

FISCAL ASPECTS OF REAL ESTATE INVESTMENTS AND TRANSACTIONS IN ITALY

Updated after the general reform of the property taxation from January 1° 2014

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ITALIAN PROPERTIES

- Land
- Residential
- Commercial

Land

Land has two different destinations:

1. Agricultural purposes
2. Development purposes

The transfer Tax (Imposta di registro) rate on sales of agricultural land is 12%.

The transfer Tax (imposta di registro) rate on sales of land for development purposes is 9%.

Residential

The transfer tax has two different rates in case of sales of residential properties:

- 2% in case the property is intended to be used as « first home» (prima casa) by the purchaser
- 9% in every other case

If a residential property is sold by a developing company, instead of the transfer tax, VAT will be charged at a 10% rate

Commercial

The definition of commercial properties includes also industrial properties, hotels, offices and any other non residential property.

The transfer tax rate on commercial properties is 9%.

Most frequently transactions of commercial properties are between companies. In this case VAT is charged on the sale price at a rate of 22%

SALES AND PURCHASE CONTRACT AND TAX DUE DILIGENCE

A brief analysis and a check list of
the critical issues before
to purchase an Italian property

SALES AND PURCHASE CONTRACT

Before executing the final deed of sale the buyer should receive from the seller a substantial number of documents and compliances which depends on the type of real estate investment:

1. Documentation about the origin of the property

This document is basically the notarized purchasing contract which certify the ownership of the property

2. Urban authorization and certificates

These documents are released by Municipality to grant the regular development and other characteristics according to the law;



3. Condominium rules

Regulation of the relationship among the various owners and limitation regarding the use of common space and structures;

4. Other administrative and technical aspects

They concern safety purpose in the building sites and utility systems;

5. Environmental aspects

The property needs to be in compliance with Italian environmental regulations and laws issued for public safety;

TAX DUE DILIGENCE

Tax due diligence is a part of the general due diligence, in Italy usually made by a public notary in case of real estate transactions.

It must be done carefully in case of sale and purchase contracts with companies as counterparts.

As a matter of fact the taxable value of the transaction could be increased by the tax office (agenzia delle entrate) and, consequently, the transfer tax could be increased.

Note also that frequently both seller and purchaser are responsible for this further taxation

PURCHASING ENTITIES

- Foreign Person
- Italian Companies
- Foreign Companies

Foreign Person

A foreign person or persons jointly can buy Italian properties with no restrictions.

The real estate transactions are taxed as transactions between Italians.

Particular attention must be dedicated to the marriage status of the purchaser, because if it is not clarified into the purchase contract, the general condition in Italy is that a purchase made by a married person will automatically be considered in the interest of the spouse for an half of the property itself.

This means that in case of sale, the signature of the spouse will be requested also if the property is only registered in the name of the purchaser

Italian Companies

Italian companies are a frequently used vehicle to own Italian properties.

The most used by foreigners is the limited liability company, called SRL (società a responsabilità limitata).

Shareholders can be both foreign persons or foreign companies. Foreigners can also be appointed as directors.

The cost to incorporate a SRL is approx. € 4.500 plus vat 22%, included public notary for the incorporation, registration in the companies registrar, translations, apostille, Vat registration

The yearly fees are approx. € 9.000 plus VAT 22%, included all the bookkeeping, the publications of the audited financials and the vat and tax returns

Italian Companies

SRL is recommended for investments into commercial properties, which are allowed to deduct the main costs to determine the taxable income.

SRL is not recommended for investments into residential properties, because there are some restrictions to the costs, interest and depreciation, that cannot be fully deducted.

Furthermore, SRL owning residential properties are subjected to a sort of minimum tax (so called società di comodo) when the property is used by owners or directors of the company itself.

