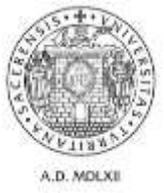




A.D. MDLXII

1. CATEGORIES OF INCOME



Taxes

Direct

Indirect



They affect index of economic strength:
income and assets

They affect indirect index of economic strength:
commercial exchanges



Personal



They refer to the wealth manifestation connected to the personal attributes of the taxpayer; they are general and Omni-comprehensive; proportional and progressive tax rate

Real



They are not connected to the personal attributes of the taxpayer and they often are with a flat tax rate



Periodical



Tax assumption recurs
on
(fiscal year)

Immediate



Tax assumption is
realized *una tantum*
(e.g., registration fee
for assets disposal)



Fixed



Predetermined in a fixed amount

Variable



It is compared to the amount of the taxable base



A.D. MDLXII

Proportional

Progressive



Flat tax rate whatever the amount of the taxable base

Tax rate varies on the basis of the taxable base's amount. Beyond a predetermined limit the tax rate becomes flat (art. 53, par 2, Cost.)



3.
INCOME FROM LAND



3.1 DEFINITION

Income from land and real estate situated in the territory of the State, registered or to be registered in the land register or in the building register. This income is divided into rental income from lands, agricultural income and real estate income (art. 25 TUIR).



3.2 TERRITORIALITY

Land income is produced by
properties in the State's territory



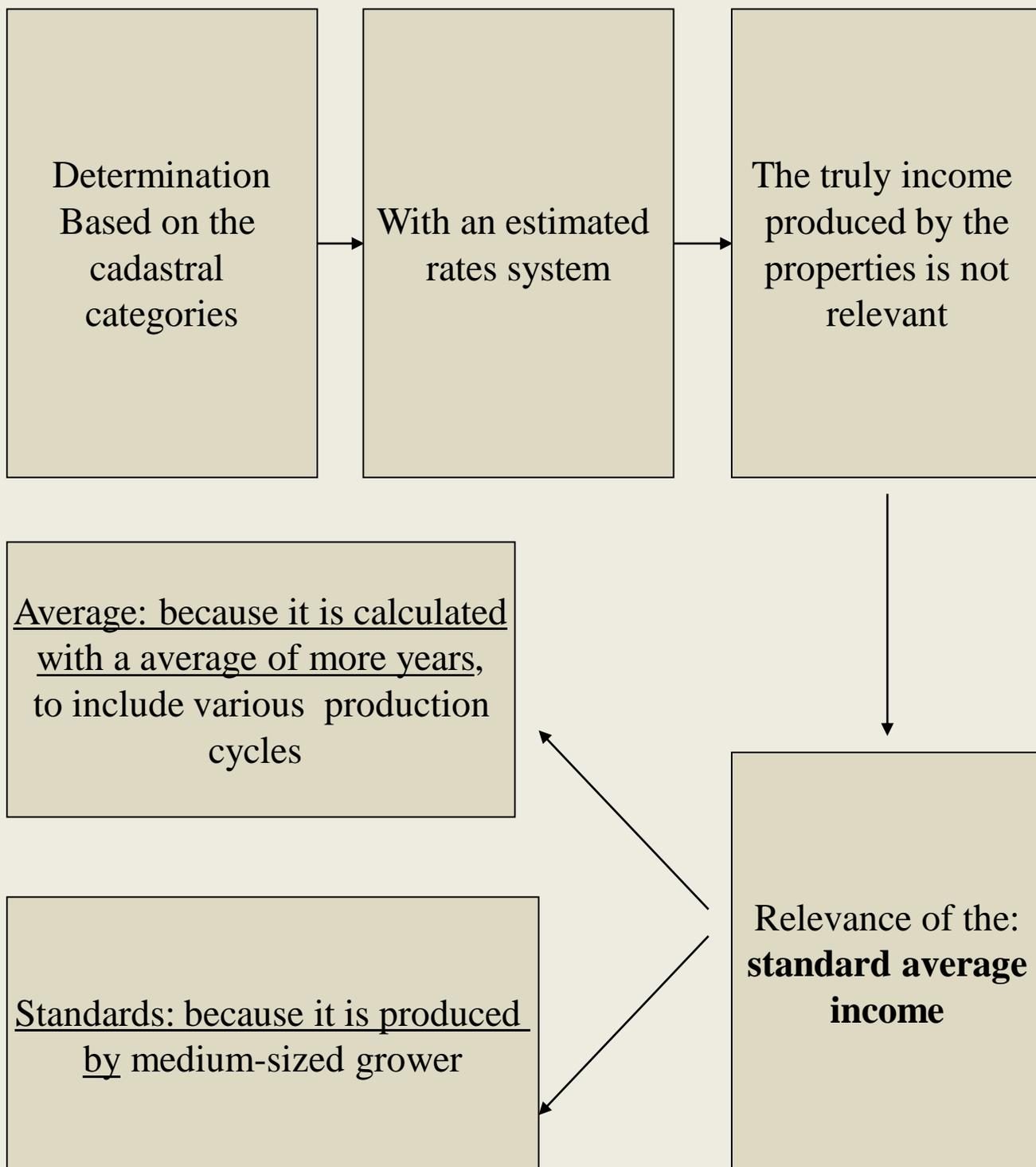
The residence of the owner of the properties
is not relevant

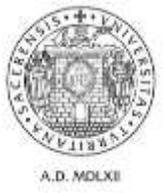
ERGO

Also for the non-resident persons the income of the
properties placed in Italy is considered produced here



3.3 STANDARD AVERAGE INCOME





3.4 TAXABLE PERSON



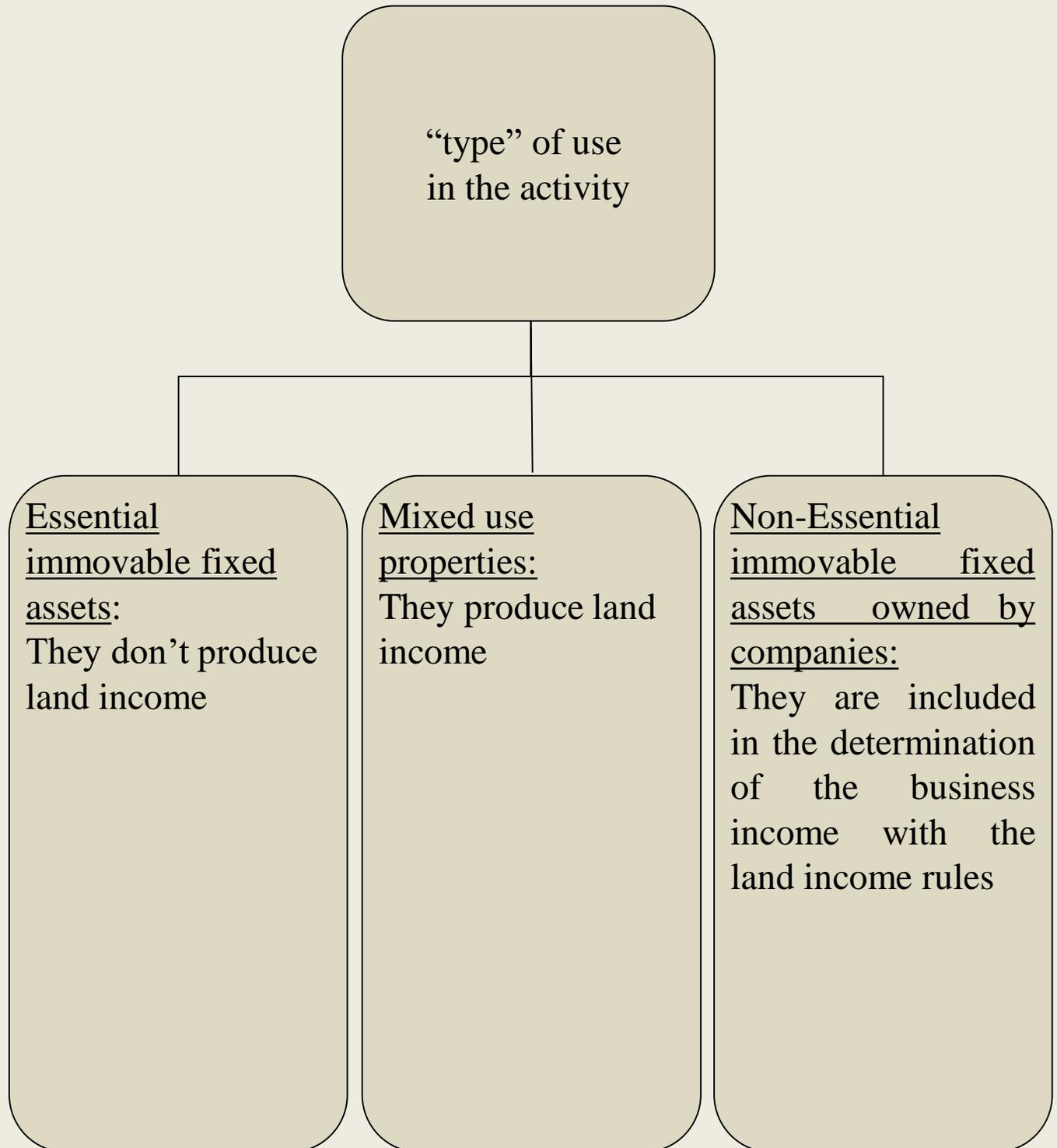
Natural person who owns
the property



Limited companies,
partnership, Cooperative,
with the qualification of
agricultural entrepreneur

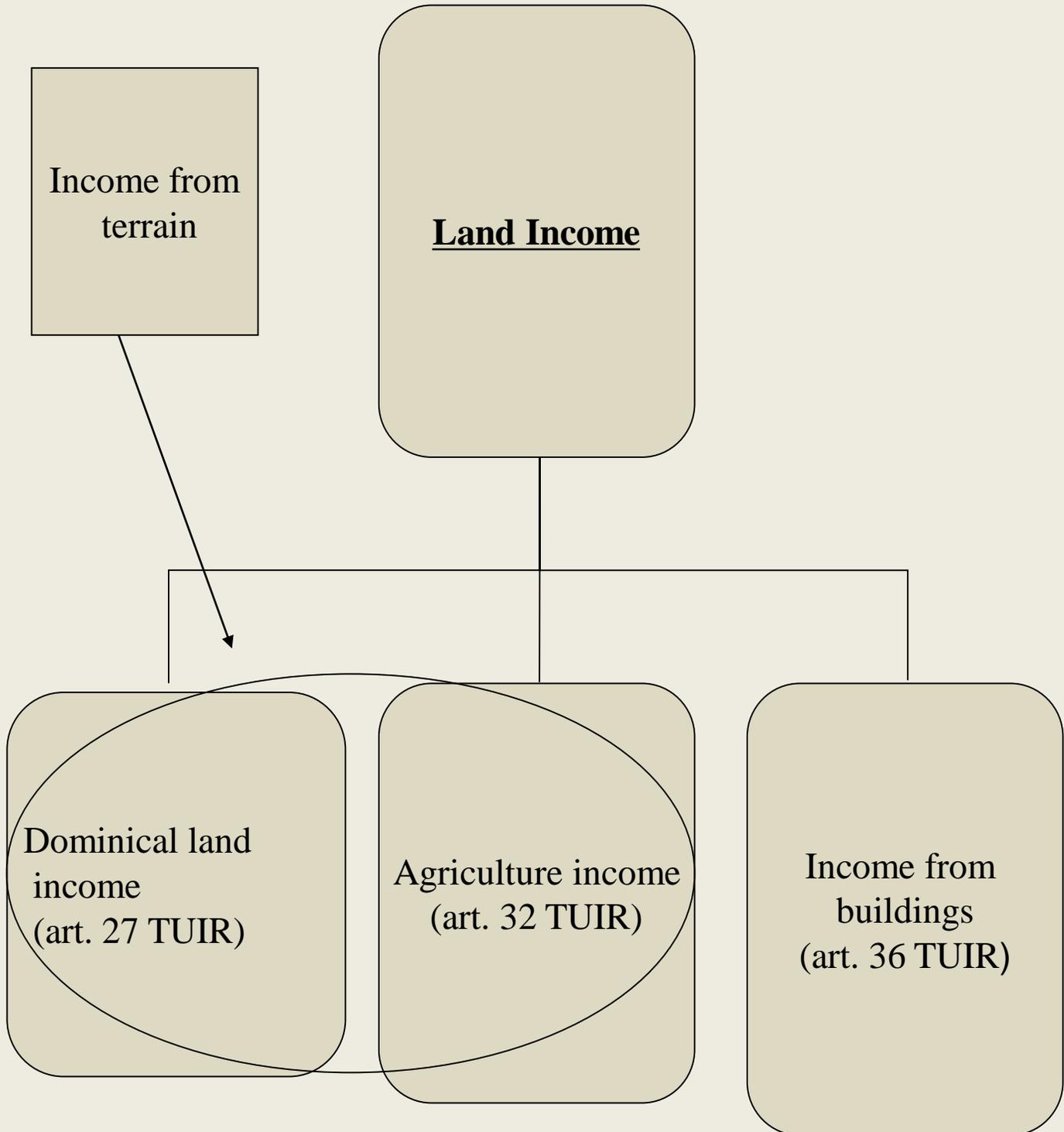


3.5 ENTREPRENEURS AND SELF-EMPLOYMENT

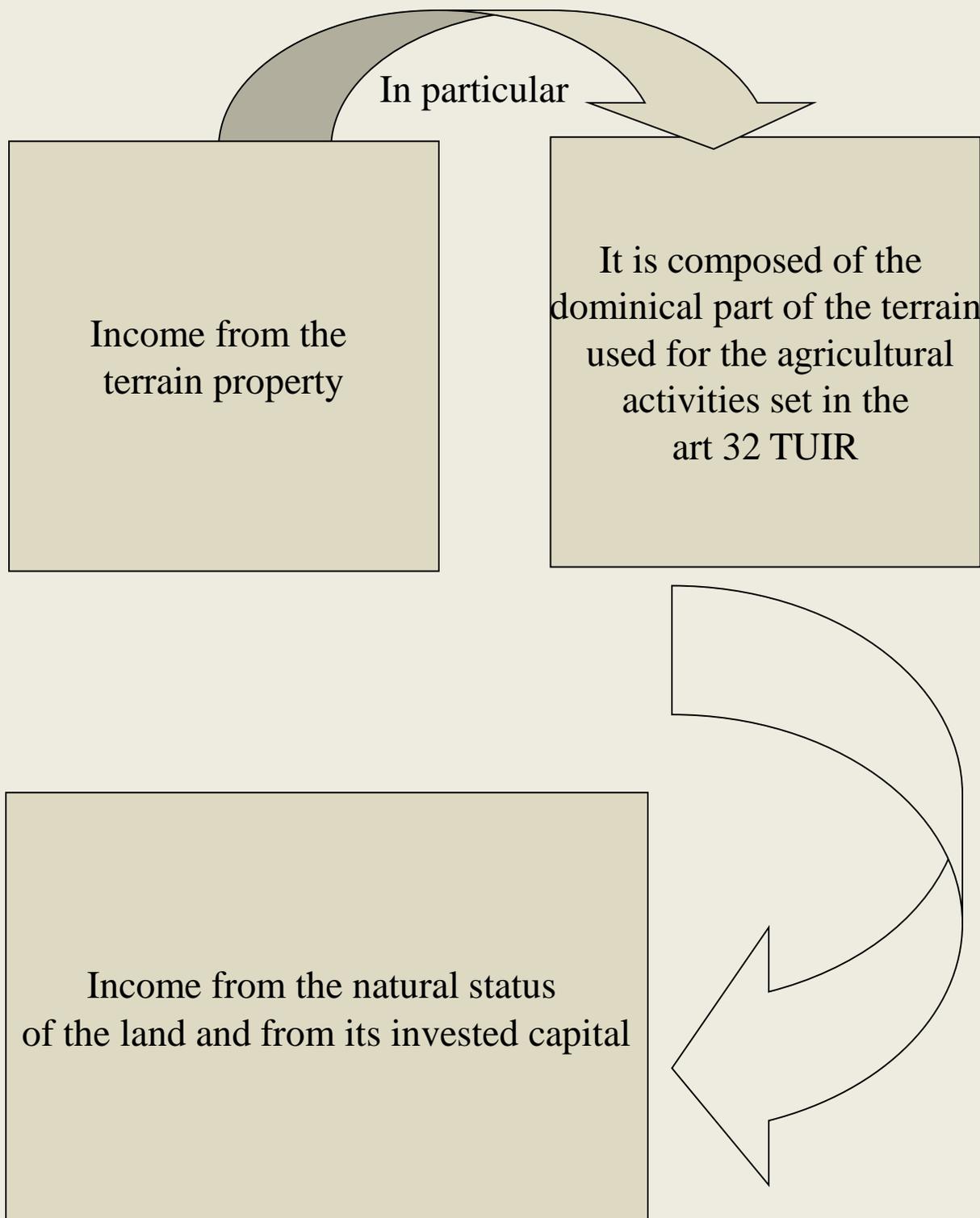




3.6 LAND INCOME CATEGORIES



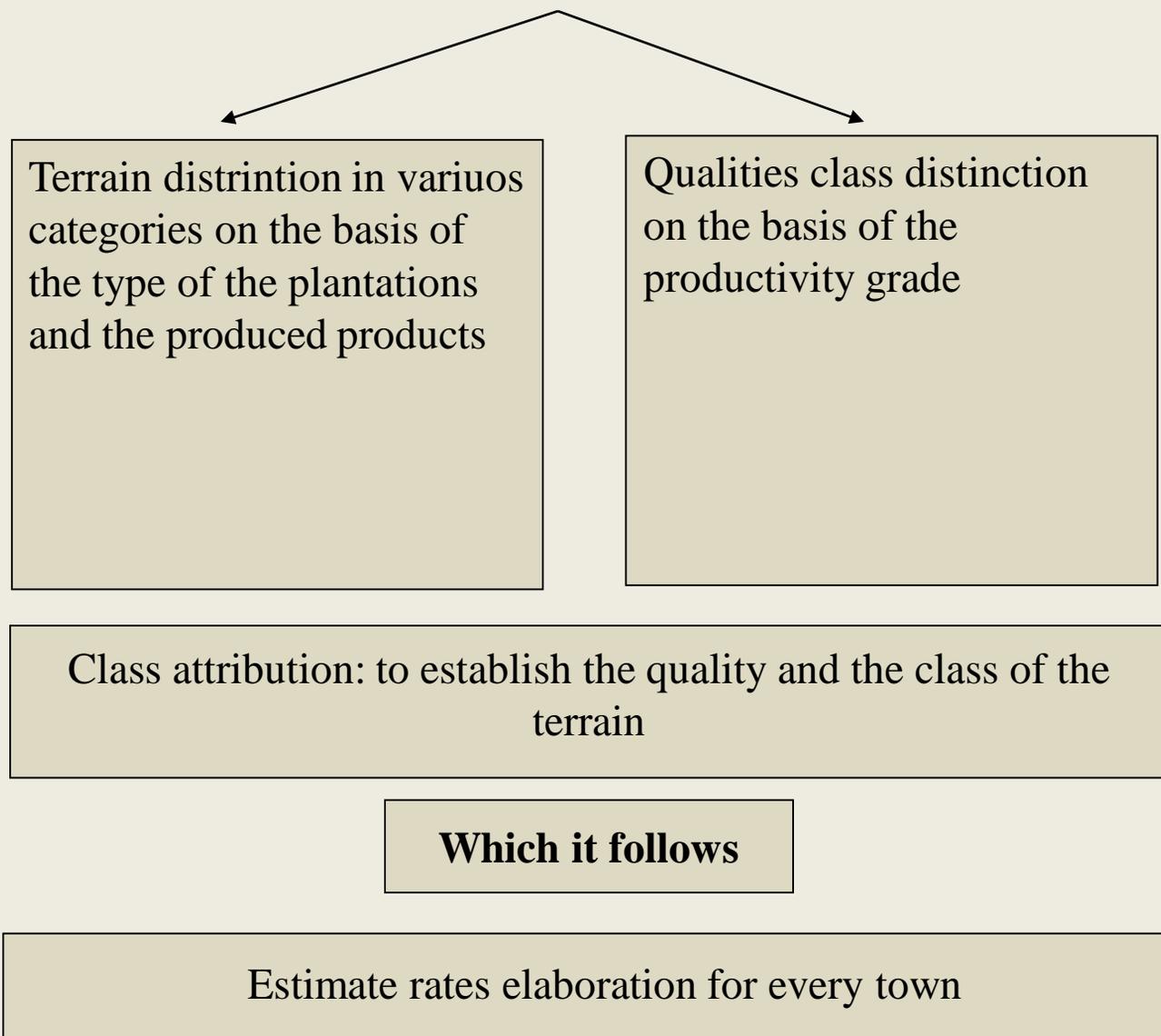
3.7 DOMINICAL LAND INCOME





3.9 DOMINICAL INCOME LAND DETERMINATION

Determined from estimate rates for each quality and class of the terrain (art. 28 par 1 TUIR).





3.13 AGRICULTURAL INCOME

It shows the standard average income from agricultural activities on the terrain within the limits of the land's potentiality (Art. 32 TUIR).

Dominical income:

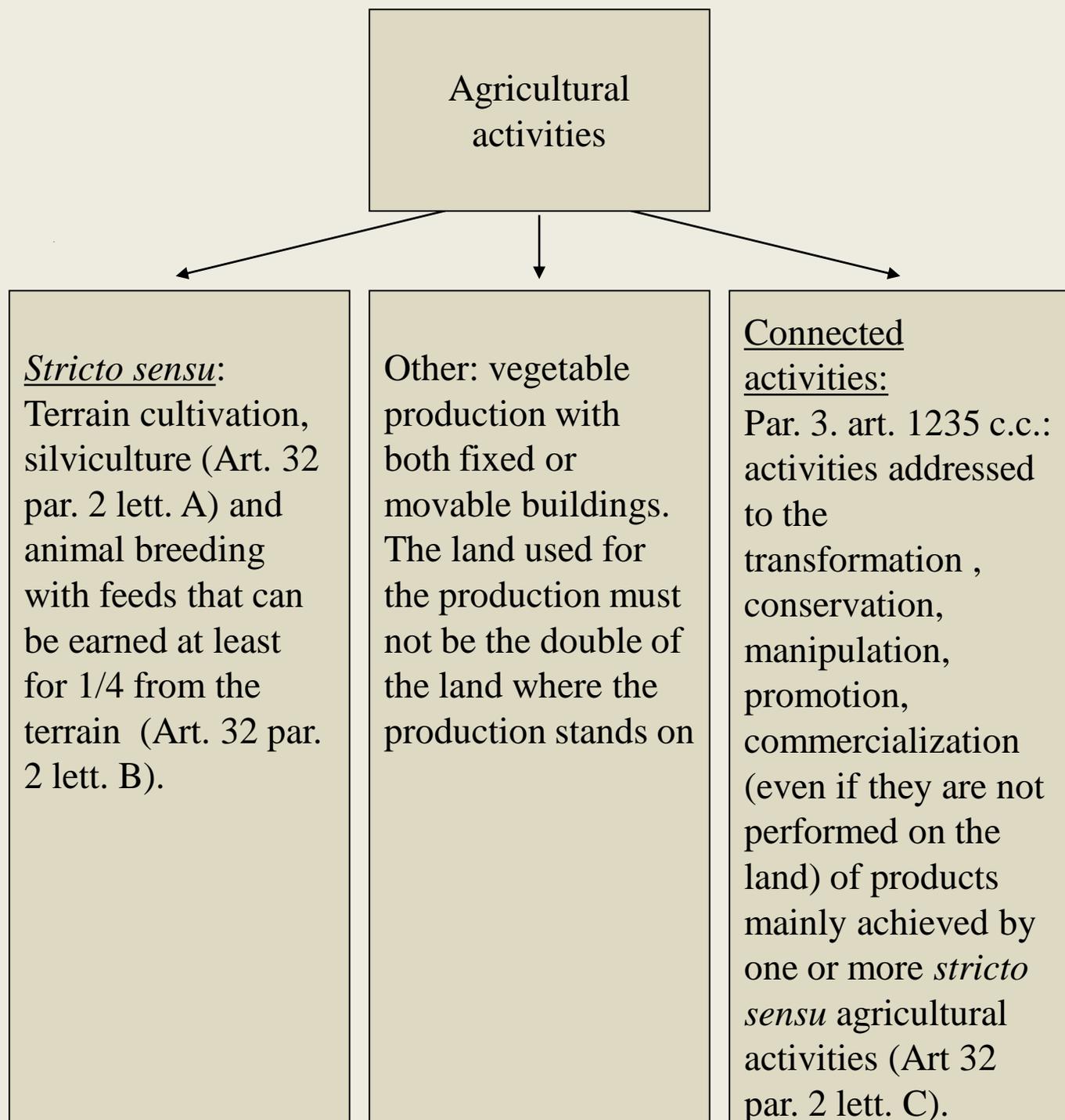
It refers to the *strictu sensu* income of the land

Agricultural income:

it refers to the invested capital and to the organized employment of the entity who uses the land for profitable activities



3.14 AGRICULTURAL ACTIVITIES



3.14.1 *Strico sensu* agricultural activities : animal breeding

Animal breeding is considered as an agricultural activity if it is performed with feeds that can be earned for at least 1/4 from the land where the breeding is made

It represents the rule's meaning of "*within the limits of the land's potentiality*", and it is the only relevant element for the qualification as an agricultural income

A maximum limit of livestock is established by a decree from the Ministry of Economy to be considered eligible for the agriculture income category



3.14.2 *Stricto sensu* agricultural activities: land cultivation and silviculture

Land cultivation

Silviculture

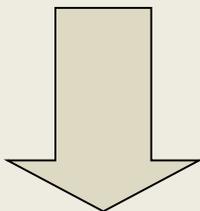


3.14.3 Exceeding the limits set by art. 32 c. 2 lett. b) T.U. 917/1986

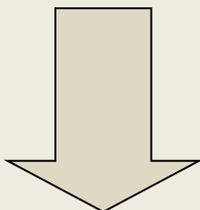
If the livestock bred exceeds the limits set by the aforementioned decree the performed activity is considered commercial and it will produce business income.

