

INVESTING IN ITALIAN REAL ESTATE

This presentation, developed and published in cooperation with the *Commercial Office* of the Consulate General of Italy in New York, and currently available also on the internet on the official website of the Consulate General of Italy in New York, provides general information on legal issues and developments of interest to U.S. individuals and business operators interested in investing in Italian real estate. This presentation offers practical guidance to help them effectively understand the most frequent legal/tax issues and technical terminology associated with the purchase of and/or investment in Italian properties. It is not intended to provide legal advice, and the information provided herein does not constitute a legal opinion by the law firm **BOSCHINI INTERNATIONAL LAW OFFICES, PLLC**. The accuracy, completeness, and temporal validity of the information provided herein are not guaranteed. All readers should always seek specific legal advice from an attorney duly admitted in the relevant jurisdiction before taking any action with respect to the matters discussed hereinafter.



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FUNDAMENTAL ASPECTS OF INVESTING IN ITALIAN REAL ESTATE

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INTRODUCTION

An increasing number of US buyers and investors have been investing in Italian real estate, especially in recent years. Italy, indeed, is recognized worldwide for its impressive artistic patrimony, beautiful cities, relaxing vacation destinations, and overall quality of life. Many US buyers/investors have been taking advantage of the friendly relationship that has traditionally joined together the United States and Italy, and have beneficially explored the opportunities that the Italian real estate market has to offer, both for residential and commercial purposes.

Generally speaking, the Italian real estate market - both residential and commercial - has performed strongly over the past few years; moreover, in recent years Italy has substantially reformed its legal system in many fundamental sectors with the explicit purpose of simplifying its commercial and fiscal legislation and creating an even more favorable legal and tax environment for domestic and foreign investments. That being said, all US buyers/investors (hereinafter collectively referred to as "buyers") desiring to invest in Italy should always seek competent legal assistance before embarking in any real estate project; buying a property in Italy, indeed, may often result in a rather complex legal process due to specialized procedures and practical difficulties peculiar to the Italian market.

The Italian legal system is substantially different from that of the United States; real estate transactions are regulated by the provisions of the Italian Civil Code (*codice civile*) as well as by those of other specific administrative, environmental, and fiscal laws and regulations. In general terms, the purchase and sale of real estate property in Italy must necessarily occur with the local assistance of an Italian-based notary (*notaio*). The notary is an Italian lawyer and - at the same time - a public official; his/her role and functions are substantially different from those of the typical US notary public. The activity of the notary (a public official and, as such, in a position of impartiality between the seller and the buyer) is usually no substitute for independent legal advice that the US buyer should always seek from his/her personal **attorney (avvocato)**.

Purchasing, owning, and investing in real property in a foreign country (i.e., Italy), indeed, expose the US buyer/owner to multiple legal and tax issues, of Italian, US, and international law. A dually-admitted Italian/US attorney is in the strategic position to properly advise and guide the US buyer/owner so that all issues arising from the interaction of the two different legal systems are effectively taken care of. On behalf of the US buyer, the attorney will coordinate with the local notary and, depending upon the complexity of the

specific case, interact and negotiate with the seller and/or the seller's attorney.

In addition, the attorney will assist the buyer in all those issues that are usually intimately related to the Italian real estate investment itself, such as:

- domestic/international tax and estate planning;
- business planning and company formation/management;
- drafting, translation, and legalization for international use of US documentation such as power of attorneys and corporate documents;
- Italian immigration procedures and counseling;
- obtainment of work permits, licenses, and permits in connection with the opening of a business - if the real estate investment is for commercial purposes;
- negotiation and drafting of commercial or residential leases, etc.

I. BUYING ITALIAN REAL ESTATE

It is generally advisable to the US buyer to seek the assistance of a licensed **real estate agent (agente immobiliare)** for the initial property search. Under Italian law, the agent could be either a "**mediatore**" or a "**mandatario**."

- The "Mediatore"

If the agent is a *mediatore*, his/her commission (*provvigione*) is usually paid by **both** the buyer and the seller; the *mediatore* has a duty to facilitate the transaction, put the seller and the buyer in touch with each other, and inform each of them of anything known to him/her which may be material or relevant to his/her clients.

- The "Mandatario"

If the agent is a *mandatario*, **only** the buyer pays the commission, and the agent acts in the interest of his/her client only.

All real estate agents must be registered with the local Chamber of Commerce (*Ruolo degli Agenti d'Affari in Mediazione*); if the agent is not registered, he/she will be liable to fines and other penalties and, more importantly, will not be entitled to the agreed upon commission. The buyer will generally be required to sign a standard contract to retain the services of the real estate agent: such contract should always be carefully analyzed before its execution, and special attention should be paid particularly to the terms relating to the amount of the agent's commission, the time when it will become payable, and the available mechanism for controversy resolution in case of fee dispute.

Once the buyer has finally selected, alone or with the help of the real estate agent, the property that he/she wants to purchase, the buyer will start, usually with the assistance of his/her attorney, the **planning activity** (see below) necessary for the choice of the legal ownership of the property, as well as the **negotiation process** (see below) with the seller.

As to the **planning activity**, buyers will generally have to decide whether to purchase the property directly under their individual name or rather, indirectly, by means of a limited liability entity. **Such decision is of the utmost importance as substantial legal and tax consequences will be associated to it.**

In broad terms, buyers have many viable options to invest in Italian real estate, depending upon their subjective characteristics: private individuals, pool of investors, or companies, as well as their underlying purposes - residential, commercial, or financial.

US private individuals can purchase Italian properties and/or real estate assets as follows:

- *Directly*

Under their own personal name, in joint name together with their spouse or co-purchaser/s, in the names of their children, or in the name of somebody who will eventually inherit the property from them; or

- *Indirectly*

Through an existing or a newly-formed Italian company, or through an existing or a newly-formed foreign company.

US companies wishing to invest in Italian real estate can purchase properties and/or real estate assets "*directly*" under their own corporate/institutional name, or "*indirectly*" through an existing or a newly-formed Italian company, or through an existing or a newly-formed foreign company.

All US buyers will need to carefully analyze with the assistance of their attorneys the provisions of the applicable United States - Italy Income Tax Treaty before making any final decision, especially when the proposed real estate investment will be the basis for the performance of an Italian commercial activity.

Often, for considerations of limitations of liability, privacy, fiscal convenience, etc., the formation of a limited liability entity is implemented; in this case, the attorney will provide for its formation on behalf of the buyer and in conformity with the instructions provided by the buyer. The newly formed entity will be the legal owner of the Italian property, and the US investor will be the owner - sole

owner or co-owner with other eventual buyers - of the shares/quotas of the entity.

As to the above mentioned **negotiation process with the seller**, such negotiations will need to be conducted with the utmost attention. Italian law, indeed, provides for **pre-contractual liability (*responsabilita' precontrattuale*)** and requires all parties involved in a pending transaction to act in good faith (*buona fede*) during negotiations. In the event of non-compliance, the non-compliant party will run the risk of being required to refund the other party of all expenses incurred in the negotiations and all losses realized.

