

Transfer of operating properties



Focus on

Para. 237, art. 1 of Budget Law 2022 (Law no. 234/2021) introduced a specific favourable tax regime applicable to the transfers of operating properties.

Specifically, it is provided for that in case of transfer of a business or business unit, the registration tax and mortgage and land registry fees apply to the transfer of operating properties for a fixed amount equal to Euro 200 each. This is a significant exception to the general regulation, which provides for the application of a proportional registration tax to said transfers (by virtue of the general principle of application either of VAT or of the registration tax, under art. 40 of Presidential Decree no. 131/1986).

The recent Circular Letter no. 3 dated 4 February 2022 provided important clarifications on the scope of applicability of the abovementioned favourable tax regime.

Below is an overview of the subjective and objective conditions necessary for the actual applicability of the new norm, in the light of the clarifications provided by the Italian Revenue Office.

Subjective scope

According to the clarifications provided by Circular Letter no. 3/2022, the favourable tax regime can be applied only by companies which:

- in the FY preceding the one in which the transfer took place had at least 250 employees;
- intend to proceed with the closure of a seat, plant, subsidiary, office or business unit located on the Italian territory, terminating the relevant activities;
- plan to dismiss at least 50 employees.

Companies with employees which are in a situation of asset or economic-financial imbalance likely to lead to a possible crisis or insolvency and which can thus access an out of court composition procedure to settle the company crisis under Law Decree no. 118/2021, are excluded from the regime above.

As a final note, the continuation of the business activity and the maintenance of employment levels by the successor or transferee are additional though necessary conditions for the parties to obtain the application of the favourable tax regime.

Objective scope

Object of the transfer must necessarily be operating properties which, due to their characteristics, cannot be used for other purposes, unless they undergo major changes. In detail, such properties - as clarified by the abovementioned Circular Letter - belong to the following Land Registry categories:

- group A, property tax category A/10 (i.e. private offices and premises whose use as office must be indicated in the planning or building permission);
- group B (i.e. colleges and boarding schools, public offices, schools, libraries, museums, chapels, underground warehouses);
- group C (i.e. buildings for ordinary and miscellaneous commercial use, such as workshops and shops, warehouses and storage areas, etc.);
- group D (i.e. real estate units for special use, such as hotels, factories, for-profit nursing homes and hospitals, banks and credit institutions, etc.);
- group E (i.e. real estate units for a particular use, such as buildings for specific public needs).

Application methods

In compliance with the provisions of law, the abovementioned regulation refers only to the transfer of operating properties for valuable consideration within the scope of broader business or business unit transfer agreements.

It is worth underlining that the favourable tax regime, as far as the registration tax and mortgage and land registry fees are concerned, only applies to transfers of operating properties and not - for the purposes of indirect taxation - to the residual transferred value of the business (which will continue being subject to taxation according to the ordinary rules).

Lastly, the tax benefit will not apply in case of termination of a business activity or of transfer of the benefitting properties by an act for a valuable consideration or without payment within 5 years from their purchase. In these cases, the operating properties will actually be subject to ordinary taxation (registration tax, mortgage and land registry fees).



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