Studio Inzaghi

The legal side of real estate

# Real Estate News

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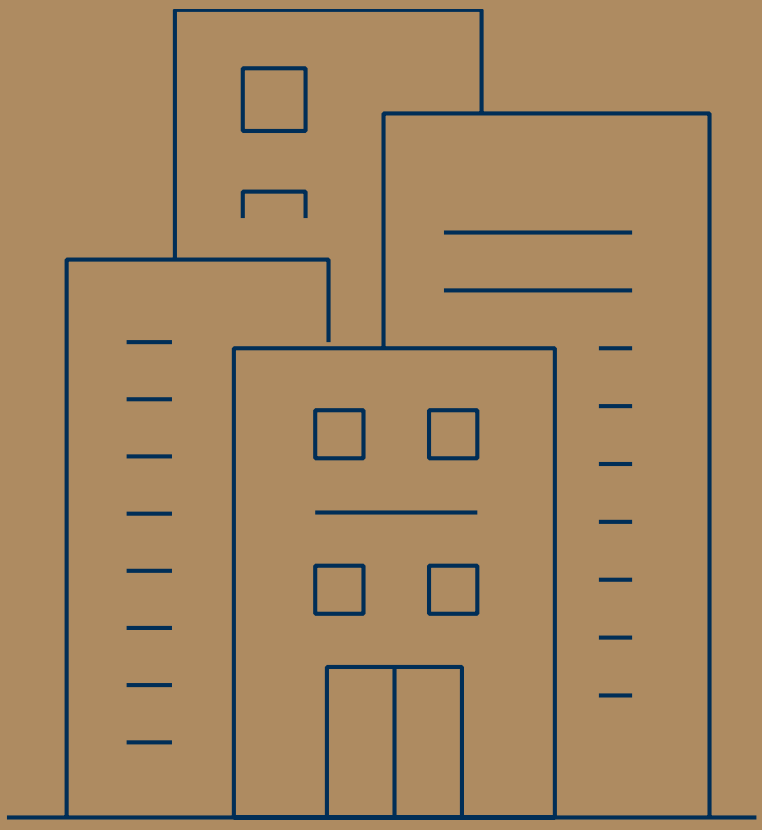

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# Town Planning

## "Save-Milan" Law Decree: SI - Studio Inzaghi with Assoimmobiliare (Italian Real Estate Industry Association) to improve the text of the draft law

Guido Alberto Inzaghi and Tommaso Fiorentino - respectively President and Coordinator of the Town Planning Table of Confindustria Assoimmobiliare - wrote the legal contents of the comments to the text of the law proposal "Dispositions on the detailed plans or allotment by agreement and building renovation works connected to urban regeneration" (so-called 'Save Milan').

Guido also outlined Assoimmobiliare's requests during the parliamentary hearing held last 12 September at the Environment Commission of the Chamber of Deputies, stressing the need for a better definition:

(i) of the criteria to be met so that, until the reorganisation of the matter, titles issued in the absence of a prior implementation plan are legitimate and demo-reconstruction works can be traced within building renovation;

(ii) of the building procedures that municipalities should instruct under the law proposal, so that the new provisions cover not only the titles issued but also those in the preliminary investigation or to be submitted until the reorganisation.

## News in the Save Home Law Decree

The collaboration between SI - Studio Inzaghi and Il Sole 24 Ore on the novelties of the so-called Save House Decree, as converted, goes on successfully.

In particular,

- Guido Alberto Inzaghi and Andrea Ceriani commented on the new provisions on the legitimate state and the new deadlines for the demolition and restoration of unauthorised buildings, including the disposal of the same should the abuses not be removed (Focus of Il Sole 24 Ore dated 8 August 2024);
- a number of practical tips with actual cases and procedures have been drawn up by the firm's professionals to better use the new regulations (Il Sole 24 Ore, 2 August 2024);
- Guido Alberto Inzaghi commented on the new regulations on the possibility of amnesty pursuant to Article 36-bis of Presidential Decree 380/2001 which, after the amendments made during conversion, allows for the regularisation of essential non-conformities (Il Sole 24 Ore of 29 July 2024);
- "*Lo stato legittimo degli immobili basato sull'ultimo titolo ora e più restrittivo*" by Guido Alberto Inzaghi and Andrea Ceriani, posted in Norme & Tributi Plus of Il Sole 24 Ore on 19 July 2024 (available at link).

