



NEWSLETTER NO. 11 - 2024

18 July 2024 Page 1/3

DIRECT TAXES

CAPITAL GAINS FROM THE SALE OF REAL ESTATE SUBJECT TO SUPERBONUS INTERVENTIONS

If real estate on which subsidised construction work was carried out in accordance with section 119 of Italian Legislative Decree 34/2020 ("Superbonus") is sold for consideration within ten years of completion of the construction work, the transaction is taxable in accordance with section 67 of Italian Tax Code (TUIR).

The capital gain is taxed irrespective of who carried out the construction work (seller or other authorised party, e.g. *condominio*), of the deductible percentage, of the method of utilisation (deduction, discount on invoice or assignment of the tax credit) and of the type of construction work carried out.

The costs of the construction work that qualify for the 110% Superbonus are not included in the tax costs of the real estate that are relevant for determining the capital gain if less than five years have passed since the construction work was carried out and the options for the discount on invoice or the assignment of the tax credit have been exercised. However, if more than 5 years have elapsed, 50% of the costs shall be taken into account (Italian tax authority, newsletter no. 13 of 13 June 2024).

OFFSETTING OF TAX CREDITS

The Italian tax authority provides clarifications on the new rules for offsetting tax credits.

As from 1 July 2024 only the electronic services provided by the tax authority shall be used to offset tax credits of any type (including any INPS and INAIL credits) and amount, the tax authority clarifies that this obligation also applies in the following cases:

- "partial" offsetting of tax credits against tax liabilities, i.e. using form F24, which may not have a "zero balance";
- "vertical" offsetting of the same tax (e.g. "IRES pre payments with IRES credit"), if this is shown on the F24 form.

The Italian tax authority also explains the exclusion of the "horizontal" offsetting of tax credits (with the exception of INPS and INAIL credits) in case of tax liabilities of more than EUR 100,000 on the basis of the new wording of section 37 (49-quinquies) of Italian Legislative Decree 223/2006, as amended by Italian Legislative Decree 39/2024.

In this regard it is clarified that the prohibition of set-off does not apply in the case of an amount of tax liabilities below the threshold of EUR 100,000 due to:

NEWSLETTER NO. 11 - 2024

18 July 2024 Page 2/3

- (i) the judicial or administrative suspension of tax claims;
- (ii) the granting of an instalment payment plan by the enforcement authority for which there is no reason for exclusion;
- (iii) the (partial) payment of the sums due. The taxpayer may also obtain the cancellation or reduction of tax liabilities below EUR 100,000 by offsetting only tax credits for state tax debts, provided this is permitted.

Moreover, if:

- the tax liabilities are higher than EUR 1,500 and do not exceed EUR 100,000, the provisions of section 31 (1) of Italian Legislative Decree 78/2010 apply;
- the tax liabilities are higher than EUR 100,000, only the provisions of section 37 (49-quinquies) of Italian Legislative Decree 223/2006 apply.

In this regard, please note that the two prohibitions apply differently: Section 37 (49-quinquies) of Italian Legislative Decree no. 223/2006 prohibits the offsetting not only of tax credits against state tax debts, but also of those deriving from tax benefits (Italian tax authority, newsletter no. 16 of 28 June 2024).

OFFSETTING THE TAX CREDIT FOR NOTIONAL INTEREST DEDUCTION (SUPER ACE)

The tax credit for notional interest deduction (Super ACE) pursuant to section 19 of Italian Legislative Decree 73/2021 is a tax incentive that is not

directly attributable to the taxes listed in section 1 (574) of Law 147/2013. Hence, the declaration of this credit in the tax return is therefore useful for control purposes, but does not give rise to a right. However, when offsetting the tax credit for notional interest deduction (Super ACE), no tax compliance certificate pursuant to section 35 (1) (a) of Italian Legislative Decree no. 241/1997 is required (Italian tax authority, answer to request for advance ruling no. 139 of 21 June 2024).

CONTRIBUTIONS UNDER THE SWISS INSURANCE SCHEME FOR OLD-AGE AND SURVIVORS' INSURANCE (OASI) (1ST PILLAR) AND PENSION FUND (OP) (2ND PILLAR) THROUGH VESTED BENEFITS ACCOUNT

The OASI ("1st pillar") and OP ("2nd pillar") pension payments to a natural person resident in Italy are taxed exclusively in Italy in accordance with section 18 and 21 DTA. In addition, both the monthly pensions paid out by the OASI and the OP as capital payments are subject to the 5% substitute tax pursuant to section 76 (1ter) Law no. 413/1991 (Italian tax authority, answer to request for advance ruling no. 125 of 3 June 2024).

DEMATERIALIZATION AND STORAGE OF EXPENSE REPORTS AND RECEIPTS

The Italian tax authority explains the correct management of analogue documents with regard to their dematerialisation and subsequent storage and reiterates that the requirements for the immutability, completeness and authenticity of dematerialised documents shall be met (Italian tax authority, answer to request for advance ruling no. 125 of 03 June 2024).

SOCIAL SECURITY CONTRIBUTIONS DEDUCTIBLE FROM CONVENTIONAL SALARY

If an employee's income was determined on the basis of the conventional salary referred to in section 51 (8-bis) of the Italian Tax Code, the social security contributions paid abroad may be deducted from the taxpayer's total income (judgement of the Italian Supreme Court no. 17747 of 27 June 2024).

SOLIDARITY CONTRIBUTION ("EXCESS PROFITS" ENERGY SECTOR)

The solidarity contribution ("excess profits") provided for in section 37 of Italian Decree-Law 21/2022 ("Decree Ukraine-bis") was deemed constitutional, with the exception of the inclusion of excise taxes in the tax base relevant for the contribution, which was found to violate the principle of tax adequacy (sections 3 and 53 of the Italian

NEWSLETTER NO. 11 - 2024

18 July 2024 Page 3/3

Constitution). (Judgement of the Italian Supreme Court no. 111 of 27 June 2024)

TAX RESIDENCE OF REAL ESTATE COMPANIES

The tax residence of a real estate company does not depend on the location of the property, but on the place where "the administration (including tax and financial administration) and management takes place" (judgement of the Italian Supreme Court no. 17289 of 24 June 2024).

CAPITAL GAINS FROM THE SALE OF REAL ESTATE

If a property, that has served as the seller's main residence for most of the period between the purchase and the sale, is sold within 5 years of the purchase, the sale is not taxable even if the property is classified as an office (A/10) in the land register (judgement of the Italian Supreme Court no. 17528 of 25 June 2024).

Yours sincerely,

HAGER & PARTNERS