3.17.1 Income determination.

Agricultural entrepreneurs, except those subject to Italian corporate tax (IRES), who perform touristic activities:



They can use a flat regime for the income determination

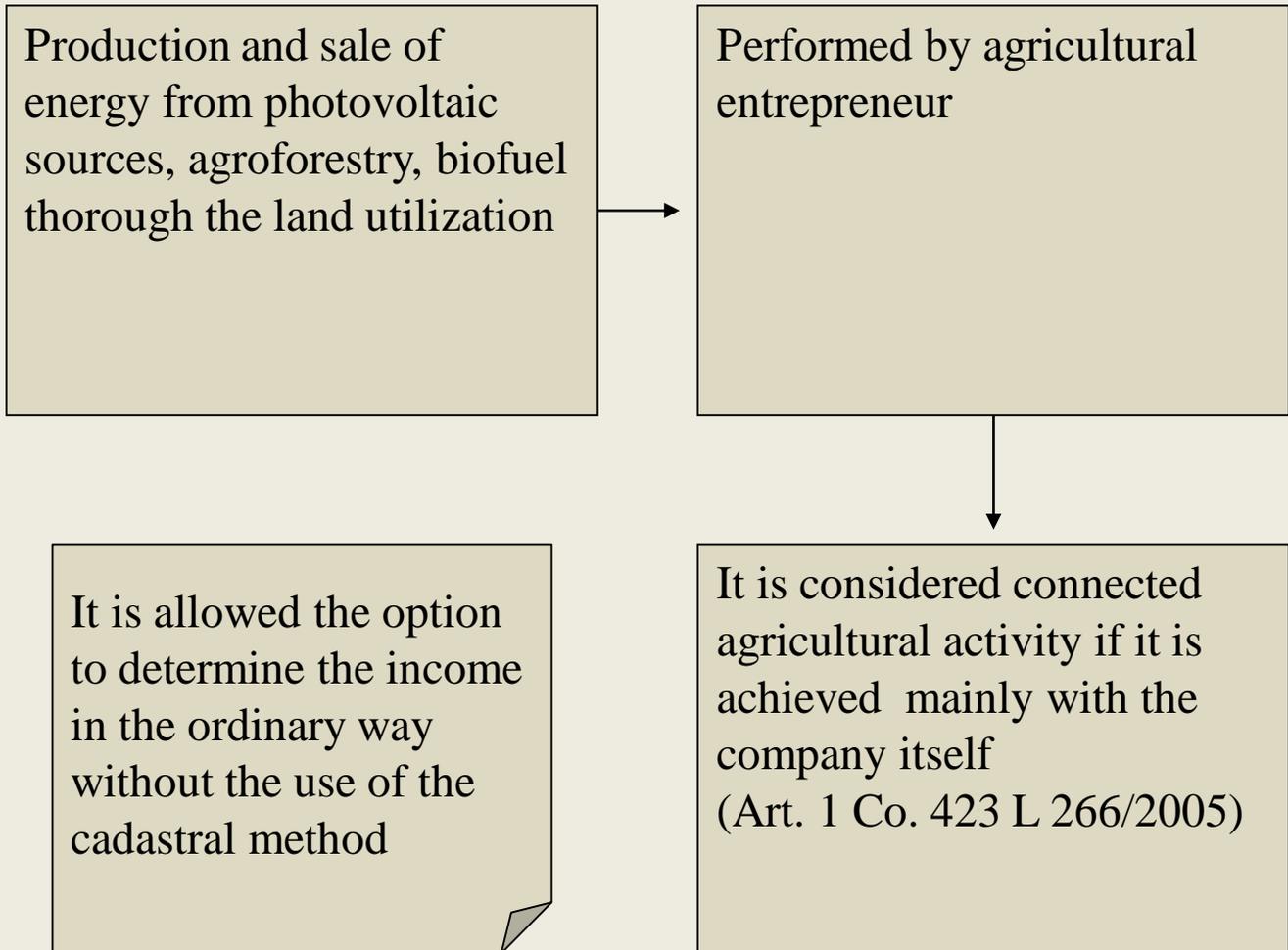


Application on the revenues (net of Vat) of a profit rate of
25%

There is not possible the deduction of costs and other
negative expenditures

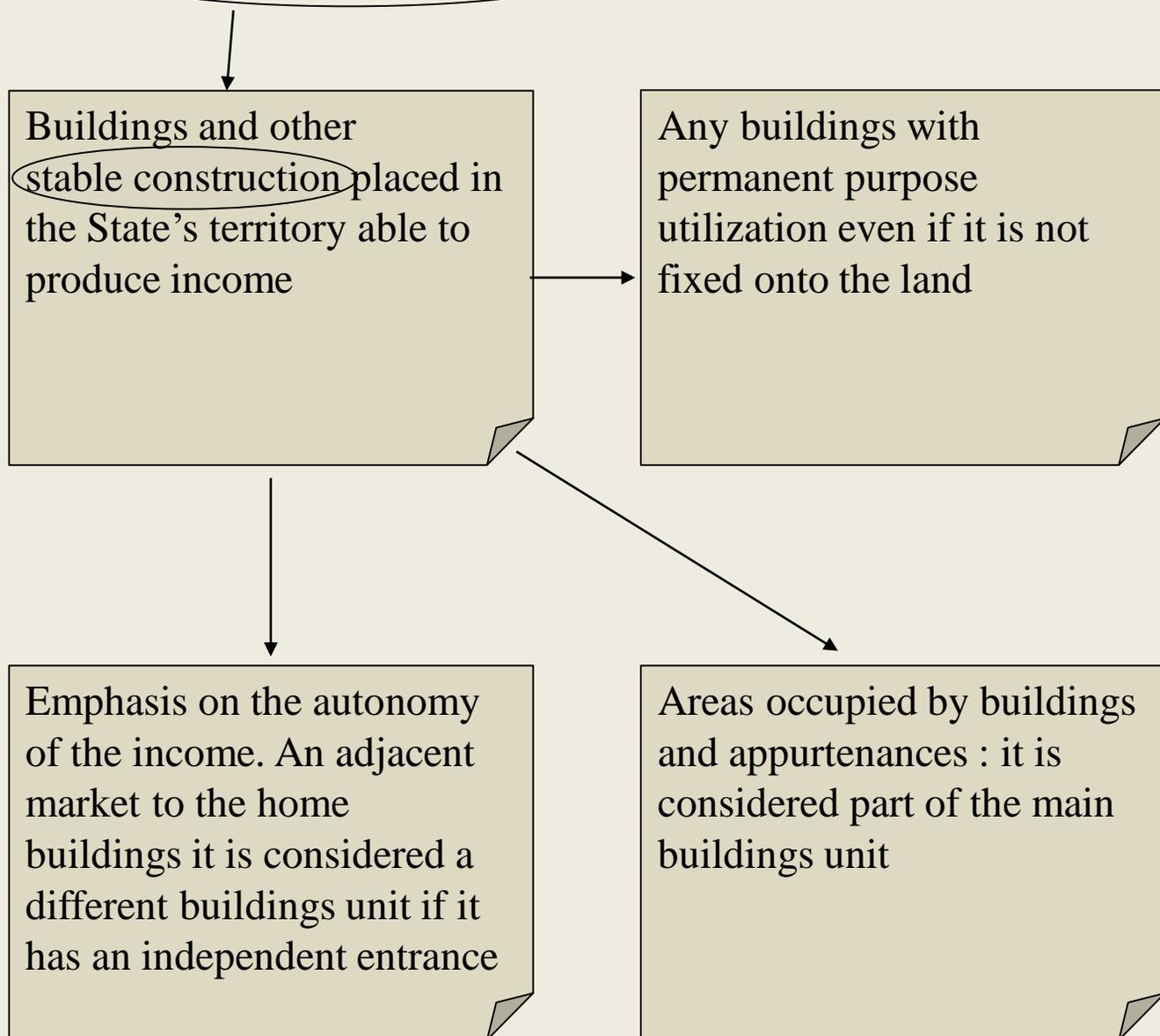


3.18 ENERGY SALE FROM RENEWABLE SOURCES.



3.20 BUILDING INCOME

It is composed of the standard average income originating from each urban properties (art 36 Co. 1 TUIR).





A.D. MDLXII

4. INCOME FROM CAPITAL



4.1 DEFINITION

To art. 44 et seq. TUIR (Italian tax consolidated code)

This categories is characterized by the absence of a legal definition in order to identify the essential elements

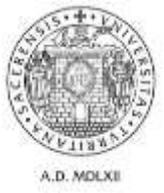


Possible definition

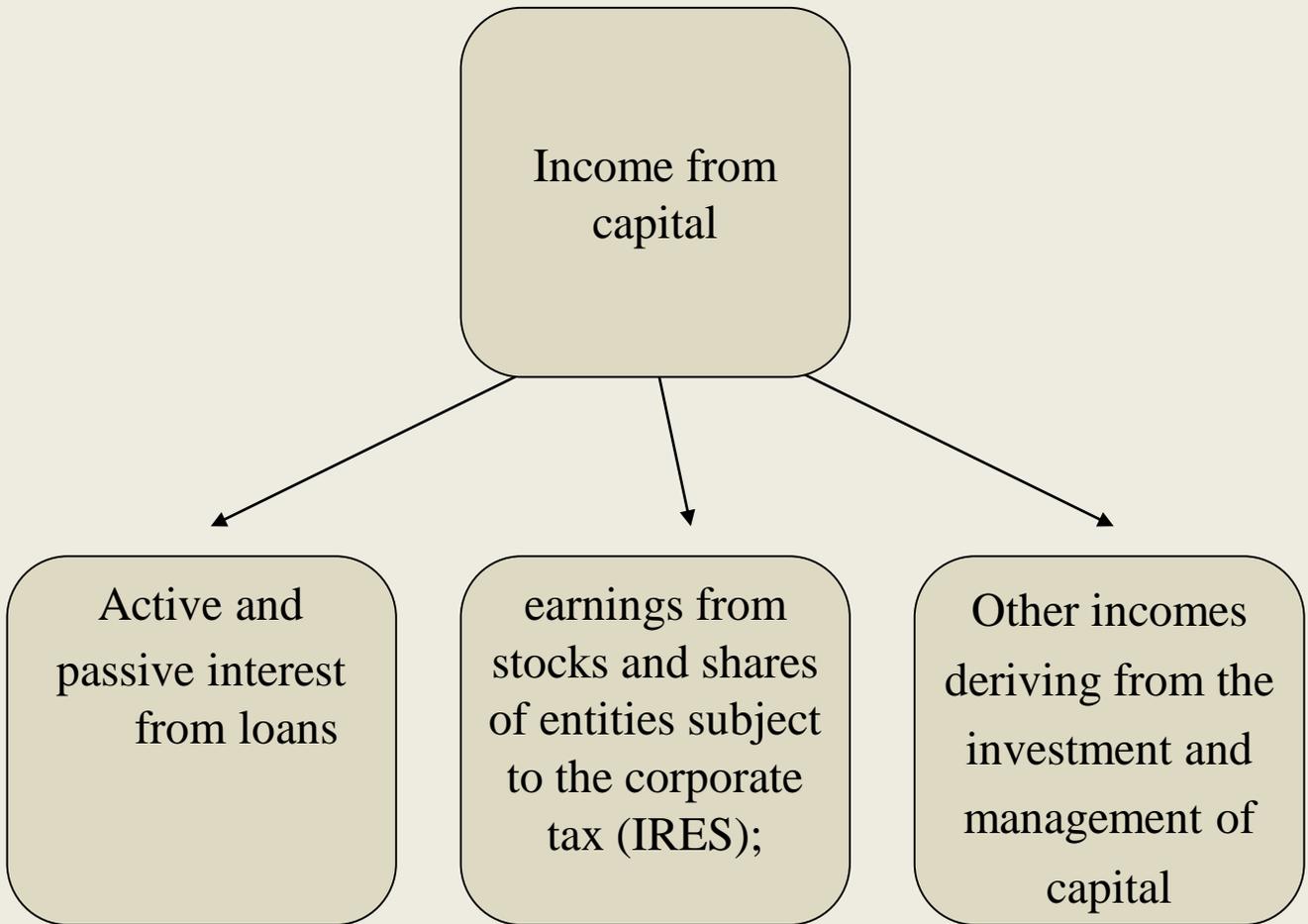
Interest, earnings from stocks and bonds and other incomes deriving from the investment of capital



Relationship with the civil concept of civil outcome (Art. 820 par. 3 Italian civil code).



4.2 THREE MAIN CATEGORIZATION





4.5.1 Taxation of participation earnings from entities subject to the corporate tax

Natural persons (not involved in a business activities)

Withholding tax equal to the 26% on the 100% of the distributed profit



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5.

INCOME FROM SUBORDINATE EMPLOYMENT



5.1 DEFINITION

Income from working in the employment of and under the direction of another party, including work at home in the cases provided by labour legislation. Pensions and equivalent benefits and other incomes considered equivalent by the law (e.g. scholarships, income from co-ordinate and continuative collaboration, etc) are also considered incomes from subordinate employment; (art. 49 Co. 1 TUIR).



5.2 EMPLOYEES

The definition of employees covers manual and non-manual workers and management personnel in the private and public sectors under the supervision of other, without any risk assumption, and with a predetermined salary and work schedule



- The public or private nature of the employment relationship is not relevant;
- The job position is not relevant



5.3 PLACE OF THE ACTIVITY: ITALY

Activities performed in Italy

Resident employees:
All the compensations received are taxed with the ordinary method stated in the art. 51 of the Italian tax consolidated code TUIR.

Non-resident employees: income from occasional activities is not taxed

If the employ moves the residence in the first six month of the year the compensation becomes entirely taxable in Italy



5.6 THE ALL-INCLUSIVE NATURE OF THE INCOME FROM SUBORDINATE EMPLOYMENT

Art. 51 TUIR

Employee income is defined as the total remuneration, in cash or in kind, payable by an employer to an employee for the performed work by the latter during the income reference period.

It is considered income from subordinate employment all the sum earned on the basis of the employment relationship



5.7 INCOME IN KIND

Article 51 and 9 TUIR

Problem

quantification

qualification

Difficulties in the application of article 9 (normal value).
Wholesale price criteria is not able to cover all
the hypothesis

The normal value of the goods or services is not
considered taxable income if their value is not greater
than 3000 €



Temporal allocation of the Subordinate
employment income



Calendar year + 12 January.

Difficulties in the allocation of the remuneration in kind
when it consists in the right to achieve goods
or services from third entities



6.

SELF EMPLOYMENT INCOME



6.1 DEFINITION

It derives from practicing crafts or professions, with habitualness even if they are not exclusive and excluding the activities set in the chapter VI or the Italian civil code TUIR (art. 53 Co. 1 TUIR).



6.2 QUALIFYING ELEMENTS

- Intellectual nature of the of the profession. It is connected on the personal skills of the activities performed
- Autonomy in the activity performed. It is the difference from the subordinate employment income
- Habitualness and professionalism in the activities. It is the difference with the other income set in the article 67 par. 1 lett. 1 TUIR.
- The non commercial nature of the activities which characterize the business income activities (art. 55 par. 1 TUIR).



6.3 INCOME TREATED AS SELF EMPLOYMENT INCOME

Income treated as self employment income
(art. 53 Co. 2 TUIR)

Commercial exploitation of the intellectual property, patent *et similia*

future discretionary bonuses of associations agreement when the contribution is a work performance

from future discretionary bonuses of the promoter members for public company foundation

Termination of agency relationship

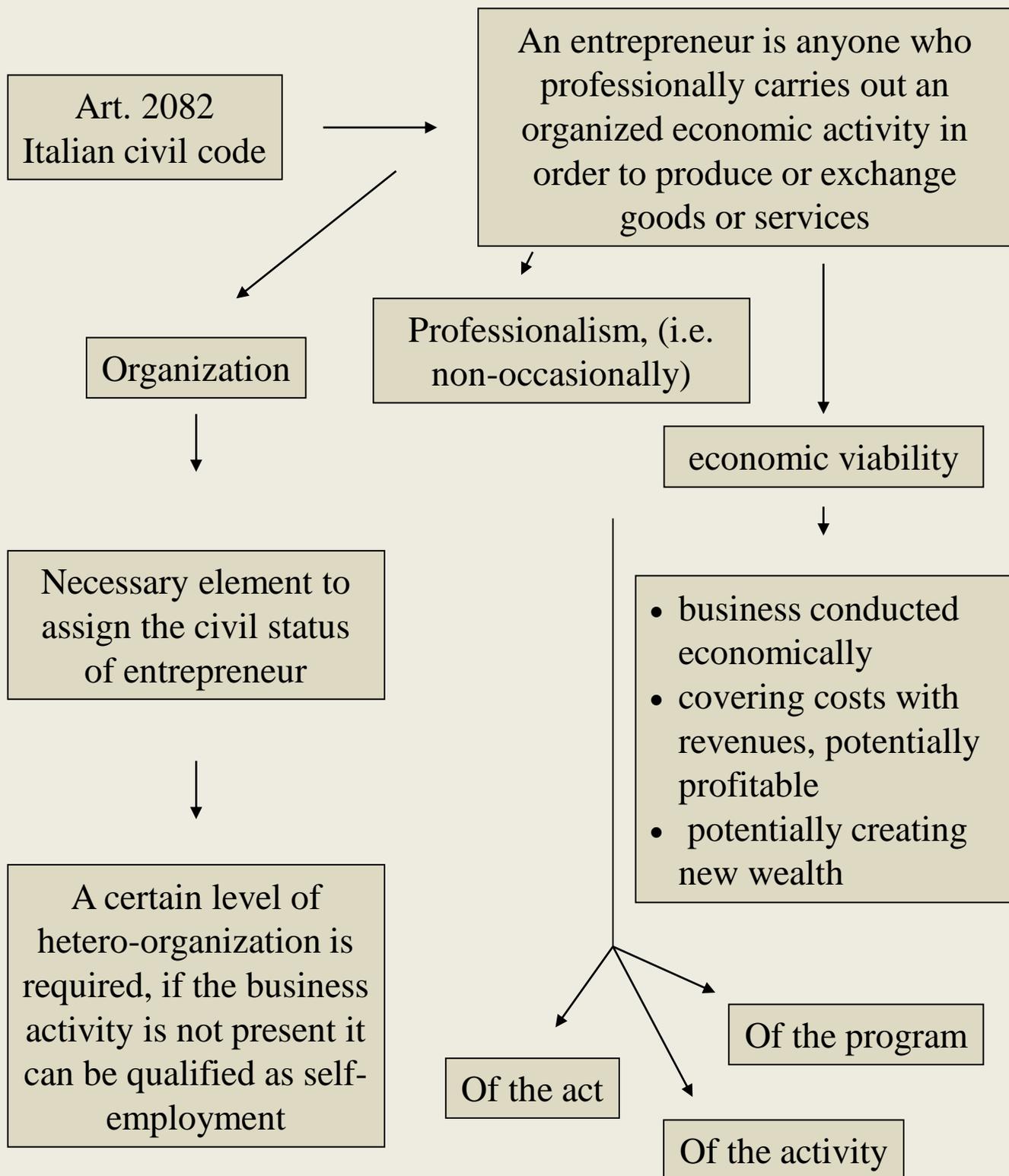


7. BUSINESS INCOME

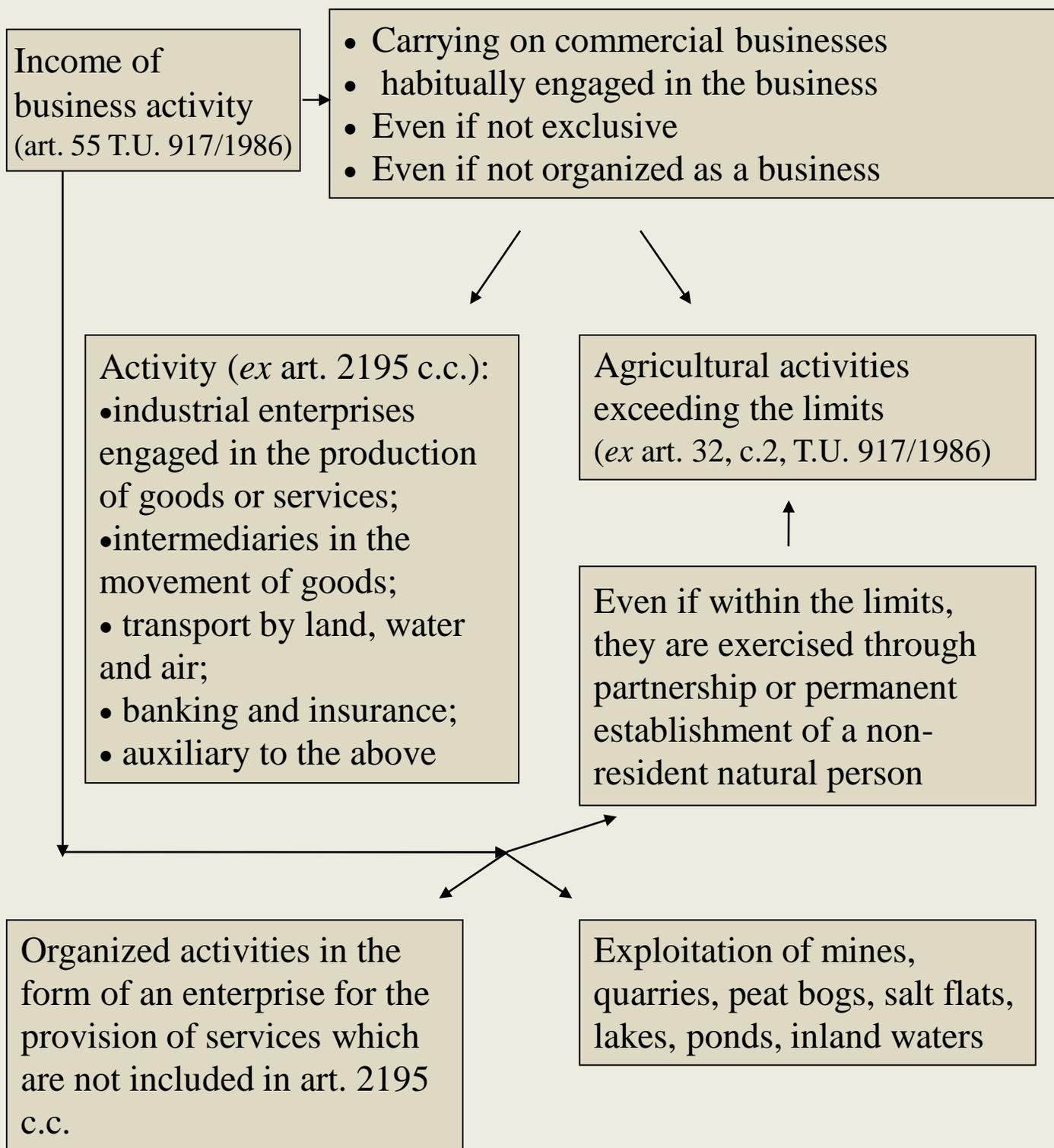


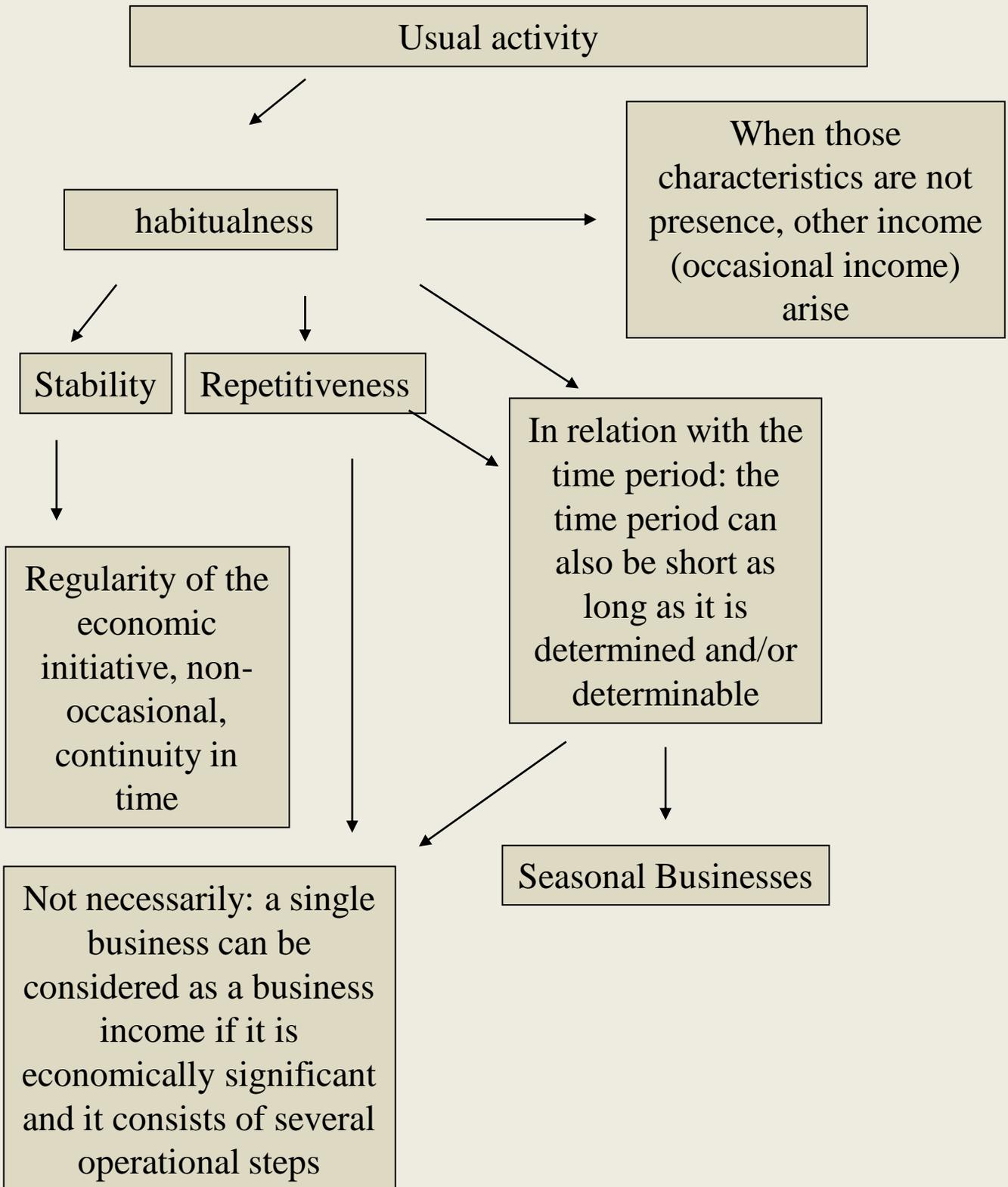
7.1 DEFINITION

7.1.1 Business definition



7.1.2 Definition of commercial business







Even if it is not exclusive

Business income is also produced by activities carried out simultaneously with other non-commercial activities

Coordination with the principle of business income attraction (art. 81 T.U. 917/1986)

Exception for the sole proprietor: in this case the financial profit has to come from a business activity.

