

THE REGISTRATION TAX DOES NOT APPLY REGARDLESS OF THE PENALTY CLAUSE IN THE LEASE AGREEMENT

Italian Revenue Agency ruling No. 185/2024

- ✓ With the ruling in comment, the Italian Revenue Agency (IRA) returns to the issue of whether the penalty clause contained in a lease agreement is subject to autonomous taxation for registration tax purposes, providing further and definitive clarifications and complying with the repeated indications coming from the jurisprudence of legitimacy (most recently Supreme Court - Cassazione - No. 3466 of 2024 and No. 30983 of 2023).
- ✓ Preliminarily, the IRA points out, also recalling the recent pronouncements of the Supreme Judges, that the penalty clause has, according to Article 1382 of the Civil Code, the function of supporting the exact, reciprocal and punctual fulfillment of the “principal” obligations originated from the contract in which it is contained, so that it does not have a “proper” and distinct cause, but has a servant and reinforcing function intrinsic to the contract that contains it. The penalty clause, indeed, cannot survive independently of the contract and concerns, due to its inseparable function and intrinsic nature, to the unitary discipline of the contract to which it pertains.
- ✓ Since the penalty clause takes on a merely ancillary and non-autonomous function with respect to the contract, the obligation arising cannot exist autonomously with respect to the principal obligation. For this reason, when registering the lease contract, Article 21, paragraph 2, of the TUR (Testo Unico Imposta di Registro) applies. Pursuant to Article 21(2) TUR, the lease contract (as a “complex” act whose provisions derive by their intrinsic nature from each other and are governed by a single economic-legal cause) is subject to the taxation of the provision that gives rise to the most onerous taxation, between the one relating to the contract (in this case 2%) and the other one relating to the penalty clause itself.
- ✓ For the purpose of assessing the most onerous provision under Art. 21(2) cited above, the IRA clarifies that the discipline of deeds subject to conditions of suspension under Art. 27 TUR (fixed tax in the amount of 200 euros) applies to the penalty clause.