

NO "MISCELLANEOUS INCOME" IN THE HANDS OF PARTNERS OF A SIMPLE PARTNERSHIP (SOCIETÀ SEMPLICE) FOR ASSETS UNDER ENJOYMENT

Supreme Court Judgment No. 17441, 25.06.2024

- ✓ In this decision, the Supreme Court rule on the correct interpretation to be given to Article 67, paragraph 1, subparagraph *h-ter*, of the Italian Income Tax Code (TUIR).
- ✓ This provision, introduced by Article 2, Paragraph 36-terdecies, of Law Decree 138/2011, specifies that "*the difference between the market value and the annual consideration for the grant of the enjoyment of business assets to partners or family members of the entrepreneur*" constitutes miscellaneous income.
- ✓ The Court, referring to some practice documents, recalls that the beneficiaries of the provision under consideration are both those who grant the enjoyment of the goods (grantors) and those who receive them (users).
- ✓ As for the users, these are those who benefit from the goods related to the business in their private sphere (i.e., members of resident companies and private association-type entities carrying out business activities as well as family members of the resident sole entrepreneur).
- ✓ As for the grantors, these are the entities that carry out commercial activities, i.e. the sole entrepreneur, general partnerships (società in nome collettivo), limited partnerships (società in accomandita semplice), companies with share capital (SPAs, SRLs, SAPAs), cooperative companies, permanent establishments of nonresident companies, and private entities of association type limited to goods related to the commercial sphere. The simple grantor partnerships remain excluded from the application of the provision, as entities that do not carry out commercial activities.
- ✓ This leads to the principle of law conclusively affirmed by the Supreme Court whereby the provision of subparagraph *h-ter* of Article 67, paragraph 1, of the TUIR is not applicable, as in the case at hand, to real estate granted in use to the partner of a simple partnership.

