

110% bonus: the complex system of fulfilments

Expert's Opinion

Available alternatives to the 110% Superbonus

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The 110% Superbonus is a tax benefit introduced under the so-called *Rilancio* Decree (art. 119 of Law Decree no. 34 dated 19 May 2020, converted by Law no. 77 dated 17 July 2020), which increased up to 110% the deduction rate of expenses borne for specific works aimed at improving energy efficiency and anti-seismic features of buildings and at installing photovoltaic plants and infrastructures...

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Transfer of tax credit as investment opportunity

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Controls needed according to CNDCEC and the Revenue Office

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The so-called Superbonus provisions under art. 119 of Law Decree no. 34 dated 19 May 2020 (so-called *Rilancio* Decree) are aimed at incentivizing expenses relevant to specific intervention for the improvement of energy efficiency and the reduction of seismic risks, borne from 1st July 2020 to 31st December 2021 (“major” works), as well as to further interventions realized in combination with the major ones (“minor” works)...

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Overview

Transfer of tax credit as investment opportunity

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Art. 121 of Law Decree dated 19 May 2020, no. 34, turned into Law dated 17 July 2020, no. 77, so-called *Rilancio Decree*, provides for the possibility – with reference to cost incurred in 2020 and 2021 – to benefit from some tax deductions as concerns construction and energy improvement interventions, in the form of tax credit or discounts on considerations, which can be transferred to third parties, including banks and financial intermediaries, departing from the ordinary dispositions on debt transfer.

These measures were introduced by the Government with the aim of relaunching the Italian economic system, which has been heavily affected by the Covid-19 pandemic emergency. Particularly important are the provisions on the transfer of credit generated from works for building renovation, energy efficiency improvement, adoption of aseismic measures, installation of solar power plants and of electric vehicle charging equipment (so-called “110% Superbonus”).

Specifically, besides the possibility to obtain a direct discount on considerations due for works, the abovementioned provision has introduced the possibility to convert tax deductions related to such interventions into tax credit and then to transfer such credit to third parties, including credit institutes and other financial

intermediaries. Transferees can, in turn, further transfer credit to other parties, including credit institutes and other financial intermediaries.

The possibility to transfer credit under para. 1 of the article at issue explicitly departs from the current regulation, which, in case of building renovation and energy efficiency improvement works, admits the transfer of credit deriving from the tax deduction or its utilization as a contribution amount.

Therefore, in order to foster the economic recovery, the Government is focusing on the building industry, which has always been a driver to growth. The legislator has strengthened the impact of the provision, by giving taxpayers the possibility to finance the whole cost incurred, also through some mechanisms for the transfer of the tax credit deriving from deductions, thus having the possibility to obtain loans for works from credit institutions by transferring the tax credit to them, or to obtain by the construction company in charge of the works a discount equal to the whole amount due.

In detail, the regulation provides that credit be transferred without recourse and provides for the non-application of the general offsetting limits provided for tax and social security contribution credit equal to 700,000 Euro (increased to 1 million Euro only for 2020), as well as of the 250,000 Euro limit applicable to tax credit to be indicated in the RU section of the tax return.

Transferees can utilize the acquired tax credit



starting from day 10 of the month following the correct receipt of the Revenue Office notification and, in any case, not before 1st January of the year following that in which concerned costs were incurred.

The possibility to transfer tax credit to third parties can also represent a great opportunity for both credit transferees (banks, financial intermediaries, etc.) and transferring parties (taxpayers), who can immediately capitalize their credit without waiting for ordinary five-year payback period.

Moreover, the *SiBonus* platform, made available by Infocamere, is now online, creating a contact between taxpayers that want to transfer their tax credit and entities that are interested in acquiring it. The platform, already operating in North-Eastern Italy, was created thanks to the collaboration with Unioncamere Veneto, and Lorenzo Tagliavanti, president of Infocamere, stated: «In a scenario where middle and large companies have already started to benefit from the transfer of credit, our aim is to make this market more accessible to small enterprises».

Transfer of credit must be made electronically by an intermediary being qualified to electronic submission of returns and must concern the remaining amounts that have not been deducted. Once the transfer option is exercised, this refers to all remaining non-deducted amounts and is irrevocable. In order for the transfer to be effective, a notification must be submitted to the Revenue Office from 15 October 2020 and by 16 March of the year following that in which the relevant costs are incurred.

