

Real estate updates included in the

2024 Budget Law

19/01/2024

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**NEWSLETTER**

**INFORMATION LETTER N.02/2024**

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Disegno di Legge *“Capitali”*

**Real estate updates included in the**

**2024 Budget Law**

The **2024 Budget Law** was published in the Official Gazette n.303 of December 30th 2023 and came into **effect on January 1st 2024**.

Here below, a brief overview of the main updates related to **real estate**:

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| **Capital gains from sale of buildings subject to restructuring with *superbonus*** | Starting from **January 1st 2024**, **capital gains from sale of properties restructured with *superbonus* are considered as miscellaneous income**; such interventions should have been completed no more than 10 years prior to the sale (in essence, within the following 10 years from the completion of works with *superbonus*, sale of properties is relevant for income tax).  Properties **excluded** are the ones:   * acquired through inheritance; * used as main residence of transferor or family for most of the 10 years preceding the sale or, if the period is less than 5 years, for most of that period.   Regarding the **determination of costs** for calculating capital gains, it is provided that:   * if *superbonus* interventions have been completed no more than 5 years before sale, constructions expenses are not taken into account, if the incentive of 110% has been used and options for transferring tax credits have been exercised; * if *superbonus* interventions have been completed for more than 5 years, but within 10 years before sale, 50% of expenses are considered if 110% benefit has been used.   It is **possible to apply the substitutive tax of 26%** to capital gains. |
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| **Real estate constructions – Increase of withholding tax on transfers** | Starting from **March 1st 2024**, withholding tax applied on **transfers** related to deductible expenses or those eligible for tax deduction will increase from 8% to **11%**.  This provision will affect, therefore, *superbonus*, *ecobonus*, *sismabonus*, *home bonus* 50%, *barrier bonus*. |
| **Establishment of real property rights** | Article 1, paragraph 92, letters a) and b), of the 2024 Budget Law has mitigated the principle of equivalence between onerous transfer of real estate and establishment/transfer of real property rights, applying it only where rules do not provide otherwise. In addition, article 67, paragraph 1, letter h), of the Consolidated Income Tax Law (*T.U.I.R.*) introduces the provision according to which not only income on granting rights of usufruct on real estate are taxed, but also that deriving from establishment of other real estate rights of enjoyment.  **Establishment of a real right of enjoyment in exchange for consideration**  The establishment of a real right of enjoyment (usufruct, surface right, use, residence, emphyteusis or predial servitude) involves, therefore, application of article 67, paragraph 1, letter h), of the *T.U.I.R.*, with the following effects:   * possession of property benefitting of *superbonus* for more than five or ten years does not count; * taxpayers apply progressive income tax (*Irpef*) to the difference between the amount received in the tax year and expenses related to their production.   **Transfer of a real right of enjoyment in exchange for consideration**  In case of transfer to third parties of a real right of enjoyment by its holder, article 67, paragraph 1, letter b), of the *T.U.I.R.* is applied, with the following regulations:   * transfer of rights held for more than 5 years or 10 years for properties benefitting of *superbonus* is not subject to taxation; * taxable capital gains are calculated as difference between considerations received in the tax year and purchase price.   Furthermore, upon request to Notary, transferors may request the application of **substitutive tax of 26%** on realized capital gains, to be paid by the Notary through form *F24*. |
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| **Extension of exemptions for properties affected by the earthquake in Central Italy 2016 - 2017** | With reference to properties located in the Municipalities of Abruzzo, Lazio, Marche and Umbria Regions, affected by the earthquakes of 2016 and 2017, 2024 Budget Law extends the exemptions as per article 48 of the Law Decree 189/2016 for *Irpef*, *Ires* and *IMU*.  The **requirements for exemptions** apply to buildings that are simultaneously:   * destroyed or subject to municipal evacuation orders, however adopted by December 31st 2018, as deemed uninhabitable either totally or partially; * located in the municipalities affected by the earthquakes of August 24th 2016, October 26th and 30th 2016 and January 18th 2017.   **Extended exemptions**  In presence of the a/m requirements:   * income from properties **does not contribute to the determination of the taxable base for *Irpef* and *Ires***, until definitive reconstruction and habitability and, however, until the year 2023; * buildings are exempt from *IMU* until definitive reconstruction or habitability and, however, not beyond December 31st 2024. |
| ***IMU e*xemption for properties owned and used by non-commercial entities** | Article 1, paragraph 71, of the 2024 Budget Law introduces certain authentic interpretation rules regarding *IMU* exemption for **properties owned and used by non-commercial entities**; such regulations are effective also for years preceding their entry into force.  In particular, ***IMU* exemption** applies if there is a combination of:   * a **subjective requisite**, as *IMU* taxpayers should be qualified as non-commercial entities (as per article 73, paragraph 1, letter c) of the *T.U.I.R.*); * an **objective requisite**, meaning the use of the property, by non-commercial entities, for institutional activities (welfare, social security, healthcare, scientific research, educational, hospitality, cultural, recreational, sports, religious and worship activities).   **Exemption for properties loaned for use**  It is clarified that the a/m exemption also applies for properties that non-commercial entities (as owners or holder of enjoyment rights) loan for use, provided that:   * lessees are non-commercial entities, functionally or structurally connected to the granting entity; * lessees non-commercial entities carry out exclusively institutional activities.   **Exemption in temporary absence of institutional activities**  It is also provided that *IMU* exemption applies even in the absence of current exercise of institutional activities by non-commercial entities, provided that simultaneously:   * properties are connected to the entity activities; * the current non-exercise of institutional activities does not result in the definitive cessation of the entity.Inizio modulo |
| **Extension of the deadline for accessing the Guarantee fund *Prima casa*** | Article 1, paragraph 7, of the 2024 Budget Law **extends the deadline for accessing the Guarantee Fund *Prima casa* until December 31st 2024**. The extension applies to the following categories of individuals:   * young couples; * single-parent families with minor children; * tenants of properties owned by autonomous institutes for public housing; * individuals under the age of 36.   On an objective level, the possibility of accessing to the fund is subject to the dual condition that:   * each applicant, falling into the a/m categories, has an *Isee* not exceeding € 40.000 annually; * the request involves loans with a financing limit (defined as ratio between total loan amount and purchase price of real estate, including additional costs) exceeding 80%.   Meeting such conditions, both subjective and objective, **the maximum guarantee amount is increased to 80%** of the outstanding principal amount.  Inizio modulo |
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| **Loan refinancing** | Article 1, paragraph 13, of the 2024 Budget Law provides, for the year 2024, the continuation of the Guarantee fund for *Prima casa* also in the event of loan refinancing, provided that:   * economic conditions remain substantially unchanged or improved; * there are no negative impacts on the economic and financial balance of the Fund itself. |

