



Newsletter



EU TAX INSIDER

Clarifications of the Italian tax authorities (ITA) on the transfer of a going concern under the EU Merger Directive: full neutrality only if certain conditions are met

Italian tax authorities' resolution no. 63 issued on the 9th of August 2018 clarified that a transfer of a going concern belonging to the Italian permanent establishment of a French resident company (Transferor) to an Italian resident company (Transferee) is fully tax neutral only if certain conditions are met.

The case addressed by the resolution and the position shared by the ITA

In the resolution the ITA confirm that the contribution of the going concern belonging to the permanent establishment of a company resident in an EU Member State (e.g. France) to a company resident in the same Member State of the said permanent establishment (e.g. Italy) falls under the scope of application of the EU Merger Directive (Directive 2005/19/EC).

In particular, the ITA confirmed that Articles 178, 179 and 176 of the ITC apply and therefore the contribution of the said going concern does not give rise to any taxable gain to the extent that the fiscal values of the assets and liabilities pertaining to it remain the same as they were in the hands of the Transferor prior to the contribution.

As regards the shares received by the Transferor in exchange of the contribution, in lack of a specific provision in the EU Merger Directive, the ITA maintained that in order to benefit from the tax neutrality such shares must be attributed, as functionally connected, to the Italian permanent establishment of the Transferor; should it be the case, the received shares would inherit the same taxable base as the transferred going concern had prior to the contribution.

Conversely, according to the Italian Tax authorities, should the newly issued shares be attributed to the foreign head office of the Transferor as a direct consequence of the contribution or pursuant to a subsequent transfer, a taxable capital gain would arise and be equal to the positive difference between the fair market value of the shares and the last fiscal value the going concern had in the hands of the Transferor prior to the contribution.

In this respect, the Italian Tax Authorities also affirmed that if the conditions provided for by Article 87 of the ITC were met the said capital gain would benefit from the participation exemption regime and, therefore, only the 5% of its total amount would be subject to Italian income tax.

If further information is required, please refer to your **LED Taxand** contact or to eiascone@led-taxand.it or fcardone@led-taxand.it

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