In order to benefit from the transfer of credit, it is also necessary to obtain a stamp of approval of information included in the documentation attesting the meeting of the requirements that give right to apply for the Superbonus. Pursuant to art. 35 of legislative decree no. 241/1997, the stamp of approval must be issued by intermediaries qualified for the electronic submission of tax returns, i.e. chartered accountants, accountants, labour consultants, and advisors at CAF offices (tax aid offices). Therefore, the stamp of approval is necessary in order for the transfer of credit to be successful. Bernoni Grant Thornton can assist the involved parties with this process, in order to ensure that the transfer of credit is concluded effectively. The stamp of approval should be issued with caution, through a structured logic process that allows assessing the adequacy of:

- the subject that will benefit from the allowance
- the type of property concerned by interventions
- the type of interventions performed;
- the relevant cost incurred
- the certifications, statements, and self-declarations needed.

At the end of the assessment process, the professional in charge can issue the stamp of approval, attesting the actual right to tax credit.



Expert's opinion

Le alternative al Superbonus 110%

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Foreword

The 110% Superbonus is a tax benefit introduced under the so-called *Rilancio* Decree (art. 119 of Law Decree no. 34 dated 19 May 2020, converted by Law no. 77 dated 17 July 2020), which increased up to 110% the deduction rate of expenses borne for specific works aimed at improving energy efficiency and anti-seismic features of buildings and at installing photovoltaic plants and infrastructures to recharge electric vehicles. The Superbonus is a deduction on the gross tax granted upon carrying out works increasing the energy efficiency or decreasing the seismic risk of buildings.

Specifically, in order to benefit from the bonus, besides falling within the scope of the selected beneficiaries (in particular (i) condominium unit owners; (ii) individuals who do not carry out business activities, nor practice arts or professions; (iii) public housing institutes (IACP); (iv) co-ownership housing cooperatives and (v) third sector organisations), it is necessary to attain an improvement of at least two energy classes, to be proven by an energy performance certificate (so-called APE) issued by an authorised professional.

Should the improvement of two energy classes be impossible to attain, it is necessary to reach the higher energy class. The 110% bonus applies to documented expenses borne by the



taxpayer from 1 July 2020 until 31 December 2020 (for public housing institutes (IACP) only, the deduction is granted for expenses borne until 31 June 2022), divided into five yearly instalments of an equal amount.

The 110% Superbonus overshadowed all other incentives and tax benefits still available though less “rich”, but nonetheless very interesting and with fewer constraints compared to the abovementioned super bonus. These other existing incentives represent a valid alternative for those who are not willing to benefit from it or who do not fall within the scope of its application.

To this end, we specify that the constraints and fulfilments implied in the obtainment of the 110% Superbonus can sometimes represent insurmountable obstacles, such as in case of:



(i) lack of the stamp of approval (which in some cases cannot be issued due to procedural flaws or breaches, e.g. in case of construction planning violations or due to the lack of the fiscal conditions); (ii) failure to comply with the minimum environmental criteria; failure to obtain an energy performance certificate (so-called APE – an improvement of two energy classes is not easy to attain when more radical interventions are needed, which in some cases are impossible to carry out); (iii) thorough architectural and engineering designs provided for under the implementing decrees; (iv) professional insurance policy provided for these professionals, with a maximum coverage not lower than Euro 500,000, in order to be reduced to a minimum the risks involved in the management of this procedure.

Such constraints and criticalities could nullify the possibility to obtain the 110% Superbonus and thus taxpayers would have to benefit from the previous tax incentives on building renovations, maintenance and renovation of existing buildings, energy efficiency improvements and reduction of the seismic risk, whose main traits are summarised below.

It is worth specifying, before analysing these “minor” incentives, and with reference to the bonus provided for combined intervention of energy requalification and reduction of the seismic risk (so-called “combined seismic-eco bonus”) under para. 2-quater of art. 14 of Law Decree 63/2013, that taxpayers carrying out works on corporate buildings, to date excluded from the 110% Superbonus, can obtain such other bonus for all buildings, be they operating, unsold or investment property.

This clarification was provided first of all by Resolution no. 34/E dated 25 June 2020 and later confirmed by the outcomes of ruling no. 549 dated 13 November 2020. The combined bonus allows to obtain a tax deduction up to 85% of the expenses borne.

It is also worth underlying that para. 2 of art. 121 of the abovementioned *Rilancio* Decree provided for other renovation works the possibility to opt - besides for the 110% Superbonus - for a discount on invoices or for the transfer of the tax credit, instead of the tax deduction.

