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OVERVIEW OF REAL ESTATE INVESTMENTS IN ITALY

INVESTMENT ENTITIES

Real estate investments in Italy are mainly carried out via one (or a combination) of the following types of investment vehicles.

Real Estate Companies

Real estate companies are special purpose vehicles carrying out the purchase, management, leasing, building, and sale of Italian real estate assets (*società immobiliari*). Real estate companies are generally formed as limited liability companies (*società a responsabilità limitata*, "S.r.l.") or joint-stock companies (*società per azioni*, "S.p.A.").

With a few exceptions, real estate companies are generally not listed on an exchange.

Real Estate Investment Funds ("REIFs")

Real estate investment funds ("REIFs") are undertakings for collective investments formed pursuant to contract law and generally utilized to invest in a plurality of real estate assets, carry out large-ticket real estate investments, and then defer the management of such real estate assets to a professional licensed entity.

REIFs must be managed by licensed Italian managers, or alternatively by nondomestic European Union ("EU") licensed managers passporting their management license into Italy to manage a REIF.

REIFs must invest at least two-thirds of their assets into real estate assets (including rights *in rem* on such assets, equity interests in real estate companies, and units of other REIFs). The remaining one-third may be invested in listed or nonlisted financial instruments.

REIFs may not directly carry out building activity, and more importantly, REIFs may not directly own business activities. As a result, while REIFs may own retail real estate assets, they may not hold the trading licenses. Certain deal structures are commonly used, however, in order to allow REIFs to own the retail real estate assets and indirectly control the related trading licenses through an affiliate.

Listed Real Estate Investment Trusts ("SIIQs")

Listed real estate investment trusts (*società di investimento immobiliari quotate,* "SIIQs") are Italian investment vehicles having certain features resembling some found in a REIT, although they do not qualify as undertakings for collective investments. SIIQs must comply with the following features:

- SIIQs must be formed as joint-stock companies, and their shares must be listed on a regulated stock exchange of a EU Member State or a European Economic Area ("EEA") Member State, provided that such country is included in the list of countries that allow an adequate exchange of information (so-called "White List Countries");
- SIIQs must be resident for income tax purposes in either Italy or in another EU Member State or a EEA Member State that is a White List Country;
- No shareholder can own, directly or indirectly, more than 60 percent of the voting rights or have right to more than 60 percent of the company's profits;
- At least 25 percent of the shares must be owned by shareholders who do not own, directly or indirectly, more than 2 percent of the voting rights nor have the right to more than 2 percent of the company's profits; and
- SIIQs' main business must be the leasing of real estate assets according to criteria set forth in the law.

SIIQs do not need to be licensed by the Bank of Italy nor do they fall under the Bank of Italy's supervision.

Real Estate SICAFs

Real estate SICAFs ("RE SICAFs") are a new kind of undertaking for collective investments formed pursuant to company law. They may be utilized to invest into a plurality of real estate assets and to carry out large-ticket real estate investments.

A RE SICAF is an Italian joint-stock company with fixed corporate capital and that has its registered office and headquarters in Italy. A RE SCIAF collects investment funds via the offering of its shares, and sometimes other equity instruments, and then places those funds into real estate assets.

The same considerations applying to REIF investments apply, *mutatis mutandis*, to RE SICAF investments.

Direct Investment

In this scenario, the investor directly invests in real estate properties without interposing any vehicle. Unless required by specific circumstances, this is not very common.

DEAL STRUCTURES

Real estate investments in Italy are commonly implemented through one (or a combination) of the following acquisition structures.

Asset Deal

Asset deals entail the direct acquisition of "hard" real estate assets (e.g., land, buildings, or portions thereof) or going concerns that include real estate.

Commonly, the main advantage of the asset deal is that it excludes the risks associated with the acquisition of the existing corporate entity that has legal title to the real estate asset.

Share Deal

Share deals, typically, entail the acquisition of the shares of real estate companies. Share deals are commonly preferred when the investment involves the transfer of the real estate asset together with the administrative authorizations required to run the relative business activity. This is the case, for example, in the acquisition of shopping centers or retail parks where, in addition to the real estate asset, investors are normally also interested in owning the related trading license.

LETTING IN ITALY

In Italy, contractual relationships aimed at the letting of commercial assets are normally governed either by property lease agreements or business lease agreements.

Commercial Property Lease Agreements

In a property lease agreement, the landlord grants to the tenant the right to occupy a real estate property for a certain period of time, against the payment of rent.

