Chapter 15

Italy

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15.1. Legal rights over immovable property

15.1.1. Non-tax law definition of immovable property

15.1.1.1. General remarks

The definition of immovable property in the Italian Civil Code is provided under article 812 (subtitled “Distinction as to property”), which states as follows:³

The soil, water sources and water courses, trees, buildings and other constructions, even if joined to the soil for a temporary purpose, and in general everything that is artificially or naturally annexed to the soil are immovable property.

Mills, baths, and other floating buildings are also considered immovable property when they are securely attached to the bank or the bed and are destined to remain so permanently for their utilization.

All other property is movable.

Article 812 of the Civil Code identifies two categories of immovable property: (i) per se immovable property in the first paragraph and (ii) constructive immovable property in the second paragraph. The third paragraph defines movable property on a residual basis and will not be dealt with further in this report. The rationale behind the distinction between immovable and movable property is that of providing specific tracking rules for the former, while the latter circulates more freely.⁴

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³ The following translation (as all subsequent translations from the Civil Code) is taken from M. Beltramo et al., The Italian Civil Code and Complementary Legislation (Oceana/Oxford University Press 2007); the present authors amended this article’s translation by inserting the missing reference to trees (which is indeed present in the original Italian text).
15.1.1.2. Per se immovable property under article 812(1) Civil Code

Soil is the quintessential immovable property. The scope of this definition should not be limited to the topsoil, but should extend both below (underground, with all the contents thereof) and above (e.g. airspace). Soil is considered immovable property only to the extent it remains fixed: once detached, all parts of the soil become movables (e.g. fertile topsoil, rocks and minerals).

Water sources and water courses mean natural streams of flowing water: brooks, creeks, rivers and lakes. They must be (i) natural and the water must be (ii) flowing. Artificial streams such as e.g. channels and penstocks may very well be immovable property in their own right, but the water flowing through or into them is considered as movable property. Still water as well is considered as movable property, whether naturally or artificially contained. In principle, the landowner may use the water on his land; however, special legislation has effectively made most water public.

Trees are only considered immovable property when they are fixed to the soil: the tree does not need to be alive, as long as it is standing on its roots and does not fall; fallen trees become movable property. Small and

5. Under article 840 of the Civil Code, ownership of the soil extends to the subsoil, with all that is contained therein, and the owner can perform any excavation work that does not cause harm to a neighbour. However, this principle has several exceptions (for mines, see section 15.1.1.4.).
7. Under article 822 of the Civil Code, rivers, streams and lakes belong to the state and are considered public domain.
8. There is indeed a paradox: flowing water is immovable property, still water is movable property; in much the same way, the double tax treaty definition of immovable property includes livestock, while dead cattle are movable property. This shows that juridical definitions sometimes have little to do with common experience and should be considered in their own right.
9. Article 909(1) of the Civil Code (right to water existing in land) provides that “the owner of the ground has the right to use the water existing in it, subject to the provisions of special laws on public waters and subterranean water”. This rule provides as to the right to use the water, rather than as to the property thereof; see M. Caprio, Article 909, in Commentario al Codice Civile (P. Rescigno ed., Milan, Giuffré 2014).
10. Water was first made public property under Law 36 of 5 January 1994 (so-called “Galli” law). The matter is now dealt with by Law 152 of 3 January 2006, which supersedes the Galli law and provides that both surface and underground water belong to the state.
11. Case law has expanded the scope of the term “trees” to encompass any vegetable growing on the soil; G. Bruno, Article 812, in Commentario al Codice Civile (G. Álpa & V. Mariconda eds., Milan, Ipsoa 2005).
medium-size plants can be considered movable property, to the extent they are kept in vases: once transplanted onto the soil, they become immovable property.

