



## ISSUES RELATING TO COMMERCIAL LEASING

### ITALY CHIOMENTI

#### CONTACT INFORMATION:

CHIOMENTI Studio Legale  
Via XXIV Maggio 43  
00187 Roma  
Tel. +39 06 466221; Fax +390646622600  
[umberto.borzi@chiomenti.net](mailto:umberto.borzi@chiomenti.net)  
[www.chiomenti.net](http://www.chiomenti.net)

#### 1. Describe [National][state][territorial][provincial] or local transfer taxes payable on creation or assignment of a lease.

Transfer taxes payable on leases of real estate assets vary according to the qualification of the subjects involved and also with respect to the characterisation of the assets leased as “commercial” rather than “residential”.

Here below we focus on commercial real estate assets and we assume that both the landlord and the tenant are Italian companies resident in Italy for income tax and VAT purpose.

##### Value added tax

VAT regime would vary depending on certain characteristics of the landlord and the tenant. In particular, as provided by article 10, par. 1, no 8 of Presidential Decree 633/1972, leases of real estate commercial assets is in principle exempt from VAT, (*i.e.* the transaction is subject to VAT at “zero rate”) unless the tenant is:

- (i) a VAT relevant entity (entrepreneur or professional) with a right to deduct the VAT (so called *pro-rata*) less than 25% due the activity carried out,
- (ii) a subject not acting in connection with a business activity;
- (iii) a subject that expressly opts for the ordinary VAT regime in the lease contract.

In any of the cases listed above, VAT would apply at the standard rate of 20%. Such VAT regime would apply on rent.

VAT charged on ren is in principle deductible by the tenant. However, its actual deduction would depend on specific VAT conditions of the tenant.

Registration tax

Registration tax applies at 1% rate on the lease agreement. The rate applies on the annual rental payments due by the tenant.

**2. Describe any legal restrictions limiting the maximum term of a lease (including renewals).**

Pursuant to Section 1573 of the Italian Civil Code, leases have a maximum term of 30 years.

**3. Describe any laws requiring landlords to allow a tenant to renew its lease.**

According to Italian Law no. 392/1978 leases for commercial, industrial, artisanal or touristic purposes shall have a minimum duration of 6 years and leases of hotels shall have a minimum duration of 9 years.

Upon expiry leases are automatically renewed for 6 or 9 years (respectively) unless the tenant or the landlord refuses the renewal. Please note that, upon expiry of the first 6-year period (or 9-year period, as the case may be), the landlord is allowed to refuse the renewal only in case the landlord intends:

- a. to use the property as its residence or as residence of its relatives;
- b. to use the property for the carrying out of commercial, industrial, artisanal, touristic or hotel activities;
- c. to pull down and re-build or completely renovate the property;
- d. to renovate the property for the purposes of carrying out of commercial activities.

Further restrictions may apply in case of leases of hotels.

**4. Describe any restrictions on rent that may be charged for to a tenant.**

As general rule there are no legal restrictions on the capacity of the parties to agree the rent for a lease.

However, indexation of rent cannot exceed 75% of the ISTAT inflation index. On the basis of such limit to indexation part of the case law holds that step up clauses (which provide for an increase of the rent starting from a certain date) are not valid as they imply an increase of the rent exceeding such limit to indexation. Please note that a recent amendment to the relevant statute has provided that the 75% limit to indexation applies only to leases with the minimum duration provided by the law (see paragraph 3 above). It would therefore appear that the indexation limit does not apply to leases with a longer duration, and presumably the case law should in future more easily admit step up clauses in lease agreements with a duration longer than the statutory minimum.

**5. Describe any laws permitting tenants to terminate a lease prior to its stated expiration date.**

The tenant is allowed to terminate the lease at any time, giving at least six months' notice to the landlord, only if such faculty has been expressly agreed between landlord and tenant and set forth in the relevant lease agreement. Even if the lease does not include any clause in this respect, the tenant is allowed to terminate the lease in case of occurrence of "serious grounds" by delivering a 6 month advance termination notice. The definition of "serious grounds" is

not expressly provided by the law; however, case law has stated that “serious grounds” can be identified in events beyond the tenant’s control, unforeseeable by the tenant and occurred after the establishment of the lease relationship which result in the fact that the lease becomes excessively burdensome for the tenant.

**6. Describe any laws allowing tenants to assign or sublease without landlord’s consent.**

Pursuant to Section 1594 of the Italian Civil Code (i) subleasing is permitted unless otherwise agreed between the parties, while (ii) assignment of the lease agreement requires, by law, the landlord’s consent.

Section 36 of Italian Law no. 392/1978 sets forth that the tenant is allowed, even without the landlord’s consent, to sublease the property or assign the lease agreement to the extent the tenant contextually sells or leases its going concern. In such event, the landlord is allowed to oppose such assignment or sub-lease on the basis of “serious grounds” within 30 days from the delivery of the relevant notice.

