Studio Inzaghi

The legal side of real estate

Real Estate News

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Highlights

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Italian Real Estate Alternative Investment Funds and tax exemption for non-resident investors

Adopted the simplified amendment of Territorial Strategy regarding data center

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Mandatory catastrophe insurance policies and the real estate industry: the case of leased properties

1. Catastrophe risk insurance: framework

   On 31 March 2025, Law Decree no. 39 was published, extending the obligation to enter into insurance agreements to cover damages to company assets, including properties, resulting from natural disasters and catastrophic events. The legislation, set out in the Budget Law 2024 (*Legge di Bilancio* 2024) and implemented by Interministerial Decree no. 18 of 30 January 2025[1], has recently been clarified by MIMIT[2].

   The insurance coverage obligation is aimed, basically, at preventing the systemic risk that could occur when company's assets are hit by catastrophic events, with obvious negative effects on the economic system. As a result of the extension, the deadlines for taking out insurance policies are the following:

IMPRESA	TERMINE
Grandi imprese	31 marzo 2025
Medie imprese	1° ottobre 2025
PMI e microimprese	31 dicembre 2025

   The obligation concerns (i) Italian companies registered in the Companies Register (excluding agricultural companies) and (ii) foreign companies with a permanent establishment in Italy.

2. The insurance obligation in case of leased property

   The insurance coverage must cover[3] the assets used in the business activity falling within those indicated in Article 2424 of the Civil Code, in the "**Tangible Assets**" (*Immobilizzazioni materiali*) section. This category includes, as is well known, buildings and land.

   In particular, the provision mentions the assets referred to in Article 2424, Active Section Item B-II, Nos. 1), 2) and 3) of the Civil Code, used under any title for the exercise of the business activity, with respect to which the MIMIT has precisely clarified that insurance coverage obligation therefore also covers assets that the company uses under a lease agreement, in its capacity as tenant (FAQ no. 1 published on the MIMIT website). Furthermore, according to the Ministry, the reference to Article 2424 of the Civil Code is intended to identify the categories of assets (land, buildings, systems and equipment) and does not imply that the assets must be recorded in the financial statements and, therefore, owned by the insured company.

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[1] *Regulation on the implementation and operational procedures for catastrophe risk insurance schemes pursuant to Article 1, paragraph 105 of Law no. 213 of 30 December 2023.*
[2] *Ministry of Companies and Made in Italy: https://www.mimit.gov.it/it/assistenza/domandefrequenti/polizze-catastrofali-risposte-alle-domande-frequenti-faq*
[3] *Pursuant to Article 1(b) of Decree No. 18/2025.*

In other words, what matters for the purposes of the insurance coverage requirement is that the asset is used by a company or permanent establishment in the course of industrial or commercial activities, regardless of the legal title on which the use of the asset is based.

3. Properties owned by investment funds and Sicaf

MIMIT's guidelines implies that tenant companies (companies resident in Italy or foreign companies having permanent establishments in Italy) are subject to the obligation to enter into insurance policies, in relation to leased properties, to cover catastrophe risks, in accordance with the legislation at hand.

However, according to MIMIT[4], this obligation does not apply when the property is already covered by an insurance policy taken out by the landlord-owner covering the risks mentioned.

Therefore, following this principle, in the context of lease agreements, it will be necessary to verify whether the property is covered by insurance in accordance with the regulations at hand (entered into by the tenant or by the landlord), it being understood that execution of the insurance policy would be a legal obligation only for the tenant-company, not for the landlord owner[5]. Consequently, unless such a policy has already been entered into by the landlord, the tenant must enter into one in accordance with the legislation examined[6].

In view of the above, on the other hand, it shall be considered that the obligation does not apply to real estate funds or Sicafs, as "mere" owners of properties. This is because real estate funds and Sicafs do not qualify as companies for the purposes of the regulations under discussion and the obligation to take out insurance policies concerns assets used in a commercial or industrial business activity, whilst the activity of funds and Sicafs qualifies as investment of equity[7].

Furthermore, should the real estate fund or Sicaf have already insured the properties against such risks (which is highly likely), the tenant will not be subject to this obligation.

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[4] FAQ No. 1 published on the MIMIT website.

[5] From this perspective, for the landlord, the leased property would be an asset recorded in the financial statement but would not be considered as being used in the context of a business activity for the purposes of the regulations at hand.

[6] To this end, the registration of Sicaf in the Register of Companies as a collective investment entity established in the form of a joint-stock company does not appear to be decisive. In the case of the real estate fund, moreover, this is not enrolled in the Register of Companies (the S.g.r. that manages it is, as is well known, enrolled in the Register of Companies, but it is the fund manager and not a company that owns the properties included in the fund's assets).

[7] Pursuant to Legislative Decree No. 58/1998 including the Consolidated Law on Financial Intermediaries.

Tax

Public-Private Partnership (PPP) and urban regeneration: VAT on the transfer of real estate assets by Municipalities

In its Ruling No. 151 of 10 June 2025, the Italian Revenue Agency addressed the VAT regime of the transfer of real estate assets from a Municipality to a concessionaire as a contribution under Article 177, paragraph 6, of Legislative Decree No. 36/2023 ("**Public Contracts Code**"), within the framework of an urban regeneration project carried out through a Public-Private Partnership ("**PPP**").

1. The case: property transfer as a contribution

   The Italian Revenue Agency, in the ruling under discussion, examined a VAT-related issue of significant interest in urban regeneration operations carried out through PPP.

   A PPP is, in short, an economic transaction based on a long-term contractual relationship between a granting authority (e.g., a Municipality) and one or more private entities, aimed at achieving a public interest objective (e.g., an urban regeneration project). The operation must also meet the criteria set out in Article 174(1) of Public Contracts Code.

   In the case submitted to the Revenue Agency, the PPP is based on a concession contract[8] between a Municipality and a private company and aims to regenerate a former railway station area. The Municipality requested clarification on the VAT regime applicable to the gratuitous transfer of certain real estate assets located in the area subject to regeneration, in favor of the concessionaire. The transfer is made as a contribution to ensure the financial balance of the concession, under Article 177(6) of Legislative Decree No. 36/2023[9].

