

Newsletter

Tax Department, Newsletter of 20 May 2019

Reimbursement of withholding tax suffered by securitization SPVs



With Order No. 13162 of 16 May 2019, the Italian Supreme Court addresses the refund rights relating to withholding tax suffered by securitization companies, sanctioning the right of the special purpose vehicles to obtain reimbursement of withholding tax suffered, once the securitization is terminated.

The right pertaining to special purpose vehicles incorporated pursuant to Art. 3 of Law 30 April 1999, No. 130 ("SPV"), specifically relating to withholding tax on interest and other income from deposits and bank accounts opened for the purpose of managing the securitization transactions, was already recognized by Agenzia delle entrate itself, as of Resolution No. 222/E of 2003 (where it was clearly stated that the withholding tax applied to special purpose vehicles is, in accordance with the applicable laws, a withholding tax that can be deducted from the income tax due in relation to the tax period in which the interest deriving from bank accounts to which they refer are included in the taxable income of the SPV), and more specifically in the subsequent Resolution No. 77/E of 2010 (in which the SPV's right to recover the withholding tax suffered was expressly recognized to be exerted by way of a request for reimbursement pursuant to Article 38 of Presidential Decree of 29 September 1973, No. 602).

In Judgement No. 697 of 2013 of the Regional Tax Court of Lazio, which gave rise to the subject Supreme Court's Order, the SPV's right to obtain the refund of the withholding tax suffered was denied by the Court on the basis of the erroneous assertion that the SPVs are "not liable to income tax" and therefore the withholding tax levied on the accounts relating to the managed securitization should have been considered as non-refundable deductions at source.

Therefore, the Supreme Court, recalling its previous decision 27 May 2015, No. 10885 and explicitly considering the new features involved in the subject case, sanctioned as an unambiguous principle of law that the interest paid on the bank accounts opened by the SPVs are subject to a withholding tax, rather than to a deduction at source, which, following the termination of the securitization, the special purpose vehicle is entitled to request for reimbursement.

For any further clarification please do not hesitate to contact Chiomenti Tax Department at tax@chiomenti.net