Financial interests, which should be capital income, are considered business income because they can not be considered as a single income component on top a business income-generating entity



The organization in the form of an undertaking is not relevant

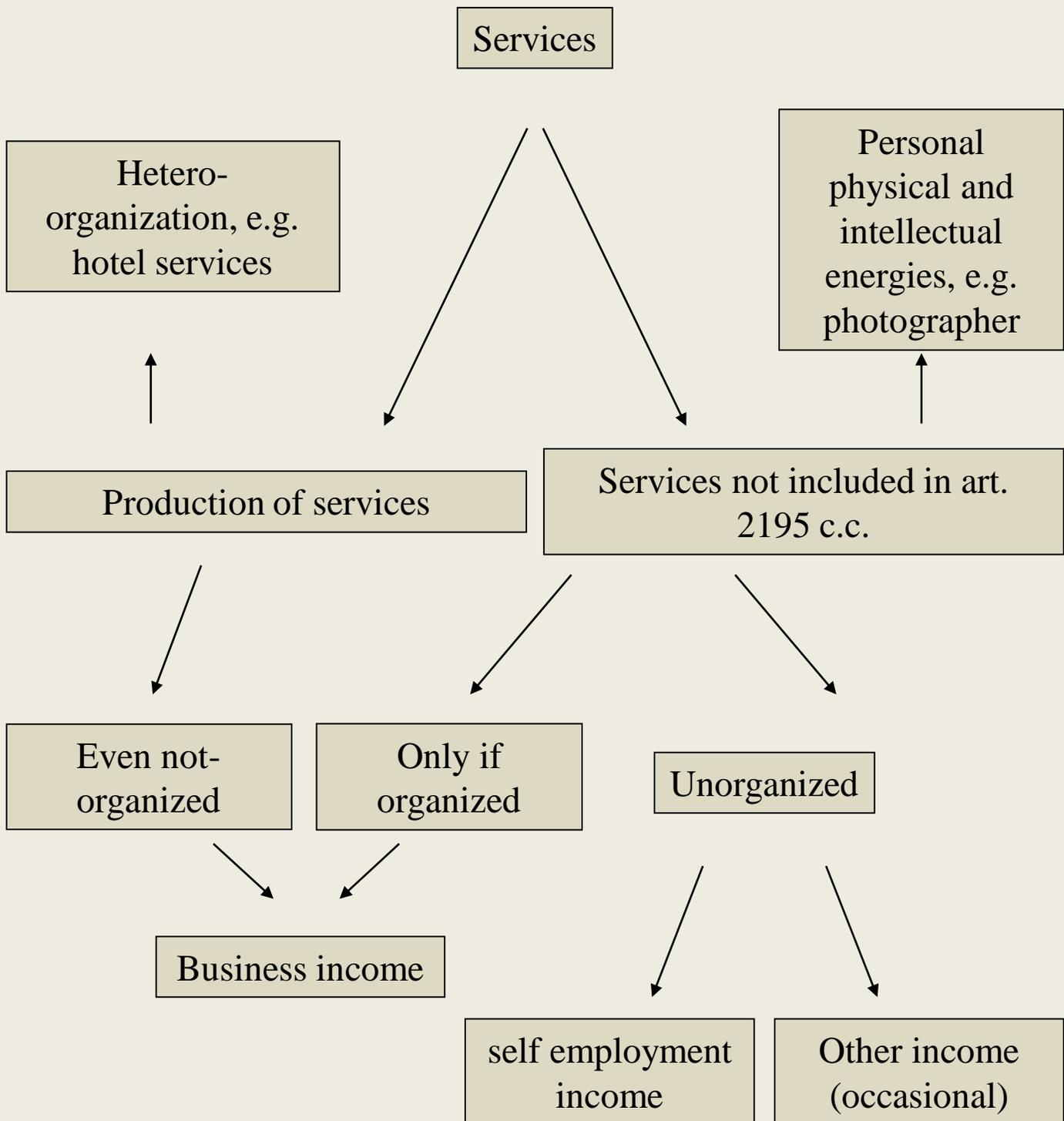


Conflict with the civil law provisions

- Only the activity performed in relevant
- The qualification of the entity and the existence of the organization in not relevant

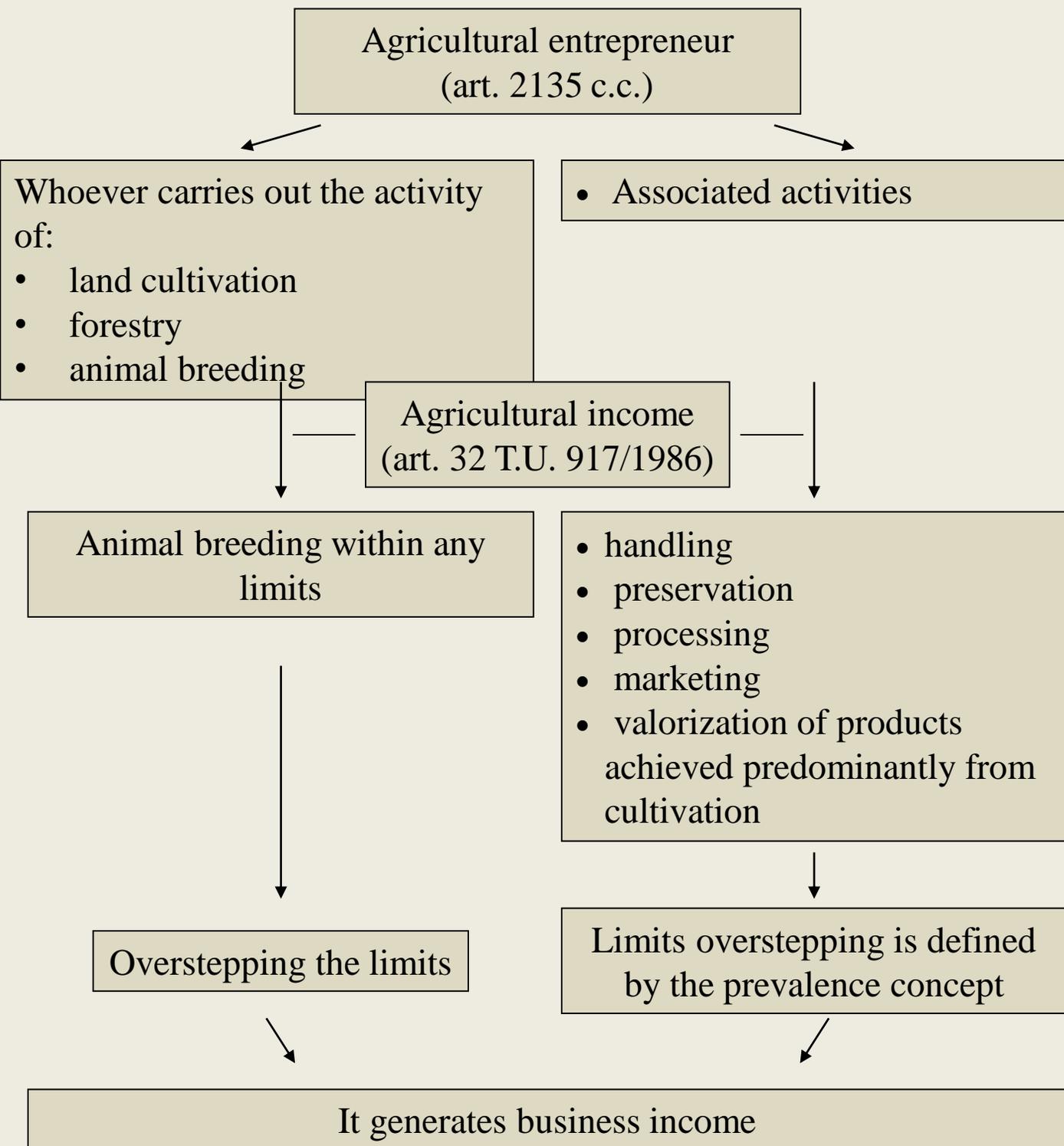


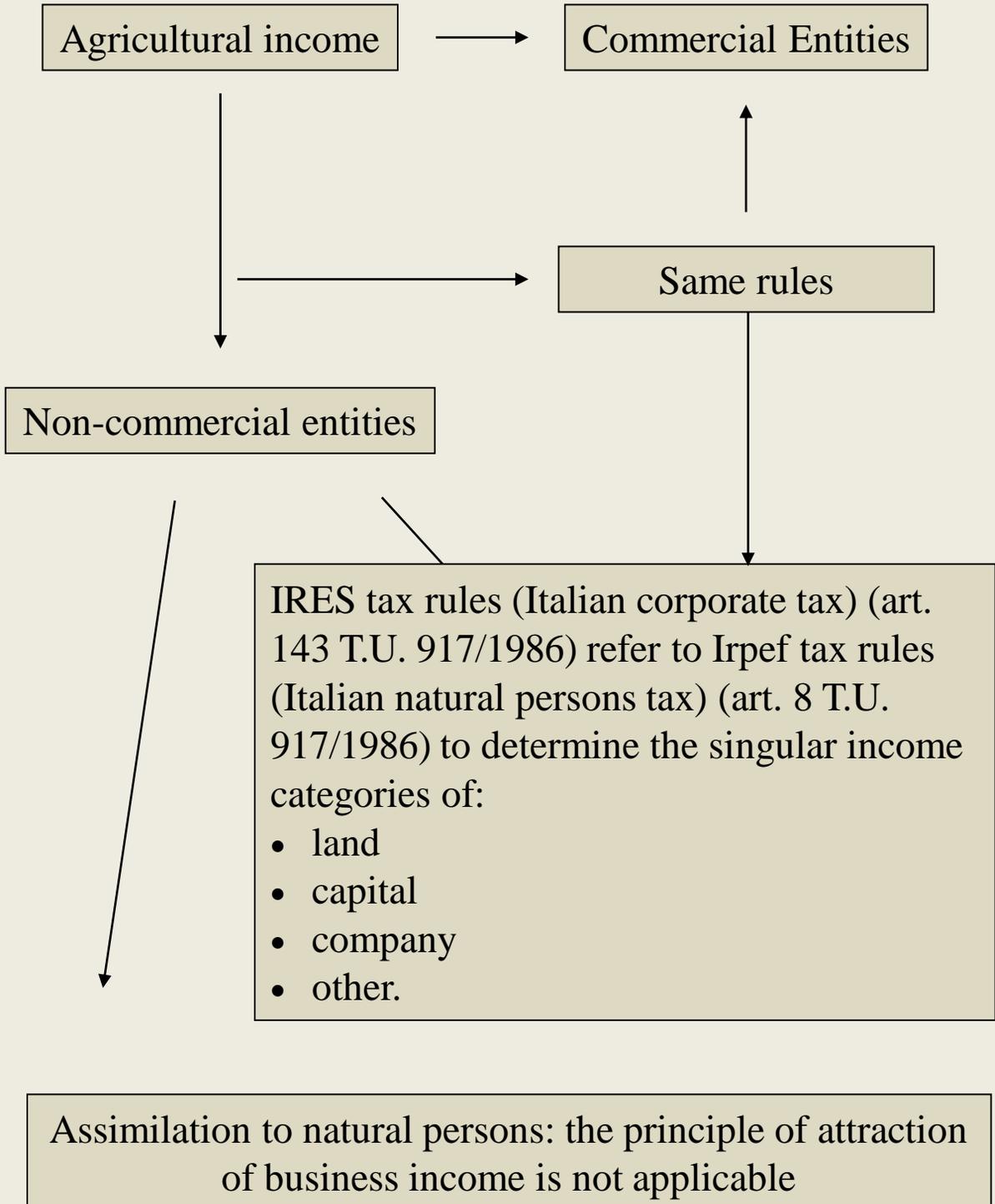
Objective relevance of the activity *ex art. 2195 c.c.*

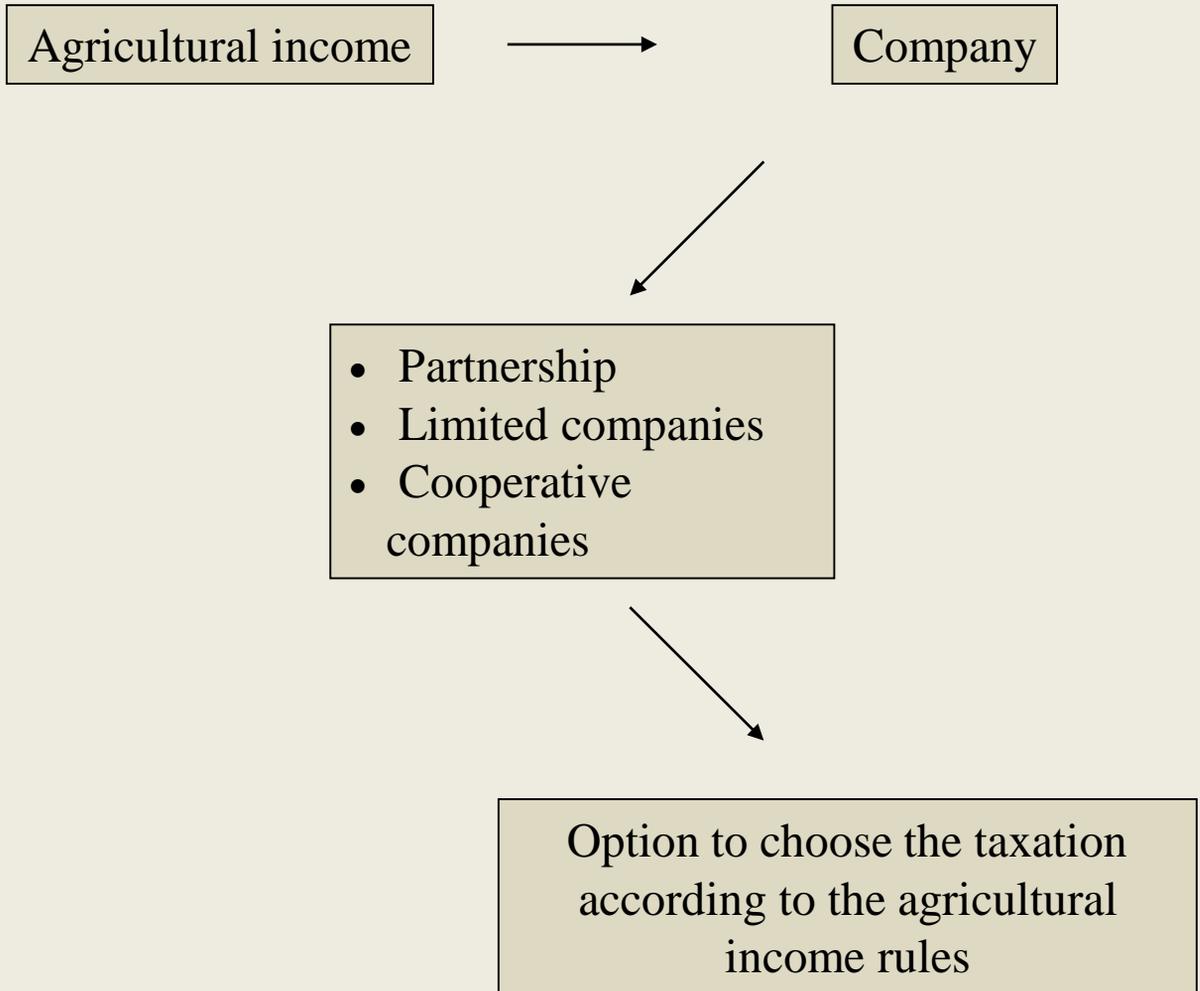




7.1.3 Agricultural undertaking definition







7.1.4 Taxation of income produced with associations

Commercial companies

Irpef

- S.n.c.
- S.a.s.
- Società di fatto (de facto companies)
- Società di armamento (arming companies)

Ires

- S.p.a.
- S.a.p.a.
- S.r.l.
- S.coop.
- Società mutua assicurazione (mutual insurance company)

Enti non commerciali

Ires

- Public and private entities, with or without legal personality, other than companies
- ecclesiastical entities
- foundations
- cultural, sports, political, trade union associations
- trusts (opaque)

In general, the above classification is connected to the legal form of the entity. The activity performed is not relevant

However, there are hypotheses that go beyond the formal constraints, looking at the actual development of the activity performed, inspired by the principle of form neutrality.



Commercial partnership (s.n.c., s.a.s.)
resident

Partnerships are not
IRPEF taxable
person

Assimilated to them:

- de facto companies
- Professional associations
- Arming companies
- società semplici (simple partnership)

Principle of transparency:

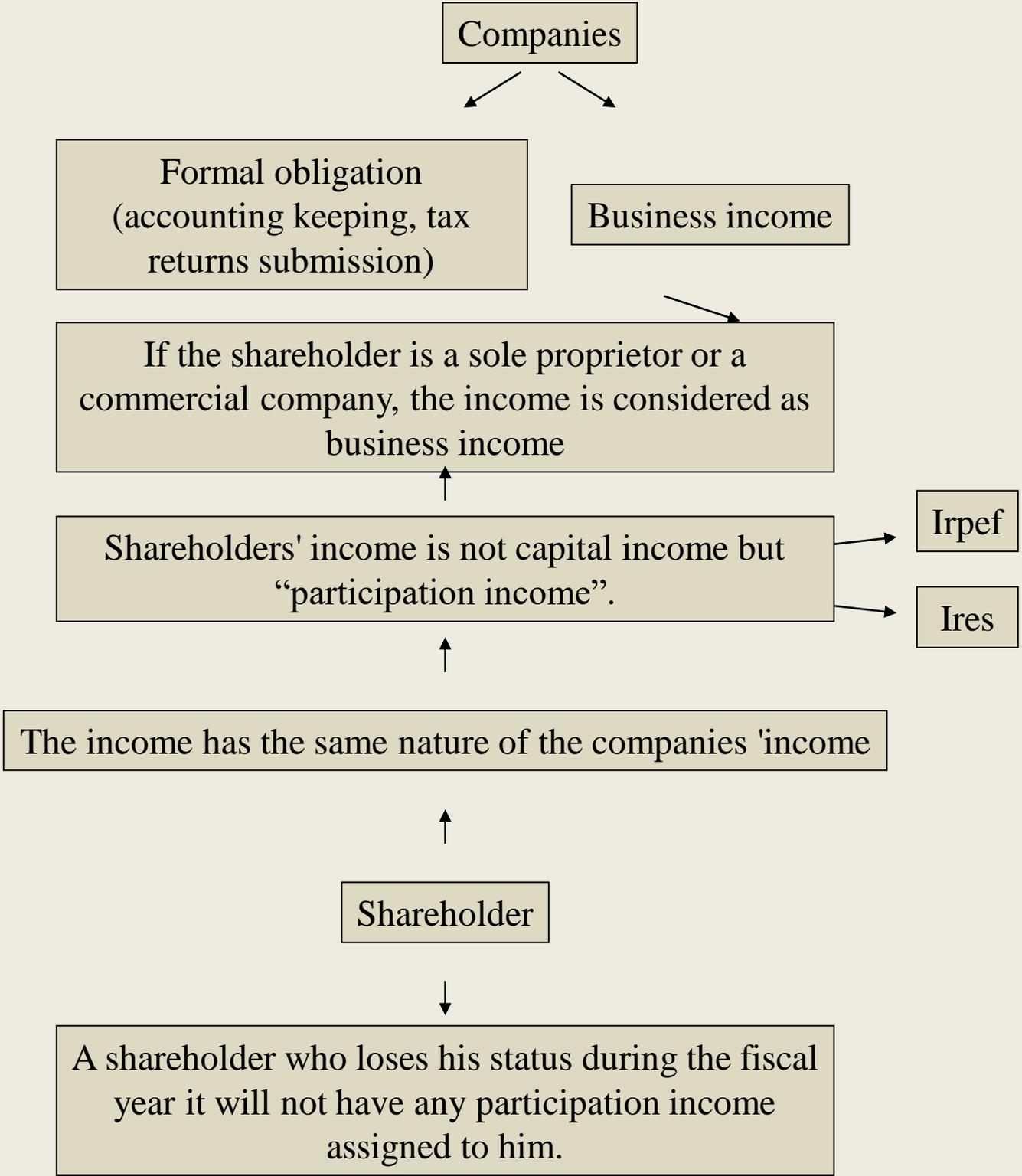
- The company's income is assigned to the shareholders even if the income is not distributed to them and in proportion to their profit share

Attraction principle (art. 6, c.3, T.U. 917/1986): Their income from every sources is considered as a business income