Foreign Companies

An interesting opportunity could be using a foreign company (a US LLC would work well for this purpose) as vehicle to purchase and maintain a property in Italy for the following reasons:

1. The foreign company which owns only properties and does not conduct any business in Italy must be not registered for VAT purposes and needs only a simple TIN (codice fiscale).
2. The foreign company will not be obligated to keep any accountancy document. Due to this simplification, the formalities will be limited to the tax return and to the payment of real estate tax. The yearly cost for the full compliance with these basic taxation rules will be approx. 2.000€.
3. Another relevant issue is about the capital gain. After five years of possession of the property there are no capital gain taxes.

Foreign Companies as special vehicle

UK Company as vehicle to own an Italian property.

UE law admit that, in case of contribution in kind, transfer tax is levied only in the country of the company beneficiary of the contribution.

In UK there is no transfer tax on this contribution.

If an Italian person make a contribution of a property into a UK company will receive in exchange shares of the UK Company.

Then the shareholders can sell the shares to the foreign purchaser

Foreign Companies

Instead of a regular 9% transfer tax applicable to a direct sale,

The taxation will be:


- 2% mortgage tax (imposta ipotecaria) on the contribution
- 1% cadastral tax (imposta catastale) on the contribution
- 0,50% UK stamp duty on the share transfer

The result will be a taxation of the transfer of 3,50% instead of 9%, with a remarkable saving for the foreign purchaser.

This operation must be carefully planned, because has consequences for future capital gain tax and inheritance tax, both in Italy and UK

PURCHASE TAXATION

Foreigners and Italians are subjected to the same taxation on their purchases of Italian properties.

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- The subjective characteristics of the seller (individual or company), together with the price of the property, generally determine the type (“registration tax” or “VAT”) and the amount of taxes that arise from the transaction.
 - The purchase of Italian real estate is also subject to “mortgage tax” and “cadastral tax”, normally 50€ each, or 200€ each if the sale is subjected to VAT

- Specifically, in cases where the seller is a VAT entity working in the construction industry, the purchase price agreed upon in the deed of sale is usually charged with:
 - VAT at the 10% rate for regular home
 - VAT at 22% rate for luxury homes
 - Mortgage tax 50€
 - Cadastral tax 50€
 - VAT at 22% rate for commercial properties
 - Mortgage Tax at 3%
 - Cadastral Tax at 1%

- In the other cases transfer taxes to be paid generally are:
 - Registration tax at 9%
 - Mortgage tax 200€
 - Cadastral tax 200€



Purchase taxation can be reduced if the purchaser is an individual.

In this case the transfer tax could be paid assuming as taxable amount the assessed value, which is generally less than the price.


On the other hand, if the sale price is less than the assessed value, could be increased by the tax office causing an increase of the payable transfer tax.

The above rules are not applicable to the transaction with VAT exposed.

REAL ESTATE TAXES

Property Taxes are mainly destined to municipality.

Many changes have incurred during the last year, including the name. To simplify, we will define them as IMU.



IMU, the municipal tax on real estate, is the main local property tax affecting all property owners, both individual and companies in Italy.

Any owner of real properties located in Italy must pay this tax on a yearly base.

The taxable base is the estimated value for the type and class of property, as assessed by the Cadastral Office.

IMU rate could be between maximum 1,06% of the assessed value of the property.

INCOME TAX

Properties located in Italy must pay income tax in Italy on the income generated by them:
rent income, capital gain

PERSONAL INCOME TAX

- Non-Italian residents: are subject to income tax only on income arising in Italy and are required to make an annual return of such Italian income.
- Italian income tax is called IRPEF (imposta sul reddito delle persone fisiche). Irpef is a progressive tax rates, with a maximum rate of 43% and a minimum tax rate of 23%.
- For IRPEF purposes, the taxable base of a non-resident individual owning Italian real estate could be the contractually-fixed rent, reduced by a flat 21% tax rate.

COMPANY INCOME TAX

Income realized by Italian SRL is subject to the Italian “corporate income tax” (IRES), currently levied at a flat rate of 27,50%.

Foreign companies non-Italian resident are subject to IRES on the aggregate income produced in Italy in any given fiscal year; therefore these entities are taxed on the income derived from land and buildings located in Italy.

