

# STUDIO ROCK

COMMERCIALISTI ASSOCIATI

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Dear

**TIRELLI & PARTNERS S.r.l.**

Via Giacomo Leopardi, 2

20123 MILAN (MI)

For the kind attention of Mr. Marco Tirelli

Milan, 7 October 2014

**SUBJECT:** Opinion on Taxation of Real Property - purchases made by foreign persons

Dear Mr. Tirelli,

as agreed, we are here sending you the opinion drawn up by our firm concerning the "Legal and Fiscal Issues Related to the Purchase of Residential Real Property in Italy by foreign persons"

We remain at your disposal for any further clarification.

Yours truly,  
Fedele Gubitosi

## **LEGAL AND FISCAL ISSUES RELATED TO THE PURCHASE OF RESIDENTIAL REAL PROPERTY IN ITALY BY FOREIGN PERSONS**

The existence of an Agreement for the promotion and protection of investments between Italy and foreign country allows its citizens to purchase real property in Italy. The income that the above citizens obtain from such real property, as required by the Convention against double taxation between Italy and the foreign country (if existing), is only taxable in the Country where the property is located (Italy).

### **Tax aspects**

The taxation of real estate transactions involving residential buildings is largely determined by the seller's profile.

The sale of real estate in Italy may be subject to the following taxes:

- value added tax;
- registration tax;
- mortgage tax;
- land registry tax.

The above taxes are normally paid by the purchaser and are calculated as a percentage of the purchase price, if taxes have not been set as fixed amounts.

The table below summarizes the tax treatment of the purchase of residential real property.

<b>Seller</b>	<b>V.A.T.</b>	<b>Registration tax</b>	<b>Mortgage tax</b>	<b>Land registry tax</b>
The building or renovation company which completed works within 5 years since the sale or more than 5 years if it has chosen V.A.T. taxability	4% (first dwelling <sup>1</sup> non luxurious)	€200	€200	€200
	10% (other)			
	22% (luxurious dwelling, only in case of transfer from the building company)			
Other V.A.T. payers	Exempt	2% (first dwelling <sup>1</sup> )	€50	€50
		9% (other)		
Physical person not running a commercial or professional business	Outside the scope of application	2% (first dwelling <sup>1</sup> )	€50	€50
		9% (other)		

It should be noted that, if the purchaser is a physical person not running a commercial or professional business, the taxable amount for the purposes of the registration, mortgage and land registry taxes subject to the above percentages, may consist of the property's cadastral value instead of the consideration paid for it, which is usually much higher than the former.

<sup>1</sup> In order to take advantage of tax benefits associated with the purchase of a "first dwelling" the purchaser must declare what follows in the deed of sale:

- the property is located in the Municipality in which he/she has or intends to establish his/her residence within 18 months of purchase, or where the purchaser's principal business activity is located or where he/she runs said business activity, or, if relocated as an employee, in the Municipality where the employer is located;
- the purchaser is not the holder, exclusively or jointly with his/her spouse, of ownership, usufruct, use and habitation rights on any other residential buildings in the Municipality where the property to be purchased is located;
- the purchaser is not the holder, not even of shares or jointly with his/her spouse, on the whole national territory, of ownership, usufruct, use, habitation and bare ownership rights on any other real property for residential use purchased, even by his/her spouse, with tax benefits on "first dwellings."

The subsequent possession and use of the property in Italy obliges the non-resident purchaser to file a tax return. The tax will be figured out on the cadastral value of the property or, in case the property is rented out, based on the rental fees as set by contract<sup>2</sup>.

The sale of the real property by the foreign taxpayer entails the taxation of any capital gains<sup>2</sup> (exception: if the aforementioned sale takes place after five years from the purchase of the same it is not taxable if the seller is a physical person). A global municipal property tax (*IUC* in Italian) is also levied on the real property, composed by a property tax (*IMU*), a town's solid waste disposal tax (*TARI*) and a "council" tax (public services rendered to the property, *TASI*).

Non-resident taxpayers who want to buy real property in Italy, whether they are a physical person or a company, must have an Italian tax identification code, obtained by submitting the appropriate form to any office of the Italian Revenue Service.

If the purpose of acquiring the property is to subsequently lease it or sell it to individuals not running commercial or professional businesses and the purchase is made by a foreign company, it will also be necessary to appoint a tax representative.

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<sup>2</sup> The above mentioned amounts are subject to the following tax rates:

- Physical person purchaser:
  - 23% up to € 15,000;
  - 27% over € 15,000 and up to € 28,000;
  - 38% over € 28,000 and up to € 55,000;
  - 41% over € 55,000 and up to € 75,000;
  - 43% over € 75,000.

Said rates are applied for the capital gain on the taxpayer's income tax return of the period and are due the following year. However a special regime is granted should the taxpayer decides to pay taxes on the capital gain at the moment of the sale. In that case the tax rate is represented by a substitute tax of 20%.

- Corporate purchaser: 31.4%.

## **Legal aspects**

The process of purchasing real property in Italy is customarily conducted on a three-step basis.

