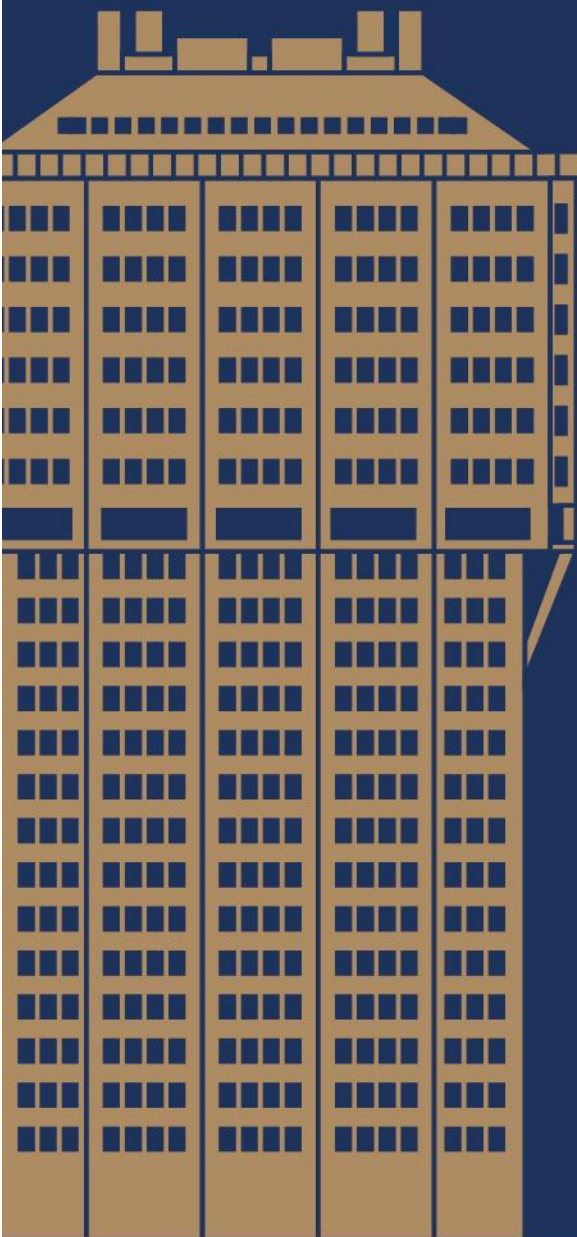




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Real Estate

Contribution to Tenant for Landlord's Works under Commercial Leases: Legitimate Under Which Circumstances?

The Supreme Court has recently ruled with Order no. 25086 dated 12 September 2025, on a matter of particular interest for the real estate market, confirming the legitimacy of a clause providing for a lump sum contribution by the tenant for renovation works carried out by the landlord on the property in which the leased unit is located.

The case involved a commercial space located within a railway station. The lease agreement provided that the tenant would pay Euro 60,000, plus VAT, as a partial reimbursement of the landlord's investments for the renovation and modernization of the railway station.

In the context of a proceeding for the recovery of arrears, the tenant had challenged the clause, arguing that it conflicted with Article 79 of Law no. 392/1978, which makes null and void those agreements that grant the landlord advantages contrary to the provisions of the above mentioned law.

The Supreme Court, however, confirmed the validity of the clause, ruling that no undue advantage was conferred to the landlord.

It should be noted that this applies specifically to this case, as the contribution was a fixed, one-off payment tied to a specific performance by the landlord (renovation works within the railway station) that served the mutual interest of both parties: the landlord enhanced the value of its property, while the tenant benefited from a unit located in a more attractive setting, with a direct positive impact on the lease value of the premises.

Therefore, according to the mentioned ruling, it can be inferred that not all additional charges beyond the rent are prohibited: if they have a concrete justification and are connected to a benefit (even partially) for the tenant, they may be legally agreed upon.

This represents an important milestone for the real estate sector, particularly for retail operators: it confirms that agreements requiring extra contributions from tenants are valid if they are well-structured, transparent, and established in a framework of genuine reciprocity.