## Medium-sized commercial premises: the Lombardy Region's guidelines for Municipalities have been published

On 29 July 2024, the Lombardy Region published in its Official Journal Resolution no. XII/2828, concerning "Directions to Municipalities for the issuance of authorisations for the activities of medium-sized commercial premises ("**MCP**")".

The Resolution, which replaces the previous D.G.R. 6024/2007, provides the instructions (also defined as "guidelines") to be followed by the Municipalities in drawing up the criteria for assessing applications for the opening and change of MCP, in relation to the following aspects:

- positioning of MCPs;
- authorisation procedure;
- layout of commercial premises;
- use of drivers for assessing the impacts and sustainability of applications;
- use of standards concerning the documentation that may be produced as an attachment to the application;
- use of other general provisions.

In particular, as far as the establishment of MCPs is concerned, municipalities are recommended to give priority to their settlement:

1. in areas with urban regeneration projects;
2. in areas that do not create significant territorial and environmental impacts and do not lead to further land consumption, while at the same time achieving general development goals;
3. in areas in the proximity of railway stations, air terminals, ports and other stations and interchanges of public and private transport
4. outside "agricultural or natural" areas, identifying measures to encourage the reuse of brownfield sites, to be regenerated or reclaimed.

The regional guidelines deem it advisable that works on MCPs be carried out through projects for the overall redevelopment of the city context and in close connection with the Trade District, where applicable.

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## Conversion into Law of the so called "Save Home" Law Decree

During the conversion process of Law Decree 69/2024, pertaining urgent provisions on building and urban plannings simplification, on 16th July 2024 the Environment and Territory Commission of the Chamber of Deputies approved the text to be sent to the Chamber, sharing some of Confindustria Assoimmobiliare's proposals which have been developed by SI– Studio Inzaghi as part of the Association's Urban Planning Committee, chaired by Guido Inzaghi.

Indeed, the Chamber Commission has:

- extended the building title conformity assessment procedure, referred to in the new art. 36-bis of the Consolidated Construction Law, i.e. Presidential Decree 380/2001,

also to the so called "essential variations" referred to in article 32: even in these cases - as well as for minor discrepancies - it will therefore be possible to obtain the amnesty building title (or apply for a SCIA in amnesty), if the intervention complies with urban planning regulations in force only at the time of submission of the amnesty building title, thus overcoming the double urban planning compliance (i.e. also at the time of execution of the works) currently in force;
- expanded and liberalized – with the new text of art. 23-ter of the Consolidated Building Law – those changes in the intended use for single real estate units, between the various functional categories and also with works, excluding these cases from the obligation to provide for areas for public services and infrastructures and appurtenant parking pursuant to Law 1150/1942.

Click the link to read the text that the Environment and Territory Commission of the Chamber of Deputies has approved and that, at the end of the parliamentary procedure, which has already begun in the Chamber of Deputies, may become law in full force and effect.

## Save Home Law Decree

On 30 May 2024 the Save Home Law Decree came into force (law-decree no. 69 of 29 May 2024).

The Law Decree includes provisions on building and town planning simplification to overcome interpretative uncertainties and allow for the redevelopment and economic enhancement of existing real estate.

Following the publishing of the decree, the professionals of SI - Studio Inzaghi commented on the innovations introduced by the Save Home for Il Sole 24 ore with the following pieces:

- "*Possibile rimediare agli abusi minori solo nei casi di difformità parziale. Sui cambi d'uso resta l'ostacolo delle norme varate a livello comunale*", by Guido Alberto Inzaghi on the front page of Il Sole 24 Ore of 3 June 2024 available at link);
- "*Esempi di casi pratici in applicazione delle nuove disposizioni*", by the professionals of SI - Studio Inzaghi (available at link), published in Il Sole 24 Ore of 3 June 2024;
- "*Stato legittimo. Verifica anche solo sull'ultimo titolo se nasce da procedimento idoneo*", by Guido Alberto Inzaghi, published in Norme & Tributi (Il Sole 24 Ore) of 7 June 2024;
- "*I Comuni potranno vendere gli immobili abusivi*", by Andrea Ceriani, published in Norme & Tributi of Il Sole 24 Ore on 7 June 2024.

