





## QUICK OVERVIEW OF ITALIAN REAL ESTATE

### Rental income and capital gains of Italian real estate

Taxpayer	Basis of tax	Tax levied	Tax rates (2019)
Resident individual	<i>Rental income</i> Capital gains	Individual income tax Individual income tax	Up to 43% Not applicable if > 5 years
Non-resident individual	<i>Rental income</i> Capital gains	Individual income tax Individual income tax	Up to 43% Not applicable if > 5 years
Resident company	<i>Rental income</i> Capital gains	Corporate income tax Corporate income tax	Up to 24% As business income
Non-Resident company	<i>Rental income</i> Capital gains	Corporate income tax Corporate income tax	Up to 24% As business income

### Rental Income

#### Individuals

##### *Introduction*

Rental income is taxed as either ordinary private income or under favourable substitute tax regime.

##### *Liability to tax*

Rental income earned by individuals forms part of the tax base on which personal income is calculated.

##### *Basis to tax*

Italian resident individuals are subject to **Imposta sul Reddito delle Persone Fisiche** IRPEF (and local surcharges) on their worldwide income. IRPEF is calculated through gradual rates by brackets of

income, which currently range from 23% up to 43%. The highest rate applies where the amount of the aggregate taxable income exceeds €75,000. In addition to IRPEF, a regional surcharge, with a rate ranging from 1.23% to 3.33%, and a municipal surcharge, with a rate of up to 0.8%, must be paid.

Resident individuals are subject to income tax on income (not collected in the context of a business activity carried out) deriving from worldwide real estate (some exclusions may apply).

With regard to real estate properties not leased to third parties, local property tax (**imposta municipale propria**, IMU – see below) replaces IRPEF and local surcharges with regard to the income deriving from such properties (with some exceptions). Therefore, in this case, only IMU falls due.

Where the real estate properties are leased out to third parties, the taxable income for income tax generally corresponds to the highest amount between: (i) the cadastral income adjusted by 5% and further adjusted according to the ownership period; and (ii) the rentals accrued in the relevant tax period according to the lease agreements.

For the lease of buildings for housing purposes, an alternative (and more favourable) tax regime is available. Such tax regime, so-called *cedolare secca* and applicable upon option of the lessor, provides for the application of a substitute tax, which replaces income taxes (IRPEF and local surcharges), registration tax and stamp duty on the lease agreement. The substitute tax applies at the rate of 21% (10% in particular circumstances) on the gross annual rental (no cost deduction is allowed). Various conditions should be met in order to opt for the *cedolare secca* regime, and in particular:

- The lease agreement should not be concluded within the framework of a business, art or profession by both the lessor and the lessee, if any;
- The real estate should be classified as housing residence in the Cadastral Registry and should be effectively used in this way (appurtenances also can benefit from this regime).

## Companies

### *Introduction*

Rental income is taxed as business income.

### *Liability to tax*

All the income for the lease of buildings related to the company contribute to form business income (through the allocation of costs and revenues in the financial statements) and are not independently taxed as a category of land income. Real estate income takes part in the formation of business income according to different rules, which depend on the type of property.



### *Basis to tax*

Resident corporate companies (ie, companies which have legal seat, place of effective management, or main business object in Italy for the most part of the tax period) are subject to corporate income tax, **imposta sul reddito delle società** (IRES), levied at the rate of 24% (from 2017).

Pursuant to the 'worldwide principle' on which the Italian tax system is based, as for resident individuals, the taxable income of resident corporate entities includes their worldwide income, ie, the income also sourced outside the Italian territory (tax credit in Italy for income taxes paid abroad is provided).

Income from lands and 'instrumental' buildings (ie, buildings directly used solely to perform the business activity and buildings whose destination cannot be changed without a complete transformation – ie, commercial or industrial buildings, offices, etc – even if not directly used or leased to third parties) are generally determined according to the tax rules applicable to business income.

The income deriving from 'non-instrumental' buildings (ie, residential buildings not directly used solely for the purpose of the business activity carried out and not representing available stock) forms part of the taxable business income as follows:

- For not leased building, the cadastral income, revaluated by 5% and adjusted in consideration of the owning period incurred in the tax period, increased by one-third;
- For leased buildings, the highest amount between: (i) the cadastral income, adjusted by 5% and further adjusted according to the ownership period; and (ii) the rentals referring to the relevant tax period according to the lease agreements, reduced by a maximum 15% amount of the rentals for certain maintenance expenses actually incurred (expenses exceeding 15% of rentals are not deductible from income tax).

Therefore, expenses and other items concerning 'non-instrumental' buildings are generally not deductible with the exception of interest expenses on financing for the acquisition of the buildings.

## Capital gains

### Individuals

#### *Introduction*

Capital gains realised on the disposal of Italian immovable property normally are taxed as miscellaneous income.

#### *Liability to tax*

The capital gains deriving from the sale of properties owned for more than five years are exempt from taxation.

#### *Basis to tax*

For properties owned for less than five years the tax base follows the ordinary rates. However, it is possible to opt for the 20% substitute tax on IRPEF.

## Companies

Capital gains realised by companies are subject to corporate income tax as business income.