Finally, it should be emphasized that the landlord's right to receive a legitimately agreed contribution is balanced by the tenant's right, having financially participated in the works, to see such works actually and promptly carried out. Should this not occur, justification for the contribution would no longer exist, allowing the tenant to protect its interests.



Tax

Property Tax (IMU): assessment of the taxable base (cadastral income) by the Revenue Agency and mandatory pre-assessment consultation with the taxpayer

Article 6-*bis* of Law no. 212/2000 (Taxpayers' Rights Act), introduced by Article 1 of Legislative Decree no. 219 of 30 December 2023, in implementation of Article 4 of the Tax Reform Delegation Law (no. 111 of 9 August 2023) provides for the obligation of prior consultation by the Revenue Agency with the taxpayer prior to the notification of an Assessment Notice – except for specific cases explicitly established by Article 6-*bis*, paragraph 2. The new Article 6-*bis* has therefore introduced pre-assessment consultation among the general principles of the Italian tax system.

Some recent judgments of first-instance Tax Courts have noted the application of this obligation also to the cadastral assessment Notice, with consequent annulment of the cadastral assessment issued in the absence of prior consultation between the Revenue Agency and the taxpayer (in this regard, see also the judgment of the first-instance Tax Court of Chieti No. 388 of 11 August 2025).

Real estate spin-off: spin-off through demerger and pre-existing beneficiary company: preliminary considerations of the Revenue Agency to be updated

With Ruling No. 225 of August 21, 2025, the Revenue Agency addressed the tax neutrality, for income tax purposes, of spin-off through demerger pursuant to Article 2506.1 of the Civil Code, which introduced a new type of spin-off in the Italian legal system. The case examined by the Revenue Agency involved a spinoff of a property undertaken by an industrial group to optimize its real estate management. However, the Agency's considerations will need to be examined in light of the amendments made, after the spin-off subject to the Ruling, by Legislative Decree no. 88 of 19 June 2025, which amended the above mentioned Article 2506.1 of the Civil Code.

Public contracts and VAT: amounts paid to the contractor for delays (price adjustment vs. indemnity)

The Revenue Agency, in Ruling no. 215 of 19 August 2025, addressed the VAT treatment of delay-related payments in public construction contracts.

The case involved payments to a construction company following a court judgment. The Court had ordered the client to compensate the contractor for additional direct and indirect costs incurred due to client-caused delays in a building construction project. These compensation payments were made pursuant to Article 25 of Ministerial Decree no. 145/2000.

The Revenue Agency classified these amounts as consideration rather than indemnity for VAT purposes. The Agency's analysis emphasized that the building construction was ultimately completed despite the delays, supporting the characterization of

payments as consideration for services rendered rather than mere indemnity for damages.

Lease of properties to the State (*Agenzia del Demanio*): registration tax on amounts paid to the landlord after termination of the lease agreement in case of subsequent waiver of termination

Ruling no. 207 of 8 August 2025, provides clarification on the tax regime, for registration tax purposes, of a particular case relating to the lease of buildings to the State Property Agency (*Agenzia del Demanio*).

The case examined consists, essentially, of two phases: 1) termination of the lease agreement, without release of the properties, with payment to the landlord of indemnities for the unlawful occupation of the properties (*i.e.*, occupation without legal right); 2) subsequent waiver of termination.

The Ruling examines the registration tax (3% or 1%) due on amounts paid by the State Property Agency to the landlord in light of the subsequent waiver of the effects of termination by the landlord or the tenant.

UCITS-SICAV shares: tax characterization for Corporate Income Tax purposes in the hands of the investors

Ruling no. 222 of 20 August 2025 concerns the tax classification for investors, for Corporate Income Tax (*Ires*) purposes, of shares in a variable capital investment company (SICAV) investing in securities. In the case examined, the shares were held by an Italian company and were recorded in the balance sheet under Current Assets among financial activities.