## During the Italian Council of Ministers meeting on 24 May, the "Save Home" emergency law-decree was approved

The Decree amended several articles of Presidential Decree no. 380/2001 by providing:

- the recalculation of the so-called constructive and executive tolerances;
- the simplification of the double compliance mechanism for minor discrepancies;
- the simplification of proving the legal status of real estate;
- the facilitation of changes of use;
- the extension of works that can be carried out as free building works;
- the fostering of prosecution of unauthorised buildings by Municipalities;
- the opportunity to maintain some temporary structures built during the health emergency.

Here is the text of the Decree and the MIT's summary slides.

## Decisional services meeting: further reduction of terms for the procedure's completion

The service meeting, as is well known, aims to bring together the public administrations that have to investigate or approve a project.

The "accelerated" service meeting procedure set forth in Article 13 of Law Decree 76/2020 was recently amended by Article 12, paragraph 6 (a) and (b) of Law Decree no. 19 of 2 March 2024 on "Further urgent provisions for the implementation of the national recovery and resilience plan (PNRR)."

What's changing:

- the possibility of using the simplified meeting in asynchronous mode, as regulated by Article 13 of Decree Law 76/2020, is extended until 31 December 2024 in all cases where a decisive service meeting must be convened;

the term within which, in the context of holding the simplified meeting referred to above, the proceeding administration carries out, outside the cases referred to in Article 14 bis paragraph 5 of Law 241/1990, the telematic meeting following the conference in asynchronous mode is reduced from 30 to 15 days.

It should be noted that the 15-day period runs from the expiration of the deadline for the issuance of resolutions pertaining to individual administrations. As previously, the unconditional consent of administrations that did not attend the meeting, or that, while attending, did not express their position, is still considered to have been acquired.

## Plenary Council 3/2024 – calculation of the fine pursuant to Article 33, paragraph 2 of Presidential Decree 380/2001

Plenary Council No. 3/2024 clarifies the mechanism for calculating the fine for heavy building renovation work carried out in the absence of or in total non-compliance with the Building Permit, where pristine restoration is not possible.

In the above cases, Art. 33, paragraph 2, of Presidential Decree no. 380/2001, provides for the imposition of "a fine equal to twice the increase in the value of the

property, resulting from the execution of the works, measured, with reference to the date of completion of the works, according to the criteria provided for by Law No. 392 of July 27, 1978, and with reference to the latest cost of production set by ministerial decree, updated to the date of the execution of the abuse, based on the ISTAT index of the cost of construction".

In relation to Article 33, the Plenary Council specified that:

- the expression "date of execution of the abuse" should be read as the time when the illegal works were carried out;
- for the purposes of calculating the fine to be set pursuant to Art. 33, c. 2, of Presidential Decree No. 380/2001, the conventional surface area must be determined pursuant to Art. 13 of Law No. 392/1978 and the unit cost of production should be calculated, based on the decree updated as of the date the abuse was carried out. The total cost of production, given by multiplying the conventional area with the unit cost of production, should be discounted according to the ISTAT construction cost index.

## Urban regeneration: Parliament's examination of draft laws progresses

On 20 February 2024, the latest draft law (no. 1028) was submitted, entitled "Provisions for urban regeneration and sustainable use of land", which will be discussed together with the previous drafts.

Below you can find the main points of the new draft:

(i) promotion of the building re-use of already developed and built-up areas, as well as public or private building complexes in a state of decay, abandonment, disused or unused, also by means of the related prohibition of use or sealing of new soil;

(ii) setting up the "fund for urban regeneration and preventing land wasting";

(iii) forecasting incentive systems with priority for reuse and regeneration or reclamation of polluted sites and the recovery of land for agricultural or environmental purposes, including through the demolition of existing buildings inconsistent with the landscape context;

(iv) obligation for Municipalities to have a Green Plan as a specific planning tool;

(v) creation of the "social role of property", whereby the municipality may acquire decaying or unused buildings whose conditions of decorum are not ensured.

We enclose the text of draft law no. 1028, on whose progress and discussion in the Commission we will keep you updated.

## Further extension of deadlines for building permits, agreements and implementation plans

Law no. 11/2024 (which came into force on 8 February 2024) for the conversion of Law Decree no. 181/2023, amends the so-called "Ukraine Decree" (Law Decree no. 21/2022) and provides:

- for works currently in progress or to be started, the possibility of benefiting of an extension to two years and six months of the extraordinary extension of the deadlines for the start and end of works (originally envisaged to be only two years) relating to BPs issued or created up to 30 June 2024.

