Comploj Vieider Lorenzon
Lechner Zanellato

PDC Partner
Wirtschaftsprüfer und Steuerberater
Dottori Commercialisti

Equity partner
Dott. Lodovico Comploj
Dott. Josef Vieider
Dott. Emilio Lorenzon
Dott. Alessandro Zanellato
Dott. Martin Lechner
Dott. Stefan Lanznaster

Partner
Dott. Nicola Sartori
Dott. Thomas Pichler
Dott. Samuel Vittur

Wirtschaftsprüfer und Steuerberater / Dottori
Dott.sa Elena Gattolin
Dott.sa Sabrina Tabiadon
Dott.sa Monika Mattivi
Dott. Christian Gentilini
Dott.sa Serena Giacomoz
Dott.sa Giulia Fortin
Dott. Luca Crepaz
Dott. Maximilian Crazzolar
Dott. Roberto Convento

Bilanzbuchhalter / Esper
Antonio Gocev

To all
clients

Circular
No. 32/2025

Bolzano, 21 July 2025

Subject: Tax-privileged assignment or tax-privileged sale of assets not used for business purposes to the shareholders, or conversion into a simple partnership (società semplice)

By 30 September 2025, partnerships and corporations may once again assign, on privileged terms, real estate and vehicles not used for business purposes to their shareholders or transfer these to them by way of a purchase agreement, or, in certain circumstances, convert the company itself into a simple partnership (società semplice). The rules are set out in Art. 1, paras. 31-36 of the Budget Law for 2025 (Law 207/2024). No official guidelines have been issued to date; however, since this is essentially a re-issue of an identical relief measure from 2016, reference may also be made to the guidelines issued by the Italian Revenue Agency at that time (Circular No. 26/E of 1 June 2016 and Circular No. 37/E/2016). Given that no separate guidelines were issued on the occasion of the last re-issue of this measure in 2023 either, no official circular on the subject is to be expected this year either.
At this point it should be recalled that in 2023 an assignment to shareholders was not possible in many cases because privileged revaluations had previously been carried out in the „Covid years“, for which a three-year lock-up period applied. That period has now expired.

GGi A GLOBAL ALLIANCE OF INDEPENDENT PROFESSIONAL FIRMS

39100 Bolzano / Bozen
via F.Crispi / F.Crispi-Straße 9
tel +39 0471 288333 - info@pdc-partner.it

20121 Milano / Mailand
Foro Buonaparte 70

39036 Stern / La Villa di Badia
Str. Ninz 63
tel +39 0471 847360

Since the assignment may represent an attractive measure for many companies, but also requires certain fundamental decisions to be taken, we set out below an overview of the legal position as it stands today:

Scope of application – persons concerned

The relief applies to partnerships and corporations, but not to other commercial or non-commercial entities. The privileged assignment or the privileged sale is possible to those shareholders who were registered as such as at 30 September 2024. The only exception concerns heirs in the event of a death occurring after the aforementioned date of 30 September 2024. It is not necessary, however, for the size of the shareholding to have remained unchanged since 30 September 2024. The shareholders may be either natural persons or legal entities.

Under commercial law, the assignment of the assets (not the sale!) corresponds to a distribution of capital or of capital reserves, or of profits or of retained earnings, to the shareholders in the form of assets in kind. Accordingly, the assignment may also be accompanied by a reduction of the company's capital with the withdrawal of a shareholder or, in extreme cases, even by the winding-up of the company.

The assignment of real estate in the case of shareholdings subject to a usufruct (with voting rights of the usufructuary at the shareholders' meeting) is still not entirely clear; at least according to the interpretation of the notaries of the Triveneto region, the assignment would have to be made to the bare owner, and the usufructuary would, where applicable, retain the usufruct right encumbering the property. It is to be hoped that official clarifications on this question may still be issued.

Scope of application – assets concerned

Real estate and assets registered in public registers (e.g. vehicles, aircraft and boats) which are not used for business purposes at the time of the assignment may be assigned. In practice, the relief is really of interest only for real property. The assignment may concern land, residential units and commercial properties alike, provided that these are let or lent for use or otherwise not used for business purposes. The assignment of real estate held as current assets (e.g. residential units of property developers or property traders) is also expressly permitted. Conversely, the privileged assignment of properties used by the company for the pursuit of its activity is excluded.

An important statement in Circular No. 26/E/2016 concerns the point in time at which this objective requirement of non-direct use must be met: it must exist at the time of the actual assignment (i.e. possibly on 30.09.2025). A change of use, even shortly before the assignment, is expressly not regarded as abuse of law in this respect. This is evidently a legitimate use of a tax advantage. It should be noted, however, that no sham transaction may be carried out in this context, as this would constitute tax evasion, which is no longer covered. The notaries also recommend (Study No. 20-2016/T) that the non-business use be specifically recorded in the deed of assignment.

