Asymmetric demerger to divide a family holding or estate: when it is physiological and when it is abusive

Pietro Cumpostu, Dottore Commercialista (Italian Chartered Accountant) Updated 14 November 2026

IN SHORT

An asymmetric demerger makes it possible to divide a company shared among shareholders or family branches, attributing to each the interest in a different company (Article 2506(2) of the Civil Code). For income-tax purposes the transaction is neutral (Article 173 TUIR); registration tax is charged at the fixed amount and the transaction is excluded from VAT. From 2018 to 2026 the Revenue Agency has treated as «physiological» an asymmetric demerger that allows the shareholders to continue an economic activity separately, even where the resulting companies hold only real estate or cash. The tax advantage becomes undue when one of the resulting companies is reduced to a vehicle for assets intended for the shareholders' personal enjoyment: in that case the demerger defers without a time limit the taxation of the capital gains that an assignment of the assets to the shareholders would bring out. That is the condition set by rulings no. 343/2019, no. 555/2021 and no. 217/2024, which on the facts examined excluded abuse. A demerger of cash inserted in circular flows among companies of the same shareholders was instead held to be abusive (ruling no. 263/2023). The dividing line is therefore the use of the assets after the

> demerger. If the shareholders intend to enjoy the assets directly, the route consistent with the system is assignment or liquidation, with the related taxation.

The asymmetric demerger in the Civil Code

By a demerger a company assigns the whole of its assets to more than one company, existing or newly formed, or part of its assets, including to a single company, and the related shares or quotas to its shareholders (Article 2506 of the Civil Code). The same provision allows that, «by unanimous consent, some shareholders are not distributed shares or quotas of one of the beneficiary companies of the demerger, but shares of the demerged company». This is the asymmetric demerger, or non-proportional demerger in the strict sense: at the outcome each shareholder, or each family branch, holds an interest in only one of the resulting companies.

Where the attribution of the shareholdings is not proportional to the original interests, the demerger plan must provide for the right of shareholders who do not approve the transaction to have their shareholdings purchased for a consideration determined under the criteria provided for withdrawal, indicating who is bound to purchase them (Article 2506-bis(4) of the Civil Code).

Neutrality for income-tax purposes and indirect taxes

A total or partial demerger «does not give rise to a realisation or a distribution of capital gains and losses on the assets of the demerged company, including those relating to inventories and to the value of goodwill» (Article 173(1) TUIR). For the shareholders, the exchange of the original shareholdings does not constitute a realisation or a distribution of capital gains or losses, except in the case of a cash adjustment (paragraph 3). Reserves in tax suspension are reconstituted by the beneficiary companies in proportion (paragraph 9).

For indirect taxes:

- the deed of demerger is subject to registration tax at the fixed amount of EUR 200 (Article 4(1)(b) of the Tariff, Part I, annexed to Presidential Decree 131 of 26 April 1986),

as confirmed by rulings no. 36/2018 and no. 91/2018;

- the transaction is excluded from the scope of VAT (Article 2(3)(f) of Presidential Decree 633/1972), as recalled in rulings no. 68/2018 and no. 107/2026.

Abuse of law: where the undue advantage lies

Abuse of law is constituted by transactions lacking economic substance which, while formally complying with the tax rules, essentially achieve undue tax advantages, that is benefits, including non-immediate benefits, achieved in contrast with the purposes of the tax rules or with the principles of the tax system (Article 10-bis(1) and (2) of Law 212/2000). The freedom to choose among transactions that involve a different tax burden remains (paragraph 4), as does the exclusion of transactions justified by valid non-marginal extra-fiscal reasons (paragraph 3).

