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# ITALIAN REAL ESTATE INVESTMENT STRUCTURES

## I. FOREWORD

The aim of this document is to provide a high-level overview of the alternative investment structures which can be implemented, in light of the current Italian law framework, for performing real estate investments in Italy.

Vehicles commonly used in Italy for investment in real estate properties include both non-regulated vehicles and regulated vehicles.

- **Unregulated real estate companies:** they generally consist of corporate entities like the limited liability companies (*società a responsabilità limitata* – “SRL”) or joint-stock companies (*società per azioni* – “SPA”).
- **REIFs and RE SICAFs:** they consist in undertakings for collective investments (UCIs) which can be set up either in contractual form, such as real estate investment funds (“REIFs”), or in corporate form, such as real estate investment joint-stock companies with fixed capital (“RE SICAFs”).
- **Real estate securitisation vehicles:** Article 7 (2) of Law no.131/1999 allows special purpose vehicles (“SPVs 7.2”) to purchase and securitize real estate properties, registered real estate rights, and shares in real estate companies.

## II. UNREGULATED REAL ESTATE COMPANIES: SRL / SPA

### i) Background

The law framework applicable to companies such as limited liability companies (SRL) or joint-stock companies (SPA) is primarily governed by the Italian Civil Code. Key aspects include limited liability for shareholders, flexible governance structures, and the requirement for registration with the Register of Enterprises.

### ii) Tax regime

#### Direct Taxes

Italian SRLs and SPAs are subject to corporate income tax - CIT (*IRES*) currently at a rate of 24% on the business income taxable accrued, which is calculated on the basis of net result of the statutory P&L duly adjusted according to the specific tax provision applicable to each P&L's item [e.g. interest expenses generally deductible within 30% EBITDA, property's depreciation deductible within certain maximum rates (generally 3%, etc.), etc.].

Moreover SRLs and SPAs are also subject to regional tax on business activities (*IRAP*) on the net value of company production derived from the activity carried out in the territory of each Italian region. The IRAP standard rate is 3,9% and may be locally increased.

Dividend payments: a domestic WHT would be in principle due on dividend payments (at the rate of 26% or 1,2% as the case may be) unless a WHT exemption is applicable if the Parent Subsidiary Directive (“PSD”) requirements are met or if recipient is a qualifying EU (or SEE) UCI; a reduced WHT rate set forth by the relevant DTT may be applicable under the relevant conditions.

Interest payments on shareholders' loan: a domestic WHT would be in principle due (at the rate of 26%) unless a WHT exemption is applicable if the Interest Royalties Directive (“IRD”) requirements are met or if recipient is a qualifying recipient; a (reduced) WHT rate set forth by the relevant DTT may be applicable under the relevant conditions.

Exit phase:

- **Asset deal:** capital gain from assets' disposal is fully subject to IRES (the taxation of capital gain on the sale of the

properties could be also deferred upon option up to 5 yearly instalments) and to IRAP

- **Share deal:** a purchase price discount for latent capital gain tax may be requested by the purchaser; in principle the capital gain is taxed in Italy unless: i) it is applicable a DTT which allocates (only) to non-resident seller the right to tax the capital gain (such as the DTT between Italy and Luxembourg) or ii) the seller is a qualifying EU / EEA UCI (in such latter case the capital gain is exempt from taxation in Italy)

#### Indirect Taxes (on asset deal transaction)

- **VAT:** exempt / ordinary regime / reverse charge, as the case may be
- **Transfer taxes:**
  - **Non-Residential buildings:** mortgage tax 3% plus cadastral tax 1%
  - **Residential buildings:** registration tax: 9% if VAT exempt

#### iii) Pros and cons

### III. REIFS OR RE SICAFs

#### i) Background

Pursuant to Italian law framework:

