

THE " CEDOLARE SECCA" REGIME IS ALSO APPLICABLE TO RESIDENTIAL LEASES TO ENTREPRENEURIAL TENANTS

Supreme Court Judgment No. 12395 of 7.05.2024

- ✓ With the judgment under consideration, the Supreme Court takes an important pronouncement on the issue, which has given rise to a long litigation, of whether or not the optional regime of the so-called "cedolare secca" (i.e. a sort of flat tax) is applicable to leases for residential use signed by landlords who are individuals in favor of tenants who are entrepreneurs.
- ✓ The Supreme Court preliminarily recalls the provisions of Art. 6, Paragraph 3, of Legislative Decree 23/2011, according to which the "cedolare secca" regime (with a 21% rate on rental income) does NOT apply to leases of real estate units for residential use carried out by the landlord in the exercise of a business/professional activity.
- ✓ After that, the Court, rejecting the restrictive interpretation provided by the Italian Revenue Agency on several occasions since the Ministerial Circular 26/E of 1.06.2011, clarifies that the "subjective" limitation to the applicability of the optional regime of the "cedolare secca" (i.e., the fact of being able to lease the residential property only outside the exercise of a business or professional activity) is to be referred exclusively to the landlord and not also to the tenant, thus remaining irrelevant the traceability of the rental for residential use to the tenant's business/professional activity (e.g., "lease for guesthouse use").
- ✓ According to the Supreme Court, in fact, the rationale of the legislative provision is not only to face tax evasion, but also to ease the development of real estate for residential use (a need that can also arise in the exercise of business/professional activities - "guesthouse use").

