

Tax Key News - Real Estate

Quarterly review of real estate taxation No. 3/2021

Summary: 1. Legislation – 2. Case law – 3. Italian Tax Authority's Rulings – 4. Insights

Highlights

- *Real estate tax incentives and pension funds: the Italian Tax Authority confirms the applicability of tax incentives for energy efficiency works (Ecobonus, Sisma-bonus and Bonus Facciate) to pension funds (Ruling No. 561 of 26 August 2021)*
- *Trusts: the public consultation closed on 30 September 2021 on the draft of the Italian Tax Authority's Circular Letter concerning the tax regime of trusts*
- *Alternative Investment Fund (AIF) and VAT on management services: the Italian Tax Authority has provided further clarifications on the VAT exemption for services related to the management of an AIF (Ruling No. 631 of 29 September 2021)*

I **Legislation**

Draft delegated law for tax reform approved by the Council of Ministers

On 5 October 2021 the Council of Ministers approved the Tax Reform Bill (the "Bill").

The Bill provides for guidelines and criteria to be followed by Legislative Decrees depending on the subject matter. The reform should be implemented in the next 5 years. Hereinafter an overview of matters related to the real estate industry.–

Rationalization of VAT and other indirect taxes (Article 5)

Article 5 of the Bill provides for guidelines to rationalize the structure of VAT, with particular reference to the number and levels of tax rates and the distribution of taxable bases among the different rates.

Modernization of property mapping tools and revision of the Cadastre of Buildings (Article 7)

Article 7 of the Bill provides for the introduction of regulatory changes aimed at ensuring the emergence of real estate assets currently not registered in the as well as providing an update on the Italian cadastral situation. It is also provided that a procedure will be launched to integrate the information on buildings currently present in the Cadastre, by means of introducing mechanisms for the periodic adjustment of the survey, based on the normal values expressed by the market.

II **Case law**

Mortgage and cadastral taxes: applicable rates in case of contribution of real estate properties located in Italy to a Luxembourg company

(Italian Supreme Court, Order No. 20356 of 27 July 2021)

The case referred to the Italian Supreme Court concerned the applicability of proportional mortgage and cadastral taxes on the contribution, for the subscription of a capital increase, of real estate properties located in Italy to a Luxembourg company.

The issue at stake concerned Article 4 of Presidential Decree No. 131/1986 Tariff, Part I, Note IV ("TUR"), according to which such taxes are due at a fixed rate, and European Directive 2008/7/EC, which prohibits Member States which, like Italy, have abolished proportional indirect taxes on contributions of assets from applying any form of indirect taxation to contributions of assets to companies established in the EU.

The Directive, by representing an exception to that limitation, allows businesses or real estate properties contribution to be subject to indirect taxes on transfers, provided that such transfers are subject to said taxes to an extent no greater than that to which "similar transactions", or all other transactions involving the transfer of businesses or real estate properties are subject, regardless of the reason why they have been carried out.

In a nutshell, the Italian Supreme Court has stated that the application of proportional registration, mortgage and cadastral taxes on a transfer of immovable property is compatible with the Directive only when the tax is generally levied on the transfer of immovable property and, therefore, affects all transfers of immovable property



irrespective of the reason for which they are carried out. Therefore, the consistency with European law requires that the tax is not due only in case of a transfer.

III

Italian Tax Authority's rulings

Coordination activities provided by a General Contractor are not eligible for s.c. Superbonus 110%

(Ruling No. 480 of 15 July 2021)

The Italian Tax Authority has stated – in line with its previous decisions (Rulings Nos. 254 of 15 April 2021 and 261 of 19 April 2021) – that the consideration paid by the client to the General Contractor for "mere" coordination activities as part of the execution of works meeting the requirements for the s.c. Superbonus 110% (Art. 119 and followings of Law Decree No. 34/2020) shall not be included among those expenses which are eligible for such tax allowance (i.e. a tax credit calculated on the eligible expenses, which may be transferred to third parties).

In particular, as already clarified in Circular Letter No. 30/E of 22 December 2020, the Italian Tax Authority has confirmed that all expenses, characterized by a direct link with the works which entitle to the tax credit at issue, are eligible to benefit from such tax allowance.