- **REIF (*fondo immobiliare*):** it is a closed-ended UCI qualifying as AIF within the meaning of AIFMD which has a contractual form (pool of assets) divided into units subscribed by a plurality of investors, managed on collective basis by an external AIFM (supervised by the relevant regulatory authority) independently and in the investors' interest on the basis of a predetermined investment policy
- **RE SICAF (*Società di Investimento Collettivo a Capitale Fisso*):** it is a closed-ended UCI qualifying as AIF within the meaning of AIFMD which has a corporate form (SPA – joint stock company with fixed capital) whose shares are subscribed by a plurality of investors, managed on collective basis by an internal / external AIFM (supervised by the relevant regulatory authority) independently and in the investors' interest on the basis of a predetermined investment policy.

SRL or SPA	
PROS	CONS
<ul style="list-style-type: none"> <li>■ Easier and flexible governance</li> <li>■ Liability segregation with respect to quotaholders/ shareholders</li> <li>■ Limited administrative and corporate running costs</li> <li>■ The IRES taxation of capital gain on the sale of the properties could be deferred upon option up to 5 yearly instalments</li> <li>■ IRES taxable income allows the deduction of operating costs, depreciations, interest expenses under the relevant provisions</li> </ul>	<ul style="list-style-type: none"> <li>■ Rental fees are taxed for IRES and IRAP purposes</li> <li>■ [Asset deal exit]: the capital gain on sale of the properties is taxable for IRES/IRAP purposes;</li> <li>■ transfer taxes on the acquisition of non-residential buildings are due at the ordinary rates (in comparison to the half-rates applicable to REIF / RE SICAFs)</li> <li>■ [Share deal exit]: price discount for latent capital gain tax to be granted;</li> <li>■ Dormant company regulation is applicable</li> <li>■ VAT refunds: procedures generally entail: <ul style="list-style-type: none"> <li>i) more time than REIFs / SICAFs and i</li> <li>i) additional costs (e.g. bank guarantee, etc.)</li> </ul> </li> <li>■ Tax risks entailed by the Italian tax authorities' scrutiny on: <ul style="list-style-type: none"> <li>(i) exemption or reduction of WHT regime on dividends and/ or intercompany interests payments claimed under PSD / IRD / DTT;</li> <li>(ii) arm's length value to intercompany transactions (transfer pricing regulation)</li> </ul> </li> </ul>

Both are regulated entities and thus subject to supervision of the Bank of Italy.

## ii) Tax regime

### Direct Taxes

REIFs and RE SICAFs are exempt from corporate income tax (IRES) and regional tax on business activities (IRAP) Proceed distributions: WHT exemption is applicable on proceeds distributed by REIFs or RE SICAFs to qualifying non-resident investors (UCI, pension funds, sovereign funds), otherwise WHT at 26% rate or reduced WHT rate under the applicable DTT (10% under Italian-Luxembourg DTT) is applicable

### Exit Phase

- Asset deal: capital gain on the sale of the properties is exempt from IRES and IRAP
- Share deal: no purchase price discount for latent capital gain tax should be granted - the capital gain (on REIF units / RE SICAF shares) realized by qualifying non-resident (White-Listed) sellers should be exempted from taxation in Italy

### Indirect Taxes (on asset deal transaction)

The AIFM is the VAT-able entity for the transactions pertaining to the REIF (while the RE SICAF itself is the VAT-able entity for its transactions)

- **VAT:** exempt / ordinary regime / reverse charge as the case may be
- **Transfer taxes:**
  - *Non-residential buildings:* mortgage tax 1,5% plus cadastral tax 0,5% (instead of 3% and 1%) for deeds where the REIF or the RE SICAF is a party
  - *Residential buildings:* registration tax: 9% if VAT exempt

## iii) Pros and cons

## IV. REAL ESTATE SECURITISATION VEHICLES: SPV 7.2

### i) Background

Differently from traditional securitizations (which typically involve the transfer of receivables), SPVs 7.2 are allowed to purchase and securitize real estate properties, registered real estate rights, etc.