Normally, commercial property lease agreements are executed when the activity to be carried out within the property does not require an administrative authorization (e.g., offices, logistics complex, etc.) or when the administrative authorization is directly held by the tenant and not the owner (e.g., single retail units, hypermarkets, etc., although it is not entirely uncommon for the owner of the real estate asset to also hold these administrative authorizations).

Italian commercial property lease agreements are regulated by Law no. 392 of July 27, 1978 ("Tenancy Law"). The Tenancy Law contains various mandatory provisions in favor of the tenant that may not be departed from. Any departure from this to the benefit of the landlord, if challenged by the tenant, can be declared null and void and automatically replaced by the relative mandatory provision of the Tenancy Law.

Some of the main mandatory provisions of the Tenancy Law include:

Minimum Duration and Renewal. The minimum duration is of six years, with automatic renewal for additional minimum six-year periods at each expiration.

Exit Rights. The landlord is not entitled to withdraw from lease outside of expiration and, in any case, at expiration of first term the landlord's withdrawal is limited to where it intends to occupy premises for own use, or where it intends to renovate the leased premises. The tenant is always entitled to withdraw from the lease in the case of "serious reasons" (*gravi motivi*).

Rental Increases/Indexation. The rent indexation is capped at 75 percent of variation of the National Institute of Statistics ("ISTAT") index for leases having the minimum mandatory duration (i.e., 6 + 6 years). The rent indexation is capped at 100 percent of variation of the ISTAT index for leases exceeding minimum mandatory duration.

Sublease and Assignment of Contract. The tenant has the right to freely sublease or to assign contract within the scope of lease or sale of relevant going concern.

Registration Costs. No more than 50 percent of contract registration costs are chargeable to tenant.

Commercial Property Lease Agreements – Tenant as Retailer

With respect to lease agreements where the tenant is a retailer—i.e., it carries out an activity that involves direct contact with clients and consumers (*contatti diretti con il pubblico degli utenti e dei consumatori*)—the following additional mandatory provisions of the Tenancy Law apply:

Goodwill Indemnity. At the term of the lease, the tenant is entitled to a goodwill indemnity equal to 18 times the monthly rent. Such indemnity equals to 36 times the monthly rent if the landlord re-let the property to a to tenant operating in same product category within the following 12 months.

Preemption Rights. The tenant is entitled to a preemption right in case of sale of the property as well as re-letting of the property at the same terms and conditions to third party purchasers or tenants.

Deregulation of "Large" Lease Agreements

Effective November 12, 2014, the Italian Parliament has approved Law Decree n. 133/2014 together with the relative amendments, through the enactment of the conversion Law no. 164/2014 (*Sblocca Italia*). This new legislation allows the parties to a commercial property lease agreement to depart from the mandatory provisions of the Tenancy Law mentioned above in those agreements where the annual rent is greater than €250,000, to the extent that the leased property has not been declared of historical interest. As a result, such large Italian property lease agreements now have the same type of flexibility seen in other European markets.

Business Lease Agreements

With a business lease agreement, the lessor grants to the lessee the right to run a business for a certain period of time, against the payment of rent.

As a matter of experience, business lease agreements are mainly employed in the letting of shopping centers, retail parks, and large retail assets where commonly the activity to be carried out within the property requires an administrative authorization that is held by the owner.

Regardless of the amount of annual rent, business lease agreements are not subject to the mandatory provisions of the Tenancy Law, and, as a result, they allow the parties a greater contractual flexibility. This is the main reason why institutional operators have preferred this type of contract in the letting of large retail assets.

The main drawback of business lease agreements is in relation to the employees who may be hired by the lessee during the term of the lease. Such business lease agreements generally contain the obligation of the lessee to lawfully terminate any existing employment contracts within the expiration of the lease (and related indemnification obligation vis-à-vis the lessor). However, should the lessee breach such obligation, the employment contracts possibly in place at the expiration or termination of the contract could be automatically enforceable vis-à-vis the lessor pursuant to article 2112 of the Italian Civil Code.

TAX CONSIDERATIONS

Income Taxation – Real Estate Companies

Real Estate Companies that are tax residents of Italy are generally subject to corporate income tax ("IRES") and regional tax on the value of production ("IRAP").

Tax Rate. IRES is currently levied at 27.5 percent. IRAP is generally levied at 3.9 percent, but each Italian region may increase (or decrease) the rate by up to 0.92 percent.

Taxable Base. IRES taxable income consists of a taxpayer's worldwide income (including that deriving from the lease of real estate assets and capital gains upon disposal of real estate assets), based on the results of the Profit & Loss Statement ("P&L") prepared for the company's legal purposes, and then adjusted downward or upward in accordance with the rules set forth by the Italian Income Tax Code, and on other tax law provisions.

