

A short guide to the purchase of
real estate in Italy

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Chapter 1

The Purchase Process

1.1. Making the Offer

The first step towards the purchase is an offer tendered by the prospective buyer to the owner of the property, usually through a real estate agency. The offer is binding only upon the prospective buyer and it is therefore important that the offer be subject to acceptance within a reasonably short period of time. It is also recommended that the offer be explicitly subject to the property being in compliance with all applicable laws and to the satisfactory results of the due diligence activities. The offer usually involves the delivery of a small down payment to the broker, who will retain the amount in escrow on behalf of Seller.

1.2 Acceptance

As soon as the Seller accepts the offer in writing, the parties have a binding deal. The circumstance that the parties have not yet signed a formal contract is irrelevant and both parties may enforce the deal. The acceptance is usually communicated in writing by the broker to the Buyer and then formalized with the execution of a so-called “contratto preliminare” or “compromesso”. This is a formal, binding agreement according to which the parties respectively undertake to buy and to sell the property and agree on the main terms and conditions of the transaction. As this agreement includes all elements of the future deed of sale, it is extremely important to include all requirements and conditions to which the deal is subject. Upon signature of the preliminary agreement, the buyer customarily pays an advance ranging between 5% and 10% of the purchase price. Unless otherwise indicated, in the event either party does not perform the sale, the other party has the right, at its option, to request specific performance (i.e. force the sale/purchase), and/or collect damages and/or to retain the deposit (or request the return of an amount equal to two times the deposit if the seller is the breaching party) and terminate the contract. The signing of the preliminary agreement normally triggers the payment of brokerage fees that, in Italy, are paid by both parties (usually around 3-4% each) unless otherwise agreed.

1.3 Right of first refusal

If the property includes a piece of cultivated land, the neighboring farmers will have the right to be preferred in the purchase of the property, at the same terms and conditions. The right may be exercised within 30 days from the date on which the farmer was made formally aware of the future sale or, if not made aware, within one year from the date of the transfer. As a consequence of these provisions, once the preliminary contract is signed, the contract and the identity of the prospective buyer must be communicated by registered mail, return receipt requested, to all neighboring farmers, which will have 30 days to exercise the option to buy the property under the same terms and conditions. The right will expire if not exercised within the 30-days deadline.

1.4 Deed of Transfer

The transfer of the property finally takes place with the execution of a deed of sale (“rogito”), which requires the intervention of a notary public. The notary is a public officer and his duty is that of making sure that the contract is in compliance with mandatory legislation (especially tax provisions). Transfer taxes are paid to the notary who will take care of remitting the relevant amounts to the tax office. The transfer is effective between the parties immediately upon execution of the agreement. The contract is subsequently recorded in a public registry by the notary public. Notarial fees and transfer taxes are customarily for the account of buyer.

1.5 Recording title

The title is recorded by the notary public. There are two different types of real estate registries. The first one, called “Catasto” is based on the identification of each parcel of land or building and indicates who is the owner of such a parcel of land of building and the tax value of the presumed income. This registry is mainly for tax purposes and it is not always updated. The second Registry, called “Conservatoria dei Registri Immobiliari”, lists, for each individual, all deeds and contracts of any type (purchase, mortgages, liens etc) regarding a real estate located in Italy. Both registries are usually reviewed before completing a sale or a purchase in Italy. Title is recorded with the Conservatoria by the notary following completion of sale and payment of taxes.

1.6 The acquisition vehicle – Direct purchase or company?

A property owned through a company is easier to transfer as the shares may circulate without paying transfer taxes and without triggering the right of first refusal in favor of neighboring farmers. Also, a company makes it possible to deduct expenses which are not deductible for individuals. However, with the Budget Law for 2007 the Italian parliament has taken a stronger approach against holding companies, which are required to report a certain amount of income and pay taxes based on a deemed remuneration of investment which is not really reasonable. The purpose is that of further discouraging the use of companies for non commercial activities. Therefore, from a mere tax perspective, the use of a company as acquisition vehicle is not a recommended option, if the property is purchased for personal use and the buyer expects to hold the property for at least five years. A company is instead advisable if the property is to be commercially exploited, especially in those cases where the exploitation relates to the farming business.