It is worth mentioning that in all cases in which the **buyer** - private individual or company - **cannot be physically present in Italy** to personally sign the specific contract to be executed, **the buyer will have to render in the United States a "power of attorney" (*Procura*)** naming an Italian **"attorney in fact" (*procuratore*)** who will act on behalf of the buyer in the pending transaction. The power of attorney will have to be translated into Italian, legalized/notarized, and duly *Apostilled* for international use (in accordance with the Hague Convention of October 5, 1961). The Italian legal system is very formalistic; therefore, all required formalities for this legal document will have to be carefully complied with to avoid delays and complications.

Once the buyer has selected the property, decided between direct and indirect ownership, and made proper financial arrangements for the financing of the investment, the buyer generally will come up with a **"Reservation Offer" (*Proposta di Acquisto*)** and pay a relatively small deposit to the seller (**approximately 10%** of the final price).

The "Proposta di Acquisto"

The *Proposta* is a written proposal. Italian law requires all contracts involving the transfer of real estate to be in writing. Usually, the *Proposta* takes the property off the market for a specified period of time during which the buyer, together with his/her attorney and technical advisor/s, can conduct the necessary checks on the property.

The buyer should always pay special attention before signing any *Proposta* as this offer is usually **irrevocable (*proposta irrevocabile*)** and, thus, binds the buyer - for the specified period - in the purchase of the property, **but it does not bind the seller until the moment the seller formally accepts it.**

Therefore, if the buyer does not proceed with the purchase because of a "legal problem," the buyer is usually contractually entitled to the return of the deposit previously paid; on the other hand, if the buyer does not go ahead simply because he/she has changed his/her mind, **the buyer will usually lose this deposit.**

If the buyer does go ahead with the purchase, the deposit will be treated as a part payment on the final price of the property.

Any property may be encumbered with a variety of restrictions, limitations, mortgages (*ipoteche*), easements (*servitu'*), encumbrances (*gravami*), town planning, environmental, and landscape obligations, etc. Therefore, before executing any legal documents, contracts, and deeds involving Italian real estate property, the relevant public registers should always be thoroughly searched, usually with the technical assistance of the attorney, and of the **land-surveyor (*geometra*)** or **architect (*architetto*)**.

In addition, the buyer wishing to purchase the property through a **mortgage (*mutuo ipotecario*)** will have to ensure that the seller agrees in the preliminary contract to the constitution of such mortgage on the property prior to the drawing up of the final deed of sale (***Rogito***) - see below.

The "Compromesso"

When the seller accepts the buyer's offer and formally communicates his/her acceptance to the buyer, the two of them have entered into a binding agreement, which is usually formalized in the **"preliminary contract" (*Contratto preliminare di vendita or Compromesso*)**.

In general terms, the *Compromesso* stipulates that both parties agree to buy and sell the property, and that they concur on the terms and conditions of the sale.

The *Compromesso* is often prepared by the real estate agent or by the construction company; however, all buyers should always seek the assistance of their Italian attorney to check all terms and conditions of this document properly as any errors, misunderstandings, or omissions in it could have far-ranging legal as well as financial consequences.

In short, the *Compromesso* is a binding legal agreement to complete the purchase at some future specified date, in the offices of a local Italian notary.

As mentioned before, the *notaio* is a public official who is legally empowered by the Italian government to witness, validate, and register deeds and contracts for the sale and purchase of Italian property.

The activity and functions of the notary are regulated by the Italian notarial law (*legge notarile*); the notary, although usually selected by the buyer, is independent and impartial, and charges legally-fixed fees for his/her services, computed on a sliding scale of charges, depending upon the declared sale value of the specific property.

Considering the fact that the *Compromesso* is a commitment to buy the property and pay the corresponding price, and that **a deposit is usually paid at the time of its execution**, it is of the utmost importance for the buyer - before executing such contract - to have obtained all documentation and search reports on the property or, at the very least, to have ascertained all legal and practical problems, and agreed with the seller a timetable to sort them out before the final closing (***Rogito Notarile***).

In concrete terms, the *Compromesso* should always:

- 1) specifically define the property being sold;
- 2) provide the identification details of both parties (buyer and seller);
- 3) state the agreed upon final price, the amount of deposit paid, and the payment modalities for the remaining installments;
- 4) acknowledge the property's conformity to legal standards, and the respect of planning and building regulations, fiscal norms, etc.;
- 5) affirm the seller's unconditional commitment to sell the property on or before the agreed upon closing date (i.e., the date in which the deed of sale - *rogito notarile* - will be executed); and
- 6) guarantee as to the absence of existing mortgages, undisclosed encumbrances, limitations, restrictions, third parties' rights, or any other problems discovered upon survey and searches or upon examination of the documentation previously submitted by the seller.

At the time of execution of the *Compromesso*, a deposit (**Caparra**) - usually ranging **between 10% and 30%** of the final price - is paid by the purchaser to the seller.

Under Italian law, the legal definition of this deposit can have very serious implications for the buyer. In fact, if such deposit is defined as "**Caparra Confirmatoria**," the buyer, in case of his/her default on the agreed terms of the contract, and upon the seller's rescission of the contract (*rescissione del contratto*), **will automatically lose the whole deposit paid**. Conversely, in the event of seller's default, the seller will be legally bound to pay to the buyer double the sum originally received as deposit.

On the other hand, if the deposit is defined as "**Caparra Penitenziale**," then, subject to the actual wording of the contract, it will enable either or both parties to the contract to withdraw (*recesso*) from the transaction, **allowing the seller to keep the deposit paid, in case of buyer's withdrawal, or compelling the seller to return the deposit received, in case is the seller the party terminating the contract**.

When all arrangements have been completed, and the contract agreed upon, the buyer and seller will execute two identical original contracts, which will then be exchanged; at the same time, the buyer will tender a check (*assegno*) or a banker's draft (*assegno circolare*) to the buyer for the deposit, thus finalizing the formalities of this stage of the transaction.

Notably, the declared price will determine the resulting taxation on the transfer of the property; the price usually represents the tax

basis on which the transfer taxes (registration, mortgage, cadastral, and VAT) will be applied - see below.

The "Trascrizione"

Since January 1997, the *Compromesso* can be registered (***Trascrizione***) in an effort to better protect the buyer vis-à-vis the seller, as well as against concurrent adverse rights of third parties, provided that the *Compromesso* is drafted either as a "public deed" (*atto pubblico*) or as a "certified private deed" (*scrittura privata autenticata*) - **the intervention of a notary is thus necessary.**

Generally speaking, it may be worth registering the *Compromesso* if:

- 1) a long period of time between the *Compromesso* and the final deed of sale is expected; and/or
- 2) the seller is a construction company and, thus, it might be potentially exposed to risks of bankruptcy (*fallimento*).