IRAP taxable base is roughly the difference between the value of production (item A of the Italian Generally Accepted Accounting Principles ("GAAP") P&L) and the costs of production (item B of the Italian GAAP P&L with certain exceptions, e.g., certain staff expenses).

Capital gains (and capital losses) upon disposal of real estate assets (and more generally upon disposal of assets other than financial assets and assets transferred in the context of a transfer of a going concern) are relevant for IRAP purposes, although capital gains upon transfer of business real estate assets (*immobili strumentali*) may not be included in any of the above items.

Tax Losses. Corporate taxpayers can use their tax losses to offset taxable income of following years only up to 80 percent of the taxable income of any given year. In other words, taxpayers are prevented from completely offsetting the taxable income of a given year even if they have tax losses carried forward from the previous fiscal years equal to, or higher than, their taxable income of that given year. The 80 percent limitation does not apply to tax losses incurred in the first three years of operation of the business. Tax losses generated in the three-year initial period of operation can, therefore, be entirely offset against taxable income of the following years.

Tax losses cannot be carried forward for IRAP purposes.

Depreciation. The tax depreciation rate of real estate assets (booked as fixed assets) is generally 3 percent (increased to 6 percent in the case of shopping centers). In the first tax year, the rates are reduced by half.

Generally, land cannot be depreciated. If the land is purchased first and then the building is erected on it, the value to be allocated to the land and to the building is equal to, respectively, the acquisition cost of the land and the costs incurred for constructing the building. If the land and the building are purchased jointly at the same time, the tax value of the land is the higher of the book value separately allocated to the land in the balance sheet relating to the fiscal year when the purchase has taken place, or 20 percent (30 percent in the case of industrial buildings) of the whole purchase price (i.e., the price paid to buy both the land and the building).

Limitation to Interest Deduction. As a rule, interest payable can be deducted up to an amount equal to the amount of interest receivable accrued during the tax year. Any interest payable in excess of the interest receivable may be deducted only up to an amount equal to 30 percent of its *risultato operativo lordo* ("ROL") in the same year ("30 Percent Threshold"). ROL roughly corresponds to the notion of Earnings Before Interest Taxes, Depreciation and Amortization, ("EBITDA"). Any further excess of interest payable in a tax year is not deductible in such tax year but can be carried forward (without time limitations) and deducted in the following tax years, provided, and to the extent, that in such tax years the interest payable—net of any interest receivable—is lower than the 30 Percent Threshold. If the 30 Percent Threshold of a given tax year is not fully used to deduct interest payable in that tax year, the amount of the unused 30 Percent Threshold in such tax year may be carried forward to the following tax years (without time limitations).

Such rules limiting the deduction of interest payable do not apply to interest that must be capitalized according to the applicable GAAP. Interest payable that is duly capitalized according to the applicable GAAP increases the tax basis of the asset.

Moreover, the 30 percent ROL limitation does not apply to interest payable accruing on loans taken out to purchase a business real estate asset meant to be leased to third parties, provided that the loan is secured by mortgage.

Interest payable cannot be deducted from the IRAP taxable base. However, interest payable that is duly capitalized according to the applicable GAAP increases the tax basis of the assets, and it can therefore be deducted through depreciation.

Allowance on Corporate Equity. Allowance on Corporate Equity ("ACE") is an additional deduction—for IRES purposes only—corresponding to the notional return on capital. This notional return is equal to the aggregate net equity increase that has occurred as of the fiscal year 2011 ("ACE Base"), multiplied by a rate of return, set at 4 percent for tax year 2014, 4.5 percent for tax year 2015, and 4.75 percent for tax year 2016.

Briefly, the ACE Base is computed as follows: the sum of cash equity contributions actually made by the shareholders *plus* waivers of financial receivables that the shareholders had toward the company, *plus* undistributed profits set aside to reserves other than non-disposable reserves, *minus* the decreases of the company's net equity triggered by distributions or assignments to the shareholders, whether in cash or in kind and irrespective of the legal title upon which such distributions or assignments are based.

Companies must compute their ACE Base every year by taking into account all the aforesaid increases and decreases that have occurred since January 1, 2011. However, the ACE Base of a given tax year cannot be higher than the company's accounting net equity at the end of that same tax year, exclusive of both the treasury shares reserve and the operating yearly profits. Moreover, the ACE Base must be adjusted downward if certain transactions occur between the company and its subsidiaries or its "sister companies" (i.e., companies that are controlled by the same entity).