2. VAT relevance according to the ruling

   The Revenue Agency only addressed the conditions under which a transfer of assets by a Municipality qualifies as a supply of goods for VAT purposes, i.e., as a taxable transaction. In summary, the ruling outlines the following alternatives:

[8] *Pursuant to Article 174, paragraph 3, contractual public-private partnerships include concession agreements — also in the forms of project finance, financial leasing, and availability contracts — as well as other contracts entered into by public administrations with private economic operators, provided that they contain the elements set out in paragraph 1 and are aimed at achieving objectives deemed to be in the public interest.*

[9] *The provision states: "If the economic operation cannot achieve financial and economic equilibrium on its own, public support is allowed. Public support may consist of a financial contribution, the provision of guarantees, or the transfer of ownership of real estate or other rights."*

Operazione	Regime IVA
Trasferimento effettuato dal Comune come Pubblica Autorità sulla base di un rapporto di diritto pubblico	Operazione esclusa dall'IVA
Trasferimento effettuato dal Comune sulla base di un rapporto contrattuale di natura privatistica	Operazione rilevante ai fini IVA

However, the response does not explicitly address the slightly different issue of whether the transfer of the property could be classified as payment in kind by the Municipality to the concessionaire.

In fact, if the transfer is a form of consideration paid in kind by the Municipality to the concessionaire, it would not be necessary to assess the capacity in which the Municipality is acting: the transaction would be subject to VAT in any case, since the supply of goods or services would be performed by the concessionaire[10].

On this basis, the Revenue Agency states that:

"*The transfer of buildable land and buildings by the applicant (the Municipality) to the Concessionaire, as a contribution pursuant to Article 177(6) of Legislative Decree No. 36/2023, is relevant for VAT purposes.*"

This is based on the "contractual nature of the transfer" and the "contractual relationship" between the Municipality and the concessionaire. According to the Agency, the transfer in question does not occur in the context of a public law relationship performed by the Municipality as a Public Authority.

The Agency notes that:

"*The provisions of the concession contract show that the relationship between the parties is of a contractual nature, based on bilateral agreements involving mutual obligations and considerations, with operational methods typical of private economic operators*."

To support its position, the Revenue Agency refers to case law from both the Court of Justice of the European Union and the Italian Supreme Court regarding the interaction between VAT and public entities.

However, the ruling merely affirms the "VAT relevance" of the transaction without specifying the applicable VAT regime or related invoicing obligations.

3. Preliminary considerations

The Revenue Agency's interpretation is particularly noteworthy and raises some questions:

- the ruling states that the transfer of the property as a contribution from the Municipality to the concessionaire is relevant for VAT but does not clarify the applicable VAT regime.

[10] *There is also the issue of the VAT deductibility for the Municipality, which is a different matter from the one addressed in the tax ruling.*

- the ruling does not specify whether the transaction qualifies as:

  a) a transfer of goods (real estate) from the Municipality to the concessionaire: in this case, a consideration (monetary or in kind) paid by the concessionaire would need to be identified, since transfers of goods are VAT-relevant only if made for consideration. It would also be necessary to assess the applicable VAT regime, depending on the characteristics of the transferred assets. The Municipality would need to issue an invoice for the transfer. However, this classification could potentially be excluded on the grounds that the transfer does not fall within the scope of the Municipality's economic activity;

  b) a payment in kind by the Municipality to the concessionaire for the urban regeneration activity: in this case, the Municipality would be required to receive an invoice for the consideration paid in kind;

- in previous rulings on similar cases, the Revenue Agency stated that the contribution granted by the Municipality qualifies as consideration, even within the PPP context. This applies both when the contribution is paid in cash and when it is paid in kind via transfer of real estate (see Rulings No. 211/2020; No. 433/2023; No. 26/2024 — also referenced in Circular No. 34/E of 2013);
- based on this ruling and previous ones, contributions granted by Municipalities under Article 177(6) of the Public Contracts Code should not generally be considered as non-taxable indemnities for VAT purposes.

The ruling can be consulted at the following link: https://lnkd.in/dJ3ZAkDb

Italian Real Estate Alternative Investment Funds and tax exemption for non-resident investors

Revenue Agency guidelines on the requirements that a non-EU investment fund (Singapore variable capital company) must meet for tax exemption on proceeds and capital gains (Ruling No. 143 of 27 May 2025).

1. <u>The investment structure</u>

   The case examined by the Revenue Agency (*Agenzia delle Entrate*) concerns an investment fund established in Singapore as non-umbrella variable capital company ("**VCC**") and managed by an independent external fund manager established in Singapore (the "**Applicant**"). The fund manager is authorized, and subject to supervision, by the Monetary Authority of Singapore.

   VCC's investors subscribes two different classes of participating shares (Class A and Class B).

   The request of ruling to the Revenue Agency concerns the tax aspects of the VCC's investment into a real estate alternative investment fund ("**REAIF**") established in Italy. REAIF is structured as contractual fund (*fondo comune d'investimento*) and is managed by an Italian authorized fund manager (*società di gestione del risparmio - SGR*) subject to supervision by the Bank of Italy.

For the purposes of the ruling, the Applicant highlighted the following characteristics of the VCC:

- the investors are independent parties, not related to each other from both a legal and an economic standpoint;
- the investment policy of VCC is established in the company's articles of incorporation and detailed in the offering documents;
- a VCC's shareholder has no ownership interest in VCC assets.

Furthermore, the Applicant highlighted the following legal aspects of a VCC under Singapore law[11]:

- the sole object of a VCC is to be one or more collective investment schemes in the form of a body corporate;
- a manager of a VCC must be a holder of capital markets services license for fund management or a registered fund management company.

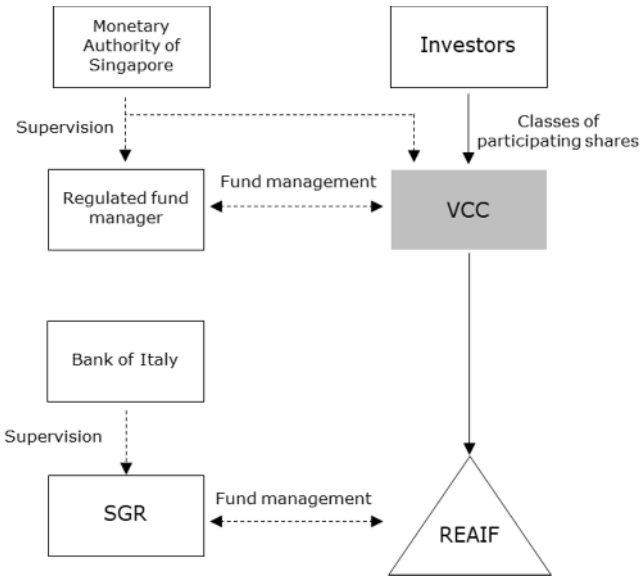
According to the Applicant:

(i) the VCC under analysis constitutes a separate collective investment vehicle with its own autonomous assets, characterized by its distinct investment policy;

(ii) it is designed to raise capital from multiple investors;

(iii) it is managed by a regulated external manager, who is authorized to independently manage the VCC's assets, without investor interference, with the objective of generating profit for the investors themselves.