## Italian vat & transfer taxes

Taxpayer	Basis of tax	Tax levied	Tax rates (2019)
Resident individual	<i>Rental income</i>	Registration Tax	1% – 2%
	Transfer of real estate services	Transfer Taxes	2% – 9%
Non-resident individual	<i>Rental income</i>	Registration Tax	1% – 2%
	Transfer of real estate services	Transfer Taxes	2% – 9%
Resident company	<i>Rental income</i>	Registration Tax	1% – 2%
	Transfer of real estate services	Transfer Taxes	2% – 9%
Non-Resident company	<i>Rental income</i>	Registration Tax	1% – 2%
	Transfer of real estate services	Transfer Taxes	2% – 9%

## Value Added Tax

### Individuals

#### Introduction

The transfer of a real estate property represents 'transfer of goods' for VAT purposes and it falls within the scope of VAT (with the exception of non-buildable lands, never subject to VAT) only if the vendor carries on a business or is a professional taxpayer and the real estate is included among the assets concerning the business or professional activity carried out.

The Italian VAT system provides a general VAT-exemption regime in a certain instance.

When a transaction falls in the scope of VAT, it should be determined if it is subject to proportional tax or if the general VAT-exemption regime applies.

Transfers of agricultural land (ie, non-buildable lands) is always outside the scope of VAT. Transfers of other kinds of land are subject to proportional VAT.

Transfers of buildings are generally VAT-exempt, with the following exceptions:

- Transfers executed by subjects that have performed construction or restructuring works within five years from the end of such works.
- After five years, if the builder/restructurer opts to apply VAT (to be expressed in the transfer deed).
- In other cases, upon the seller's option for the VAT application.

### *Liability to tax*

If an individual performs commercial or professional activities in Italy, in principle it will be subject to VAT.

### *Basis to tax*

For real estate transfers subject to VAT, the following rates apply:

- 22% ordinary rate;
- 4% and 10%, applicable in particular cases (purchase from a developer/builder, under specific terms and conditions).

When the seller opts for VAT, it is generally applied with the reverse charge regime.

Rental fees are generally VAT-out of scope or VAT-exempt, and therefore subject to Registration Tax (1% or 2% rates).

## **Companies**

The same rules for individuals apply.

## **Transfer Taxes**

### **Individuals**

#### *Introduction*

A transfer tax is a tax on the passing of real estate from one person or company to another. The rights of immovable property can qualify as real estate.

#### *Liability to tax*

Seller and buyer are jointly and severally liable for the payment of registration tax.

#### *Basis of tax*

Registration Tax is based on the revaluated cadastral value (usually lower than the market price).

For transfers of buildings that are VAT-exempt or out of VAT scope (such as, eg, transfers performed by non-VAT entities), registration tax falls due in proportional amount (with a minimum amount of €1,000). The rates generally applied are the following:

- 2% if the purchaser fulfils the requirements for the 'first home tax benefit'
- 9% in other cases.

For residential buildings subject to proportional VAT, Registration Tax applies at the fixed amount of €200.

For instrumental buildings under VAT application, Registration Tax is due for the fixed amount of €200, regardless of whether they are subject to proportional VAT or VAT exempt.

#### *Cadastral and mortgage taxes*

The transfer of real estate properties is subject to specific formalities accomplished by special public offices that keep and preserve public real estate registers.

Each deed implying the transfer of real estate properties must be documented in these registers. These registrations are subject to cadastral and mortgage taxes at the following rates:

- Mortgage tax: up to €200 for residential buildings / 3% for instrumental buildings
- Cadastral tax: up to €200 for residential buildings / 1% for instrumental buildings.

Generally, the tax base of these taxes is the same used for registration tax purposes. Cadastral and mortgage taxes apply at the fixed amount of €50 each if the transfer concerns a residential building subject to 9% registration tax.

In addition, cadastral and mortgage taxes are due for a fixed amount of €200 each for transfers of buildings for housing purposes subject to proportional VAT.

### Companies

The same rules for individuals apply.

### Italian local taxes

Taxpayer	Basis of tax	Tax levied	Tax rates
Resident individual	rev. cadastral value	Municipal Tax	Approximately 1% – see below
Non-resident individual	rev. cadastral value	Municipal Tax	Approximately 1% – see below
Resident company	rev. cadastral value	Municipal Tax	Approximately 1% – see below
Non-Resident company	rev. cadastral value	Municipal Tax	Approximately 1% – see below

#### Introduction

Every municipality levies an annual municipal tax on Italian real estate.

#### Liability to tax

Every owner or user of residential or commercial buildings in Italy is liable to local municipal tax.

#### Basis of tax

##### Municipal Property Tax (IMU)

Real estate properties (ie, buildings, building lands) are generally subject to Municipal Property Tax (IMU) which is levied on the owner of the property right or on the holder of other real estate rights, in proportion to the months of effective possession. IMU is computed in different ways, depending on the characteristics and location of the properties.

The IMU tax rates are determined by the competent municipality, within the limits stated by the law, and may vary on the characteristics of the properties and on the status of the owner. The standard IMU rate is 0.76% for properties (excluding residential properties held by individuals as their main home). However, municipalities can increase or reduce the standard rate by 0.3%.

IMU generally is not deductible for the purpose of income tax for individuals (IRPEF) and corporate income tax (IRES) for companies. However, in case of instrumental buildings 20% of the IMU paid is deductible for IRES purpose only.