The notional return is deducted only once the net income has been calculated. If, in a given year, the notional return is higher than the company's net taxable income, the company will declare no income in that year and will be able to carry forward the excess of notional return to the following years.

Dividend Distributions for Italian Residents. As a rule, dividends paid by Italian-resident companies to Italian residents are not subject to any withholding tax. Dividends are generally 95 percent IRES-exempt, or 50.28 percent personal income tax ("IRPEF")-exempt if they are paid to, respectively, Italian resident entities and individuals. As an exception, a 26 percent final withholding tax (i.e., such withholding tax represents the only tax liability for the shareholder in relation to the dividend received) applies to dividend distributions made to Italian-resident individuals holding the shares/quotas not in the context of a business activity, provided that the equity interest is not qualified (i.e., it does not exceed 25 percent—reduced to 5 percent for listed companies—of the share capital, or 20 percent—reduced to 2 percent for listed companies—of the voting rights in the shareholders' meeting of the subsidiary).

Dividend Distributions for Non-Italian Residents. As a rule, Italy levies withholding tax on dividend distributions made to non-Italian-resident shareholders (without a permanent establishment to which the shares are effectively connected). The rate of the withholding tax is generally 26 percent, which may be reduced under the applicable double tax treaty, if any. The 26 percent withholding tax rate is, however, reduced to 1.375 percent in the case of dividend payments made to non-Italian resident entities that are subject to tax and are resident in an EU Member State or EEA Member State that is a White List Country.

If the non-Italian-resident shareholder is an EU-resident company without a permanent establishment in Italy to which the shares are effectively connected, it may also benefit from a withholding tax exemption under the Parent–Subsidiary Directive.

Capital Gains for Italian Residents. The Italian participation exemption, generally applicable to capital gains from the disposal of shares and other equity interests realized by Italian businesses does not, as a rule, apply (and therefore such gains are fully taxed), unless evidence is given that the Real

Estate Company carries out an "active" business prevailing over the mere leasing activity. In this latter case (and subject to the fulfillment of other requirements), the gains, if any, are then 95 percent IRES-exempt and 50.28 percent IRPEF-exempt if realized by, respectively, business entities and sole proprietors or partnerships.

Capital gains realized by individuals are 50.28 percent IRPEF-exempt or subject to 26 percent capital gains tax, depending on whether the equity interest is qualified or not.

Capital Gains for Non-Italian Residents. Capital gains realized by non-Italian residents, without a permanent establishment in Italy to which shares are effectively connected, from the disposal of a nonqualified equity interest in a Real Estate Company is not subject to tax in Italy if (i) the shares are listed on a regulated market; (ii) the non-resident is resident in a White List Country; or (iii) an exemption is provided for by the applicable double tax treaty, if any. Otherwise, the gain is subject to a 26 percent capital gains tax.

Capital gains realized from the disposal of qualified equity interests are instead subject to IRES or IRPEF on 49.72 percent of the amount of the gain, unless an exemption is provided for by the applicable double tax treaty, if any.

Income Taxation - Real Estate Investment Funds (REIFs)

Taxation of the Fund. Italian REIFs are treated as persons liable to tax for IRES purposes. However, REIFs entirely owned by one or more institutional investors ("Institutional REIFs") are not subject to IRES or to IRAP. As a consequence, subject to certain limited exceptions, any income, including capital gains on the sale of real estate assets or of equity interests in real estate companies, dividends from real estate companies, and lease payments is generally not taxed when held by the fund.

To this end, institutional investors include:

- The Italian government or other Italian public bodies;
- Italian undertakings for collective investments (for instance, investment funds);
- Italian social security entities and pension schemes;
- Italian insurance companies with regard to investments made to cover technical reserves;
- Italian banks and financial intermediaries subject to prudential supervision;
- Non-Italian persons and entities listed above that are resident in White List Countries;
- Italian-resident banking foundations, private "no profit" entities and cooperative companies; and
- Special Purpose Vehicles ("SPVs") that are mainly participated (50 percent + 1) by one or more of the entities listed above, irrespective of such participation being direct or indirect. Such SPVs may be corporate or contractual and may be resident in Italy or in White List Countries.

REIFs, other than Institutional REIFs, are not subject to IRES and IRAP provided that they fully comply with the notion of "investment fund" provided for by the Unified Financial Act. In particular, this requires that the management company acts as an independent asset manager and carries out discretionary management of the fund's assets in accordance with applicable regulatory provisions and the fund's regulation, and that there is a "plurality of investors."

