



Italian tax authorities confirm tax regime applicable to real estate securitization vehicles

The Italian tax authorities clarified for the first time the Italian tax treatment applicable to real estate securitization structures in letter ruling no. 132, published on the Italian tax authorities' website on 2 March 2021 (the "Ruling").

As a background, Italian Securitization Law (Law no. 130 of 30 April 1999) was amended by the 2019 Finance Bill to regulate also securitization transactions involving real estate assets, registered movable assets (ships, aircrafts, vehicles), in rem rights (usufruct or surface rights) or personal rights on the same assets.

The Ruling provides clarity on most of the interpretative issues regarding the tax regime applicable to these new securitization structures paving the way for securitization vehicles to be considered as a viable alternative structure for investing in Italian real estate or other registered assets.

The case addressed by the Italian tax authorities

In the case submitted to the tax authorities an Italian vehicle was set-up to carry out one or more securitizations of the proceeds deriving from real estate, registered assets or rights on the same assets. The securitization vehicle could acquire, enhance (also through construction, maintenance, restructuring or requalification works under procurement contracts), lease and sell real estate assets.

In particular, the vehicle acquired the property of certain solar power plants leased to a photovoltaic operator and financed the acquisition through the issue of a single tranche of unrated unlisted notes subscribed by two financial institutions. One of the noteholders entered into an asset management agreement with the vehicle to carry out the administration and management of the power plants.

All amounts deriving from the leasing and possible future sale of the power plants are segregated by law to satisfy the rights of the noteholders and cover the costs and expenses of the securitization. From an accounting point of view, the assets, liabilities, revenues and costs of the vehicle are accounted as off-balance sheet items in the company's statutory accounts.

Tax regime of the vehicle

The Ruling confirms that the real estate securitization vehicle is subject to the same income tax regime as traditional securitization vehicles because its assets and any amounts deriving therefrom are segregated by law for the benefit of the noteholders and to cover the costs and expenses of the securitization.

Therefore, the vehicle does not have to report income for corporate income tax (IRES) purposes, except for any profit left to the vehicle after the full discharge of its obligations in relation to the notes and any other creditor in respect of costs, fees and expenses incurred in the context of the securitization.

Nor is the vehicle subject to local tax on productive activities (IRAP), provided that its revenues and costs are accounted for as off-balance sheet items of income in the vehicle's financial statements.

Tax regime of the noteholders

The Italian tax authorities confirm that the notes issued by the real estate securitization vehicle fall within the application of legislative decree no. 239 of 1 April 1996.

Under this regime, no withholding tax is applied on interest and other proceeds paid under the notes if the beneficiaries are, amongst others, Italian resident companies and investment funds, residents of States included in the "white list" of States allowing an adequate exchange of information with Italy or (supervised or non-supervised) institutional investors established in those States. From a formal perspective, the notes should be deposited with a qualifying intermediary and certain documentary requirements are to be fulfilled.

VAT regime

The Ruling confirms that the real estate activity carried out by the vehicle is subject to the ordinary VAT regime applicable to enterprises carrying out real estate activities. In particular, the vehicle is entitled to recover input VAT on the purchase of goods and services related to that activity under the ordinary rules and subject to the ordinary limitations.

Other transfer taxes

The Ruling confirms that the acquisition of real estate assets by the vehicle does not benefit from any preferential tax regime other than those ordinarily applicable on the basis of the nature of the transferred property or the seller of the property.

The acquisition of commercial real estate assets is therefore ordinarily subject to cadastral and mortgage taxes at the overall 4% rate. In particular, the vehicle cannot benefit from the 50% reduction available to real estate collective undertakings and SIIQs; such reduction applies in case the seller is a real estate collective undertaking though.

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