

## Tax Department / September 2025

### From simulation to classification: new doctrine on intermediary companies

The Supreme Court has handed down two rulings (May 26 and June 4, 2025) on the artificial division of activities through intermediary companies. In the case analyzed, an entrepreneur set up a company without material or human resources to invoice part of the services that he actually provided himself, in order not to exceed the limits of the objective assessment regime for personal income tax and the simplified VAT regime.

Until now, this type of structure fell under Article 16 of the General Taxation Law (simulation), which allowed the existence of the company to be disregarded and the income to be attributed directly to the partner. The novelty is that the Inspectorate, although it described a case of simulation, opted for Article 13 of the LGT (classification), concluding that the income declared as work should be treated as income from economic activities. Thus, the company was formally maintained, but the partner's income was reclassified, also leading to exclusion from the module regimes and the application of direct assessment.

The Chamber endorsed this approach by a majority, understanding that the power of classification allows for the reclassification of income when the proven facts do not fit into the declared category. It was based on two ideas:

1. The company was not disregarded for tax purposes; it merely reclassified the partner's income.

2. The legal consequences differ from those arising from a declaration of simulation, as the company's corporate income tax base remained intact.

In contrast to this position, the dissenting opinion highlighted the inconsistency of maintaining that a company lacks the means to operate and, at the same time, recognizing the validity of the income paid to the partner. According to this view, the transaction should be subsumed under Article 16 of the General Tax Law, since the interposition of a company lacking means is a typical case of simulation, and not of mere classification.

The core of the debate revolves around the doctrine of the non-interchangeability of powers an *tiabuso*: each technique in Articles 13, 15, and 16 of the LGT responds to its own assumption and cannot be used alternatively. The requirement of legal certainty obliges the Administration to precisely justify the technique applied, without resorting to ambiguous reasoning that hinders the taxpayer's defense.

In short, the rulings of May and June 2025 open up a new scenario: the Supreme Court has admitted that the classification in Article 13 can be used to reclassify income in cases of intermediary companies without means, without the need to expressly resort to simulation. This solution raises doubts about its internal consistency with previous case law and with the aim of reinforcing legal certainty in the application of anti-abuse powers.