#### Municipal Tax for Indivisible Services (TASI)

The municipal tax for indivisible services is payable by the owner (with the partial exception referred below).

The TASI ordinary rate is 0.1%. This rate can be varied by the competent Municipality; however, the aggregate rate of IMU and TASI cannot exceed the maximum IMU rate stated by law, which is 1.06%.

#### Municipal Waste Tax (TARI)

TARI is calculated based on the tariffs established by the Municipality (derived from the floor area and the business activity carried on). Generally, the computation is made directly by the Municipality and provided to the taxpayer for relevant payment.

TARI is owed by the user of the property (owner or, where there is a lease contract, the tenant).

### Italian net wealth/worth taxes

#### Individuals

A wealth tax is not present in Italy.

A wealth tax on real estate properties (Imposta sul valore degli immobile situati all'estero or IVIE) located **outside of Italy has been introduced where** an individual is resident for Italian tax purposes.

The IVIE applies to the value of the real estate (i.e. the cost of the property or the market value in force where the property is located).

### Vehicles for Italian real estate

#### Commonly used vehicles for Italian real estate

##### *Real Estate property*

An alternative to the direct acquisition of real estate properties may be the purchase of interest in ordinary corporate companies (limited liability companies, such as the S.p.a. or S.r.l.) owning such properties. From the investors' perspective, this route has specific features, different from those associated with direct investment in real estate.

However, in case the real estate investment is done through a partnership the income tax still is applied directly on the investor, the vehicle being considered tax transparent.

In general, the investment through a real estate corporate company generates income having a financial nature: dividends from net profit distributions and capital gains from shareholding disposals.

For personal income tax (IRPEF) purposes, the tax for both dividends and capital gains earned by individuals is applied with a 26% rate, separately from the ordinary tax base.



## Specific real estate vehicles for Italian real estate

The REIF is set up as a closed-end fund.

For income generally subject to withholding taxes (WHT), for REIFs WHT is levied as definitive taxation, apart from cases in which the law expressly excludes REIFs from WHT (for example, where interest and income derived from capital investments in foreign funds).





## ACQUIRING ITALIAN REAL ESTATE

### DIRECT PURCHASE OF REAL ESTATE

This section discusses the most important tax implications of direct purchase of real estate.

First, it discusses the impact for resident individuals and non-resident individuals, thereafter, the impact for resident companies and non-resident companies.

#### Resident individuals

##### *Transfer taxes*

If the seller is not liable to VAT (for option or obligation) the applicable rate is of 9% (2% if the buyer fulfils the requirements for the 'first home tax benefit').

In case of VAT application, the Registration tax is charged with the fixed amount of €200 (see page 5 for more details).

##### *Mortgage tax and cadastral duties*

The transfer of real estate properties is subject to specific formalities accomplished by special public offices that keep and preserve public real estate registers.

Each deed implying the transfer of real estate properties must be documented in these registers. These registrations are subject to cadastral and mortgage taxes at the following rates:

- Mortgage tax: up to €200 for residential buildings / 3% for instrumental buildings
- Cadastral tax: up to €200 for residential buildings / 1% for instrumental buildings.

Generally, the tax base of these taxes is the same used for registration tax purposes. Cadastral and mortgage taxes apply at the fixed amount of €50 each if the transfer concerns a residential building subject to 9% registration tax.

In addition, cadastral and mortgage taxes are due for a fixed amount of €200 each for transfers of buildings for housing purposes subject to proportional VAT.

#### *Value-added tax*

In principal, the supply of real estate is exempt from VAT (VAT applicable for option).

However, VAT has to be charged in case of newly created buildings sold by its own construction company within five years, with the following VAT rates:

- 4 and 10% for real estate real estate classified in the cadastral categories other than "luxury houses";
- 22% for the "luxury houses".

Moreover, if the newly created building is sold later than five years after being built or after refurbishing works, VAT application is optional.

When the VAT option is chosen by the seller and the purchaser is liable to VAT, it is applied with the Reverse Charge.

#### *Deductibility of costs*

VAT is generally not deductible for income tax purposes, but for purchases of new residential houses in energy class A or B acquired from 'construction companies', VAT paid is deductible from IRPEF at 50%.

#### **Non-resident individuals**

Non-resident individuals are treated the same as resident individuals.

#### **Resident companies**

##### *Transfer taxes*

If the seller is liable to VAT (for option or obligation) the applicable rate of Registration Tax is of €200. Otherwise, if the seller is not liable to VAT the transfer taxes are levied at 9%, based on the revaluated cadastral value of the property.

##### *Mortgage tax and cadastral duties*

In case of residential real estate, mortgage and cadastral taxes are approximately €50 each, unless the sale is led by the company that built it within five years after its construction or by other VAT taxpayers: the due taxes would amount to €200 each.

For instrumental buildings the mortgage tax is 3% and cadastral duties are 1%.

#### *Value-added tax*

In principal, the sale and purchase of a real estate property between two companies VAT-subjects is exempt from VAT (proportional VAT is generally applicable only for option by the seller).

When VAT is opted, it is generally applied with the reverse charge regime.

The same rules for individuals apply.

#### *Deductibility of costs*

The amortisation is deductible within ministerial limits.