The SPV 7.2 in principle finances the acquisition of a real estate property by issuing notes to investors, which are then repaid using the proceeds generated from the real estate assets (such as rents, disposals, etc.)

This vehicle allows to combine real estate investment and capital market financing, offering a regulated and bankruptcy-remote structure that protects investors (similarly to REIFs and RE SICAFs) while the SPV 7.2 can entrust asset management activities to third-parties allowing for professional and efficient handling of the underlying properties.

The securitised real estate assets and the amounts arising therefrom (rental, sale proceeds etc.) are segregated by provision of law from the assets of the same SPV 7.2 and from assets resulting from other transactions and are exclusively dedicated to serve the obligations towards the secured creditors (which mainly include the holders of the securitisation notes).

On the securitized assets (due to segregation principle) no actions are allowed by creditors other than the creditors of the securitisation (mainly holders of the notes issued by SPVs 7.2 for the financing of the purchase of the securitised assets, or other lenders / hedging counterparties in connection with the securitisation, if any).

REIF or RE SICAF	
PROS	CONS
<ul style="list-style-type: none"> <li>■ Exempt from IRES/IRAP</li> <li>■ Transfer Taxes on acquisition of non-residential property applicable at the half rate (2% instead of 4%)</li> <li>■ Quicker VAT credit recovery [i.e. fast-track refund procedure, offsetting procedure with VAT debts of other REIFs managed by the same AIFM (not applicable to RE SICAF), "horizontal" offsetting procedure with other tax debts].</li> </ul>	<ul style="list-style-type: none"> <li>■ Higher corporate, administrative and management costs (e.g. AIFM fees, depositary bank, etc.)</li> <li>■ Stricter governance which shall be compliant with civil law and regulatory provisions applicable to set-up and management of UCIs</li> </ul>

## ii) Tax regime

### Direct Taxes

As far as corporate income tax (IRES) is concerned, revenues (e.g. rental, capital gain, etc.) and costs arising from the securitization transaction are not actually taxed for IRES purposes due to the segregation feature of the securitised properties [should any residual amount be available to the SPV 7.2 after the discharge of all its obligations towards noteholders, such amount would be eventually subject to IRES].

As Italian regional tax on productive activities (IRAP) derives its taxable base from the accounting results, no taxation occurs as long as the assets of the securitization remain “off-balance sheet” for accounting purposes. Interest payments on notes (issued by the SPV 7.2): special WHT exemption regime is applicable to qualifying non-resident (White-Listed)

noteholders; otherwise, standard 26% substitute tax is due that may be reduced pursuant to the applicable DTT.

Exit phase:

- **Asset deal:** capital gain arising from the sale of the Properties is not taxed for IRES and IRAP purposes
- **Notes deal:** the sale of notes is not taxed in Italy for qualifying non-resident (White-Listed) investors.

### Indirect Taxes

- SPV 7.2 is VAT-able entity for the transactions performed.  
**VAT:** exempt / ordinary regime / reverse charge as the case may be
- **Transfer taxes:**
  - *Non-residential buildings:* mortgage tax 3% plus cadastral tax 1%
  - *Residential buildings:* registration tax: 9% if VAT exempt

## iii) Pros and cons

SPV 7.2	
PROS	CONS
<ul style="list-style-type: none"> <li>■ revenues and costs related to the securitised assets not taxable in the hands of the SPV 7.2.</li> <li>■ favourable WHT (exemption) regime on interest payments on notes for qualifying non-resident investors</li> <li>■ lower administrative, corporate and management costs in respect of those applicable to REIFs or RE SICAFs</li> </ul>	<ul style="list-style-type: none"> <li>■ transfer taxes on acquisition of non-residential buildings due at the ordinary rate (unlike the half-rates applicable to REIFs and to RE SICAFs)</li> <li>■ VAT refunds: procedures generally entail: i) more time than REIFs / SICAFs and ii) additional costs (e.g. bank guarantee, etc.)</li> </ul>



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