Chapter 2

TAXES

2.1 Transfer taxes

The transfer of real estate property is subject to transaction taxes and the tax rates vary depending on legal nature of seller and buyer and type of property. By default, the sale of real estate is subject to three different transfer taxes - the “imposta di registro”, the “imposta catastale”, and the “imposta ipotecaria” - totaling 10% (with some exceptions). If, however, the property includes land, the land transfer price is subject to a rate of 18%, with some very limited exceptions. If the Seller is a company, the transaction is subject to the above mentioned transfer taxes or to VAT depending on the circumstances. In both cases, the total tax burden usually amounts to 10% (with exceptions).

If the purchaser is an individual, the transfer taxes are always calculated on the so-called “cadastral value”, which is the value attributed to the property for various tax purposes and which is normally substantially lower than the market value. Therefore, the previous common practice to declare a purchase price lower than the price actually paid, to limit tax impact, has now disappeared (or, at least, it is not in the interest of the purchaser). If the buyer is a company, or if the property is not a residential property, taxes are calculated on the actual purchase price. VAT is always for the account of Buyer. Transaction taxes are for the account of both parties, however the common practice is that taxes are paid entirely by buyer.

If the buyer wants to live in Italy and the property being purchased will be his main place of residence in the country, the above taxes may be substantially reduced (total tax rate will be approximately 4%), and even lower taxes are due if the buyer will actually engage in agricultural activities.

2.2 Taxes for holding real estate

The holding of real estate is subject to tax called ICI (Imposta Comunale sugli Immobili), whose rate is decided locally by the Municipality within a permitted range of 0.4% and 0.7% of the cadastral value. Usually the Municipalities link the rate to the actual use of the property (owners home, vacation home, building rented to third parties, offices, etc). Furthermore, the income

produced by the property is subject to income tax. If the property is owned by an individual or by a foreign company without business in Italy and it is not rented out, a small deemed income is always assumed, based on the cadastral value: it will usually fall within the no tax area.

2.3 Taxes upon resale of the property

An interesting facet of Italian real estate investments is the limited scope of applicable capital gains provisions. Italy does not have a specific, separate discipline regarding the taxation of real estate capital gains which, when taxable, are simply subject to the regular income tax. However, if the property was acquired by an individual (or through a foreign company with no business in Italy), for vacation or other purposes, the capital gains shall be treated as income only if the property was held for less than 5 years or when the property was an undeveloped parcel of land which was made suitable for construction by the party who is now reselling it. If the buyer moves his residence to the property, there is no capital gains tax upon resale, even if the property is resold before expiration of 5 year term.

2.4 Trusts

The 2007 Budget Law has also introduced, for the first time, specific tax rules regarding the use of trust structures. Italy does not have a domestic trust legislation however it is signatory to the 1985 Hague convention for the recognition of foreign trusts. According to the new rules, the transfer of Italian assets to a trust must be treated as a gift with the consequence that the beneficiary is a close relative (spouse or children) of the settlor, the transfer will go exempt from gift tax on the first 1.000,000 Euro (for each beneficiary) and a very favourable 3% transfer tax rate shall apply. No inheritance tax will be due upon death. Less favourable conditions shall apply if beneficiary is not a close relative.

2.5 Inheritance taxes

Inheritance taxes have been reintroduced in 2007, however at a rate which is significantly lower than other countries. There is a tax exempt area which depends on the relationship with the deceased (for example children or spouse do not pay inheritance taxes on the first 1.000.000 Euro of value received by

each heir), and then inheritance taxes will range between 4% and 8%. In addition to inheritance taxes, there is a transfer tax of 3% (with limited exceptions).

Chapter 3

FREQUENTLY ASKED QUESTIONS

1. Is it possible for a non Italian national to purchase real estate in Italy?

All individuals with citizenship of a country which is a member of the European Union may freely purchase real estate in Italy. The same rule applies to companies incorporated within the European Union. For non EU individuals and companies the purchase is permitted if an Italian national may freely purchase real estate in the foreign country (“reciprocity rule”)

2. What do I need to buy real estate in Italy?

The foreign buyer will be required to obtain an Italian fiscal code. The fiscal code does not imply, per se, a tax liability and is used to record and trace all transactions. The opening of an Italian bank account is also recommendable, although not legally required, to facilitate all payments to be made after purchase of the property and to pay real estate taxes.