Buildings and other constructions are joined to the soil by their very nature, but their property can circulate separately from that of the underlying soil due to the right of superficies (see section 15.1.2.2.1.). Any construction may qualify, irrespective of the materials it is built with: e.g. a gas station or an olive mill. Hydroelectric power plants include dams and penstocks, but there used to be an issue as to whether or not Penton wheels (water turbines) should also have been included: from a civil law perspective, they should not since they are simply bolted and screwed in place; from a tax law perspective, however, they were eventually included in the relevant taxable base (see section 15.2.2.1.1.).

15.1.1.3. Constructive immovable property under article 812(2)

These goods – mills, baths and other floating buildings – are not always considered immovable property: they become so due to their artificial connection to the soil (i.e. riverbanks or riverbeds) and only for the time such a connection remains in place. Such requirement also applies to mills and baths and not only to other floating buildings.

The connection must be both actual (unattached property is still considered as movable) and prospective (the goods are destined to remain connected permanently for their utilization): once attached, the item is no longer an autonomous good and cannot be separated without its being disrupted or substantially altered. The connection must be stable and secure: bolting and screwing an item in place is not considered stable enough in order for the item to become immovable property, let alone simply leaving the item in place without any connection whatsoever.

Under article 812(2), “mills” are floating river mills only: windmills and land watermills fall within the scope of article 812(1) and are considered per se immovable property. Floating buildings as well must be solidly connected to the soil (an anchored item does not qualify) and permanently

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12. IT: Supreme Court, Case 2200 (1977).
13. IT: Supreme Court, Case 17933 (2004).
14. Scozzafava, supra n. 4.
15. The original Italian word is “saldamente”, which conveys both meanings.
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destined to remain so for their utilization. Since the goods are destined to remain connected permanently for their utilization, items not utilized for whatever reason should qualify as movable goods (even if permanently fixed to riverbanks).

15.1.1.4. Particular assets

“Ships” is defined as follows under article 136 of the Navigation Code:16 “[A]ny construction destined for water shipment, also for the purpose of towing, fishing, pleasure or for other purposes.” The rules provided for ships also apply to floating buildings, to the extent they are considered as movable property (i.e. unless they are considered as constructive immovable property under the above rules). The term “boats” is not defined as such under the law:17 in non-technical language it is commonly understood to refer either to (some) minor ships18 or to a ship (or any floating building) destined for sport or recreation.19 A ship has two main features: it (i) floats and (ii) is suitable to navigate. Therefore, a ship comes into existence with the launch: only upon being launched does a ship effectively float and become suitable to navigate. Registration in the Italian Naval Register takes place either (i) if the majority20 of the ship belongs to Italian/EU individuals/entities, or (ii) if the ship is managed by an Italian permanent establishment (PE) of the non-EU owner, directed by an Italian/EU individual/entity (domiciled where the ship is registered).

“Aircrafts” is defined as follows under article 743 of the Navigation Code: “[A]ny machine destined for airborne transportation of people or goods.” Remote-controlled flying objects (e.g. drones) are also considered as aircrafts. Aircrafts fall within two main categories: state aircrafts (military ones and those which are both state owned and used for institutional state services) and private aircrafts (all others). In order [to be allowed] to fly, aircrafts must be registered in the National Aeronautical Register; this is granted if the nationality requirements are met under article 756 of the Navigation Code. The aircraft must fully or mainly belong to: (a) an Italian

16. IT: King Decree 327 of 30 March 1942.
17. “Ship” translates as “nave”, which is defined under article 136 of the Navigation Code; “boat” translates as “barca”, which is not a juridical term.
18. Major and minor ships are distinguished under the Navigation Code: major ships are built for the open seas; minor ships are built for coastal navigation, harbour service and inland waterway navigation.
20. The Navigation Code states “more than twelve carats”: a “carat” (as in a golden alloy) is one twenty-fourth of the ownership of a ship, so that this means more than 50%.
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or EU public administration; (b) an Italian or EU individual; (c) companies incorporated or established in Italy or in the EU, provided that (i) their capital fully or mainly belongs to Italian/EU individuals or to Italian/EU companies with a similarly Italian/EU shareholder base and (ii) their chairman, managing director and the majority of directors are Italian/EU individuals. Upon registration in the National Aeronautical Register, an aircraft becomes subject to Italian law. Registered ships and aircrafts are “registered assets”: any contract transferring their ownership (as well as other deeds) must be in written form, under penalty of being considered null and void.

