

Securitization transactions:

first official clarification published by the Italian Tax Authorities on the tax regime of the so-called Reocos

With ruling No. 18 issued on January 30, 2019 (the “**Ruling 18**”), the Italian Tax Authorities clarifies certain tax aspects of the so-called Reocos (real estate companies incorporated in the context of securitization transactions).

Reocos are special purpose vehicles set-up with the sole purpose of acquiring, managing and disposing of real estate assets (the “**Assets**”) mortgaged out to secure loans whose receivables have been subsequently securitized pursuant to Law No. 130/1999 (the “**Securitization Law**”). The activity of Reocos is carried out against consideration paid by the securitization vehicle (the “**130 SPV**”).

1. Corporate income tax (IRES) and regional tax (IRAP)

According to the provisions of the Securitization Law, receivables transferred to the 130 SPV constitute a pool of separate assets (*patrimonio separato*) ring fenced from the rest of the business of, and from any other securitization transactions carried out by, the same 130 SPV; since neither profits nor costs connected to the *patrimonio separato* are entered in the P&L of the 130 SPV, no IRES or IRAP is due in connection with the same *patrimonio separato* (Circular Letter No. 8/E of 6 February 2003).

The Ruling 18 clarifies that, absent a similar provision in the Securitization Law with respect to Reocos, said companies cannot enjoy the same tax treatment applicable to 130 SPVs. Therefore, Reocos are liable to IRES and IRAP.

2. Value added tax (VAT)

Management fees paid by the 130 SPV to Reocos, as consideration for their services, shall be subject to VAT at the ordinary rate (currently 22%) as they qualify as valuable supplies of services.

On the contrary, any sum transferred from the 130 SPV to the Reoco (aimed at providing the Reoco with the funds necessary to perform its activity) is not subject to VAT.

3. Indirect taxation applicable to transfers of Assets

Transfers of Assets to and from Reocos are subject to the ordinary indirect tax regime; as a consequence, the amount of registration, mortgage and cadastral taxes will vary depending, *inter alia*, on (i) the tax status of the seller, (ii) the features of the asset so transferred and (iii) the possibility to claim specific tax reliefs.

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