In light of the above, the Italian Tax Authority has held that the consideration paid by the client to the General Contractor for carrying out a study of feasibility of works, being a professional expense related to and in any case required by the type of works (see Circular No. 24/E of 8 August 2020) may benefit from the Superbonus 110%.

Italian Tax Authority's draft of Circular Letter regarding the tax regime of trusts for the purposes of direct and indirect taxes

(Public consultation closed on 30 September 2021)

On 30 September 2021 the public consultation on the draft Circular Letter of the Italian Tax Authority came to an end; such public consultation was aimed at gathering contributions with respect to the tax regime applicable to trusts, also in light of the new legislation enacted in 2019¹ and the recent case law of the Italian Supreme Court on the tax treatment of trusts. The Circular Letter also deals with the new rules regarding the tax monitoring obligations of the beneficiaries of a trust resident for tax purposes in Italy² (.

The previous Circular Letters issued by Italian Tax Authority regarding trusts are No. 48/E of 6 August 2007 ("*Trusts. Tax regulations for the purposes of income taxes and indirect taxation*") and No. 61/E of 27 December 2010 ("*Further clarifications concerning the taxation of trusts*").

For further information on this subject, please refer to [Newsalert tax department](#).

¹ Article 13 of Law Decree No. 124 of 26 October 2019, converted with amendments into Law No. 157 of 19 December 2019.

² Legislative Decree No. 90 of 25 May 2017.

Pension funds: applicability of real estate tax incentives for energy efficiency works

(Ruling No. 561 of 26 August 2021)

The Italian Tax Authority has confirmed the possibility for a pension fund, to benefit from tax incentives for energy requalification works on buildings (the s.c. Ecobonus pursuant to Article 14 of Law Decree No. 63/2013), reduction of seismic risk (c.d. Sisma-bonus pursuant to Article 16 of Law Decree No. 63/2013) and renovation of building facades (s.c. Bonus facciate pursuant to Article 1, para. 219 – 224, of Law No. 160/2019).

In the case at stake, the pension fund intends to carry out a urban development project on a real estate complex that it owns, in order to convert it from its current office use to residential use.

The Italian Tax Authority has pointed out that both Italian residents and non-residents persons may be eligible to benefit from the "building deductions" (s.c. *detrazioni edilizie*), irrespective of the type of income owned by such person (Circular Letter No. 7/E/2021, Circular Letter No. 2/E/2014 and Circular Letter No. 36/E/2007).

In the case at stake, the Italian Tax Authority has held that the pension fund, which is considered as taxable entity for corporate income tax (IRES) purposes, shall benefit from the tax incentives provided by abovementioned Ecobonus, Sisma-bonus and Bonus Facciate, with reference to expenses incurred within 31 December 2021.

Moreover, the Italian Tax Authority confirmed that, since the pension fund cannot deduct such expenses from its income taxes (since under Article 17, par. 6, of Legislative Decree No. 252/2005 the income of the pension fund is subject to a substitute tax in lieu of the income taxes), the pension fund itself may be eligible to benefit from these tax incentives by means of the transfer of a tax credit to third parties, through the assignment of the tax credit (*cessione del credito*) or the "invoice discount" (*sconto in fattura*), i.e. one of the alternative methods provided by Article 121 of Legislative Decree No. 34/2020 to benefit from the tax incentives at issue.

On the contrary, the Italian Tax Authority has excluded with previous rulings the applicability of such tax incentives to real estate undertakings for collective investments (Sicaf or AIF). For more details on this issue, please refer to the following article (in Italian) [Entrate niente bonus edilizi oicr e veicoli cartolarizzazione](#).

Withholding tax on interest on medium/long-term loans paid by a company resident in Italy to non-resident credit institutions

(Ruling No. 569 of 30 August 2021)

The Italian Tax Authority has provided clarifications with reference to the applicability of the withholding tax exemption on interest paid by companies resident in Italy to non-resident entities and deriving from medium/long-term loans. By means of this ruling, the Italian Tax Authority clarified that the exemption applies if the direct recipients of the interest meet the requirements for exemption under Article 26, par. 5-*bis*, Presidential Decree No. 600/1973. If the direct recipients do not meet the requirements for the exemption from withholding tax, it is not possible to verify the existence of such requirements with respect to the "beneficial owners" of the interest pursuant to a *look-through* approach.

