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FISCAL TREATMENT OF EARLY TERMINATION PENALTIES FOR MORTGAGE LOANS: NEW TICINO PRACTICE

The recent case law of the Federal Court (judgements no. 2C_1165/2014, no. 2C_1148/2015 and no. 2C_1009/2019) has standardised the practice of deducting exit penalties charged by the bank institute in case of anticipated termination of a fix mortgage loan.

In particular, termination of a fixed-rate mortgage may generate costs for the borrower because the bank invests the repaid mortgage credit on the money or capital market for the remaining term, and if the bank obtains a lower interest rate, it charges the mortgage holder a penalty or an exit penalty.

In its communication of 23 July 2020, the Cantonal Tax Administration of Ticino has underlined the tax deductibility of such early termination penalties from the taxable income, as well as interest expenses, if a change in the terms of the existing loan agreement is agreed with the same creditor (reduction of the interest rate, or even an increase of the credit).

On the other hand, if the mortgage loan is renegotiated with a new creditor, or if it is simply terminated before expiry date, the penalty for such early termination of the mortgage loan agreement is allowed as a deduction from income until and including tax year 2020, provided that the cancellation of the mortgage loan is not due to the sale of the property concerned.

If the early termination is directly linked to the sale of the real estate property, the termination penalties due to the bank are deductible investment costs to be considered when the real estate capital gain tax is computed and is irrelevant for income tax purposes.

https://m4.ti.ch/fileadmin/DFE/DC/DOC-PRASSI/2020_TrattamentoFiscaleDelleIndennitaPerDisdetta_AnticipataDiUnMutuolpotecario.pdf

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