



# Common Working

*Theory into Practice*

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MOORE STEPHENS



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Real property - Italy

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# Real property – Italy

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## **Acquisition of real property – general considerations**

- Acquisition of real property in Italy only in accordance with Italian law
- Registration of purchaser in Land Register (in the Regions Trentino Alto Adige necessary for valid transfer of title, in all other Regions necessary in order to uphold such title against third parties)
  - Individuals, partnerships
  - Italian companies (SpA, Srl, Cooperatives)
  - Foreign companies (incorporated under foreign law)
- Indirect acquisition of real property through acquisition of shares - possible also under foreign law



## Real property – Italy

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### Acquisition of real property – transfer tax / costs of acquisition

- Acquisition of real estate in Italy is subject to **transfer duties** (registration, mortgage and cadastral tax) and/or VAT
  - Where a building plot is acquired from a company as vendor, VAT is applicable and therefore fixed transfer duties of EUR 504 will apply; whereas where a building plot is purchased from a private individual, the transfer duties are 11% in total. Acquisitions of agricultural land are subject to transfer duties of 18%
  - The acquisition of residential properties from a company as vendor is subject to transfer duties of EUR 504; whereas transfer duties of 10% in total would apply to an acquisition from a private individual



# Real property – Italy

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## Acquisition of real property – transfer tax / costs of acquisition

- If the property is to be used as the purchaser's principal residence in Italy there is a measure of relief, in that the registration duty is reduced to 3% and the mortgage and cadastral duties to a fixed amount of EUR 336 in total. Where commercial property is the subject of the acquisition, there is generally a fixed registration duty of EUR 168 and mortgage and cadastral duties amounting to 4%.
- The taxable base for the transfer duties in connection with the acquisition of real property is generally the purchase price agreed in the deed of sale, but can be adjusted to market value by the Tax administration, except in case of sale of residential property to a private individual where the cadastral value can be used.



## Real property – Italy

### Acquisition of real property – transfer tax / costs of acquisition

- Where building land is purchased from a company, the transaction will be subject to VAT at the standard rate of 20%, whereas, where the vendor is a private individual no VAT will apply. The sale of agricultural property is not subject to VAT.
- The acquisition of residential property from a company is subject to a reduced rate of VAT of 10% (reduced further to 4% where the property is to be used by the purchaser as his or her main place of residence in Italy); where the vendor is a private individual no VAT will apply. The acquisition of business property is subject to VAT of 10% (repurchase) or 20% (in all other cases).
- The taxable base is generally the agreed purchase price.



## Real property – Italy

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### **Acquisition of real property – acquisition of a property company**

- In principle, as an alternative to the direct purchase of real property, an indirect acquisition through the medium of a company or partnership is possible.
- In the event that the purchase is effected by a newly incorporated company that subsequently acquires the property (a so-called ‘asset deal’) the same transfer duties (registration, mortgage and cadastral duties) would apply as in the case of a direct purchase. Where the real property is held as a business asset by a business or a branch of a business that is being acquired, the registration duty would be charged on the net value of all the purchased branch assets (i.e. value of the real property less the related liabilities).



## Real property – Italy

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### **Acquisition of real property – acquisition of a property company**

- In the event that the newly incorporated company receives the real property as a contribution in kind, the same transfer duties (registration, mortgage and cadastral duties) would apply as in the case of a direct purchase. Where the real property is held as a business asset by a business or a branch of a business that is being contributed, than a fixed amount of registration, mortgage and cadastral duties of EUR 168 would be applicable.
- The purchase of shares in a company holding the real property (a so-called ‘share deal’) is subject only to a fixed registration duty of EUR 168; no mortgage or cadastral duties are due.





# Real property– Italy

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## **Current taxation – income tax / profit tax**

- Renting income is subject to income / profit tax
  - Italian residents: taxed together with other income
  - Residents abroad: limited tax liability with respect to real estate income
- Individuals occupying their own real property must declare a “theoretical rent” (“rendita catastale”), except for the case the property is used as main residence of the owner
- Where the property is let, the taxable income is the greater of (a) the cadastral rent and (b) the actual rental income obtained, reduced by 15%.
- Loan interests are deductible from rent (19% of max 3615 €), no other deduction is allowed



## Real property– Italy

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### **Current taxation – income tax / profit tax (continued)**