Although the Ruling does not concern participations in real estate UCITS (contractual funds or SICAF), the considerations by the Revenue Agency may be relevant also for such participations, given that, in summary, also from a tax perspective, a SICAV falls within the category of UCITS.

Transfer taxes: new Consolidated Act effective from 1st January 2026

On 12 August 2025, Legislative Decree no. 123 of 1st August 2025 was published in the Official Gazette (Ordinary Supplement no. 29), containing the new Consolidated Act on transfer taxes (*i.e.*, registration tax, mortgage tax and cadastral tax) as well as other indirect taxes other than VAT.

The new Consolidated Act reorganizes the legislation on the transfer taxes consolidating in a single Act the provisions currently contained in separate laws.

The Consolidated Act will enter into force on 1st January 2026.

Non-resident Trust and capital gains connected to Italian properties: guidance from the Italian Revenue Agency

On 4 July 2025, the Revenue Agency issued Tax Ruling no. 175 concerning a trust resident in the U.S.A. for tax purposes ("**Trust**") with respect to the tax regime of capital gains realized by the Trust from the disposal of shares of a non-Italian company owning a real estate asset in Italy.

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1. The case
2. Revenue Agency guidance
3. Preliminary remarks

1. The case

Through the ruling application, it was represented that:

- the Trust was a discretionary trust established by an Italian resident individual for the benefit of certain individuals, some of whom are also Italian residents;
- for tax purposes, the Trust is resident in the U.S.A. and characterised as opaque for Italian tax purposes (i.e., it is treated as a separate taxable entity);
- the Trust does not carry out a business activity and owns all the shares (100%) of a company established under the laws of Switzerland (the "**Swiss Company**") which, in turn, owns a residential property in Italy. The Swiss Company does not have a permanent establishment in Italy for tax purposes.

The matter submitted to the Revenue Agency concerned the tax treatment of capital gains arising from the Trust's disposal of its shareholding in the Swiss Company, considering the potential attribution of sale proceeds to certain Trust beneficiaries who are Italian residents.

The Applicant requested clarification on whether any capital gains arising from the disposal of shares in the Swiss Company should be considered as Italian-sourced income pursuant to Article 23(1-*bis*) of the Consolidated Income Tax Act.

The question derives from the circumstance that, under Article 23(1-*bis*), capital gains from the sale of non-listed shareholdings in non-Italian resident companies (e.g. the Swiss Company) by non-Italian resident persons (e.g. the Trust) may be taxed in Italy if the shareholding value derives, for more than half, at any time during the 365 days preceding their disposal, directly or indirectly, from real estate located in Italy.

This tax rule applies to Italian property-rich companies, i.e. companies holding, directly or indirectly, real estate assets in Italy representing more than 50% of the shareholding value.

Under this rule, capital gains may be subject to Italian taxation even when realized by a non - resident person through the sale of shares in a non-resident company, due to the jurisdictional nexus created by the underlying Italian real estate asset.

In this case, Italian income taxation will be excluded if, *inter alia*, the capital gain is realized by a person resident in a State that has concluded a Tax Treaty with Italy

providing for exclusive taxation in the State of residence (thereby excluding source State taxation in Italy).

As noted by the Revenue Agency, this provision was introduced in 2023 and is designed to align the Italian income tax system with Article 13(4) of the OECD Model Tax Convention on Income and on Capital, which permits source State taxation of capital gains from the disposal of real estate-rich participations.

2. Revenue Agency guidance

The Revenue Agency:

- i) confirmed that the capital gain in question falls within the scope of the domestic rule described above and, therefore, it is subject to the 26% substitute tax in Italy;
- ii) notes that the domestic rule must be coordinated with the provisions contained in the Tax Treaty with the United States, since the Trust is resident for tax purposes in the U.S.. Indeed, Tax Treaty provisions prevail over domestic tax rules;
- iii) concluded that the capital gain in question may be taxed in Italy (26%), while double taxation shall be eliminated in the United States pursuant to Article 23 of the Treaty.

