

Legal / Tax Issues Inbound Real Estate Investment in Italy

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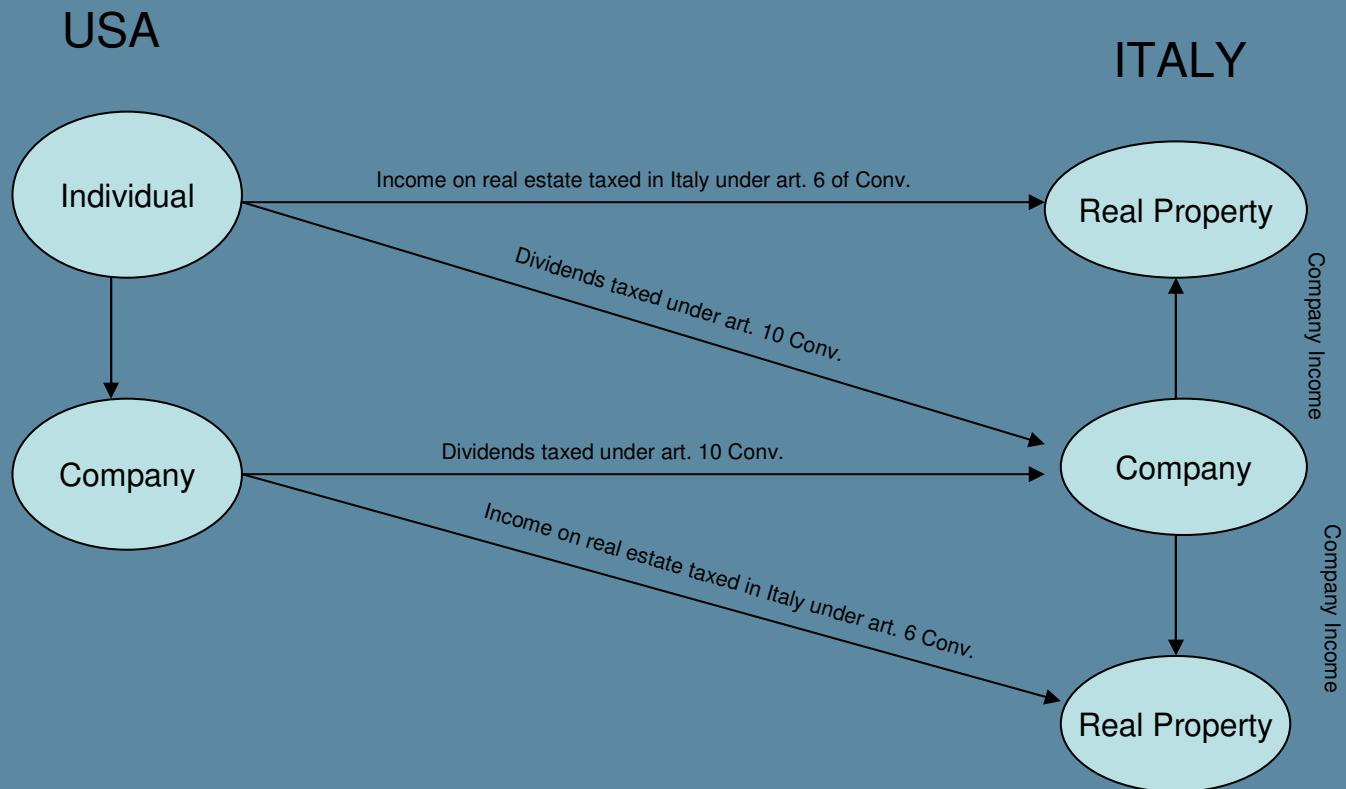
Real Property Purchase: Contractual Considerations

