



## **Purchasing Real Estate in Italy - FAQ**

By

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### **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. What is the purchase process?**

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.



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.

The transfer of the property ultimately 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



## **7. 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.

## **8. 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.

## **9. 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.



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

In most cases an individual purchasing residential real estate in Italy will end up paying 10% of the cadastral value of the property. If the property is purchased through a company, the transfer tax will amount to 10% of the purchase price. An 18% rate (calculated on purchase price) is assessed for the purchase of farming land.

**11. 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 and rates will vary on annual amount. A flat 21% rate is available for individual owners.

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.

As of 2012 a property tax called IMU is also assessed, at a rate ranging between 0,4% and 0.7% of the cadastral value of the property. The rates may be increased for second homes. IMU is paid twice a year in June and December.

**12. 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.



**13. 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).

**14. 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.

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