“Mines” and “quarries” are defined under the Mining Law, which provides for the research and extraction of mineral substances and underground energy suitable for industrial use. The legal distinction is different from the common language meaning and is based on the substances being extracted, rather than on how and where the extraction activity is carried out. A “mine” deals with the research and extraction of (a) metal ore, either to be smelted or directly usable; (b) graphite, fuels (solid, liquid and gaseous), asphalt and bituminous rocks; (c) phosphates and similar minerals; (d) precious stones and similar minerals; and (e) radioactive substances, mineral and thermal waters, steams and gas. A “quarry” deals with the research and extraction of (a) peat; (b) construction materials; (c) earth pigments, diatomaceous earth, quartz and similar materials; and (d) other materials suitable for industrial use, which are not extracted in mines. A mine cannot be privately owned: it belongs to the state (or to autonomous regions) and the right of extraction therefrom is granted under a concession regime. A quarry, on the other hand, as a general rule is managed (directly or indirectly) by the landowner; however, if the landowner does not exploit the quarry in a suitable way, the relevant public authority can grant a third party the concession to exploit the quarry: in this case, arm’s length compensation is paid by the concession grantee to the landowner.

“Railways” are considered public domain (if belonging to the State) under article 822 of the Civil Code. However, railways no longer belong to the state (and hence are not public domains): national railways were first established as a public entity and later incorporated as a company. As a result,

21. IT: King Decree 1443 of 29 July 1927.
22. In non-technical language, “mine” is generally understood as involving any extraction activity carried out underground (open-pit mines being the exception confirming the rule); “quarry” involves the same activities carried out on the ground surface.
railways today are private property (albeit destined for public service). Consequently, they may be rented out to private tenants under private law and any relating litigation is subject to ordinary jurisdiction. 25 The term “railways” includes railway stations, electrical substations and all pertinences necessary to the functionality and preservation thereof; the term does not include trains.

15.1.2. Types of rights over immovable property

15.1.2.1. Full ownership

The content of the full ownership right is defined as follows under article 832 of the Civil Code:

The owner has the right to enjoy and dispose of things fully and exclusively, within the limits and with observance of the duties established by the legal order.

The ownership right can therefore be distinguished in two basic sub-rights: (i) the right to enjoy and (ii) the right to dispose. Both these rights are full (with no limits, apart from those explicitly provided for) and exclusive (meaning that only the owner has such rights and nobody else); 26 however, both rights are subject to the general limits and duties provided by the legal order, which implement the social purpose principle under the Italian Constitution. 27

The right to enjoy means both (i) the right to use economically the property and (ii) the right to modify its productive organization (this latter also being termed *ius abutendi*). 28 As the ownership right is basically granted *erga omnes* (i.e. towards anyone), property law mainly deals with the limits to such right. The owner may therefore enjoy the property in any way that is not explicitly forbidden, but such right of enjoyment should not be exercised “badly”. Indeed, property law provides for certain rules, which are based on an underlying judgement of what “good” behaviours are to be allowed

26. Exclusivity therefore means that the owner can forbid others to enter the property: this is acknowledged by article 841 of the Civil Code (enclosures), under which “the owner can enclose the land at any time.”
27. Article 42(2) of the Constitution provides that private property is acknowledged and warranted under the law, which provides as to its origination, enjoyment and limits in order to ensure its social purpose and make it accessible to anyone.
and what “bad” behaviours are to be forbidden: the prohibition of emulative acts\textsuperscript{29} derives from the moral principle of “\textit{neminem laedere}” (thou shalt not damage anyone); the scope limitation in the power to exclude third parties from the enjoyment of the property\textsuperscript{30} follows from economic considerations (what economists would term “Pareto efficiency” or “Pareto-optimal”); the duty to respect legal distances in constructions\textsuperscript{31} is a consequence of “good neighbour” policies and so on.