Taxation of the Investors: Italian Residents. Proceeds paid by Italian REIFs to Italian-resident institutional investors—as well as the spread between the amount paid to the investors upon redemption/liquidation of the units and the price paid by the same investors to subscribe for the units—are subject to a 26 percent withholding tax, which is levied on account of the ordinary income taxes or as a final withholding tax depending on the status of the recipient. No withholding tax is levied on proceeds paid to Italian pension funds and to undertakings for collective investments, including other REIFs. In case the withholding tax is levied on account of the ordinary income taxes (this would be the case of Italian corporate and, more in general, entrepreneur taxpayers), the proceeds are then included in the recipient's overall IRES or IRPEF (Italy's income tax on individuals) taxable base, and the withholding already paid is credited against the IRES or IRPEF due. When the final withholding is applied (this would be the case of Italian individuals and nonbusiness entities), the proceeds are not included in the recipient's overall income.

The same treatment applies to Italian-resident non-institutional investors holding a stake not higher than 5 percent. On the contrary, in case of Italian-resident noninstitutional investors with a stake higher than 5 percent, a flow-through (transparency) approach applies. In other words, the positive results accrued at the level of the funds are proportionally allocated to such investors and taxable to them, regardless of any actual distribution by the funds.

Capital gains realized upon the disposal of units in Italian REIFs are generally subject to tax in the hands of the investors. The applicable tax regime, however, depends on the status of the investors.

Taxation of the Investors: Non-Italian Residents. The tax regime of Italian permanent establishments of non-Italian residents for the income attributable to such permanent establishment is similar to the one applicable to Italian residents.

Proceeds paid to non-Italian resident investors (without a permanent establishment in Italy to which the units of REIFs are effectively connected)—as well as the spread between the amount paid to the investors upon redemption/liquidation of the units and the price paid by the same investors to subscribe for the units—are taxed as follows:

- No withholding tax applies if the proceeds are paid to (i) pensions funds and undertakings for collective investments (such as mutual funds and investment funds) that have been set up in White List Countries; (ii) central banks and sovereign funds; and (iii) organizations established under international agreements concluded by Italy;
- A 26 percent withholding tax applies on the proceeds paid to other foreign investors, irrespective of whether they are institutional investors. If the investor is resident in a country that has a double tax treaty in force with Italy, a lower treaty rate may apply. To this end, the Italian Tax Authorities deem that the provision of the treaty applicable in this case is the one provided for interest payments (Article 11 of the OECD Model).

Capital gains realized by institutional investors and by investors (other than institutional investors) holding a stake lower than 5 percent upon disposal of the units in Italian REIFs are not subject to taxation in Italy if (i) the units relate to listed REIFs, or (ii) the investor is (a) one of the persons or entities listed previously in this section (mutual fund, central bank, etc.), or (b) resident for tax purposes in a White List Country. In all other cases, capital gains are taxed in Italy, unless the exemption is provided for by the applicable double tax treaty.

Income Taxation – Listed Real Estate Investment Trusts ("SIIQs")

Taxation of SIIQs. SIIQs are exempt from both IRES and IRAP on profits arising from:

- The leasing of real estate assets;
- Capital gains (and capital losses) on the disposal of real estate assets intended to be leased;
- Dividends paid out of profits relating to leasing activity by other SIIQs and SIINQs (see below);
- Capital gains (and capital losses) on the disposal of shares/equity interests in other SIIQs and SIINQs;
- Proceeds arising from investments into Italian real estate funds ("Italian Qualified REIFs") that invest at least 80 percent of their gross asset value into real estate assets, rights *in rem* on real estate assets, including those arising from lease contracts with a transferral nature as well as from license relationships ("*rapporti concessori*") and interest in real estate companies; and other real estate investment funds leasing their real estate assets, including social housing real estate investment funds;
- Capital gains (and capital losses) on the disposal of units in Italian Qualified RE Funds

All of the above are defined as the "Exempt Business."

Income arising from other sources is subject to standard IRES and IRAP.

SIIQs must distribute to their shareholders at least 70 percent of the net profits of the Exempt Business to the extent that such profits relate to the holding of real estate assets, shares/equity interests in other SIIQs and SIINQs, and units in Italian Qualified REIFs.

Capital gains arising from the disposal of real estate assets, investments in SIIQs and SIINQs and units in Qualified Italian REIFs must be distributed: for an amount equal to 50 percent, in lieu of the 70 percent threshold; and within the two tax years following the tax year during which the capital gain has been realized.