In practice, a copy of the *Compromesso* will have to be filed with the competent local office of the Italian "Agency of the Territory" (*Agenzia del Territorio - Conservatoria dei Registri Immobiliari*), and a relatively small fee will have to be paid. Registering the contract prevents a possible fraudulent disposal by the seller of the same property to multiple good-faith prospective buyers. In fact, any other prospective buyer will be informed, by means of an ordinary search on the specific property, of the pending agreement to sell/buy such property; therefore, the first prospective buyer to have registered his/her *Compromesso* acquires a good right to complete the purchase also against concurrent third parties. In addition, in the event of bankruptcy of the seller, the prospective buyer (who has registered the preliminary contract) is afforded by law a special privilege vis-à-vis concurrent creditors of the seller in relation to that specific property that has been the object of registration.

The "Rogito Notarile"

The executed preliminary contract will be the basis upon which the final "Deed of Sale" (*Rogito Notarile*) will be drafted by the notary and executed by the parties. Usually the choice of the notary will be made by the purchaser as he/she will be the party responsible for the payment of the notary's legal fees. The execution of the *Rogito* will normally take place in the offices of the notary and, eventually, in the presence of two witnesses (*testimoni*); during the stipulation (*Stipula*), the notary will read and explain to the parties the clauses of the deed, providing the parties with impartial advice as to all legal aspects arising from the transaction. At the moment of signing the deed, the buyer will tender the previously agreed-upon payment to the seller and the seller will deliver to the buyer all ownership documents and the keys for the property.

The buyer will usually tender payment by means of banker's draft (*assegno circolare*) payable to the seller.

The payments due will typically include:

- 1) the balance of the purchase price owed to the seller (i.e., the total price minus any deposit/s already paid at the *Proposta di Acquisto* and/or *Compromesso* stages);
- 2) the notary's fees - calculated as a percentage of the cadastral value (*valore catastale*) of the property as declared in the *rogito*;
- 3) taxes arising from the transaction (the tax dues will be deposited by the notary at the moment of the registration - see below).

Notably, the latter two items will be paid directly to the notary and, thus, will not be included in the banker's draft for the seller. If the purchase of the property will be paid partly in cash and partly through a mortgage (*mutuo ipotecario*), the deed of sale will be drawn up together with the mortgage deed.

Once the *Rogito* has been signed by the parties, the property has finally and irrevocably changed hands. The *notaio* will then have the responsibility of formally registering (*registrazione*) - within 20 days - the change of ownership at the "**Land Registry**" (*Catasto*), and filing the sale (*trascrizione*) at the "Agency of the Territory" (*Agenzia del Territorio*). The buyer will then receive from the notary a certified copy of the Purchase Deed, as duly filed with the Italian administrative authorities/agencies.

After the buyer has become the new owner of the property, it will be the buyer's responsibility to:

- file a formal notice (*antiterrorismo*) with the local police authorities (*Questura/Comando di Polizia*) within 48 hours from the transfer of title, declaring the occurred transfer of ownership;
- file the so-called "TIA notice" (*Tariffa Igiene Ambientale*);
- subscribe all necessary contracts (*volturazione delle utenze*) for the main utilities (power, water, gas, telephone, etc.); and
- if the purchased property is an apartment belonging to a condominium building (*condominio*), inform the condominium manager (*amministratore del condominio*) of the transfer of the ownership, and arrange with him/her for the payment of common service charges and the right to attend condominium meetings (*assemblee condominiali*).

II. DUE DILIGENCE AND DOCUMENTATION FOR THE PURCHASE OF REAL ESTATE

Before signing the *Compromesso* and certainly before executing the final deed of sale, the buyer should receive from the seller and/or from the notary, and always check with his/her personal attorney, a substantial number of documents, deeds, licenses, authorizations, etc., related to the property itself and/or the current owner/s. The amount and the complexity of such documentation will depend on various factors and the type of real estate investment - residential vis-à-vis commercial. Such documentation is often difficult to obtain - as various documents are issued by different administrative offices and agencies - and difficult to be fully understood without the technical assistance of an attorney.

In very general terms, such documentation and related due diligence activity will include, but will not be limited to:

1) **"Title deed of the property" (*Titolo di proprietà e/o di provenienza*)**

This document confirms the ownership of the property and the seller's good title, and reports eventual encumbrances, limitations, restrictions, easements (*servitù*), mortgages (*ipoteche*), etc. affecting the property. Particular attention should be paid when the buyer purchases a property that the seller has received by inheritance or gift;

2) **"Certificate of urban destination" (*Certificato di destinazione urbanistica*)**

This document must be attached to any deeds transferring real rights on non-built lands to show to the purchaser the destination of that specific parcel of land in the Town-planning Scheme (*Piano Regolatore*) and, therefore, the economic usability of the land object of the transfer. This certificate must be obtained by the owner/seller from the Municipality (*Comune*) where the land is located;

3) **"Authorization for division into lots" (*Autorizzazione alla lottizzazione*)**

Italian law provides for the nullity of a purchase of parcels of land when the purchase is not accompanied by specific authorization for residential division into lots;

4) **"Town-planning Conformity" (*Liceità urbanistica*)**

For commerciability purposes of the real estate object of the sale, in case the **construction resulted begun after September 1967**, it is necessary to make express mention of the essential terms of the authorization (i.e., construction/building license, etc.);

5) **"Certificate of Indemnity" (*Concessione in sanatoria*)**

This document regularizes any construction works or restructuring works modifying the structure, size and/or use of the property, done on the property in the absence of or

without compliance with required administrative licenses, authorizations, and permits;

- 6) **"Certificate of Habitability" (*Certificato di agibilità*)**
This document is issued by the Municipality where the property is located, and certifies the existence of the safety, health, and energetic efficiency conditions of the property and of its utilities systems;
- 7) **"Preemptive rights" (*Diritto di Prelazione*)**
All real estate properties of historic and artistic value are subject to the preemptive rights of the Italian Ministry of Cultural Heritage and Cultural Activities (*Ministero per i Beni e le Attività Culturali*). Therefore, the owner of this type of property is required by law to inform in advance the competent local ministerial office as to any proposed transfer having as object that specific property;
- 8) **"Cadastral Aspects" (*Aspetti catastali*)**
The Italian **cadaster** (*catasto*), the general registry of all real estate assets/properties located in Italy, was created to:

- register, specify, and describe all Italian-situs properties;
- ascertain the ownership of as well as other eventual concurrent real estate rights (*diritti reali*) on real estate properties, evidencing their variations; and to
- permit a fair distribution of the fiscal burden levied on real estate properties.