The neutrality of the demerger is, according to the Revenue Agency, «a physiological effect of the institution» (ruling no. 133/2022): it is not in itself an undue advantage. The undue advantage identified in the practice is a different one: the deferral without a time limit of the taxation of latent capital gains on assets which, if assigned directly to the shareholders, would be taxed at normal value (Article 86(1)(c) and (3) TUIR). On the «sine die or significantly postponed, and therefore not merely temporary» deferral of tax, recalled by the policy instruction (atto di indirizzo) of the Deputy Minister of Economy and Finance of 27 February 2025, prot. no. 7, and on the order of the inquiry, see the guide Holding companies that do not distribute dividends: the risk of abuse of law.

The Revenue Agency's line from 2018 to 2026

Date	Ruling	Case	Outcome
12/10/2018	no. 36/2018	Real-estate company divided among four shareholders	Physiological transaction to continue the management of the properties

Date	Ruling	Case	Outcome
19/10/2018	no. 40/2018	Division of a real-estate portfolio	Physiological transaction to divide the real-estate management between two companies
15/11/2018	no. 68/2018	Two family groups, crossed demergers	Physiological transaction: each group continues its own commercial management and the management of let properties
19/11/2018	no. 70/2018	Reorganisation with an asymmetric demerger	No abusive scheme
4/12/2018	no. 91/2018	Two family groups, real-estate company	Physiological transaction to manage the properties «according to their respective points of view»
5/12/2018	no. 101/2018	Separation between real-estate development and agricultural activity	Physiological transaction
28/3/2019	no. 87/2019	Shareholders who continue letting separately	Physiological transaction
10/4/2019	no. 106/2019	Partial non-proportional demerger of a real-estate company	Physiological transaction to continue letting and real-estate management separately
23/8/2019	no. 343/2019	Total demerger in a generational transfer, beneficiaries also with cash	Not abusive, provided it does not substitute for the dissolution of the company, with assets attributed to companies of «mere enjoyment»
21/2/2020	no. 72/2020	Shareholders with different entrepreneurial views	Physiological transaction
27/3/2020	no. 98/2020	Two shareholders who independently manage two business branches	Physiological transaction
1/10/2020	no. 421/2020	Real-estate company, two 50% shareholders in disagreement on sale or letting	Physiological transaction to make each shareholder independent in the management of the properties

Date	Ruling	Case	Outcome
23/6/2021	no. 435/2021	Operating company of four family groups	Physiological transaction; latent gains are taxed when the assets leave the business regime
25/8/2021	no. 555/2021	Demerger and division of properties	Physiological transaction; undue advantage if even one resulting company were deprived of operations, with properties for the shareholders' direct use
21/3/2022	no. 133/2022	Asymmetric demerger with cash arising from a sale of shareholdings	Physiological institution to separate assets and the corporate membership
1/3/2023	no. 233/2023	Asymmetric demerger between brothers with real estate and cash	Physiological transaction, excluding financing or guarantee transactions in favour of the shareholders
21/3/2023	no. 263/2023	Financing and partial proportional demerger of cash among companies of the same shareholders	Abuse: circular flows and saving of the tax on dividends
5/11/2024	no. 217/2024	Purchase of own shares and asymmetric demerger to overcome disagreements among shareholders	Transaction not abusive, provided the business activity continues
25/5/2026	no. 107/2026	Reorganisation of three companies of two groups with a demerger of real-estate portfolios	No undue advantage, including for VAT, registration tax and mortgage and cadastral taxes

The rulings are given on the facts represented by the applicants. The line is consistent and covers both operating companies and companies that manage real estate. Rulings no. 343/2019, no. 555/2021 and no. 217/2024 have a favourable outcome, but they set the condition that no resulting company is reduced to a company of mere enjoyment. The only negative outcome in the series concerns a proportional demerger of cash lacking a reorganisational purpose (ruling no. 263/2023).

Economic activity or personal enjoyment: the dividing line

In ruling no. 343/2019 the Revenue Agency stated that, for there to be no avoidance features, the demerger must not be «in fact, aimed at substituting for the dissolution of the corporate bond by the shareholders (or some of them) and the assignment to them of the business assets through the formal attribution of the related assets to companies of "mere enjoyment", for the sole purpose of deferring sine die the taxation of the latent capital gains on the transferred assets».

