

ITALY – RULING ON THE TAX TREATMENT OF REAL ESTATE SECURITISATIONS. WELCOME CONFIRMATIONS, BUT NOT MORE

The Italian tax authorities have just days ago issued a comprehensive ruling on the tax treatment of real estate securitisation companies, a 2019 addition to the Italian securitisation framework (Ruling 132 of 2 March 2021, the "Ruling").

THE REGIME

Under the Italian Securitisation Law (Law 130 of 1999), the securitisation legal framework also applies to securitisations of proceeds arising from the ownership of real estate and registered movable assets (*beni mobili registrati*) as well as to other rights in rem (*diritti reali*) or personal rights (*diritti personali*) over such assets (each a "Real Estate Securitisation").

The regime applicable to Real Estate Securitisations provides that:

- Italian special purpose vehicles ("RE SPVs") are legally permitted to acquire and manage the receivables arising from certain portfolios of assets and to own and manage real estate and registered movable assets, as well as any related rights;
- RE SPVs must have as their exclusive object the carrying out of Real Estate Securitisations (any other transaction being excluded);
- in the context of each Real Estate Securitisation, the parties must identify the assets and rights that will be available to satisfy the rights of the noteholders and any hedging counterparties;
- the assets and rights identified by the parties, as well as any other claims owed to an RE SPV in the context of a Real Estate Securitisation, are segregated for all purposes from any other assets of the RE SPV and from the assets relating to any other transaction (*patrimonio separato*);
- no actions are permitted on the segregated assets by creditors other than the noteholders, the lenders under any financing granted to the RE SPV or the counterparties under any hedging agreements in place in connection with the Real Estate Securitisation.

Because the law does not specifically govern Real Estate Securitisations and RE SPVs the applicable tax regime has been derived by analogy from the tax regime governing the securitisation of receivables, as amended and interpreted over time.

THE RULING

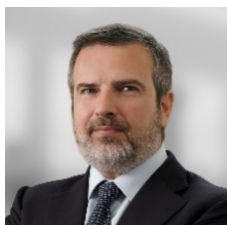
The Ruling confirms several conclusions that practitioners in the field have meanwhile derived by analogy from the regime applicable to the securitisation of receivables. The principal confirmations of the Ruling include:

- The tax regime applicable in the context of the securitisation of receivables applies also to the segregation of the assets held by RE SPVs; i.e., unless and until a surplus remains at the end of the securitisation, which is not to be paid out to noteholders or to other creditors of the transaction, no corporation tax (IRES) would be applicable on the income and gains of the RE SPV;
- Similarly, the accounting of the segregated assets and relevant activities is such that no regional tax (IRAP) would be applicable on the tax basis generated under the transaction, again unless and until a surplus remains at the end of the securitisation, which is not to be paid out to noteholders or to other creditors of the transaction;
- The tax regime applicable to the Real Estate Securitisation notes the general regime governing other securitisation notes. Thus, interest is in principle subject to a 26% substitute tax; however eligible white-listed foreign investors would be exempt subject to de minimis compliance (see [this briefing](#) for further insight);
- VAT on the activities of the RE SPV applies under ordinary rules as applicable to any Italian entity engaged in real estate activity;
- No special regime applies for transfer tax purposes; therefore, registration, mortgage and cadastral taxes on purchases and sales would apply under ordinary rules, because the special regime applicable to investment funds or to eligible ReoCos and LeaseCos is not applicable to RE SPVs.

OUR VIEW

Overall, the Ruling constitutes a welcome confirmation, possibly dispelling doubts only for the more wary. Real Estate Securitisations are gradually increasing for smaller transactions and have all the features to become a mainstream solution for institutional real estate investment in Italy even for larger transactions.

CONTACTS



Carlo Galli
Partner

T +39 02 8063 4525
E carlo.galli
@cliffordchance.com



Sara Mancinelli
Counsel

T +39 02 80634 582
E sara.mancinelli
@cliffordchance.com



Andrea Sgrilli
Senior Associate

T +39 02 8063 4239
E andrea.sgrilli
@cliffordchance.com

www.cliffordchance.com

Clifford Chance, Via Broletto, 16, 20121
Milano, Italia

© Clifford Chance 2021

Clifford Chance Studio Legale Associato

Abu Dhabi • Amsterdam • Barcellona •
Pechino • Bruxelles • Bucharest • Casablanca
• Delhi • Dubai • Düsseldorf • Francoforte •
Hong Kong • Istanbul • Londra •
Lussemburgo • Madrid • Milano • Mosca •
Monaco di Baviera • Newcastle • New York •
Parigi • Perth • Praga • Roma • San Paolo del
Brasile • Seoul • Shanghai • Singapore •
Sydney • Tokyo • Varsavia • Washington, D.C.