



**Newsletter**



**REAL ESTATE TAX INSIDER**

## **4Q 2021 Italian Real Estate Tax News**

LED Taxand summarizes hereinafter the main tax news regarding Italian real estate for the fourth quarter of the year 2021.

### **Case Law - EU Court of Justice, Judgement 16 December 2021, joined Cases C-478/19 and C-479/19. Transfer tax reduction applicable also to foreign open-ended real estate funds.**

According to art. 35, paragraph 10-ter, Law Decree no. 223/2006, transfer taxes are reduced by half in case of sales/purchases of commercial real estate assets made by Italian closed-ended real estate funds. The EU Court of Justice stated that such provision represents a restriction on free movement of capital. Therefore, this favourable tax treatment must apply also to foreign open-ended real estate funds. The applicability of this beneficial provision to foreign closed-ended real estate funds has been confirmed by the First-Degree Tax Court of Milan, decision no. 5952/2018.

### **2022 Budget Law, art. 1, par. 718 – Extension of the SIIQ/SIINQ regime**

Article 1, paragraph 718, of Law no. 234 of 2021 (2022 Budget Law), amended the conditions under which it is possible for a SIINQ (Non-listed Real Estate Investment Company) to apply the special tax regime available for SIIQ (Listed Real Estate Investment Companies). The amendments apply from 1 January 2022.

The SIIQ regime was introduced by Article 1, paragraphs 119-141bis, of Law no. 296 of 2006, for listed joint-stock companies that are resident in Italy or in EU/EEA Member States, which carry out real estate leasing as the main activity. The SIIQ regime provides for the exemption from IRES and IRAP of the business income produced by the leasing activity ("exempt activity") and the taxation of the profit deriving from the exempt activity at the level of the shareholders other than the SIIQs at the time of distribution, through the application of a 26% withholding.

The mentioned regime could be extended to non-listed joint-stock companies resident in Italy, carrying out real estate leasing activities mainly, in which an SIIQ (also jointly with other SIIQs) held at least 95% of the voting rights at the ordinary shareholders' meeting and 95% of the profit sharing rights.

## **LED Taxand - Real Estate Tax Insider No. 4/2021**

Following the amendments made by the 2022 Budget Law, the regime at hands may be extended, upon jointly option, to non-listed joint-stock companies, limited partnerships and limited liability companies, provided that the relative share capital is not lower than that referred to in art. 2327, Civil Code (50,000 euros), resident in Italy, carrying out real estate leasing activity as main activity (as defined in paragraph 121), in which, alternatively:

- a) a SIIQ or SIINQ owns more than 50% of the voting rights in the ordinary shareholders' meeting and 50% of the rights to participate in the profits; or
- b) at least one SIIQ or SIINQ and one or more other SIIQs or SIINQs or real estate investment fund referred to in art. 12 of D.M. 5 March 2015, n. 30 – whose assets are invested for at least 80% in real estate intended for lease or in investments in SIIQ or SIINQ or other real estate AIFs that invest in the same assets or rights in the same proportions – together own 100% of the share capital, as well as the voting rights in the ordinary shareholders' meeting and the rights to participate in the profits, provided that the SIIQ or SIINQ or the participating SIIQs or SIINQs hold at least 50% of the voting rights in the ordinary shareholders' meeting and profit sharing.

For further information please refer to your contact in LED Taxand: [jpbaroni@led-taxand.it](mailto:jpbaroni@led-taxand.it), [fcardone@led-taxand.it](mailto:fcardone@led-taxand.it) or [eprocopio@led-taxand.it](mailto:eprocopio@led-taxand.it).

**DISCLAIMER: *The information contained in this newsletter cannot be considered as a legal opinion. LED Taxand does not accept any liability in connection with the use of such publication without the collaboration of its professionals.***