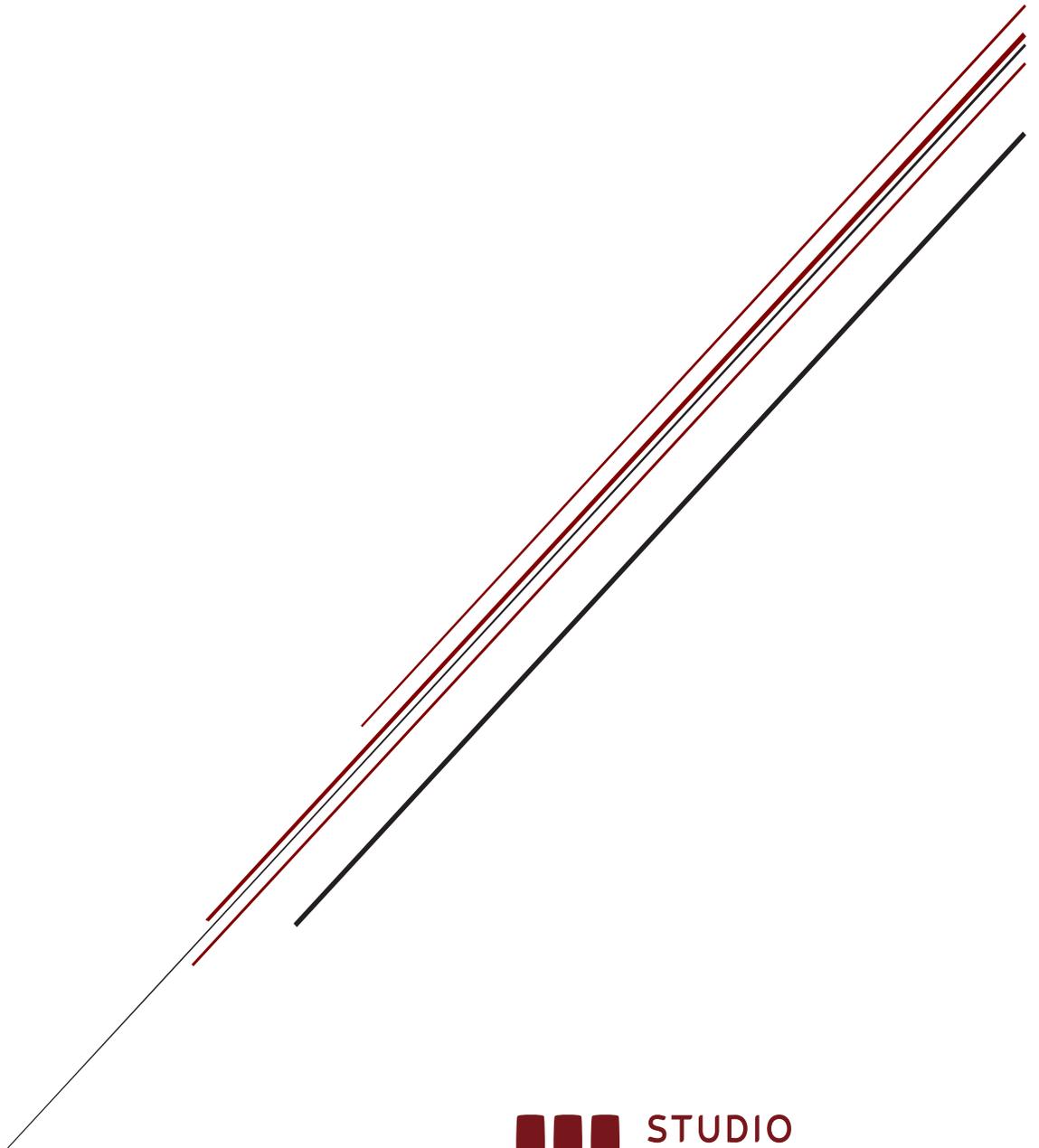


Tax Newsletter No. 2/2019

TAX NEWS ON REAL ESTATE SECTOR

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Law Decree No 34/2019

Law Decree No. 34 of 30 April 2019 (also “Growth Decree”) published in the Italian Official Gazette No. 100 of 30 April 2019 and entered into force as of May 1st, 2019, has introduced, among others, new tax provisions regarding the real estate sectors.

The Law Decree is immediately effective, even if still needs to be converted into law by the Italian Parliament. Such conversion shall occur within and no later than 60 days from the publication of the Law Decree in the Official Gazette and it cannot be excluded that, in such context, material amendments are made.

Here below is a summary of the main provisions contained in the Growth Decree.