Depending upon the type of real estate - lands or buildings - two different cadasters exist, namely the **"land cadaster" (*catasto dei terreni*)** and the **"urban cadaster" (*catasto urbano*)**. Before executing any deed of purchase of Italian property, it is necessary to conduct proper search on the exact status of the property and its cadastral compliance (*regolarità catastale*) through consultation of the documentation on file at the Italian Agency of the Territory (*Agenzia del Territorio*). Specifically, the property's blueprint (***planimetria***) and cadastral maps (***mappe catastali***) will have to be obtained and compared with the actual status of the property. In case of non-conformity, a "declaration" (*denuncia di variazione*) will need to be filed to obtain the regularization of the property;

- 9) **"Condominium Aspects" (*Aspetti condominiali*)**
The condominium rules (*regolamento condominiale*) regulate the relationship among the various owners for the joint use and benefit of the common parts of the building (including rights, duties, and prohibitions);
- 10) **"Administrative Aspects" (*Aspetti tecnico-amministrativi - Sicurezza Impianti, Sicurezza Cantieri, Barriere Architettoniche*)**

For safety purposes in the building sites and utilities systems, all constructions built after 1996 need to be accompanied by a "building file" (*fascicolo del fabbricato*); in addition, for properties built after 1990, conformity certificates of the installed systems will be required. Moreover, to promote the elimination of physical barriers in favor of physically impaired persons, properties built after 1989 will need to be accompanied by a certificate attesting the level of accessibility, visibility, and adaptability of the property in question; and

11) "Environmental Aspects" (*Aspetti ambientalistici*)

The property needs to be in compliance with Italian environmental regulations and laws issued for public safety. In particular, if pollution levels exceed legally-fixed thresholds, the owner will generally be liable, and will bear the costs for implementing the specific safety measures necessary to remedy the current situation and prevent future pollution.

If the seller is a real estate trader, developer, or construction company (*societa'/impresa costruttrice*), the buyer should pay special attention to make sure that the seller has not been declared bankrupt by courts (*fallito*), and that no application to this effect is currently filed and/or pending against it. In this regard, all prospective buyers of new properties under construction or to be developed should be informed that the Italian government has recently enacted new legislative measures (legislative decree n. 155/2005) for the purpose of affording better protection to the financial rights of individual purchasers of real estate under construction or development, in the event of financial crisis or bankruptcy of the construction company.

In particular, all purchasers are now afforded increased protection by means of:

- 1) a more detailed specification of the contents of the preliminary contract;
- 2) a suretyship obligation (*obbligo di fideiussione*) to be delivered by the construction company to the buyer at the moment of the execution of the preliminary contract;
- 3) an obligation for the construction company to deliver to the buyer - at the moment of the transfer of the ownership - an insurance policy (*polizza assicurativa decennale*) as a guarantee for eventual construction defects affecting the property;
- 4) the creation of the so-called "Solidarity Fund" (*Fondo di Solidarieta'*), a fund that will assure financial indemnification to those purchasers who, as a result of situations of financial crisis or bankruptcy of the builder,

have lost their financial investment in the real estate project under construction or development.

In case of purchase of newly developed property or property still under construction, the buyer must also make sure that the property will be delivered complete with the necessary license to occupy it as a home (*certificato di agibilita'*).

When the seller is a construction company or a business entity, the buyer will also need to make sure that the company representatives with whom the buyer is negotiating and/or executing the contracts actually possess the legal powers to bind the seller for the purposes of the pending transaction. In this regard, the seller will usually request and obtain from the competent Chamber of Commerce (*Camera di Commercio*) a certificate (*Visura Camerale*) containing all fundamental information and data currently on file on the company (including a list of the company's officers and their legal powers).

Lastly, all buyers will also need to make sure that:

- 1) in case they are purchasing property that the seller owns in a regime of legal communion with his/her spouse, the spouse has actually formally agreed to the sale, if the spouse's consent is necessary;
- 2) in case they are purchasing property that the seller has inherited jointly with other concurrent heirs, the concurrent heirs had been preliminarily offered the same property object of the sale and they have rejected such offer;
- 3) in case they are purchasing agricultural land (*terreni agricoli*), the "right of first refusal" (*diritto di prelazione*) of the occupying and neighboring farmers has been respected (the Italian Civil Code, indeed, provides that if a parcel of cultivated land is being sold the occupying and neighboring farmers have the right to be "preferred" - at the same terms and conditions - in the purchase of such property. This right is not waivable in advance: therefore, once the preliminary contract is signed, the contract and the identity of the prospective buyer must be sent to the occupying and neighboring farmers who have 30 days to decide whether to buy the property under the same terms and conditions. If no farmers exercise the right of first refusal, the parties can proceed with the sale, but the selling price cannot be lower than the price previously communicated to the farmers, otherwise the sale may be challenged by them);
- 4) in case they are purchasing commercial real estate (and, in certain cases, even residential property) currently leased, the current tenants (*inquilini*) had been preliminarily

offered to purchase that property and they have rejected such offer.

III. TAX OBLIGATIONS ARISING FROM THE PURCHASE AND OWNERSHIP OF REAL ESTATE

Generally speaking, all foreign buyers of Italian real estate properties who do not intend to relocate to Italy and become Italian full time residents should appoint an Italian **"fiscal representative" (*rappresentante fiscale*)**.

A fiscal representative is an Italian-based person (i.e., a friend or - more often - a professional adviser such as the buyer's personal attorney or accountant) who undertakes on behalf of the foreign taxpayer - private individual or company - all dealings with the Italian Tax Authorities.

The appointment of a fiscal representative is the only practical way to ensure that the Italian Tax Authorities, unable to contact the foreign taxpayer in his/her home country (i.e., the United States), do not take any adverse action against the taxpayer's property to collect any taxes which they allege to be due.

In addition, all foreign buyers/investors will need to obtain an Italian **"fiscal code" (*codice fiscale*)** from the local tax office. The fiscal code is a tax identification number that will be necessary for the execution of the *Compromesso* and of the *rogito notarile*.

Under Italian law, taxes on real estate can be divided in two categories:

- 1) taxes payable on the transfer of property (*tributi della compravendita immobiliare* - e.g., registration, mortgage, cadastral, and VAT taxes); and
- 2) taxes on the ownership of the property (*tributi di gestione* - e.g., IRE/IRPEF, IRES, ICI, TIA).

The buyer/owner is generally responsible for these taxes.

(i) TAXES PAYABLE ON THE TRANSFER OF THE PROPERTY

The subjective characteristics of the seller (individual as opposed to construction company/developer), together with the declared price of the property, generally determine the type (**"registration tax" - *Imposta di Registro***, or **"VAT" - *IVA, Imposta sul Valore Aggiunto***) and the amount of taxes that arise from the transaction.

The purchase of Italian real estate is also subject to **"mortgage tax" (*imposta ipotecaria*)** and **"cadastral tax" (*imposta catastale*)**. These taxes are due for the formal transcription in the Italian Property Registers. Their tax base matches that of the registration tax, with tax rates set respectively at 1% and 2%.

Specifically, **in cases where the seller is a VAT entity working in the construction industry** (e.g., real estate companies, construction companies, developers, etc.), the purchase price agreed upon in the deed of sale is usually charged with:

- 1) VAT at the 10% rate (20% for luxury homes and for commercial/industrial real estate);
- 2) registration tax at a fixed amount equal to euros 168;
- 3) mortgage tax at a fixed amount equal to euros 168; and
- 4) cadastral tax at a fixed amount equal to euros 168.

