Recent tax ruling on the '*realizzo controllato*' regime

Family Office and Private Client

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Recent tax ruling on the '*realizzo controllato*' regime

In Tax Ruling no. 203/2022 the Revenue Agency has provided further clarification about the transfer of equity investments under the '*realizzo controllato*' regime, in transactions involving family-owned holding companies.

The '*realizzo controllato*' regime

This regime is governed by article 177(2) of the Italian Income Tax Code (IITC) and focuses on the value of shares/quotas received by one company (Company A) in return for a contribution of shares/quotas in an investee company (Company C) made to another company (Company B) – a contribution through which Company B acquires control of Company C as defined in article 2359 (first paragraph) of the Italian Civil Code. For the purposes of ascertaining the income of Company A, the value of the Company B shares is equivalent to the portion of Company A equity represented by its investment in Company B as a result of the transaction. Therefore, the gain realized by Company A will be the difference between the book value of the Company B shares/quotas it receives and the Company B capital increase. If these two amounts correspond, Company A will benefit from a non-taxable gain.

Tax ruling no. 203/2022

In this tax ruling the Italian Revenue Agency analyzes a two-phase business reorganization involving: (i) the transfer, as a contribution, of all the shares held by a father and his four children to a NewCo, including shares held in bare ownership as well as usufructs in shares, and subsequently (ii) the transfer by the four children, as a contribution, of their interests in the NewCo to four different single-member holding companies.

The Revenue Agency confirms that the '*realizzo controllato*' regime applies in the **first phase**, since it satisfies the requirement that those making a contribution receive shares in the company it is made to, and that said company receives a number of shares that guarantee control of the transferred company. Moreover, it is irrelevant that partial rights – such as the usufruct or bare ownership of shares – are transferred, provided that in this first phase the company receiving the contribution can acquire the majority of votes that can be cast at the shareholder meeting (legal control) and that the individual making the contribution receives shares in the company that receives it.

The **second phase** of the transaction involves, instead, the incorporation of four holding companies, each headed by one of the four shareholders. It also involves the application of the '*realizzo controllato*' regime governed by article 177(2-*bis*) IITC, under which the tax benefit is conditional on the shares transferred as a contribution being (i) 'qualifying' shares[1], and (ii) passed to existing or newly incorporated companies fully owned by the individual making the contribution. The Revenue Agency has confirmed that these conditions are satisfied. In particular, since all four shareholders are transferring shares to a newly incorporated holding company, the status of 'qualifying' shares will be checked by reference to the holding company's interest in the indirectly owned companies, taking into account any intermediate companies in the ownership chain. The Revenue Agency has clarified that the transfer to the single-member holding company of an equity interest in the NewCo carrying more than 20% of the voting rights will give the single-member holding company the same percentage of ownership as that held by the individual who made the contribution.

(1)Qualifying shares are those that represent more than 2% (in the case of listed companies) or 20% of the rights to vote at the ordinary shareholder meeting, or more than 5% (in the case of listed companies) or 25% of the capital.

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