It is thus possible to choose among the following alternatives:

- a discount on the consideration due to the supplier who carried out the works
- the transfer of the tax credit for an equal amount, with the possibility to transfer it to other parties in the future, including to credit institutions and other financial intermediaries.

The option above can be exercised for expenses borne between 2020 and 2021, with reference to the deductions due for:

- gli interventi di recupero del patrimonio • maintenance and renovation interventions on existing buildings under art. 16-bis, para. 1, letters a) and b) of the TUIR (Consolidated Text on Income Taxation)
- energy efficiency interventions indicated under art. 14 of Law Decree no. 63 of 2013;
- adoption of anti-seismic measures under art. 16 of Law Decree no. 62 of 2013 (so-called “sismabonus”), including those which entitle to the Superbonus



- recovery or renovation of the façade of existing buildings, including the mere external cleaning or painting, which entitle to receive a dedicated bonus (so-called “façade bonus”), introduced by Law no. 160 dated 27 December 2019 (Budget Law 2020)
- installation of photovoltaic plants indicated under art. 16-bis, para. 1, letter h) of the TUIR, including those which entitle to the Superbonus
- installation of charging stations for electric vehicles under art. 16-ter of the abovementioned Law Decree no. 63 of 2013, including those which entitle to the Superbonus.

We specify that, as provided for under Revenue Office Circular Letter no. 24/E dated 8 August 2020, should more subjects bear the expenses for the interventions above on the same building which they own, each can autonomously decide how to benefit from the tax incentives available (direct deduction, discount on invoices or transfer of the tax credit), regardless of the choice of the other subjects.

Moreover, basing on the contents of the outcomes of the Revenue Office ruling no. 432 dated 2 October 2020, the transfer of the tax credit is acceptable without subjective limits. Both for the 110% Superbonus and the building works listed above, it is possible to finalise the transfer of the accrued tax credit in favour of any third party, without the need to assess the link with the relationship which gave rise to the deduction.

In order to benefit from the transfer of the so-called “minor building bonuses”, there is no need to obtain a stamp of approval or a certification containing, among other things, a check of the consistency of the costs of interventions. Moreover, there seems to be no limitation related to the two progress reports (each equal to at least 30%) required for the 110% Superbonus to benefit from the discount on invoices or from the transfer (even partial) of the tax credit.

The provisions of art. 121 of the abovementioned *Rilancio* Decree thus allows subject who fail to comply with the strict requirements of the 110% Superbonus to obtain the incentives already in place, by increasing the options available to access them. The convenience of these minor incentives will need to be evaluated keeping into account the minor bureaucratic fulfilments implied in case of tax credit transfer or discount on invoices. Therefore, we deem it advisable to summarise the main characteristics of the incentives relevant to building interventions which, according to the draft Budget Law 2021, should be extended also to next year.

Alternatives to the 110% Superbonus

Building renovation interventions

For renovation works under art. 16-bis of Presidential Decree 917/86, the regulation provides for the possibility to benefit from a 36% IRPEF (personal income tax) deduction on the expenses borne, up to a total amount not exceeding Euro 48,000 per building unit. Law Decree 83/2012, as amended by Budget Law 2020 (Law no. 160 dated 27 December 2019)



nonetheless provided for that, for expenses borne between 26 June 2012 and 31 December 2020, the deduction be increased to 50%, with a subsequent increase of the maximum expense threshold to Euro 96,000. The deduction is to be divided into 10 yearly instalments for an equal amount.

The beneficiaries of this incentive are all IRPEF taxpayers, either resident or not in Italy, who rightfully own the building on which the works under art. 16-bis, para. 1 of the TUIR have been carried out and who bore the relevant expenses. Therefore, the following subjects are entitled to the deduction: (i) owners or bare owners; (ii) owners of a right to use assets (usufruct, use, dwelling or surface rights); (iii) lessees or bailees; (iv) members of divided or joint housing cooperatives (v) sole traders, for buildings not falling within the scope of operating or unsold property; (vi) subjects indicated under art. 5 of TUIR, which generate income as partnerships, general partnerships, limited partnerships and similar entities or family businesses, under the same conditions provided for sole traders.

Moreover, the following subjects are also entitled to the deduction, provided that they also bear the expenses and that bank transfers and invoices are also in their name: co-habitant family member of the owner or holder of the building where the works have been carried out; separate spouse assignee of the building registered in the name of the other spouse; member of a civil partnership; more uxorio cohabitant, not owning the building where the works have been carried out, nor owner of a bailment contract, for expensed borne starting from 1 January 2016.

