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Newsletter
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Subject: Preferential allocations or preferential sale of business assets not used in the business to the shareholders, or conversion of a company into a simple partnership

Until **30 September 2026** general partnerships, limited partnerships, limited liability companies, joint-stock companies and partnerships limited by shares may once again allocate certain properties and movable assets recorded in public registers to their shareholders, or sell them to those shareholders, on preferential terms; alternatively, the company may be converted into a simple partnership.

The rules are set out in Art. 1, paras. 35-40 of the Budget Act for 2026 (Law 199/2025). No official guidelines have been issued to date; since, however, this is essentially a re-enactment of an identical relief from 2016, reference may also be made to the guidance issued by the 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 most recent re-enactments of this measure in 2023 and in 2025 either, no official circular on the subject is to be expected this year either.

Since the allocation may represent an attractive measure for many businesses, but also calls for

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fundamental decisions, here is an overview of the legal position as it stands today:

Scope – persons covered

The relief applies to partnerships and corporations, but not to other commercial or non-commercial entities. The preferential allocation or the preferential sale may be made to those shareholders who were registered as such as at **30 September 2025**. The only exception concerns heirs in the event of a death after the aforementioned 30 September 2025. It is not harmful, by contrast, if the size of the shareholding has changed since 30 September 2025. The shareholders may be either natural or legal persons. As a rule, however, the allocation is of interest for natural persons.

Under company law, the allocation of the assets (not the sale!) corresponds to a distribution of capital or capital reserves, or of profits or retained earnings, to the shareholders in the form of assets in kind. Accordingly, the allocation 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 dissolution of the company.

The allocation of properties 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 allocation would have to be made to the bare owner, with the usufructuary retaining, where applicable, the right of usufruct encumbering the property. It would be desirable for official clarification to be issued on this point.

Scope – assets covered

What may be allocated are **properties and assets recorded in public registers** (e.g. vehicles, aircraft and boats) which **at the time of the allocation** are not used in the business. In practice the relief is really only of interest for real property. The allocation may concern land, apartments and commercial properties alike, provided that these are let, lent for use or otherwise not used in the business. The allocation of properties held as current assets (e.g. apartments held by property developers or property traders) is also expressly permitted. Conversely, in the case of real property, those buildings and plots of land are excluded which are used directly by the company for the exercise of its own business activity.

An important statement in Circular No. 26/E/2016 concerns the point in time at which this substantive requirement of non-direct use must be met: it must exist **at the time of the actual allocation** (i.e. at the latest on 30.09.2026). A change of use, even shortly before the allocation, is expressly not regarded as abuse. It is evidently a lawful use of a tax advantage. It should be noted, however, that no sham transaction may be carried out in this connection, since that would amount to tax evasion, which is no longer covered. The notaries additionally recommend (Study

No. 20-2016/T) that the non-business use be expressly recorded in the deed of allocation.

Procedure for the transfer to the shareholders

The transfer of business assets not used in the business to the shareholders may be effected by means of **3 legal transactions**:

- allocation of the assets to the shareholders with a simultaneous reduction of capital reserves and/or retained earnings;
- sale to the shareholders with no effect on the company's net assets;
- conversion of the partnership or corporation into a simple partnership.

Subject to its admissibility under company law, the allocation may also be made to individual shareholders only, or not strictly in proportion to the shareholdings. What is required, however, is an appropriate basis under company law, sufficient distributable reserves or a permissible capital reduction and, where applicable, a compensation in value between the shareholders.

Taxation of the capital gains at the level of the company

Any capital gains are subject to a reduced substitute taxation.
The substitute tax on the latent gains amounts to **8%, increased to 10.5%,** if the company was not operative in 2 of the last 3 years.
The gain, i.e. the basis of assessment for the substitute tax, is determined as the difference between the allocation value or the sale price on the one hand and the tax-recognised costs at the level of the company on the other.
In addition, in the case of buildings and non-building land, the allocation value may optionally be determined on the basis of the cadastral value. This is the cadastral value determined in accordance with the rules on registration tax using 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
Main residence	115.5
All other buildings	126

For building land, by contrast, the general market value must be used.

