



Tax authorities acknowledge the entitlement of real estate companies to the tax benefits for energy requalification and anti-seismic interventions

In Resolution No. 34/E of 25 June 2020 (the "**Resolution**") the Italian tax authorities revised their interpretation on the possibility for companies making energy requalification and anti-seismic interventions on real estate to benefit from the tax reduction (*detrazione*) provided under Italian Tax law, even if the real estate is held for sale or rented to third parties.

Subject to several requirements, Italian tax law provides for a deduction from the income tax of a percentage of expenses incurred in relation to certain interventions aimed at increasing the energy efficiency of existing buildings (known as "*eco-bonus*" under Article 1, paras. 344-349, of Law No. 296/2006) or anti-seismic interventions (known as "*sisma-bonus*" under Article 16, para. 1-*bis* et seq., of Legislative Decree No. 63/2013). The deduction is granted in 10 yearly installments up to a maximum amount that depends on the type of intervention.

According to the view expressed in the past by the Italian tax authorities, enterprises (including companies) were entitled to the above tax benefits only in relation to interventions on business property (*immobili strumentali*) directly used in their business activities. The benefit was instead denied to real estate trading companies and companies renting property to third parties for interventions made on real estate to be sold or rented out. This restrictive interpretation by the tax authorities, however, was challenged by taxpayers in court. In certain recent decisions, the Supreme Court embraced the taxpayers' position and held that the benefit was subject neither to objective (depending on the cadastral classification of the real estate), nor to subjective (depending on the type of use of the real estate by the relevant taxpayer) limitations. The case law of the Supreme Court thus confirmed that the applicability of those benefits was not limited to real estate directly employed to carry out the companies' business activities.

The Resolution is in line with the above-mentioned case law of the Supreme Court and confirms that companies are entitled to the *eco-bonus* and the *sisma-bonus* for all interventions made on their real estate, regardless of the actual use thereof.

It therefore appears possible to submit a tax refund request for the tax benefits deriving from past interventions on real estate that have not been formerly granted, if the relevant requirements are met.

Following a similar reasoning, it would also be possible to conclude that the view expressed in the Resolution should apply likewise in relation to tax benefits granted in connection to other interventions made on the companies' real estate. This would be the case, for instance, with regard to the 90% deduction for expenses incurred in 2020 for the recovery or restoration of the external facade of existing buildings, granted by the 2020 Financial Bill (known as "*bonus facciate*").

The tax authorities' new position could also be of particular interest with respect to the incentives enhancements introduced by regulations issued in connection with the COVID emergency. In fact, Law Decree No. 34/2020 (still subject to be converted into law – with possible amendments – by the Parliament) introduced the possibility for fiscal years 2020 and 2021 to (i) transfer the tax benefits to the suppliers of the renovation works in exchange for a price discount, or to (ii) convert the benefits into a tax credit that may be used to offset liabilities for social security contributions and other taxes (including VAT, but not including registration tax and IMU) or may be sold to third parties, including financial intermediaries.

Finally, it is important to highlight that:

- (a) The possibility to claim the tax benefits referred to in the Resolution is limited to companies and other persons carrying out a business activity. Therefore, Italian real estate funds cannot claim the eco-bonus and the sisma-bonus, since they are precluded from carrying out a business activity under the relevant regulatory rules.
- (b) In principle, there should not be any obstacle to benefit from the above tax incentives for real estate companies (generally known as "Reoco") established pursuant to Article 7(1) of the Italian Securitization Law for the purpose of managing real estate assets representing the security for securitized receivables. In this respect, however, a confirmation from the tax authorities would enhance legal certainty.

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