The right to dispose is principally the right to sell, mortgage, donate or bequeath the full property; the owner may sell, mortgage, donate or bequeath any partial property right as well (see section 15.1.2.2.) and retain the residual right. The owner has the right to raze the building to the ground and the right to rebuild it; volume building rights also belong to the landowner, who might use them on another adjacent property of his or sell them to other adjacent landowners. However, the building right as such (\textit{ius aedificandi}) no longer belongs to the landowner: while building had always been subject to some kind of local authorizations (granted for free), following the Bucalossi law\textsuperscript{32} this was changed into a concession procedure (which requires payment of the relating fees); the building right was thus carved out from the ownership right and the landowner is only left with a legitimate interest.

15.1.2.2. Other rights in rem

Rights in rem are characterized by being (i) “absolute”, as they can be enforced towards anyone (rather than towards a specific person); (ii) “immediate”, as no cooperation is required from another person (as with obligations) and (iii) “typical”, as they are set and new ones cannot be created.\textsuperscript{33}

A distinction should be made between (a) rights \textit{in re propria} (on the own property, i.e. full ownership) and (b) rights \textit{in re aliena} (on the property of someone else). The latter are rights that limit the original ownership

\textsuperscript{29} Under article 833 of the Civil Code, the owner cannot perform acts that have no other purpose than that of harming or causing annoyance to others.

\textsuperscript{30} Under article 840(2) of the Civil Code, the owner of the soil cannot oppose the activities of third persons that take place at such depth in the subsoil or at such height in the space above it that he has no interest in excluding them.

\textsuperscript{31} Articles 873-908 provide for mandatory distances, lights and views and drainages.

\textsuperscript{32} IT: Law 10 of 28 January 1977; the matter is now dealt with by Presidential Decree 380 of 6 June 2001.

\textsuperscript{33} In this respect, see M. Comporti, \textit{Diritti reali (diritto civile)}, in \textit{Enciclopedia Giuridica Treccani} (loose-leaf).
right, subtracting certain of its particular features; rights in re aliena may be further distinguished as (i) guarantee rights in rem and (ii) enjoyment rights in rem.

Guarantee rights in rem are pledges (for movable property) and mortgages (for immovable property): they both grant their holder the right to sell the debtor property and take precedence over any other creditors on the sale proceeds, in the event the debtor defaults on its obligation. These guarantee rights will not be dealt with further in this report. Enjoyment rights in rem will be surveyed in the following sections dealing with superficies, emphyteusis, usufruct, use, habitation and encumbrances.

15.1.2.2.1. Superficies

The landowner may carve out the right to build and maintain a building over its land (which is called right of superficies) in favour of a third party, which becomes the owner of the building. The landowner can also sell a building separately from the land on which it is built. In the event the right of superficies is established for a fixed period of time, upon the expiry of the term the right dissolves and the landowner becomes the owner of the building. The right of superficies does not expire when the building is destroyed, but it dissolves if nothing is built for 20 years.

Without the right of superficies, the owner of the land would also become owner of the building (a refund of costs being due to the builder). The right of superficies is not only above land: it can be the right to build over an already existing building or to build underground. Even before any construction is built, the right of superficies can be sold, mortgaged, donated or bequeathed.

