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# Transfer of business and subsequent sale of shareholdings

## Doubts continue about the scope of Article. 20 of Presidential Decree of 26 April 1986 no. 131, in relation to the transfer of business and subsequent sale of shareholdings.

The jurisprudential controversy does not seem to stop in relation to the scope of article 20 of Presidential Decree 131/86, with particular reference to the treatment - for registration tax purposes - of transfers of business and the subsequent sale of the shareholdings.

In two recent judgments (i.e. Cass. Civ. judgment 27 January 2017, no. 2054; judgment 10 February 2017, no. 3562), in fact, the Supreme Court ruled (with different outcomes) on the tax regime of the above transaction.

In the first (i.e. Cass. Civ. no. 2054/2017), in favour of the taxpayer, it was held that the investigation into the legal effect must be carried out by the authorities on the basis of the evidence in the registration documents. According to those judges, the authorities should not, without question, accept the classification of the contract advanced by the parties.

But nor are they permitted to apply their own interpretation to the negotiations which are typical for that type of contract because this would result in an artificial construction of a set of facts different from those that were desired (and which have differing legal effects) by the parties.

The second (i.e. Cass. Civ. No. 3562/2017), on the other hand, against the taxpayer, again upheld the legitimacy of the classification as a transfer of the business of the transaction in question. In the case under consideration, the applicant had shown that a transaction that was successfully removed from the scrutiny of tax avoidance in the field of direct taxation (art. 176 (3) Consolidated Tax Code) could not qualify as avoidance in the different ambit of registration tax. On this point, the judges of the Supreme Court excluded the classification under article 20 DPR 131/86 as an anti-avoidance measure and held it to be only a regulation that allows the tax authorities to reclassify contracts on the basis of the objective effects achieved by the contract or in connection with it.

This reclassification, according to the same judges, is admissible if you transfer the assets in a company and then the shares of the same are transferred, given that if these actions are "connected" it may well be appropriate to achieve the objective effects of the sale, namely the transfer of things behind the payment of the price paid.

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