In the case of a transaction subject to VAT, the taxable basis is given by the "price" agreed upon by the parties.

In the other cases (e.g., purchase from a private seller, or from a company other than the ones aforementioned) taxes to be paid generally are:

- 1) registration tax at 7% rate;
- 2) mortgage tax at 2% rate; and
- 3) cadastral tax at 1% rate.

For real estate of historical, artistic, and archaeological interest, the rate of 3% is applied, provided that the purchaser complies with the obligations related to the preservation and protection of the property; the registration tax rate for purchases of agricultural is 15%.

The "declared value" of the property on the *Rogito* represents the basis (*base imponibile*) upon which the registration tax is applied.

Registration, mortgage, and cadastral taxes are usually paid to the tax authorities by the notary (who had temporarily collected them from the buyer - on behalf of the government - at the moment of the execution of the *Rogito*) at the time of the registration of the *Rogito*. VAT is typically paid by the buyer to the seller which then deposits the amounts received to the Italian Tax Agency.

The chart on the following page summarizes the various taxes due on transfer of Italian real estate, showing their respective applicable rates and fixed amounts, depending upon the type of property sold as well as the subjective characteristics of both the seller and the buyer.

TAXES ON PURCHASE OF REAL ESTATE

Type of real estate	Seller	Buyer	VAT	Registration	Mortgage	Cadastral
Agricultural land	Business or private	Professional farmer	n/a *	8%	2%	1%
		Other subjects (business or private)	n/a	15%	2%	1%
Buildable land	Business	Business or private	20%	Euros 168	Euros 168	Euros 168
	Private	Business or private	n/a	8%	2%	1%
Commercial real estate	Business	Business or private	20%	Euros 168	Euros 168	Euros 168
	Private	Business or private	n/a	7%	2%	1%
Commercial (of historic, artistic value)	Private	Business or private	n/a	3%	2%	1%
Residential luxury home	Builder	Business or private	20%	Euros 168	Euros 168	Euros 168
Residential non luxury home	Builder	Business or private	10%	Euros 168	Euros 168	Euros 168
		Private (first home)	4%	Euros 168	Euros 168	Euros 168
Rural homes (non luxury, first home of landowner)	Builder	Business or private	4%	Euros 168	Euros 168	Euros 168
Residential luxury home	Real estate company	Business or private	20%	Euros 168	Euros 168	Euros 168
Residential non luxury home	Private or other type of company	Business or private (no first home)	n/a	7%	2%	1%
Residential non luxury home		private (first home)	n/a	3%	Euros 168	Euros 168
Residential (of historic, artistic value)		Business or private (no first home)	n/a	3%	2%	1%

* n/a: Not Applicable

(ii) TAXES PAYABLE ON THE OWNERSHIP OF THE PROPERTY

(a) PROPERTY TAXATION

ICI, the municipal tax on real estate (**Imposta Comunale sugli Immobili**), is the main local "property tax" affecting all property owners - individuals and companies - in Italy. Any owner, resident or

non-resident, of real properties located within Italian territory must pay this tax annually. The taxable base equals the sum of the estimated value for the type and class of property, as determined by the Cadastral Office (*Catasto*) - i.e., the "cadastral income" (*rendita catastale*) and a given multiplier. In general terms, **ICI tax rates will usually be between 0.4% - 0.8% of the estimated value** of the property fixed by government tables.

In addition, municipalities raise further taxation in relation to the services they supply to all property owners within their boundaries (***Tasse Locali***); this burden includes the tax imposed for the services of **rubbish collection and management, "TIA" - *Tariffa Igiene Ambientale***.

All buyers should be informed that, under Italian law, the Tax Authority is entitled to claim back any overdue taxes - unpaid by the taxpayer - on Italian properties by seizure on the taxpayer's assets even when the affected property has been transferred to other "good faith" owners. Any buyer of Italian properties, therefore, remains exposed - for a certain period of time - to the risk that such real estate may be subject to future government seizure to pay the tax debts of former owners. New purchasers/owners have the right to make up against defaulting previous taxpayer/s (owner/s); however, this process may generally take long time, and often the chances to ultimately succeed are modest. All purchasers, therefore, need to properly safeguard themselves in advance by conducting necessary due diligence activity with the assistance of their attorney.

(b) PERSONAL INCOME TAXATION

For tax purposes, all private individuals registered with the Italian registry office of the resident population, or domiciled or resident in Italy for most of the fiscal year (i.e., for more than 183 days per year) are considered as Italian residents ["residence" is the place of habitual abode; "domicile" is the place where an individual has his/her main center of interests (center of vital interests)].

Italian resident individuals are subject to income tax on their worldwide income, and are required to pay "**personal income tax**" (***Imposta sul Reddito - IRE/IRPEF***) on income derived from Italian real estate.

Non-Italian residents are subject to income tax only on income arising in Italy (e.g., rental income from property located in Italy) and are required to make an annual declaration (***Dichiarazione dei Redditi***) of such Italian income. Progressive tax rates apply, with a maximum rate of 39% and a minimum tax rate of 23%; the taxable period coincides with the calendar year.

Specifically, *IRE/IRPEF* is applied on individuals - resident and non-resident - owning Italian real estate in accordance with the ownership of income falling within two specific categories set forth in the

"Unified Text on Income Taxation" (*Testo Unico delle Imposte sui Redditi - TUIR*) as follows:

- 1) Income from real estate (*redditi fondiari*); and
- 2) Miscellaneous income (*redditi diversi*) - e.g., capital gains from disposal of real estate assets.

Income from real estate:

is divided into "income from buildings" and "income from land;" "income from land" is then divided into "income from ownership of land" and "agricultural income" (income earned by performing an agricultural activity on the land). Notably, "income from real estate" is determined according to cadastral criteria, and - subject to specific exceptions - is subject to taxation regardless as to whether or not it has actually been realized during a given fiscal year. For personal income tax purposes, properties used by individuals as their main residence benefit from specific tax relief; cadastral income is instead increased by 1/3 when a property is not used for housing purposes, or is not rented out to third parties.

Notably, capital gains arising from sale of real estate properties owned by resident as well as non-resident individuals are taxable in Italy only if such properties were purchased less than five (5) years from the date of transfer. Therefore, property kept for more than five (5) years will not give rise to Italian capital gains taxation upon its disposal (emphasis added).

(c) COMPANY INCOME TAXATION

Income realized by domestic/resident limited liability companies is subject to the Italian "**corporate income tax**" (*Imposta sul Reddito delle Società - IRES*), currently levied at a flat rate of 33%. For income tax purposes, the overall income of domestic companies is always considered as "business income." Therefore, income from land and buildings owned by such entities will also need to be calculated, subject to certain specific exceptions, according to the criteria established for business income. Rented lands and buildings that are not used for the company's commercial purposes (non-instrumental properties - *immobili non strumentali*) are an exception, and the determination criteria of the cadaster (*catasto*) as provided for individuals is applied; the rent is subject to a 15% lump-sum reduction, while the cadastral rent of non-rented buildings is increased by 1/3.

