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IMMOVABLE PROPERTY INVESTMENTS IN ITALY

According to the Italian law, immovable properties include buildings, constructions and, in general, everything that is naturally or artificially installed into the ground. The Italian Law provides rules for the purchase or sale of property, as well as a special system for advertising the transfer of property.

1. Ownership of immovable property

METHODS OF ACQUIRING ORIGINAL OWNERSHIP

The original ownership of immovable property may be acquired by accession or by usucaption.

- **Accession:** in the case of accession, two or more properties or parts of properties are combined in such a way that they cannot be separated without serious damage; in such a case, in the absence of specific agreements between the owners, the owner of the main property is bound to purchase the secondary property.
- **Usucaption:** acquisition by usucaption arises when a property has been held by a third party in good faith for at least twenty years if not used, during such a period, by the owner. In these cases, the corresponding right is granted to the possessor (ownership or real right of use), while the right not exercised is extinguished

METHODS OF DERIVED ACQUISITION

The ownership of immovable property may also be acquired on a derived basis, by arranging instruments that transfer this right, or by succession, following death.

- **Contracts** transferring ownership of immovable property must be drawn up either by private instrument authenticated by a notary or directly by notarial deed. The form of publicity provided for these contracts is the registration, which has the function of settling any disputes between holders of rights, giving priority to the first party that registers his right of acquisition. The contract may be preceded by an undertaking deed (or preliminary purchase contract).
- **Succession**, by law or by will, may be universal or just for a part of the property.

2. Income from owning immovable property

For natural persons, income deriving from the ownership, use or other real rights to buildings is subject to taxation based on their nominal land income (it. “rendita catastale”), depending on the period of possession during the calendar year, the percentage of possession and the type of use made of the property.

The aforesaid income contributes to forming the overall tax-

able income of the owner, according to the IRPEF (personal income tax) general provisions.

If the property is also the owner's main residence, the relating income is not taxed.

Income from buildings/lands belonging to **companies** or relating to **commercial businesses** is regarded as business income and contributes to the formation of the overall taxable income.

Income from property rental contributes to the formation of the overall income of the owner.

From 2011 natural persons can choose a different way of taxing their rental income.

The new tax called "cedolare secca" - which replaces those currently due on rental income made by natural persons (IRPEF, regional and municipal additional IRPEF, registration tax as well as the stamp duty) is thus alternative to the ordinary taxation and cannot be applied by companies.

It is calculated by applying a **rate** of **21%** on the annual income rent for open-rent contracts (it. "contratto a canone libero").

A reduced rate of **15%** (10% for years 2014-2017) is applicable for **agreed-rent contracts** (it. "contratto a canone concordato").

3. Property rental

CONTRACTUAL FORMS

Two types of **contract** have been provided for by the regulation:

- **Open-rent** contracts (it. "contratto a canone libero") The parties may stipulate rental contracts for a period of not less than four years, renewable for other four years (6 years + 6 years if premises are leased for commercial use). Automatic renewal does not take place if the owner needs the property beforehand for specific reasons.
- **Agreed-rent** contracts (it. "contratto a canone concordato") The parties may arrange rental contracts, agreeing the period (not less than three years, renewable for other two

years) and the rent (governed by local agreements between associations of owners and tenants). The legislator has provided a series of tax discounts for this type of contracts.

VAT ON BUILDING LEASE CONTRACTS

Lease contracts regarding **residential buildings** are generally **VAT exempt**. VAT applies (provided the lessor exercises the 10% VAT application option in the contract) in case of buildings used as "social housing", pursuant to Min. Decree 22/4/2008, and in case of leases carried out by companies which have built or refurbished the building for lease.

Lease contracts regarding **instrumental buildings** are generally **VAT exempt** unless the lessor exercise the 22% VAT application option in the lease contract.

