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1Q 2020 Italian Real Estate Tax News

LED Taxand summarizes hereinafter the main tax news regarding Italian real estate for the first quarter of the year 2020.

Law - Law Decree 17 March 2020 no. 18 ("Cura Italia Decree") - Article 65. Tax credit for shops and stores.

Cura Italia Decree introduces new provisions to counteract the emergency related to the spread of COVID-19.

Among the measures adopted, article 65 provides for shops and stores, hit by the economic crisis, a tax credit of 60% of the rent for the month of March 2020 related to buildings falling under cadastral category C/1 (shops and stores). This credit can be used exclusively in compensation pursuant to Article 17 of the Legislative Decree 9 July 1997, no. 241.

The business operators that can benefit from this tax credit are all those not included in Annexes 1 and 2 of the Decree of the President of the Council of Ministers of 11 March 2020, which identifies shops and stores who carry out activities defined as essential (i.e. pharmacies, para pharmacies, points of sale of basic foodstuffs, etc.). In addition, with the answers to the Faqs of 27 March 2020, the Ministry of Economy and Finance provides a more stringent interpretation of the article in question. It clarifies that buildings held under a going concern lease agreement (frequently used by shopping centres, as an alternative to real estate lease agreements) as well as other commercial buildings' agreements concerning the regulation of relations between tenant and owner are excluded. With Circular no. 8/E of 3 April 2020, the Italian tax authorities further clarify the issue. Recalling the purpose of the Article 65 "to contain the negative effects deriving from the containment measures of the epidemiological emergency" as well as to "restore the taxpayer by the cost incurred for the aforementioned rental fee", they specify that to benefit from the tax credit it is necessary to verify in advance that the payment of the agreed rental fee has been performed. Moreover, given the mandatory character of the provision, any lease agreement concerning buildings not falling under cadastral category C/1, even those registered in category D/8 ("Buildings built or adapted for the special needs of a business activity and not susceptible of different destination without radical transformations") are excluded from the tax credit. Amendments to the current version of article 65 have been proposed with the aim to extend the scope of the tax credit.

Law - Law Decree 17 March 2020 no. 18 ("Cura Italia Decree") - Article 64. Tax credit for sanitization costs.

According to article 64 of Cura Italia Decree, a tax credit to the extent of 50% for sanitization costs related to workplace and working tools up to a maximum amount of 20,000 euros has been introduced, for the fiscal year 2020, in favour of subjects carrying out business, artistic or professional activities.
The tax credit is capped at 50 million euros for the fiscal year 2020 and it is subject to the conditions and limits set forth by the Decree which will be issued by the Minister for economic development, in agreement with the Minister for the economy and finance.

Case Law - Italian Supreme Court decision 31 January 2020 no. 2313. Pursuant to Parent-Subsidiary Directive, dividends exempt from withholding tax and not taxed at parent level.

The Supreme Court stated that the withholding tax exemption on dividends under the Parent-Subsidiary Directive (implemented in Italy by article 27-bis DPR 600/1973) does not eliminate the risk of economic double taxation (i.e. the risk that the same item of income is taxed both in the hands of the parent company and in the hands of the subsidiary). Such interpretation is in line with the Directive which provides for both the withholding tax exemption (article 5) and the non-taxation of the dividends in the hands of the parent company (article 4). This decision seems to amend the interpretation of the Supreme Court on the Directive and specifically the criticized judgement n. 25490/2019, according to which the Court ruled that the withholding tax exemption applies to the extent the dividends are taxed at the level of the parent company.

Case Law - Second Degree Tax Court of Lombardy, decision 7 February 2020 no. 359. The asset management company is not liable for the tax debt of a REIF in liquidation.

The decision no. 359/22/2020 of the Lombardy Regional Tax Court excluded the tax liability of the asset management company in relation to the tax debt of a REIF in liquidation. Although a REIF does not have legal personality, its assets are segregated with respect to the assets of the management company (Supreme Court Decision no. 16605/2010; no. 12187/2013, no. 12602/2019) and from a tax viewpoint a REIF is a taxable person. Indeed, even if the asset management company is required to pay taxes due by the REIF, it has an obligation of means (i.e. to collect the funds and make the payment) and not an obligation of a result (i.e. it must not guarantee to the tax authorities that the REIF pays its tax debt). Furthermore, according to the Court, there is no Italian law which provides for the joint tax liability of the asset management company for the tax debt of the REIF (see also Lombardy Regional Tax Commission, decision no. 5282/67/2015). Lastly, the Court highlights that the REIF must pay also the penalties levied for its tax infringements but it is entitled to file a claim for damages against the asset management company in case of *mala gestio.*

Revenue Agency's guidelines - Reply to Tax ruling no. 72/2020. The asymmetric demerger of immovable properties is not abusive.

The Italian tax authorities clarified that it is not abusive the partial non-proportional demerger in favour of a NewCo to which is attributed part of the assets of the demerged company, consisting of immovable properties and the related rental agreements. Specifically, the Italian tax authorities highlighted that in the case at stake the asymmetric demerger seems a normal transaction aimed at allowing the two shareholders of the company to be demerged to separately continue their business activity. The demerged company (which will be wholly owned by the majority shareholder of the company to be demerged) will keep carrying out holding activity while NewCo (which will be entirely held by the minority shareholder of the company to be demerged) will start the activity of real estate company.

Revenue Agency's guidelines - Reply to Tax ruling no. 74/2020. Clarifications on the VAT regime applicable to an umbrella SICAF.

As regards an umbrella (multiple compartments) SICAF managed by an Italian AIFM, the Italian tax authorities clarified from a VAT viewpoint that: (1) the SICAF has an autonomous VAT number, different from the one of its AIFM; (2) the SICAF must opt for the regime of separation of the activities according to article 36 of the Italian VAT Code in relation each sub-fund; (3) the SICAF is entitled to any VAT credit. Considering that article 9 Legislative Decree 44/2014 extended to real estate SICAF the VAT rules for real estate investment funds, a VAT refund request filed by a SICAF should follow the rules provided for real estate investment funds.

Revenue Agency's guidelines - Reply to Tax ruling no. 84/2020. VAT treatment of rental fees charged by a refurbishment company on residential buildings.

The Italian tax authorities clarified the VAT regime applicable to rental fees related to a residential building utilised for "room & breakfast" activity following refurbishment works carried out by the company owner of the asset. If the company rents out the residential building carrying out directly the room & breakfast activity, rental fees are subject to VAT at the reduced rate of 10% (see Directive 2006/112/CE article 135, paragraph 2, letter a). Conversely, if the company rents out the residential building to a tenant that manages the room & breakfast activity, rental fees are exempt from VAT but the company owner of the asset can opt for the application of the VAT to the extent it carried out qualifying refurbishment works on the building.

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