

MAZZESCHI

Italian Immigration
& Citizenship

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News, updates and curiosities on
Italian Immigration and Citizenship



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WORKING AND LIVING IN ITALY:

Working remotely in Italy: should I stay or should I go?

Italy does not have any specific provision regarding “remote working” carried out by foreign visitors. The only reference we have found and that be applied by analogy to this scenario, is in the guidelines of the Italian Consulate of San Francisco for a kind of retirement visa. This visa does not allow to work and the Consulate specifically indicates that:

“Applicants are not permitted to work from home, blog for payment, offer consulting services to their previous employers, or otherwise dodge this restriction.”

From a strict legal point of view, it is our opinion that even though the individual would be working for clients outside Italy, he would still work and if she/he has entered Italy without a work visa (for tourism or business) he/she would violate the scope of his visa/scope of entry (if he is a non-visa national).

The website of Italian Ministry of Foreign Affairs has a online questionnaire to be used by foreigners willing to enter Italy. (www.esteri.it)

If you select “work” as reasons of stay (and there is no difference if the work is for local or foreign clients) the answer is always that a work visa is required

EU Guidelines

Additionally, EU Guidelines (applicable for social security) provide for that the worker is subject to the rules of the country where he works:

“As a basic rule, you are subject to the legislation of the country where you actually work as an employed or a self-employed person . It doesn’t matter where you live or where your employer is based” (<https://ec.europa.eu/social/main.jsp?catId=851&langId=en>).

This applies to Social Security regulations but could be extended by analogy also to employment and immigration rules.

Possible Tax issues

Last but not least, working “remotely” in a country may have tax consequences both for the individual and for the company he is eventually employed by. OECD has issued a comprehensive analysis of related issues

[OECD Secretariat analysis of tax treaties and the impact of the COVID-19 crisis](#)



MY HOME IS MY CASTLE

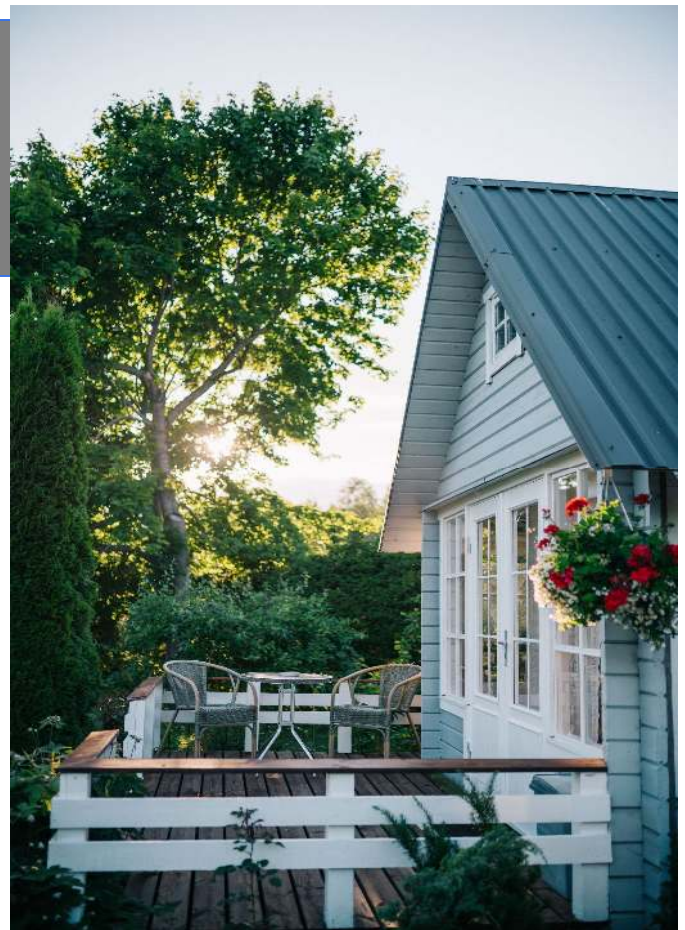
Can I buy a property in Italy and obtain residence permit?

Italy's "dolce vita" lifestyle is iconized by movies like Roman holiday (1953), La dolce vita (1960) and more recently Under the Tuscan sun (2003).

The country is famous also for its **food** which is considered to be the world's most popular.

My favorite movie about Italian food is Stanley Tucci's THE BIG NIGHT (1996), the story of two brothers, recent immigrants to America, who run a restaurant named Paradise. You cannot miss the hilarious (dramatic for an Italian!) scene when the chef labors all day to create a perfect seafood risotto but a customer complains she cannot find the seafood. Then she asks for spaghetti and meatballs as a side dish and the Chef tell his brother (Stanley Tucci):

"..... she is a criminal!".



Can you obtain a residence permit by purchasing a property? NO

Italy — differently from other EU countries — does not have a residency by real-estate investment program, but this does not discourage many buyers to dream purchasing a house in our country.

