on 31.12.2023 and can be redeemed up to the amount remaining at the end of the period ending on 31.12.2024.

Substitute Tax
The substitute tax is applied at a rate of **10%** and is calculated in the tax return for the tax period ending on 31.12.2024.
The payment must be made in four equal installments, with the first installment due by the deadline for the payment of income taxes for the tax period ending on 31.12.2024, and the others by the deadline for the payment of income taxes for subsequent periods.

Alignment of Tax Values to Accounting Values
The gap between accounting values and tax-relevant values is reduced for the following cases:

- Capital contributions (former Article 88, paragraph 3, letter b) of the TUIR);
- Intra-annual contracts (former Article 92, paragraph 6, of the TUIR);
- Multi-year contracts (former Article 93 of the TUIR);
- Currency transactions (former Article 110, paragraph 3, of the TUIR).

Capital Contributions
Capital contributions remain taxable based on the cash method; however, from the tax period following that ending on 31.12.2023 (2024 for "solo" subjects), the possibility of installment payments in constant amounts in the year of receipt and in the following years (but no later than the fourth) is abolished.
For contributions received by the end of the tax period ending on 31.12.2023 (2023 for "solo" subjects), any installment plans already started remain valid.

Intra-Annual Contracts
From the tax period following that ending on 31.12.2023 (2024 for "solo" subjects), businesses that account for goods in progress and services in execution at the end of the period using the percentage of completion method, in accordance with correct accounting principles, must apply this method also for determining business income.
For intra-annual contracts that are incomplete by the end of the tax period ending on 31.12.2023, the "old" rules continue to apply, under which only the cost method is allowed, requiring adjustments in the tax return if the percentage of completion method was applied in the financial statements.

Multi-Year Contracts
From the tax period following that ending on 31.12.2023 (2024 for "solo" subjects), businesses that account for multi-year contracts using the completed contract method must apply the same method for tax purposes.
For multi-year contracts that are incomplete by the end of the tax period ending on 31.12.2023, the "old" rules continue to apply, under which only the agreed-upon consideration method (the so-called "percentage of completion") is tax-relevant, requiring an increase in the tax return for the potential difference between:

- The tax-relevant amount (valued based on the agreed-upon consideration);
- The amount recorded in the Income Statement (if valued using the completed contract method).

Currency Transactions
The provisions of paragraph 3 of Article 110 of the TUIR are abolished, making currency exchange differences "from valuation" recorded in the financial statements under accounting principles immediately tax-relevant.
According to Article 2426, paragraph 1, number 8-bis of the Civil Code, the obligation to value at the exchange rate at the financial statement reference date only applies to monetary items (e.g., receivables and payables). Exchange differences arise as a positive or negative difference between the value of receivables or payables converted at the exchange rate of the transaction date and the value converted at the closing exchange rate.
As a result of the new regulations, exchange differences recorded at the end of the tax period ending on 31.12.2023 will immediately be relevant for tax purposes, without an extension of the dual civil/fiscal framework until the extinguishment of the valuation item.
Therefore, not only will the adjustment to the exchange rate on 31.12.2024 be immediately tax-relevant, but also all variations made up until 31.12.2023 must be considered tax-relevant in 2024.

A new regime has been introduced to align discrepancies between accounting and tax values that arise during changes in accounting standards.
This intervention results in significant streamlining and simplification of the subject matter, as:

- the regime applies to all cases of changes in accounting standards, which are consequently governed in a uniform manner;
- specific cases that were not regulated under the previous regime are now explicitly addressed.

Cases Leading to Discrepancies Between Accounting and Tax Values
The alignment regime applies to the following cases of changes in accounting standards that may give rise to discrepancies between accounting and tax values:

- the initial adoption of international accounting standards (IAS/IFRS) (so-called "First Time Adoption" or FTA);
- changes to international accounting standards (IAS/IFRS) already adopted;
- transitioning from international accounting standards (IAS/IFRS) to national standards (so-called "Last Time Adoption" or LTA);
- changes to national accounting standards;
- changes in financial statement reporting obligations due to modifications in the size of the company;

- application of the strengthened derivation principle to micro-enterprises;
- tax-neutral extraordinary transactions carried out between entities adopting different accounting standards.