  This extension: (i) is also applied to SCIAs, landscape authorisations and environmental declarations and authorisations, however called; (ii) it is not automatic but subject to a communication to the municipality by the interested party, subject to verification of certain conditions;

- for allotment agreements or similar agreements, as well as for implementation plans (and any preparatory deeds) drawn up until 30 June 2024, the extension of the validity terms and commencement and completion of works is two years and six months.

  This extension is automatic as long as it does not conflict with the conditions specified by law.

# Real Estate

## Restructuring – Protective measures in the negotiated settlement of business crises and real estate leases

By means of an article published in Il Sole 24 Ore - Norme e Tributi Plus, Ivana Magistrelli and Paolo Marensi highlight the steps that landlords can take to protect their rights in the event that the company in crisis is the tenant.

The article here.

## Data Center: Green light for guidelines on environmental assessment procedures

In Il Sole 24 Ore, Silvia Gnocco commented on the novelties included in the guidelines for data centre environmental assessment procedures of the Ministry of the Environment and Energy Sovereignty (MASE) issued by Decree no. 257 of 2 August 2024 of the General Directorate for Environmental Assessments.

In particular, it was pointed out that the power of the (emergency) generators depends on the procedures that operators must follow: verification of subjection to environmental impact assessment (EIA) if the nominal power is between 50 and 150 MW, or actual EIA in the case of power above 150 MW.

The challenge is to combine what is provided for in the guidelines with greater simplification and a reduction in the timelines of the authorisation process.

## SI Studio Inzaghi in the "Real Estate 2024 - Global Practice Guides" published by Chambers and partners

SI – Studio Inzaghi, with its partners Guido Alberto Inzaghi, Ivana Magistrelli, Silvia Gnocco and Gabriele Paladini, contributed to the Italian "Real Estate 2024" Section of the "Chambers' Global Practice Guides".

The Real Estate 2024 Guide (available at link) provides an overview of the Italian legal and tax issues of the real estate industry, covering transactions, real estate finance, planning and zoning, investment vehicles, commercial leases and development.

## Student Housing and National Recovery and Resilience Plan (PNRR) resources: guidelines for use

Click here to download the slides projected as part of the Roadshows organised across Italy by Cassa Depositi e Prestiti and the Ministry of University and Research.

They summarise the main contents of the tender notice (Ministerial Decree 481/2024 et seq.) and of the simplification procedures adopted with Law Decree no. 4 (Law Decree no. 19 of 2 March 2024) as well as identify some practical cases to support operators.

## Data Center – the Guidelines of Lombardy DGR XII 2629/2024

Click here to read the Guidelines of Lombardy Regional Council Decision XII 2629/2024 which, given the absence of specific legislation, are intended to provide some uniform guidelines to municipal administrations, also from a town planning and environmental point of view.

Among the most significant recommendations are the town planning consistency with areas or buildings for production and office use.

The Guidelines deem it appropriate that applications for medium- and large-sized buildings be assessed during the services meeting in which the Province or the territorially interested city expresses an opinion on the suitability of the project on the basis of the same Guidelines.

As a first comment, we note that the environmental VIA/AIA procedures provided for in the Guidelines are likely to be triggered only in cases where there is also a defined plan of the IT infrastructure to be housed in the building, but not in pure town planning - general or implementation - where the related energy requirements are not yet identifiable.

## PNRR student housing – New MUR FAQ on the tender notice posted

Ministerial Decree no. 481 of 26 February 2024 set out the rules for the allocation of PNRR resources (Euro 1.2 billion) for the development of student accommodation and residences.

After the first explanations published on 8 April 2024, new FAQs were published yesterday, here attached.

Important answers are given on various issues, including those related to: (i) technical or dimensional requirements; (ii) the nature of the managing/implementing entity; (iii) the calculation of charges; and (iv) costs eligible for co-financing.

We recall that for the realisation of the PNRR student housing, the provisions of the so-called PNRR Decree 4 shall also be taken into account, with its simplification and acceleration mechanisms compared to the ordinary ones.