INVESTMENT STRUCTURE OVERVIEW



The Revenue Agency has confirmed that both the proceeds distributed by the REAIF to the VCC and any capital gains arising from the disposal of a participation in the REAIF are exempt from income tax in Italy.

[11] *Variable Capital Companies Act 2018.*

2. Tax exemption on proceeds

   The tax exemption for the proceeds[12] is granted based on the VCC's classification as a foreign undertaking for collective investment under Italian tax law.

   This classification requires that the VCC, regardless of its legal form, is comparable to a collective investment undertaking established under Italian law[13] and is subject to supervision by the competent authority, either at the level of the VCC itself or at the level of its management company – as clarified by the Revenue Agency in numerous previous rulings on various types of international investment funds.

   The Revenue Agency has highlighted that, for comparability to an Italian collective investment undertaking, two essential characteristics must be met:

   (i) the collective management of capital raised from a plurality of investors;

   (ii) the autonomy of the management company's activity, free from the influence of the investors.

   In the case of the ruling, the Revenue Agency has determined that these requirements are met. With respect to the supervision requirement, the Revenue Agency confirmed that this requirement is met since the management company of the VCC is a registered management company subject to the supervision by the Monetary Authority of Singapore.

3. Tax exemption on capital gains

   Regarding the capital gains from the sale of the participation into the REAIF, the Revenue Agency confirmed the applicability of the tax exemption set out by the domestic rule applicable to non-resident institutional investors established in white-list countries (Article 5(5) of the Legislative Decree No. 461 of 1997), without elaborating on the rationale.

   It is worth noting that this aligns with the previous Ruling No. 76/E of 22 December 2023, in which the Revenue Agency clarified that participations in REAIFs do not qualify as participations in companies or entities under the property-rich company rule – which excludes the tax exemption[14]. Consequently, the property-rich company rule does not apply to capital gains arising from the sale of participations in REAIFs, which can benefit from the tax exemption provided for non-resident institutional investors (provided that the gain is realized by a person which qualifies as non-resident institutional investor under Italian tax law).

   The classification of the VCC as a foreign undertaking for collective investment, comparable to an Italian collective investment undertaking and subject to supervision by a competent authority[15], entails that it qualifies as institutional investor for the purposes of the capital gains tax exemption.

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[12] Set out by Article 7(3) of the Law Decree No. 351 of 2001 providing the tax regime of real estate investment funds.
[13] Organismo di investimento collettivo del risparmio (Oicr).
[14] The property-rich company rule was introduced in Italy in 2023.
[15] At the level of the registered management company.

4. Guidelines on tax exemption requirements

   In the ruling under review, the Revenue Agency not only reaffirmed principles previously established in several rulings concerning international investment funds but also provided further details on the requirements that a foreign fund must meet for the tax exemption.

   Therefore, it provides further details on the analysis that must be performed to determine whether a foreign investment fund is eligible for the tax exemption on proceeds and gains from the participation into a REAIF.

   For example, the tax authority specified that, under the comparability requirement, a foreign entity that has the legal form of a fund in its jurisdiction but lacks the substantive requirements to be deemed comparable to an Italian collective investment undertaking would not qualify for the tax exemption.

   Furthermore, the Revenue Agency highlighted that the requirement of the management company's autonomy refers to the relationship between fund investors and the management company and implies that the investors cannot have direct control over the management of the fund or its portfolio activities.

   To this end, the Revenue Agency analyzed: (i) the rules of the Singapore law applicable to this matter (i.e., Securities and Futures Act 2001) and (ii) the VCC's documents (i.e., the Private Placement Memorandum, the Articles of Association and the Fund Management Agreement).

5. Key takeaways

   - The ruling confirms that the tax framework for Italian real estate funds remains stable - the interpretation of tax exemption requirements is in line with the other rulings released to date;
   - The Revenue Agency provided further details on the comparability analysis between foreign funds and Italian funds, which is essential for determining whether the foreign fund qualifies from the tax exemption;
   - Regarding Singapore-based investment funds, the Revenue Agency had previously addressed a case involving a REIT established in Singapore (Ruling No. 345 of 2019);
   - The same tax considerations apply if the REAIF is incorporated as SICAF under Italian law.

Real estate companies and property tax (IMU) exemption

The Italian Supreme Court has recently provided important clarifications on the IMU (property tax) exemption for inventory properties held by real estate companies.

These clarifications could affect IMU management in cases involving properties held for sale.

Read the preliminary analysis prepared by our professionals at the following link.

Build to Rent: a new tax framework is needed to unlock its potential

Build to Rent continues to attract the attention of developers and investors: the model appears to effectively address the challenges of the residential market, generating economic, social, and environmental benefits. Yet, in Italy, this asset class has not yet taken off as it has in other European countries.

This topic was discussed by Gabriele Paladini, partner at SI - Studio Inzaghi, in a recent interview with Monitor Immobiliare: "*The last intervention in this field dates back more than 20 years ago. Meanwhile, the world has changed, the residential market has completely changed. The current regulations are no longer adequate. In particular, the non-recoverable VAT burden has been, in our experience, one of the main factors that slowed down the development of Build to Rent in Italy*."

An updated and market-aligned regulation is now essential to allow operators to invest in a structured and large-scale way, offering accessible, stable, and quality housing solutions.

The full interview is available at the following link: https://lnkd.in/ds-KHCxE

Construction/renovation real estate companies and property tax (IMU): the Supreme Court on the tax exemption for inventory assets

The IMU exemption does not apply in the following cases:

- if the company has renovated the property intended for sale, with works referred to in art. 3, paragraph 1, letters c), d), f) of the Consolidated Building Act, but has not built it (ordinance April 21, 2025, no. 10392);
- if the property is leased on a short-term basis pending sale (ordinance April 21, 2025, no. 10394).

1. The cases

   The cases examined by the Supreme Court concern the objective scope of the IMU exemption provided for by art. 1, paragraph 751, Law no. 160/2019 for "buildings constructed and intended by the construction company for sale, as long as such destination remains and they are in no case leased" (so-called inventory properties).