Taxation of Investors: Italian Residents. A 26 percent withholding tax is levied on the dividends paid to the SIIQ's shareholders out of profits of the Exempt Business.

No withholding tax is levied on dividends paid to (i) other SIIQs; (ii) Italian undertakings of collective investments; (iii) Italian pension funds; and (iv) assets under management under Article 7 of Legislative Decree no. 461 of November 21, 1997 ("*risparmio gestito*").

The withholding tax is final if the SIIQ's shares are held by nonbusiness individuals. In the other cases, dividends are subject to a withholding tax on account and then are fully included in the taxable base of the taxpayer.

The Italian participation exemption does not apply to the capital gains realized upon disposal of shares in SIIQs. Capital gains realized by sole proprietors, Italian business partnerships, Italian resident companies, and by permanent establishments of non-Italian residents are fully included in the IRES taxable base of such persons.

In respect of shares held by resident nonbusiness individuals, the regime changes depending on whether the shares represent a qualified equity interest or not. If the shares in the SIIQs are qualified, capital gains upon their disposal are fully taxed in the hands of Italian resident individuals and subject to IRPEF. If the shares are nonqualified any gain is subject to a 26 percent capital gain tax.

Taxation of Investors: Non-Italian Residents. As a rule, 26 percent withholding tax is levied on the dividends paid to the

SIIQ's shareholders out of profits of the Exempt Business. The Italian Tax Authorities have taken the view that the Parent/Subsidiary Directive does not apply to SIIQs. However, non-residents can benefit of reduced rates provided for by the applicable double tax treaties, if any.

In respect of shares held by non-residents without permanent establishment in Italy, the regime applicable to capital gains changes depending on whether the shares are qualified or not. If the SIIQ's shares are qualified, capital gains upon their disposal are fully taxed in the hands of non Italian residents. An exemption may be available under double tax treaties. Conversely, Italy does not tax the capital gains relating to nonqualified shares, if they are realized by nonresidents without a permanent establishment in Italy.

Income Taxation – SIINQs

The SIIQ tax regime also applies to nonlisted real estate companies (*società di investimento immobiliare non quotate*, "SIINQs"), if the following conditions are met:

- They are resident in Italy for income tax purposes;
- Their main business is the leasing of real estate assets;
- They are 95 percent owned by a SIIQ (or, jointly, by more than one SIIQ); and
- They opt for the SIIQ regime and for the domestic tax consolidation regime together with the controlling SIIQ.

Income Taxation – RE SICAFs

The same tax regime applicable to REIFs applies also to RE SICAFs investing in real estate assets (see Taxation – Real Estate Investment Funds (REIFs)).

Income Taxation – Direct Investment

The considerations made under the prior section, "Taxation – Real Estate Companies," basically apply also to direct investments in a real estate assets performed by Italian resident companies. However, according to the Italian Tax Authorities, the full deduction of interest payable accruing on mortgage loans taken out to purchase a business real estate asset meant to be leased to third parties is available only to companies whose main business purpose is leasing real estate assets ("*immobiliare di gestione*").

The income tax consequences of an asset deal directly performed in Italy by a non-Italian resident depends on whether the non-Italian resident is deemed to have a permanent establishment in Italy. Although the ownership of real estate assets by a non-Italian resident company does not amount per se to a permanent establishment in Italy, it is likely that the management of the real estate assets amounts to a permanent establishment in Italy.

Should a permanent establishment exist, the latter is subject to a similar tax regime applicable to Italian taxpayers. If a permanent establishment does not exist in Italy, a non-Italian resident company, which owns real estate assets located in Italy, is subject to IRES (but not to IRAP) on the cadastral income of such asset. If the real estate assets are let out, 95 percent of the rent would be subject IRES (but not to IRAP). The gain, if any, realized upon the sale of the assets is, generally, subject to IRES, unless the asset has been held for at least five years, in which the gain is exempt.

Local Taxes on Real Estate Assets Explained

The ownership of real estate assets implies generally the application of a municipal tax (*imposta unica comunale*, "IUC"). IUC is composed of (i) a tax on the holding of the real estate asset (*imposta municipale propria*, "IMU"); (ii) the tax on indivisible municipal services (*tassa per i servizi indivisibili*, "TASI"); and (iii) the tax on solid waste (*tassa sui rifiuti*, "TARI").

IMU. The taxable base of IMU is the cadastral income, as resulting from the land registrar on January 1 of the relevant year, plus a 5 percent addition to the cadastral income, multiplied by a coefficient ranging from 55 to 160, depending on the cadastral classification of the property. The general tax rate is 0.76 percent, but the municipality in which the immovable property is located may increase or decrease the rate by a coefficient of up to 0.3 percent.