The works entitling to benefit from the incentive are distinguished depending on whether they are carried out on single building units or on common parts of multi-apartment buildings. As concerns single building units, the following interventions give right to the deductions:

A.

- Works listed under letter b), c) and d) of art. 3 of Presidential Decree 380/200, i.e. extraordinary maintenance works and thus all works and changes necessary to renovate and substitute parts of buildings, including structural ones, and to realise and integrate water and sanitation, as well as technological services. Works relating to the parcelling or combination of building units also fall within the scope of extraordinary maintenance interventions, also if they imply a variation of the areas of the single building units, as well as of the demand for infrastructure services, provided that the total volume of buildings and their original use are not changed
- Restoration and conservation works, and thus works aimed at preserving buildings and guaranteeing their functionality through a series of interventions which, though respecting their characteristic features, allow to attain other compatible uses
- Building restructuring work, i.e. interventions aimed at transforming buildings through a series of works which lead to obtain a building wholly or partially different than the original one.

**B.**

Interventions necessary to the reconstruction or restoration of buildings damaged further to natural disasters even though said interventions are not included in the categories indicated under letter A above, and upon condition that the state emergency had been declared.

C.

- Works aimed at the elimination of architectural barriers on lifts and elevators (e.g. the realisation of an elevator outside the building)
- Works aimed at the realisation of any tool which, through communication, robotics and any other advanced technologic mean, is apt to improve the internal and external mobility of severely disable persons.

D.

Interventions relevant to the adoption of measures aimed at preventing the risk of criminal acts by third parties.

E.

Interventions aimed at wiring buildings and at reducing noise pollution.

F.

Energy saving interventions, with specific reference to the installation of plants based on renewable energy sources. Within this category also falls the installation of photovoltaic plants under art. 16-bis of TUIR.

G.

Adoption of anti-seismic measures, with specific reference to the implementation of safety measures to meet static requirements. Said works need to be carried out on the structural parts of buildings or structurally connected building complexes and to involve whole buildings.

H.

Interventions for the removal of asbestos and works aimed at avoiding domestic accidents.

All the interventions above need to be carried out on residential properties and outbuildings, regardless of the cadastral category.

Works carried out on common parts of multi-apartment buildings fall within the scope of incentives granted for building renovations. Common parts are those referable to more functionally autonomous building units, regardless of their being referable to more owners. In this case, the deduction is due to each owner basing on the ownership thousandths, with reference to the year in which the property management proceeded with the bank transfer for the works. Ordinary maintenance works are also included among the interventions above, in addition to the works already mentioned. Examples of ordinary maintenance works include, by way of example: repair, renovation and substitution of building finishing, works necessary to integrate or preserve the efficiency of existing technological plants, replacement of floors, window and door frames, painting of walls, ceilings and internal and outdoor frames, internal replastering, waterproofing of roofs and terraces, painting of garage doors.



Interventions aimed at restoring and renovating façades (Façade Bonus)

Subjects bearing expenses for interventions aimed at restoring or renovating the façade of existing buildings of any cadastral category are entitled to obtain a 90% IRPEF or IRES (corporate income tax) deduction on the expenses borne, to be split into 10 equal yearly instalments starting from the year of disbursement. No maximum expense thresholds are provided for this incentive, nor a maximum deduction limit.

The beneficiaries of this incentive are all taxpayers, either resident or not in Italy, who rightfully own the building on which the works have been carried out and who bear the relevant expenses.

In particular, the following subjects are entitled to the deduction: (i) individuals, including those who practice arts or professions; (ii) public and private entities which do not carry out trading activities; (iii) partnerships; (iv) associated professional firms; (v) taxpayers who attained a business income (individuals, partnerships, joint-stock companies).

In order to be entitled to the bonus, buildings need to be located in areas classified as A or B or equivalent, basing on regional regulations and municipal building regulations. “A areas” include urban agglomerations having a historical, artistic or environmental significance. “B areas” are those parts of the territory wholly or partially built-up. Specifically, the deduction is due for:

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- mere cleaning or painting of external façade walls
- interventions on balconies, ornaments or friezes, including the mere cleaning or painting
- thermal interventions on façade walls or interventions on at least 10% of the external plaster of the total gross dissipating surface of a building.

On the contrary, the deduction is not due for interventions carried out while constructing the building or for demolition and reconstruction works, including those maintaining the same volume of the pre-existing building, falling within the scope of the building renovation interventions bonus.

