

## Newsalert

Tax Department

New tax credit for energy efficiency of buildings (so-called Superbonus)

Italian Tax Authority guidance (Circular No. 24/E of 8 August 2020)

With Circular 24/E published on 8 August 2020 ("**Circular 24**") the Italian Tax Authority has provided the first clarifications regarding the so-called Superbonus, which provides for a deduction for income tax purposes equal to 110% of the expenses incurred for specific renovation works on buildings relating to: improving the energy efficiency of buildings, anti-seismic measures, installation of photovoltaic systems and charging columns for electric vehicles.

The regulatory framework consists of:

- Articles 119 and 121 of Law Decree No. 34 of 19 May 2020 converted with amendments into Law No. 77 of 17 July 2020 ("**Decree**");
- Decree of the Ministry of Economic Development of 3 August 2020, concerning the certification of the works for the purposes of the tax credit, as well as the procedures for the control of the certificates; and
- Decree of the Ministry of Economic Development of 6 August 2020, concerning the technical requirements to benefit from the Superbonus.

The Superbonus coexists with the tax deductions already in force prior to the Decree and related to the anti-seismic measures (so-called Sismabonus) and energy efficiency improvement of buildings (so-called Ecobonus).

### *The beneficiaries of the tax deduction*

The persons entitled to benefit from the Superbonus are identified by paragraph 9 of Article 119 of the Decree:

- a) **condominiums**;
- b) **individuals**, not acting in the context of a business or professional activity (on a maximum of 2 building units; this limitation does not apply to works made on the common parts of the building as well as to anti-seismic interventions);

- c) **independent housing cooperatives**, for works carried out on properties owned by the cooperatives and rented to their members;
- d) **other entities**:
  - i) the Autonomous Social Housing Institutes (IACP) and entities with the same social purposes, set up as companies that meet the requirements of European legislation on "in house providing", for works on buildings, owned by them or managed on behalf of municipalities, used for public housing;
  - ii) non-profit organizations;
  - iii) amateur sports associations (in relation to interventions on buildings used as changing rooms).

Persons subject to corporate income tax (IRES) are therefore excluded from the Superbonus (e.g., commercial companies).

Circular 24 has provided some clarifications with regard to condominiums, individuals and «Renewable Energy Communities».

In relation to **condominiums**, the Italian Tax Authority has underlined that buildings subject to the works must be constituted as a condominium in accordance with the regulations set out in Articles 1117 et seq. of the Italian Civil Code, considering that the Decree refers to condominiums and not to "*common parts*" of buildings. In this regard, the Italian Tax Authority has also pointed out that it is not necessary for the condominium to be formally constituted by a resolution, since, according to the settled case-law, the birth of the condominium is automatic when several persons build on common ground or when the sole owner of a building transfers floors or parts of a floor to third parties in exclusive ownership.

Indeed, this clarification is contrary to the recent guidelines provided by the Italian Tax Authority in relation to Sismabonus and Ecobonus (see circular No. 13/E of 31 May 2019, rulings No. 293 of 22 July 2019 and No. 137 and 139 of 22 May 2020). In these occasions the Italian Tax Authority also granted the tax deductions for interventions carried out on common parts of several building units owned by a single owner (i.e. in the absence of a condominium), even though the relevant provisions referred to "*common parts of condominium buildings*". Therefore, such a limitation seems inconsistent with other tax deductions concerning buildings, since it prevents from benefiting from the Superbonus on common parts of buildings which can, instead, benefit from the "ordinary" Ecobonus and Sismabonus.

The condominium resolution for the interventions at stake should be adopted with a number of votes representing the majority of those present and at least 1/3 of the value of the building (according to an amendment to Article 119 which should be introduced shortly).

With reference to **individuals** who carry out business activities, arts and professions, Circular 24 has specified that building units that qualify as business assets or assets related to arts or professions (respectively referred to in Articles 65 and 54, paragraph 2 of the Presidential Decree No. 917/1986) are excluded from the Superbonus.

According to Circular 24, such business units may, however, benefit from the Superbonus in relation to interventions on the common parts of the condominium to which they belong, provided that the condominium is "residential", i.e. has a total area consisting of more than 50% of residential building units.

Circular 24 states that, in order to benefit from the Superbonus, building units should be "**residential**" (and not owned in connection with a business or professional activity), so that, for example shops, offices or laboratories, even if owned by individuals outside the context of a business or professional activity, would be excluded from the tax deduction. It is worth pointing out that such requirement is not provided by the Decree.

The abovementioned "non-residential" building units could however benefit from the Superbonus for the interventions carried out on the common parts of the condominium to which they belong (provided that the latter qualifies as "residential"), as well as from the "ordinary" Ecobonus and Sismabonus.

Finally, Circular 24 clarified that the Superbonus also applies to «**Renewable energy Communities**» constituted "as non-commercial entities or condominiums that adhere to the configurations" referred to in Article 42-bis of Law Decree No. 162/2019, but limited to the costs incurred for renewable source plants managed by these energy communities.

### *The "leading" and "minor" interventions*

Paragraphs from 1 to 4 of Article 119 of the Decree identify the so-called "**leading**" or "**main interventions**", i.e. the interventions that allow to benefit from the 110% Superbonus tax deduction. These are certain insulation interventions (e.g., external insulation), interventions for the replacement of existing winter air conditioning systems and the installation of condensing boilers (e.g., replacement of the boiler) and anti-seismic measures.