Alignment of Discrepancies Between Accounting and Tax Values Arising from Changes in Accounting Standards – Transitional Regime for Previous Transactions

In the context of changes in accounting standards, a transitional regime of tax neutrality is provided, which leads to discrepancies between accounting and tax values.
Previous transactions continue to be subject to the previous tax regulations.

Alignment Methods
The discrepancies between accounting and tax values arising from the transitional tax neutrality regime can be aligned for the purposes of corporate income tax (IRES), regional tax on productive activities (IRAP), and any additional taxes.

Alignment can be implemented:

- on all positive and negative discrepancies (the so-called "global balance method");
- with reference to individual cases (the so-called "single case method").

In the first case:

- the positive balance of discrepancies is subject to taxation at the ordinary rates of IRES and IRAP, plus any surcharges or additional taxes, separately from the overall taxable income;
- the negative balance of discrepancies is deductible in equal installments during the tax period in which the alignment option is exercised and in subsequent periods up to a number of tax periods equal to the longer residual duration of the cases subject to alignment, but in no less than ten total tax periods.

In the second case:

- the positive balance of the discrepancy is subject to a substitute tax for IRES and IRAP at rates of 18% and 3%, respectively, plus any surcharges or additional taxes;
- the negative balance of the discrepancy is not deductible.

The alignment takes effect starting from the tax period in which the discrepancies arise, and the relevant option is exercised in the tax return for the same period. The tax is paid in a single installment by the balance payment deadline for taxes related to the tax period in which the discrepancies arise.

Effective Date
The transitional tax neutrality regime and the alignment regime apply starting from the tax period following the one in progress on December 31, 2023 (i.e., from 2024 for entities whose tax year coincides with the calendar year). From the same tax period, the previous alignment provisions are no longer applicable.

Alignment of Increased Accounting Values Resulting from Extraordinary Transactions

For tax-neutral extraordinary transactions (business contributions, mergers, and demergers) carried out starting January 1, 2024, the following has been established:

- a modification of the so-called "ordinary" revaluation regime provided under Article 176, paragraph 2-ter of the Italian Income Tax Code (TUIR);
- the inapplicability of the so-called "derogatory" revaluation regime under Article 15, paragraphs 10-12 of Legislative Decree 185/2008.

In practice, for transactions carried out from January 1, 2024, it is only possible to opt for the revaluation regime provided under Article 176, paragraph 2-ter of the TUIR, as amended by Legislative Decree 192/2024 (the so-called "single" revaluation regime).

Revaluable Assets
The assets that can be revalued are the increased values attributed in the financial statements to individual tangible and intangible fixed assets related to the acquired business.

Exercising the Option
The option can be exercised in the tax return for the tax period during which the transaction was carried out.

Rate and Payment of Substitute Tax
The option involves the payment (in a single installment) of a substitute tax on the increased accounting values at a rate of 18% for income taxes and 3% for IRAP, plus any surcharges or additional taxes.

Recognition of Increased Values
The increased values subject to substitute tax are considered fiscally recognized starting from the tax period in which the option is exercised.

Changes to the Carryforward of Losses

Definition of Change in Principal Activity
The definition of a change in the principal activity has been revised. Under the new rules, this occurs in the case of a change in the sector or market segment or in the event of the acquisition of a business or business branch.

As in the previous regime, the change in activity becomes relevant if it occurs during the tax period in progress at the time of the transfer or acquisition or in the two subsequent or preceding periods.

Redefinition of Limitations on the Carryforward of Tax Losses in Mergers

- A new criterion has been introduced for quantifying tax losses, based on the economic value of the company.
- For retroactive mergers, the limitations on the carryforward of losses accrued up to the legal effective date of the transaction have been confirmed.

- A uniform regime for the carryforward of losses, interest expense excesses, and ACE (Allowance for Corporate Equity) excesses has been reaffirmed.