For partnerships the part of interest, corresponding to the ratio between the amount of revenues and other income that contribute to the business income (or that do not compete as excluded), and the total amount of all revenues and income are deductible from taxes in case of business activities.

On the other hand, for limited companies, the interests related to loans for acquisition or building properties are deductible in each tax period up to the amount of interest incomes and similar income. The excess is deductible within the limit of 30% of the gross operating profit of the core business.

In addition, the energy requalification costs, incurred directly, are deductible at 50% -65% (maximum limit of €100,000).

If the seller opts for taxability, the VAT applied on the transfer of instrumental real estate is deductible. Thereby, VAT is deductible if the sellers are constructors and renovators liable to VAT.

However, for non-instrumental real estate, the VAT is not deductible because the seller is VAT-free.

### **Non-resident companies**

Non-resident companies are treated the same as resident companies (VAT payment for the purchase could be refunded on request or avoided by means of the VAT identification procedure).

## **INDIRECT PURCHASE OF REAL ESTATE**

This section discusses the most important tax implications of the indirect (shares) purchase of real estate.

First, it treats the impact for resident individuals and non-resident individuals. Thereafter, it discusses the impact for resident companies and non-resident companies.

### **Resident individuals**

#### *Transfer taxes*

The purchase of a company participation entails the payment of transfer taxes and stamp duties. For the purchase of shares of the limited companies, the registration tax amounts to €200 and the stamp duty to €16. For the purchase of shares of the partnerships, the registration tax amounts to €200 and the stamp duty to €156.

#### *Personal income tax*

Income derived from the capital gain for the sale of the shares is subject to a WHT of 26%.

#### *Dividend withholding tax*

Dividends from Italian corporate companies to individuals are subject to a WHT of 26%.

### **Non-resident individuals**

Non-resident individuals are treated the same as resident individuals.

### **Resident companies**

#### *Transfer taxes*

The purchase of a company participation entails the payment of transfer taxes and stamp duties. For the purchase of shares of the limited companies, the registration tax amounts to €200 and the stamp duty to €16. For the purchase of shares of the partnerships, the registration tax amounts to €200 and the stamp duty to €156.

#### *Corporate income tax*

The profits deriving from the participation in companies are subject to the IRES tax only on 5% of the profits distributed. They do not contribute to forming the income for the year in which they are received because they are excluded from the income of the company for 95% of their amount. The dividends received by the simple companies discounted the percentages of taxability of 40% for the profits produced up to 31 December 2007; 49.72% for profits produced up to 31 December 2016 and of 58.14% for profits produced up to 31 December 2017. However, for profits produced from 2018, the percentage subject to tax is 100%.

#### *Losses*

IRES subjects can use business losses to reduce business income and can bring the surplus limitlessly into subsequent periods, but not more than 80% of income earned.

#### *Fiscal unity*

The tax consolidation is an opportunity for taxation methods granted to the corporate groups. The consolidation allows the creation of a single tax obligation against a multitude of IRES taxable subjects linked to each other by a control relationship

### **Non-resident companies**

#### *Corporate income tax*

The profits received by companies residing in non-EU countries are subject to a WHT equal to 26%. Profits received by company's resident in the European Union are subject to a tax withholding tax of 1.2%. If the requirements are met, these companies can take advantage of the facilities provided by the Directive n.90 / 435 / CE (Parent Directive). Finally, if the agreements stipulated to avoid double taxation are present, the provisions contained will be relevant.

#### *Fiscal unity*

There is the possibility of exercising the option for the so-called 'Consolidated World' by the resident companies for the income earned by the non-resident subsidiaries.





## HOLDING ITALIAN REAL ESTATE

### DIRECT HOLDING OF REAL ESTATE

This section discusses the most important tax implications of the direct holding of real estate.

First, the impact for resident individuals and non-resident individuals is discussed. Thereafter, is discussed the impact for resident companies and non-resident companies.

#### Resident individuals

##### *Personal income tax (IRPEF)*

##### *Real estate income*

Real estate situated in the State and held by a resident individual is treated for tax purposes to produce income, according to its average cadastral income established by the tax authorities. Real estate income, as described above, has to be considered in addition to other incomes in order to form the tax basis subject to IRPEF.

However, in case of rental fees derived from the real estate, only the highest amount between the rental income previously reduced by 5% and the average cadastral increased by the 5% is liable to IRPEF. The amount of rental fees is further reduced by 35% if the properties are classified as buildings of historical interest.

Rental fees may also be subject to a substitute tax of 21% pursuant to the optional tax regime 'cedolare secca' in case agreements are connected with properties rented for residential purposes (further reduced by 10% if rental fees received are related to facilitated rental agreements), in order to replace the ordinary IRPEF tax rate and all related registration taxes. Moreover, cedolare secca tax regime is available, as well, for short period agreements up to 30 days, if not connected with business income.

Income arising from properties held abroad by resident individuals is subject to taxation for IRPEF purposes in Italy, in accordance with the worldwide taxation principle, considering, alternatively, the net amount determined by the foreign State (cadastral value) and the rental fee reduced by 15%. In order to

reduce the impact of the double taxation of foreign income, there will be a tax credit for income produced abroad in case taxation was carried out in the other state.