Energy retrofit upgrades (Ecobonus)

Budget Law 2020 (Law. no. 160 dated 27 December 2019) confirmed the so-called Ecobonus, introduced by Law Decree no. 83 dated 22 June 2012. This bonus provides in particular for the right of to benefit from a tax deduction for those who carry out interventions aimed at improving the energy efficiency of existing buildings. Beneficiaries of this incentive are: (i) individuals, including those who practice arts or professions; (ii) taxpayers who attained a business income (individuals, partnerships, joint-stock companies); (iii) associated professional firms; (iv) public and private entities which do not carry out trading activities.

Moreover, starting from 2018, the scope of beneficiaries has been extended to include also public housing institutes and joint co-ownership housing cooperatives.

Generally speaking, deductions are granted for:

- the reduction of heating energy consumptions
- improved thermal insulation of buildings (insulations - floors - windows, including frames)
- the installation of solar panels
- the replacement of heating plants with condensation plants
- the purchase and installation of solar shading
- the purchase and installation of heating plants with thermal generators powered by biomasses
- the purchase and installation of multimedia devices for the remote control of heating plants, hot water production or air-conditioning systems of building units
- the purchase and installation of micro-cogenerators to replace existing plants
- the purchase of condensation air heater
- the replacement of heating plants with hybrid plants integrating a heat pump with a condensing boiler.

In order to benefit from this incentive, it is necessary that the interventions above are carried out on existing property units and buildings, of any cadastral category, including rural ones and those instrumental for a business or professional activity.

The deductions, to be divided in 10 yearly equal instalments, range between 50% and 85%, depending on whether the intervention concerns a single property unit or a condominium and on the energy efficiency level attained.



To date, it is possible to apply for the obtainment of the deduction for the expenses borne by 31 December 2020 (it is worth reminding that these benefits should be extended also to the following year by the draft Budget Law 2021).

Interventions carried out on single property units give right to deductions from 50% (for the replacement of window frames, the replacement of heating plants with condensing boilers with energy efficiency rating equal to A at least, the installation of heating plants powered by biomasses) up to 65% for other interventions.

On the contrary, interventions on common parts of multi-apartment buildings concerning all property units composing a single condominium have to comply with different norms, deadlines and measures. Expenses borne from 1 January 2017 until 31 December 2021 for the interventions listed above entitle to receive higher deductions when specific energy performance rates are attained. Expenses are to be calculated on a total amount not exceeding Euro 40,000 multiplied by the number of property units in the building. Specifically, interventions on common parts of condominiums give right to:

- a 70% deduction, if they concern at least 25% of the gross dissipating surface of the building shell
- a 75% deduction, when they are aimed at improving the winter and summer energy performance and provided that they attain at least the medium performance rate indicated in the Decree of the Ministry of economic development dated 26 June 2015 (National guidelines on energy certification).

It is specified that the requirements provided for by the regulation to benefit from the higher deductions need to be certified by qualified professionals through an energy performance certificate (APE).

Still higher deduction percentages (up to 85%) are provided for interventions carried out on common parts of multi-apartment buildings located in 1, 2 and 3 seismic areas, aimed at the reduction of the seismic risk and at the energy retrofitting (in this case, the maximum amount of expenses is equal to Euro 136,000 for each property unit of the condominium).

The tax deduction cannot be combined with other tax incentives provided for the same types of interventions by other national law provisions (such as, for example, the deduction for the maintenance and renovation of existing buildings). Should the interventions carried out give right to both the incentives provided for energy efficiency and to those for building renovations, it will be possible to benefit only from one or the two tax incentives, complying with the relevant specific fulfilments.

Interventions aimed at the reduction of the seismic risk (so-called “sisma bonus”)

Law Decree no. 63/2013 introduced the so-called “sisma bonus”, providing for tax deductions for subjects who carry out anti-seismic interventions for the static safety of buildings.

The deduction can be granted to both IRPEF and IRES taxpayers bearing the expenses for the eligible interventions, provided that they rightfully own or hold the building and that the expenses are charged to them.



Specifically, the following IRPEF taxpayers can benefit from the incentives: (i) owners or bare owners; (ii) owners of a right to use assets (usufruct, use, dwelling or surface rights); (iii) lessees or bailees; (iv) members of divided or joint housing cooperatives (v) sole traders, for buildings used for business activities; (vi) subjects indicated under art. 5 of TUIR who generate income as partnerships, general partnerships, limited partnerships and similar entities or family businesses. As concerns IRES taxpayers, the following are entitled to the incentive: (i) autonomous social housing institutes; (ii) entities with the same social purposes of the above; (iii) divided or joint housing cooperatives. The deduction is due for expenses borne between 1 January 2017 and 31 December 2021 and can be up to 85% depending on the safety level attained, on the seismic area in which the building is located and the type of building.