Limitations on carryforward are expressly excluded for intra-group mergers.

New Quantitative Limit Based on the Economic Value of the Company
As a significant change from the previous regulation, tax losses can now be carried forward up to the economic value of the company. This value must be determined in an appraisal report prepared by an expert appointed by the company.

In the absence of an appraisal report, the quantitative limit remains the same as in the previous context, corresponding to the book equity of each participating company.

Vitality Test
The vitality test remains unchanged in general terms and continues to be a *conditio sine qua non* for the carryforward of losses.

The test is based on comparing revenues and income from core business activities, as well as expenses for employee services and related contributions, between the financial statements for the year preceding the merger's effective date and the two prior fiscal years (the second term is considered at 40% of the average for those two fiscal years).

Carryforward of Tax Losses in Mergers

Retroactive Mergers
The principle is reaffirmed that, for retroactive mergers, the limitations on the carryforward of tax losses also apply to losses incurred during the interim period from the beginning of the tax year to the legal effective date of the transaction.
However, the new wording of the regulation clarifies that this only applies to losses incurred by the absorbed company.

Intra-Group Mergers
As an innovation compared to the previous regulation, it is now established that the limitations on the carryforward of tax losses do not apply if the companies involved in the merger belong to the same group. This condition is met if one company controls the other, or if both are controlled by the same parent company.

Effective Date and Transitional Regime
The new provisions apply to transactions carried out in tax periods starting after December 31, 2024 (the effective date of Legislative Decree 192/2024), which means 2024 for calendar-year taxpayers.
For losses, interest expense excesses, and ACE (Allowance for Corporate Equity) excesses accrued until the tax period preceding December 31, 2024 (i.e., until 2023 for calendar-year taxpayers), the safeguard provisions for intra-group transactions do not apply.

Carryforward of Tax Losses in Spin-Offs

The reform extends the innovations concerning the carryforward of tax losses, interest expense excesses, and ACE excesses—previously discussed in relation to mergers—to spin-offs as well.

Intra-Group Spin-Offs
Similar to mergers, it is established that the limitations on the carryforward of tax losses do not apply if the companies involved in the spin-off belong to the same group. This condition is met if one company controls the other, or if both are controlled by the same parent company.

Effective Date and Transitional Regime
The new provisions apply to transactions carried out in tax periods starting after December 31, 2024 (the effective date of Legislative Decree 192/2024), which means 2024 for calendar-year taxpayers.
For losses, interest expense excesses, and ACE excesses accrued until the tax period preceding December 31, 2024 (i.e., until 2023 for calendar-year taxpayers), the safeguard provisions for intra-group transactions do not apply.

Subjective Positions in Demergers
Subjective positions, meaning those "situations of power and obligation that would produce effects on the income measurement activity of the demerged company in the periods following the demerger" (Italian Revenue Agency Resolution 19.3.2002 No. 91, responses to interpretative queries 16.9.2020 No. 365, 15.12.2022 No. 589, and 4.7.2023 No. 368), must, pursuant to Article 173, paragraph 4 of the Italian Income Tax Code (TUIR), be allocated among the companies participating in the demerger "in proportion to the respective shares of the transferred or remaining net accounting equity."

The new formulation of Article 173, paragraph 4 of the TUIR now excludes from subjective positions "tax surpluses usable for offsetting, also pursuant to Article 17 of Legislative Decree No. 241 of July 9, 1997, and tax credits requested for refund, which are unrelated to tax benefits, along with their related instrumental obligations [...]."
This rule resolves the interpretative uncertainty resulting from the position expressed by the Italian Revenue Agency in its response to the query of 4.7.2023 No. 368, regarding the classification of the IRAP tax credit as a subjective position to be allocated according to the general rule (and therefore in proportion to the net accounting equity).

Demerger by Spin-Off under Article 2506.1 of the Italian Civil Code
Paragraph 15-ter of Article 173 of the TUIR introduces the tax treatment of demergers by spin-off under Article 2506.1 of the Italian Civil Code, which is governed by the principle of neutrality. Therefore, the spin-off does not result in the realization or distribution of capital gains and losses on the assets of the demerged company, including those relating to inventories and goodwill value.