#### *Business income*

When the possession of the real estate is connected with the production of business income, such income is determined according to the same rules of the resident companies, except for the special provisions established.

#### *Regional tax (IRAP)*

If resident individuals produce business income, they are also subject to IRAP according to the same rules, except for the special provisions established.

#### *Deductibility of costs, interest and depreciation*

Costs and depreciation are generally deductible only if related to the production of the business income. Interest costs are generally deductible as well, although shall be considered restrictions in the presence of exempt revenues.

#### *Losses – Carry back/forward*

Losses may be deducted against business income only if the individual runs a business (VAT subject). The surplus amount may be carried forward without temporal limits in the following years up to 80 % of the income amount.

### **Non-resident individuals**

Income from a real estate property situated in Italy is taxed in Italy, even in case of existence of a Double Taxation Convention.

Non-resident individuals are treated the same as resident individuals.

### **Resident companies**

#### **Corporate income tax (IRES)**

Business income generated by limited liability companies are subject to IRES at a fixed rate of 24%.

Trust entities are subject to corporate taxation as well, if particular provisions are met.

In some circumstances, limited liability companies may be taxed as a transparent entity and are therefore not liable for corporate taxation.

#### *Deductibility of costs, interest and depreciation*

For the purposes of this guide, properties held shall be distinguished between 'patrimonio' assets (not directly connected with business income), assets directly connected with business income as instrumental properties and properties held for sale i.e. 'immobili merce'.

The 'patrimonio' assets are classified by the tax law according to their residential use/non-instrumental relation with the actual activity of enterprise and with the corporate aim.

For the purpose of business income shall be considered subject to taxation the higher one between cadastral income and rental fee reduced by the amount of expenses incurred, (actually paid and

supported by relevant documentation) up to 15% of their amount. Costs and depreciation related to these properties are not deductible.

The buildings held for the purposes of their sale or the buildings purchased or built and held for the sale (called 'immobili merce') will contribute to form business income.

The 'instrumental properties' are classified as instrumental assets according to their own nature (properties belonging to the cadastral categories A/10, B, C, D and E even when not leased or at free disposal of the taxpayer) or according to their own aim (assets used directly and solely to the enterprise activity, independently of their belonging to cadastral categories).

Related revenues, costs and depreciations (whose annual average is equal to 3%) must be considered on their accrual basis value as reported in the account books. Maintenance costs are deductible by 5% of their amount per tax year: surplus amount may be deducted in the following 5 years.

Interest costs are deductible up to the amount of the interest receivable. Surplus amount may be deducted within the amount of the Gross Operating Profit.

However, in addition to the general rules described above, it should be remarked that interest costs related to 'immobili patrimonio' are not deductible for IRES purposes only in case they are connected with their ordinary functioning. Differently, interest costs concerning a mortgage financing aimed at purchasing a building to be leased may be entirely deducted.

A remarkable anti-avoidance rule, which may affect corporations investing in Real Estate, has been introduced in the Italian tax system, i.e. 'Società di comodo' fiscal regime. Such rule concerns a company set up just for tax purposes to avoid personal income tax. Fiscal authorities may subject to an additional penalty on taxation upon business income of the year if not capable to reach an established minimum amount.

#### *SIIQ tax rules*

The corporations which are classified as Società di Investimento Immobiliare Quotate (SIIQ) may represent a remarkable option for real estate investors for fiscal purposes as well. Basically, we are dealing with a SPA resident company quoted on the Italian stock exchange whose properties held are aimed to be rented for 80% of their amount, as well as the revenues arising from. For the tax purposes the business income obtained by applying the IRES rules, is taxed directly to shareholders with a 26% substitute tax.

#### *Losses-carry back/forward*

Losses may be deducted against income of the following years without temporal limits up to 80% of the income amount.

If losses are related with three early tax years their amount may be fully deducted against business income of the following years.

#### *Regional tax (IRAP)*

Companies are subject also to IRAP regional tax, in the amount of 3.9 % (ordinary rate may be increased in measure of 0.92% by regions) whenever existing the requirement of the 'autonomous organisation' established by the Decree n. 446 /1997. IRAP basis of tax is formed upon the value of the 'produzione netta' determined by the gross margin as reported in the financial statement, except the ones related to the employees engaged with open-ended contracts, and all the ones of financial nature.

Moreover, Italian partnerships are as well subject to IRAP, but taxable basis may in some circumstances differ according to special rules established by tax law.

### **Non-resident companies**

Income from a real estate property situated in Italy are taxed in Italy, even in case of existence of a Double Taxation Convention.

When the non-resident company does not fulfil the requirements for a permanent establishment in Italy, the rental fees are taxed separately as real estate income with the same rules for individuals (generally taxed on 85% of revaluated cadastral value).

Non-resident entities and companies are subject to IRES and IRAP taxation upon the business income arising from a permanent establishment in the Italian jurisdiction pursuant to the provisions of art. 162 Tuir and are treated in the same manner discussed above for resident companies.

Real estate solely held as an investment asset will not qualify as a permanent establishment.

## **INDIRECT HOLDING OF REAL ESTATE**

This section discusses the most important tax implications of the indirect (shares) holding of real estate.

First, the impact for resident individuals and non-resident individuals is discussed. Thereafter, is discussed the impact for resident companies and non-resident companies.