- Secure the deal
 - Preliminary Sales Contract (“*Compromesso*”)
 - Right of first refusal (“*Diritto di prelazione*”)
 - Deposit (“*caparra*”) and enforcement on default
 - *Caparra Confirmatoria*
 - *Caparra Penitenziale*
- Due Diligence
 - Legal and tax essentials
 - Document lists - Addendum
- Notarial System
 - Closing (“*Atto di compravendita*”)
 - Special Power of Attorney (“*Procura Speciale*”)
 - Either party may be represented by a third party pursuant to a specifically drawn power of attorney



Real Property Purchase: Choice of Entity

Application of Italy United States Convention of
Double Taxation with Respect to Taxes on Income
and the Prevention of Fraud or Fiscal Evasion, December 30, 1985*



*A new treaty and protocol were signed between the two nations on August 25, 1999. It has been ratified by both countries, but has not yet entered into force.



Income Taxation: Residency

- Residents taxed on world wide income
- Non-residents taxed only on Italian source income
- Determining residency:
 - Individuals:
 - Registered as resident in municipality where reside
 - Domiciled or residing in Italy for the majority of the year
 - Corporation:
 - Incorporated in Italy or foreign corporation with branch in Italy (permanent establishment)
 - Management offices
 - Principal business purpose
- Where residency of both countries U.S. Italy Income Taxation Treaty: tiebreaker provisions



Income Taxation: Real Property Basics

- Levied even where there is no actual income from the property: minimum tax value
- Personal Income tax (IRPEF) progressive to 43%
- Corporate Income tax (IRES) flat rate 27.5%
- Capital Gains:
 - On real property owned directly by an individual sold within 5 years of purchase the gain realized will be taxed at the progressive income tax rates. Real property sold after 5 years of ownership no taxation on gain.
 - On real property owned by a company any gain is taxed as business income
- Registration tax: paid at purchase levied at 10% of purchase price; reduced to 4% for resident individual purchasing property for “principal residence”.
- Property Tax (ICI): Levied on all property that is not principal residence at rate of 0.5% to 0.7% of cadastral value.
- Regional Trade Tax (IRAP): Levied on every entity that carries out business activity in Italy at a rate of either 3.9% or 4.82%



Estate Planning: Applicable Law

- IPL Article 46, §1 provides that the law applicable to the distribution of a Decedent's estate is the *national law* of the Decedent at the moment of death.
- IPL Article 46, § 2 provides that the *decedent* may *elect* to apply law of country where resides
 - Must be an express declaration made by a will
 - Election will be ineffective if at the time of death Decedent no longer resides in that country
 - Such an election made by an Italian citizen cannot affect the rights of "*legittimari*" (forced heirs) resident in Italy.
 - Forced heirs are: spouse, biological and adopted children and parents (Civil Code Art. 536).
 - Shares set aside for heir(s) depends on the number/categor(ies) of heirs.



Estate Tax

- Spouse, children or parents: 4% on the amount which exceeds €1 million*
- Siblings: 6% on the amount which exceeds €100,000*
- Other relatives up to the fourth degree and relatives by marriage up to the third degree: 6%
- All other beneficiaries: 8%

* *per beneficiary*

N.B. When a beneficiary is disabled, the rates are levied on the amount of the inheritance that exceeds €1,500,000.



Gift Tax

- Spouse, children or parents: 4% on the amount which exceeds €1 million*
- Siblings: 6% on the amount which exceeds €100,000*
- Relatives up to the fourth degree and relatives by marriage up to the third degree: 6%
- Other donees: 8%

* *per donee*



Real Estate Investment Funds

- Managed by asset management companies (“*società di gestione del risparmio*”, “S.G.R.”)
- Each investment is an independent pool of assets where investors and S.G.R. are protected from creditors of Funds
- Flexible Investments
- Tax Benefits