Procedure for the transfer to the shareholders

The transfer of assets not used for business purposes to the shareholders may take place by way of three legal transactions:

- assignment of the assets to the shareholders with a simultaneous reduction of capital reserves and/or retained earnings;
- sale to the shareholders without any effect on the company's net equity;
- conversion of the partnership or corporation into a simple partnership (società semplice).

An assignment is only ever possible if it can be carried out proportionately in favour of all shareholders (where applicable also with balancing payments to the other shareholders) and if the necessary capital reserves or retained earnings are also available.

Taxation of the capital gains at the level of the company and the release of reserves in tax suspension at the level of the company

The tax relief consists in the application of a substitute tax on any capital gains, as well as in a substitute tax on the taxation of reserves in tax suspension which are, where applicable, „distributed“.

The substitute tax on the hidden reserves amounts to 8%, increased to 10,5% if the company was non-operating in 2 of the last 3 years. The gain, i.e. the taxable base for the substitute tax, is determined as the difference between the assignment value and the value recognised for tax purposes. In the case of buildings and non-building land, the assignment value may optionally be determined on the basis of the cadastral value. This is the cadastral value determined in accordance with the registration tax rules by applying a prescribed multiplier or coefficient:

Property	Coefficient
Land	112,5
Cat. C/1 and E	42,84
Cat. A/10 and D	63
Cat. B	176,40
First home	115,5
All other buildings	126

For building land, on the other hand, the general market value must be used.

Incidentally, any capital losses arising from the privileged assignment are not recognised for tax purposes at the level of the company, with one exception, however: if assets held as current assets are assigned at the cadastral value and a loss on disposal results from this, that loss may be offset or deducted.

Retained earnings in tax suspension released as a result of the assignment (e.g. revaluation reserves not released from suspension or reserves arising from old subsidies) are settled with a substitute tax of 13%. Where such a release is necessary, it was certainly advisable to release these reserves from suspension in the tax return by paying the substitute tax of 10% (see our circular); where applicable, it should be examined whether a release from suspension is still possible!

Taxation of the assignment at the level of the shareholder

In the case of corporations, the assignment also has effects at the level of the shareholder: where profits or retained earnings are assigned, these must be taxed as dividends and are then subject to the substitute tax of 26%; the shareholder receives a dividend in kind. However, only that portion is to be taxed which has not already been subjected, at the level of the company, to the aforementioned substitute tax of 8% or 10,5% as a capital gain.
In the case of partnerships, on the other hand, only the value of the shareholding recognised for tax purposes is reduced by the market value of the assignment, and only where this reduction goes „below zero“ may taxable income arise for the shareholder.
Assignments of capital reserves lead to a reduction of the value of the shareholdings recognised for tax purposes.
No assignments of profits are taxable at the level of the shareholder if the latter acquires the property not by way of assignment but by way of a purchase agreement.

Payment of the substitute tax

The substitute tax of 8% or 10,5% and also the substitute tax of 13% on the release of reserves in tax suspension must be paid in two instalments, namely 60% by 30 September 2025 and 40% by 30 November 2025. Payment must be made using form F24, and offsetting against tax credits is permitted in accordance with the general provisions. The payment codes were confirmed by Decree No. 30 of 22 June 2023 and are the same as in 2016:
1836 for the substitute tax of 8% or 10,5% on the capital gains arising in the course of an assignment, sale or conversion, and
1837 for the substitute tax of 13% on the release from suspension of reserves in tax suspension which are disclosed in the course of an assignment or conversion.

Capital gains on a resale by the shareholder

Irrespective of whether the transfer to the shareholder takes place by way of sale or assignment, future capital gains are taxed at the level of the shareholder pursuant to Art. 67 of the Income Tax Code (TUIR). In the case of buildings and non-building land, a speculation period of 5 years for a resale must therefore be observed as from the assignment; otherwise, any capital

gains are taxable at the level of the shareholder. Capital gains from building land are always taxable, irrespective of any speculation period.
In this context, it may therefore well be of interest to carry out the assignment or the sale at a value higher than the cadastral value, since the substitute tax of 8% will as a rule be lower than the tax on any future capital gains. The substitute tax may therefore quite properly also be regarded as a revaluation tax in the broader sense.