Exemptions to IMU are provided in certain cases (e.g., real estate assets to be sold by the constructor or restoration company).

TASI. The taxable base of TASI is the same as for IMU. The standard tax rate is 0.1 percent, but the municipality can increase or decrease it.

TARI. The taxable base for TARI is calculated with reference to the area occupied by immovable property and open spaces. The municipality may assume that the taxable base is 80 percent of the area occupied by immovable property and open spaces according to the cadastral classification (immovable property registry).

Indirect Taxes Relating to Real Estate Assets

Asset Deal – Sale of Real Estate Assets (other than Land)

Seller of the Asset	Residential Asset			Business Asset
	Ordinary	Social Housing (No Main Dwelling)	Main Dwelling (No Social Housing)	*Strumentali per natura*
Non-VAT Taxpayer	Registration Tax: 9% (minimum amount: EUR 1,000) Mortgage Tax: EUR 50 Cadastral Tax: EUR 50	Registration Tax: 9% (minimum amount: EUR 1,000) Mortgage Tax: EUR 50 Cadastral Tax: EUR 50	Registration Tax: 2% (minimum amount EUR 1,000) Mortgage Tax: EUR 50 Cadastral Tax: EUR 50	Registration: 9% Mortgage: EUR 50 Cadastral: EUR 50
VAT Taxpayer Who Did Not Build or Substantially Restore the Real Estate	VAT-exempt Registration Tax: 9% (minimum amount: EUR 1,000) Mortgage Tax: EUR 50 Cadastral Tax: EUR 50	VAT-exempt or 10% VAT upon election / VAT applied through reverse charge mechanism**** Registration Tax: EUR 200 Mortgage: EUR 200 Cadastral: EUR 200	VAT-exempt Registration Tax: 2% (minimum amount: EUR 1.000) Mortgage Tax: EUR 50 Cadastral Tax: EUR 50	VAT exempt or 22% VAT upon election / VAT applied through reverse charge mechanism**** Registration: EUR 200 Mortgage: 3% Cadastral: 1% (mortgage and cadastral taxes are 1.5% and 0.5% respectively if a REIF or a RE SICAF is either the seller or the buyer)
VAT Taxpayer Who Built or Substantially Restored the Real Estate in the Last Five Years	10% VAT* Registration Tax: EUR 200 Mortgage Tax: EUR 200 Cadastral Tax: EUR 200	10% VAT Registration: EUR 200 Mortgage: EUR 200 Cadastral: EUR 200	4% VAT Registration Tax: EUR 200 Mortgage Tax: EUR 200 Cadastral Tax: EUR 200	22% VAT** Registration: EUR 200 Mortgage: 3% Cadastral: 1% (mortgage and cadastral taxes are 1.5% and 0.5% respectively if a REIF or a RE SICAF is either the seller or the buyer)
VAT Taxpayer Who Built or Substantially Restored the Real Estate (But Not in the Last Five Years)	VAT-exempt or 10% VAT** upon election / VAT applied through reverse charge mechanism**** Registration Tax: EUR 200 Mortgage Tax: EUR 200 Cadastral Tax: EUR 200	VAT-exempt or 10% VAT upon election / VAT applied through reverse charge mechanism**** Registration: EUR 200 Mortgage: EUR 200 Cadastral: EUR 200	VAT-exempt or 4% VAT upon election RegistrationTax: EUR 200 Mortgage tax: EUR 200 Cadastral Tax: EUR 200	VAT-exempt or 22% VAT*** upon election / VAT applied through reverse charge mechanism**** Registration: EUR 200 Mortgage: 3% Cadastral: 1% (mortgage and cadastral taxes are 1.5% and 0.5% respectively if a REIF or a RE SICAF is either the seller or the buyer)

* Main Dwelling means the dwelling that qualifies as "*prima casa*" under Decree No. 131 of April 26, 1986 (as subsequently amended).
** 22% if the real estate is a luxury dwelling.
*** 10% if (i) the real estate is a "*immobile Tupini*" sold by the builder, or (ii) substantially restored real estate that is sold by the enterprise that restored it.
**** Reverse charge mechanism is only applicable if the purchaser is a VAT taxpayer.