34. Art. 2784 Civil Code.
35. Art. 2808 Civil Code.
37. Under article 934 of the Civil Code, any planting, structure or works existing upon or under the soil belong to the owner of the soil.
38. IT: Supreme Court, 5 June 1971, No. 1674.
15.1.2.2.2. **Emphyteusis**

Emphyteusis can be either perpetual or temporary: in this latter case, it cannot last less than 20 years. The tenant has the same rights that the owner would have to the fruits of the land, to treasure and to the utilization of the subsoil under special laws. The tenant must (i) improve the land and (ii) pay the grantor a periodic rent (in money or in kind). The tenant may sell, donate or bequeath his right: no payment is due to the grantor; upon establishing the right, however, the grantor may forbid the tenant any alienation for 20 years. Secondary emphyteusis (i.e. an emphyteusis over another one) is not allowed. The tenant is entitled to purchase the full ownership of the fund by paying the grantor an amount equal to the net present value of future rents.41

15.1.2.2.3. **Usufruct, use and habitation**

The usufructuary has the right to enjoy the property, but he must respect its economic destination; both natural and civil fruits belong to the usufructuary for the duration of his right. The duration of the usufruct cannot exceed the life of the usufructuary (if this latter is an individual); if established in favour of an entity, the usufruct cannot last more than 30 years. The usufructuary can sell his right for some time or for its entire duration, unless the deed establishing the usufruct explicitly forbids so. Apart from the expiry of the term, the usufruct may be cancelled due to non-exercise for 20 years, when it is reunited with the bare ownership and when the property is destroyed.42

Usufruct therefore involves both the basic sub-rights: (a) the right to enjoy and (b) the right to dispose (of course only the usufruct can be alienated rather than the full property). However, both such rights are somewhat dimmed with respect to those of the full owner: indeed, the rationale behind such limitation is that the property will eventually revert to the bare owner;43 consequently, the usufructuary is bound to diligently preserve the property and the bare owner is acknowledged a residual interest in it (also in terms of paying the relating expenses).44

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41. Arts. 957-977 Civil Code.
42. Arts. 978-1020 Civil Code.
44. Art. 1005 Civil Code, under which extraordinary repairs are chargeable to the owner (with the usufructuary paying the owner an interest over amounts spent for extraordinary repairs).
Use and habitation are minor rights in rem, patterned after usufruct. The former entitles its holder to the use of a property and to the fruits therefrom, but only to the extent of his personal and family needs. The latter entitles its holder to live in a house, but only to the extent of his personal and family needs. Both rights are extremely personal: they cannot be sold or rented out.45

15.1.2.2.4. Encumbrances

An encumbrance is a burden over a property for the use of another property belonging to a different owner. Encumbrances can be established either mandatorily (in specific cases provided by law) or voluntarily: in the former case, a court decision usually creates the encumbrance and determines the compensation for the owner of the property receiving the burden. Typical encumbrance cases involve the passage over someone else’s property, waters, aqueducts and electric cables. An encumbrance is cancelled when the two properties (i.e. that with the right and that with the burden) are reunited under the same owner or when the right is not exercised for 20 years.46

15.1.2.3. Joint ownership

Joint owners may each use the shared property, provided that they do not alter its destination and do not prevent other joint owners from using it. Both the enjoyment and the expenses of the property are in proportion to the ownership stakes: these are presumed to be equal. Each joint owner may sell, mortgage, donate or bequeath his property stake both to other joint owners and to third parties. Each joint owner may ask for the property to be divided.47

15.1.3. Characterization of foreign legal rights over immovable property

"Lex rei sitae" means “the law of the state where the property is situated”: this principle is the basis for the characterization of foreign legal rights over

45. Arts. 1021-1026 Civil Code.
46. Arts. 1027-1099 Civil Code.
47. Arts. 1100-1116 Civil Code.
immovable property in Italy. The matter is provided for under article 51 of the Italian private international law recast (i.e. Law 218 of 31 May 1995, hereinafter Law 218/1995), which expressly states that:

51(1) [O]wnership, possession and other rights in rem are governed by the law of the State in which the property is situated;

51(2) [T]he acquisition of ownership, possession and other rights in rem is governed by the law of the State in which the property is situated, except for cases in which the acquisition of a property right derives from family relationships or an agreement.