Ruling no. 217/2024 takes up the same formula, referring it to companies of «mere enjoyment» «not characterised by any operations» and to the deferral of the taxation «of the latent capital gains on the transferred assets and/or of the profit reserves in the shareholders' hands», and states that «an essential condition is that the demerger is characterised as a corporate reorganisation transaction aimed at the effective continuation of the business activity».

In ruling no. 555/2021 the Agency indicated the consequence: if even one of the resulting companies «were deprived of operations, the transaction would amount to attributing to the individual shareholder properties for direct use through the corporate screen», and the tax saving would consist in the deferral without a time limit of the taxation of the capital gains.

The management of properties granted on lease has been treated as a sufficient economic activity (rulings no. 68/2018, no. 87/2019 and no. 91/2018). In legal writing it has recently been argued that the pathology arises only if the company uses the assets «for the direct satisfaction of the shareholders' personal and family needs», whereas the transaction remains physiological if the assets are used in a business activity or even only in an activity of economic exploitation of the assets to obtain a stable profit, the so-called economic activity of asset management. This is a doctrinal reading, consistent with the practice cited, not an express position of the Agency.

The sensitive cases: cash and residential property

Cash. An asymmetric demerger that attributes cash resources has been held to be physiological when, after the demerger, the resulting companies carry on an economic activity (rulings no. 343/2019 and no. 133/2022). In ruling no. 233/2023 the conclusion is accompanied by the condition that the shareholders' needs are met by any distributions of dividends, «excluding financing or guarantee transactions vis-à-vis them». In ruling no. 263/2023, by contrast, a partial proportional demerger of cash among companies of the same shareholders, preceded by a loan, was held to be abusive: according to the Agency it did not respond «to any need for corporate reorganisation» and the circularity of the flows made it possible to save the tax that the dividends would have borne. Legal writing recommends caution when the assets attributed are cash resources or assets intended for sale, such as shareholdings; the risk is also indicated, with positions that are not uniform, for demergers of cash only followed by a gift of the shareholdings. The use of a holding company's liquidity for the benefit of the shareholders is dealt with in the guide on holding companies that do not distribute dividends.

Residential property. A resulting company that holds only residential properties used by the shareholders or their family members, without letting or any other activity, corresponds to the case described in ruling no. 555/2021: it is the configuration that exposes the neutrality to being disallowed as an undue advantage.

When the shareholders wish to enjoy the assets directly: the alternatives

If the objective is the shareholders' personal enjoyment of the assets, the route consistent with the practice is the dissolution of the company or the assignment of the assets, with the taxation that follows: that is what, according to ruling no. 343/2019, the demerger must not substitute for. For property that is not instrumental by use and for non-instrumental registered movable assets, the 2027 Budget Bill (A.C. 3174-bis, Article 13) reintroduces the favoured assignment and transfer to shareholders and the conversion into a società semplice (simple partnership) with substitute tax, by 30 September 2027; the text is not yet law and may change.

In a generational transfer, the alternatives to a demerger, such as the family holding company with a contribution at a controlled realisation, gifts of shares and the family pact,

are dealt with in the guide Generational transfer through a family holding company in Italy.

From 1 January 2027: new article numbers

From 2027 the Income Tax Code approved by Legislative Decree 117 of 19 June 2026 applies (Article 377):

- the demerger remains governed by Article 173, with the same number and the same content, subject to the updating of the internal cross-references;
- capital gains on the assignment of assets to shareholders (Article 86(1)(c) and (3)) are governed by Article 95;
- the internal cross-references in Article 173 change number: the distribution of profits in Article 47 moves to Article 49, the exempt capital gains in Article 87 to Article 96;
- the fixed registration tax of EUR 200 for demergers is provided for by Article 4(1)(b) of the Tariff, Part I, annexed to the Consolidated Law on registration tax and other indirect taxes (Legislative Decree 123 of 1 August 2025);
- the exclusion from VAT of transfers of assets in demergers is provided for by Article 5(3)(e) of the Consolidated Law on VAT (Legislative Decree 10 of 19 January 2026).

