



ITALY REAL ESTATE UPDATE

NOVEMBER 2013

A NEW TAX FRAMEWORK FOR REAL ESTATE TRANSACTIONS: A FEW CERTAINTIES AND SEVERAL DOUBTS PENDING THE CLARIFICATIONS FROM THE TAX AUTHORITY

Starting from 1 January 2014 significant changes will come into effect with reference to registration tax, as well in respect of cadastral and mortgage tax application in Italy. On the contrary, the VAT treatment of real estate investments will not be affected by such new provisions.

New regime

The new rules will be applicable to transfers of real estate assets carried out starting from 1 January 2014. The reorganisation of **registration tax** rates provides only 2 proportional rates for all real estate transfers:

- 2% in case of transfer of non-luxury residential buildings designated to be the main dwelling of the purchaser;
- 9% in all the other cases.

Registration tax applied with the proportional rates cannot be in any case lower than €1,000.

Due to the fact that the application of the “principle of alternativity” (between VAT and registration tax) will remain valid also after 1 January 2014, in case of transfer of real estate assets subject to VAT or of non-residential buildings which are exempted from VAT, registration tax will remain applicable at the fixed amount, even if the amount of €168 will be increased to €200 (also for mortgage and cadastral taxes – see below).

Together with the change in the registration tax rates, some amendments are also provided for **mortgage** and **cadastral taxes**. In particular, mortgage and cadastral taxes will always be applied at the fixed rate of €50 when the 9% or the reduced 2% registration tax rate applies.

In case of transfers which are not subject to proportional registration tax rates, mortgage and cadastral taxes will be applied under the same rules and rates currently applicable, with the sole exception of the amount that has been increased to €200.

Some applications

In light of all the above, starting from 1 January 2014 the following indirect taxation will be applicable to the transfer of **non-residential buildings** (such as offices, retail buildings, hotels, factories, warehouses, depots, etc.):

- VAT at the rate of 22% (10% in case of renovated buildings) will be mandatory for the sales where the seller is a construction company that built or renovated – regardless of whether this construction or renovation was implemented directly or by way of sub-contracting to third parties – the relevant property no more than five years prior to the sales. Apart from the scenario above, VAT would be due in case the seller opts for its application in the sale deed;
- Registration tax would be applied at the fixed rate of €200, under the principle of alternativity;
- Mortgage and cadastral taxes would be applicable at the rates of 3% and 1% respectively, unless the seller or the purchaser is a REIF. In this latter case, applicable rates would be equal to 1.5% and 0.5%.

In other words, except for the increase of the registration tax to €200, no change would intervene to the transfers of non-residential buildings.

Residential buildings, starting from 1 January 2014, will be subject to the following tax treatment:

- VAT must be applied at the rate of 10% (4% in case the property is destined to become the main dwelling of the purchaser) if the seller is the construction company that built or renovated – directly or indirectly through third party sub-contractors – the relevant property no more than five years prior to the sales. Apart from the above scenario, VAT would be due in case the seller opts for its application in the sale deed;
- Registration tax would be applied at the rate of 9% (2% in case of “main dwelling”), unless the sale is subject to VAT (in this case, registration tax would be applied at the fixed amount of €200);
- Mortgage and cadastral taxes would be applicable (i) at the fixed amount of €50 each if the registration tax is applied at the proportional rate, or (ii) at the fixed amount of €200 in case the sale is subject to VAT.

It becomes evident that sales of residential buildings different from main dwelling carried out as from January 2014 will become more convenient since the indirect taxation (apart from VAT that would remain the same) would be reduced to an overall 9% (plus €100) from the previous 10%.

Other changes

Another relevant amendment is related to the abolishment of all the exemptions and reliefs provided for by the rules for the transfers of real estate assets to which the new 9% and 2% rates apply.

While some of the provisions that will be abolished are easily identifiable, others leave some doubts, and until an official clarification will be issued, or the wording of the rule will be changed, the uncertainty will not be easily solved.

Among the abolished provisions it is clear that all the reduced rates currently provided for registration tax, different from the 2% and 9%, will be included.

For example, the transfer of agricultural lands to agricultural entrepreneurs would hence be subject to 9% registration tax, and the same rate would be applicable to the transfer of real estate assets of historical, artistic or archaeological interest, currently subject to 3% rate.

Real estate funds

As far as real estate investment funds (REIFs) are concerned, it seems that the 50% reduction of the normally applicable mortgage and cadastral tax rates for the sale of non-residential properties where one of the parties is a REIF, should remain valid also after 1 January 2014.

Furthermore, also the contribution to REIFs of a plurality of real estate assets mainly rented out to third parties, an investment structure often times used when a portfolio of real estate assets is sold, should remain subject to registration, mortgage and cadastral taxes at the fixed amount of €168 (€200 from 1 January 2014). In any case, the above interpretations need to be confirmed by an official position of the Tax Authorities.

Finally, another point to be clarified is the treatment of the transfer of real estate assets made by REIFs during the liquidation procedure resolved upon within 31 December 2011 under section 32, para. 5 of Law Decree No. 78/2010. Paragraph 5-ter of the aforementioned section 32 provides that said transfer would be always subject to registration, mortgage and cadastral taxes at the fixed amount of €168 and not to the proportional rates ordinarily applicable, regardless the nature of the real estate asset transferred. Also in this case it is uncertain whether the possibility of benefitting of indirect taxation at the fixed amount of €168 (€200 as from 1 January 2014) must be considered abolished. However, until an official position from the Tax Authorities is published, it is not possible to exclude that the regime of fixed registration, mortgage and cadastral taxes no longer applies to transfers

made in the context of the liquidation of a REIF. This would lead to evident downsides for those investors which relied upon the advantageous taxation provided by the 2010 law in their business plans.

Sale of going concern

Finally, please note that the above illustrated changes will affect also the sales of going concerns including real estate properties. Starting from 1 January 2014, those transfers will be subject to a 9% registration tax, while mortgage and cadastral taxes, will be levied at the fixed amount of €50. The amendments could even lead to a reduction of the applicable taxes since currently the sale of a going concern including a real estate asset is subject to registration tax levied at the rate of 7% and to mortgage and cadastral taxes levied at the overall rate of 3%, while starting from 1 January 2014, registration tax will be increased to 9%, while mortgage and cadastral taxes will be applied at the rate of €50 each.

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