Capital gains (*plusvalenze*) realized from sale of real estate assets can be taxed in their entirety, in the fiscal year of realization, or, at the taxpayer's discretion, in equal installments in the fiscal year of realization and in the following four (4) fiscal years, provided that they have been owned for at least three (3) years.

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 will be the contractually-fixed rent, reduced by a flat 15% (in this case, no deduction for expenses effectively incurred - i.e., for maintenance costs - is allowed).

For *IRES* purposes, capital gains deriving from sale of real property are included in a specific category of income (miscellaneous income) and are subject to *IRES* in the fiscal year of realization; notably however, capital gains arising from sale of a property owned for more than five (5) years are not subject to any taxation in Italy (emphasis added).

In addition to *IRES*, and subject to specific exceptions, Italian-resident companies conducting business activities in any Italian region are subject to the "**Regional Tax on Business Activities**" (*Imposta Regionale sulle Attività Produttive - IRAP*), a local tax applied on the value of the production generated in a given fiscal period (*IRAP* is supposed to be gradually abolished by the Italian government). The *IRAP* tax rate for most taxpayers amounts to 4.25%; however, only proceeds arising from real estate properties (e.g., rental income) that have been actually realized are taken into account. **Non-Italian resident companies are subject to *IRAP* only on the production generated through Italian permanent establishments.**

IV. FISCAL BENEFITS FOR PURCHASES OF "FIRST HOMES" AND FOR RESTRUCTURING WORKS

(i) PURCHASE OF "FIRST HOMES"

If the property to be purchased is to be the buyer's "first home" (*prima casa*) in Italy, a significant tax reduction is generally available. The purchase of the "first home" benefits from specific tax advantages:

- registration tax or, alternatively, VAT are paid applying reduced rates;
- mortgage and cadastral taxes are due in a fixed amount.

Specifically, in cases where the seller is a VAT entity working in the construction industry, VAT is paid at the reduced rate of 4%, and the registration, mortgage and cadastral taxes are paid in the fixed amount of 168 euros each. In the other cases (e.g., purchase from a private seller), the tax rate of 3% instead of 7% applies for the registration tax, and the mortgage and cadastral taxes are paid in a fixed amount of 168 euros each.

The following chart summarily visualizes the advantageous *prima casa* fiscal regime.

FIRST HOME (PRIMA CASA) FISCAL BENEFITS		
TAX	FIRST HOME	OTHER CASES
PURCHASE FROM PRIVATE SELLER		
REGISTRATION	3%	7%
MORTGAGE	168.00 euros	2%
CADASTRAL	168.00 euros	1%
PURCHASE FROM CONSTRUCTION COMPANY		
VAT	4%	10%
REGISTRATION	168.00 euros	168.00 euros
MORTGAGE	168.00 euros	168.00 euros
CADASTRAL	168.00 euros	168.00 euros

In order to take advantage of the *prima casa* regime it is generally required that:

- the buyer be a private individual (*persona fisica*);
- the property be not a luxury house, as set forth by Ministerial Decree (08/02/1969);
- the real estate be located in the Municipality (*Comune*) where the purchaser has his/her own residence, or in which the purchaser intends to transfer it within 18 months from the date in which the deed of sale was executed, or where the purchaser performs his/her professional activity.

Furthermore, the purchaser must declare in the purchase deed that:

- he/she is not the sole holder, or in conjunction with the spouse, of rights of property, use, usufruct, and housing of other real property for housing purposes in the territory of the Municipality where the property is located;
- he/she is not the holder, either for quotas or in legal communion, nationwide, of rights of property, use, usufruct, housing on another home, purchased - even by the spouse - taking advantage of the *prima casa* benefits; and that
- he/she will transfer his/her residence within 18 months in the Municipality where the real estate is located, in case he/she does not already reside there.

Notably, the Italian IRS (*Agenzia delle Entrate*) has clarified in a recent Circular that:

- Italian citizens emigrated abroad have the right to enjoy the benefits provided by law for the purchase of "first homes" if

they purchase a real property as their first home within the territory of Italy, without the mandatory requirement that they must transfer their residence within 18 months in the Municipality where the real estate is located;

- the status of non-resident does not have necessarily to be documented by a certificate of registration in the "Italian Registry of Residents Abroad" (*AIRE - Anagrafe Italiana Residenti all'Estero*), but it can be self-certified by the purchaser by means of declaration rendered in the purchase deed;
- foreign nationals (with no Italian citizenship) have the right to enjoy the benefits provided for the purchase of "first homes" if they purchase a property as their first home within the territory of Italy and transfer their residence within 18 months in the Municipality where the real estate is located;
- the advantageous regime pertains also to rural properties (*fabbricati rurali*) for residential use and therefore it does not relate exclusively to urban housing;
- even properties currently under development or construction can benefit from this beneficial tax regime, on the condition that such properties are not luxury houses; and that
- the beneficial regime finds application also in the context of succession and donation.

Once the buyer has taken advantage of the *prima casa* fiscal benefits, **the property cannot be resold before five (5) years from the date of the initial purchase**; otherwise, the buyer will be subject to a penalty equal to the difference between the paid tax and the tax that would have had to be paid on the property as a "second home", plus a sanction equal to the 30%, in addition to interest.

Interestingly however, the law allows a *prima casa* buyer to resell the property without incurring any penalty in the event the buyer purchases another property for his/her residential use within one (1) year from the date of the previous sale.

(ii) RESTRUCTURING WORKS

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

Taxpayers are currently entitled to deduct from their *IRE/IRPEF* the 36% 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 euros 48,000**, on each property on which the works are done, and will have to be allocated over a period of ten (10) years.

Restructuring works that are eligible for the deduction are specified in the D.P.R. n. 380/2001 (the "Building Legislation and Regulation Consolidation Act" - *T.U. dell'Edilizia*). Specifically, the 36% deduction is available for expenses incurred for **"extraordinary maintenance works" (*interventi di manutenzione straordinaria*)**, **restoration works (*opere di restauro*)**, **"preservation/recovery works" (*opere di risanamento conservativo*)** as well as for **"building restructuring works" (*lavori di ristrutturazione edilizia*)** for single apartments. On the other hand, **"ordinary maintenance works" (*manutenzione ordinaria*)** are eligible for personal income tax deduction only if they relate to common parts of residential buildings.

Generally speaking, **"Extraordinary Maintenance Works"** are those changes and modifications that are necessary to restore or replace structural and/or technological parts of buildings, as well as to create or improve sanitary systems, provided that they do not alter the volume and surface of the property and do not involve changes of the destination of use (i.e., installation of elevators, emergency stairs and ramps, realization/improvement of sanitary and energy systems, replacement of external fixtures and shutters, roof restoration/replacement, etc.).

"Restoration and Preservation/Recovery Works" are those changes and modifications necessary to preserve the integrity of the property and assure its functionality (i.e., consolidation, repair and renovation of constitutive elements of the property, elimination or prevention of degradation, etc.).