It is worth noting that the Ruling was issued on the assumption that the Trust is resident for tax purposes in the United States and is eligible for Tax Treaty benefits – including satisfaction of the Limitation on Benefits clause provided for in Article 2 of the Protocol to the Treaty. The ruling request also concerned the tax treatment of amounts distributed by the Trust to the Trust beneficiaries and derived from capital gains; however, this part of the query was rejected on procedural grounds, as the application must be filed directly by the person who will be affected by the ruling. Therefore, the application regarding these matters should have been filed by the beneficiaries of the Trust.

3. Preliminary remarks

The ruling is noteworthy, *inter alia*, because it addresses a typical case falling within the scope of the Italian property-rich companies rule. This case clarifies how the rule primarily concerns the taxation of private real estate investments connected to wealth management (the case at hand involves a trust and a residential property in the absence of business activity).

Conversely, the Italian property-rich companies rule does not apply if the Italian properties are part of a commercial business activity or real estate investments carried out by regulated investment funds under certain circumstances.

With respect to the taxation of non-resident trusts, the Revenue Agency recently provided guidance in two landmark rulings on income tax exemption for gains from Italian shares held in trust (no. 144 and no. 145 issued on 28 May 2025). These rulings concern the tax exemption set out by an Italian domestic rule for certain

capital gains realized by non-resident persons if certain requirements are met (tax exemption that does not require the application of a Tax Treaty).

Public-Private Partnerships and Urban Regeneration: the VAT regime of Real Estate Transfers by Municipalities

In Ruling Response no. 151 of 10 June 2025, the Italian Revenue Agency addresses the VAT implications of real estate transfers from municipalities to concessionaires as contributions under Article 177, paragraph 6 of the Public Contracts Code in the context of urban regeneration operations through Public-Private Partnerships.

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1. The case: transfer of real estate as contribution
2. VAT aspects according to the Ruling
3. Preliminary remarks

1. The case: transfer of real estate as contribution

The Italian Revenue Agency, in the ruling under commentary, addressed a VAT issue of significant interest for urban regeneration operations conducted through Public-Private Partnerships (hereinafter "**PPP**").

A PPP is, in summary, as known, an economic operation based on a long-term contractual relationship between a contracting authority (e.g., a municipality) and one or more private companies, with the goal of achieving a result of public interest (e.g., an urban regeneration project). The operation must also have the characteristics established by Article 174, paragraph 1, of Legislative Decree no. 36/2023 ("**Public Contracts Code**").

In the case subject to the ruling, the PPP is based on a concession contract 1 between a municipality and a private company and aims to regenerate an area where a decommissioned railway station was located.

The aspect of the PPP on which the municipality requested clarification from the Agency concerns the VAT regime to be applied to the gratuitous transfer, from the municipality to the concessionaire company, of certain real estate properties located in the area subject to regeneration. This is because the transfer would occur as a contribution to ensure the economic-financial balance of the concession, based on Article 177, paragraph 6 of Legislative Decree no. 36/2023.

2. VAT aspects according to the Ruling

The Revenue Agency only addresses the requirements for considering a transfer of goods made by a municipality as a supply of goods for VAT purposes and, therefore, as a transaction for VAT purposes (i.e. a sale of goods) carried out by the Municipality.

In summary, these are the following alternatives:

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

By contrast, the response does not explicitly address the question, partly different, relating to the possible qualification of the real estate transfer as consideration in kind paid by the Municipality to the concessionaire company. Indeed, if the transfer were consideration paid in kind by the Municipality to the concessionaire company, it would not be necessary to verify in what capacity the Municipality acts: in any case, the consideration would be subject to VAT, given that the transaction (supply of goods or services) would be carried out by the concessionaire company.