- Depreciation (3%) is deductible from taxable profits of companies and entrepreneurial individuals
- Income tax (individuals and partnerships)  
→ progressive rates between 23% and 43%
- Profit tax (corporations)  
→ flat tax rate of 27.5%, a regional tax (Irap) varying from 2.98% to 3.9% must be added (regional tax applies also to partnerships)
- Interest deduction cap rule (corporations) - interest expense exceeding interest income is deductible only to the extent that it does not exceed 30% of EBITDA, except for interest on mortgage loans for rented property
- Dummy company rule



# Real property– Italy

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## **Current taxation – property taxes/other taxes**

- Agricultural properties, building land and buildings – regardless whether they are of commercial or residential nature – are subject to a property tax (ICI – *Imposta comunale sugli immobili*). Agricultural properties in mountainous areas are exempted.
- The tax is charged on a formulaic market value of the property, determined by applying a multiplication factor to the cadastral rent. The tax rate varies according to the local authority area, from a minimum of 0.4% to a maximum of 0.7%.
- The letting of property is subject, in general, to registration duty of 2% will apply. On the lease of agricultural property a registration tax of 0.5% applies. For the letting of commercial property subject to VAT 1% registration duty applies.



# Real property– Italy

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## Transfer of real property – taxation of capital gain

- Where Italian real property is directly held by a private individual, the capital gain from the disposal of building land (without exception) and from the disposal of buildings and agricultural property (if the property is sold before five full years of ownership) is classified as ‘miscellaneous other income’ and included in the taxpayer’s total income subject to income tax. However, a private individual may instead opt for an alternative method of taxation, whereby a flat 20% tax is applied to the capital gain)
- For property dealing companies, taxable income in Italy is generally computed under the rules generally applicable to taxable income, namely by finding the difference between income or gains and deductible expenses (personnel costs, administrative costs, other operating costs, interest expense etc).



# Real property– Italy

## Disposal of property companies

- Where a private individual holds real property through a participation in an Italian company, the capital gain from the sale of a participation in the company is taxed in Italy as follows:
    - for non-qualifying shareholdings (voting rights below 20% or shareholdings below 25% in non-listed companies or below 2% or 5% respectively in listed companies) there is a final withholding tax of 12.5% on the capital gain; for qualifying shareholdings (where the above limits are exceeded), 49.72% of the capital gain is subject to income tax (partial participation exemption)
- Where a participation in a property management company (no matter whether residential or business property is leased) in Italy is held via a company or partnership, the partial participation exemption does not apply.



# Real property– Italy

## Transfer of real property – inheritance and gift tax

- Gift and inheritance tax is levied on transfers of assets *mortis causa* (in general by a will) or by lifetime gift.
- For the application of the gift and inheritance tax in Italy, only the residence of the transferor is relevant, and not the residence of the transferee. If the transferor is resident in Italy at the time of the transfer, all assets involved in the transfer are taxable in Italy, no matter where they may be situated. If the transferor is non-resident, then only assets situated in Italy are taxable. As a note of caution, it should be borne in mind that merely the regular use of holiday homes in Italy for a period that is longer than a regular holiday, can lead to an assumption of residence for the purposes of gift and inheritance tax.



# Real property– Italy

## Transfer of real property – inheritance and gift tax

- Where transfers of participations in a company or partnership holding real property are concerned, the taxable base for gift and inheritance tax is the book value of the transferor's equity in the company or partnership. However, in the case of transfers of shares in listed companies, the taxable base is the current market value of the shares.
- Where the transfer is made to a spouse or a direct descendant or forebear, the rate of tax is 4% on the amount exceeding EUR 1 million per transferee. For transfers to siblings, the rate is 6% on the amount exceeding EUR 100 000 per transferee. In the case of transfers to any other individual, the rate is 8%, without any personal allowance. For transfers of real property, there are also mortgage and cadastral duties of 4% in total (or, in the case of a main residence, a fixed amount of EUR 336).



## Real property– Italy

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### Avoidance of double taxation

- Double tax agreements (DTA) reserve the right of taxation of income from immovable property in located Italy to Italy as location state
- Capital gains from sale of shares of companies with real property located in Italy are normally taxable in the state of residence of the disponent (DTA with DE, AT, Ch)  
→ exception: an exception to this rule appears in e.g. the treaty with France: in this case the capital gain from the sale of shares in companies holding real property is taxed in the country where the property is located, i.e. Italy. )
- Double taxation is avoided by granting a tax credit