2. The Supreme Court's position

   According to the Supreme Court, the IMU exemption is not applicable if:

   - pending sale, the construction company's inventory properties are leased, including in the case of short-term leases lasting less than one year;
   - the company owning the properties has carried out renovation works on them (as per art. 3, paragraph 1, letters c), d), f) D.P.R. no. 380/2001) but has not built them.

   The Supreme Court supports its position by considering the literal wording of the law and the principle that tax benefits must be interpreted narrowly.

According to ordinance no. 10394, the IMU exemption cannot be extended to buildings subject to temporary leases, holding that a lease lasting less than one year does not affect the intended destination for sale (and therefore the nature of the property as inventory).

On this point, the Supreme Court stated that, in the context of IMU, leasing—even for a short period during the year—precludes exemption: because during the lease, the property is not on the market for sale, and thus the stable destination for sale of the property constructed by the company, which justifies the IMU exemption for inventory properties, ceases to exist.

According to ordinance no. 10392, the IMU exemption cannot be extended to buildings subject to renovation works under art. 3, paragraph 1, letters c), d), f) D.P.R. no. 380/2001 and intended for sale.

The Supreme Court also notes that, to support the exemption position, it is not possible to invoke the fact that the IMU tax base is the same for buildings under construction and those undergoing significant renovation through the above-mentioned works (for both, as is known, the tax base is the market value of the developable land until work completion).

3. Preliminary considerations on renovated buildings

Ordinance no. 10392, which excludes exemption for renovated buildings, expresses a different view from that of the Ministry of Economy and Finance ("**MEF**").

With Resolution no. 11/DF of December 11, 2013, the MEF extended the exemption to buildings undergoing renovation works under art. 3, paragraph 1, letters c), d), f) D.P.R. no. 380/2001, stating that these fall within the concept of "constructed buildings" for IMU purposes. The MEF's position is based, in summary, on the fact that the tax base for IMU is the same for buildings under construction and for those undergoing significant renovation.

The Supreme Court's position is not entirely convincing, at least in its absolute formulation that groups all renovated buildings but not built by the company that intends to sell them.

In fact, from an IMU perspective, both substantially and economically, there is not necessarily a difference between a construction company that builds a property from scratch for sale and one that carries out renovation works under art. 3, paragraph 1, letters c), d), f) D.P.R. no. 380/2001 and then intends to sell the property.

The distinction based solely on the classification of works under the Consolidated Building Act (D.P.R. no. 380/2001) does not appear decisive for IMU exemption.

The law providing the exemption does not define the concept of "constructed buildings."

Moreover, among the works under art. 3, paragraph 1, letter d) D.P.R. no. 380/2001, under certain conditions the demolition and reconstruction of existing buildings are included.

Currently, this is the only Supreme Court ruling on the matter. It will be necessary to monitor the evolution of case law and the approach that will be adopted by the tax authorities.

4. Preliminary considerations on leased buildings

   The Supreme Court's restrictive position aligns with the tax authorities' approach.

   Temporary leasing precludes the IMU exemption because the stability of the property's placement on the market for sale justifies the exemption. Leasing, even if shorter than a year, undermines this stability and thus excludes the exemption.

   This is a specific aspect of IMU related to the tax's presupposition. Conversely, it appears irrelevant that, for accounting purposes (OIC no. 13 and no. 16) and income taxes, short-term leasing does not automatically negate the intention to sell the properties and therefore their classification as inventory assets.

Financing secured by mortgage on land with surface rights: full deductibility of interest for corporate income tax (Ires) purposes denied

The full deductibility of interest expense provided for so-called "real estate management companies" (*immobiliari di gestione*) in relation to loans secured by mortgages on leased real estate does not apply in case of land not leased to third parties pursuant to a lease agreement, but made available to third parties pursuant to surface rights for photovoltaic plants.

This is the opinion expressed by the Italian Revenue Agency in Ruling No. 110, published on 16 April 2025.

Article 1, paragraph 36, of Law No. 244/2007 (as amended by Article 4 of Legislative Decree No. 147/2015) provides for the full deductibility for corporate income tax (Ires) purposes of interest expense on financing, provided that the loan is secured by a mortgage on real estate intended for leasing and the borrowing company is effectively and predominantly engaged in real estate activity.

Where these conditions are met, the entire amount of interest expense incurred during the fiscal year is deductible for Ires purposes, without being subject to the limitations of Article 96 of Presidential Decree No. 917/1986 (TUIR), which links deductibility to the EBITDA of the fiscal year.

Ruling No. 110 does not address whether the applicant qualifies as a "real estate management company" as it was not the subject of the ruling (although, as will be shown, this aspect could be relevant for interpreting the rule).

The Agency held that the "intended for leasing" requirement is not met where the secured properties are land and the granting to third parties is carried out via surface rights agreements (in the case in question, 20-year contracts for the installation of solar panels).

A surface right (*diritto di superficie*) is a real right of use: based on this (legally correct) premise, the Agency concludes that the granting of surface rights cannot be assimilated to a lease for the purposes of the above-mentioned paragraph 36 on interest deductibility.

The Agency emphasized the literal wording of the provision and its original intent, which was to support traditional real estate management companies, namely those whose business consists of leasing buildings.

Some preliminary observations:

- It is true that lease agreements and surface rights are legally distinct under civil law, but from an economic standpoint, the differences are more nuanced (especially from the perspective of real estate operators);
- Both leasing of buildings (for rent) and granting of surface rights on land (also for rent) are used for similar economic purposes, namely to allow third-party use of real estate assets (buildings or land). Surface rights allow construction on land owned by another party;
- The tax provision targets companies that effectively and predominantly carry out real estate activities. More specifically, it applies to entities commonly referred to as real estate management companies. According to the Revenue Agency (Circular No. 37/E of 2009), these are companies whose assets mainly consist of real estate (excluding properties held for sale or used directly in industrial or commercial business), and whose principal activity is passive utilization of real estate—e.g., leased or otherwise non-operational properties.

Such a definition could arguably include companies whose business consists of leasing buildings and granting surface rights over land under long-term agreements.

The Revenue Agency's negative position in Ruling No. 110 likely stems from two aspects of the provision:

1. Its literal wording (which refers only to leasing); and
2. The fact that it may be interpreted as a tax incentive, thus requiring a strict interpretation.

It is worth noting that the provision in question (Article 1, paragraph 36, of Law No. 244/2007) also includes a programmatic clause calling for a comprehensive reform of the tax regime for real estate companies. However, this reform has not yet been implemented.