Based on the above, the Revenue Agency states that *"the transaction of alienation of buildable areas and buildings by the Applicant (the Municipality) in favour of the Concessionaire, as a contribution pursuant to paragraph 6 of Article 177 of Legislative Decree No. 36 of 2023, assumes relevance for value-added tax purposes"*. This is based on the "contractual nature of the transfer" and the "contractual nature" of the relationship between the Municipality and the concessionaire. According to the Revenue Agency, the transfer at issue does not occur within the framework of an activity carried out by the Municipality as a Public Authority based on a public law relationship.

The Revenue Agency notes that *"from the provisions of the concession contract under examination, it appears that the relationships between them are of a contractual nature, based on bilateral agreements that consist of the provision of mutual services and counter-services, with methods of carrying out activities typical of commercial operators"*.

In arguing its thesis, the Revenue Agency also refers to the case law of the EU Court of Justice and the Italian Supreme Court on the relationship between VAT and public entities.

The ruling limits itself to affirming the "relevance" for VAT purposes without, however, specifying the applicable regime and related invoicing.

3. Preliminary remarks

The Revenue Agency's thesis is of considerable interest, however it raises some perplexities:

- The ruling maintains that the transfer of real estate as a contribution from the Municipality to the concessionaire company "has relevance" for VAT purposes, without however indicating the applicable VAT regime;
- The opinion does not clarify which of the following categories the case falls into:
 - a. sale of goods (real estate) from the Municipality to the concessionaire: in this case, the consideration paid, in money or in kind, by the concessionaire to the Municipality should be identified, given that, as known, supplies of goods are relevant for VAT purposes if made for consideration. Furthermore, the applicable VAT regime should be

examined based on the characteristics of the transferred asset. In this case, the Municipality should issue an invoice for the sale of a real estate asset. However, this qualification could be excluded by arguing that the transfer does not fall within an economic activity carried out by the Municipality in the meaning of VAT law;

- b. consideration in kind (price) paid by the Municipality to the concessionaire for urban regeneration activity. In this case, the Municipality should receive an invoice for the consideration;
 - In previous rulings on similar cases, the Revenue Agency had argued the nature of consideration of the contribution provided by the Municipality, also in the context of PPP (see Response no. 211/2020; Response no. 433/2023; Response no. 26/2024; Circular no. 34/E of 2013);
 - In light of the above, contributions by a Municipality pursuant to Article 177 paragraph 6 of the Public Contracts Code cannot be considered, at least as a rule, as indemnities excluded from VAT.
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Town planning

Guido Alberto Inzaghi comments on the “Milan case” on Milano Finanza

Guido Alberto Inzaghi analyses the impact of judicial investigations on the Milanese property market. Milan remains attractive thanks to its liveability, profitability, competitive prices and the 2026 Olympics.

Regulatory uncertainty does not discourage investors, provided that the rules are clear and predictable.

“Some rules need to be changed”, Inzaghi stresses, highlighting the proposal put forward with Assoimmobiliare to introduce a 60-day deadline from the posting of the construction sign for challenging building permits, so as to offer greater security to operators.

Click here to read the full article: <https://lnkd.in/dUFkAqVj>

Town Planning in Milan: the Municipality opens the files of agreed building permits issued since 2014

With Executive Determination (“DD”) no. 7863 of 18 September 2025, the Municipality of Milan approved the public selection notice for the assignment of three professional roles to support the analysis and verification of administrative and technical-urbanistic aspects related to building permit applications provided by the Administration.

The assignments under this selection procedure will involve technical-administrative support activities, consisting of the analysis and verification of administrative and technical-urbanistic aspects relating to the building titles applications indicated by the Administration.

Specifically, the DD specifies that building permits subject to town planning agreements finalized from 12 November 2014 (the date of entry into force of Article 28-*bis* of the Presidential Decree no. 380/2001 – introduced by Article 17, paragraph 1, letter q) of Legislative Decree no. 133 of 12 September 2014, as amended by Law no. 164 of 11 November 2014) will be subject to a retrospective evaluation, covering:

- the status of the administrative process;
- the legitimacy of the administrative procedure, with particular reference to the competent authority responsible for taking the actions;
- the legitimacy of the building classification of the intervention and the consistency of the building permit;
- the economic aspects of the issued permit, with reference to both urbanization charges and any monetization of standards;

- the technical specifications of the intervention and the administrative requirements contained in the agreement.