The case at issue can be summarized as follows: a Luxembourg investment fund, subject to supervision in Luxembourg, owns the entire share capital of an Italian resident company (through a Luxembourg intermediate holding company); the Italian company paid interest



to the holding company under a loan granted by the holding company to the Italian company. Therefore, in the case at issue the requirements for the withholding tax exemption would have been met by the Luxembourg fund and not by the intermediate holding company.

The Italian Tax Authority has clarified that the interest paid by the Italian company to the intermediate holding company does not benefit from the exemption from withholding tax. Indeed, according to the Italian Tax Authority's interpretation, given the explicit reference in the tax rule at issue to the recipients of the income, it is not possible to apply the exemption regime by verifying the requirements on the beneficial owner of the interest (the Luxembourg fund) rather than on the direct recipient of the interest (the intermediate holding company).

Change of use of residential units following renovation of buildings and Ecobonus tax incentive

(Ruling No. 611 of 17 September 2021)

The Italian Tax Authority has clarified that, when carrying out works eligible for the tax incentives calculated on expenses for renovation works, as laid down in Article 16-*bis* of ITC, the tax incentives provided by such provision shall not be applied if, once the work has been completed, the intended use of the real estate unit subject to works has changed from residential to instrumental (professional office). Indeed, for the purposes of the tax incentive, the work must be carried out on residential buildings or parts of residential buildings, while works on non-residential buildings are excluded.

On the contrary, the Italian Tax Authority has clarified that even in case of change of use of the real estate unit, the Ecobonus tax incentive for energy efficiency works, set out by Article 14, par. 1, Law Decree No. 63/2013, may be applied since such tax incentive involves all existing buildings (including non-residential ones).

The allocation to one or more condominiums of the entire expense related to works on common parts eligible for Superbonus 110%

(Ruling No. 620 of 22 September 2021)

The Italian Tax Authority has confirmed that the Superbonus 110% tax incentive for energy efficiency works allows the single owner, or some owners, who shows a particular interest in having certain works carried out on the apartment building, the possibility to express his/their intention to take charge of the entire expense referred to the works on the entire building, and to benefit therefore from Superbonus 110% tax incentive³.

For example, some of the owners of the building cannot benefit from the 110% Superbonus (and do not have the necessary funds to cover the relevant expenses), the other owners are eligible to benefit from the tax incentive for the works at stake on the common parts of building.

It is understood that only the owners benefitting from the Superbonus 110% tax incentive would be liable in case of incorrect use of the same.

Alternative investment fund management advisory services and VAT exemption

(Ruling No. 631 of 29 September 2021)

³ Article 119, par. 9-*bis*, of Law Decree No. 34/2020.

The Italian Tax Authority has confirmed the VAT exemption regime pursuant to Article 10, par. 1, No. 1 of the Italian VAT Law with reference to the services provided by an independent third party advisor to an asset management company, aimed at providing assistance and support with regard to the definition of the management and marketing strategies of an alternative investment fund (AIF).

In particular, the consultancy agreement is aimed at providing strategic advice and assistance in order to support the fund manager during the preparatory phases of the constitution of the AIF and the marketing of the same, such as (a) the definition of the strategy and investment policies of the AIF (b) the planning and implementation of activities related to the marketing of the AIF (*e.g.* organization of meetings with potential investors, definition of the approach strategy with them; preparation and/or review of due diligence or other informative and/or marketing documentation).

By recalling the principles already expressed in the previous rulings No. 628/2020 and No. 527/2021, the Italian Tax Authority has further clarified that the VAT exemption is applicable to such services only after the fund manager has been authorized to operate as an AIF manager (AIFMD). Indeed, only the described services rendered after the date of authorization can be considered as "*intrinsically connected*" and globally functional to the fund manager's activity of managing the AIF, which is included in the "*management of mutual funds*" exempt from VAT pursuant to Article 10, par. 1, No. 1 of Presidential Decree No. 633/1972.

IV

Insights

G. Giannantonio, G. Paladini, G. Bighignoli – *The Real Estate Investment Structure Taxation Review: Italy, 2021*

Contact

Giuseppe Andrea Giannantonio

Partner – Chiomenti

giuseppeandrea.giannantonio@chiomenti.net

Gabriele Paladini

Counsel – Chiomenti

gabriele.paladini@chiomenti.net

Giulia Bighignoli

Senior Associate – Chiomenti

giulia.bighignoli@chiomenti.net