**7. Describe any laws allowing landlord to restrict assignments or subleases by tenants.**

The landlord and the tenant are entitled to agree and establish restrictions on subleases of the property. As mentioned in previous paragraph no. 6, pursuant to Section 1594 of the Italian Civil Code, assignment of the lease agreement (other than in the case of a transfer of going concern) requires, by law, the landlord’s consent unless otherwise agreed between the parties.

**8. What is the common form of eviction proceeding? What is the customary length of time for that proceeding?**

In case of breach of the lease agreement (such as non-payment of the rent or refusal to leave the property in case of termination or expiry of the lease) the eviction of the tenant shall be ordered by the Court by way of a decision issued as a result of a regular lawsuit filed by the landlord. The proceeding before the court of first instance and the issuance of the decision may require approximately 1 year (especially in the case of eviction due to a clear default by the tenant) but may require a longer term depending *inter alia* on whether the tenant contests the grounds for his eviction or on the local jurisdiction.

**9. Are there any legal restrictions on pledging a leasehold interest as security for a financing?**

Pursuant to Italian Laws, a leasehold interest is not included in the assets which can be pledged or mortgaged. On the other hand rental incomes are often assigned by way of security pursuant to which the borrower would assign the receivables arising under the lease agreements in favour of the bank as security for the claims of the bank against the borrower under the facility agreement. Under the Italian Civil Code if the assignment is for a period exceeding three years the security document must be notarised and the assignment must be registered with the Land Register.

**10. Describe any requirements for landlords to hold security deposits in separate accounts and, if such requirements exist, describe if there can be one separate account for all tenant security deposits or whether each security deposit must be held in its own separate security deposit.**

The landlord is not required to hold such deposits on specific accounts and is only required to return the deposit amount at the end of the lease (and to pay yearly interest on the deposited amount).

**11. Describe any required statutory or other legal disclosures to be made to all tenants.**

There are no statutory or legal disclosures to be made to the tenant.

**12. Describe all taxes on rent or other taxes that landlord are required to collect from tenants.**

In principle, there are no taxes that landlord must collect from the tenants. Please however consider that the parties generally agree that costs relating to registration tax shall be borne equally by both parties.

**13. Describe any limitations on the ability of landlords to exercise self-help.**

As general principle the exercise of self-help as a way to enforce legal or contractual obligations is forbidden and any such power is reserved to the competent Courts.

**14. Describe whether remedies such as acceleration of rent must be expressly stated or whether they are implied.**

Any acceleration of the rent needs to be expressly agreed between the parties and any clause providing for such an acceleration would likely be contested by the tenant, unless structured as a liquidated damages clause (please note that the amount of the liquidated damages in a liquidated damages clause can be reduced by the competent court in the event such amount is manifestly excessive).

**15. Describe whether there are any expedited remedies for tenant default and, if so, what lease provisions (such as waiver of jury trial, for example) would be required for a landlord to seek expedited remedies.**

In case of default of the tenant the landlord is entitled to start court proceedings, to enforce the deposit or other security and to claim termination of the lease agreement – pursuant to Section 1453 of the Italian Civil Code (which states that in case of in agreements providing for mutual performances, when one of the parties fails to perform its obligations, the other party can choose to claim either performance or termination of the agreement) - and damages. According to Section 1455 of the Italian Civil Code, the agreement cannot be terminated and the non defaulting party will be entitled only to claim damages if the default by one party has only slight importance with respect to the interest of the other. The judicial proceedings for termination of the lease and consequent eviction of the tenant is based on a faster procedure than “ordinary” proceedings.

**16. Describe any formal requirements for the execution of a lease.**

Theoretically commercial lease agreements do not need to be executed in writing. However, please consider that, for tax purposes, lease agreements shall be registered with the competent Tax Authorities.

Furthermore, when the duration of the lease exceeds 9 years, the relevant lease agreement shall be executed in writing, notarized and registered with the relevant Land Register.

**17. Describe whether a memorandum of lease or other document would need to be recorded for the lease to be enforceable against third parties.**

The lease is enforceable vis à vis third parties (such as purchasers of the property) provided that it has a date certain at law (such certainty can be obtained inter alia by means of registration with the tax authorities or by notarization of the lease).

However, if the lease has not been registered with the Land Register, the lease is enforceable vis à vis a subsequent purchaser of the property only for a maximum of nine years from the start of the lease.

**18. Describe any restrictions on the transfer of ownership of real properties subject to a lease. Does such a transfer affect the tenant’s rights or obligations?**



If the tenant uses the leased property for carrying out commercial activities which entail a contact with customers, the tenant has a pre-emption right for the purchase of the property in the event the landlord intends to transfer such ownership to a third party (there are certain specific cases of non application of such pre-emption right, including “block sales” and certain contributions in kind).

There are no other statutory limits to the transfer of leased properties – please note however that in some case the lease agreement provides for additional limitations.

On the other hand, tenant’s rights and obligations are not affected by the sale and purchase of the property, provided that the lease has a date certain at law and (for durations exceeding nine years) has been registered with the Land Register (see paragraph 17 above).