Tax Neutrality for the Beneficiary Companies
For the beneficiary companies of the demerger, the assets and liabilities subject to spin-off:

- retain the tax value they had in the demerged company as of the effective date of the demerger pursuant to Article 2506-quater of the Italian Civil Code;
- are considered held for the same period of ownership as in the demerged company.

Tax Neutrality for the Demerged Company
The demerged company assumes, as the value of the shares received, an amount equal to the difference between the tax value of the assets and that of the liabilities subject to spin-off, even if

they do not constitute a business unit, as recorded on the effective date of the demerger pursuant to Article 2506-quater of the Italian Civil Code.

In cases where the assets and liabilities subject to spin-off constitute a business unit:

- for the purpose of calculating the holding period of the shares received by the demerged company, the holding period of the business unit subject to spin-off must also be considered;
- the shares received by the demerged company are recorded as financial fixed assets in the financial statements where the assets and liabilities of the business unit were recorded.

If the asset subject to spin-off is an equity interest, the following applies to the shares received in exchange in the beneficiary company:

- the shares are acquired by the demerged company with the same balance sheet classification as the spun-off equity interest;
- the holding period of the spun-off equity interest is preserved.

These provisions have implications for the applicability of the participation exemption regime under Article 87 of the TUIR in the event of a subsequent disposal of the shares in the beneficiary company.

Transfer of Subjective Positions from the Demerged Company to the Beneficiary
For the application of Article 173, paragraph 4 of the Italian Income Tax Code (TUIR), which governs the criteria for the allocation of subjective positions (such as tax losses, non-deductible interest expenses, etc.) between the beneficiary companies and the demerged company, it is established that the net equity transferred to the beneficiary company must be compared to the accounting net equity of the demerged company as recorded on the effective date of the demerger pursuant to Article 2506-quater of the Italian Civil Code.

Tax Composition of Net Equity
It is specified that, following a spin-off, the demerged company retains the original composition of its net equity unchanged, while the beneficiary company must classify the portion of net equity received as a capital reserve for tax purposes.

Effective Date
This regulation applies to spin-offs carried out during the tax period in progress as of December 31, 2024. It also applies retroactively to previous tax periods, provided the related tax returns were prepared in compliance with these provisions.

Company Contribution
Article 176, paragraph 1 of the TUIR has been amended to clarify that, in the case of a company contribution, the recipient takes the position of the contributing entity concerning the assets and liabilities of the company, "including the value of goodwill."

Contributions of "Loss-Making" Shares
New rules have been introduced in Articles 175, paragraph 1-bis, and 177, paragraph 2 of the TUIR regarding contributions of so-called "loss-making" shares, i.e., contributions where the realizable value is lower than the tax-recognized cost of the contributed shares.

In such cases, if the fair market value of the contributed shares, determined under Article 9 of the TUIR, exceeds their tax-recognized cost, the contribution does not trigger the general rule for determining the contribution's consideration based on the fair market value under Article 9 of the TUIR. The difference between the tax-recognized cost and the realizable value is not considered a deductible negative income component for the contributor.

Exchange of Shares through Swap

Article 177, paragraph 1 of the TUIR has been modified to extend the scope of the tax neutrality regime to cases where the acquiring company holds legal control under Article 2359, paragraph 1, n. 1 of the Civil Code over the exchanged entity and, as a result of the swap, increases this control. This new provision applies to operations carried out from December 31, 2024, the effective date of Legislative Decree 192/2024.

Exchange of Shares via Contribution

Maintaining the application of the controlled realization regime, the entire replacement of paragraphs 2 and 2-bis of Article 177 of the TUIR has been implemented, along with the introduction of paragraphs 2-ter and 2-quater in Article 177 of the TUIR.
The new provisions apply to transactions made from December 31, 2024, the effective date of Legislative Decree 192/2024.