## Conversion "Law Decree Italian Recovery and Resilience Plan 4": administrative fast track for student housing

The draft law for the conversion of Law Decree No. 19 of 2 March 2024 (known as DL.PNRR 4), approved yesterday by the Chamber of Deputies and submitted to the Senate, contains important novelties in relation to the construction of student accommodation and residences with PNRR resources.

In particular, in addition to the following provisions already provided for in the original text of the Law Decree, which allow:

- change of use also departing from town planning instruments by means of SCIA (not including constrained properties)
- not being subject to the rules on minimum parking spaces
- a volume increase of 35% for building renovation works

it is now allowed to use the building permit as an exception for the development of new student housing in areas "already fully sealed".

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## Leases to Public Administration entities: yes to Istat indexation and no rent reduction for lease renewals

The ISTAT adjustments of rents paid by the PA is once again possible. This can be gathered from the conversion law of the so-called "Milleproroghe Decree", Law Decree no. 215 of 30 December 2023, expected in the Official Gazzetta, which does not provide for the postponement already provided for by Law Decree 95/2012 (converted with amendments by Law 135/2012).

Moreover, until 31 December 2024, for the renewals of passive lease agreements entered into with state administrations, the 15% reduction of the market rent (provided for in Article 12 sexies of Decree-Law No. 146 of 21 October 2021) does not apply if:

(i) the energy class of the building is not less than B (or D for constrained buildings);
(ii) there is adequate space per employee per square metre;
(iii) the new rent is less than the last amount paid.

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## "Italian Recovery and Resilience Plan Decree 4": new features for student accommodations

The draft PNRR Decree 4 examined by the Council of Ministers includes important innovations in relation to the development of student accommodation with PNRR resources.

In particular:

1. the appointment of an ad hoc Extraordinary Commissioner;

2. the fee to the manager (3 annual instalments) may be disbursed in a single payment (against an appropriate guarantee and the retention of the use as a student residence);
3. the change of use will also be possible by way of departure from the provisions and limitations of the town planning instruments and may take place by means of a SCIA (special rules are envisaged for constrained buildings);
4. not subject to the rules on minimum parking spaces;
5. in case of renovation pursuant to Article 3 paragraph 1 of the Building Code, there will be the possibility of a 35% volume increase.

# Tax

## Reduced Property Tax (IMU) for buildings leased under lease agreements applying the "agreed rent rules"

By means of a recent ruling, TAR Milan has confirmed the applicability of the reduced IMU, provided for buildings leased under the "agreed rent" regime, in cases where the lease agreement has been entered into on the basis of agreements between associations representing building owners and associations representing tenants (pursuant to Law No. 431 of 9 December 1998) but not recognized by the Municipality.

The applicable regulations on IMU provide for a benefit for buildings leased under the "agreed rent" regime, consisting of a reduction of the rate set by the Municipality (i.e. 75% of the standard rate). This benefit applies to lease agreements entered into on the basis of the agreements, defined on a local basis, between the aforementioned associations.

The issue concerned the relevance of the Municipality's approval of the aforementioned agreements between associations for the purposes of Law No. 431/1998 and, therefore, for IMU purposes.

TAR, upholding the appeal of the associations Assocasa, Feder.casa Lombardia, Confabitare and Unioncasa, deemed illegitimate the failure of the Municipality of Milan to reduce the IMU rate for those lease agreements under the "agreed rent" regime, signed according to the agreement between the aforementioned associations but not approved by the Municipality of Milan.

According to the ruling mentioned above, the Municipality's failure to approve the agreements at issue does not prevent the lease agreements entered into under such agreements to be qualified as having "agreed rent" regime pursuant to Law No. 431/1998: therefore, also those buildings which are subject to such lease agreements can benefit from the IMU reduction.

## Real estate funds - The Italian Supreme Court confirms full applicability of the asset segregation principle for tax purposes

### Key points

The Supreme Court's judgement no. 16285 of 12 June stated a principle of law, which is acceptable and should be taken into account in several transactions relating to the management of real estate funds:

- in case of termination of a real estate fund, following winding-up, there is no direct liability of the AIFM (SGR) that managed the fund with respect to the non-payment of VAT;

- this is without prejudice to the case where the Tax Agency asserts an autonomous title of liability of the SGR, which cannot arise merely from the management ratio;
- therefore, the SGR is not liable with its own assets for any VAT debts relating to the real estate fund that has been wound up.