Town planning

New regional regulations on mezzanine construction

With Article 9 of Regional Law No. 8 of June 6, 2025 — in force since June 11, 2025 — Articles 65-*bis* and 65-*ter* have been introduced into Regional Law No. 12/2005. These new provisions regulate the construction of mezzanine floors with the aim of promoting building renovation and urban regeneration, while minimizing land consumption.

The legislation allows the construction of mezzanine floors — defined as accessible horizontal structures obtained by partially inserting a load-bearing element into a closed space — within individual, existing residential units. These mezzanines may be used for both residential and office purposes.

With its own agenda, the Regional Council instructed the Regional Executive to clarify that the "office" use does not constitute a separate urban planning category but represents an ancillary use compatible with the residential function, which remains predominant.

From a building regulation perspective, the construction of mezzanines falls under the category of building refurbishment and requires the prior issuance of the appropriate building title. It is also permitted as an exception to the maximum gross surface area limits set by the current Town Planning Scheme (P.G.T.) and local building codes, provided that:

(i) applicable health and hygiene standards are met;

(ii) minimum height requirements, as set out in Article 65-*ter* are respected. In particular:

- if the gross floor area of the mezzanine does not exceed 50% of the area at stake, the minimum height between the floor and the underside of the mezzanine, as well as that between the floor of the mezzanine and the finished ceiling of the rooms above, must be at least 2.40 m;
- if the gross floor area of the mezzanine does not exceed 30% of the area at stake, the minimum height, measured using the same criteria, may be reduced to 2.10 m.

Mezzanine construction, being classified as a building refurbishment, is also subject to the applicable building fee.

The full text of the law is available at the following link.

The new Regional Law no. 8 of 6 June 2025 regulates the construction of mezzanines

Article 9 of Regional Law no. 8 of 6 June 2025 — in force as of 11 June 2025 — introduced articles 65-*bis* and 65-*ter* into Regional Law No. 12/2005. These provisions govern the construction of mezzanines, with the aim of promoting building renovation and urban regeneration while limiting land consumption.

The legislation allows for the construction of mezzanines — defined as internal, walkable horizontal structures created through the partial insertion of a supporting element within an enclosed space — within individual existing residential units. These mezzanines may be used for both residential and office purposes.
By specific resolution, the Regional Council instructed the Regional Executive to clarify that the "office" use does not constitute an independent urban planning category, but rather an accessory and compatible use with the prevailing residential function.
From a building regulation perspective, the construction of mezzanines falls under the category of building renovation works and requires the prior issuance of the appropriate permit, depending on the type of work being carried out.
Such construction is permitted even in derogation of the maximum gross floor area limits set out in current General Urban Plans (P.G.T.) and of municipal building regulations, provided that:

(i) applicable hygiene and health standards are complied with;

(ii) the minimum heights established by Article 65-*ter* are respected.

Specifically:

- if the gross floor area of the mezzanine does not exceed 50% of that of the relevant room, the minimum height between the floor and the underside of the mezzanine, as well as between the mezzanine floor and the finished ceiling of the overlying space, must be at least 2.40 meters;
- if the gross floor area of the mezzanine does not exceed 30% of that of the relevant room, the minimum height — measured using the same criteria — may be reduced to 2.10 meters.

As a building renovation intervention, the construction of mezzanines is subject to the payment of the relevant construction contribution.
The full text of the law is available at the following link: https://lnkd.in/dsm96a_4

Council of State No. 3593/2025: tolerance thresholds do not apply to buildings subject to amnesty

With recent judgment No. 3593 of 28 April 2025, the Italian Council of State confirmed that construction tolerances do not apply to building permits issued under a building amnesty law.

According to the administrative judge of second instance, the percentage limits provided under Article 34-*bis* of the Consolidated Building Act (*Testo Unico dell'Edilizia*) concern only so-called "construction site tolerances," which arise from minor deviations from the design specifications of a valid building permit, and do not apply to interventions covered by an amnesty procedure.

The ruling thus sets an important precedent by clarifying the scope of construction tolerances, which allow for minor dimensional deviations (such as height, distances, volume, covered area, etc.) from the approved design, without the deviation being classified as an unlawful building activity — but only within the limits permitted by the Consolidated Building Act.

The full text of the decision is available at the following link: https://lnkd.in/dxp4mMkN

Administrative case law: demolition and reconstruction on a different site qualifies as "building renovation"

With recent judgment no. 422 of 3 June 2025, the Council of Administrative Justice for the Sicilian Region (CGARS) ruled that the demolition of a structure on a given plot and its subsequent reconstruction on a different plot falls within the scope of "building renovation" as defined in Article 3, paragraph 1, letter d) of Presidential Decree No. 380/2001, as amended by the Simplification Decree (Decree-Law No. 76/2020, converted into Law No. 120/2020).

The amended provision expressly allows reconstruction activities to take place on a different site.

The ruling also provides important clarifications on the concept of "building renovation" and related jurisprudential developments:

- Departure from the traditional approach:

  The court declared that older case law — which limited renovation to cases where there was continuity between the demolished structure and the new one — is outdated. This view was based on an earlier and more restrictive definition of renovation;

- Expanded definition of building renovation:

  The updated Article 3(1)(d) significantly broadens the notion of renovation, now including the demolition and reconstruction of existing buildings even with different shapes, elevations, footprints, volumes, and typological characteristics, as well as changes needed to comply with seismic safety, accessibility, technological systems, and energy efficiency standards.

  The legislative intent, as revealed in the preparatory works of the conversion law, is to support urban regeneration and avoid unnecessary consumption of new land by reusing already urbanized areas;

- Distinction between renovation and new construction:

  According to the literal wording of the law, the key factor distinguishing renovation from new construction is no longer the structural or spatial continuity of the buildings, but the existence of a pre-existing structure. New construction is thus a residual category, applying only where no prior structure exists for demolition and reconstruction.

This ruling sets an important precedent, potentially offering greater flexibility to developers and municipalities involved in urban regeneration and the upgrading of the existing building stock.

For further details, the full decision is available at the following link: https://lnkd.in/dGjk6Sd4

Urban planning in Milan: new coordination guidelines between urban-construction policy directives and the City's Zoning Plan (PGT)

With Managerial Decision ("**DD**") No. 4192 of 27 May 2025, the Municipality of Milan issued important clarifications on the application of the "Policy Guidelines for the Development of Administrative Activities in the Field of Urban Planning and Construction", updated by City Government Resolution No. 552/2025 (the "**DGC**"), and aligned with the current Zoning Plan ("**PGT**").