### **Resident individuals**

Personal income tax (IRPEF)

Dividends distributed by Italian entities are subject to a substitute tax at 26%.

*Deductibility of costs, interest payments and depreciation*

Interest costs are generally deductible solely if related to the production of the business income.

Dividend substitute tax at 26%, cannot be offset against the amount of the tax amount due for the year.

*Losses*

The loss arising from a shareholding in a transparent entity can be offset in the tax basis against the same business income. Surplus may be carried forward without temporal limits in the following years up to 80% of the income amount.

### **Non-resident individuals**

The dividends distributed to non-resident individuals, are subject to a substitute tax at 26%, independently of the qualification of the shareholder, if not differently established by the provisions of OECD treaties to avoid double taxation.

### **Resident companies**

#### *Corporate income tax (IRES)*

Income derived from shareholding is always qualified as business income for companies and subject to IRES at a fixed rate equal to 24%. In the case when the income is related to participation in a partnership shall be considered integrally on an accrual basis. At the other hand if related to a share in another IRES subject is excluded from the tax basis for the amount of 95%.

#### *Deductibility of costs, interest payments and depreciation*

Interest costs related to loans in order to buy a share in another company are deductible in accordance with the general provisions. Depreciation, as a decrease in value of the asset, deriving from the detention of shares cannot be deducted.

#### *Distribution of income and gains*

Dividends distributed by another company subject to the corporate tax are excluded from the tax basis for the amount of 95 %. Moreover, dividends derived from the participation in companies which are resident in a jurisdiction with privileged tax regimes, shall be considered integrally to the formation of the tax basis.

#### *Anti-tax avoidance directive.*

The anti-tax avoidance directive (ATAD) as transposed into the Italian law jurisdiction has amended partially some of the general rules concerning the interest deductibility. Such new provisions may in some circumstances potentially decrease the amount of the deductibility of the interest costs.

### **Non-resident companies**

Dividends paid from an Italian company to another foreign company are subject to a substitute tax at 26%, or the lower percentage established by OECD treaties to avoid double taxation.

However, if a foreign company derives income in the Italian jurisdiction through a permanent establishment will be treated in the same manner as resident companies as described above.

Otherwise, if the provisions of EU Directive 2011/96 are met, dividends will be taxed only in the country of the parent company.

Real estate solely held as an investment asset will not qualify as a permanent establishment.





## SELLING AND TRANSFERRING ITALIAN REAL ESTATE

### DIRECT SALE OF REAL ESTATE

#### Resident individual

##### *Capital gains*

If the selling occurs within five years from the purchase, capital gain is subject to the personal income tax at a progressive tax rate up to 43% or under some conditions to a substitutive tax equal to 20%. The transfer of the real estate to a company leads to the same consequences.

Though, if the Italian real estate does not qualify as a trade or business, individuals are not taxed on capital gains if the selling of the real estate occurs after 5 years from the purchase.

If the real estate property qualifies as a trade or business, capital gain is taxed even if the selling occurs after 5 years from the purchase.

##### *VAT/transfer tax*

If the real estate property does not qualify as a trade or business, the supply of immovable property is exempt from VAT. However, if the real estate property qualifies as a trade or business, as a general rule, VAT is charged if a new building is sold within five years from the conclusion of its construction or from the renovation carried out on it, if the seller is the constructor or the restructuring company. In such case, the applicable tax rate can be 4%, 10% or 22%. Thereby, if the sale takes place after the time period, the supplier can opt for a VAT-able supply of the property.

Transfer taxes apply by the acquisition of the legal or economic ownership of Italian real estate properties; if the immovable property qualifies as a business property, either if the sale is VAT charged or it is not, the registration tax is always due for a fixed amount of €200, the mortgage and the land registry taxes are equal to 1% and 3% of the consideration and the stamp duty is due for a fixed amount of €230 Euro. If the real estate property does not qualify as a trade or business and the building is a business property, the sale is not charged with VAT, the registration tax rate is equal to 9% of the

corresponding but its amount can't exceed €1,000, mortgage and cadastral taxes are each one due for a fixed amount of €50, the land registry tax and the stamp duty are not due.

#### *Deferral of tax*

If the real estate property qualifies as trade or business, the capital gains realised by selling Italian real estate properties owned for not less than three years, may be optionally taxed in five years.

#### *Losses*

Losses on the sale of real estate properties by individuals without a trade or business are ignored. However, if the real estate property qualifies as a trade or business, losses may be deducted, except when deriving from the attribution of the real estate to purposes unrelated to the business.

#### **Non-resident individual**

Non-resident individuals are treated the same as resident individuals.

#### **Resident company**

##### *Capital gains*

If capital gains are realised by the assignment to the members or to purposes unrelated to the business, capital gains on Italian real estate properties are subject to the Italian corporate income tax as business income. Business income is taxed with a tax rate of 24% (IRES – Corporate income tax) plus an additional regional tax rate included between 3.9% and 4.82% (IRAP – Corporate income tax on productive activities).

##### *VAT/transfer taxes*

As a general rule, the supply of immovable properties is exempt from VAT. However, VAT is charged if a new building is sold by the building constructor or by the company in charge for the renovation works of the building, within five years (mandatorily) or after five years (by option) from the conclusion of the construction/renovation works or after five years (by option) by subjects different from the abovementioned ones. Thereby, the supplier can opt for a VAT-able supply of the property. The applicable VAT rate can be 4%, 10%, 22%.