What to do in practice

1. **The shareholders' objective**: determine whether each shareholder or family branch intends to continue an economic activity, including the management of let properties, or to enjoy the assets directly.
2. **Demerger plan**: unanimous consent for the asymmetric attribution and a clause on the right of dissenting shareholders to have their shareholdings purchased (Article 2506-bis(4) of the Civil Code).
3. **Activity after the demerger**: document for each resulting company the activity that will be carried on (leases, investment plans, use of the cash).
4. **Assets used by the shareholders**: do not concentrate in a resulting company residential properties intended for the shareholders' personal use without an economic activity; in

these cases consider assignment or liquidation.

5. **Subsequent transactions**: examine in advance gifts or sales of shareholdings planned after the demerger, in particular if the resulting companies hold only cash.
6. **Anti-abuse ruling request**: in doubtful cases, submit it before carrying out the transaction (Article 11(1)(c) of Law 212/2000), as in the rulings cited.

Key risks

- **A resulting company without operations, with assets for the shareholders' direct use**: disallowance of the neutrality as an undue advantage and taxation of the capital gains under the rules on assignment to shareholders (rulings no. 343/2019, no. 555/2021 and no. 217/2024; Article 10-bis of Law 212/2000).
- **Cash**: a proportional demerger of cash in circular flows held to be abusive (ruling no. 263/2023); the absence of loans or guarantees to the shareholders set as a condition in ruling no. 233/2023; a demerger of cash only followed by a gift of the shareholdings, considered at risk by part of the legal writing.
- **Dissenting shareholders**: the right to have their shareholdings purchased at withdrawal values, if the attribution is not proportional (Article 2506-bis(4) of the Civil Code).
- **Cash adjustments**: the adjustment may not exceed ten per cent of the nominal value of the shares or quotas attributed (Article 2506(1) of the Civil Code); for the shareholders who receive it, Article 47(7) and, where the conditions are met, Articles 58 and 87 TUIR apply (Article 173(3) TUIR; from 2027 Articles 49(7), 69 and 96 of Legislative Decree 117/2026).

Frequently asked questions

What is an asymmetric demerger?

It is the demerger in which, with the unanimous consent of the shareholders, some shareholders are not attributed shareholdings in one of the beneficiary companies

but shares or quotas of the demerged company (Article 2506 of the Civil Code). At the outcome each shareholder, or each family branch, holds an interest in only one of the resulting companies.

Is an asymmetric demerger taxed?

For income-tax purposes it is neutral: it does not give rise to a realisation or a distribution of capital gains, either for the company or for the shareholders, except in the case of a cash adjustment (Article 173 TUIR). The deed is subject to registration tax at the fixed amount of EUR 200 and the transaction is excluded from VAT.

When does the Revenue Agency treat an asymmetric demerger as physiological?

When it allows the shareholders, or the family groups, to continue an economic activity separately. The practice from 2018 to 2026 has recognised this also for companies that manage let properties (rulings no. 36/2018, no. 68/2018, no. 87/2019 and no. 107/2026) and for demergers with cash followed by an economic activity (rulings no. 343/2019, no. 133/2022 and no. 233/2023).

When does an asymmetric demerger become abusive?

When one of the resulting companies is reduced to a vehicle for assets intended for the shareholders' direct enjoyment, without an economic activity. According to ruling no. 555/2021 the tax saving would then consist in the deferral without a time limit of the taxation of the capital gains that an assignment of the assets to the shareholders would bring out.

Can a demerger be used to divide a real-estate portfolio among siblings?

Yes, if after the demerger each company continues an economic activity, for example the letting of the properties received. That is the case examined in several rulings, in which the transaction was treated as physiological to allow the shareholders or the

family groups to manage the properties according to their respective choices (rulings no. 36/2018 and no. 91/2018).