3. May I use a trust to purchase real estate?

Italy has ratified the 1985 Hague Convention on the recognition of trust. A recent amendment to Italian tax legislation has established the rules for the purchase of properties by a trust, for conferring properties to a trust and for the taxation of income received from a trust. It is important to note that, in the event of properties already owned in Italy, in most cases it will be possible to transfer real estate to a trust whose beneficiaries are close relatives of the settlor with the payment of a 3% transfer tax on cadastral value of the property, and no inheritance taxes will be due afterwards.

4. Is there any special rule in the event of purchase of real estate by a married couple?

In Italy the default rule is that all properties purchased by either one of the spouses are deemed joint ownership of both spouses. If the buyers are not Italian citizens the law of their country of citizenship shall apply. If the spouses have different nationalities, the law of the country of domicile shall apply. At the time of the purchase the foreign

purchasing party shall declare to the notary in Italy which rules apply in his/her own country to the properties purchased during marriage.

5. Do I need to come to Italy personally to close the acquisition?

The closing of the purchase is performed in front of a notary public, where the parties may appear either personally or through an attorney in fact. In the latter case, a proxy is required. The Proxy must be authenticated by the Italian consulate or by a notary public. The foreign notary public must take care of obtaining an Apostille in accordance with the 1961 Hague Convention abolishing legalisation, which will make the notarized proxy valid and enforceable abroad.

6. How is title recorded?

There are two different types of real estate registries. The first one, called “Catasto” is based on the identification of each parcel of land or building and indicates who is the owner of such a parcel of land or building and the tax value of the presumed income. This registry is mainly for tax purposes and it is not always updated. The second Registry, called “Conservatoria dei Registri Immobiliari”, lists, for each individual, all deeds and contracts of any type (purchase, mortgages, liens etc) regarding a real estate located in Italy. Both registries are usually reviewed before completing a sale or a purchase in Italy. Title is recorded with the Conservatoria by the notary following completion of sale and payment of taxes.

7. What is the cadastral value of a property?

The “Catasto” indicates a presumed value of the income that may be earned on any piece of property “Rendita Catastale”. The law provides for certain multipliers that will be applied to such a figure to derive the Cadastral Value (“Valore Catastale) of the property, which is, basically, a conventional tax value of the property. This value is then used to assess taxes based on real estate. This value is normally much lower than the actual market price of the property.

8. What is the tax impact of purchasing a real estate property in Italy?

The 2007 Budget law has incredibly complicated the tax issue, however in most cases an individual purchasing real estate in Italy will end up

paying 10% of the cadastral value of the property. An 18% rate is assessed for the purchase of farming land.

9. What is the tax impact of holding a real estate property in Italy?

If the property is used to carry out a business activity, for example if the property is rented out to third parties, income will be taxed as any other Italian source income. Rates will vary on annual amount. If no income is reported, a small deemed income will be assessed in any event, based on the cadastral value of the property, however in most cases the deemed income will not reach the minimum threshold for taxation.

Local municipalities will levy ICI, which is a property tax, at a rate ranging between 0,4% and 0.7% of the cadastral value of the property. ICI is paid twice a year in June and December. Foreign residents may opt to pay ICI in one instalment during the first 2 weeks of December of each year by paying a 3% interest charge.

10. What is the tax impact of reselling an Italian real estate property?

If the property is owned by an individual, or by a foreign company or trust not involved in commercial activities in Italy, and the property was held for at least 5 years, the capital gains realized through the sale of the property will be tax free. Also, there is no taxation if the property was inhabited by the owner, who moved there his residence for most of his holding period. If those conditions are not met, the capital gains will be taxed as any other source of income and the taxable rate will depend on amount of the gain and legal nature (individual or corporation) of the party.

11. What about inheritance taxes?

Inheritance taxes have been reintroduced in 2007, however at a rate which is significantly lower than other countries. There is a tax exempt area which depends on the relationship with the deceased (for example children or spouse do not pay inheritance taxes on the first 1.000.000 Euro of value received by each heir), and then inheritance taxes will range between 4% and 8%. In addition to inheritance taxes, there is a transfer tax of 3% (with limited exceptions).

12. Do I need to have an Italian will if I own an Italian property?

No. There is no such a requirement and the foreign will may take care of the Italian property as well. Also, if the owner is a foreign national, Italian law will recognize inheritance rules of his country of citizenship, irrespective of the circumstance that the property is situated in Italy.