In the case of a sale, the tax result must in principle be determined on the basis of the purchase price actually agreed.
For the calculation of the substitute tax, however, this is taken to be at least the open market value or cadastral value chosen under the special rules.

Whether a capital loss is recognised for tax purposes must be examined on a case-by-case basis, taking into account the statements in Circular No. 37/E/2016 and the later ruling ("interpello") No. 101/E/2017, the tax authorities taking a considerably more restrictive view than the prevailing doctrine.

Release of reserves under tax deferral at the level of the company

Retained earnings under tax deferral released by the **allocation** (e.g. non-released revaluation reserves or reserves from old subsidies) are settled by way of a **substitute tax of 13%**.
Important: Where such reserves already existed in the financial year ended 31 December 2024 and were still present at the end of the financial year ended 31 December 2025, it may be examined whether the general settlement with the substitute tax of 10% under Art. 1 paras. 44–45 of Law No. 199/2025 can be claimed. The option must be exercised in the tax return for the tax year current at 31 December 2025; the substitute tax must be paid in four equal annual instalments.

Taxation of the allocation at the level of the shareholder

In the case of corporations, the allocation also has effects at the level of the shareholder: where profits or retained earnings are allocated, these are taxable as dividends and are then subject to the withholding tax of 26%; the shareholder receives a dividend in kind. Only that part is taxable, however, which has not already been subject at the level of the company to the aforementioned substitute tax of 8% or 10.5% as a capital gain. If, therefore, a property is allocated to the shareholder at 200,000 Euro and a capital gain of 50,000 Euro arises at the level of the company, the tax position is as follows:

Allocation with release of retained earnings

Calculation	Amount
Open market value or cadastral value of the property used for the allocation	200,000 €
Tax value of the property at the level of the company	– 150,000 €
Gain subject to the substitute tax of 8 % at the level of the company	50,000 €
Dividend in kind taxable at the level of the shareholder	150,000 €
Withholding tax of 26 % on the dividend in kind	39,000 €

In the case of partnerships, by contrast, only the tax-recognised value of the shareholding is reduced by the open market value of the allocation, and only where it is reduced "below zero" may taxable income arise for the shareholder.
Allocations of capital reserves lead to a reduction of the tax-recognised value of the shareholdings.
<u>No allocations of profit are taxable at the level of the shareholder where the latter acquires the property not by way of allocation but by means of a contract of sale.</u>

Payment of the substitute tax

The substitute tax of 8% or 10.5% on the capital gains and also the substitute tax of 13% for the release of reserves under tax deferral are to be paid in two instalments, namely **60 % by 30 September 2026 and 40 % by 30 November 2026**. 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 Ruling 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 allocation, sale or conversion, and
1837 for the substitute tax of 13% on the release of reserves under tax deferral which are uncovered in the course of an allocation or conversion.

Capital gains on a resale by the shareholder

Irrespective of whether the transfer to the shareholder takes place by purchase or by allocation, future capital gains are taxed at the level of the shareholder within the meaning of Art. 67 of the Income Tax Act. In the case of buildings and non-building land, a speculation period of 5 years must therefore be observed from the allocation before a resale, failing which any capital gains are taxable at the level of the shareholder. Gains from building land are always taxable, irrespective of any speculation period.
In this connection it may therefore well be of interest to carry out the allocation 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.

VAT, registration tax and mortgage and cadastral tax

As with the last preferential allocations in 2016, 2023 and 2025, there are no specific reliefs for VAT, not least because any such reliefs would conflict with the applicable EU directives. In principle the allocation is equivalent to a self-supply.
Where the transfer falls within the scope of VAT, a distinction must be drawn between taxable and exempt supplies. By virtue of the principle of alternativity, registration tax is in principle payable at the fixed amount in those cases covered by VAT. Where, by contrast, proportional registration tax is owed, the applicable rates are halved by the special rules.
Where the allocation is treated as a withdrawal or self-supply, the VAT basis of assessment is in principle determined by the purchase price of the asset or of a similar asset or, in the absence of a purchase price, by the cost price applicable at the time of the allocation. The residual value of the asset still existing at that time must be taken into account. Following the most recent reforms, the open market value is no longer automatically the VAT basis of assessment.