VAT, registration tax and mortgage and cadastral tax

As with the last privileged assignments in 2016 and 2023, there are no specific reliefs for VAT purposes, not least because any relief would conflict with the EU directives in force. In principle, the assignment is equivalent to self-supply, and accordingly the market value must be subjected to VAT.
Incidentally, there is no self-supply and no supply for VAT purposes in all those cases where no input VAT was deducted upon acquisition (e.g. purchase from private individuals, purchase before 1 January 1973 or purchase of residential units without input VAT deduction).
In the case of buildings, attention must be paid to whether completion took place more than 5 years ago; if this is the case, VAT applies to residential units (for construction companies) and to commercial properties (for all businesses) only if this is expressly opted for in the deed. Although the application of VAT is, at first sight, hardly advantageous, particularly in the case of assignments to private individuals, the effects of a VAT-exempt sale on the input VAT deduction of the company carrying out the assignment (keyword: pro rata) must also be taken into account, and there may well be cases in which opting for VAT makes sense. In the case of VAT-exempt assignments of depreciable buildings (as a rule commercial buildings), the specific input VAT deduction relating to the properties over the last 10 years must also be adjusted on a pro rata basis. Each individual case will therefore have to be examined here!
In the case of land, a distinction must be drawn between building land and non-building land. In the former case, the assignment is subject to VAT, whereas the transfer of agricultural land is outside the scope of VAT pursuant to Art. 2 of the VAT Act.
Where the assignment is subject to VAT (also in the case of VAT-exempt supplies), registration tax and mortgage and cadastral tax apply at the fixed amount.

Where, on the other hand, buildings and agricultural land are transferred within the scope of registration tax, the rates are halved as follows:
- generally 4,5% for buildings (instead of 9%);
- 1% (instead of 2%) for first homes;
- 7,5% (instead of 15%) for agricultural land;

- 2% (instead of 4%) for the assignment of building units specifically intended for commercial activities, as well as the corresponding building land (as a rule not applicable due to VAT).

Finally, the mortgage and cadastral taxes are settled at the fixed fee of 50 or 200 euro respectively.

Halved rate for registration tax

The application of the cadastral value within the meaning of the so-called automatic determination of value must be expressly requested in the deed of assignment.

Sale to shareholders

The reliefs outlined also apply to transfers for consideration, i.e. to the sale of assets to the shareholders, provided that the purchase price corresponds at least to the market value or to the cadastral value of the buildings, as shown above. In this case, the provisions on the use of reserves and on dividend taxation do not apply.

A sale will always have to be chosen where no reserves available for assignment exist. In addition, however, a sale offers a number of attractive tax advantages, as the Italian Revenue Agency expressly confirmed in Circular No. 37/2016:

- Any losses on real estate held as current assets are as a rule deductible.
- The deductibility for tax purposes of losses on disposal is not limited to real estate held as current assets, but is permitted in accordance with the general criteria.
- Whereas assignments must be made at the market value/cadastral value, a sale may also be made at a different value, and the cadastral value must only be taken into account where it exceeds the sale price.
- In the case of future sales by the shareholder, reference is not made to the cadastral value stated in the deed of assignment, but to the agreed purchase price.

For the sake of completeness, it should be mentioned that the statements in the aforementioned Circular No. 37/2016 were subsequently partly contradicted by the Agency in Ruling No. 101/2017, although the limited scope of such rulings must be borne in mind. A timely clarification of this question too by the tax authorities would be desirable.

Finally, it should be noted that in the case of a sale the shareholder also owes the agreed purchase price to the company!

Conversion into a simple partnership

Companies whose object consists mainly or exclusively in the management of real estate not used for business purposes (as a rule property companies) may be converted into simple partnerships (società semplice) by 30 September 2025. Specifically, no substantial commercial activities other than letting may be carried on within the company.

(società semplice)

In the case of corporations, the existing retained earnings must be taxed at the level of the shareholder as a result of the conversion. A conversion is only possible if, at the time of the conversion, the same shareholder situation exists as at 30 September 2024; a change merely in the size of the shareholding of individual shareholders is not prejudicial in this respect.

The taxation at the level of the company and of the shareholders is essentially identical to that applicable to the privileged assignment, also for VAT purposes.

Registration tax and mortgage and cadastral tax are, by their very nature, always due at the fixed amount.

There is, however, one major difference: in the case of conversions into simple partnerships, the period during which the company held the asset is also taken into account when calculating the 5-year speculation period for a future sale. Particularly in cases where buildings or non-building land are to be resold immediately, the conversion is therefore a welcome alternative.

<u>**If you wish to carry out one of the operations outlined in your company, we ask you to contact our office as soon as possible, as the preparation takes a considerable amount of time.**</u>

We remain at your disposal for any further information you may require.

Yours sincerely
Josef Vieider