

Dear clients:

11 November 2024

Subject: Inheritances and donations tax breaks

Legislative Decree 139/2024 amended article 3, paragraph 4-ter, of law 346/1990, providing for the exclusion from inheritance and donation taxes in the event of free transfer of companies and corporate shareholdings in favor of the spouse and descendants, both during life and after death.

In particular, the relief in question concerns three specific situations:

1. Transfer of shares of limited company: it is necessary to acquire or strengthen control of the company and maintain this condition for at least five years;
2. Transfer of shares of partnership company: it is necessary to transfer and maintain “ownership” of the share for five years;
3. Transfer of companies or business branches: the heirs or beneficiaries must continue the business for at least five years.

Each type of transfer has different requirements that must be respected to benefit from the relief.

Beneficiaries are required to submit a specific declaration together with the declaration of succession, the deed of donation or the family agreement.

If the conditions set are not respected, the tax will be applied as the ordinary one, with the addition of interest and a 30% penalty (article 13, Digs 471/1997).

This legislative change aims to solve some difficulties that have emerged in recent years; in particular, it is clarified that not only the acquisition, but also the integration of control (i.e. the strengthening of an already existing control position) can benefit from the relief.

Furthermore, it is established that the obligation to continue the business activity applies only in the case of a company transfer, while in the case of the corporate shares transfer it is not necessary to verify whether the company is carrying out entrepreneurial activity at the timing of the transfer.

Administrative procedures, however, have adopted a different position, as highlighted by the response to question 552/2021 provided by the Revenue Agency, which denied exemption to those transfers



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that do not allow the beneficiary to control a company that appears as a "productive entrepreneurial reality worthy of being protected also for the purposes of its generational transition".

The Court of Cassation confirmed this restrictive approach, excluding the facilitation for the transfer of controlling shares of a non-resident limited company, which was considered "static management".

This decision refers to what was already underlined by the Constitutional Court in ruling 120/2020, which had highlighted problems in the application of the rule based on its presumed legislative logic.

Legislative Decree 139/2024, however, restores the original and literal interpretation of the relief, ignoring the most recent restrictive interpretations.

Furthermore, the new provision clarifies that the relief also applies to shareholdings in companies' resident in countries of the European Union, the European Economic Area and in other countries included in the "white list".

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