Deductibility of IMU on commercial real estate from IRES tax basis

Under current rules, IMU¹ is deductible for the purposes of IRES (Corporate income tax) up to an amount equal to 40%² for immovable properties, qualifying as capital assets (not trading assets).

The Growth Decree provides for the progressive increase of the deductibility of IMU to 50% for FY2019, 60% for FYs 2020-2021 and 70% for FY 2022 (whereby fiscal year is aligned with calendar year).

Privileged tax regime for construction and renovation companies

The Growth Decree introduces, on a temporary basis (i.e. until 31 December 2021), a privileged tax regime in relation to the transfer of the property of the “entire buildings” from individuals (or entities NO-VAT persons) to construction or renovation companies.

Under current rules, the acquisition of real estate in Italy is subject to transfer duties (registration, mortgage and cadastral tax) and/or VAT.

Generally speaking, each real estate transfer is subject to transfer taxes depending upon the subjective features of the seller-transferor (e.g. individual, construction/removable companies or other business companies) AND the cadastral class of the property (e.g. commercial or residential) Should the seller be an individual (or entities NO-VAT persons) and the purchaser be a construction or renovation company, the sale/transfer is ordinarily subject to registration tax at a proportionate rate of 9%, further to cadastral and mortgage taxes for of €50 each.

Under the new provisions, registration, cadastral and mortgage taxes are imposed with a lump-sum amount of €200 each (for a total amount of €600) under the conditions that the purchaser:

- (i) is a construction or renovation companies, and

¹ The municipal tax on real estate (so called “IMU”) is a general property tax levied¹ (except in specific circumstance), on a yearly basis, by local authorities on all property owners, both commercial-property owners and private homeowners.

² Starting from 2019, the 2019 Budget Law already provided that the deductibility of IMU from Corporate Income Tax (“IRES”) increased from 20% to 40% of the related amount.

- (ii) within the next 10 years after the purchase, shall provide for:
 - (a) the demolition of the buildings acquired;
 - (b) their reconstruction in compliance both with the earthquake-proof regulations, and energy classification (even if with volumetric variation where permitted by current town planning regulations);
 - (c) their subsequent sale.

If one of the conditions (as outlined above under (i), (ii) (a), (ii) (b) and (ii) (c)) are not met, indirect transfer taxes revert to ordinarily apply, with penalty of 30% further to interest for late (tax) payment.

Tax changes to the regime of the Real estate owned Companies

The Decree Law introduces some clarification in the law on securitization (i.e. Law No. 130 of 30 April 1999) to fill in the gaps on previous tax regime applicable to the Real estate owned Companies (i.e. ReoCo).

Reoco is Special Purpose Vehicle set up with the scope to acquire, manage and dispose the real estate assets guarantee the assets to be securitized, usually incorporated under the legal form of an Italian corporate entity, thus being subject – under the previous rules – to ordinary rules on corporate income tax IRES (and regional tax IRAP).

The Decree law clarifies that under a securitization transaction, assets purchased by the ReoCo constitute a cover pool (“*patrimonio separato*”) exclusively bound to the satisfaction of the securitisation; to that extent, ReoCo’s taxable income, if any, is not subject to ordinary corporate income and regional taxes (IRES and IRAP).

Under this new regime, the approach taken by the Italian tax authority in past rulings (i.e. Tax rulings No. 18 of 30 January 2019 and no. 56 of 15 February 2019) are not applicable.

In addition, Growth Decree provides for the application of registration, mortgage and cadastral tax lump-sum amount of €200 each (for a total amount of €600) for any acquisition of real estate (even if executed by means of a leasing agreements by ReoCo); finally, the lump-sum taxation for indirect taxes seen above apply also to the sale of the real estate from ReoCo to third parties, under special requirements.

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Ruling Answer No. 65 February 20, 2019

VAT treatment of supplies of services made to real estate investment funds

With the answer to the ruling n. 65 published last 20 February, the Italian tax authorities expressed their views on the VAT treatment of the supply of the services relating to the identification of opportunities for the acquisition/disposal of real estate, rendered by a company established in another EU member State to a foreign REIF with real estate located in Italy.

Quoting to the principles established by the Court of Justice of the European Union (among others in the case C-169/04 C-595/13) and also the clarifications provided by the European Commission with the Explanatory Notes “EU VAT place of supply rules on services connected

with immovable property”, the Italian tax authorities clarified that the supplies of the services relating to the identification of opportunities for the acquisition/disposal of real estate are to qualify as a “portfolio management activities”, so falling within the scope of article 44 of the EU VAT Directive 2006/112.

Accordingly, these services qualified as a generic service, are not subject to VAT in Italy based on the general B2B rule.