

TAX NEWS REGARDING BUILDINGS REGISTERED IN THE CADASTRAL CATEGORY F

Case Law

Indirect taxation - The flat roof covering an industrial warehouse is not an "instrumental building"

The Supreme Court, with the ordinance n. 15192 of the 1st of June 2021, resolved a controversial issue concerning the possibility to whether, or not, attribute the nature of (portion of) "instrumental building" to a flat roof, registered in the cadastral category F/5, merely because insisting on an industrial warehouse registered in category D/1, and on the consequent fiscal treatment for indirect taxes purposes (VAT, registration tax, mortgage and cadastral tax).

It is worth to firstly remember that the art. 40 of PD n. 131/1986 establishes a general principle of alternation between the VAT and the registration tax (the "**Alternation Principle**"), according to which the subjection to VAT of a given transaction implies that the relative deed /contract must be subject to registration tax levied at 200 euros. This principle also applies to those operations which, although subject to VAT, are exempt from taxation - such as, for example, instrumental buildings sales (see Art. 10, par. 1, n. 8-ter), PD n. 633 / 1973) - except, among the others strictly listed, for the operations provided in the art. 10 n. 8-bis), par. 1, of PD n. 633/1973 laying down provisions on sales of buildings other than those classified as instrumental.

Therefore, the correct identification of a flat roof nature (i.e., instrumental rather than non-instrumental) allows to understand whether or not the related transfer falls under the VAT/ registration tax Alternation Principle.

Furthermore, it must be investigated whether the nature of the asset on which the flat roof insists (registered in the cadastral category D/1) in some ways affects the evaluation of its nature as a (portion of) instrumental building/building other than those classified as instrumental.

In this respect, the art. 15 of the PD n. 650/1972 recognizes the possibility to autonomously identify the flat roofs in the urban building register (so regardless the nature of the building on which they insist).

The Supreme Court, with the order cited at the beginning, held that a flat roof autonomously registered in the land registry in the category F/5 is not instrumental either by destination (as it is not used for the business activity), or by nature (as it is not necessarily usable for a business activity due to its intrinsic characteristics).

Furthermore, as it has an autonomous cadastral classification, the circumstance that it constitutes the cover of a property which is deemed to be instrumental by nature (category D/1) does not affects the autonomous nature.

In the light of the foregoing, the transfer of ownership of a flat roof (falling out of the scope of the Alternation Principle, as it is excluded from the aforementioned art. 10, par. 1, n. 8-ter, PD n. 633/1973 since not qualifiable as instrumental building) would not be covered by the Alternation Principle. Thus registration tax would apply with the proportional rate of 9% (to be calculated on the asset market value) and mortgage and cadastral taxes would apply with the lump sum of 50 euros each.

Rulings

Indirect taxation - Correct tax treatment of cadastral properties identified as lands

With the ruling n. 365, published on the 6th of July 2022, the Italian Revenue Agency clarified the correct tax treatment applicable, for the purposes of indirect taxes, to a sale and purchase transaction involving a building under construction, registered in the cadastral category F/3, whose works had been interrupted due to an execution and which, therefore, was still registered as a land.

According to the Italian Revenue Agency, the indirect taxation regime applicable to the transfer of a property is *"Closely related to the objective nature of the asset sold, hence to the status of the same at the date of the sale, regardless of the destination of the asset by the 'buyer'".* (See Cass. sent. n. 4074/2020, n. 30157/2017 and n. 22765/2016).

Therefore, considered the interruption of the works and the cadastral classification (F/3 – building units under construction) unsuitable to attribute the nature of a "building" to the property at stake, the same would be deemed as "buildable land" rather than "unfinished building".

Consequently, the transaction must be subject to VAT and, in application of the Alternation Principle, to registration, mortgage and cadastral taxes with the lump sum of 200 euros each.

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