15.1.3.1. Property rights under article 51(1) Law 218/1995

In order to analyse the characterization of foreign legal rights over immovable property in Italy, reference is to be made to the lex rei sitae, which regulates how to exercise real rights by the relevant holders as well as the actions that the latter may utilize for purposes of protecting their rights. In this regard, foreign real rights that are not recognized in Italy shall not apply over properties located in the Italian territory. The same principle applies to protection remedies and the content of the real rights, since only those provided for by Italian laws will apply.

The essential elements grounding the principles outlined by article 51 of Law 218/1995 are the ownership, possession and other rights in rem, which are based on the power to enjoy and dispose of a particular property or to benefit from the same. Whenever foreign juridical concepts are concerned, their characteristics should correspond to the above-mentioned elements: foreign legal elements (such as common law liens or mortgages or Austrian rents) may also be re-conducted to those archetypes if – given their particular structure – they contain the essential characteristics of one of those elements provided for by article 51 of Law 218/1995.

With regard to trust instruments, characterized by their nature of a fiduciary relationship whereby property is held by one party for the benefit of another (a trust is created by a settlor who transfers some or all of his property to a trustee, which holds that property for the trust’s beneficiary), it produces


effects in Italy under Law 364 of 16 October 1989, which ratified the Hague Convention on the Law Applicable to Trusts and on their Recognition of 1 July 1985 (hereinafter Hague Convention). The Hague Convention therefore imposes on Italian judges the acknowledgement of a trust that has its related assets located in Italy but is created by a foreign subject and on the basis of that foreign law, providing for the applicable law as the one designated by the settlor, or, when no applicable law has been chosen, the law with which the trust is most closely connected. As a consequence of the trust being acknowledged, trust property remains segregated from the trustee’s personal property; on the other hand, the trustee may sue, be sued and appear in its capacity as trustee in front of notary publics or other public representatives.

15.1.3.2. Property rights acquisition under article 51(2) Law 218/1995

Lex rei sitae also provides for the acquisition of property rights as a basic rule (as well as the related cases of loss of property rights). However, article 51(2) of Law 218/1995 introduces an exception to the application of the law of the state where the property is situated: i.e. when the acquisition of such right derives from a family relationship or an agreement. The application of the lex rei sitae principle depends on whether or not the property right is acquired originally; in other words, a rule applies when no

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50. The trust disciplined by the Hague Convention refers to “the legal relationships created – inter vivos or on death – by a person, the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose.” In particular, the trust contains the following characteristics: “(a) the assets constitute a separate fund and are not a part of the trustee’s own estate; (b) title to the trust assets stands in the name of the trustee or in the name of another person on behalf of the trustee; (c) the trustee has the power and the duty, in respect of which he is accountable, to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him by law.”


52. Art. 6, Hague Convention.


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previous legal claim existed over the property (acquisto a titolo originario); another one when the property right is transferred from a previous holder (acquisto a titolo derivativo).

On the one hand, according to major scholars, the law of the state in which the property is situated applies to all cases of original acquisition of the property right (acquisto a titolo originario); namely the occupation (occupazione), accrual of possession (accessione), specification (specificazione) and union or confusion (unione o commistione). The same principle also applies to the acquisition of a property right by means of prescription (usucapione).

On the other hand, in relation to cases when the title is transferred from a previous holder (acquisto a titolo derivativo), a specific distinction is to be made: (i) the lex rei sitae shall apply to the content, limits and modalities to exercise the property right and (ii) foreign law may apply with regard to the acquisition of the relevant title.

As a consequence of the above, property rights may be created over Italian assets under foreign rules that have no correspondence in Italian law – and that would not produce the same effects if they were provided for under Italian applicable laws. A typical example of a situation where a foreign law creates a title over an Italian real property concerns a foreign inheritance procedure. In such case, foreign law determines who the subject entitled to acquire the real right over the Italian property is, as well as the relevant formalities to obtain such right (e.g. automatically or by means of a specific acceptance), as established by the inheritance law of that specific country. On the other hand, the lex rei sitae (Italian law) provides for the content of the real right that the mentioned subject has obtained through the relevant foreign title.