- a binding offer (in Italian “proposta irrevocabile di acquisto”);
- a preliminary contract (in Italian “preliminare di compravendita”);
- a deed of transfer (in Italian "rogito”).

### Binding offer

The purchaser makes a formal written offer in a specific form provided by the real estate broker, in which he/she states:

- his/her intention of acquiring the property;
- the price offered;
- the timing of the transaction:
  - date of signature of the Preliminary contract;
  - date of signature of the Deed of transfer;
- the timing of payment(s);
- the expiry of the offer itself;

The offer is binding for the purchaser, which means that he is not allowed to cancel it before expiry. The purchaser will enclose a check with the offer for a variable amount (normally between € 10,000 and 50,000). The check will remain in the broker’s possession until the seller has signed the offer for acceptance. In case the offer is not accepted by the seller, the sum enclosed with the offer must immediately be returned to the purchaser.

### Preliminary contract

The preliminary contract is the legal deed that is normally executed between purchaser and seller as a legally binding document once full agreement on the terms of the transaction is reached through a binding offer accepted by the seller.

The features of the Preliminary contract are:

- in most cases, it is a private document between the two parties;

- it normally contains the right of the purchaser to name the formal purchaser at a later date;
- it does not transfer entitlement, but it creates a binding obligation between purchaser and seller;
- it binds the parties to execute the Deed of Transfer at a subsequent date;
- it provides for a sum to be handed over from purchaser to seller as a deposit (not less than 10% of the purchased price). Escrow arrangements are not customary;
- it triggers the agent's right to receive a commission.

The signing of the Preliminary contract is normally expected to take place as soon as the parties have reached an agreement on the terms of the purchase through the binding Offer phase (normally around 30 days after the acceptance of the Offer by the seller).

#### Deed of transfer

The deed of transfer is the formal legal instrument that is executed between the seller and the appointed purchaser that closes the transaction. Normally the deed of transfer is executed within six months after the Preliminary contract. Its main features are:

- the deed of transfer must be executed by the parties in front of a Notary Public;
- it transfers entitlement to the property;
- it triggers tax payments that must be made to the Notary Public, who also acts as a tax collector in this Country;
- at the time of execution of the deed of transfer the purchaser must pay the full balance of the purchase price.

Under the Italian law, at the time of signing of the deed of transfer the Notary Public will have to be assured by the Seller that:

- the property complies with planning permits;
- the Seller has paid property tax, common expenses on the estate being sold.

In the Italian legal system, a Notary Public is an independent professional acting as a public officer who has the authority to certify all deeds dealing with real property, as well transfers of cars, ships, airplanes, etc.

In our practice the title search is the responsibility of the Notary Public and is conducted by him/her before executing the Deed of Transfer. It is however normal that a title search be also conducted at the time of signing the Preliminary contract in order to check that there are no liens or mortgages registered on the property and that the sellers are indeed the registered owners of such property.

#### Registered purchaser(s)

Real estate property can be purchased in Italy both personally or through Italian or foreign companies. The final decision must be made after proper evaluation mainly of tax and estate planning issues. Your accountants' help will be required to reach a decision. The issue is not critical at the Preliminary contract stage since the execution of this contract can be made by a physical person who reserves the right to name the formal owners at a later date, though prior to the signing of the Deed of Transfer.

#### The Real estate broker's activities

The work that would normally be expected of a real estate broker is that of generally advising Clients on the proposed transaction, reviewing the initial title search, negotiating and drafting the Preliminary contract (if not signed in front of a Notary), attending and handling the closing of the Preliminary contract, handling contacts with the Notary and with the Seller's advisors in view of executing the Deed of Transfer, attending to the signature of the Deed of Transfer. The binding Offer will be in Italian but the broker will provide an English version upon request. Other relevant documents (Preliminary contract, Deed of Transfer) will be translated for the purchaser's convenience into English or into their own language by the Notary or by the lawyer/tax consultant designated by the purchaser (if any).

Cost and fees payable by the purchaser in addition to the purchase price

- *Surveyor* - In most cases the purchaser does not hire a surveyor or an architect to check the state/maintenance/stability of the property. You may however want to do that given the size of the deal.
- *Agent fees* - As explained above under Italian law the agent's fees are payable at the signing of the Preliminary contract. The agent in Italy normally receives a commission both from the seller and from the purchaser. The Agent's fees are calculated on a percentage basis on the actual purchase price as shown in the Preliminary contract. Unless otherwise agreed the customary commission is 3% from the purchaser and 3% from the seller.
- *Notary Public* - The Notary will charge his/her fee on a percentage basis on the price shown in the Deed of Transfer. As a very broad indication, given the size of the transaction, the percentage might be in the region of 0.5% to 1.5%.
- *Taxes* - At the time of the execution of the Deed of Transfer the purchaser will be required to pay the registration tax, stamp duty and other ancillary taxes to the Notary Public.
- *Lawyers' and tax consultants' fees* - Should the purchaser decide to designate a lawyer/tax consultant he/she will pay their fee which will be normally based on the amount of the transaction.