For a detailed reading, the full text of the DD is provided [here](#).

Administrative Case Law: no Implementation Plan Required Even for Buildings Exceeding 25 Meters in Height

The Regional Administrative Court ("TAR") of Milan affirmed with Judgment no. 2748/2025 that an implementation plan is not necessary for buildings over 25 meters in height located within already urbanistically consolidated areas.

The case concerning the nine-floor residential building constructed without an implementation plan on via Razza has concluded with a ruling in favour of the Municipality of Milan. The TAR rejected the administrative appeal filed by the neighbouring condominium, which requested the annulment of the building permits. The court ruled that, although the building exceeds 25 meters in height, deviation from the provisions of the 1980 Regulatory Plan and the 1942 Urban Planning Law was permissible, due to the area's consolidated urban structure and the presence of related public services.

In its reasoning, the TAR stated: *"Established case law has repeatedly affirmed that the requirement for an implementation plan — as a prerequisite for the issuance of a building permit — arises in cases where the area has not yet been urbanized, or where new development must be integrated into existing urban fabric, considering the realization or enhancement of public works, infrastructure, and essential community services. Consistent case law excludes the necessity of an implementation plan."*

The full text of the TAR Milan judgment can be accessed [here](#).

Data Centres: public consultation launched on the National Strategy to attract industrial investment in Italy

The Ministry of Companies and Made in Italy ("MIMIT") has launched a public consultation on the "Strategy for attracting industrial investment in Data Centres in Italy" (the "**Strategy**"), drawn up in collaboration with MASE, MUR and the Department for Digital Transformation.

The Strategy is a policy document aimed at guiding the location and development of data centres throughout the country in a more effective, efficient, sustainable and economically advantageous manner, contributing to the creation of a competitive ecosystem in the sector.

The document is divided into five chapters which, starting from a concrete analysis of the national and international territory, outline industrial policy measures to promote new investments and identify the most prominent areas of development for the sector.

The text of the Strategy can be consulted at the following link:
<https://lnkd.in/dJTTE3F4>

Data centres and land consumption: a proposal to combine development and sustainability

In the debate on the new Consolidated Building Act, an interesting proposal has arisen to reconcile the needs of the property market with the goal of zero land consumption.

As highlighted by lawyer Guido Alberto Inzaghi in the article published on Il Sole 24 Ore, one possible solution could be to include in the regulatory text the renaturalisation of brownfield sites, even in municipalities other than those where the main intervention is taking place, as an alternative to building on virgin land.

This approach, in line with the recent Nature Restoration Law approved by the EU, would be a useful option for strategic infrastructure projects – such as data centres and logistics hubs – which, for technical reasons, cannot always be located in already urbanised areas. However, according to Inzaghi, it is essential that renaturalisation planning be managed at the supra-municipal level to prevent local limitations from rendering the entire system ineffective.

This proposal aims to make the goal of zero land consumption realistic and achievable, within a vision of modern, balanced and European-wide spatial planning.



Contracts

Guarantees in contracts for works subject to deduction

In its recent opinion no. 3516 of 3 June 2025, the Ministry of Infrastructure and Transport (MIT) addressed the issue of replacing the final guarantee with deductions on the progress of works in public contracts, offering an interpretation that has raised debate among industry operators.

According to the MIT, the right provided for in Article 117, paragraph 4 of the Public Contracts Code – which allows the contractor to request the principal, prior to the execution of the contract, to replace the 10% final guarantee with deductions on the SAL – is applicable exclusively to contracts above the EU threshold.

The principal may only oppose such a request for justified reasons of risk due to particular characteristics of the contract or specific subjective situations of the contractor.

