

CHANGES INTRODUCED BY ITALIAN LAW NO. 147 OF 27 DECEMBER 2013 ON CAPITALISATION OF INTEREST BY THE BANKS

Article 1, paragraph 629, of the 2014 Stability Law¹ introduced material amendments to the legislation on capitalisation of interest by the banks.

Specifically, the new wording of Article 120, paragraph 2, of the Italian Consolidated Banking Law now states that, in establishing the procedures and criteria for the accrual of interest under banking transactions, the Interministerial Committee for Credit and Savings (Comitato Interministeriale per il Credito e il Risparmio, CICR) must provide that “interest periodically capitalised may not generate further interest, which, in subsequent capitalisation transactions, is calculated exclusively on the principal sum”.

The legislator, therefore, did not affect CICR’s authority, already existing, to determine the procedures and criteria for accrual of interest in banking transactions, or the frequency for calculating bank interest, for which the rule that frequency must be the same for both debit interest and credit interest had already been established.

The real change is instead contained in the wording of point b) of Article 120, paragraph 2, of the Italian Consolidated Banking Law, which, by making the accrual of interest on capitalised interest unlawful, in actual fact prohibits interest capitalisation in banking relationships.

As we know, Article 1283 of the Italian Civil Code provides that: “in the absence of practices to the contrary, past due interest may generate interest only from the date of judicial claim or as a result of an agreement entered into after the due date, and provided that the interest concerned is due for at least six months”.

In relations between the Bank and the customer it is now provided that interest capitalised in a certain period cannot in turn generate interest in subsequent periods, with the consequence that the only interest that shall accrue shall be the interest calculated on the initial principal sum.

Having explained the literal meaning of the law, its interpretation and application raise a number of doubts that must be clarified by the CICR. More in particular, from a technical point of view, when interest is “capitalised” and therefore merges with the principal, it should in theory form a single item with said principal.

The difficulty in practice consists in keeping separate and independent two elements, which on one side are aggregated, but on the other must be considered independently in order to contemplate two separate calculation bases.

The problem could either be solved ex ante, by opening a special account for each relationship on which to record the amounts accrued, or ex post, by debiting these amounts on the account and deducting them only when the subsequent periodic payment is made.

The issue is particularly topical following expiry of the 31 March 2014 deadline, upon which banks were obliged to debit and credit the quarterly amounts accrued from/to customers’ accounts.

The main question raised is how the banks should act, given that the new CICR resolution had not yet been issued on that date.

¹ Italian Law no. 147 of 27 December 2013, containing the “Provisions for drawing up the annual and multiannual State budget”, was issued in Ordinary Supplement no. 87 of Official Journal no. 302 of 27 December 2013.

Italian doctrine is divided on the matter. The majority believe that the banks should continue to apply the pre-reform rules, since in order for the new rule to be fully applicable specific regulations would be required from the competent body.

A minority of academic commentators instead take the view that the change in legislation is already fully applicable and effective as of 1 January 2014, since this is provided in general terms by the last paragraph of the 2014 Stability Law. Therefore, they believe that it is not necessary to await specific CICR regulations and that accordingly at least contracts entered into in the current year,² should already be subject to the new provisions.

Given that the rule raises a number of problems in terms of interpretation and practical implementation, it is hoped that the CICR shall take prompt action to provide detailed clarification on procedures and new criteria for the accrual of interest.

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² In the absence of the CICR resolution, contracts entered into prior to the change in legislation should instead continue to be subject to the previous rules.