



Italy: New tax incentives to boost the real estate sector

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The Law Decree no. 34/2019 (so-called 'Growth Decree') introduced, among others, new tax incentives to boost the real estate sector. On 27 June 2019, the Italian Parliament converted the Growth Decree into law and it partly amended the text of the decree. The aim of this Tax Alert is to summarize these incentives/opportunities.

1. Securitization of Real Estate Properties and Registered Movable Assets

The Growth Decree, amongst other things, introduced a series of amendments to Law no. 130/1999 (the 'Securitization Law') on securitizations and particularly with regard to Real Estate Companies (RECs) and Leasing Companies ('LCs') established to support the securitization of unlikely-to-pay receivables ('UTPs').

The Growth Decree provides for numerous measures facilitating the disposal of non-performing loans owned by banks and financial intermediaries through securitization operations. In this regard, the main innovations introduced by the Growth Decree are aimed mainly to:

- i. facilitate the transfer of positions classified as 'probable default' or UTP;
- ii. widen the scope of securitization SPVs to support the debtors of purchased receivables;
- iii. clarify the ancillary nature of SPVs to the securitization itself: all the sums arisen from the management and enhancement of assets and rights shall be paid to the SPV;
- iv. enable the intervention of RECs, in the securitization of assets and rights to be in the exclusive interest of the securitization, tax neutral; and
- v. define the type of securitization of real estate, registered movable property and real or personal rights.

Furthermore, the new paragraph 4 of article 7.1 provides for the possibility of incorporating more than one REC in the form of a limited company, with the sole purpose of acquiring or disposing the assets securing the loans. These companies, in accordance with the new amendments, may act either directly or indirectly through one or more additional SPVs (where the reference to the aiding role of the REC seems to be aimed at underlining the ancillary nature of the securitization).

2. Tax incentives for Real Estate Companies and Lease Companies

The Growth Decree, as indicated above, amends the Italian Securitization Law and introduces several tax incentives with the aim to incentivize the use of RECs and the LCs established to support the securitization of Non Performing Loans ('NPLs') and UTPs.

More specifically, RCs and LCs are incorporated with the purpose of purchasing, managing and developing the real estate properties underlying the portfolio of NPLs/UTPs acquired by 130 Special Purpose Vehicles ('SPVs') for the benefit of the 130 SPVs and their noteholders.

Generally the operations of RCs and LCs have been slowed down by the uncertainty of the income tax treatment of proceeds realized by RCs and LCs. In 2019 the Italian Tax Authorities ('ITA') have taken the view that the income realized by RCs from the management of their real estate properties is ordinarily subject to income taxation (re. tax rulings no. 18/2019 and no. 56/2019). According to the ITA, since the real estate properties of RCs do not legally qualify as a pool of segregated assets (*'patrimonio separato'*), the income generated by such assets should be taxed in the hands of the RCs. The view taken by the ITA has been criticised by most tax commentators.

2.1 Definition of the Income tax treatment

The Growth Decree has defined that assets, rights and amounts deriving from the management of real estate properties of RCs and LCs, as well as any other right acquired in the context of the securitization of NPLs/UTPs, qualify as a pool of assets (*'patrimonio separato'*). This provision is aimed at removing any doubts and uncertainty as to the applicability of the same income tax regime applicable to 130 SPVs to RCs and LCs.

As a result, all proceeds deriving from the acquisition, management and disposal of real estate properties carried out by RCs and LCs should generally qualify as 'off-balance sheet' items and should not be subject to corporate income tax (IRES) and regional tax on productive activities (IRAP).

2.2 Transfer tax incentives

From a transfer tax perspective, the Growth Decree introduces tax provisions whereby acquisitions of real estate properties by RCs and LCs are subject to transfer taxes (registration tax, mortgage and cadastral taxes) at negligible fixed amounts, irrespective of the nature of such properties.

Furthermore, the same favourable tax regime applies also to subsequent disposals of real estate properties made by:

- RCs to:
 - i. purchasers that carry on a business activity, on condition that the purchaser undertakes to transfer the relevant property within five years from the purchase, and
 - ii. individuals qualifying for the so-called 'first-dwelling' beneficial tax regime;
- LCs, in cases of termination of leasing agreements due to the lessees' behaviour, not limited to the lessees' default and irrespective of the conditions applicable to RCs.

3. Further tax incentives for the real estate industry

The Growth Decree also introduces tax incentives for enterprises that acquire real estate properties, even under the VAT exemption regime (Article 10 of the Presidential Decree no. 633/1972), with the purpose of:

- i. demolishing;
- ii. re-developing;
- iii. or carrying out extraordinary maintenance, restoration and conservative improvements, building refurbishments, pursuant to the Article 3, paragraph 1, letters b), c) and d), of the Presidential Decree no. 380/2001;

and subsequently transferring such properties within 10 years from the relevant acquisition.

Indeed, purchases and subsequent disposals of real estate properties made by enterprises by 31 December 2021 can benefit from the application of registration tax, mortgage and cadastral taxes at negligible fixed amounts (EUR 200 each) provided that the purchasing enterprise demolishes, re-develops and transfers the property within 10 years and that the reconstruction of the real estate properties is carried out in accordance with the anti-seismic rules and the new property is classified within energy classes 'NZEB', 'A' or 'B'.

Furthermore, it specifies that the aforementioned tax regime may be solely applied when the subsequent transfer involves at least 75% of the volume of the new real estate property. This is particularly relevant when the real estate property is divided into different real estate units.

Moreover the new text of the Growth Decree introduces an exemption related to a specific municipal tax, the so-called 'TASI'. Indeed, the decree states that, from 1 January 2022, TASI is not applied when a real estate property is built by an enterprise with the aim to be subsequently transferred. Therefore, this tax regime may be applied as long as the property is not rented and it is not intended for purposes other than for sale.

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