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Real Estate

The Growth Decree introduces tax incentives for the transfer of buildings to construction or renovation companies

In order to benefit from the tax incentive, this companies will have to provide for the demolition, reconstruction and sale of the transferred building, within ten years following the transfer. Under certain conditions, the registration, mortgage and cadastral tax will be applied at a fixed amount of Euro 200,00 each.

The 2019 Italian Growth Decree introduced a tax incentive for the transfer of buildings to construction or renovation companies. Such tax incentive is applied to transfers carried out within 31 December 2021.

Within ten years following the transfer, the construction or renovation companies will have to:

- demolish and rebuild the buildings or carry out extraordinary maintenance works, restoration works or renovation works on the buildings. In any case, the new buildings shall be compliant with the anti-seismic regulations and be classified among energy classes A or B;
- finally, sell the buildings (even if they are divided into several units on condition that the sale concerns at least 75 per cent of the new building).

The tax incentive introduced by Article 7 of the 2019 Italian Growth Decree allows the application of the registration, mortgage and cadastral taxes at the fixed amount of Euro 200,00 each.

If the conditions and terms described above are not respected, then: (i) the registration, mortgage and cadastral taxes shall become applicable at the ordinary rate, (ii) penalties in the amount of 30 per cent of the tax due shall apply as well as the interest accrued from the date of purchase.

Merger and acquisition

The Growth Decree introduces tax incentive for the business combinations

The Growth Decree introduced a tax free on higher values booked as a result of mergers, demergers or contributions of business at an overall amount not exceeding Euro 5.000.000,00.

With regard to the operations of business combinations (i.e. mergers, demergers and contributions of business) carried out between 1 May 2019 and 31 December 2022, Article 11 of the Italian 2019 Growth Decree established the recognition for tax purpose of the value of goodwill and the higher values attributed to tangible and intangible assets at an overall amount not exceeding Euro 5,000,000. Consequently, any higher value are tax free for IRES and IRAP purposes (if not exceeding five million).

In order to benefit from this tax incentive, in the tax year in which the business combination takes place and in the previous two tax years, the companies taking part to the operation must satisfy the following conditions:

- both companies must have been operative for at least 2 years;
- both companies must not be part of the same group of companies;

- one company must not hold more than 20% of the shares in other company taking part to the operation;
- one company must not control the other company taking part to the operation, even indirectly, by holding a majority of the votes at the ordinary shareholders meeting.

Such tax incentive is applied if the entity resulting from the business combination is an Italian resident company for tax purposes. No other conditions are required with regard to other entities involved in the operation.

The tax benefit is forfeited if, in the four tax years following the business combination, the company carries out further reorganization operations or transfers the assets booked or revalued under this provision.

The company may submit a tax ruling to the Italian tax authorities in order to prove that the business combination is not abusive and, therefore, the tax benefit must not be revoked.

Instead, if the tax benefit is revoked, the company will have to pay the higher amounts due for IRES and IRAP, also with reference to previous tax years, but without penalties or interests.

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