4. Registration tax on building lease contracts

Lease contracts shall be registered within 30 days from stipulation and are subject to the application of a proportional **registration tax**, amounting to **2%** of the **annual rent** in case of **residential buildings** rented by owners that do not apply VAT (registration tax amounts to € 67 in case of lease of residential buildings by owners applying VAT).

The registration tax is applied with a 1% rate for instrumental buildings (no matter whether VAT is applied or not).

Lease contracts of any amount must be registered, unless the duration is less than 30 days.

5. Indirect and direct taxes on property transfer

The transfer of instrumental or residential properties is subject to both indirect taxes (VAT, registration tax, land and mortgage tax) and direct taxes (Irpef/CIT).

INDIRECT TAXES

The most frequently scenarios are:

A. RESIDENTIAL PROPERTIES

In case of sale of residential buildings, **indirect taxes** apply according to the following table:

Sale of Residential Buildings				
Type of seller	Time limits	VAT rate	Registration tax	Mortgage and land tax
Building/ restructuring companies	Within 5 years from the termination of the construction/restructuring	10%; 4% in case the building is the 1 st house for the purchaser; 22% in case of luxury buildings	€ 200	€ 200 + € 200
	After 5 year from termination of the construction/restructuring	VAT exempt	9% or 2% for 1 st house case	€ 50 + € 50
		VAT applicable with 4, 10, 22% rate in case of exercise of the option by the seller	€ 200	€ 200 + € 200
Any other seller	Buildings used as <<social houses>> ex Min. Decree 22/4/2008**	VAT exempt	9% or 2% for 1 st house case	€ 50 + € 50
	Buildings used as <<social houses>> ex Min. Decree 22/4/2008**	VAT applicable with 10% or 4% in 1 st house case, in case of exercise of the option* by the seller	€ 200	€ 200 + € 200
	Other buildings	VAT exempt	9% or 2% for 1 st house case	€ 50 + € 50
Private individuals		NO VAT applicable	9% or 2% for 1 st house case	€ 50 + € 50

*The seller can choose to charge VAT by declaring it in the deed.

** D.M. 22/4/2008 provides which characteristics residential buildings shall possess to be considered as “social houses” (alloggi sociali).

Registration tax (when proportional) is calculated on the sale price declared in the deed of transfer. According to Law 23/12/2005 nr. 266 (Legge finanziaria per l’anno 2006),

when the parties are both private individuals, registration tax can be calculated on the land value of the building (cadastral value re-valuated) which is usually much lower than the sale price.

As per **VAT**, the reverse charge mechanism applies in case of sale of residential property at business to business level and when the seller (building company) has opted for the application of VAT.

B. INSTRUMENTAL PROPERTIES

In case of sale of instrumental buildings, indirect taxes apply according to the following table:

Sale of Instrumental Buildings				
Type of seller	Time limits	VAT rate	Registration tax	Mortgage and land tax
Building/ restructuring companies	Within 5 years from the termination of the construction/ restructuring	22%; or 10% in particular cases	€ 200	4%
	After 5 year from termination of the construction/restructuring	VAT exempt	€ 200	4%
		VAT applicable by option with 10 or 22% rate	€ 200	4%
Any other seller		VAT exempt (ordinary regime)	€ 200	4%
		VAT applicable by option with 22%; or 10% in particular cases	€ 200	4%
Private individuals		NO VAT applicable	9%	€ 50 + € 50

The reverse charge mechanism applies in the case of sale of instrumental property at business to business level and when the vendor (building company or commercial organization) has opted for the application of VAT.

DIRECT TAXES ON BUILDING SALES

For **private individuals**, the capital gain made on the sale of property is **taxed only if** the sale is made **within five (5) years from the purchase**.

If the property has been acquired by means of tax benefits for a principal residence (first house) and is sold within five years of purchase, the vendor will forfeit the concessions enjoyed and the relevant penalties will be applied, unless he/she purchases another property to be used as his/her principal residence within one year.

For **commercial entities** (S.p.A., S.r.l. etc...), **the capital gain** made on the transfer of property is always **part** of its **corporate income taxable base**.