"Building Restructuring Works" are those changes and modifications necessary to partially transform/modify the existing property or to entirely convert the existing building/property into a new one (i.e., demolition of an existing property and successive accurate reconstruction of a property possessing the same fundamental characteristics, modification and/or creation of a facade and/or balcony, conversion of an attic into a penthouse or of a balcony into a veranda, etc.).

Lastly, **"Ordinary Maintenance Works"** are those involving common repairs, the renovation and substitution of finishing materials and details, and those necessary to integrate or maintain the existing technological systems.

All prospective buyers should keep in mind that - to take advantage of this beneficial fiscal regime - they will have to comply with a number of requirements and fulfill certain obligations. Prior to the commencement of any work, indeed, they will have to:

- forward by registered letter (*raccomandata*) a specific form to the competent office of the "Italian Revenue Service" (*Agenzia delle Entrate*); and
- forward a notice to the "Local Health Agency" (*Azienda Sanitaria Locale*).

Notably, all taxpayers wishing to take advantage of the deductions for expenses incurred in restructuring works will need to pay such expenses by means of wire transfers (*bonifici bancari*).

V. ITALIAN REAL ESTATE INVESTMENT FUNDS

US buyers - private individuals or companies - can invest in Italian real estate also through special Real Estate Investment Funds (*Fondi di Investimento Immobiliare - REIFs*). As a result of recent regulatory amendments, the new REIFs are **more flexible and more attractive** for tax reasons to foreign investors interested in Italian real estate.

(i) REGULATORY ASPECTS

The Italian REIF legal regime was first introduced in 1994; at the end of 2003, however, the REIF tax regime was substantially amended for the purpose of making it more advantageous both for domestic and foreign investors.

Italian real estate funds are regulated by provisions contained in several statutes and regulations issued by the Bank of Italy (*Banca d'Italia*), the Ministry for Economic Affairs (*Ministero dell'Economia e delle Finanze*) and by the Italian regulatory authority for financial markets (*CONSOB - Commissione Nazionale per le Società e la Borsa*).

An Italian REIF is a tax exempt fund that invests exclusively or predominantly in real estate, immovable assets, and equity interests in real estate companies. A REIF is not a legal entity, but rather a pool of investment jointly held by multiple unit holders. The fund is managed on behalf of and in the interest of the unit holders (*partecipanti*) by a "savings managing company" (*società di gestione del risparmio*).

Investment funds and savings managing companies are separate "entities" and the assets of the funds cannot be held directly by the savings managing company; they must be deposited, indeed, with an authorized bank (the depository bank - *banca depositaria*), which carries out each transaction upon instructions by the savings managing company.

Specifically, a savings managing company must be an Italian joint-stock company (*società per azioni - SPA*), and have its registered office and head office in Italy; a savings managing company can carry out its activity of management of investment funds upon authorization by the Bank of Italy.

The depository bank must be an Italian bank (or an Italian branch of an EU bank), and must comply with certain specific regulatory requirements which are under the supervision of the Bank of Italy.

In the presence of specific circumstances, the filing of a prospectus (*prospetto informativo*) may be required; in particular, a prospectus must be filed if the units of the fund are to be offered to the public.

Under Italian law, the managing company is charged with the drafting of the Regulation (*Regolamento*) of the fund; the *Regolamento* set forth the fund's operational rules, and must be approved by the Bank of Italy before any offer of the fund units (*quote di partecipazione al fondo*) to the investors take place.

In particular, the *Regolamento* governs the investors' participation in the fund, the respective rights and obligations of the fund's investors, of the managing company, and of the depository bank, the distribution of earnings, the procedures for the fund's winding up, and the subscription and redemption of the funds units. In addition, the *Regolamento* determines the managing company's officers who are responsible for the selection of investments, and sets forth the investments criteria, the types of securities and other assets in which the fund's assets may be invested, as well as all other relevant issues.

Italian REIFs can be formed through contribution or through subscription. Investors usually subscribe for fund units in cash; however, subscription by contribution of real estate assets, real estate rights or interests in real estate companies is also permitted.

In broad terms, the legal form of Italian REIFs can be twofold:

- "closed ended" REIFs (*fondi chiusi*); or
- "semi-closed ended" funds (*fondi semi-chiusi*).

Closed ended funds are funds in which the entire amount of the capital is determined at the time of its formation and cannot be subsequently modified; this type of funds does not allow its unit-holders to sell their participations to third parties.

Semi-closed ended funds are funds that are allowed to increase the value of their initial capital by issuing new units, on the condition that such issue is provided for in the fund's by-laws (a recent Communication of the Bank of Italy has made clear that if further units are to be issued, they must be subscribed within the time period of 18 months after the publication of the prospectus).

An Italian REIF can be either listed or not listed. It is possible to set up a fund with only a few participants. However, to guarantee small investors the possibility of liquidating their investment in the

fund, Italian law requires the filing of an application for listing (*quotazione*) on the Italian Stock Exchange within 24 months after the closing of the initial offer if the minimum fund unit is worth less than euros 25,000.

The type of investors to whom the fund's units may be offered is set forth in the fund's Regulation.

As a general rule, units may be made available to:

- the general public, whether through listing or not; or
- only to specific categories of investors.

In this latter regard, it is possible to organize **"reserved funds"** (*fondi riservati*) that are accessible only to qualified investors (e.g., pension funds, insurance companies, investment firms, banks and banking foundations, stockbrokers, savings management companies, foreign persons/entities who, pursuant to the regulatory laws of their respective home countries, conduct the same type of activities carried on by the foregoing persons, as well as individuals/entities who can demonstrate the possession of specific expertise and experience in transactions involving financial instruments, etc.) and for which investment restrictions are looser than those affecting general funds; in addition, Italian law allows the formation of **"speculative funds"** (*fondi speculativi*), accessible only to a maximum of 200 investors, whose minimum units must be worth more than euros 500,000, and which can operate virtually without limitations.

Italian REIFs were generally not allowed to directly engage in activities of building construction; however, a recently-issued Regulation by the Bank of Italy now allows even such type of activity, directly or indirectly through controlled companies (*societa' di costruzione*), provided such activity does not exceed 10% of the fund's overall activity.

Notably, an Italian REIF:

- may not invest, directly or through controlled companies, more than one third (1/3) of its assets in one single real estate asset having unitary, urban, and functional characteristics;
- may not invest more than 10% of its equity in the shares of the same building company;
- may enter into loan agreements as borrower up to 60% of the value of the real estate assets, real estate rights, and interests in real estate companies owned by the fund and up to 20% of the value of other assets owned by the fund. REIFs are permitted to apply loan capital, within the indicated limits, to carry out operational activities (including changing the commercial designation of the real

- estate, etc.) of the assets in which the fund's capital is invested;
- has generally no obligation to distribute its profits during its lifetime; however, it must distribute all the proceeds deriving from its activities at the end of its duration.

(ii) FISCAL ASPECTS

Real estate investment funds are subject to special tax rules, the main set of which was introduced in 2001, and to which substantial amendments were subsequently introduced effective as of year 2004.