Transfer taxes apply by the acquisition of the legal or economic ownership of Italian real estate. The market value of real estate will be taxed against a tax rate of 2%/9% for registration duty plus a fixed amount up to €720 for mortgage, cadastral and related special levies, if the sale is VAT exempt; If the real estate is commercial, either in the case the sale is charged with VAT or in the case the sale is VAT exempt, registration duty, stamp duty, special levies are due for a fixed amount of €520 and the market value of real estate will be taxed against a tax rate of 4% (3% + 1%) for mortgage and cadastral taxes.

#### *Deferral of tax*

If an entity sells Italian real estate properties owned for not less than three years, the company may optionally decide to tax the capital gain in five years.

### *Losses*

If realised – as a transfer for a consideration or – as a compensation also in insurance form or – by the attribution to shareholders or to purposes unrelated to the business, losses on the sale of real estate properties are deductible from the taxable income.

### **Non-resident company**

Italian real estate properties held by a foreign company are not considered as a permanent establishment in Italy in the absence of other evidence. Therefore, capital gains occurred within five years from the real estate properties purchase or construction, are taxable in Italy not as 'business income' but as 'different income', income category pertaining to individuals' taxation.

## INDIRECT SALE

### **Resident individual**

#### *Capital gains*

Capital gains are taxed at a fixed rate of 26%.

#### *VAT / Transfer Tax*

The sale of investments which is VAT exempt, is subject to the registration duty for a fixed amount up to €200 and to the stamp duty for a fixed amount up to €16.

#### *Deferral of tax*

The capital gain must be considered realised after the transfer of the participation is completed. The capital gain should be taxed at the moment the seller receives the payment.

### *Losses*

Losses incurred by selling participations that respect the requirements for the application of the participation exemption system may only partially reduce the taxable income, for the 58.14% of their amount.

### **Non-resident individual**

Capital gains obtained by selling non-qualified holdings in a listed company are exempt from taxation in Italy. Capital gains obtained by selling non-qualified holdings in a non-listed company are exempt from taxation in Italy if the non-resident seller has his residence in a White-list Country; if the Country belongs to the Blacklist they would be taxable in Italy even if, in most cases, they are exempt in Italy for the application of the Conventions against the double taxation. Capital gains realised by selling qualified holdings, either in a listed company or in a non-listed company, are taxable in Italy even if, in most cases, they are exempt for the application of the previously mentioned Conventions.

## Resident company

### *Capital gains*

Capital gains are subject to the Italian corporate income tax as business income by a tax rate of 24%. Capital gains realised on participations having the requirements for the 'participation exemption', are exempt from taxation for the 95% of their amount.

### *VAT / Transfer Tax*

The sale of participations is VAT exempt and is subject to the registration duty for a fixed amount equal to € 200 Euro.

### *Deferral of tax*

Capital gains realised by selling participations not respecting the requirements for the participation exemption system, may be optionally taxed in five years.

### *Losses*

Losses arising on the sale of shares shall reduce the business income. Losses realised on participations having the requirements for the 'participation exemption' shall reduce the business income only for the 5% of their amount.

## Non-resident company

Capital gains obtained by selling non-qualified holdings in a listed company are exempt from taxation in Italy. Capital gains obtained by selling non-qualified holdings in a non-listed company are exempt from taxation in Italy if the non-resident seller has his residence in a White-list Country; if the Country belongs to the Blacklist they would should be taxable in Italy even if, in most cases, they are exempt in Italy for the application of the Conventions against the double taxation. Capital gains realised by selling qualified holdings, either in a listed company or in a non-listed company, are taxable in Italy even if, in most cases, they are exempt for the application of the previously mentioned Conventions.

## DIRECT TRANSFER INTRA CONCERN (ITALIAN REAL ESTATE TO ITALIAN COMPANY)

Besides the sale, companies have the chance to resort to extraordinary operations made between entities, to 'give-up' the Real estate properties owned.

Specifically referring to the 'Transfer' of Real Estate properties made between companies (M&A may lead to the same conclusions), it must be underlined that this kind of operation is considered in Italy as a sale for valuable consideration and can, therefore, bring to the application of the abovementioned rules.

## Resident Company

### *Capital gains*

Capital gains received by companies are subject to the corporate income tax as business income with a tax rate of 24% plus a regional tax rate that can assume a value included between the 3.9% and the 4.82% (it can be different on the basis of the Italian region considered). Under some conditions there is the chance not to tax the transferred values.

### *VAT / Transfer tax*

As a general rule, the supply and lease of immovable property is VAT exempt. However, VAT is charged if a new building is sold by the company that built the real estate property or refurbished it within five years from the conclusion of the construction or refurbishment. Thereby the transaction will be taxed at a tax rate of 22% and the transfer taxes will be due for a fixed amount.

Transfer taxes apply by the acquisition of the legal or economic ownership of Italian real estate.