Subjective Scope

The subjective scope of application of Article 177, paragraphs 2 and 2-bis of the TUIR has been extended to include the requirement that the "exchanged" company must be a company under Article 73, paragraph 1, letter a) or d) of the TUIR. Therefore, even contributions involving shares in non-resident companies can access the controlled realization regime.

Objective Scope

The objective scope of application of Article 177, paragraph 2 of the TUIR has been extended to include cases where the receiving company holds legal control under Article 2359, paragraph 1, n. 1 of the Civil Code over the exchanged company and, as a result of the contribution, increases this control.

Contribution of Qualified Shares

One of the conditions required by paragraph 2-bis of Article 177 of the TUIR for applying the controlled realization regime has been amended in cases where the contribution of shares does not allow the receiving company to acquire or increase its legal control over the exchanged company.
In particular, the condition of the so-called "single-shareholder company" has been modified, establishing that the controlled realization regime applies if the receiving company, whether existing or newly formed, is exclusively owned by:

- the contributor;
- or the contributor and their family members (spouse, relatives within the third degree, and in-laws within the second degree), if the contributor is an individual.
  The further condition remains that the contributed shares must represent more than 2% or 20% of the voting rights in the ordinary assembly or more than 5% or 25% of the capital or assets, depending on whether the shares are traded on regulated markets or are other types of shares.

Contribution of Qualified Shares Held in Holding Companies
The rules governing the contribution of qualified shares held in holding companies have been modified, now included in the new paragraph 2-ter of Article 177 of the TUIR.
According to the new rules, holding companies are considered non-listed companies that fall under the category of "financial holding companies" (Article 162-bis, paragraph 1, letter b of the TUIR) or "non-financial holding companies" (Article 162-bis, paragraph 1, letter c, n. 1 of the TUIR).
In the case of contributions of qualified shares in holding companies, the thresholds for qualification under paragraph 2-bis of Article 177 of the TUIR must be checked, considering the potential dilution effect of the participation chain, for the:

- shares held "directly" by the holding company;
- shares held "indirectly" by the holding company through subsidiaries, which are also considered "financial holding companies" or "non-financial holding companies."
  It is also specified that, for applying the controlled realization regime, it is sufficient to check whether the qualification thresholds, taking into account the potential dilution effect from the participation chain, are met for the participating companies that represent more than half of the book value of the shares being verified, considering any dilution effect.

Intra-Community Exchange of Shares
The regulations governing intra-Community exchanges of shares through swaps or contributions, as per Article 178(1)(e) of the Italian Income Tax Code (TUIR), have been amended to extend the scope of the fiscal neutrality regime under Article 179(4) of the TUIR. This extension applies even in cases where the acquiring company holds the legal control, as defined in Article 2359(1)(1) of the Italian Civil Code, over the exchanged company and, as a result of the swap or contribution of shares, increases this control.
Furthermore, it is now specified that the regulations for intra-Community exchanges of shares also apply when the contributed shares pertain to companies residing in the same Member State (other than Italy) as the receiving company.

Amendments to the Liquidation Regime
The regulation on the ordinary liquidation of sole proprietorships and commercial companies (Article 182 of the TUIR) is reworded to replace the provisional nature of the income for tax periods between the start and end of liquidation with a definitive approach, though there remains the possibility to recompute income for shorter liquidation periods.
For sole proprietorships and partnerships (SNC and SAS), income for interim periods is determined net of losses from prior periods included in the liquidation and contributes to the overall income of the entrepreneur, family members involved in the business, or partners.
In cases of short-term liquidation (no more than three years, including the year of commencement):

- The business or company can recompute the income of the last of the interim periods and progressively for earlier periods, reducing each by the remaining losses up to the corresponding amount.
- Entrepreneurs, family collaborators, and partners can opt for separate taxation of income (in this case, the tax is calculated using the rate corresponding to half of the net total income of the taxpayer during the two-year period prior to the year in which liquidation began).
- In cases of a loss at the end of liquidation, the provisions of Article 8 of the TUIR apply.