**Possible impacts for real estate funds (brief notes)**

This decision, which confirms the full operability of asset separation between SGR and fund (set out for legal purposes in Article 36 of the Consolidated Law on Finance) also for tax purposes, is significant in many cases, for example:

- **Property tax (IMU) disputes:** the Tax Authorities' claim should no longer concern the SGR's assets, but should be limited to the fund's assets (as autonomous and separate assets);
- **Precautionary measures** (put in place by the Tax Agency when collecting or making refunds): the Agency should not charge fund A with effects arising from the existence of tax debts of fund B (asset separation also applies between funds managed by the same SGR);
- **Replacement of the SGR:** Notices for tax liabilities of a fund issued by the Tax Agency after the replacement of the SGR for years preceding the replacement should not be served on the replaced SGR, since the latter cannot be liable with its assets, it no longer has the power to represent the fund in court and the management relationship with the fund no longer exists;
- **Winding up of the real estate fund**: limitation of the SGR's liability for tax liabilities of the fund arising after winding-up not only for VAT (Supreme Court of Cassation cited above) but also for IMU, registration tax and mortgage and cadastral taxes.

This will apply, a fortiori, in case of the externally-managed real estate SICAF (with SGR as external manager): in addition to the asset separation pursuant to Article 36 of the Consolidated Law on Finance, the SICAF, as an S.p.A., is an autonomous and distinct legal entity from the SGR to which it has delegated the management of its real estate assets.

According to the Supreme Court this is without prejudice to the case in which the Tax Agency can prove a specific liability of the SGR: however, again according to the Supreme Court, this liability cannot arise only from the management relationship, but requires something more, which will have to be proved by the Agency (by contrast with the current situation). It is worth pointing out that the tax system does not provide for specific regulations on the SGR's tax liability in the cases mentioned above: the issue will therefore have to be assessed on a case-by-case basis, through tax due diligence, with respect to the specific tax liability, considering the regulations governing that tax and the origin of the liability.

## Tax credits from building bonuses - As of 1 January 2025, limits for banks and insurance companies on offsetting for tax purposes

The tax capacity for the purchase of tax credits will therefore be reduced.

This is what is provided for by Article 4-bis, paragraphs 1 and 3, of Law no. 67/2024 (which converted Law Decree no. 39/2024), relating to several measures on tax bonuses for construction, about to enter into force (publication in the Official Gazzetta is being awaited).

In case of breach, in addition to the retrieval of the unduly compensated amount, plus interest, a penalty of 30% will apply (Art. 4-bis, paragraph 2).

The new provision may have an immediate impact on the building bonus tax credit field, considering also the other changes on building bonuses.

These are, as known, the tax credits that banks (and other entities) purchase on the basis of the provisions, which have been amended several times, that allow building bonuses, *i.e.* benefits in the form of tax deductions in favour of persons who carry out certain building works (superbonus, bonus-facades, etc.), to be turned into transferable tax credits. The purchaser of the tax credit (e.g. the bank) may use it, under certain conditions, to pay, by offsetting, taxes and other sums owed to the State, including social security and insurance payments (see Tax Agency, answer to query no. 478/2023).

This legislative amendment limits the so-called tax capacity of banks, i.e. the capacity of the bank's tax liabilities that can be paid by offsetting with tax credits (an issue on which the Bank of Italy has intervened in the past). This could require banks to reduce the purchase of tax credits immediately, in view of their limited use as from 1 January 2025.
The restriction does not apply to entities other than banks, insurance companies and other financial entities referred to in the new provision.

The sector of building bonus credits is also important for construction companies to monetize these credits by assigning them (as tax credits) to third parties.

## Revenue Agency – Guidelines on (i) withholding tax exemption for income distributed by real estate funds to foreign investors and (ii) short leases

The Tax Agency has released interesting clarifications on: (i) the exemption from withholding tax for income distributed by real estate funds to foreign investors (answer to query No. 104 of 13 May 2024') and (ii) the short lease (Circular No. 10/E of 10 May 2024).

In particular:

- with its response to query, the Tax Agency has reaffirmed some essential points regarding the exemption from withholding tax on income distributed by Italian real estate AIFs (funds and Sicaf) to foreign institutional investors (in this case, a Canadian retirement fund investing through an intermediary vehicle);

- the Circular provides a useful overview of the complex legal framework of the short leases, as recently amended.