### *Fiscal unity*

Under Italian law, it's possible to form a fiscal unity if a holding company owns 50% of the share capital or 50% of the balance-sheet profit of its subsidiaries. The holding company and the subsidiary must be established in Italy. Transactions within the fiscal unity are not visible for tax purposes under the respect of some conditions. The transfer of real estate properties within the fiscal unity can be therefore also invisible and not subject to any tax. There are, however, certain anti-abuse rules in case the fiscal unit will be broken after transferring the real estate.

### **Non-resident company**

Non-resident companies are treated in a different manner than the resident ones.

Italian real estate held by a foreign company are not considered to be a permanent establishment in Italy in the absence of other evidence. In some circumstances, it is possible to form a Fiscal unity with a permanent establishment in Italy. Various detailed conditions apply.

## INDIRECT TRANSFER INTRA CONCERN (ITALIAN REAL ESTATE TO ITALIAN COMPANY)

### **Resident company**

#### *Capital gains*

Under some circumstances there can be no taxation of the capital gain realised by transferring holdings.

#### *VAT/transfer tax*

The sale of investments is VAT exempt, is subject to the registration duty for a fixed amount up to 200 Euro and to the stamp duty for a fixed amount up to €16.

#### *Deferral of tax*

Capital gain realised by transferring participations not respecting the requirements for the participation exemption system, may be optionally taxed in five years.

#### *Losses*

Losses arising on the sale of shares may be offset against profits of the next years.

#### *Fiscal unity*

Under the Italian law, it is possible to form a fiscal unity if a holding company owns 50% of the share capital or 50% of the balance-sheet profit of its subsidiaries. The holding company and the subsidiary



must be established in Italy. Transactions within the fiscal unity are not visible for tax purposes. The transfer of shares within the fiscal unity are therefore also invisible and is not subjected to any tax.

### **Non-resident company**

Non-resident companies are treated in a different manner than the resident ones. Italian real estate held by a foreign company are not considered to be a permanent establishment in Italy in the absence of other evidence. In some circumstances, it is possible to form a Fiscal unity with a permanent establishment in Italy. Various detailed conditions apply.

## **DIRECT TRANSFER INTRA CONCERN (ITALIAN REAL ESTATE TO FOREIGN COMPANY)**

### **Resident company**

#### *Capital gains*

Capital gains received by companies are subject to corporate income tax as business income.

#### *VAT / Transfer tax*

According to the VAT legislation, Transfer is considered as a sale for valuable consideration and is therefore a transaction liable for VAT purposes. If the transfer concerns real estate properties that are for residential uses and VAT is charged, transfer taxes are due in a fixed amount up to €600 Euro; if VAT is not charged the registration tax is due for an amount equal to 9% of the corresponding and the Mortgage and Cadastral taxes are each-one due for a fixed amount of €50 Euro.

If the transfer concerns real estate properties that are for business use either if VAT is charged or the transfer is VAT exempt, the Registration Tax is due in a fixed amount of €200 Euro, the Mortgage and Cadastral taxes are due for an amount equal to the 3% and the 1% of the corresponding; if the transfer is out of the scope of IVA, the Registration tax can be 1%, 2%, 4% of the corresponding, the Mortgage tax rate is equal to 2% and the Cadastral tax rate equal to 1%.

Transfer taxes apply by the acquisition of the legal or economic ownership of Italian real estate.

#### *Deferral tax*

Taxation on capital gains can be deferred. Various detailed conditions apply.

#### *Losses*

Losses may be offset against other taxable Italian income.

#### *Fiscal unity*

A Foreign company can form a Fiscal unity for Italian tax purposes, as parent company if operating a business activity in Italy with a permanent establishment and being resident in a Country which with it exists an agreement against the double taxation.

### Non-resident company

Non-resident companies are treated in a different manner than the resident ones. Italian real estate held by a foreign company are not considered to be a permanent establishment in Italy in the absence of other evidence.

## INDIRECT TRANSFER INTRA CONCERN (ITALIAN REAL ESTATE TO FOREIGN COMPANY)

### Resident company

#### *Capital gains*

Capital gains received by companies are subject to corporate income tax as business income and the tax rate is the one referred to a point.

#### *VAT / Transfer tax*

VAT is only charged if a new building is sold within 5 years after the conclusion of its construction or refurbishment. Thereby, the supplier can opt for a VAT-able supply of the property if the sale occurs after the abovementioned period. The applicable VAT rate is 22%. If the sale is charged with VAT, as a general rule transfer taxes are considered for a fixed amount.

#### *Deferral tax*

Taxation on the capital gains can be deferred. Various detailed conditions apply.

#### *Losses*

Losses may be offset against other taxable Italian income.

#### *Fiscal unity*

A Foreign company can form a Fiscal unity for Italian tax purposes, as parent company if operating a business activity in Italy with a permanent establishment and being resident in a Country which with it exists an agreement against the double taxation.

### Non-resident company

Non-resident companies are treated in a different manner than the resident ones. Italian real estate held by a foreign company is not considered to be a permanent establishment in Italy in the absence of other evidence.

## TRANSFER ITALIAN REAL ESTATE TO AN EU-COMPANY

If the transferor's home jurisdiction is in the European Union, the liability to tax on the capital gains may be avoidable if the transfer, merger and acquisition provisions apply. Several detailed conditions apply which can be found in the art. 179 of the TUIR and in the Council Directive of 19 October 2009.

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