Asset Deal - Sale of Land

Seller of the Land	Zoning*	Land Other Than Zoning		
			Agricultural Land	Favorable Regime for Small Farm Property**
Non-VAT Taxpayer	Registration Tax: 9% (minimum amount: EUR 1,000) Mortgage Tax: EUR 50 Cadastral Tax: EUR 50	Registration Tax: 9% (minimum amount: EUR 1,000) Mortgage Tax: EUR 50 Cadastral Tax: EUR 50	Registration Tax: 9% (minimum amount: EUR 1,000); 12% if the purchaser is not a qualified farmer (minimum amount: EUR 1,000) Mortgage Tax: EUR 50 Cadastral Tax: EUR 50	Registration Tax: EUR 200 Mortgage Tax: EUR 200 Cadastral Tax: 1%
VAT Taxpayer	VAT 22% Registration Tax: EUR 200 Mortgage Tax: EUR 200 Cadastral Tax: EUR 200	Outside the scope of VAT Registration Tax: 9% (minimum amount: EUR 1,000) Mortgage Tax: EUR 50 Cadastral Tax: EUR 50	Outside the scope of VAT Registration: 9% (minimum amount: EUR 1,000); 12% if the purchaser is not a qualified farmer (minimum amount: EUR 1,000) Mortgage Tax: EUR 50 Cadastral Tax: EUR 50	Outside the scope of VAT Registration Tax: EUR 200 Mortgage Tax: EUR 200 Cadastral Tax: 1%

* Zoning means a tract of land (*area edificabile*) that, according to certain regulatory instruments, may be developed by a real estate contractor, which can thus build either residential or business real estate.
** Regime available only if the land is sold to certain qualified farmers or farm enterprises (*società di coltivazione diretta*).

Asset Deal – Sale of a Business (Going Concern)
The sale of a business is outside the scope of VAT, regardless of whether the seller is a VAT taxpayer. The sale of a business is instead subject to registration tax. If the business is located in Italy, the registration tax is due even if the deed of transfer is executed outside the territory of Italy.

If, in the transfer deed, the seller and the buyer clearly state the price paid for each class of assets transferred, different tax rates apply to the price indicated for each asset, net of the liabilities proportionally allocated to it. The following tax rates may apply:

- Accounts receivable: 0.5 percent (the Italian Tax Authorities seem to take a different position and may apply a 3 percent rate);
- Real estate assets: generally 9 percent (12 percent in case of agricultural land sold to a person other than a qualified farmer); and
- Other tangible assets (excluding cars and boats) and intangible assets (including goodwill): 3 percent.

If the parties fail to apportion the overall price, there will be only one rate. This will be the highest rate among those, in principle, applicable to the different assets included in the business (e.g., 9 percent if the business includes real estate assets), and it will be applied to the overall consideration paid by the buyer.

The Italian Tax Authorities may disregard the consideration reported by the parties in the contract and assess a higher value of the assets transferred, including goodwill, if they deem that the price indicated by the parties understates the value of the business.

If the business also includes also real estate assets, 2 percent mortgage tax and 1 percent cadastral tax are also due.

Share Deal - Transfer of an Equity Interest in an Italian Limited Liability Company
The sale of an equity interest (quota) in an Italian limited liability company (*Società a responsabilità limitata*) is VAT-exempt. The sale is generally executed by notary deed, and it is subject to mandatory registration with the Italian Tax Authorities. EUR 200 registration tax applies.

Transfer of Shares in an Italian Joint-Stock Corporation
The sale of shares in an Italian joint-stock corporation (*Società per azioni*) is VAT-exempt. The sale is subject to EUR 200 registration tax if the sale is executed by either notary deed or private deed with notarized signatures. If the shares are instead transferred by endorsement (*girata*), the transfer need not be registered with the Italian Tax Authorities, and, therefore, it would not be subject to registration tax.

Moreover, if shares in an Italian joint-stock corporation (having its registered office in Italy) are transferred (whether by sale or contribution), the purchaser must pay 0.2 percent (0.1 percent in case of listed shares) financial transaction tax on the purchase price, save for certain exceptions (e.g., transfers within the same group or transfers upon mergers).

Leases

Leases of business assets are exempt from VAT, save for the case where the lessor elects to subject the lease to VAT. In any case, lease rents are also subject to 1 percent registration tax.

Leases of non-business assets are VAT exempt, unless the lessor elects to subject the lease to VAT in the following cases: the lessor is a VAT taxpayer who built or substantially restored the leased asset, or in the case of social housing. If VAT is not opted for, the lease rentals are subject to 2 percent registration tax.

Business leases are subject to VAT. If more than 50 percent of the value of the assets of the business relates to real estate assets, 1 percent registration tax also applies.

LAWYER CONTACTS

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