Notably, as of January 2004, **Italian real estate funds are tax exempt**: therefore, they are not subject to the **Italian "Corporate Income Tax" (IRES)** and to the **Italian "Regional Tax on Productive Activities" (IRAP)**.

In addition, no withholding tax is generally levied on income from capital derived by the fund (e.g., dividends, interests, etc.).

- **Individual Investors**

Income and dividends distributed by REIFs to individual investors are usually subject to a 12.5% withholding tax (*ritenuta alla fonte*) withheld by the managing company.

For the purpose of application of the 12.5% withholding tax the term dividend includes:

- distribution executed by the fund;
- the difference between the official value of the unit upon redemption and the official value upon acquisition or subscription;
- the difference between the official value of the unit upon sale and the official value upon acquisition or subscription.

Notably however, **the 12.5% withholding tax does not apply if the foreign individual recipient is a non-Italian resident who is resident of a country with which Italy has entered into an effective exchange of information** - a list of the countries providing adequate exchange of information is laid down in an Italian ministerial decree; generally speaking, the list includes those countries which have entered into a tax treaty with Italy containing a specific clause for a fully-fledged exchange of information (e.g., the United States of America).

Capital gains (*plusvalenze*) on the transfer of the units of a real estate fund are generally included in the overall income of the individual investor and are subject to **Italian Personal Income Tax (IRE/IRPEF)**; capital gain tax is applied at a 12.5% rate.

Notably however, **capital gains on the transfer of the units of a real estate fund are tax exempt in Italy if they are realized by non-resident individuals without a permanent establishment in Italy, provided that:**

- the units are listed on a regulated market; or
- if the units are not listed on a regulated market, the nonresident individual is resident of a country which allows an effective exchange of information with the Italian tax authorities (e.g., the United States of America).

- Corporate Investors

Income and dividends distributed by REIFs to corporate investors are usually subject to a 12.5% withholding tax withheld by the managing company.

Notably however, **the 12.5% withholding tax does not apply if the foreign corporate investor/recipient is a non-Italian resident entity which is resident of a country with which Italy has entered into an effective exchange of information - e.g., the United States of America.**

Capital gains on the transfer of the units of a real estate fund are generally included in the overall income of the foreign corporate investor and are subject to **Italian Corporate Income Tax (IRES)**; capital gain tax is applied at a 12.5% rate.

Notably however, **capital gains on the transfer of the units of a real estate fund are tax exempt in Italy if they are realized by non-resident foreign companies without a permanent establishment in Italy, provided that:**

- the units are listed on a regulated market; or
- if the units are not listed on a regulated market, the non-resident foreign company is resident of a Country which allows an effective exchange of information with the Italian tax authorities (e.g., the United States of America).

- Fund's Managing Company

The fund's managing company is subject to **IRES** and **IRAP**; the managing fees paid to company, indeed, must be included in the company's overall income and are subject to the ordinary **IRES** flat rate of 33%. **IRAP** is currently levied at the rate of 4.25%.

- Indirect Taxes

The deed of formation of an Italian REIF, its capital subscription, as well as the issuance of the fund's certificates are **not** subject to the Italian registration tax (*imposta di registro*).

ICI (Imposta Comunale sugli Immobili - the municipal tax on real estate) must be paid by the managing company on all real estate properties and assets located in Italy and owned on behalf of the fund (the usual tax rates are between 0.4% - 0.8% of the estimated value of the property fixed by government tables, depending upon the municipality where the property is located).

Furthermore, VAT at a 20% rate is usually levied on the sale of real estate assets; however, depending upon the type of real estate assets - e.g., non-buildable land, or agricultural land - and the subjective characteristics of the seller, exceptions may be available. The VAT taxpayer for the activities carried out by the REIF is the fund's managing company; the company needs to calculate VAT in accordance with applicable VAT law, but it is generally allowed to offset its own VAT against that of the fund (and vice versa).

In this latter regard, the managing company can ask for reimbursement within six (6) months on the related VAT credit from the acquisition of real property by the REIF and the costs associated with the management of that property. Otherwise, the VAT credit can be either set off against other taxes due or transferred to a third party. Alternatively, transfers of real estate assets not subject to VAT are subject to registration tax, levied at different rates depending upon the type of real estate assets transferred.

Transfers of Italian real estate properties/assets are also subject to the **mortgage and cadastral taxes (*imposte ipotecarie e catastali*)**, currently levied at the aggregate rate of 3% on the value of the transfer or, alternatively - for transactions subject to VAT - at a fixed amount cumulatively equal to euros 336.

FINAL CONSIDERATIONS

With wise planning and sound business judgment, the purchase of Italian real estate may represent an excellent investment for the US buyer, both for residential and commercial purposes. Italy has recently reformed its system with the purpose of creating a more favorable legal and tax environment for foreign investments.

In light of the substantial differences between the legal and tax systems of the United States and Italy, the US buyer should always seek the professional advice of a competent dually-admitted Italian/US attorney. The attorney will help the buyer understand the operation of the Italian system, evaluate the legal and tax consequences in the buyer's US position arising from the foreign investment, structure the

investment to take advantage of the applicable tax treaty, negotiate the terms of the transaction on the buyer's behalf, protect the buyer's interests vis-à-vis adverse counterparts, and guide the buyer through all stages of the transaction, always closely coordinating with the local Italian notary.

Concretely, US buyers have many viable options to invest in Italian real estate, depending upon their subjective characteristics - private individuals, pool of investors, or companies - as well as their underlying purposes - residential, commercial, or financial.

In broad terms, **US private individuals** can purchase Italian properties and/or real estate assets:

Directly

- under their own personal name;
- in joint name together with their spouse or co-purchaser/s;
- in the names of their children;
- in the name of somebody who will eventually inherit the property from them; or

Indirectly

- through an existing or a newly-formed Italian company;
- through an existing or a newly-formed foreign company;
- by financially participating in an Italian REIF.

US companies wishing to invest in Italian real estate can purchase properties and/or real estate assets:

Directly

- under their own corporate/institutional name; or

Indirectly

- through an existing or a newly-formed Italian company;
- through an existing or a newly-formed foreign company;
- by financially participating in an Italian REIF.

In all scenarios, the buyer should always be assisted by his/her attorney who will suggest and tailor the more appropriate solution to the specific needs of the buyer in an effort to minimize future legal problems and maximize final commercial/financial results.

In light of the excellent performance of the Italian real estate market over the past few years, US investors should carefully examine the opportunities that the recently-reformed regulatory and fiscal regimes of the Italian REIFs can provide, and actively consider their participation in an Italian REIF as a tax-attractive option to diversify their portfolio of foreign investments.

This memorandum provides general information on legal issues and developments of interest to prospective investors in real estate properties in Italy. It is not intended to provide legal advice. All readers should always seek specific legal advice before taking any action with respect to the matters discussed here. Should you have any questions or wish to discuss any of the issues raised in this memorandum please call FRANCESCO BOSCHINI.



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