In principle there is no self-supply and no supply for VAT purposes in those cases where no

input VAT was deducted on acquisition (e.g. purchase from private individuals, purchase before 1 January 1973 or purchase of apartments without input VAT deduction).
In the case of buildings, attention must be paid to whether completion took place more than 5 years ago; if so, VAT applies to apartments (for construction companies) and to commercial properties (for all businesses) only where the deed expressly opts for it. Although at first sight the application of VAT is hardly advantageous, particularly in the case of allocations to private individuals, the effects of a VAT-free sale on the input VAT deduction of the company carrying out the privatisation (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 exempt allocations 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!
In the case of land, a distinction must be drawn between building land and non-building land. In the former case the allocation is subject to VAT, whereas the transfer of agricultural land is outside the scope of VAT within the meaning of Art. 2 of the VAT Act.
Where the allocation is subject to VAT (including in the case of VAT-exempt supplies), registration tax and mortgage and cadastral tax apply at the fixed amount.

Halved rate for registration tax

Where buildings and agricultural land are transferred within the scope of registration tax, by contrast, the **rates are halved as follows:**
- for buildings generally 4.5% (instead of 9%);
- 1% (instead of 2%) for main residences;
- 7.5% (instead of 15%) for agricultural land;
- 2% (instead of 4%) for the allocation of building units specifically intended for commercial activities as well as the corresponding building land (as a rule not applicable because of VAT).

Finally, mortgage and cadastral taxes are settled by way of the fixed fee of 50 or 200 Euro respectively.
If the cadastral value is to be used instead of the open market value for the purpose of determining the substitute tax, the company must expressly make this choice in the deed of allocation. This is to be distinguished from the determination of the basis of assessment for registration tax.

Sale to shareholders

The reliefs described also apply to transfers for consideration, that is to say to the **sale of assets to the shareholders**, provided that for tax purposes the purchase price corresponds at least to the open market value or the cadastral value of the buildings, as set out above.

A lower actual purchase price is in principle possible, but must be justifiable under company law. An inappropriately low price may be assessed as a hidden distribution of profits or an impermissible transfer of assets.

A sale will always have to be chosen where no allocable reserves are available. Beyond that, however, the sale offers a number of attractive tax advantages, as the Revenue Agency expressly confirmed in Circular No. 37/E/2016:

- Any losses on properties held as current assets are as a rule deductible.
- The tax deductibility of capital losses is not limited to properties held as current assets, but is permitted in accordance with the general criteria.
- Whereas allocations must be made at the open market value/cadastral value, the sale may also be made at a different value, and the cadastral value only has to be observed 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 allocation but to the purchase price agreed.

For the sake of completeness it should be mentioned that the statements in the aforementioned Circular No. 37/E/2016 were later partly contradicted by the Agency in Ruling No. 101/E/2017, although the limited scope of such rulings must be borne in mind. Timely clarification of this question by the tax authorities would also 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 is predominantly or exclusively the management of properties not used in the business** (as a rule property companies) may be converted into simple partnerships by 30 September 2026. Specifically, apart from letting, no significant other commercial activities may be carried on within the company.

In the case of corporations, the conversion means that the existing retained earnings are taxable at the level of the shareholder. A conversion is only possible if at the time of the conversion the same shareholder situation exists as at 30 September 2025; a change merely in the size of the individual shareholdings is not harmful in this respect.

The taxation at the level of the company and of the shareholders is essentially identical to that of the preferential allocation, including for VAT purposes.

Registration tax and mortgage and cadastral tax are naturally always payable 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>Should you wish to carry out one of the operations described above 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.

Kind regards
Josef Vieider