The guidelines apply to interventions classified as "new construction" with a height > 25 m and/or volume > 3 cubic meters per square meter (m^3/m^2).

Below is a summary of the clarifications provided in the DD:

1. Implementation Planning

   For Implementation Plans ("**PA**") with a Territorial Surface Area < 20,000 m^2:

   - during the review phase, the Municipality will assess the share of service provisions to be allocated and the portion to be monetized;
   - it is not mandatory to provide service areas for at least 50%, or 30% in regeneration zones.

2. Conventioned Building Permit

   The Conventioned Building Permit ("**PDCC**") may be used as an alternative to the PA in specific zones such as NAF and AdR, but only if the intervention complies with morphological rules.

   Otherwise, an implementation plan is required.

   As part of the review assessing PDCC eligibility, the Procedure Manager may request support from a Working Group, whose operation will be governed by a specific provision.

3. Direct Permit

   This method of intervention remains valid for projects that do not involve urbanistically significant changes of use (in which case the PDCC applies), with the following features:

   - Demolition and reconstruction or new construction;
   - Height < 25 m and/or density < 3 m^3/m^2.

4. Demolition and Reconstruction Involving Change of Use Classified as New Construction

   The required service area is calculated as for new construction, deducting the territorial index of 0.35 m^2/m^2 from the percentage provided for each use type under Art. 11(2) of the PdS (Service Plan).

Landscape Commission: the Joint Office between the Municipality and the Metropolitan City of Milan is established

The Metropolitan City of Milan and the Municipality of Milan, based on a framework agreement from 2023, have established a Joint Associated Office for the exercise of administrative functions in the field of landscape management.

This is a significant initiative, especially for the Municipality of Milan, which — following the resignation of the members of the Landscape Commission — is currently unable to directly perform these functions.

The Council of the Metropolitan City has already approved the agreement by resolution on May 26, 2025. Approval from the Milan City Council is now awaited.

The official press release approving the agreement by the Metropolitan City is available at the following link: https://lnkd.in/euDxpC_f

Adopted the Simplified Amendment to STTM 3 and the Regulatory Framework on STTMs for Data Centers

By Decree of the Metropolitan Mayor no. 93870/2025, published in the Official Register of the Metropolitan City of Milan (CMM) on 20 May, the "*Simplified amendment of the Metropolitan Thematic-Territorial Strategy for the innovation of production, service, and distribution spaces – STTM 3 as well as the Regulatory Framework of the First Three Metropolitan Thematic - Territorial Strategies in force pursuant to article 5, Paragraph 3 of the NdA of the PTM, regarding data centers*", was adopted.

The simplified amendment to the Territorial Strategy, which is a section of the Metropolitan City's Territorial Plan ("**PTM**"), introduces a specific regulation regarding the location and development of data centers.

The compliance with this new regulation will be a necessary condition for obtaining:

- a favorable opinion from CMM in the context of urban planning, environmental, and authorization procedures required to locate and develop the data centers;
- a prior compatibility opinion with the PTM during the urban planning amendment procedures.

Milan: new guidelines on urban planning and construction

The City Board has approved new guidelines for the development of administrative activities in the field of urban planning and construction, in order to ensure the coordinated and uniform continuation of preliminary investigations for interventions, pending the future general amendment to the Town Planning Scheme (TPS).

In particular, the new guidelines establish the following:

- Recourse to the Implementation Plan for interventions that involve exceeding 25 meters in height or a land density greater than 3 cubic meters per square meter, and in any case for projects involving the deviation from the morphological rules

of the TPS. Should the land area exceed 20,000 square meters, an area equal to at least 50% of the same must be found;

- the possibility of proceeding with the Agreed Building Permit if works comply with the morphological regulations of the Ancient settlements (*Nuclei di antica formazione*) or the compact urban fabric (*Tessuti urbani compatti a cortina*);
- the possibility of intervening with direct building title in all other cases. However, if a change of use that is relevant from an urban planning perspective is proposed, the Administration must assess the most appropriate method for granting the necessary territorial resources and whether they should be obtained through transfer, easement of areas, or monetization.

Pending the publication of the resolution text, further details can be found in the press release issued by the Municipality of Milan: https://www.comune.milano.it/-/rigenerazione-urbana.-procedure-e-attivita-amministrative-in-materia-urbanistica-ed-edilizia-approvate-le-nuove-linee-di-indirizzo

Landscape compatibility and regularization of non-compliant works: the Ministry of Culture clarifies that the "landscape amnesty" under Article 36-*bis*, par. 4, of Presidential Decree No. 380/2001 is also admissible in cases involving new surface areas or volumes

With Circular No. 19/2025, the Ministry of Culture ("**MIC**") clarified that, pursuant to Article 36-*bis*, par. 4, of Presidential Decree No. 380/2001, it is possible to obtain a "landscape amnesty" through a binding ex post opinion (i.e. for works already carried out), even when the intervention has entailed the creation or increase of surface areas or volumes.

This represents a significant change from the traditional framework of the Cultural Heritage and Landscape Code, which, under Article 167, par. 4, explicitly excluded such cases from the scope of regularization.

The MIC's clarification is particularly relevant for developers, technical advisors and public authorities, as it helps define the boundaries between administrative streamlining and the protection of landscape values.

Content of art. 36-*bis*, par. 4

Article 36-*bis*, par. 4, applies to works carried out:

(i) in partial non-compliance with the building permit ("**PDC**") or the certified notice of commencement of works ("**SCIA**"), in the cases provided for under Article 34 of Presidential Decree No. 380/2001;

(ii) in the absence of, or in deviation from, the SCIA, in the cases provided for under Article 37 of the same Decree;

(iii) involving essential variations pursuant to Article 32 of Presidential Decree No. 380/2001.

Pursuant to Article 36-*bis*, par. 4, where such works: *"[…] have been carried out in the absence of, or in deviation from, the required landscape authorization, the competent head of office shall request a binding opinion from the authority responsible for managing the landscape constraint, in order to assess the landscape*

compatibility of the intervention – including in cases where the works have resulted in the creation of new usable surface areas or volumes, or the increase of those lawfully constructed. The competent authority shall issue its decision on the application within a mandatory period of 180 days, following a binding opinion from the competent Superintendence, to be rendered within a mandatory period of 90 days. If the opinions are not provided within the time limits set out in the second sentence, consent shall be deemed granted by silence, and the head of office shall act autonomously. The provisions of this article shall also apply in cases where the works are found to be incompatible with a landscape constraint imposed after their execution".

