

## Newsalert

Tax Department

The new interpretative rule on tax free step-up for entities operating in the hotel and thermal sectors

### Introduction

On 19 May 2021, Italy approved a new interpretation provision to clarify that the tax-free step up of the fiscal value of real estate assets of the hotel industry is applicable also to hotel buildings leased to third parties, pursuant to a lease agreement (*contratto di locazione*) or a lease of going concern (*affitto d'azienda*).

Under the same provision, the tax-free step up is applicable also to hotel buildings under construction or refurbishment (thus temporarily closed).

Such provision is included in Law No. 69 of 21 May 2021 converting Law Decree No. 41 of 22 March 2021 (so called "**Sostegni Decree**"), concerning urgent measures to support the economy.

### The tax-free step-up for hotel and thermal sectors resulting from the interpretation provision

The tax free step-up, introduced by art. 6-*bis* of Law Decree No. 23 of 8 April 2020 ("**Liquidity Decree**"), as converted into Law No. 40 of 5 June 2020, grants – in a nutshell – entities operating in the hotel and thermal industries the chance to step-up the fiscal value of the real estate assets accounted for in the financial statements as of 31 December 2019 without paying any substitute tax or other taxes (unlike ordinary step-up rules, usually subject to the payment of a specific tax).

The step-up may be carried out in the financial statements for 2020 and/or the financial statements for 2021.

The authentic interpretation rule will allow to overcome some potential interpretative doubts arising from the wording used in art. 6-*bis* of Liquidity Decree which identifies the scope of applicability of the step-up to entities that are "*operating in the hotel and thermal sectors*".

In particular, the interpretative rule at stake clarifies that the tax free step-up also applies:

- (i) for properties intended for the use as hotel, leased to other entities operating in the hotel sector, pursuant to a lease agreement (*contratto di locazione*) or a lease of going concern (*affitto d'azienda*) – either third party entities or entities belonging to the same group, according to a Propco/Opco structure;
- (ii) for properties, intended for the use as hotel, under construction or refurbishment.

Indeed, the wording of art. 6-*bis* of Liquidity Decree did not allow a clear interpretation of the scope of application of the rule, so that it could have excluded those entities that, while having the ownership of the real estate property intended for the use as hotel, entered into lease agreements or lease of going concern in order to delegate the hotel business to third entities or other group companies.

In many cases, said division of roles between the company owning the assets, on one hand, and the company carrying out the hotel business, on the other hand, (Propco/Opco structure) is aimed at safeguarding the ownership of the real estate property and limiting the risks deriving from hotel management. In other cases, said division could be intended to improve the efficiency of the property by means of involving of specialist operators.

A strict interpretation of art. 6-*bis* of Liquidity Decree would have led to exclude from the tax free step-up many companies owning assets intended for the use as hotel, thus undermining the legislator's intention to support the hotel industry, which has been highly affected by the economic crisis deriving from Covid-19. In particular, such discrimination would not have been consistent with the purpose of the tax-free step up as defined by the same wording of the rule, *i.e.* "support the hotel and thermal sectors".

In principle, a substantial interpretation of the concept of "operating in the hotel sector" should have allowed, on a case-by-case basis, to extend the application of the tax-free step up to cases as those mentioned above, possibly through the filing of a ruling with the Tax Authority. Indeed, this interpretation has been recently supported by the Italian Tax Authority with respect to the lease of going concern (rulings No. 637/2020 and No. 200/2021).

However, the interpretation provision at issue allows to avoid uncertainty about the application of the tax-free step up with respect to the different forms of the business in the hotel industry.

## Contacts

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