The incentive is to be calculated on a total amount of Euro 96,000 per property unit for each year and is granted in five yearly equal instalments. Anti-seismic interventions carried out on common parts of condominiums also entitle to higher deductions if a reduction of the seismic risk has been attained as a result. Among deductible expenses are also those borne for the seismic classification and seismic vulnerability check of buildings.

Specifically, it is possible to benefit from a higher deduction in the following cases:

- when a reduction of the seismic risk is attained as a result of the works, determining the classification of the building in lower risk class, a 70% deduction on

the expenses borne is due (75% for works carried out on common parts of multi-apartment buildings)

- if the works result in the classification of the building in two lower risk classes, an 80% deduction is due (85% for works carried out on common parts of multi-apartment buildings).

It is worth specifying that in order to benefit from these higher rates, compared to the rates provided for maintenance and renovation interventions on existing buildings, the professional responsible for designing the structural intervention needs to certify (according to the form contained in annex B to the Decree) the risk class of the building prior to the works and the one attainable after the intervention.

In compliance with the provisions of para. 4 of art. 119 of the *Rilancio Decree*, we specify that the purchase, renovation and resale of a building can benefit from the 110% Superbonus provided for intervention of reduction of the seismic risk.

The norm, by expressly providing it, rewards businesses who resell renovated buildings with anti-seismic improvements within 18 months from the completion of works. In such cases, the 75% to 85% deduction is increased up to 110%. On this point, however, the outcomes of Revenue Office ruling no. 515 dated 2 November 2020 clarified that the sale of a building to an individual will have to be completed by 31 December 2021, thus significantly reducing the 18 months time limit, should the 110% Superbonus deadline not be extended.



Focus on...

Controls needed according to CNDCEC and the Revenue Office

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The so-called Superbonus provisions under art. 119 of Law Decree no. 34 dated 19 May 2020 (so-called *Rilancio Decree*) are aimed at incentivizing expenses relevant to specific intervention for the improvement of energy efficiency and the reduction of seismic risks, borne from 1st July 2020 to 31st December 2021 (“major” works), as well as to further interventions realized in combination with the major ones (“minor” works), specifically carried out on:

- Buildings common property
- Detached buildings
- Single real estate units within buildings
- Real estate units located within multi-family buildings that are functionally independent and have one or more independent accesses from outside.

The tax allowance also applies to the installation of solar power plants connected to the electricity grid, as well as to the realization of electric vehicle charging facilities within buildings.

The benefit consists in a further deduction that is additional to those regarding interventions on building façades and building maintenance and renovation, as well as to the so-called “eco-bonus” and “sisma bonus”.

Art. 119 of the *Rilancio Decree* provides for a 110% deduction due (thus significantly increasing it compared to similar provisions) and introduces even more advantageous conditions by providing a reduction of the deduction instalment period,

the conversion of the deduction into a discount on invoices or the transfer of credit, even to banks, through the conversion of the deduction into a tax credit.

One of the main critical aspects of the regulation is the high number of fulfilments required, including, in particular, those related to certifications and stamps of approval, which are required, in addition to further ordinary fulfilments, in case the taxpayer opts for the discount on invoices and the transfer of tax credit.

8 fulfilments provided under the Decree on “Technical Requirements”

On 6 August 2020, the Ministry of Economic Development issued a Decree on “Technical Requirements” to access the tax allowances regarding the energy improvement of buildings, published in the Official Gazette on 5 October 2020. Under art. 6, the Decree provides for 8 specific fulfilments, consisting in the following activities:

1. Filing of the project’s “technical report” properly attesting that the intervention meets the requirements for the containment of energy consumption of buildings and of their related thermal plants, when declaring the starting of works.
2. Certification by a qualified technical expert attesting that the intervention meets all the requirements provided under the decree and its annexes.
3. Collection of an energy performance certificate.
4. Acquisition, if needed, of a certification by the supplier of low thermal inertia thermostatic valves.
5. Collection of documentation attesting payments performed – to be performed as credit transfer including details concerning



invoice number, reason for the payment, tax code of the deduction beneficiary and of the payment receiver. In case of interventions on buildings common property, a copy of the holders' meeting resolution and the table showing the allocation of costs among holders must be kept.