Principle of identification
between company and
shareholders

Otherwise, risk to defer the profits
distribution and thus the taxation

Double taxation risk is not
applicable





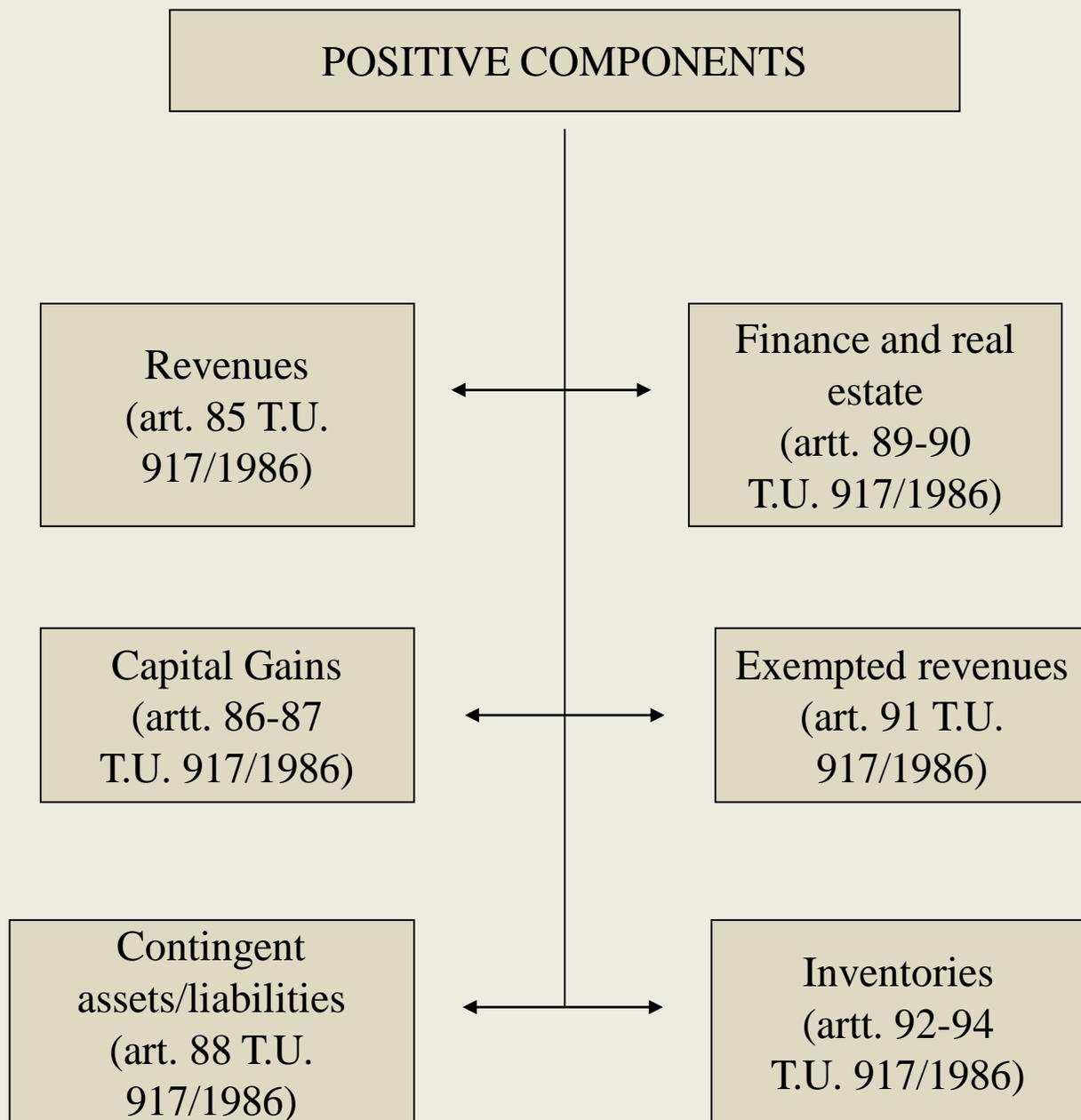
Losses

- Allocated to the shareholder as well as the profits

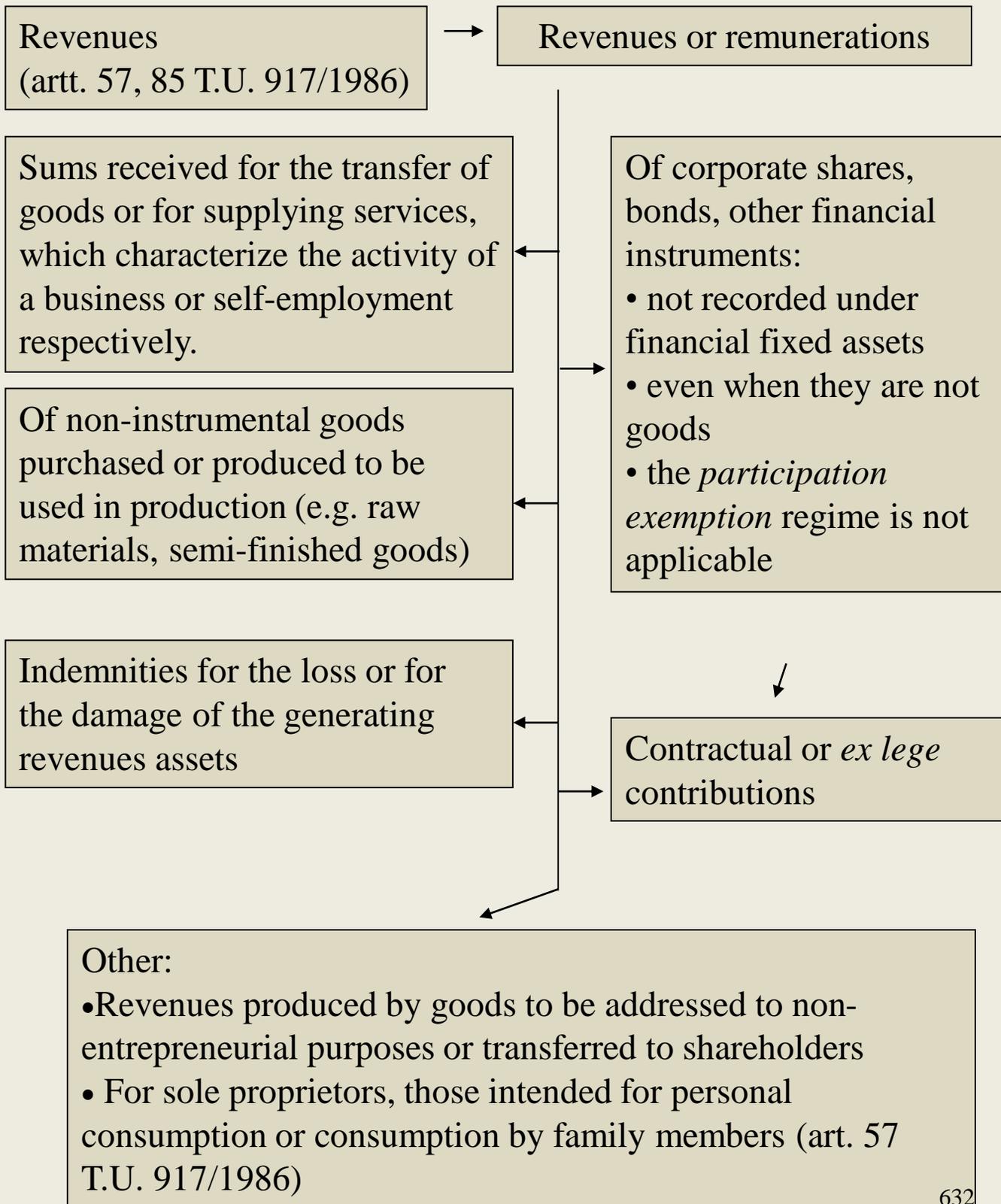
- losses surplus may be deferred to subsequent years (not beyond the fifth)



7.2 POSITIVE COMPONENTS OF BUSINESS INCOME



7.2.1 Revenues



The relationship between the positive components and the activity

Revenues



Goods selling



Connected to the main company's activity and aimed to realize the company's life program

Capital gains



Assets disposal



Assets are permanently connected to the company's activity



Assets selling is not the core activity of the company

Income



Extraordinariness



- Non predictable event
- It is connected to the original positive or negative component already recorded in the past

The relationship between the positive components and the concept of onerousness, gratuitousness and pecuniary interest

Pecuniary
interest

Onerousness

gratuitousness

To get the
price

Mutual relation
between the
services, bilateral
nature of the
contract

Getting a
non-
synallagmatic
economic
advantage in
the *an* and
quantum

one of the parties
acquires an
advantage
without a
pecuniary
sacrifice

one of the parties, in order to acquire
any kind of right, benefit or advantage,
accepts a pecuniary sacrifice
(patrimonial and/or non-patrimonial)



Contributions

On a contract base
(art. 85, lett. g
T.U. 917/1986)

Grants related
to income on the
basis of a to specific
law (art. 85, lett. h
T.U. 917/1986)

Capital contribution
payment

They are revenues

Extraordinary
revenues

- Conditioned and limited in time.
- Aimed to company restructuring

Investment for
future activities



Contributions on a contract basis
(art. 85, lett. g T.U. 917/1986)

They are revenues

The contributions are connected to company's obligation to carry out its activity

Supporting the company's costs for the performing activity

Other than extraordinary contributions (contingent assets)

They are not services otherwise they would be revenues

In the interest of the entrepreneur, otherwise they would generate a contingent assets/liabilities

Other than the core revenues of the company

Recorded in the pertaining period



Grants related to income on the basis of a specific law (art. 85, lett. h T.U. 917/1986)

To settle the company's cost

Supporting the economic situation of the company (eg. Contributions to agricultural sector; price-controlled sector)

Revenues

Nature of a Subsidy

Recorded in the pertaining period



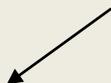
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Compensation indemnities and the relationship with both the activity and the company program

Indemnity arising from damage to the company's assets
(artt. 85 e 86 T.U. 917/1986)

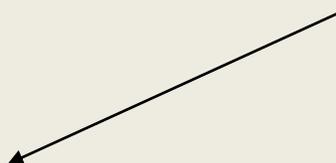


Compared to the revenues



Even if the will to exchange is
not present

Indemnities are attracted to the
business income



Because of the damaged assets were addressed
to the company activity



also in the form of insurance for loss or for damage to the goods.

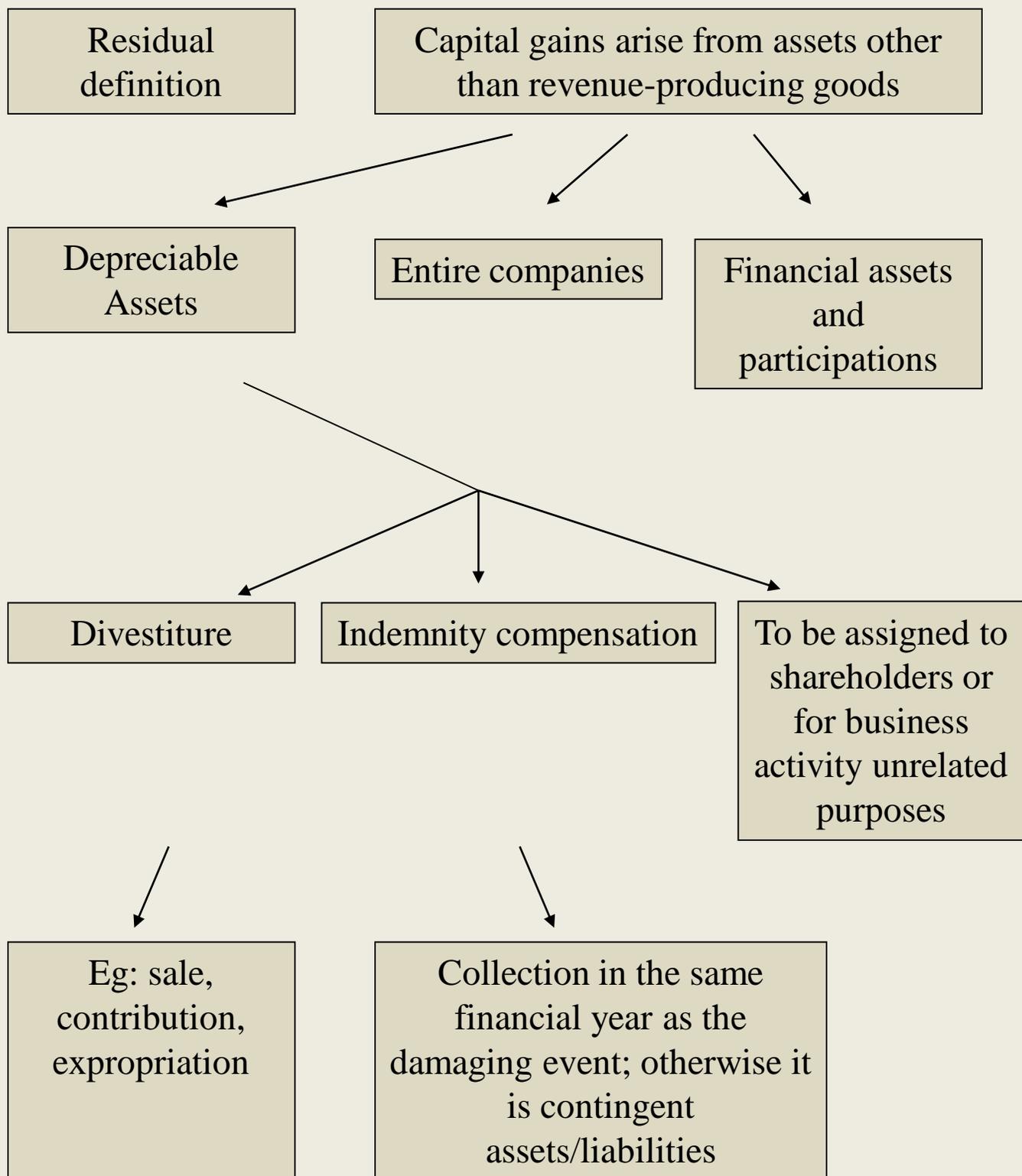
They generate revenues if they are related to revenue-producing goods. They are financially considered on accrual basis

Duplication of the concept of par 2 of the art. 6 del TUIR (Italian tax consolidated code)

Damaged but not destroyed goods: compensation is considered as a revenue but without the corresponding goods write-off from the inventory



7.2.2 Capital gains





Transfer for consideration

Compensation

For assignment to shareholders or for business activity unrelated purposes



Price

Indemnities

Normal values



Net of:

- Connected direct charges
- Residual value

Net of its residual value.



Conventional Regime



In the fiscal year of the arising capital gain it is considered part of the company's business income

Deferred regime



Distribution of the capital gain in 5 fiscal year

Conditions

Personal consumption is excluded

- Ownership of the assets, also under leasing agreement, for at least 3 years
- Or, recorded in the last 3 balance sheets as financial fixed assets



Company sale

With a price

Capital gains are taxable

Goodwill calculation

Difference and similarities
with the rules of the single
assets disposal

Option for the separate
taxation
ex art.17, T.U. 917/1986



mortis causa

Free *inter vivos* acts to the relatives

Capital gains can not be taxed

ratio

Continuity of the tax approved values of the transferred assets (the company receives the same assets tax value of he transferor)

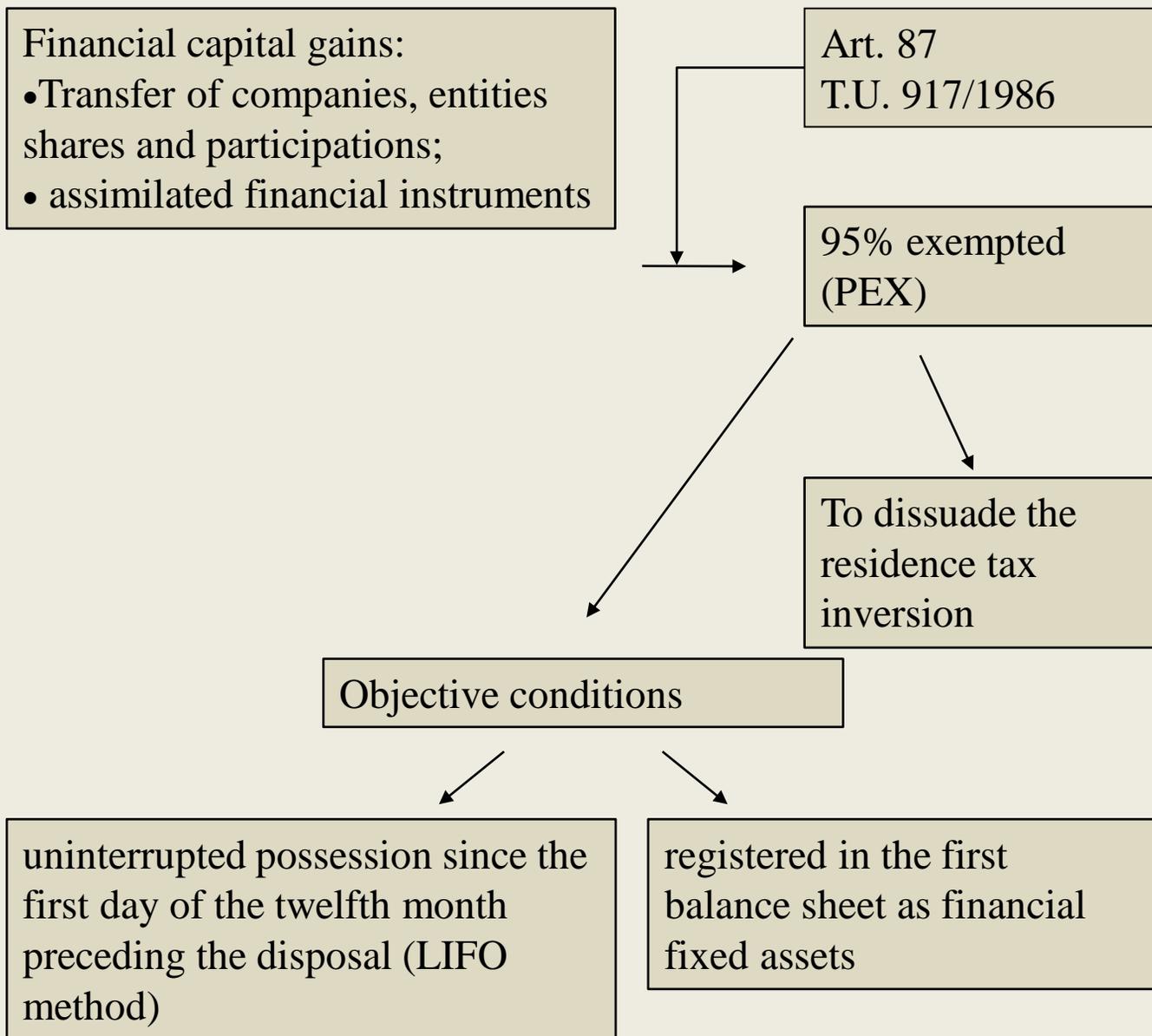
Those criteria are applied also when

the heirs have set up a company

Company liquidation

the company is not dismembered but is assigned to one of the shareholder heirs

7.2.3 Exempted capital gains



Objective conditions

Tax residence of the subsidiary in a *white list Country* *ex art.168 bis* (or after a tax rulings *ex art. 167 T.U. 917/1986*)

Commercial activity of the subsidiary

at least from the beginning of the third tax period preceding the transfer

The activity of the subsidiary is not considered commercial if the current value of the assets (including goodwill also if it is not recorded in the financial statement) consists predominantly of non-instrumental assets or goods

It is always commercial the activity of the listed companies



Special cases in which PEX is applied

It must be considered that part of the received sums can be attributable to revenues reserves

Exemption for the exceeding part of the tax approved value of the participation

- Termination
- Exclusion
- Release
- reduction for capital surplus
- liquidation, including bankruptcy of the subsidiary



7.2.4 CONTINGENT ASSETS (Art. 88 T.U. 917/1986)

Contigent assets
connected to the
administrative events
recorded in the
previous fiscal years

Heterogeneous and
corrective function



Stricto sensu contingent assets



Increases connected to the operating performance of the company with an adjusting function



revenue and income earned as a result of expenses, losses or deducted charges or recorded liabilities in the previous fiscal years



unexpected *ex-post* lack of expenses, losses or deducted charges, recorded liabilities in the previous fiscal years



revenue or other income earned in excess than the considered amount to calculate the previous fiscal years income

Improper contingent assets



Increases without adjusting function because they affect the result without the aim to amend specifically identified transactions. Accounted in previous fiscal years



Indemnities compensation different from those connected to revenues and capital gains



Contributions

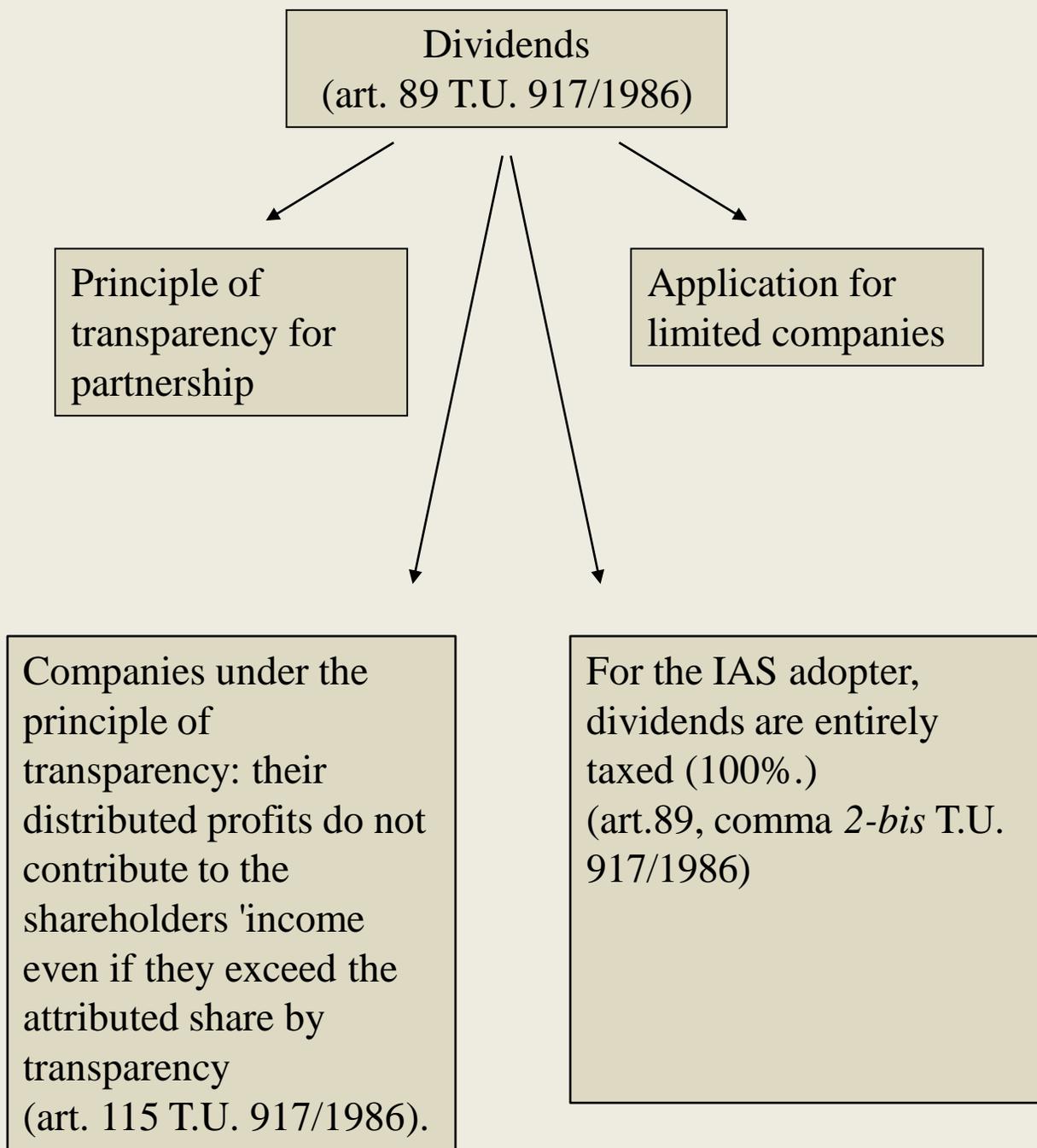


The following are not considered contingent assets because they essentially are:

- alternative ways of capital transactions
- Company compensation both for a financial deficit status or financial strengthening;
- Non-refundable cash payment or non-refundable payment in kind made by the shareholder to the entities subject to IRES;
- waiver of claims by the shareholder
- Reduction of the company's debts in case of bankruptcy



7.2.5 Dividends and interests (art.89)





Non-entrepreneur
IRPEF recipient
(art. 47 T.U. 917/1986)

Qualified participation,
> 2% or 20% of the
votes in the
shareholders' meeting
or > 5 or 25% of the
equity

Non-qualified
participation, < 2% or
20% of the votes in the
shareholders' meeting <
5 or 25% of the equity

Before 2017 the applicable fiscal
regime was different for qualified and
not qualified participation

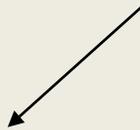
The taxation of formed profits since
1.1.2018 and past profits distributed with
shareholder's resolution after 31.12.2022
is equal to 26% (withholding)



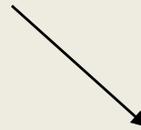
Irpef entrepreneur
recipient
(art. 59 T.U. 917/1986)