In any case, when foreign laws also apply for the acquisition of the property right, the relevant modalities to exercise such right are governed by the law of the state where the property is situated. The lex rei sitae also applies in relation to disclosure and filing with the competent authorities of the relevant deeds of acquisition, assignment and loss of property rights.

58. Benvenuti, supra n. 49; Bariatti, supra n. 49, at 1325 ff.
15.2. Taxation of immovable property under domestic law

15.2.1. Application of income and corporate income taxes to immovable property

15.2.1.1. Definition of immovable property

The Italian income tax code (hereinafter IITC) does not have a specific definition of the term “immovable property”. Accordingly, the definition relies on the term as defined in article 812 of the Civil Code. More precisely, the IITC refers to the general term “immovable property” in order to identify a residual class of asset that does not have to be registered into the land and building register.\(^6^0\) For fiscal purposes, the main definition is instead related to the concept of “land and building” that have to be registered into the land and building registries.\(^6^1\) The definition of building is provided by article 36(2) of the IITC, which refers to every urban building that is capable of generating income on its own. This provision has to be read in conjunction with the cadastral law.\(^6^2\) According to article 4 of such law, “every building or permanent construction made of every material apart from the rural building has to be considered as urban building.” This “physical concept” has to be linked with the tax side. According to the following article 5, “every part of a building that, as it is and by its own, is capable of producing income has to be considered as urban building.” Accordingly, from a fiscal point of view, the concept of urban building refers to cadastral law and it links a physical concept associated with an autonomous capability of producing income.\(^6^3\)

In principle, the cadastral physical concept does not differ much from article 812 of the Civil Code. However, it can be said that they are not strictly coincident and the cadastral definition is an autonomous concept in relation to the Civil Code provision. This seems to be the position also of the Italian Supreme Court. In decision 16824 of 21 July 2006, in order to determine if an electric power plant turbine has to be considered for fiscal purposes as movable or immovable property, the Court did not rely on the definition in the Civil Code. Indeed such definition was not taken into account because

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60. Art. 70(1) IITC.
61. Art. 25 IITC.
63. An extensive analysis of the concept “urban building” as stated in the cadastral law is provided by the Italian Territory Agency in circular letter n. 4/t of 4May 2006.
it does not take into consideration technological progress and new advance techniques through which every material object can be incorporated into a land and thereby become a “building”.64

Lastly, it can be concluded that the tax definition of immovable property (or more precisely land and building) relies completely on the cadastral law. The Civil Code concept assumes a marginal role only as far as the residual tax rule is concerned and more precisely on land and building that do not have to be registered in the land and cadastral register.

All the above refers to immovable property located in the Italian territory. As far as the immovable property located abroad is concerned, the IITC refers only to land and building. Since some taxation rules applicable to the Italian land and building are also applicable to the foreign land and building, it could be argued that the cadastral notion of land and building has to also be applied to the foreign ones.

15.2.1.2. Taxation of immovable property

15.2.1.2.1. Immovable property unrelated to a business activity

The Italian tax system can be qualified as a scheduler one. There are six class of income: income from immovable property, income from capital, self-employment income, labour income, business income and miscellaneous income.

Income from immovable property refers to income related to land and buildings that have to be registered in the land and building register.65 Immovable property income can be divided into three subcategories, the first two (reddito dominicale and reddito agrario) related to the land and the third that refers to the buildings (reddito dei fabbricati). As a general rule, income is taxed on accrual basis66 and the taxable person is the person that has legal ownership on the land and building. There is a deemed income that is

64. Another clear example of an autonomous physical concept of immovable property (better, building) refers to solar panels. Indeed, in Circular Letter 36 of 19 December 2013, the Italian revenue agency did not consider a solar panel permanently incorporated into land a building on condition that the solar panel could be removed without losing its capability of being reinstalled. According to the Civil Code, every construction that is incorporated into land, even if not permanently, has to be considered an immovable property.
65. Art. 25 IITC.
66. Art. 26(1) IITC.