6. Submission of the dossier describing the intervention to ENEA (Italian National Agency for New Technologies, Energy and Sustainable Economic Development) within 90 days after the end of works through the ENEA portal, downloading the relevant electronic submission receipt.
7. Submission to ENEA of the technical certification attesting that the requirements provided by the Decree have been met and stating that costs borne are adequate with reference to interventions performed.
8. Storage of all documents acquired, in order to promptly present them in case the Revenue Office or ENEA request them.

In light of the above and of the clarifications provided by the Revenue Office in Circular Letter no. 24/E dated 8 August 2020, it is useful to analyse in detail the content and critical aspects of tax fulfilments and, particularly, those concerning certifications and stamps of approval.

Certifications and stamps of approval

The considerable amount of the allowance and the need to avoid any improper use to the prejudice of the Inland Revenue impose to comply with a number of requirements consisting in a structured controls system, aimed at preventing any behaviour that breaches the regulation provisions. There are peculiar technical requirements and different professionals with diversified expertise should be involved, who are required to certify the existence of the required conditions to benefit from the allowance. In particular, architects, engineers, surveyors and qualified experts must collaborate, in order to

- Check whether the major interventions (thermal insulation or replacement of heating systems), combined with the minor interventions (e.g. "ecobonus") will lead to the required energy efficiency classification improvement (+2 levels).
- Verify the compliance with the minimum technical requirements and the adequacy of costs incurred based on the provisions of the Decree on eco-bonus requirements.
- Certify the existence of aseismic interventions.

It is pointed out that these certifications must be prepared even if the taxpayer does not opt for the discount on invoices or for the conversion of the tax deduction into transferable tax credit. If the taxpayer opts for one of these possibilities, a stamp of approval must be issued by tax intermediaries or tax aid offices.

The person issuing the stamp of approval must also check for the presence of all required certifications and attestations and that the adequacy of costs borne has been assessed. If the option concerns the deduction for building maintenance and renovation works, the stamp of approval can be issued without the need of certifications attesting the adequacy of costs borne.



The document by CNDCEC and the National Foundation of Chartered Accountants dated 21 October on required controls

On 21 October, the CNDCEC (National Council of Chartered Accountants and Registered Auditors), in collaboration with the National Foundation of Chartered Accountants, published a document on the 110% superbonus, particularly concerning the “checklist” to obtain a stamp of approval for interventions aimed at increasing energy efficiency and reducing seismic risks.

This document outlines the controls that qualified subjects must perform in order to correctly issue a stamp of approval in case a taxpayer opts for the transfer of tax credit or for the discount on invoices, as an alternative to the direct utilization of the tax deduction. Such stamp of approval, provided under art. 35 of Legislative Decree dated 9 July 1997 no. 241, must be affixed on a proper communication to be submitted to the Revenue Office, attesting the existence of all requirements that give right to the tax deduction.

The following paragraphs will analyse the main document’s guidelines with reference to interventions for energy efficiency improvement and reduction of seismic risks.

The Checklist to obtain the stamp of approval for energy efficiency improvement interventions

The abovementioned document, besides reminding the need to verify the identity of the beneficiary taxpayer, to detail the costs incurred – making a distinction between major and minor works –, and to indicate the amount of the transferred credit, suggests to carry out some controls with specific reference to

- Legal form of the beneficiary
- Information on property and on the payment of the relevant municipal taxes
- Documentation attesting the ownership or the availability of real estate
- Buildings common property (if any)
- Self-declaration on the maximum deduction amount and the compatibility of the benefit with other measures
- Administrative authorizations, communications, technical reports and certifications required under the current regulation
- Documents attesting expenses incurred and their relevant payments
- Type of works to be performed
- Intermediate and final certifications.

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The document also contains some tables that specify, for the main energy efficiency improvement interventions, the main characteristics of the intervention and the expense limit. For example, with reference to major thermal interventions

on vertical (generally, external walls), horizontal (clothing, floors), and sloping surfaces that concern a building's cladding, the document, as concerns the characteristics and expense limit, specifies as follows:

| TYPE OF INTERVENTION | CHARACTERISTICS OF THE INTERVENTION | EXPENSE LIMIT |
|---|--|---|
| <p>Heat insulation of vertical, (generally, external walls) horizontal (clothing, floors) and sloping surfaces that concern the cladding of buildings – including detached ones – that affect more than 25% of the gross surface of the building or of the functionally independent building unit having one or more independent accesses from the outside if placed within multi-family buildings (<i>article 119, para. 1, lett. a</i>)</p> | <p>The heat insulation intervention must concern more than 25% of the building's gross surface. Insulating materials must meet the minimum environmental requirements under the Decree of the Ministry of the Environment dated 11 October 2017.</p> | <ul style="list-style-type: none"> • Euro 50.000 for detached buildings or functionally independent building units placed within multi-family buildings • Euro 40.000, times the number of property units the building is made up of, if such units are comprised between two and eight • Euro 30.000, times the number of property units the building is made up of, if such units are more than eight |