* **Short-term lease and flat-rate tax**

Of particular significance are, finally, the changes introduced to the regulations governing leases. Indeed, article 1, paragraph 63, of the 2024 Budget Law **raises the flat-rate tax**, applicable by option, **to 26%** for lease contracts, allowing the possibility to retain the **regular rate (21%) for a single property designated for short-term rentals**.

For what concerns the **objective scope**, the provision specifically refers to short-term leases, defined as lease agreements for residential properties with duration not exceeding 30 days, including those involving provisions of linen and cleaning services, entered into by individuals, outside of business activities, either directly or through entities engaged in real estate brokerage or those managing online platforms connecting individuals seeking rental properties with those offering leasable units[[1]](#footnote-1).

**Business nature – Exclusion**

Regulations on short-term leases apply exclusively to **agreements entered into outside the scope of business activities**. As per article 1, paragraph 595, of Law 178/2020, **a business nature is presumed if more than four apartments are designated for short-term rental** in each tax period (business nature of lessor excludes the applicability of the flat-rate tax)[[2]](#footnote-2).

Inizio modulo

In summary, starting **from January 1st 2024**, the flat-rate tax on short-term leases:

* applies with the “reduced” rate of **21%** on income from one property identified by taxpayers;
* applies with the **26%** rate on income from short-term lease of other properties different from the one a/m;
* **cannot be applied** if owners designate more than 4 properties for short-term rental in the tax period, in which case it falls within the scope of business activities.

**Withholding tax of 21% as advance payment**

The provisions for short-term leases require intermediaries (entities engaged in real estate brokerage, as well as those managing online platforms connecting individuals seeking rental properties with those offering leasable units), when collecting rents or proceeds for short-term leases or similar contracts, or when facilitating payments of such rents or proceeds, to:

* **operate as withholding agents** **a withholding tax of 21% on rents and proceeds** upon payment to beneficiaries and remitting it to the Tax Authority;
* issue corresponding certifications.

**Adjustment of regulations for non-resident intermediaries**

Non-resident intermediaries, without permanent establishment in Italy, are no longer obliged to appoint a tax representative, but can choose to fulfil communication, withholding and certification obligations directly or by appointing a tax representative as responsible party.

Here below, a summarizing table:

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| --- | --- |
| **Short-term rental residential properties with flat-rate tax** | **Flat-rate (by option)** |
| **Single property for short-term rental** | * With option in tax return: 21% * Without option in tax return: 26% |
| **Two properties for short-term rental (\*)** | * One property indicated in tax return: 21% * Other property: 26% |
|  |  |
| **Three properties for short-term rental (\*)** | * One property indicated in tax return: 21% * Other two properties: 26% |
| **Four properties for short-term rental (\*)** | * One property indicated in tax return: 21% * Other three properties: 26% |
| **Five properties for short-term rental (\*)** | * Business activity: no flat-rate tax |

Inizio modulo

(\*) With no option, all properties are taxable at 26% rate.

Inizio modulo

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Our Firm remains at disposal for any further clarification.

Studio Nicolini Commercialisti Associati

Milan, 19 January 2024

The information contained in this Information letter has a mere general and informative scope and does not constitute an advice on the subjects covered.

Our Firm remains at complete disposal for any additional information.



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1. By explicit legislative intent, are considered short-term leases: i) **sublease** agreements, if entered into under conditions that qualify as short-term rentals; ii) onerous contracts entered into by **lessees**, with the object of granting enjoyment of properties to third parties (so-called sublease of lessees), if concluded under conditions that qualify as short-term rentals.. [↑](#footnote-ref-1)
2. The entrepreneurial nature of lessors fundamentally excludes both the classification of the contract as a short-term lease and the applicability of the flat-rate tax; consequently, the flat-rate tax for short-term leases transitions to the standard 26%, but it is possible to secure a reduction to the 21% rate for a property designated for short-term rental by **declaring it accordingly**. [↑](#footnote-ref-2)