Clarifications provided by the circular

- The Circular clarifies that, although there appears to be a conflict between Article 36-*bis*, par. 4, of Presidential Decree No. 380/2001 and landscape protection legislation, such inconsistency can be resolved in light of the principle of succession of laws over time.
- Accordingly, Article 36-*bis* is fully applicable even in the absence of an express derogation from the Cultural Heritage and Landscape Code.
- The Circular also reaffirms the importance of the mandatory 90-day time limit within which the Superintendence must issue its binding opinion. If no response is provided within this timeframe, consent shall be deemed granted by silent approval (*silenzio-assenso*).
- The MIC urges the Superintendencies to adopt all necessary organizational measures to prevent the silent-approval mechanism from becoming common practice, emphasizing its exceptional and residual nature.
- The obligation to assess landscape compatibility remains applicable even where the constraint was imposed after the works were carried out.

Criminal liability for developments in conflict with the adopted PRG in Rome

Rome and Milan are currently revising their respective general town planning instruments: the PRG for the Italian capital and the PGT for the Lombard capital. Final approval of both instruments is not expected before the end of the year. Meanwhile, a crucial question remains open: which regulations apply until their entry into force?

The answer is far from straightforward. To prevent developers from circumventing the adoption of stricter regulations—such as lower building indices or increased mandatory social housing quotas—by accelerating applications for building permits, safeguard measures have been in place since 1952. Under these rules, where a development project conflicts with an adopted urban planning instrument, the Municipality must suspend any determination on the application.
However, the application of this mechanism raises critical issues, particularly in relation to the following two questions:

- is a building permit protected from newly adopted regulations merely by being effective, or is it also necessary that construction has commenced?
- can municipalities introduce exceptions to safeguard measures in their urban plans, allowing pending applications to be assessed under the rules of the previous town planning instrument?

Application of adopted regulations to building titles

According to established administrative case law (TAR Milan No. 1814/2021; Council of State No. 7516/2020), in order for a building permit to be valid, it is not necessary for construction works to have commenced prior to the adoption of the town planning instrument. It is sufficient that the permit is effective, meaning that:

- for PDC: upon issuance;
- for SCIA (both ordinary and substitutive of a PDC): 30 days after submission, provided the application is complete. Although ordinary SCIA is legally effective upon filing, certain case law requires a 30-day waiting period, similar to the SCIA substituting a PDC;
- for conditional SCIA: 30 days after the fulfilment of the prescribed conditions.

However, to mitigate the risk of expiration, it is essential to commence works within one year and complete them within the subsequent three years. Under Article 15, par. 4, of Presidential Decree No. 380/2001, if the restrictive amendment is approved before construction begins, the building permit automatically lapses.

Municipal exceptions and limitations imposed by the Criminal Court

Certain Municipalities have attempted to mitigate the impact of safeguard measures:

- Rome: Article 113 of the recently adopted PRG establishes that the new planning rules do not apply to building titles submitted before its adoption, provided they comply with the urban planning regulations in force at the time of filing;

- Milan: The current (soon-to-be-replaced) PGT contained a similar provision, exempting projects already under review at the time of adoption from the new rules.

However, Milan's approach was challenged by the Italian Supreme Criminal Court (ruling No. 21476/2023), which held that national law prevails over any conflicting local provisions. The judgment clarified that safeguard measures established by national (and regional) legislators cannot be disregarded by municipal planning rules, in accordance with the hierarchy of legal sources.

While this interpretation may be questionable — given its restrictive impact on municipal planning autonomy and potential adverse effects on legal certainty for both developers and local authorities — it must nonetheless be taken into account when handling building applications, particularly in relation to the recently adopted PRG in Rome.

Public procurement law

Infrastructure works (*opere di urbanizzazione*) in lieu of development fees due to the Municipality

Infrastructure works offset against development fees due to the Municipality represent an important mechanism in real estate development projects, allowing developers to directly construct the necessary infrastructure instead of paying the monetary contributions to the Municipality

However, this mechanism involves operational and legal complexities that are often underestimated during the planning and design phases of development projects. Private developers carrying out urbanisation works are required to apply public contract rules, with significant consequences in terms of time, costs and management of the entire project.

The private developer as contractor

The institution of urbanisation works offset against concession charges constitutes a peculiar legal situation that requires private individuals to apply public contract regulations.

This mechanism requires the adoption of procedures governed by the Public Contracts Code, with the consequent application of procedural steps that differ substantially from ordinary commercial practice. Private parties are required to manage tender procedures, comply with publication deadlines, set up evaluation committees and conduct the award phases in accordance with the procedures laid down for public contractors.

The operational implications manifest themselves in various ways.

Completion times are subject to considerable delays compared to typical private sector timelines, with possible repercussions on the overall economic and financial balance of the real estate transaction. Such delays may compromise marketing plans and relationships with purchasers who legitimately expect certain completion dates, negatively affecting the competitive positioning of the transaction on the market.

The application of public contract law requires specific skills that are not always available in private organisations, making it necessary to seek specialised external advice or train internal staff. Operators often find themselves ill-equipped to deal with the complexity of drafting tender documents, managing selection boards, assessing the qualification requirements of companies and handling any administrative appeals.

The private operator takes on administrative responsibilities typical of the public sector, with consequent exposure to procedural risks, litigation and personal liability.

The directors and managers of development companies are faced with responsibilities ranging from the correct application of public contracts procedures to the management of conflicts of interest and may bear financial liability for the use of funds allocated to public-interest infrastructure.

This creates an overlap of legal regimes: while oversight must follow public law principles, the economic risk remains entirely with the private party. During the execution phase, the developer must meet public standards while maintaining the project's financial viability—without benefiting from the flexibility tools available to public authorities.

The need for prior economic assessment of the offset mechanism

The offset mechanism offers significant advantages in terms of control over completion, execution quality, and, in some cases, cost containment.

However, exceeding the regulatory thresholds triggers the obligation to carry out public tender procedures, with consequent economic and timing implications.

Public tender procedures entail administrative and management costs that are often not properly considered during the initial assessment of the deduction, including:

- costs for managing tender procedures;
- specialist consulting fees for proper application of sector law;
- longer completion times, resulting in additional financial charges on invested capital;
- procedural risks and potential disputes that may cause further delays and legal expenses.