For contracts below the threshold, however, according to the ministerial interpretation, this possibility is not provided for in Article 53 of the Code, thus precluding the replacement of the final guarantee of 5% with withholdings on SALs.

For the time being, case law has not yet ruled on this restrictive interpretation, leaving open the question of whether this differentiated regime between contracts above and below the threshold will be confirmed in the future.

The MIT's opinion once again confirms the complexity of the regulatory system governing public contracts, characterised by a rigidity that affects both the award procedures and the substantive rules governing the contractual relationship, the content of which is almost entirely predetermined by law.

However, the MIT opinion also provides an opportunity to reflect on the content of contracts for the execution of urbanisation works subject to deduction, which have characteristics that are profoundly different from those of ordinary public contracts.

The stiffness of the code system for public works contracts makes the contractual autonomy that characterises contracts for urbanisation works with deductions even more significant.

There is a widespread belief among operators that contracts for urbanisation works subject to deduction are essentially comparable to ordinary public contracts, with identical rules and constraints.

However, this is a misperception that fails to seize the significant differences between the two cases and risks limiting the operational potential of this important tool.

Article 13, paragraph 7 of Legislative Decree 36/2023 establishes that the provisions of the Code also apply to the awarding of public works carried out by private entities, holders of building permits or other authorisations, who directly undertake the

performance of urbanisation works in full or partial deduction of the contribution required for the issuance of the permit.

The provision would therefore seem to imply that the Public Contracts Code applies in full to contracts for urbanisation works subject to deduction, fuelling the misunderstanding about their legal nature.

Annex I.12 to the Code, on the other hand, clarifies a fundamental aspect that is going to radically change the applicable regulatory framework: in relation to the contract execution phase, only the rules governing testing referred to in Article 216 of the Code apply.

This means that, while the award phase of contracts for urbanisation works is fully subject to public law rules – with all the procedural, transparency and publicity obligations that this entails – the execution phase is essentially exempt from the provisions of the Code and falls within the scope of private autonomy.

This important distinction, which is often overlooked in operational praxis, allows private operators to maintain their entrepreneurial nature and negotiating autonomy during the preparation of the contractual terms of the contract, without having to assume the typical operational characteristics of public administration.

This is a significant difference that has a profound impact on contract management and the contractual strategies of private operators.

With specific regard to guarantees – the main focus of the MIT's opinion – the exclusion of the provisions of the Code during the execution phase entails a full return to private law, with significant operational consequences.

Firstly, the type of guarantee is not predetermined by law: the private principal is free to choose between bank guarantees, insurance policies, security deposits or other forms of guarantee deemed most appropriate to the specific case.

Secondly, the amount of the guarantee can be independently tailored to the characteristics of the work to be carried out, without predefined percentage constraints.

This allows the level of protection to be adapted to the actual needs of the project, avoiding both insufficient guarantees and excessive financial tied-up capital.

Furthermore, the duration and subject matter of the guarantee can be defined in full contractual autonomy, taking into account the complexity of the work, the expected completion times and the specific risks associated with the work.

Therefore, the contractor does not have the right to request the replacement of the final guarantee with deductions on the SAL.

The private principal retains full control over the guarantee terms, being able to assess on a case-by-case basis whether to accept any requests made by the contractor.

The private principal also enjoys full autonomy in managing payments to the contractor, with the possibility of providing for retention guarantees in both above-threshold and below-threshold contracts, without the interpretative limitations that arose from the MIT's opinion on ordinary public contracts.

This allows for greater flexibility in structuring cash flows and better protection of the client's interests.

Finally, in contracts for urbanisation works subject to deduction, private operators can structure the system of contractual guarantees completely independently, adapting it to the specific risks of the project, the characteristics of the contractor, the complexity of the work and their own standard contractual practice.

