Recent tax rulings on partnerships in a wealth planning scenario

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The Italian Revenue Agency’s 2021 Tax Rulings nos. 689, 691 and 754 clarify the tax treatment of proceeds from the disposal of immovable property and equity interests by a partnership (*società semplice*). There are also important explanations for the members of partnerships regarding proceeds from a distribution or liquidation.

These rulings confirm the versatility and benefits of a partnership for wealth planning purposes and as a means of holding family assets.

Partnerships and taxation

According to article 2249 of the Civil Code, as a partnership cannot engage in business activities, its taxable income is the sum of the separate income categories defined in article 6 IITC[1] and is attributed to the members of the partnership under the look-through principle[2].

Tax Rulings nos. 689 and 691

Both rulings clarify that the **disposal of an immovable property purchased over five years earlier** by a partnership does not generate any taxable income for either the partnership or its members.

These rulings also establish an important principle regarding **profit distributions to members** by the partnership. If income generated by a partnership is exempt, or subject to substitute or withholding tax, it will not be included in either the partnership's overall taxable income or in the allocation of that taxable income, via the look-through principle, to the members. Therefore, the members will not be subject to any further taxation in the event of the subsequent distribution of the income by the partnership.

(1) Italian Income Tax Code.

(2) Under article 5 IITC.

The rulings also provide clarification about a later stage in the lifetime of a partnership. During the **liquidation of a partnership** the difference between the liquidation proceeds received by a member and the tax basis of that member's partnership interest generally constitutes a taxable capital gain. However, the Italian Revenue Agency has ruled that, even upon liquidation of the partnership, proceeds allocated to the members from the disposal of immovable property – held for over five years – do not constitute taxable income for the members. Therefore, the same principle applies: even at the time of the partnership's liquidation, any income that was previously exempt or taxed to the partnership through a substitute or withholding tax is not taxed to the members.

Tax Ruling no. 754

This ruling examines the case of a partnership that intends to (i) step up the tax basis of an equity interest, by paying the relevant substitute tax[(3)] (ii) dispose of this equity interest, and (iii) subsequently distribute its residual assets to its members when it is liquidated.

The Revenue Agency has confirmed that if a partnership steps up the tax basis of an equity interest, its subsequent disposal for a price equal to the value identified in the step-up appraisal would generate zero taxable income, as the price would correspond to the new tax basis.

The Revenue Agency has also explained that a **distribution to the members** (even during liquidation of the partnership) of the proceeds from the disposal of the equity interest would not constitute a taxable event for those members, as the income attributable to them under the look-through principle would be zero. Therefore, the distribution would be a mere cash transfer, irrelevant for tax purposes.

Conclusions

These rulings confirm the effectiveness of a partnership as a wealth planning tool. In the case of an immovable property, any capital gain generated by its disposal is not taxable if the immovable property has been held for over five years. On the contrary, in the case of an immovable property held through a limited liability company (S.r.l.), the same capital gain would be taxed initially in the hands of the company as business income and then in the hands of the shareholder in the event of a dividend distribution.

In the event of a disposal of an immovable property held for less than five years, a partnership, unlike commercial companies, could also take advantage of the 26% substitute tax on the capital gain.

Moreover, as regards the holding of immovable property, a partnership is not subject to the so-called 'shell company' rules[(4)] that apply to commercial companies.

Last but not least, all foreign companies, including those similar to Italian partnerships (e.g. a Luxembourg SPF-*Société de gestion de Patrimoine Familial*), are considered to be fiscally opaque[(5)]. They are therefore an attractive option in a wealth planning scenario, since the taxation of members resident in Italy only takes place at the time of the actual distribution of profits.

(3) Under article 5 of Law no. 448/2001.

(4) Under Law no. 724/1994.

(5) Under article 73(1)(d) IITC.

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