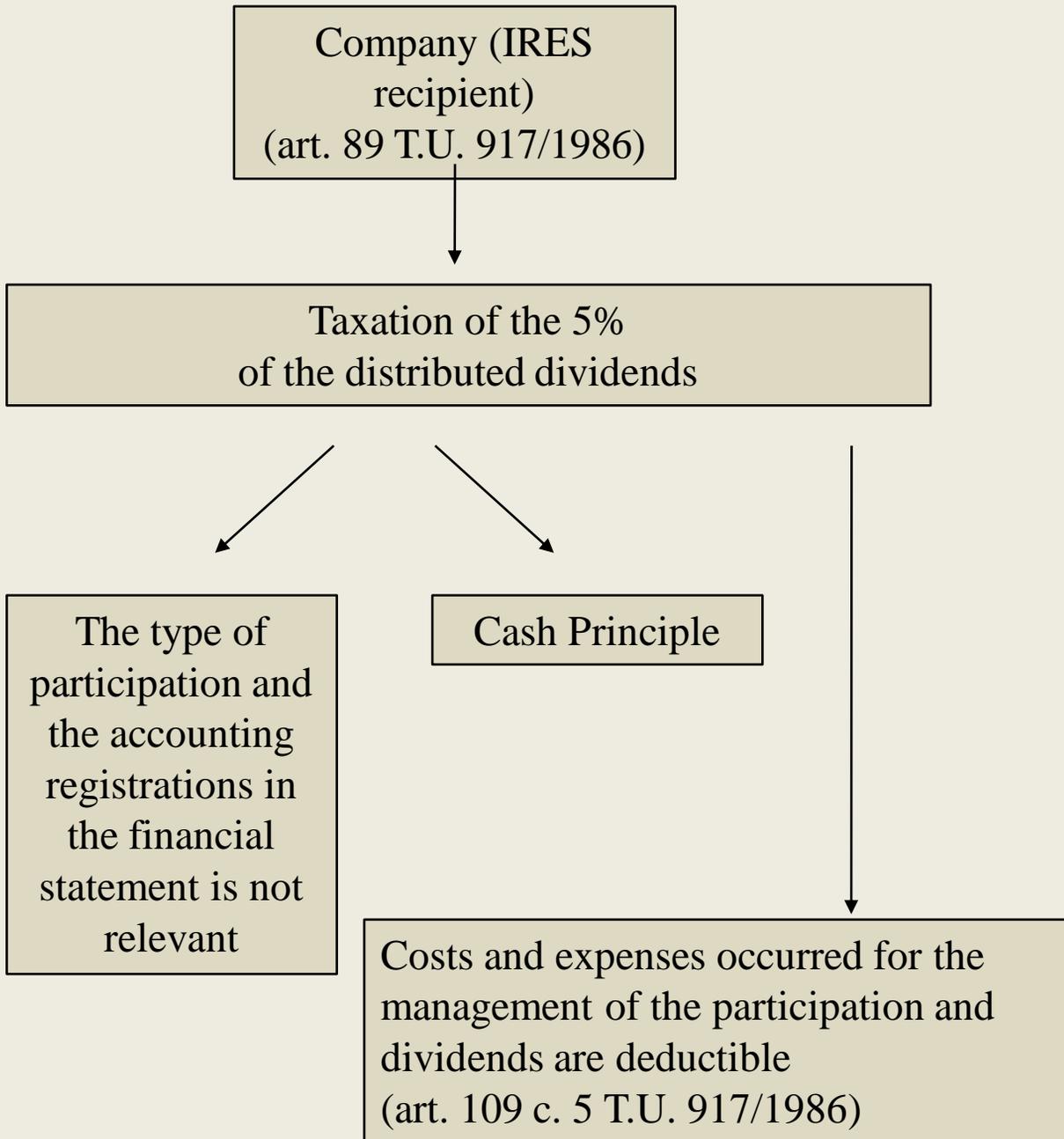
Taxation of the 58,14% of the
distributed dividend



The type of
participation and the
accounting
registrations in the
financial statement
is not relevant



Cash principle





Interests

They contribute to the income for the amount accrued in the financial year

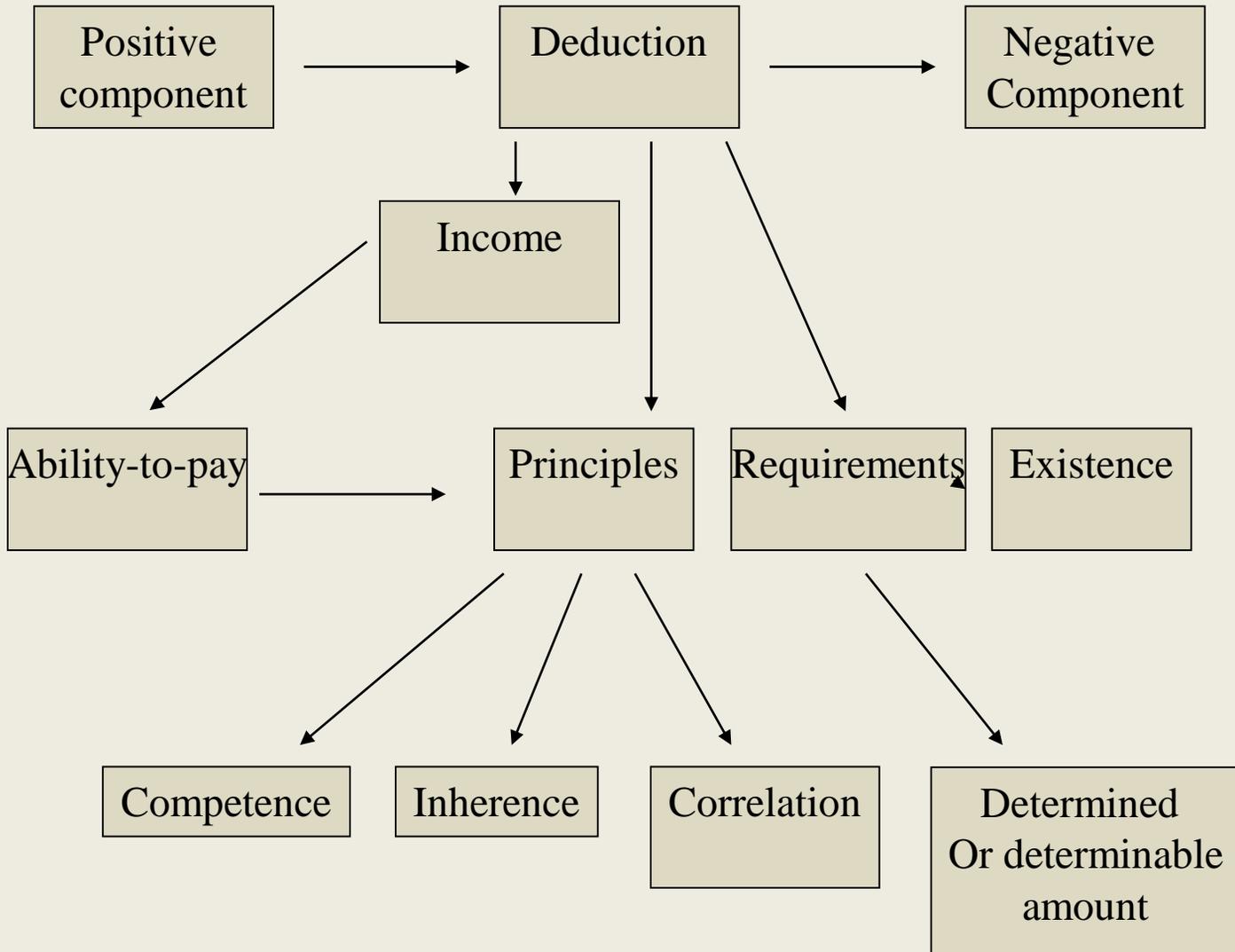
Principle of an accrual basis

according to contractual agreements

If there is no written agreement, it is presumed at the legal rate



7.3 NEGATIVE INCOME COMPONENTS





Ascribable to to the income statement

Exemption

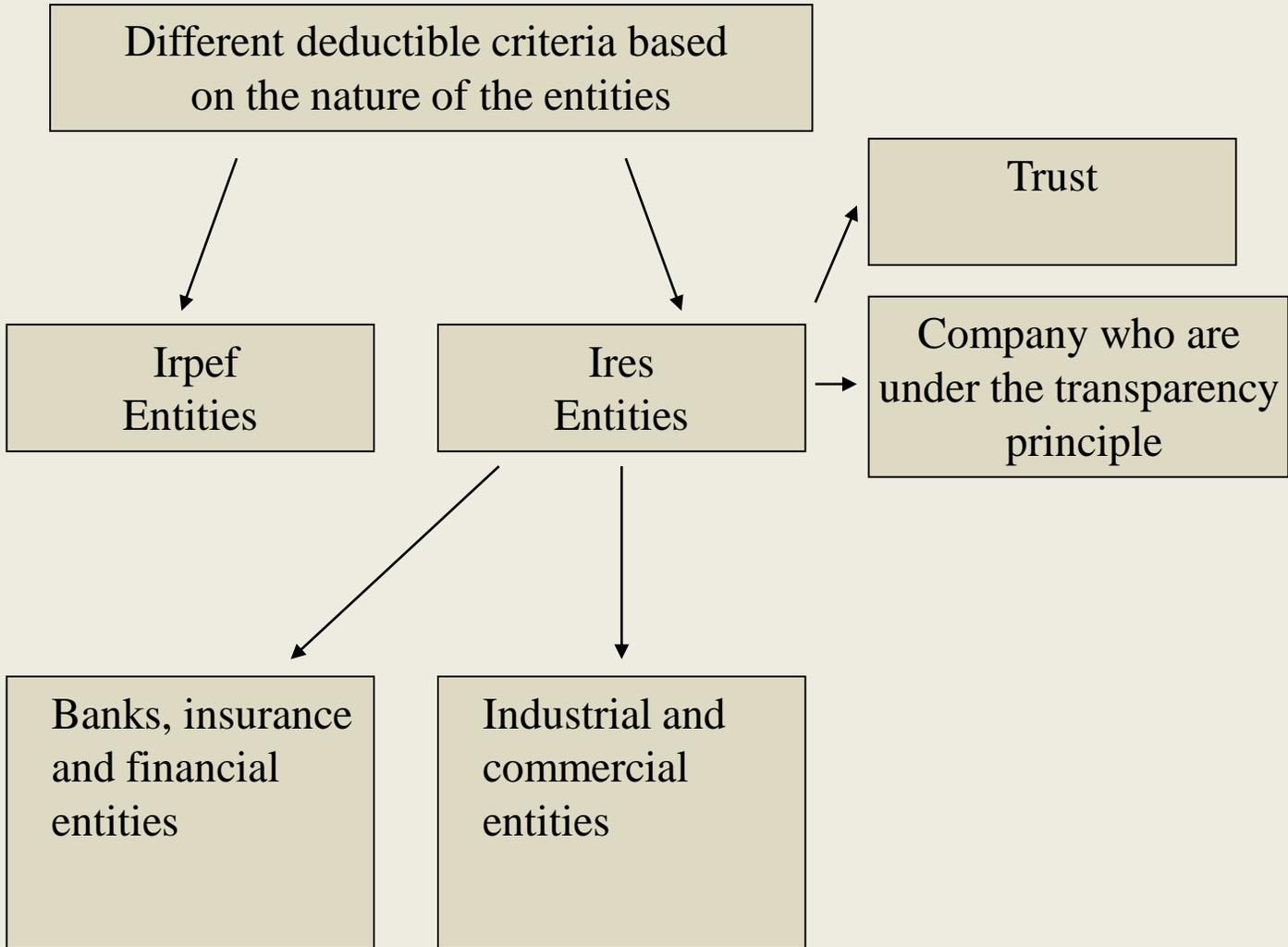
Ascribed to the income statement of a previous year (deferred deduction by obligation/faculty)

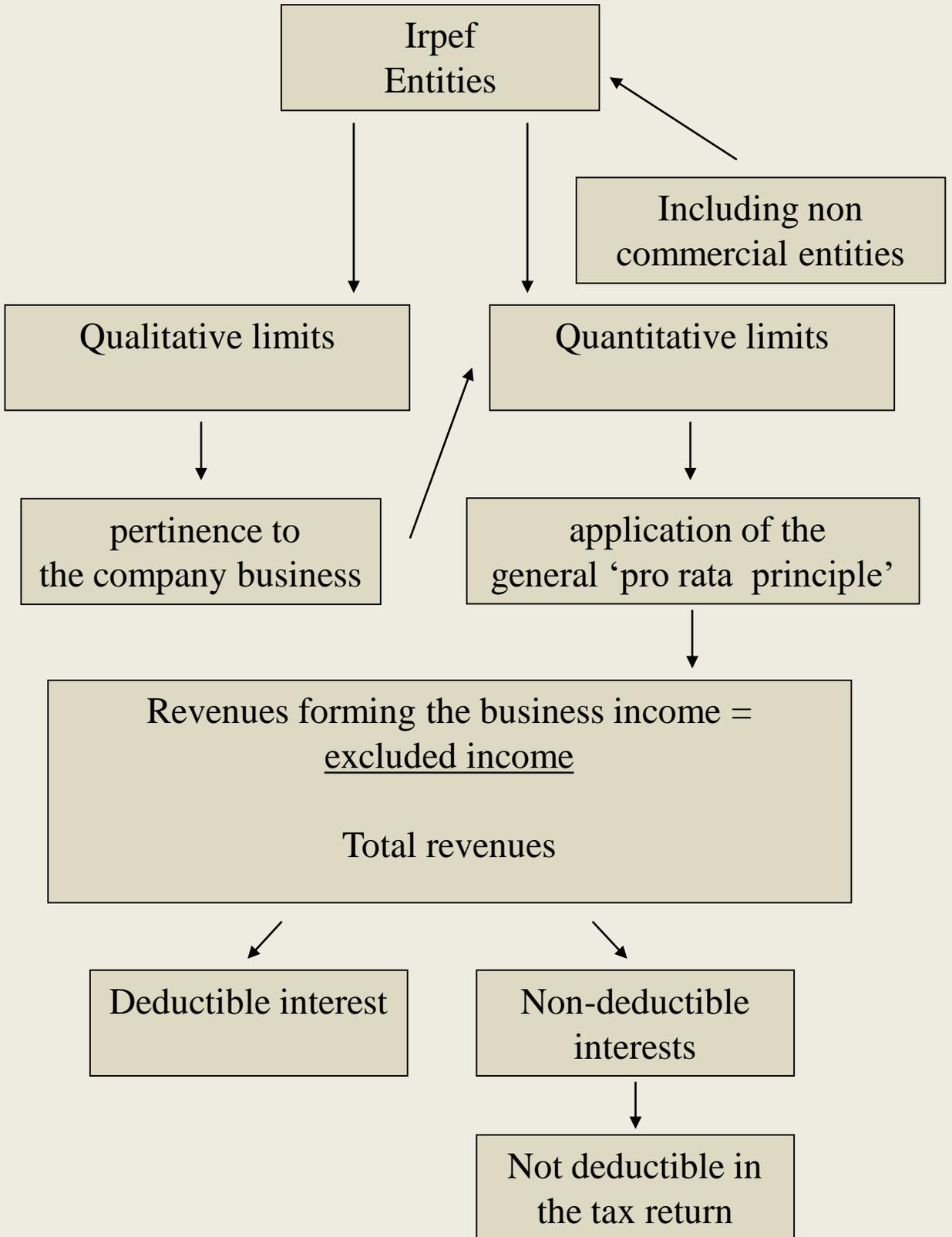
They can not be ascribed to the income statement but they are deductible on a law basis

They are not ascribed to income statement but resulting from precise and certain elements and specifically relating to revenues