As regards minor interventions and, particularly, energy efficiency improvement interventions,

the document specifies as follows:

| TYPE OF INTERVENTION | REQUIREMENTS | EXPENSE LIMIT |
|---|--|--|
| <p>Cost borne for all energy efficiency improvement interventions as specified under art. 14 of Law Decree no. 63 dated 2013 and under art. 1, para. 344 to 347, of law no. 296/2006 (so-called "ecobonus") (<i>article 119, para. 2</i>)</p> | <p>They must be performed in combination with major interventions and must ensure, in the aggregate, an improvement by two energy efficiency levels, or, if this is not possible, the highest energy efficiency class (currently, A4), provided that interventions are actually concluded.</p> | <p>Within the deduction or expense limits provided under art. 14 of law decree no. 63 dated 2013 for each intervention, and under art. 1, para. 344 to 347, of law no. 296/2006.</p> |



Checklist for the obtainment of the stamp of approval related to aseismic interventions

Lastly, the document suggests, with reference to the interventions aimed at reducing seismic risks, to check for the availability of the same information and collect the same documentation as that provided for energy efficiency improvement interventions.

As regards the distinction between major and minor interventions, the document specifies that the first ones refer mainly to interventions performed to implement safety measures in buildings or aggregates of buildings that are structurally connected with each other, and that the expenditure threshold is Euro 96,000 for each real estate unit (96,000 Euro times the number of each building's real estate units, in case of interventions on buildings common property).

On the other hand, with reference to minor interventions and, particularly, to the installation of solar power plants, the document specifies that the installation of plants must be carried out in combination with the major intervention concerning energy efficiency or aseismic improvements and that the energy that has not been used for self-consumption or not delivered for self-consumption must be assigned to GSE (Gestore Servizi Energetici).

The tax deduction, in this case, is calculated on the total amount of expenses, that cannot exceed Euro 48,000 and, in any case, not higher than Euro 2,400 for each nominal power KW of the solar power plant (limit reduced to Euro 1,600 if the installation is combined with a building renovation intervention).

Required documentation to be stored

The abovementioned Circular letter no. 24/E issued by the Revenue Office on 8 August 2020 provided a detailed list of documentation that needs to be stored in case of any future controls. Namely:

- Invoices or receipts attesting expenses actually borne for the interventions and, only for individuals, the bank or postal credit transfer receipt through which payment was performed
- Owner's statement of consent to the performance of works, if these are carried out by the property holder
- Copy of the holder's meeting resolution and the table showing the allocation of costs among holders, or, alternatively, certification issued by the property manager, if interventions are performed on buildings common property
- With reference to energy efficiency improvement interventions, copy of the certification submitted to ENEA and, with reference to aseismic interventions, copy of the certification filed with the competent office.



Conclusions

As already commented, the Superbonus is subject to multiple fulfilments that make it difficult for small real estate owners to benefit from it.

The implementation decree of the Ministry of Economic Development dated 8 August 2020, relevant to technical requirements, identifies 8 different fulfilments and this points out that the measure is essentially aimed to major operations rather than small interventions, unlike the tax allowance concerning the building renovation, which provides for more simplified fulfilments.

In such a context, the synthesis pursued by the document issued by CNDCEC and the Foundation of chartered accountant is appreciable, at least as concerns the fulfilments needed for the issue of the stamp of approval and the certifications.

In fact, the implementation of a structured control system can minimize improper uses of the regulation to the prejudice of the Inland Revenue and non-compliant behaviours with the regulation provisions, thus preventing over-invoicing. Moreover, the same control system and the compliance with the fulfilments indicated by the document can represent a parameter for the assessment of the diligence of professionals involved to ascertain the adequacy of costs and certifications. In fact, professionals are subject to a three-level liability – i.e. civil, administrative, and penal – for the activities related to the correct compliance with fulfilments required to benefit from the bonus.

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