The overcoming of the misunderstanding of regulatory identity with ordinary public contracts can contribute to a more effective use of the institution of urbanisation works subject to deduction, with concrete benefits for the efficiency of urban transformation operations and for the balance between public and private interests. A proper understanding of the applicable legal regime allows real estate operators to fully exploit the potential of this mechanism, maintaining the necessary operational flexibility without sacrificing essential protections.



Litigation

Real estate and unlawful occupation: which legal protections are available to owners in light of recent case law?

Property release procedures are areas an area where the issues and weaknesses of Italian legal procedure are particularly evident is clearest. Over the years, they have been the subject of particular attention from national and international courts, serving as a test case for assessing the effectiveness of court-based remedies.

The failure to enforce evictions, often due to postponements by the judicial enforcement officer for lack of resources, highlights, in substance, a responsibility of the State in cases of excessive delays in enforcement proceedings. The European Court of Human Rights (ECHR) has often condemned Italy for violating Article 6 of the ECHR, highlighting how systematic delays in granting law enforcement compromise the right to own.

The courts of law have also acknowledged this approach, recognising the State's liability for failure to enforce in cases where the administration has not provided law enforcement officers in response to a legitimate request by the judicial officer. The Supreme Court has clarified that the Ministry of Home Affairs, which oversees the bodies responsible for enforcing judicial measures, cannot choose at its discretion whether and when to implement a decision of the judicial authority; failure to grant law enforcement assistance constitutes an offence, except in cases of force majeure, and justifies recourse to the remedies provided for by law.

Ownership protection is therefore the key issue. That protection cannot be considered true and effective if the property remains unavailable for years despite a favourable court ruling. In the past, the lawmaker has intervened on several occasions to scale back or suspend the enforceability of release orders, especially in situations of social emergency. However, these measures, commonly referred to as "legal suspensions of evictions", have ended up sacrificing individual rights without providing an adequate balance.

In this general context, the question arises as to what remedies are actually available against the State when the release procedure exceeds reasonable terms.

On one hand, there is the action for compensation pursuant to Article 2043 of the Italian Civil Code, which allows for full compensation for damages suffered as a result of the omissive and unlawful conduct of the Public Administration; under Article 2043, any wilful or negligent conduct that causes wrongful damage to another person obliges the author of that conduct to provide compensation for such damage (Aquilian liability). On the other hand, there is the compensation remedy provided for by Law No. 89/2001 –known as "Pinto Law" – which recognises fair compensation for the unreasonable length of enforcement proceedings.

What has long been debated and remains uncertain is the relationship between the two remedies, and in which cases one is applicable rather than the other. Some rulings have argued that, in the event of damage to the ownership right resulting from the excessive length of the trial, the Pinto Law is exclusively applicable, by virtue of an alleged special relationship that would make it prevail over the general provisions of Article 2043 of the Italian Civil Code.

However, this approach appears somewhat simplistic in that it asserts a special relationship between the Pinto Law and Aquilian liability, without really questioning the different function, nature and structure of the two remedies. In order to properly qualify as special, the two conflicting rules must govern the same case, creating a genuine antinomy, which is not the case here. Article 2043 of the Italian Civil Code governs tortious liability for unlawful acts, while the Pinto Law introduces a form of compensation, not damages, based on different assumptions.

The contrast between the two forms of protection is not only theoretical, but has significant practical implications: the Pinto law guarantees standardised compensation, which is compensatory in nature and accessible with a lower burden of proof; on the contrary, Article 2043 of the Civil Code requires the assessment of an offence and the verification of the subjective element of intentional or negligent conduct by the party responsible. From this perspective, the two instruments are not mutually exclusive but can coexist, protecting different and independent damages. Therefore, compensation claims cannot be automatically excluded whenever the Pinto law can be invoked. The latter, in fact, was not designed to replace existing remedies, but to complement them, offering citizens additional and less burdensome protection.

Finally, despite structural issues, the Italian legal system still provides effective protection for individuals who experience delays in property release procedures. Compensation claims and the Pinto remedy are complementary tools that can be adapted to different needs and ensure the effectiveness of judicial measures.