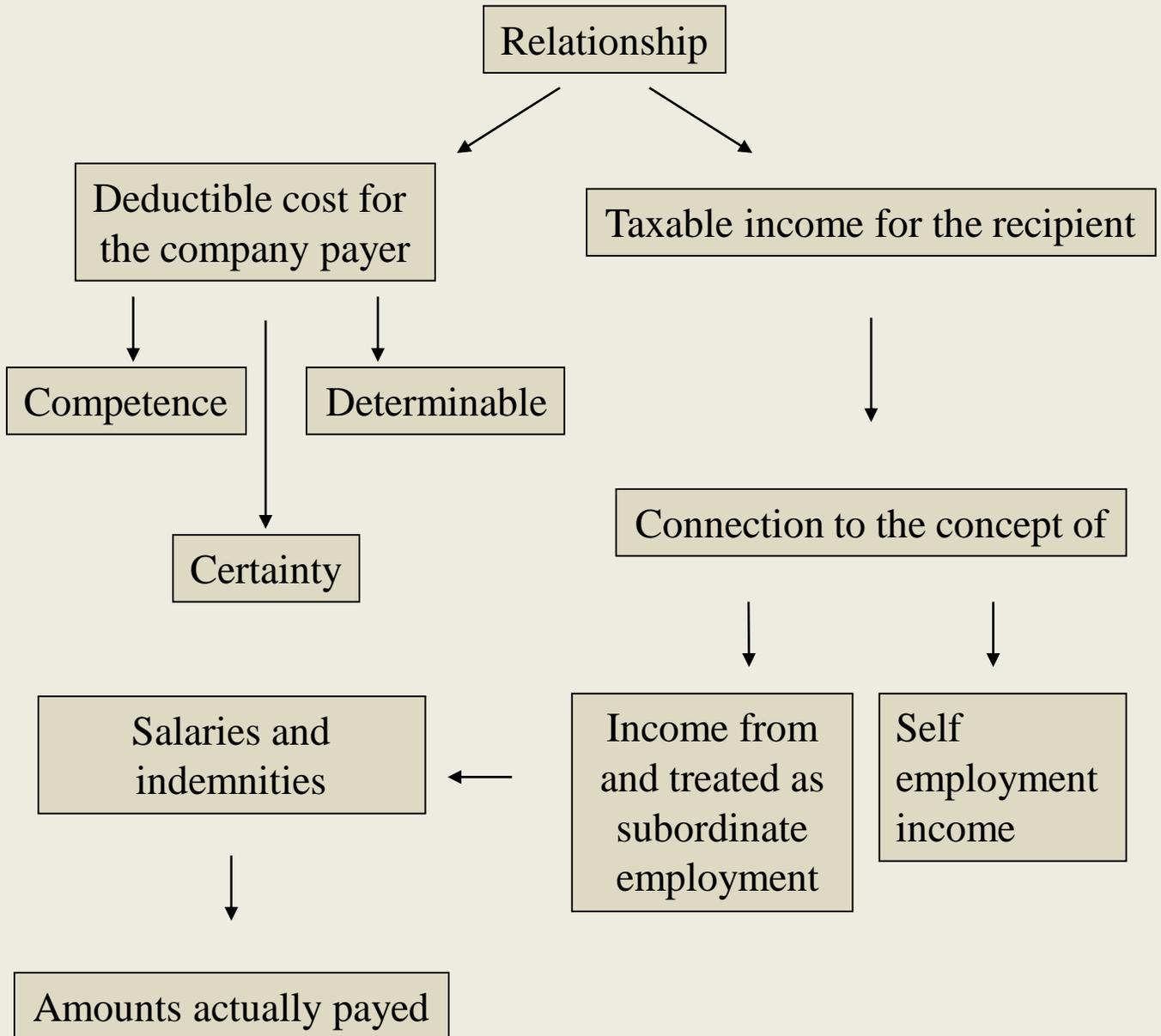
7.3.1 Passive interests





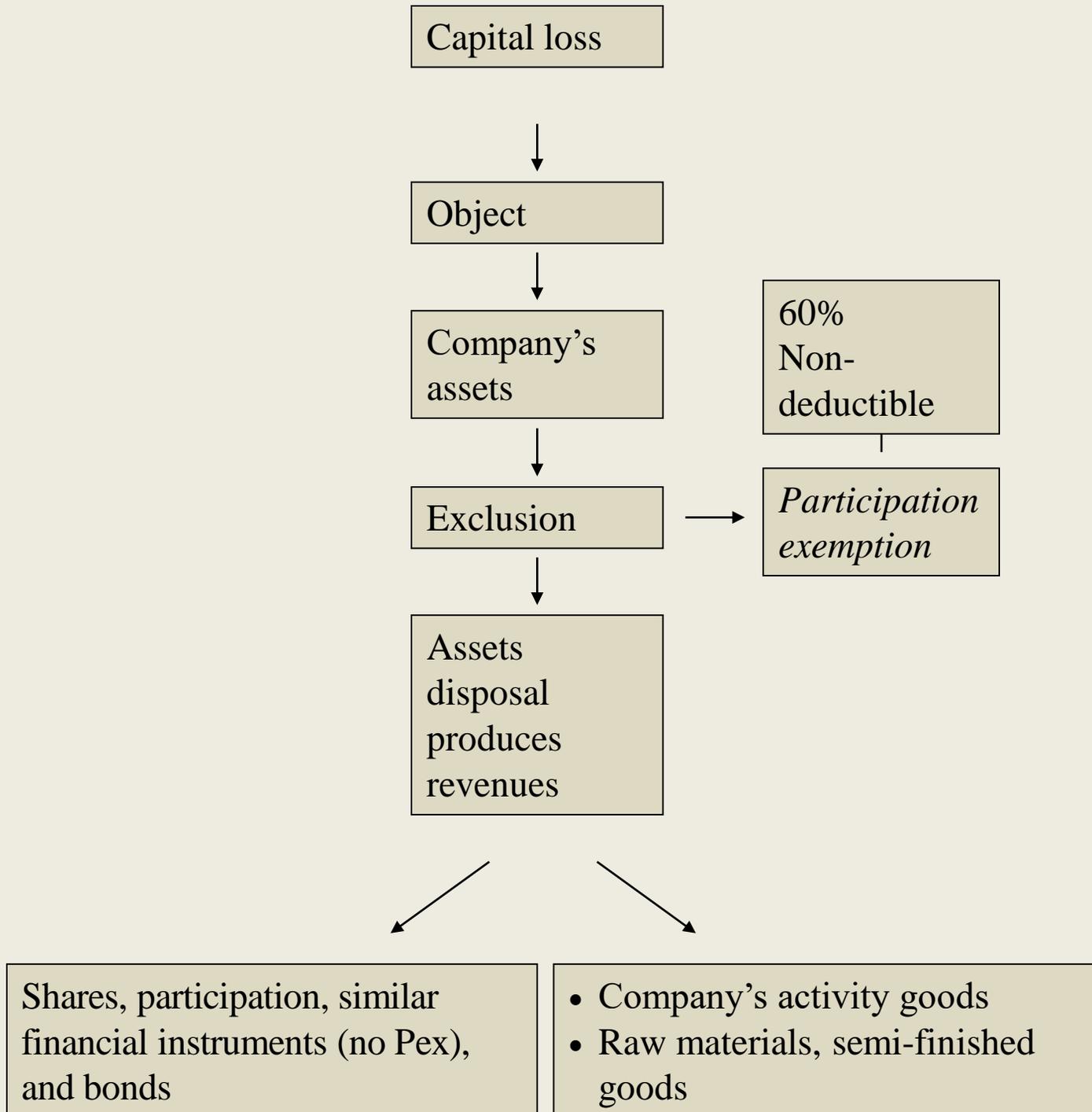


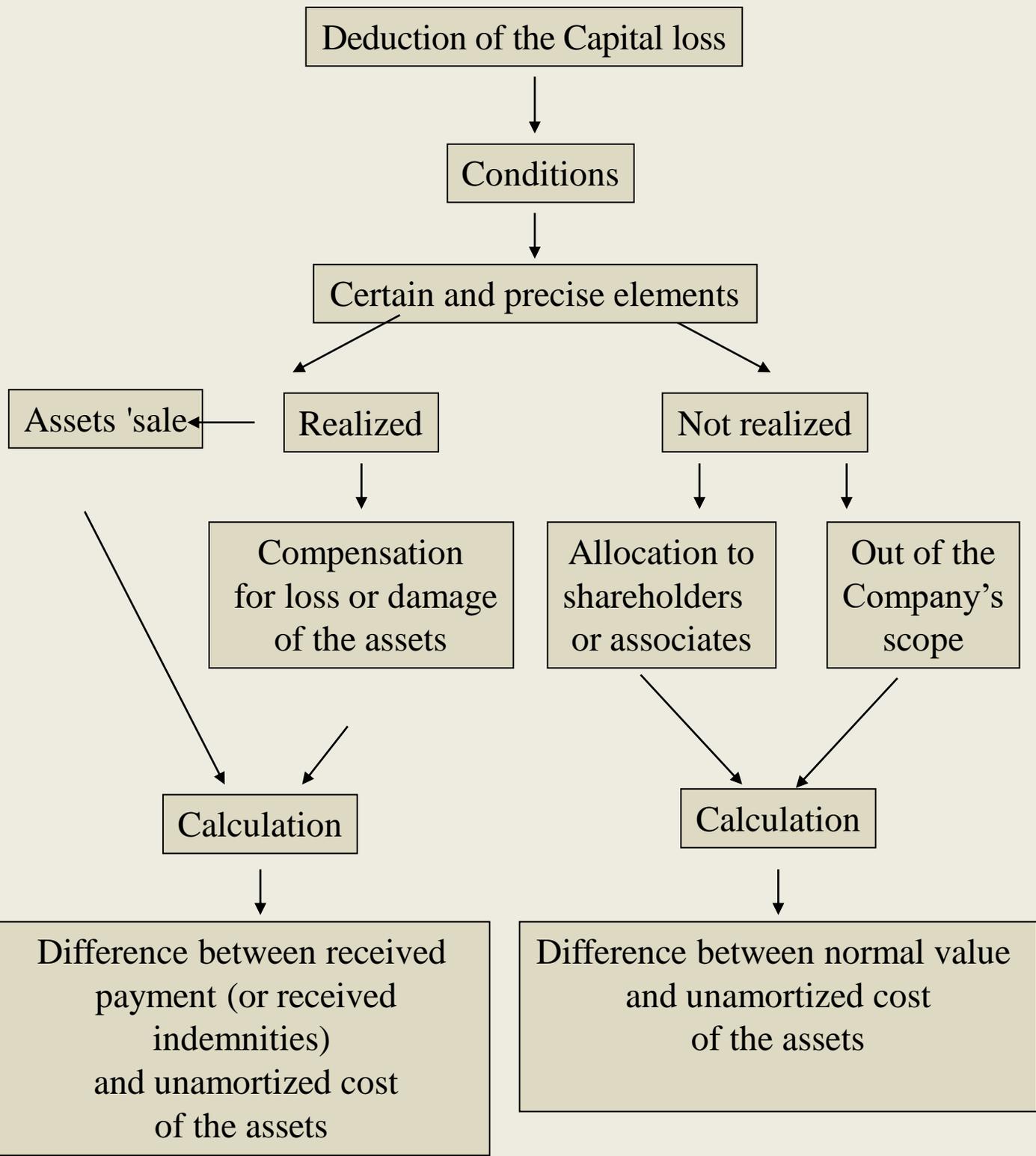
7.3.2 Salary expenses

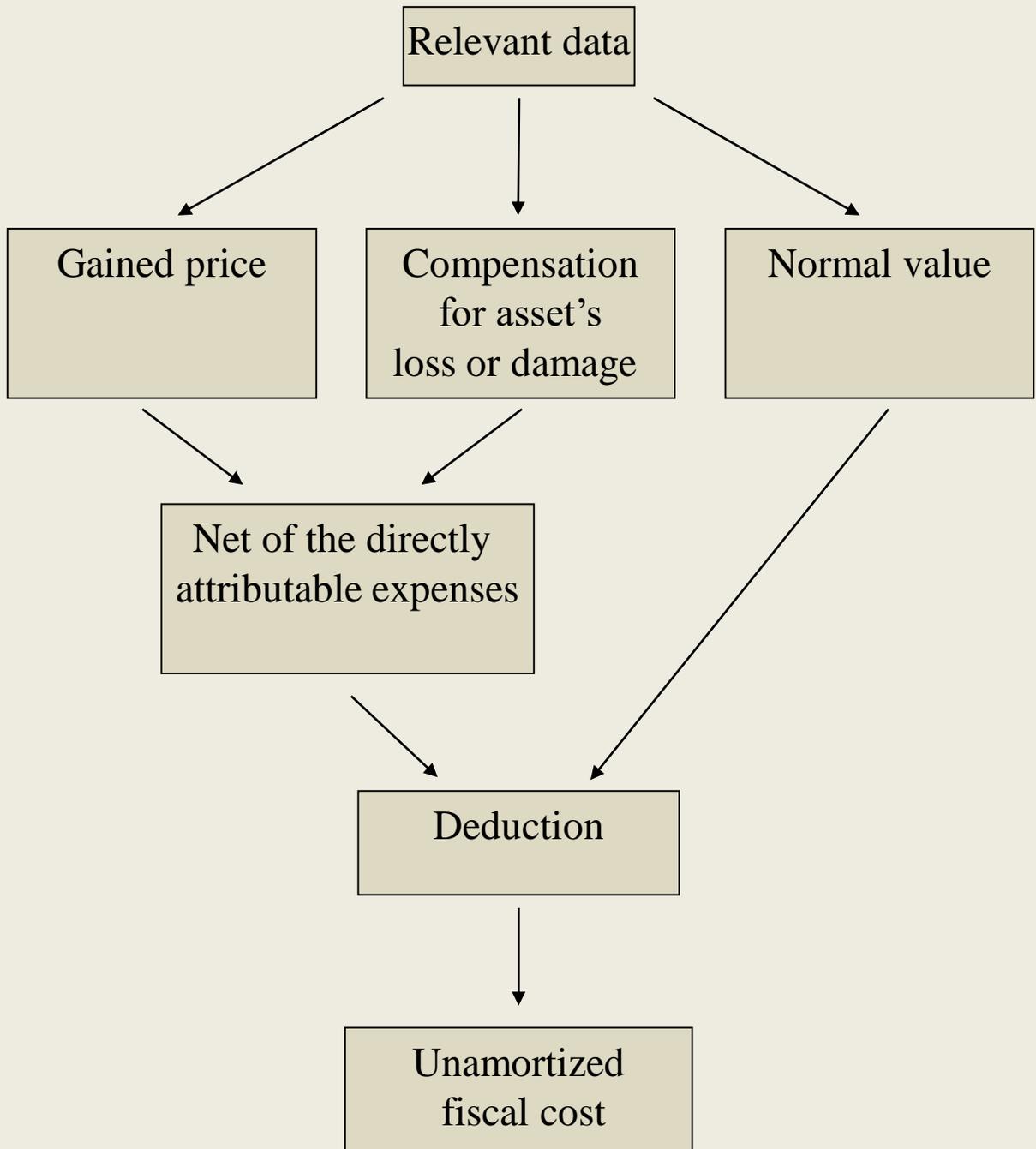


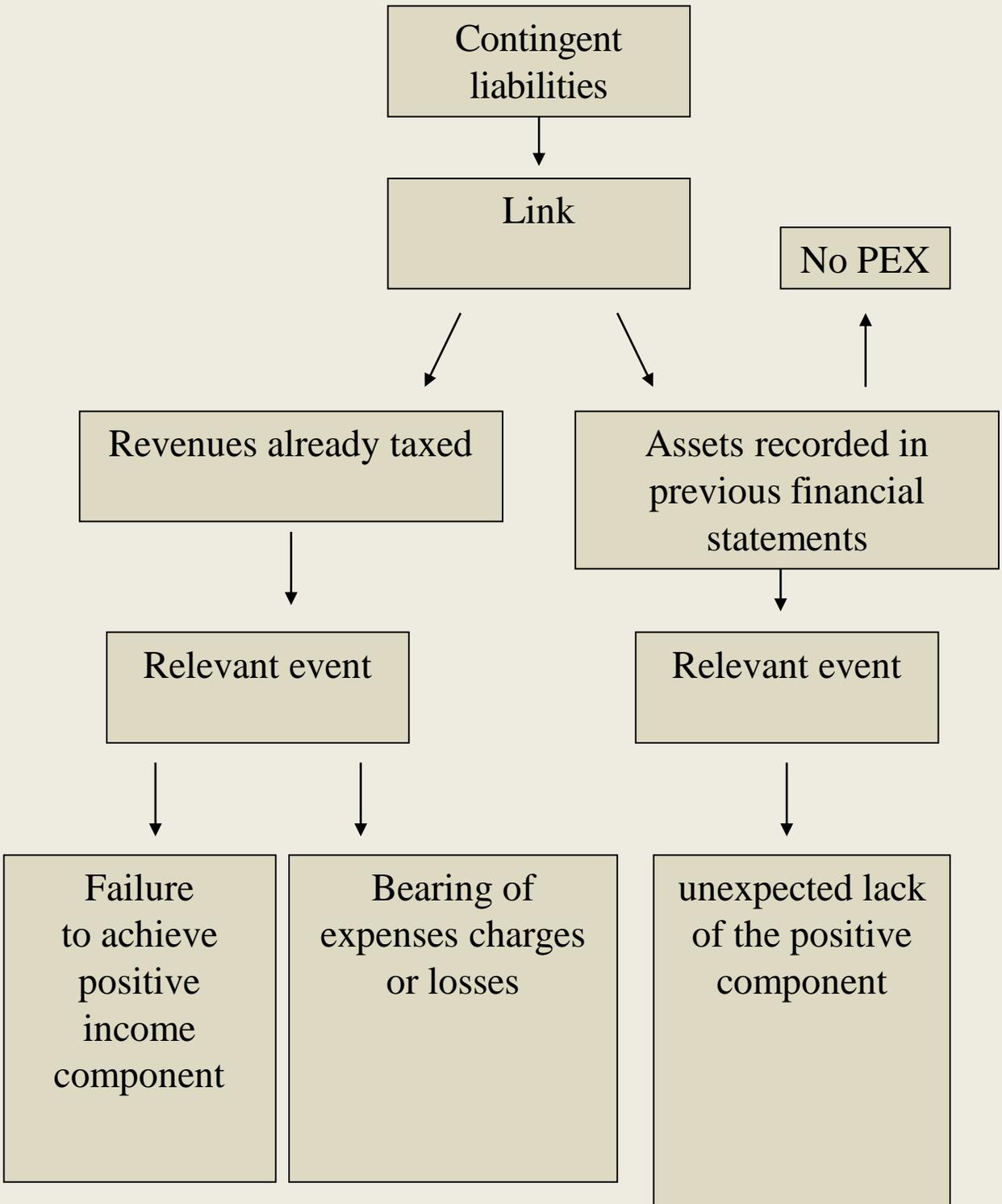


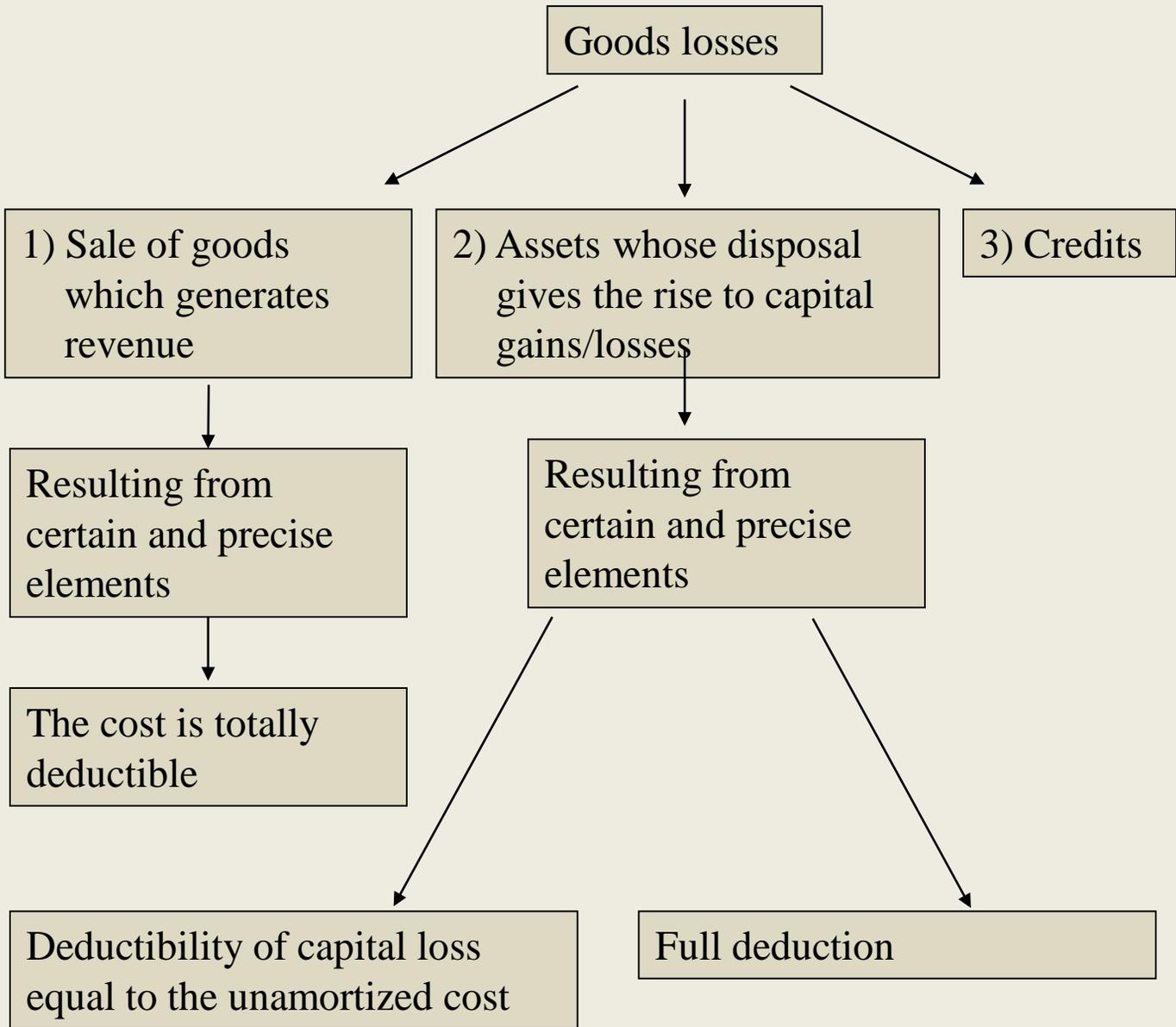
7.3.4 Capital loss, contingent liabilities and losses













3) Credits

As a results of certain and precise elements (low amount and at least 6 months from the expiration date, l. 134/2012)

Waive a credit

Debtor is under a insolvency procedure

Fully deductible

The cost is totally deductible



Goods 'loss

Compensation (including insurance indemnities) for loss of or damage of the company's assets

1) Goods whose sale generates revenues

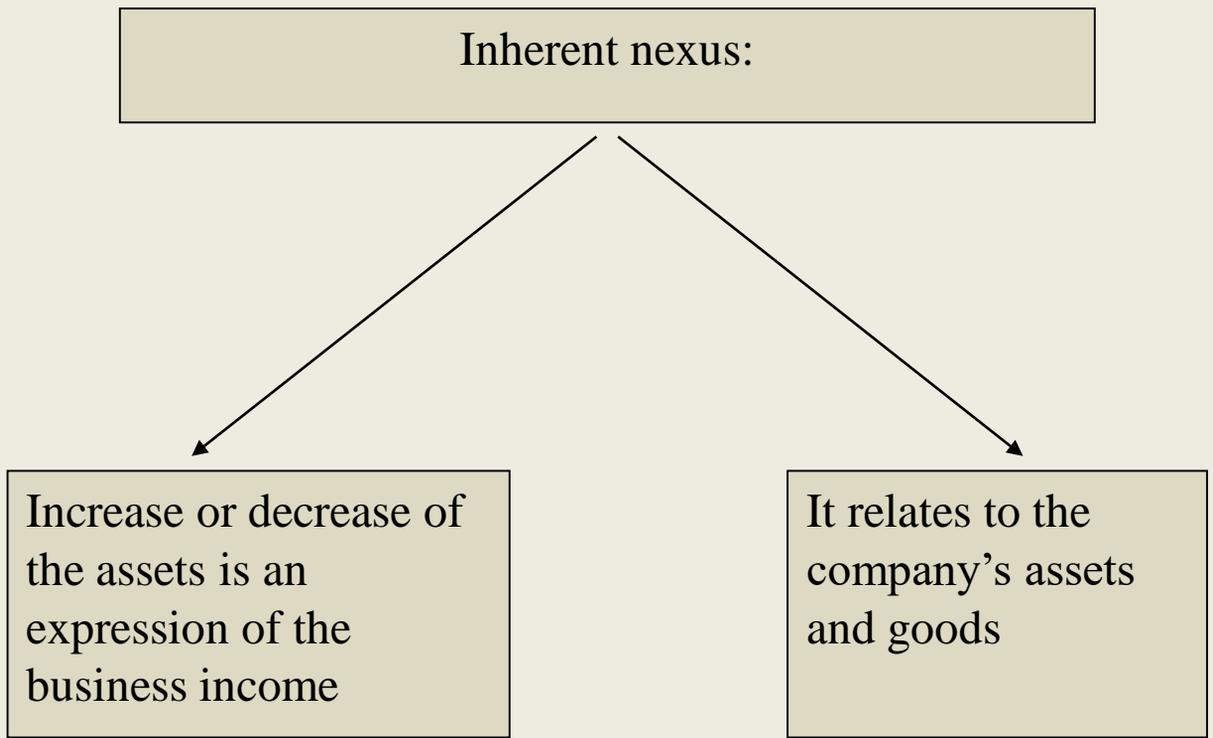
2) Assets whose disposal makes capital gains/losses

3) Credits

Comparison with the tax approved cost/value

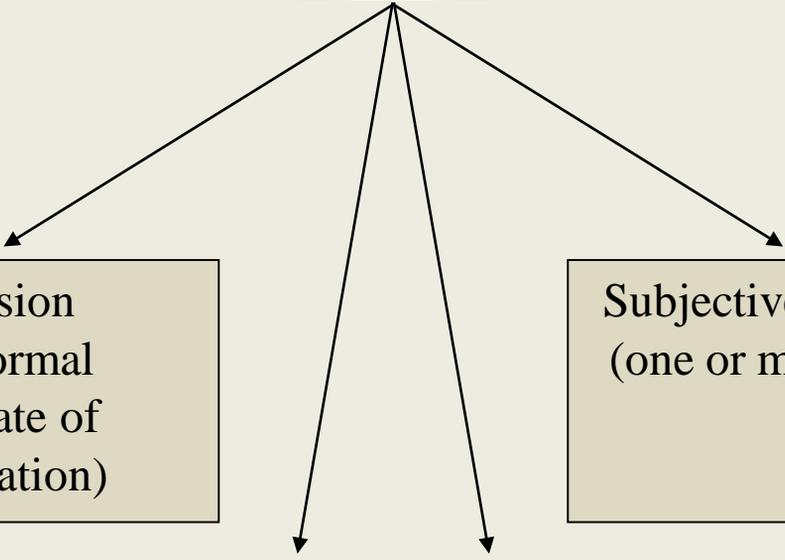


7.3.9 The Inherence of Negative Components





Activities and plan-concept



Dimension
Static/formal
(certificate of
incorporation)

Subjective dimension:
(one or more entities)

Dimension
static-effective

Temporal
dimension



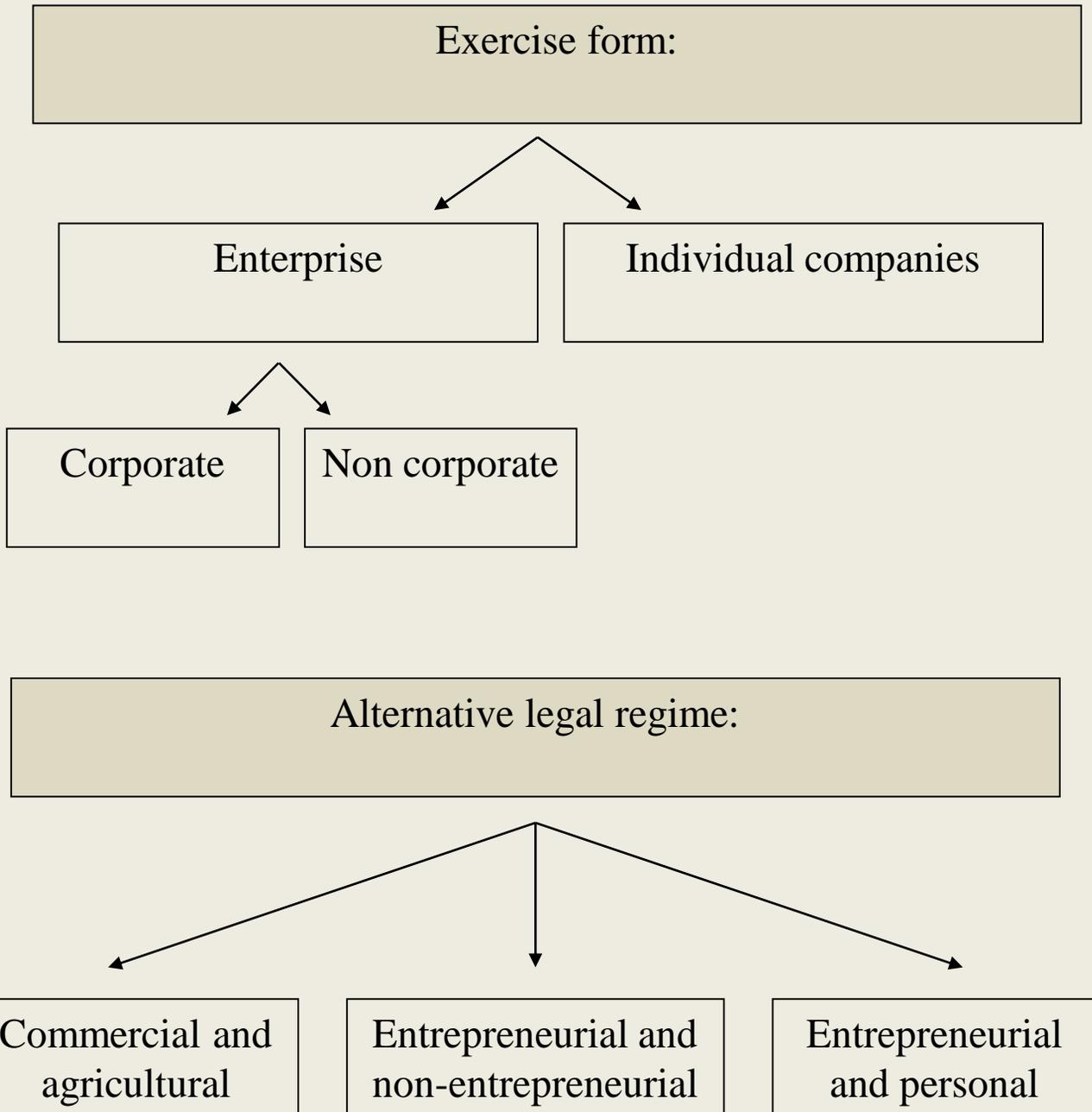
Inherence, corporate and individual companies

Inherence nexus is differentiated in relation to:

the form of the enterprise.

Type of legal regime.

Also entrepreneurial activities can be instrumental, with the consequence of different rules application.





Inherence and attraction principle (Artt. 6, 81 T.U.
917/1986)



Characteristics

Dummy companies and
Shell corporation



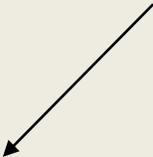
Inherence and company group

Group:



Business group purpose is distinct from the business of the individual group companies.

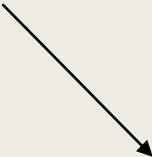
Problems:



Values of group transaction;



Gratuitousness (Guarantee loans, credit waiver);

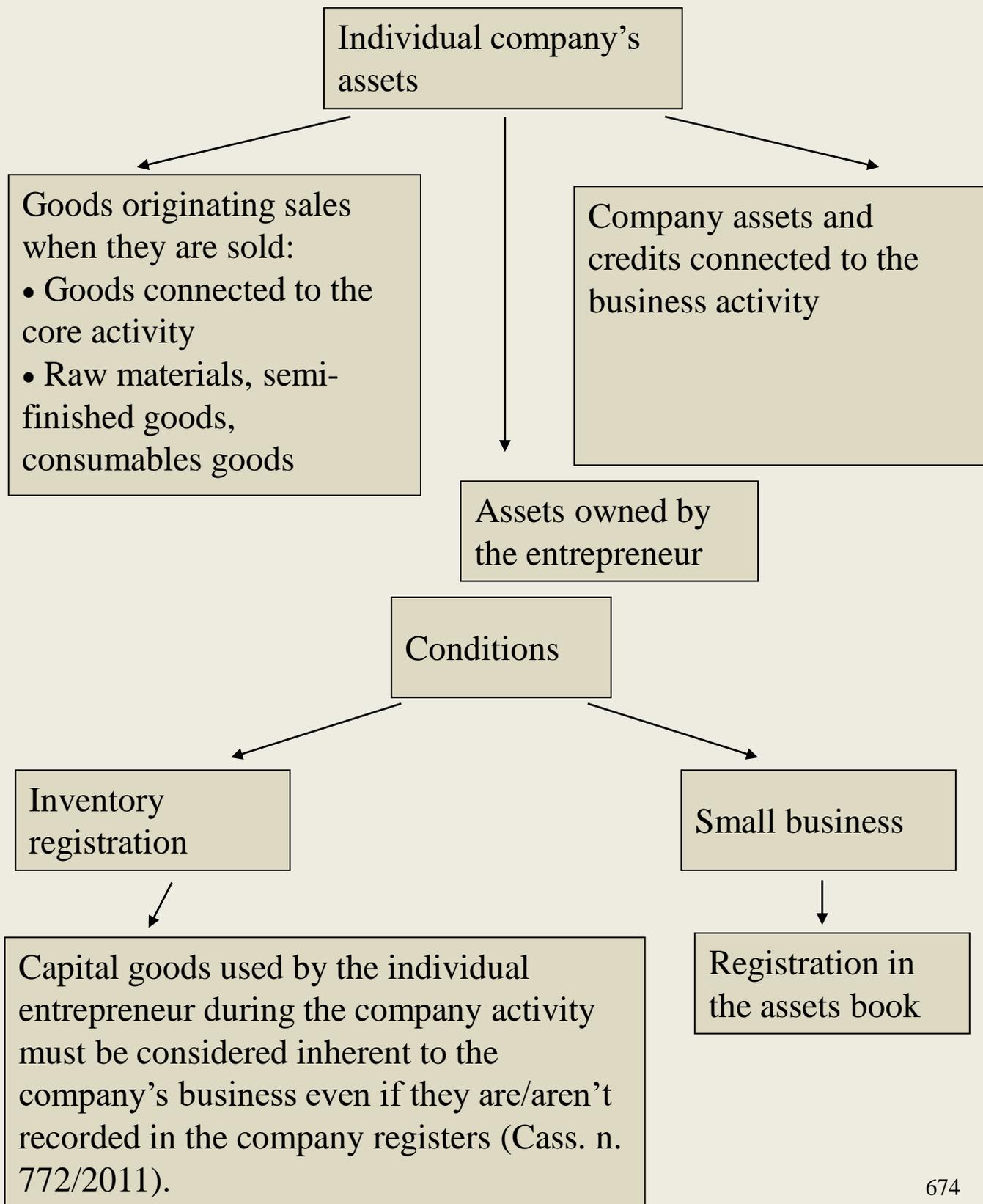


Groups operations (management fees, *cash pooling*).