Therefore, assessing the economic convenience of the offset mechanism requires a preliminary analysis during the negotiation of the town planning agreement. This analysis should not focus solely on immediate economic savings, but also on the timing and managerial implications.

The optimal balance between the benefit of offsetting and the burdens of the related procedures is the key to an effective strategy—which does not necessarily align with the goal of maximizing the offset amount.

In many cases, a selective approach may be more advantageous, prioritizing offsetting only for infrastructure that is strategically critical to the overall economic sustainability of the project.

In any case, it is always advisable to check whether it is possible to optimise the cost-benefit ratio by adopting specific practical solutions, such as dividing the works into functional lots to reduce the number of contracts required or, within the limits permitted by law, using the sub-threshold procedures provided for in Article 14, paragraph 11 of the Contract Code, the choice of easily manageable award criteria, the drafting of tender contracts that make full use of the private contractor's right not to apply the rules of the Code on the execution of public contracts.

Choosing the award criterion

The choice of award criteria in tender procedures for urbanisation works to be deducted is particularly important in relation to the impact on the overall project completion time.

The Public Contracts Code introduced different maximum durations for concluding procedures, as set forth in Annex I.3:

- most economically advantageous offer: 9 months for open procedures;
- lowest price criterion: 6 months for open procedures.

The three-month time difference is a significant factor in the economics of the real estate transaction, considering that these terms start from the publication of the tender notice and are essentially non-negotiable, except for a justified extension by the contractor's responsible officer (RUP) for a maximum of three additional months.

For developers, this timing difference may represent a significant opportunity to optimize the execution of offset urbanisation works.

The applicability of the lowest price criterion for works contracts has also been recently reaffirmed by ANAC (Italy's Anti-Corruption Authority) in the President's notice of 20 November 2024.

This shift from the previous restrictive position now allows operators to act within a clear and EU-compliant legal framework.

Within the current regulatory framework, therefore, the criterion of the most economically advantageous tender is preferable when it is necessary to evaluate qualitative, technical, environmental or social aspects that are not exhaustively covered by the technical specifications and project documents.

This approach is best suited for complex works, where execution quality can significantly impact the final value of the project, even though it requires more complex evaluation processes and longer timelines.

The lowest price criterion can be used when the qualitative aspects are fully guaranteed by the project documentation and contractual provisions.

This strategy is recommended for technically standardized works, where cost is the decisive factor and award time is critical to the project's success.

Direct award of primary functional works: regulatory limits and constraints

The direct award of primary urbanisation works for the purpose of deducting costs is frequently subject to misinterpretation, whereby the implementing entity is granted operational freedom comparable to that of private contracts.

Primary urbanisation works include essential infrastructure for the use of the area undergoing urban transformation: roads, parking, underground utilities, public lighting and sewerage systems.

Despite being executed by a private entity, such works retain their public nature, and are therefore subject to the relevant legal framework.

The direct award allowed under Article 13(7) of the Public Contracts Code, in conjunction with Article 16(2) of the Consolidated Building Act (*Testo Unico Edilizia*), does not constitute an exemption from the legal safeguards applicable to works intended for public use.

In practical terms, this entails:

- the obligation to verify the project in accordance with Article 42 of the Public Contracts Code, and validation by the RUP, a process that may require substantial modifications to the technical documentation, resulting in delays and additional costs;

- the possibility of awarding the works only to companies that meet the legal requirements for the award of public contracts, which limits the selection to qualified companies only and excludes potential long-standing partners of the developer who do not meet these requirements;

- the obligation to carry out technical and administrative testing of the works carried out in accordance with Article 116 of the Code, which introduces an additional control phase, extending the time required to complete the project.

Even in relation to this type of work, it is essential to regulate contractually the methods of accounting of the work in accordance with public contract regulations, in order to ensure recognition of the deduction and facilitate checks during testing, preventing possible disputes with the Administration for which the works are intended.

The absence of an adequate contractual framework may give rise to significant issues during testing, especially if construction variations have been managed under private-sector practices that may not be accepted by the certifying authority—potentially leading to rework or the partial denial of offset recognition.

Litigation

The Supreme Court renders ineffective the function of the Town Planning Certificate (CDU) and undermines the legitimate expectations of private parties who have relied upon it

The Supreme Court declares the purchaser's appeal inadmissible and upholds the Municipality's lack of liability

With ruling no. 6469/2025, the Supreme Court held that an "omissive" Town Planning Certificate (CDU) is essentially ineffective as a basis for the legitimate expectation of private individuals and professional operators. In the case at hand, the CDU failed to indicate the existence of a hydrogeological building constraint affecting the appellant's land, thereby undermining its reliance on the possibility of constructing on the plot.

Case

The appellant had purchased a plot of land believing it to be buildable, due to the Municipality of Ghedi's failure to indicate, in the Town Planning Certificate ("**CDU**"), a building restriction arising from the Hydrogeological Structure Plan ("**PAI**"), which had already been incorporated into the adopted Town Planning Scheme ("**PGT**"). The Court of Brescia initially ordered the Municipality to compensate the appellant for over € 230,000. However, the Brescia Court of Appeal overturned the ruling, holding that the effectiveness of the PGT (once approved and published) was *erga omnes* and therefore presumed to be known by anyone.

Appeal to the Supreme Court

The original appellant challenged the appeal ruling on two grounds:

1. it disputed that the PGT had *erga omnes* effect, claiming that it had not been published in the Regional Bullettin;
2. it claimed that the CDU was misleading and that there was a causal link between the conduct of the Municipality and the damage suffered.

Both grounds were declared inadmissible:

- the PGT was deemed to have been duly approved and published, with *erga omnes* effect;
- the appellant failed to demonstrate with sufficient precision that publication was lacking or that the CDU explicitly attested to the land's buildability;
- moreover, according to the Court, the area was already subject to restrictions under the PAI, which also had *erga omnes* effect.

Conditional cross-appeal filed by ITAS MUTUA

ITAS MUTUA had challenged the validity of the insurance coverage and complained about the failure to evaluate some contractual clauses, but the appeal was absorbed, the main one having been rejected.

Outcome

- Main appeal: inadmissible
- Cross appeal: absorbed
- The appellant was ordered to pay the court costs in favor of both the Municipality of Ghedi and ITAS MUTUA.

Commentary

This ruling provides a significant opportunity to reflect on the centrality of town planning due diligence in real estate transactions, particularly when the buildability of the property is at stake.