

PROVIDING FINANCIAL SUPPORT TO OTHER ENTITIES DOES NOT CONSTITUTE "COMMERCIAL" ACTIVITY FOR PARTICIPATION EXEMPTION PURPOSES

Italian Tax Authority ruling No. 96 dated 23rd April 2024

- ✓ Italian Tax Authorities provide clarification on the correct qualification of "activity" under Article 87 (1) (d) of CIT (Corporate Income Tax) for the purposes of applying the participation exemption regime.
- ✓ The case submitted to Italian Tax Authorities concerns a transaction involving the sale of Beta's shares by the company Alfa and the related treatment for CIT purposes of the capital gain realized. Beta is the promoting company entitled to carry out financial support activity towards the company Delta (including in cases of losses), in order to guarantee its economic-financial balance.
- ✓ The existing contractual relationship between Beta and Delta provides, in return for the activity provided by Beta and albeit in the absence of contribution and sharing of management risks/powers and corporate profits, remuneration as a percentage of the profits produced by Delta.
- ✓ Italian Tax Authorities clarify that Beta does not provide any contribution to Delta and that there is no "participation" relationship between the parties to qualify Beta as a holding company. Therefore, for the purposes of the participation exemption regime, Article 87(5) of CIT does not apply, and so the requirements of "commerciality" and "residence" must be verified directly in Beta and not in its subsidiaries.
- ✓ In addition, Italian Tax Authorities reach the conclusion that the participation exemption regime does not apply to the sale of Alfa's shareholding in Beta, since the "commerciality" requirement under Art. 87(1) (d) of CIT is not integrated in Beta's head in relation to the activity carried out. It is due to the fact that this activity can be traced back to a mere passive management that is exhausted in a profit percentage perception or in losses supporting.