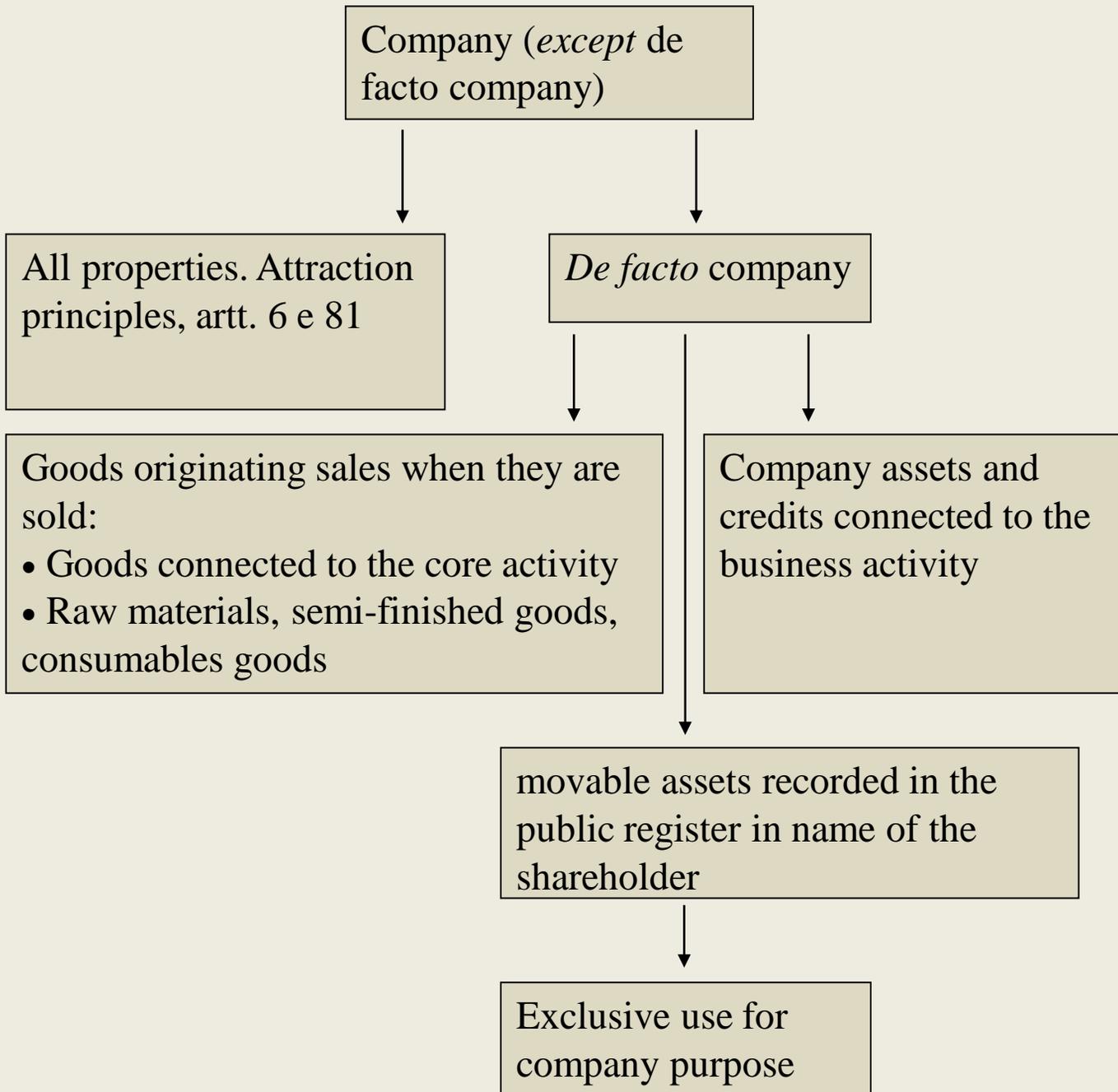
7.4 COMPANY'S ASSETS

7.4.1 Individual company



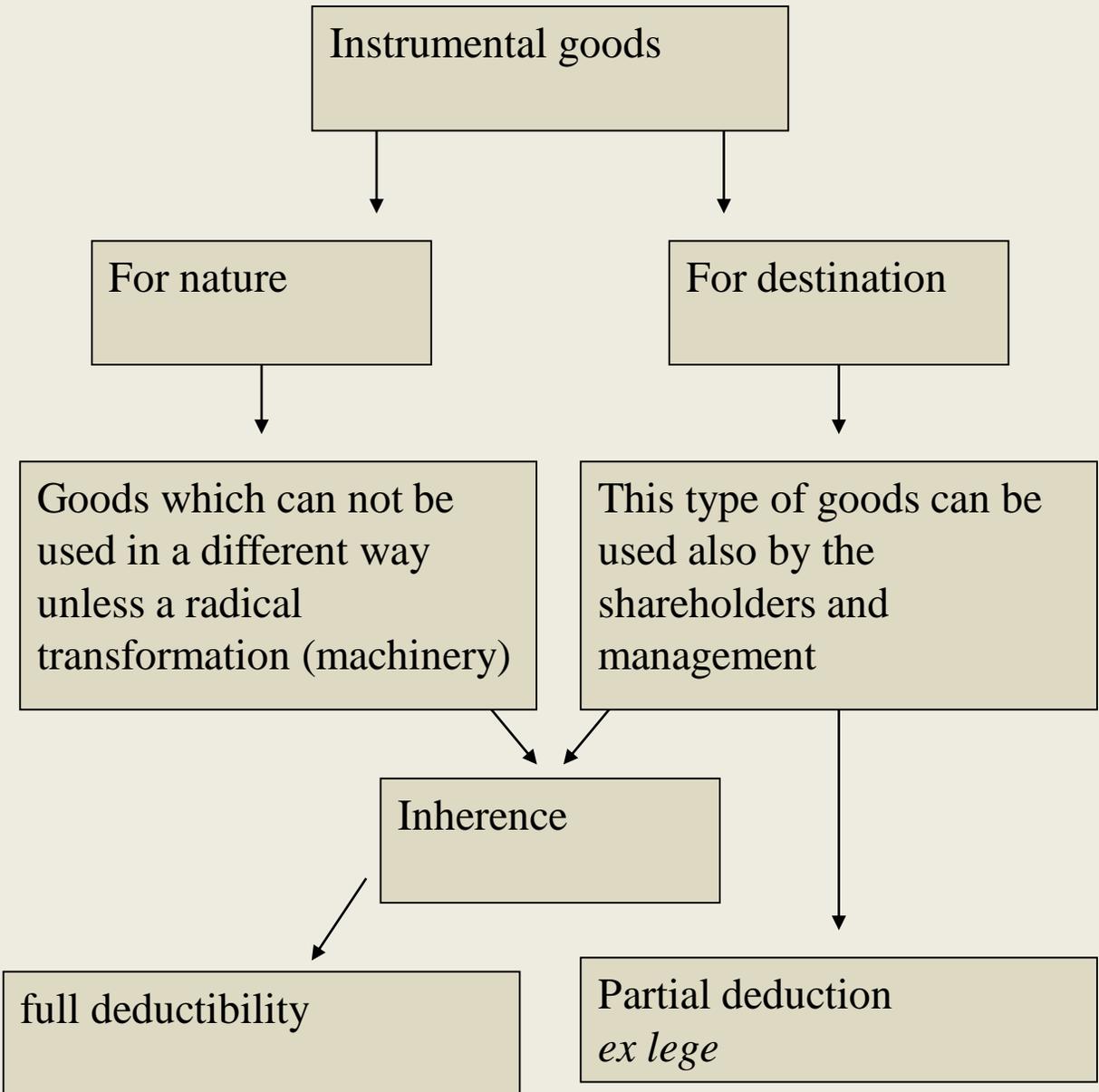


7.4.2 Companies





7.4.3 Instrumental goods





Buildings of the individual companies

Goods generating revenues

Recorded in the inventories

Instrumental

Patrimonial

For nature

For destination

Goods which can not be used in a different way unless a radical transformation

This type of goods can be used by the shareholders and management too

full deductibility even if they are under a lease agreement

Deductibility related to the effective use

Buildings 50%



Buildings are considered for the income determination

Goods

Instrumental

Patrimonial

Costs, Revenues, unsold stock

Amortization of capital gain/loss

Land income rules

The greater between cadastral income and rents

Entire costs deduction

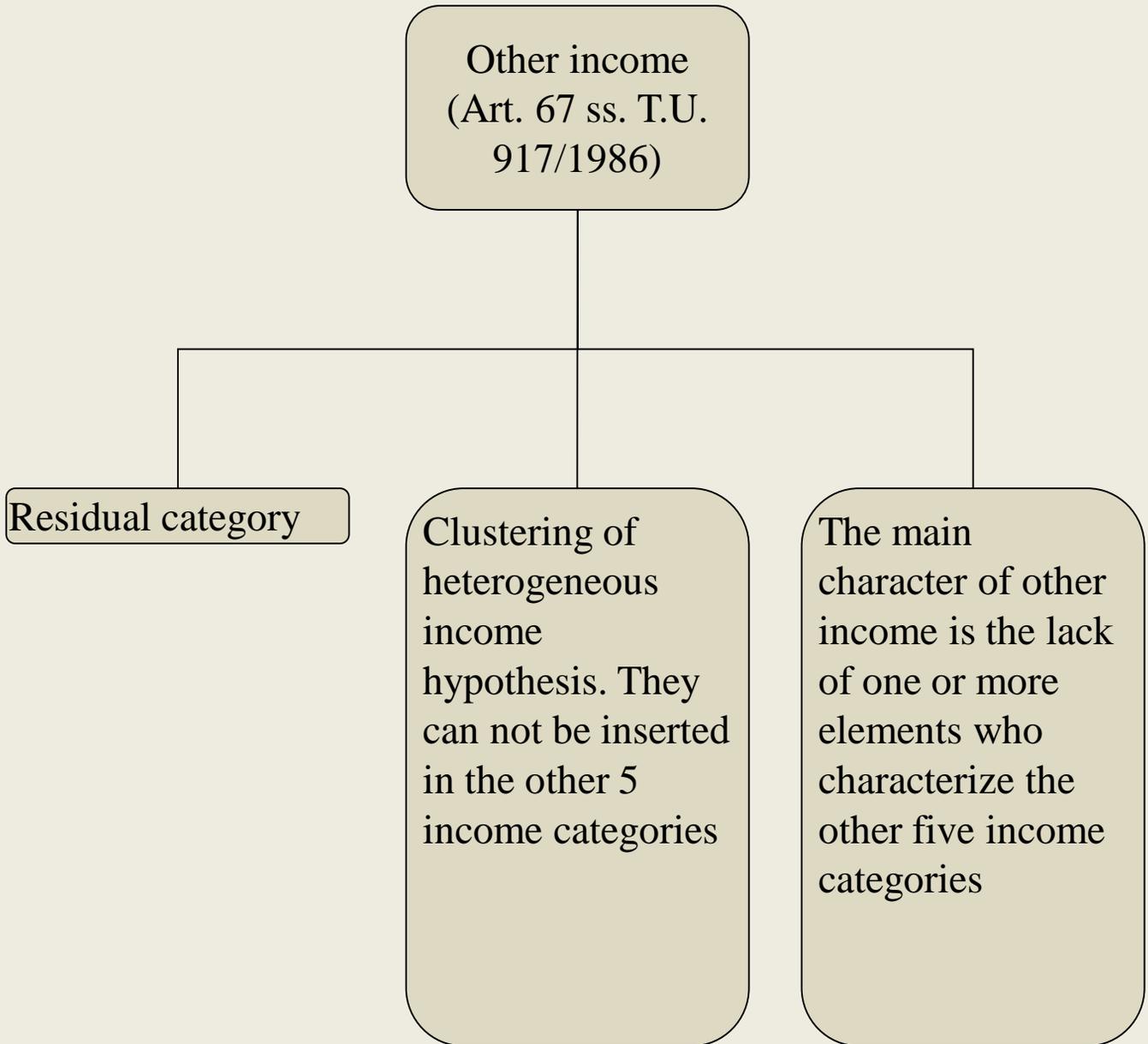
Business income attraction principle



8. OTHER INCOME



8.1 DEFINITION





8.3 TYPE OF OTHER INCOME

Art. 67, par. 1, lett. a) b) d) e)
f)

Capital gain from the allotment of the terrain and from the activities execution in order to get the terrain buildable

Winnings and prize;

Capital gain from purchased or built assets within five year and from the buildable terrain disposal

Income from buildings placed in a foreign counties

Land income without a cadastral determination

Art. 67, par.1, lett. g) h) “first part”, h) “second part”, i) l)

Income from
the intellectual
property
commercial
exploitation

Income from
occasional
commercial
activities

Income from
usufruct, sub-
lease, lease, rent
of a assets or
from use
concession o a
movable assets
and from a
company lease

The
remuneration
from lease and
usufruct of the
only one
company of the
entrepreneur is
not considered
business
activity. In case
of a subsequent
sale of he
company the
capital gain is
included in the
other income

Income from
occasional Self-
employment
activates



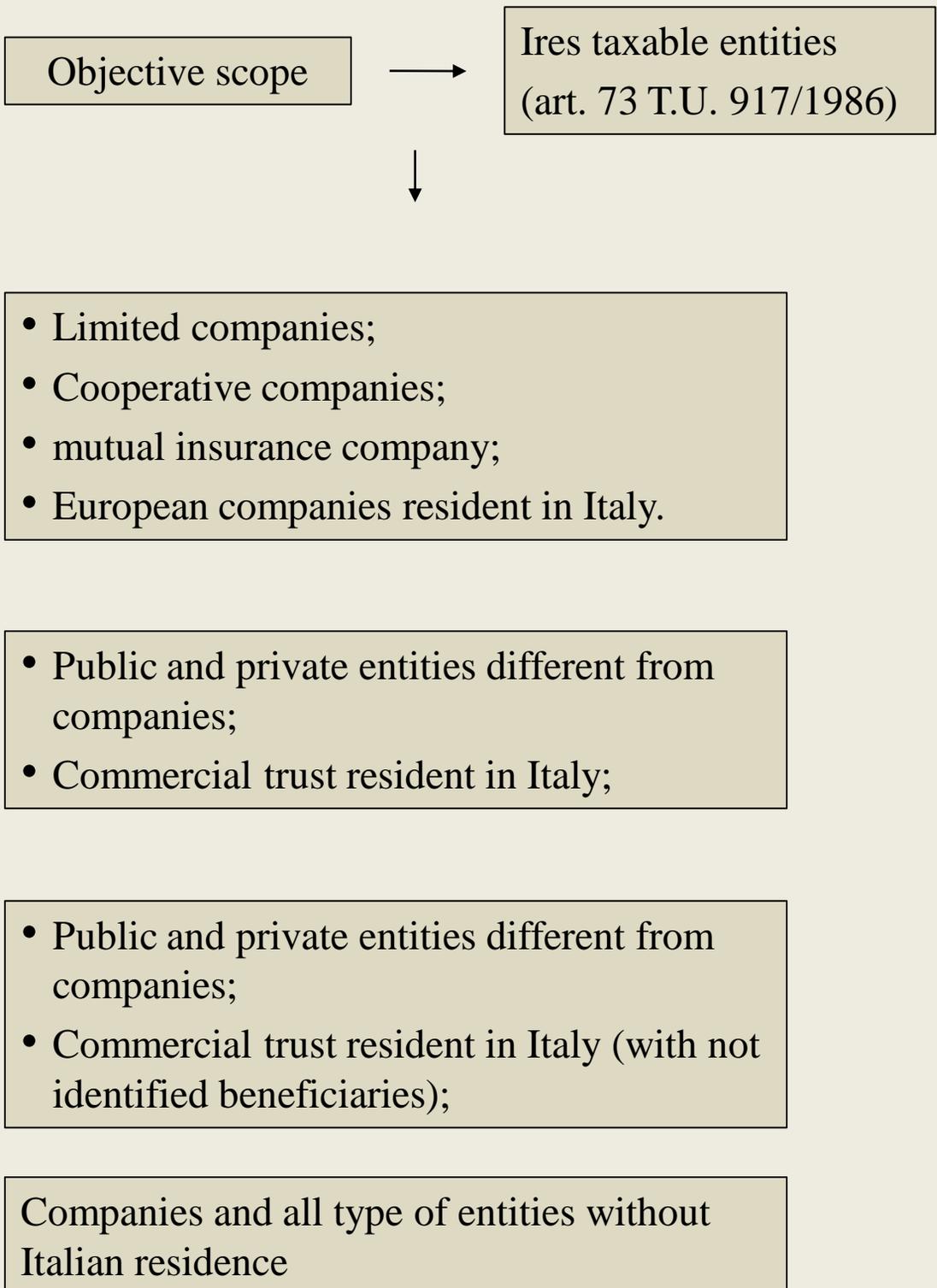
A.D. MDLXII

9.

L'IRES (Italian corporate TAX)



10.1 IRES





A.D. MDLXII

Commercial entities
(art. 73 TUIR)



Commercial activity is the principal or exclusive scope of their activity



They always produce business income (no other income categories)

Non commercial entities
(art. 143 TUIR)



Commercial activity is not the principal or exclusive scope of their activity



- They can produce different income categories as the natural person (art. 8 TUIR)
- A separate accounting is mandatory for the performed commercial activities
- Ordinary regime: income determination as the natural person
- Special regime: flat determination of the income with a profit's rate (art. 144 TUIR)



Resident entities



World wide taxation principle

Non-resident entities



Taxation of the income produced in Italy

Resident companies are:

- commercial and non-commercial entities, equivalent bodies including consortiums, non-recognized associations, other non-incorporated organizations not belonging to other taxable persons if they have their legal premises, administrative premises or their main business in Italy for the main part of the tax period, are considered as residents.



10.2 INCOME DETERMINATION FOR IRES PURPOSE

1) Origin of the taxable income from the civil income



- Profit/loss of the income statement
- Income adjustment (increase/decrease) stated by the Italian Tax consolidated text (TUIR)

2) Temporal character of the adjustment



- Temporary (e.g. patent and trademark)
- Definitive (e.g. exempted capital gain)

3) *Ratio*



- Incentives function of the decreasing adjustment
- Certainty function for other adjustment (eg. depreciation)
- Fiscal flat parameter – elastic civil parameter



Companies and non resident companies

With a permanent establishment

Without a permanent establishment

Permanent establishment:

- a fixed place of business for carrying on a business ;
- entity engaged in the negotiation activity

Incomes produced in Italy is attracted by the PE and they are determined on the income statement basis

For non commercial resident entities the taxation occurs for a singular incomes categories (atomistic principle)



Fiscal year



It is stated by the law or from certificate of incorporation, if it is not established by these latter it corresponds to the calendar year

Tax rate



Flat, 24%



A.D. MDLXII

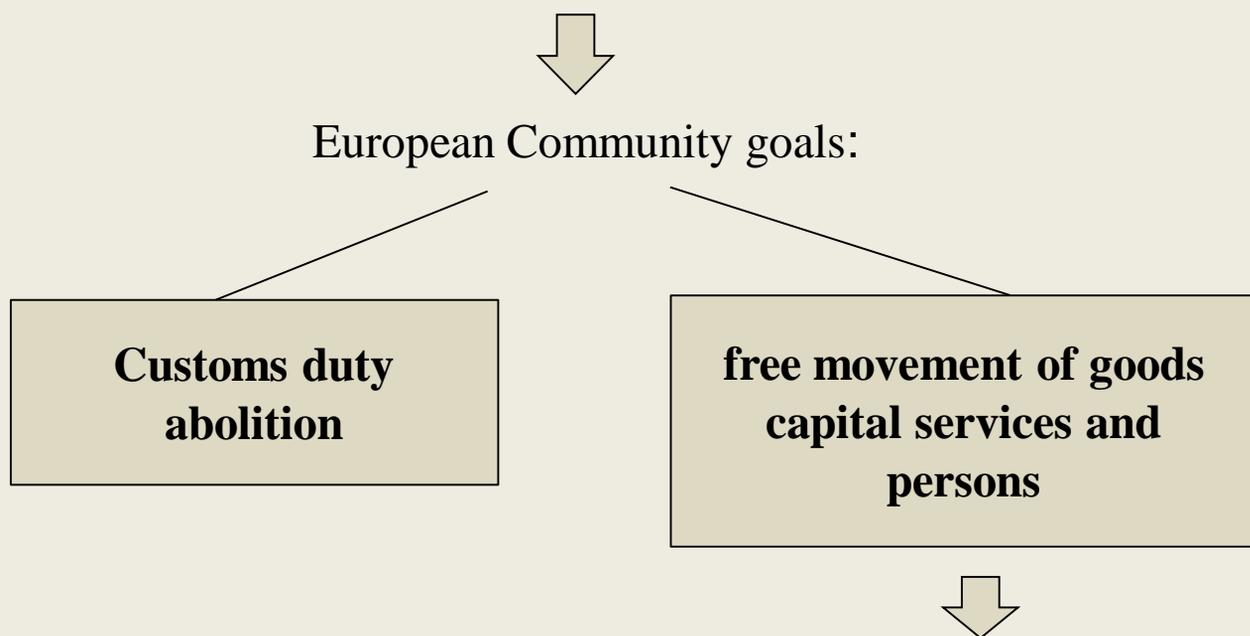
10. VAT



18.1 NATURE AND THE CHARACTERISTICS OF VAT

18.1.1 VAT: AN EUROPEAN TAX

(1) The establishment of VAT serves Community purposes



Fiscal neutrality during European circulation of goods and services



⇒ Vat is ruled by the EC, with European law acts to be respected by all member State

over the years, numerous directives and some regulations have been issued



Today resumed in the Directive n. 2006/112/CE, which rules the general discipline of the VAT

⇒ Part of the tax revenue is addressed for financing EU objectives

for this amount, VAT is an 'own tax' of the EC, which contributes to the financing of Community objectives

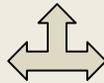


Consequence of the European nature of the VAT

direct application of the VAT rules (directly applicable or with direct effect) and of the general principles of the EC:

- VAT Directives are highly detailed and therefore in most cases they are directly applicable
- Community principles govern the interpretation and application of VAT rules

**Teleological criteria:
guideline for the
interpretation of VAT rules**



**Principle of abuse
of rights arises in the
VAT field**

- The protection of rights within the VAT system is governed by European principles

respect of the principle of equivalence and effectiveness



⇒ The Court of Justice of the European Union (CJEU) is competent for a preliminary rulings



numerous CECJ judgments over the years have interpreted and clarified the VAT provisions



the judgments of the CECJ are an important interpretative aid and a completion of the Community VAT rules



National courts have to refer the matter to the CECJ under Article 234 of the EC Treaty where there is a doubt on the interpretation of the VAT rules



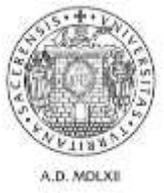
18.1.2 VAT characters

⇒ it is a consumption tax

⇒ It is designed to ensure tax neutrality in trade within the EU through a special application mechanism



⇒ It is characterized by the presence of essential elements identified by EU rules



18.1.3 Entities subject to VAT

In the VAT rules there is a distinction between

➔ *De iure* taxable person (economic operators):

- They are directly involved in the management of the VAT scheme



They are the taxable person identified by law



They must respect substantial and formal obligation



They are not affected by the VAT (principle of VAT neutrality)

➔ *De facto* taxable person (final consumers):

- They are not directly involved in the management of the VAT but they suffer the final effect of the tax



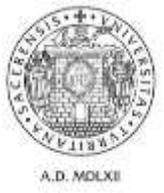
They are not the taxable person identified by the law



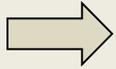
They are not subject to formal and substantial obligation



they are affected by the VAT when they buy goods, services (also importations)

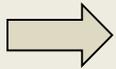


18.2 VAT ASSUMPTIONS



Land based distinction

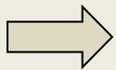
- National
- european
- non-European



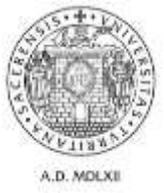
the territorial criteria is fundamental for the VAT assumptions discipline because VAT is a consumption tax



the arising of the assumptions is based on the place of presumed consumption of the goods or services



the place where the assumption is realized corresponds to the Country who collects the VAT



Relevant transactions under the VAT purpose

in the national operations:

- ⇒ consumption of goods and services (objective assumption)
- ⇒ realized the territory of the State (territorial assumption)
- ⇒ carrying out a commercial activity, art or profession (subjective assumption)

in the international operations:

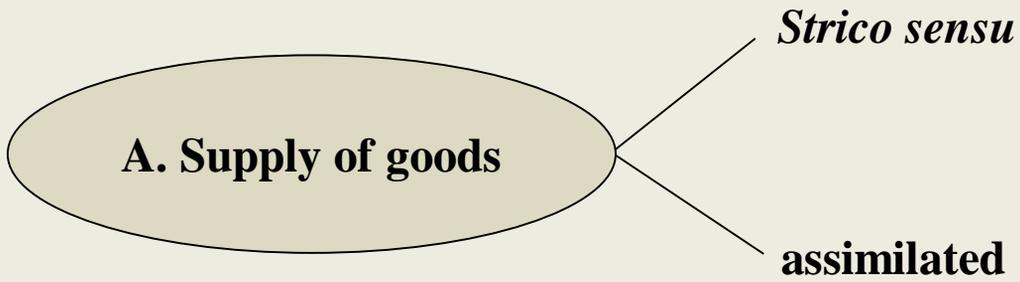
- ⇒ Anyone who made importations

Intra EU transactions

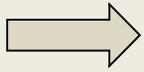
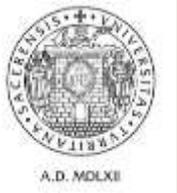
- ⇒ purchases of goods between VAT entities
- ⇒ supplies of goods to final consumers



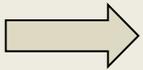
18.2.1 Objective assumption



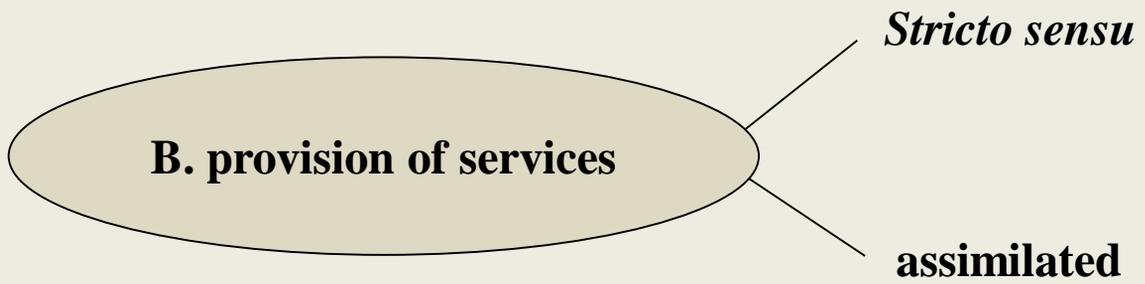
➔ **Stricto sensu: transfer of ownership of the goods**



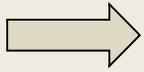
Assimilated: operations who are not considered as a goods disposal but they are subject to the VAT treatment



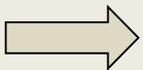
Exclusions; operations without Vat relevance



➔ *Stricto sensu*: provision of services rising from contracts



Assimilated: operations who are not considered as a provision of services but they are subject to the VAT treatment



Exclusions: operations without Vat relevance



18.2.2 Subjective assumption

To have a VAT relevance operations must be carried out a:

⇒ Business activity

⇒ art or profession

“Economic activity”: any activity of production, marketing or provision of services, including mining, agricultural activities, as well as activities of the self-employment. It is also considered economic activity any exploitation of a tangible or intangible asset in order to gain a stable income



Market activity

Economic activity characteristics



habitualness



stability



independency

Also illegal activity is considered economic activity



Subordinate employment is excluded

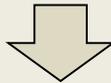
**Commercial
business**



Substantial definition

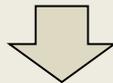


formal definition



Can be considered VAT entities:

- **Commercial companies**
- **Private and public entities with a commercial or agricultural activities**



**They are VAT entities for their legal status
(Conclusive presumption for all the operation carried
out by commercial entities)**

Commercial Business

→ habitual but not exclusive professional business of the commercial or agricultural activities set in the art. 2195 and 2135 Italian civil code even without a company based organization

→ Activity performed with a company based organization in order to provides services (for services not included in the art. 2195 of the Italian civil code)

Wider definition of business than the civil code definition



Wider definition than the direct taxes definition because also agricultural business is included



**considered activities
for a business purpose**

→ supplies of goods and provision of services
performed by shareholders or associates

→ Activities performed by public entities with not
only commercial activities



Art and profession



habitual but not exclusive self-employment activities



Activities performed by natural persons, partnership and associations

18.2.3 Territorial application of VAT (territorial assumption)

Tax discipline

→ Specific criteria to identify the allocation and the taxation of the goods supply and provision of services in the State's territory

→ recently modified for the localization of services (D.lgs. n. 18/2010 for the ratification of the Directive 2008/8/EC of 12.2.2008)

ratio: Identification of the consumption place of the services: taxation based on the the country-of-destination principle

Land based criteria for the supply of goods



General criteria

- ➔ Place of physical existence of the goods
- ➔ Place where the shipping starts: for transportation
- ➔ Destination place: in the event of assembly or installation of the goods



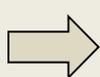
Specific criteria

- ➔ place of transport departure: supply of goods on ships, aircraft and trains for intra-EC transports
- ➔ domicile or residence in the territory of the State of the seller taxable person : supply of natural gas and electricity through distribution systems

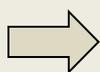
Land based criteria for provision of services



General criteria



Customer place: if the customer is a VAT entities placed in the State's territory (*business to business transaction*)



Vendor place: If the vendor is a VAT entities in the State's territory and the customer is not a Vat entities (*business to consumer transaction*)

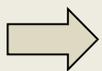
Established taxable person:

- person who is domiciled or resident in the territory of the State (who is not domiciled abroad) ;
- Permanent establishment in the State's territory of a foreign entities
- For entities other than natural persons, domicile is the place of the registered office and place of effective management.

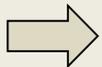
**Land based criteria for
provision of services**



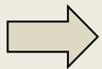
**Specific criteria without consideration of the service
recipient place**



Buildings 'place: real estate transaction



Rout section travelled in State's territory: for
passenger transport services



Place where the services is tangibly performed:
catering and restaurant services (other than the same
services provided on the ships, aircraft and train
where the applied criteria is the starting place)



18.2.4 Importation

For VAT purpose imports made by any person are taxable



Import definition: “‘Importation of goods’ shall mean the entry into the Community. In addition, the entry into the Community of goods which are in free circulation, coming from a third territory forming part of the customs territory of the Community, shall be regarded as importation of goods”

Ratio: to tax all foreign goods entering in the EC territories with the same conditions to the European circulating goods



18.3 VAT transactions

18.3.1 Vat transaction: characteristics

VAT transaction

- ➔ Taxed for VAT purpose
- ➔ Subject to be registered, invoiced and declared in the VAT return
- ➔ To be considered in the turnover
- ➔ Distinction: taxable, non-taxable and exempt transaction

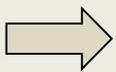
Excluded VAT transactions

- ➔ Vat rules are not applied for this type of transaction
- ➔ Definition: excluded transaction

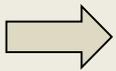


18.3.2 Vat transaction: taxable transaction

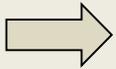
Taxable transaction



Supply of goods and provision of services in the State's territory within company, art or profession activity



Importations made by anyone;

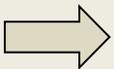
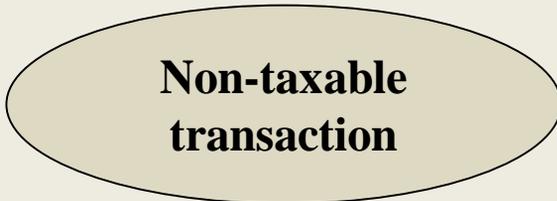


intra-Community purchase

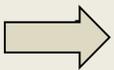
Performing taxable transactions entails the application of the ordinary VAT mechanisms working principles



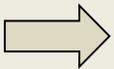
18.3.3 VAT transaction: non-taxable transactions



Exportation



transaction considered as exportation



international services connected to the international trade

To be not confused with the non-taxable transaction originating by the *reverse charge* mechanism



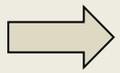
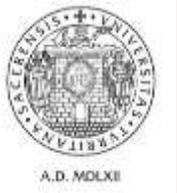
18.3.4 Exempt transaction

Exemption

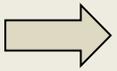
- ➔ Exception from the general VAT discipline of intra-community goods and services
- ➔ Considered as “Community law concepts” to be interpreted only by the European legal system



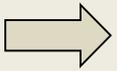
→ exhaustively listed:



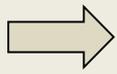
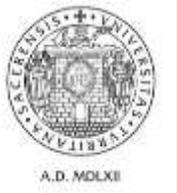
exhaustively listed by the European law VI Directive (today art. 132, Directive n. 2006/112/CE)



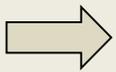
Strictly interpretation to avoid the effect of distorting the conditions of competition in the common market



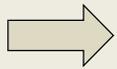
During the time a lot of CJEU judgments have specified the meaning of each Vat exemption



objective nature of the exception provided by the European laws (connected to the activity performed)

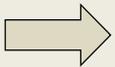


Domestic rules often conflict with European rules because domestic rules provide subjective exemptions. In this case European rules prevail over the domestic rules and the latter must be overturned



Also the illegal activity in competition with the exempted legal activity is exempted

The ratio is to avoid the distortion of the competition even between legal and illegal activities



unlawfulness may be civil, criminal or administrative and it does not impede the set up of an activity (under the Community definition) in competition with the exempted lawful activity

VAT Discipline:

- ➔ Output VAT is not recharged
- ➔ Vat payed on purchase connected to the exempted performed services can not be deducted (ex art. 19, par 2, D.P.R. n. 633/1972) partial deduction (*pro rata mechanism*). When it is not applicable see chapter. 19.4)

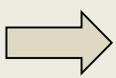
Ratio: to affect a different entities other than de final consumer. Vat mechanism is arrested before the consumption phase

The entity affected by VAT is a *de iure* Vat entity

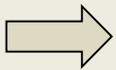


18.4 VAT APPLICATION MECHANISM

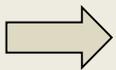
18.4.1 Taxation moment



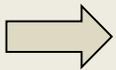
For the purposes of VAT this is the moment when the tax debt becomes a legal duty



The entire VAT mechanism starts



it is relevant for all the involved entities in the VAT scheme taxation



Also known as «operation execution»

Taxation moment identifies when the operation is able to start of all the VAT application mechanisms

Supply of goods

- ➔ movable assets: delivery or shipment of the goods
- ➔ fixed assets: stipulation of the deed of property transfer
- ➔ exemption: art. 6, par 2, DPR n. 633/1972

Provision of services

- ➔ payment of the consideration
- ➔ exemption: art. 6, par 3, DPR n. 633/1972

intra – Community transactions

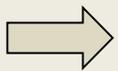
- ➔ Moment of the delivery of the goods in the State's territory
- ➔ when the goods arrives in the State's territory:
when the transport is made by the transferee.

When taxation moment occurs, the following obligations born

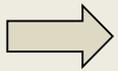
- ➡ VAT recharge obligation by the seller/service provider
- ➡ Deduction right by the buyer/ services recipient
- ➡ Invoicing obligation
- ➡ Obligation to pay the tax to the State treasury

exemption art. 6, par 5 (supply of pharmaceutical products, services provided by the State- Public entity – University – hospital) where the VAT collection is not connected to the taxation moment

Anticipation of the taxation moment



Invoices issuing (in a period before the
aforementioned events)



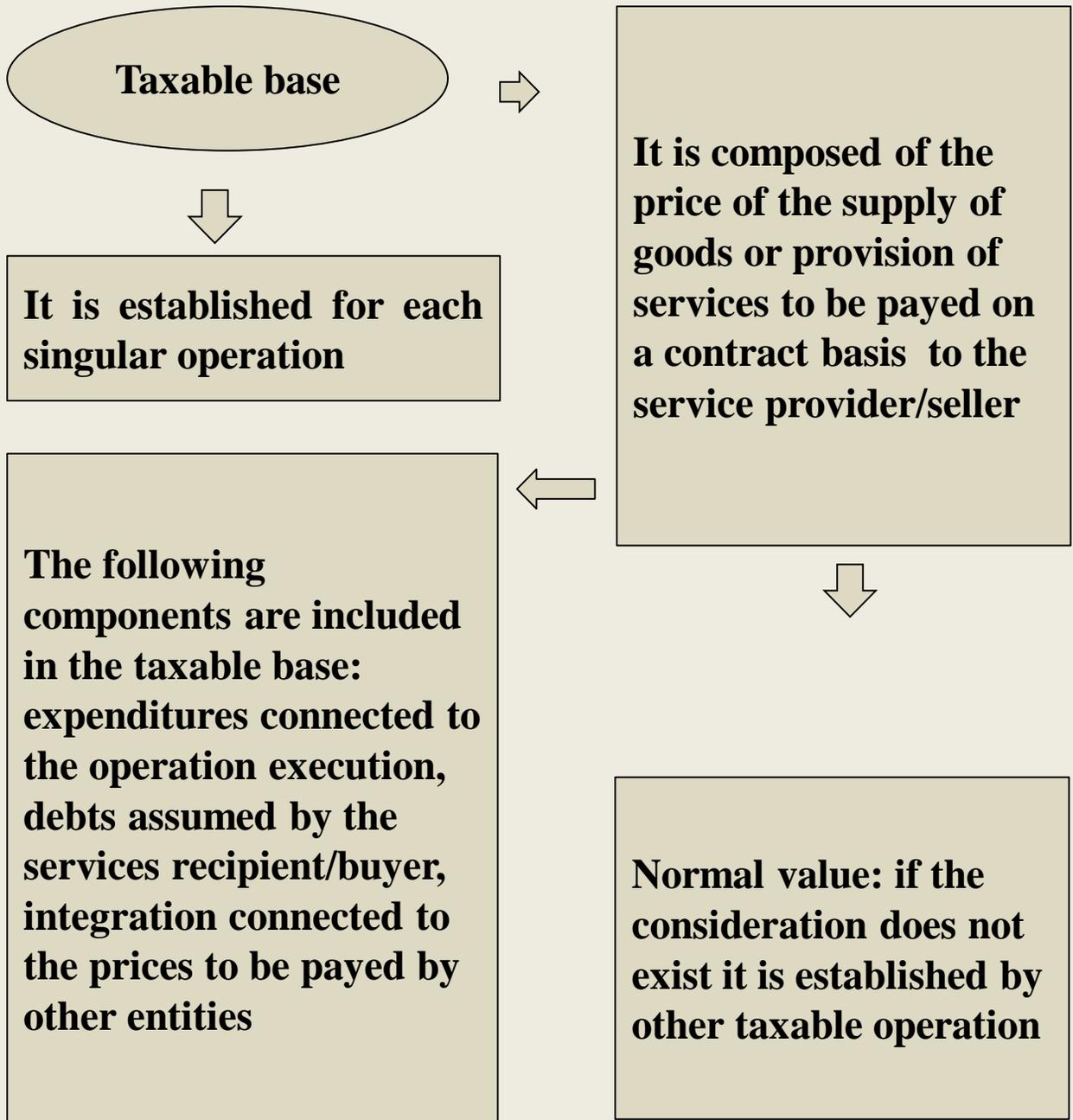
When the consideration is payed (for the goods)

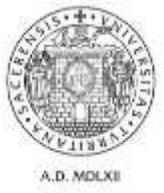


**Vat operation is considered done within
the limit of the price invoiced or payed**

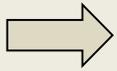


18.4.2 VAT determination





Taxable base exclusion:



interest for late payment, penalties



VAT rate

➔ General rate: 22%

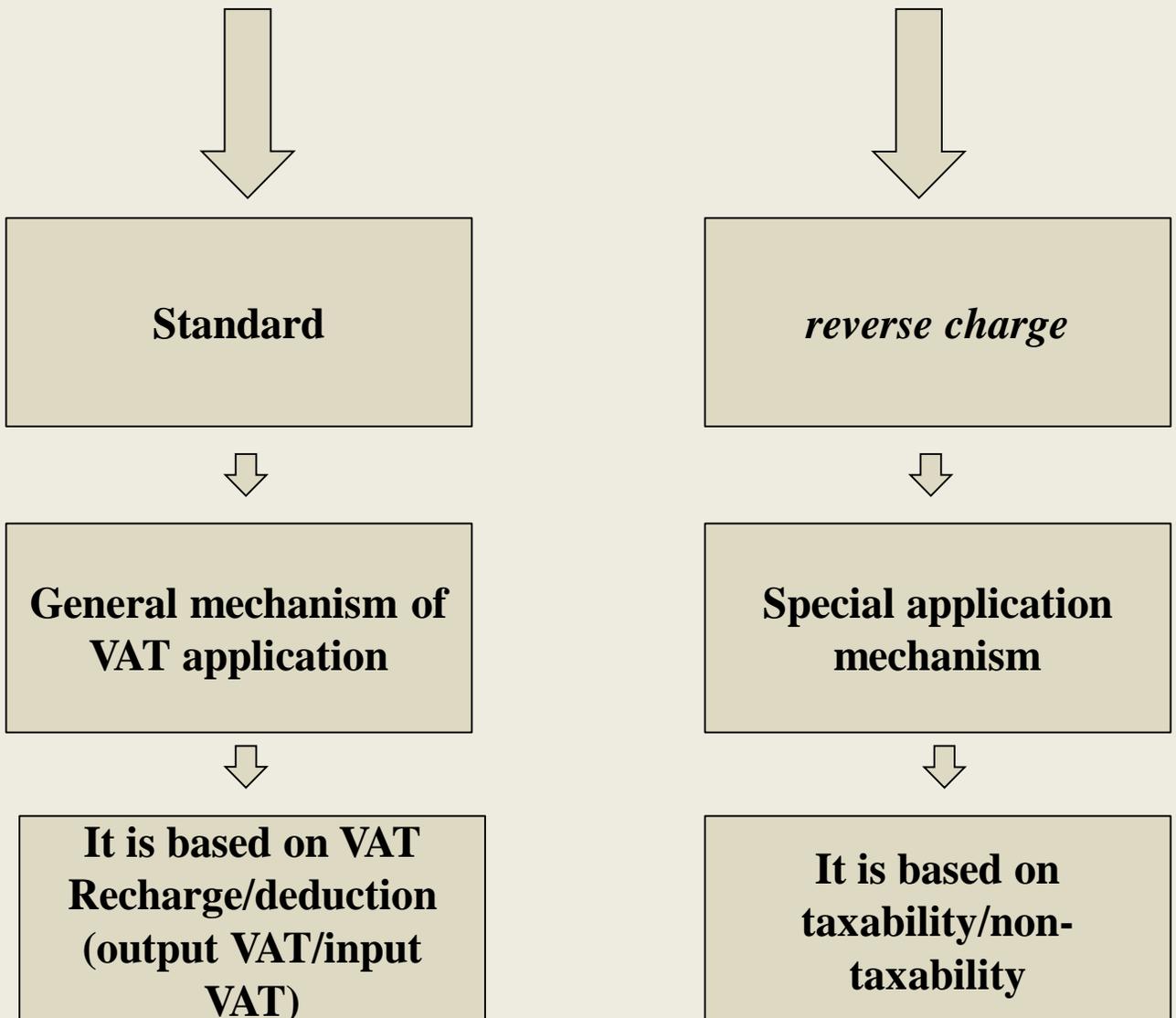
➔ Reduced vat rate: 4% e 10%



**VAT rate in force in the moment of the
operation execution**

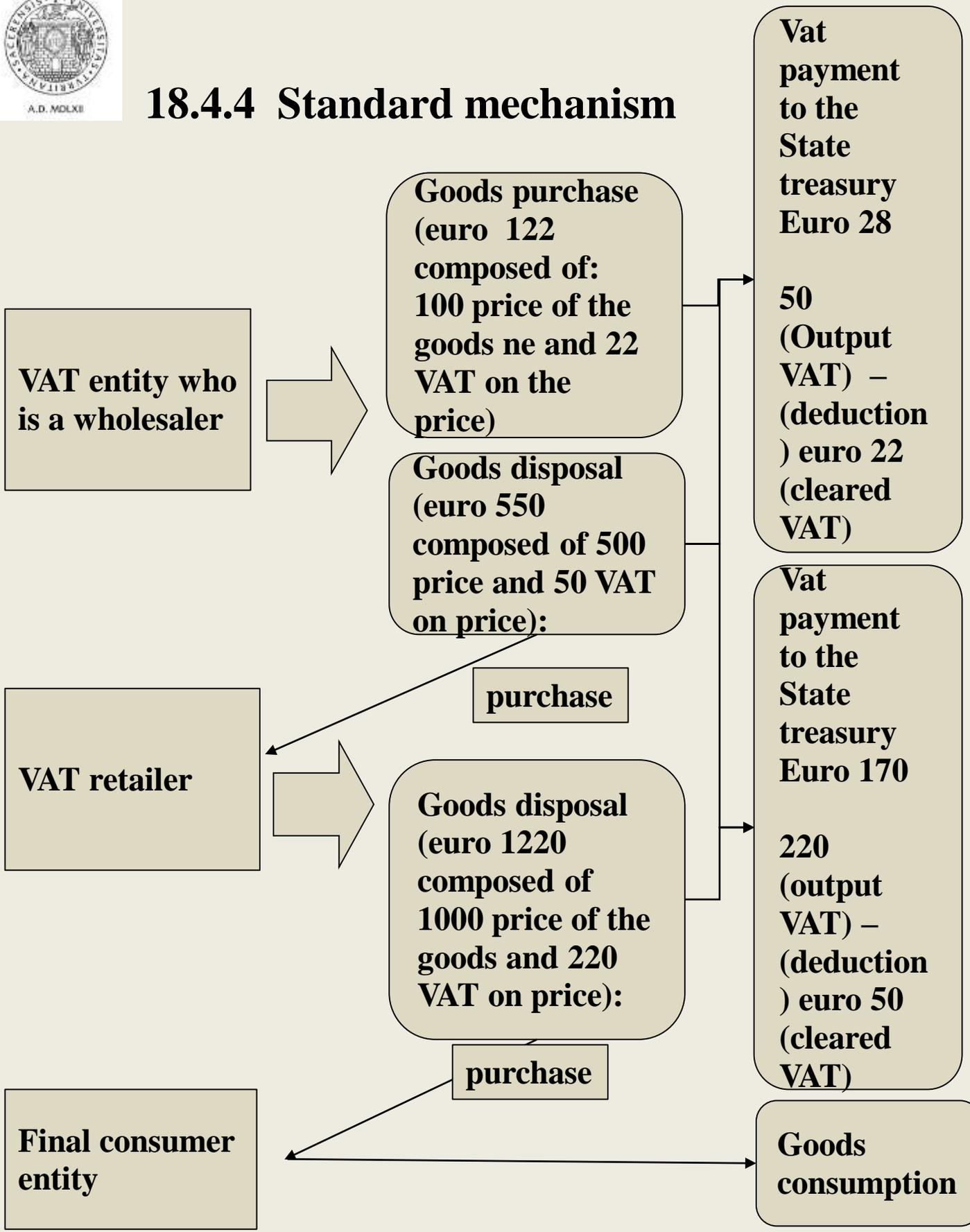


18.4.3 Application mechanism





18.4.4 Standard mechanism





Output VAT

➔ The entity who performs supply of goods or provision of services has to recharge the VAT to the services recipient/buyer

➔ VAT recharge is mandatory and it is null and void every different agreement ↓

Vat recharge is optional only when it is exhaustively provided by the law.

➔ Output VAT credit it is a senior secured credit in case of insolvency procedure



Input VAT

VAT entity subtracts from the output VAT the input VAT



It is a right (not an obligation) of any entity in order to determine the VAT



Input VAT must be deducted within the VAT return submission date connected to the period of the arising input VAT

At the existing conditions to the birth of the right moment

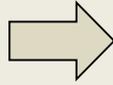


A.D. MDLXII

Deduction right concerns only to the imported or purchased goods/services under the execution of business, art or profession (c.d. principle of inherence)

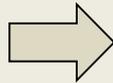


It is deductible



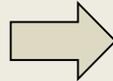
VAT connected to inherent goods or services

It is nondeductible



VAT connected to the goods or services of a exempted or excluded operations

It is deductible *pro quota*



Output VAT of goods or services used in a Vat excluded operation



Output VAT for goods or services used for private purpose

***pro-rata deduction* (%
of deduction)**



**It is applied to the taxpayer
who have input vat
activities and VAT
exempted activities**



**VAT deduction is proportional to the taxable VAT transaction
and it is equal to a percentage (known as “percentage of
deduction”)**



**The percentage of deduction is the ratio between
the input VAT operation in one year and the total
operation (with Vat exempted operation)**



18.4.5 *Reverse charge mechanism*

Reverse charge principles

- ⇒ It is the mechanism who allows to move the VAT obligation to the service recipient/buyer from the service provider/seller
- ⇒ It deletes input VAT ad it is an exemption to the VAT recharge obligation
- ⇒ it can be used only from VAT entities
- ⇒ it is founded on the taxable-nontaxable operation binomial
- ⇒ it simplifies VAT application



The use of reverse charge mechanism is criticized because is in conflict with the original nature of the VAT discipline