Is an asymmetric demerger of cash only permitted?

The practice has treated it as physiological when, after the demerger, the resulting companies carry on an economic activity (ruling no. 133/2022) and there are no loans or guarantees vis-à-vis the shareholders (ruling no. 233/2023). A proportional demerger of cash inserted in circular flows among companies of the same shareholders was instead held to be abusive (ruling no. 263/2023).

What if a resulting company holds only the house in which a shareholder lives?

That is the configuration described in ruling no. 555/2021: a company without operations that holds properties for the shareholder's direct use. It exposes the neutrality to being disallowed as an undue advantage. If the objective is personal enjoyment of the asset, the consistent route is assignment or liquidation with the related taxation.

Are valid economic reasons required for an asymmetric demerger?

Article 10-bis of Law 212/2000 excludes abuse if there is no undue tax advantage and, in any event, for transactions justified by valid non-marginal extra-fiscal reasons. In the practice on asymmetric demergers the decisive point is that the resulting companies continue an economic activity; the separation of the strategies of the shareholders or of the family branches has been recognised as a physiological purpose.

What alternatives are there if the shareholders want the assets in a personal capacity?

The assignment of the assets to the shareholders or the liquidation of the company, with the related taxation (ruling no. 343/2019). The 2027 Budget Bill (A.C. 3174-bis,

Article 13) reintroduces the favoured assignment and transfer and the conversion into a società semplice by 30 September 2027; the text is not yet law.

What changes from 2027 for the demerger?

From 1 January 2027 the new Income Tax Code (Legislative Decree 117/2026) applies: the demerger remains governed by Article 173, with the same number and the same content, subject to the updating of the internal cross-references. Capital gains on assignment to shareholders move to Article 95; the fixed registration tax and the exclusion from VAT move to the new consolidated laws on registration tax (Legislative Decree 123/2025) and VAT (Legislative Decree 10/2026).

Legal sources

Legislation

- Article 2506 of the Civil Code – Normattiva
- Article 2506-bis of the Civil Code – Normattiva
- Article 173 TUIR – Normattiva
- Article 86 TUIR – Normattiva
- Presidential Decree 131 of 26 April 1986 (Tariff, Part I, Article 4) – Normattiva
- Article 2, Presidential Decree 633 of 26 October 1972 – Normattiva
- Article 10-bis, Law 212 of 27 July 2000 – Normattiva
- Article 11, Law 212 of 27 July 2000 – Normattiva
- Article 95, Legislative Decree 117 of 19 June 2026, from 1 January 2027 – Normattiva
- Article 173, Legislative Decree 117 of 19 June 2026, from 1 January 2027 – Normattiva
- Legislative Decree 123 of 1 August 2025 (Tariff, Part I, Article 4), from 1 January 2027 – Normattiva
- Article 5, Legislative Decree 10 of 19 January 2026, from 1 January 2027 – Normattiva

Administrative practice

- Revenue Agency rulings no. 36/2018, no. 40/2018, no. 68/2018, no. 70/2018, no. 91/2018, no. 101/2018
- Revenue Agency rulings no. 87/2019, no. 106/2019, no. 343/2019, no. 72/2020, no. 98/2020, no. 421/2020, no. 435/2021, no. 555/2021
- Revenue Agency rulings no. 133/2022, no. 233/2023, no. 263/2023, no. 217/2024, no. 107/2026
- Policy instruction of the Ministry of Economy and Finance of 27 February 2025, prot. no. 7 – Department of Finance

Related guides

- Holding companies that do not distribute dividends: the risk of abuse of law
- Generational transfer through a family holding company in Italy

Contact

For the examination of a specific case, the contact page is available.

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Pietro Cumpostu, Dottore Commercialista, Partner — Fidinam & Associati Multidisciplinare S.t.A. s.r.l.