For capital companies, the income for interim periods is determined based on the respective financial statements, net of losses from prior periods, including those before the start of liquidation (due to the capital companies' ownership of prior losses).
Pre-liquidation losses and those from interim periods should be fully compensated (rather than limited to 80%).
A derogation for short-term liquidation also applies to capital companies (no more than five years), allowing them to recompute interim income using the carry-back method described for partnerships.

Effective Date
The modifications apply to liquidations beginning after December 31, 2024 (the effective date of Legislative Decree 192/2024).

Amendments to the Tonnage Tax Regime
The flat-rate determination of income for certain maritime companies (the so-called "Tonnage Tax") regulated by Articles 155-161 of the TUIR and Ministerial Decree 23.6.2005 is amended.
Exclusion of Companies in Difficulty
Subjectively, the option for the Tonnage Tax regime is excluded for companies in a state of liquidation, dissolution, or "difficulty" under Article 2(18) of EU Regulation 17.6.2014 No. 651.
It is also specified that the maximum level of aid resulting from the option for the Tonnage Tax (taking into account other aid measures for maritime transport) cannot exceed the elimination of taxes, fees, and social security contributions for seafarers, and corporate income tax for maritime transport activities.

Limitation of the Scope of the Tonnage Tax
Regarding the eligibility for the Tonnage Tax:

- For tugboat activities, they are eligible only if they involve maritime transport, with over 50% of the vessel's annual activity constituting maritime transport.
- For "ancillary" activities as defined in Article 6(2) of Ministerial Decree 23.6.2005, eligibility is conditional on total income from such activities not exceeding 50% of the total income of each eligible vessel (requiring separate accounting for ancillary activities).
- Within this limit, land transport immediately preceding or following maritime transport is included in the Tonnage Tax only if sold together with maritime transport services.
- In any case, land transport of containers is excluded from the Tonnage Tax.

Relevance of Inoperativity and Temporary Decommissioning
Regarding the criteria for determining the flat-rate income, the following days are included among those that are relevant (to be multiplied by the daily flat-rate income based on the vessel's gross tonnage):

- Days when the vessel is not used due to maintenance, repairs, upgrades, or transformations.
- Days of temporary decommissioning.
- Days of bareboat chartering (however, the detailed income calculation for bareboat chartering is maintained, introducing a tax credit to avoid double taxation on such income).

Prohibition of Carrying Forward Losses
Finally, for maritime companies opting for the Tonnage Tax, the ability to carry forward losses from prior periods (as per Article 84 of the TUIR) is excluded.

Effective Date
All of the above provisions apply from the tax period following that in progress on December 31, 2023 (thus from 2024 for "solar" taxpayers).

6. New Developments Regarding Miscellaneous Income

Transfer of Buildable Land Received as a Gift
The tax regime for capital gains on buildable land received as a gift is modified by amending Article 68, paragraphs 1 and 2 of the Consolidated Income Tax Act (TUIR).

Sale for Consideration of Land Usable for Construction
According to the previous Article 68, paragraph 2, last sentence of the TUIR, for land acquired through inheritance or donation, the purchase price is considered to be the value declared in the related declarations and registered deeds or, if subsequently determined and settled, increased by any other related costs, as well as the INVIM tax and inheritance tax.

Under the new regulation, for land acquired:

- **by inheritance**, the purchase price is considered to be the value declared in the related declaration or, if subsequently determined and settled, increased by inheritance tax and any other related costs;
- **by donation**, the purchase price is considered to be the amount paid by the donor, increased by the gift tax and any other related costs.

The new rule aims to regulate the effects of donating buildable land to family members, followed by its sale, within a short period, to third parties by the beneficiaries. This is achieved by introducing a principle similar to the one currently applied to the sale of properties acquired through a gift less than 5 years ago, for which the purchase price or construction cost is considered to be that incurred by the donor. In this way, it prevents operations solely aimed at avoiding or significantly reducing capital gains taxation compared to what would have resulted from the sale of the buildable land if it had been sold directly by the donor.

Effective Date
This provision applies to sales for consideration of land suitable for construction that occur from December 31, 2024, onwards.