For such works the Superbonus is calculated on a maximum amount of expenses, based on the number of building units composing the building.

The beneficiaries can benefit from the tax deduction also for the expenses incurred for all the energy efficiency measures referred to in the so-called Ecobonus and for the installation of infrastructure for the recharging of electric vehicles and solar photovoltaic systems ("**minor interventions**"), provided they are carried out together with at least one of the "leading" interventions.

Pursuant to Circular 24, in order to meet such condition, the costs related to the minor interventions must be incurred, besides the period of validity of the incentive (i.e., from 1 July 2020 to 31 December 2021), between the inception and the completion of the works related to the "driving" interventions. In such events, the rate of deduction ordinarily provided for the minor interventions is increased to 110% of the expenses eligible for the tax deduction.

### *The certificate for the tax deduction*

According to Article 119, paragraph 1 of the Decree, the tax deduction of 110% shall be divided into 5 annual instalments of equal amount and the portion not used in the year cannot be used in the following years nor claimed for refund. In order to benefit from the deduction, Article 119, paragraph 13 of the Decree requires for the achievement of a certificate, issued by **qualified professionals**<sup>(1)</sup>:

- 1) on the compliance of the intervention with the technical requirements for the tax deduction; and
- 2) on the corresponding congruity of the expenses incurred in relation to the interventions; in this respect, Circular 24 refers to the price lists provided for in the Decree of the Ministry of Economic Development of 6 August 2020.

For energy efficiency interventions, a copy of the certificate must be sent, exclusively by telematic means, to the National Agency for New Technologies, Energy and Sustainable Economic Development (ENEA), in accordance with the procedures established by the Decree of the Ministry

---

<sup>1</sup> For example, engineers or architects. In particular, in order to carry out energy efficiency measures, the qualified professional must be qualified for the design of buildings and systems and enrolled in the specific professional register. In case of seismic interventions, the qualified professional must be in charge of the structural design or of the supervision of the works (as well as enrolled in the relevant professional register).

of Economic Development of 3 August 2020 and within 90 days from the completion of the works (if the certificate has been issued with regard to interventions which have been completed). For anti-seismic interventions, on the other hand, the certificate shall be filed through the so-called "*sportello unico competente*" referred to in Article 5 of the Presidential Decree No. 380/2001.

*The transfer of the tax credit and the "invoice discount" (Article 121, paragraph 1 of the Decree)*

Instead of the direct tax deduction in the income tax return, the beneficiary of the Superbonus can opt for:

- 1) a contribution, in the form of a **discount** on the consideration due ("invoice discount") up to a maximum amount equal to the same consideration due, anticipated by the supplier who carried out the interventions and retrieved by the latter in the form of a tax credit, of an amount equal to the deduction allowed<sup>(2)</sup>; or
- 2) the **assignment of the tax credit**, for an amount equal to the deduction, to other persons, including credit institutions and other financial intermediaries.

In both cases the tax credit may be assigned to other persons.

The tax credit may be offset against any taxes (pursuant to article 17 of the Legislative Decree No. 241/1997) therefore also with withholding taxes and property tax (IMU), with the same annual allocation in which the original deduction would have been used.

The transferee cannot use in the following years (nor claim the refund of) the amount not used through the offsetting.

With reference to the "discount", Circular 24 established that where the supplier applies a "partial" discount, the tax credit must be calculated on the amount of the discount applied, while the taxpayer may use the remaining amount as a tax deduction or transfer it to other parties.

Circular 24 has also clarified that the transferees may be the suppliers, credit institutions, financial intermediaries and other persons (individuals, companies and other entities).

The following information should be provided in the form for to the communication of the option for the "invoice discount" or for the assignment of the tax credit: the tax identification number of the transferee or the supplier, the date of exercise of the option, the amount of the tax credit assigned or the contribution in the form of a discount, as well as the "kind of transferee" (supplier, individual, financial intermediaries or insurance company).

These options may be exercised either at the completion of the works or with reference to each stage of progress.

The assignment of the tax credit requires that a qualified professional enrolled in specific registers (e.g. chartered accountant) issues a "conformity permit".

The option for the discount or for the assignment of the tax credit must be exercised by electronic means, in accordance with the terms and conditions set forth in the official documentation released by the Italian Tax Authority (regulation No. 283847 of 8 August 2020).

This documentation provides that the options may be communicated starting from 15 October 2020 and that communications must, in any case, be sent by the deadline of 16 March of the year following the one in which the expenses eligible for the deduction are incurred. The transferees and the suppliers, prior to using the tax credit, will also have to confirm the exercise of the option in the specific area of the Italian Tax Authority website.

---

<sup>2</sup> For example, as clarified by Circular 24, if the taxpayer sustains an expense equal to Euro 30,000, to which corresponds a deduction of Euro 33,000 (110%), against a discount applied in the invoice equal to Euro 30,000, the supplier will accrue a tax credit of Euro 33,000.

Finally, Circular 24 clarifies that the beneficiary of the tax credit who opts for the deduction has the possibility to subsequently opt for the assignment of the residual amount of the tax credit not used.

\*\*\*

---

## Contacts

[tax@chiomenti.net](mailto:tax@chiomenti.net)