For IRES purposes, the taxable base of a non-resident company engaged in the mere ownership of Italian real estate could be the contractually-fixed rent, reduced by a flat 21% tax rate.

CAPITAL GAIN TAX

According to the main double taxation agreement Treaty, capital gain tax due on property sales is paid where the property is located.

Taxes paid in Italy will be deducted in the country of the foreign investor according to the Treaty.



- **PROPERTY OWNS BY INDIVIDUALS:**

Capital gains upon disposal of real estate are tax-exempt if the sale occurs after five years from the acquisition or the construction.


- **PROPERTY OWNS BY COMPANIES (SRL):**

Capital gains upon disposal of real estate are always subject to corporate income tax (IRES).

Taxation can be diluted in five years if the property is owned since three years or more

BENEFIT FOR FIRST HOME RESTRUCTURING WORKS AND ENERGY SAVING

These benefits are available
also for foreigners
Investing in Italian properties



Substantial tax deductions on the buyer/owner's personal income tax are currently provided for by Italian law for renovating works done, in compliance with specific requirements, on Italian residential properties owned by resident as well as non-resident person.

Taxpayers are currently entitled to deduct from their IRES and IRPEF the 50% of the expenses paid for restructuring works on their homes and common parts of residential buildings located in Italy.

The deduction is available on expenses incurred up to the maximum limit of 48.000,00 €, on each property on which the works are done, and will have to be allocated for a period of 10 years.

Specifically, the 50% deduction is available for expenses incurred for:

- Extraordinary maintenance works
- Restoration works
- Preservation works
- Building restructuring works

FINANCING

The Italian banking system is available to finance foreign investments in Italian properties

EQUITY FINANCING

The Italian Civil Code expressly provides the faculty to increase the share of capital through the issuing of new shares (Equity)

- **TAX ASPECTS**

An Italian company's capital increase made through contribution of immovable properties (i.e. commercial/housing buildings, lands, real enjoyment rights on immovable properties, etc.) is subject to proportional registration tax, with rates ranging from 9% for buildings to 12% for land

DEBT FINANCING

- Mortgage loans are available for Italian properties that generate a ROI at a rate based on the rent cash flow.
- Shareholders, included foreigners shareholders, are allowed to lend funds to the company, obtaining a remuneration for interests at a market rate.

INHERITANCE AND GIFT TAXES

The status of the foreign investor must be analyzed in advance to make an estate and inheritance planning correct for both the countries

- Inheritance tax and gift tax affect gift transfers and transfers due to death . For inheritance tax and gift tax purposes, the same rates apply.
- The applicable tax rates vary according to the specific relationship between the transferor subject (i.e. the deceased in the case of an inheritance; the donor in the case of a gift) and the transferee subject (i.e. the heir, for inheritance; the receiver for gift), regardless of the nature of the transferred assets.
- The threshold for having no taxation in case of direct heir, is 1.000.000\$ for each son and daughter. Same for the spouse.
- The tax rate in these cases is 4%
- If the transferred object is a real estate property, proportional mortgage and cadastral taxes may be due (mortgage tax 2%, Cadastral tax 1%).

Shares of companies owning properties must also be included into the assets subjected to inheritance tax

TRUST

Trust can be a vehicle to protect the assets in Italy and to make an estate and inheritance tax planning



A trust is a typical common law instrument.

Just recently the use of trust has been admitted in Italy, according to the convention of La Hague.

The diffusion of the trusts has caused an adjustment the Italian rules of civil law to this institution, not regulated by any Italian law.

It is an interesting instrument to own Italian properties and is frequently used by foreign investors.

The cost to set up a trust according to the Italian Standards is approx. 7.500€ plus VAT.

The maintenance, including the professional Trustee fees, tax returns and real estate tax returns is approx. 7.500€ on a yearly base.

Taxation of trust owning Italian properties is the same of the foreign companies investing in Italy.