

15% REGISTRATION TAX FOR THE ESTABLISHMENT OF SURFACE RIGHTS ON AGRICULTURAL LANDS

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"Deeds of incorporation of surface rights on agricultural land are subject to a 15% registration tax."

The Italian Revenue Agency (the "Agency") with response no. 365 of 3 July 2023, has confirmed that deeds of incorporation of surface on agricultural land are subject to a 15% registration tax.

Specifically, the Agency deems that the applicable tax treatment for registration tax purposes is regulated by Article 1, third paragraph, of the First Part of the Tariff annexed to Italian Presidential Decree 131/1986, to the extent that the surface

rights involve land intended for agricultural use. Indeed, the rule provides that *"if the transfer involves agricultural land and its related appurtenances in favour of subjects other than direct farmers and professional agricultural entrepreneurs, enrolled in the respective welfare and pension management scheme"*, then the registration of the relative deed is subject to tax with a rate of 15%.

In this sense, the (obviously extensive) interpretation of the rule by the Agency effectively equates the establishment of a real right of enjoyment to a type of transfer.

This interpretation had already been previously refuted by the Italian Supreme Court, initially in relation to the deeds of incorporation of land easements, and subsequently with specific reference to the deeds incorporating the surface rights (Order No. 3461 of 2021).

In particular, following a rather literal interpretation of the legislative text, the Italian Supreme Court believes that the acts constituting a real right of enjoyment do not entail any "transfer" of ownership and should therefore be subject to a 9% registration tax according to Article 1, first paragraph, of the First Part of the Tariff, attached to Italian Presidential Decree 131/1986 as *"deeds transferring for consideration the property of real estate in general and deeds transferring or establishing real property rights of enjoyment"*.

"The recent stance of the Agency therefore represents a backwards step in that it risks generating uncertainty for operators in the photovoltaic sector."

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Moreover, the Agency, embracing the approach taken by the court of law in various decisions related to the establishment of servitude rights on agricultural lands, has surpassed the guidelines contained in the previous administrative practice, recognising the application of the 9% registration tax (Resolution No. 4/E of 15 January 2021).

The recent stance of the Agency therefore represents a backwards step in that it risks generating uncertainty for operators in the photovoltaic sector, who had previously acted in accordance with the Italian Supreme Court's view that the establishment of surface rights on agricultural land is among the acts subject to a 9% (rather than 15%) registration tax.

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