Short leases are agreements for the lease of residential properties, including those with certain ancillary services, having a duration not exceeding 30 days, entered into by a "natural person-non-entrepreneur" landlord (Article 4, paragraph 1, of Law Decree no. 50 of 24 April 2017). The definition includes agreement executed through real estate intermediaries, *e.g.*, online platforms for short leases.

The regulations therefore concern both individuals who lease properties (in terms of taxation of rental income) and persons who run websites for short-term leases (required to fulfil specific obligations for tax purposes).

The amendments commented in the Circular concern:

- the increase from 21% to 26% of the substitute tax on short lease income in the case of an option for the flat tax (*cedolare secca*) with the option to apply 21% for only one property. Should the lease involve 5 or more flats, the activity qualifies as a business activity and, therefore, is excluded from the special tax regime for short-lease
- the possible withholding by intermediaries, including those who operate platforms for short leases;
- the fulfilment of tax obligations with the Tax Agency for non-resident intermediaries (also in light of recent case law of the Court of Justice of the European Union).

## Tax Reform - Overview of new tax rules regarding the real estate sector

In accordance with the enabling law for the reform of the tax system, the Council of Ministers has approved a number of draft legislative decrees, among which we highlight below the most significant ones for the real estate sector.

On April 30, the draft legislative decree aimed at the overall review of the taxation system of the income of individuals and companies was approved in a preliminary way. As far as it is relevant, we highlight that:

1. in case of building plots acquired by donation, the purchase price shall be deemed to be the price paid by the donor, increased by donation tax and any subsequent inherent costs;
2. regarding the transfer of property acquired by donation no more than five years earlier, the donation tax as well as any subsequent inherited costs are also included in the calculation of the acquisition cost, similarly to what is currently provided for land acquired by inheritance.

The draft legislative decree containing provisions for the rationalization of indirect taxes other than VAT (i.e. registration tax, inheritance and donation tax, stamp tax and other indirect taxes) was approved on 9 April. In this respect we point out the following tax amendments:

(i) trust: the settlor of a trust will be able to opt for the payment of inheritance and donation tax on a voluntary basis and in advance at the time of the contribution of assets to the trust;

(ii) inheritance tax: for the purposes of (a) the tax base, (b) the determination of tax rates and (c) the deductibles, what has been transferred during the lifetime by way of a donation is to be excluded from the determination of the inheritance.

## Property Tax (IMU) is not due for an illegally occupied property if the owner has taken prompt action in court to vacate the property

By virtue of the Constitutional Court's decision no. 60 published on 18 April 2024, the exemption from the tax provided for as of 1 January 2023 for illegally occupied properties for which the taxpayer has taken action in court to obtain their vacating by filing a charge with the competent judicial authorities (Article 1, paragraph 759, of Law No. 160 of 2019 as amended by Article 1, paragraph 81, of Law No. 197 of 2022), is in fact extended also to previous tax periods.

According to the Constitutional Court, it is unreasonable and contrary to the principle of the ability to pay taxes that the owner of an illegally occupied property, who has promptly reported the matter to the competent judicial authorities, is required to pay IMU for the period from the time of the report to the time when the property is vacated. The Court stated that the ownership of such property does not constitute, for the period in which it is illegally occupied, a valid index of wealth for tax purposes of the legitimate owner.

What is decisive, for the purposes of the IMU exemption, is not the mere occupation but the conduct of the taxable person aimed at regaining the possession of the property.

# Litigation

## Preliminary agreement conditional upon the granting of an administrative order and failure to obtain the order

It often happens that the parties make the effectiveness of a preliminary sale and purchase agreement conditional upon the obtainment of an administrative order, such as a town planning change, by the promissory purchaser, on behalf of the promissory seller.

According to the Supreme Court (Decision no. 5976 of 6 March 2024), should the title not be issued due to the promissory purchaser's fault (who perhaps did not file the application or filed it improperly), the condition cannot be considered fulfilled for this reason, and therefore the preliminary agreement effective, resulting in the obligation to purchase the property by paying the price.

The very recent decision is particularly interesting because of the well-known difficulties in obtaining building permits resulting from the ambiguous interpretation of the field regulations.