Addendum 1 Legal Due Diligence Document List

1. List of the proprietors) of the property.
2. Copy of deed(s) by which ownership of the property (of land and/or buildings) passed to proprietor(s) (“*Atti di provenienza*”). Details any liens, restrictions, etc.
3. Cadastral certificates of land and/or buildings (“*certificati catastali*”).
The Italian cadaster (*catasto*) is the land evidence registry of all real estate located in Italy and a title search of this registry is essential to any purchase.
4. Cadastral maps.
The property’s blueprint (“*planimetria*”) and cadastral maps (“*mappe catastali*”) should be compared to the current property.
5. Concessions and/or authorizations which have been issued by administrative authorities, e.g. zoning, habitability, regularization with non-conformities, etc.
6. Concessions and/or authorizations which have been requested but not yet issued by administrative authorities, obligations to fulfil for the administrative authorities.
7. Copies of documents under points 5 and 6 above relative to the property and to activities carried out thereon (e.g. sports, swimming pools).
8. Condominium regulations.
9. Environmental approvals.
10. Indication as to the individuals and/or entities which actually operate the activities (e.g. individuals, companies, associations etc.) (“Operators”).
11. The following documents relative to each entity Operator: Memorandum of Association, Articles of Association, managers’ and partners’ resolutions, balance sheets from the previous 3 years.
12. Any contractual relationships which Operators may have entered into with any of its individual partners as third parties.
13. Contracts between the Operators and any employee, supplier, collaborator etc.
14. List of any farmers who work the land, sharecroppers, tenant farmers etc, together with relevant documentation.
15. List of any litigation that the Operators, its partners or others who may own the land may be involved in.
16. Additional documentation as may be required while the Due Diligence review is in progress



Addendum 2 Tax Due Diligence Document List (1 of 2)

Direct taxes (IRPEG and IRAP)

1. Corporate income tax returns ("*Modello Unico*") filed for past four fiscal years. Tax computation for current fiscal year.
2. Receipts of filing of income tax returns.
3. Receipts of payments of direct taxes for past four and current fiscal years (including payments due in installments).
4. Any internal document evidencing the calculation of the taxable basis for IRPEG, IRES and IRAP and the taxes due for past four and current fiscal years.

VAT purposes

1. Annual VAT returns filed for past four fiscal years.
2. Receipts of filing of the annual VAT returns.
3. Receipts of payments of VAT due for past four fiscal years.
4. Periodical VAT returns filed for four year old fiscal year and relevant filing receipts.
5. Annual VAT Communications filed for past three and current fiscal years and relevant filing receipts.

Withholding tax agent tax return

1. Annual withholding tax agents return (ordinary and simplified) filed for past four fiscal years.
2. Receipts of filing of the withholding tax agent returns.

Property tax (ICI) – If applicable

1. Documents relating to ICI (municipal tax on lands and buildings). Relevant returns, calculations, receipts of payments for the past seven fiscal years.



Addendum 2 Tax Due Diligence Document List (2 of 2)

Other documents

- Financial statements
- Statutory financial statements (balance sheet, income statements, explanatory notes on Directors' reports) for the past four fiscal years.
- Statutory books and registers compulsory for tax purposes available for consultation.
- Documentation and a brief description regarding any "extraordinary" transactions (e.g. merger, transfers of ongoing business) performed by the company.
- Copy of any inter-company agreement.
- Evidence of peculiar intra-group transactions that may give rise to particular tax transfer prices issues.
- Tax litigation
- Copy of any report of tax audits or questionnaires notified by the tax authorities to the company and its directors.
- Copy of any notice of assessment delivered to the company by the tax authorities and details of the status of the proceedings.
- Documents concerning any pending tax litigation.
- Documents concerning any tax amnesties or voluntary settlements the company applied for.
- Accounting records, the journal, the VAT books and records and the underlying accounting documents (invoices issued and received, agreements etc.) should be made available
- List of participations and relevant details of write-off of value made during the previous five years.
- List of extraordinary transactions or company reorganizations performed during the previous five years.
- Additional documentation as may be required while the Due Diligence review is in progress