Houses for sale at € 1, is it true?

A growing number of small towns in Italy have started to put abandoned properties on sale for just € 1. The programs are attracting worldwide attention and the interest of many potential buyers. The goal of these programs is mainly to resettle rural areas. Details of the programs vary depending on the town but in most cases the purchaser is required to submit a renovation plan which must be completed within a set deadline.

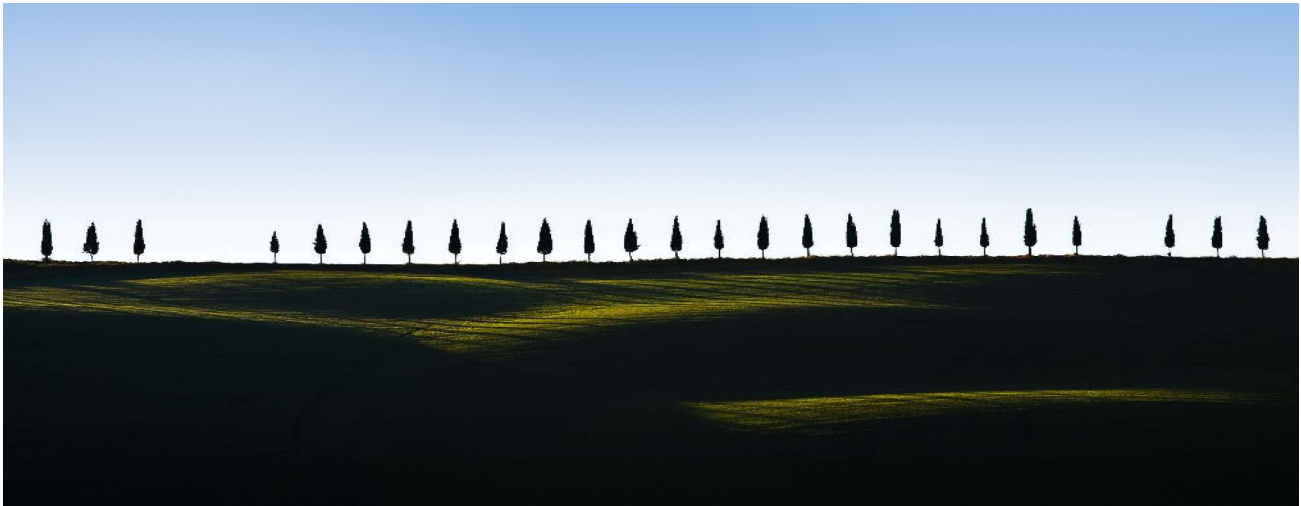


Why not buy a Castle?

If your budget is higher than € 1 there are plenty of historical buildings on sale in Italy. Some properties are privately owned and have been owned for centuries by the same family. In recent years, however, due to the increasing costs of maintenance, cuts in government subsidies to maintain historical properties and an increase in property taxes, many of these properties were put on the market. Furthermore, many historical and valued buildings are also owned by the State which has started a program to sell it or lease it. Many of the assets (which include palaces, villas and hotels) need to be redeveloped but several are in city centers and attractive locations and prices can be lower than market prices. The Tuscany Region has a dedicated website where available properties are displayed.

Which visa options are available?

While the purchase of a property does not automatically grant a visa, it is still possible to obtain a kind of ‘retirement visa’ (**residenza elettiva**) by proving a “passive” income (i.e. pensions or savings, not a salary or compensation for work) of not less than € 31,000/year. This visa, however, does not allow the individual to work while in the country. Another option could be **the Investor’s Visa** which requires to invest (i) € 2 Million in Italian government bond; (ii) € 500 K in a company or € 250 K in a start-up (ii) € 1 Million in a philanthropic project.



Is my purchase safe and guaranteed?

The purchase of real estate, from a legal standpoint, is very safe in Italy. A Notary, who is a public officer under Italian law, will intervene in the acquisition procedure. Notaries act on behalf of the Government and NOT on behalf of either the buyer or the seller and they are completely neutral. Italian Notaries perform more duties than those normally associated with Notaries in other countries. Notary Public must carry out a legal and administrative due diligence on the property to make sure that the seller has the full title on the property, the property is free from mortgages, liens or other burdens, and it is compliant with building and safety regulations. The Notary’s due diligence does not include any checks on possible structural defects and it is therefore advisable to appoint a specialized technician for this purpose. As additional guarantee, if you buy a property under construction, the builder — until Closing is finalized — must provide a bank or insurance guarantee equal to price paid. The buyer is therefore protected against the builder bankruptcy or failure to complete the project. Furthermore, the seller is liable for major defects of the property until 10 years after the Closing. Last but not least, the buyer can request that the Notary acts as escrow agent and keep any funds paid by the buyer in deposit, until the closing is finalized.



Are there any limitations for foreigners to buy?

As a general rule, Italian law permits the purchase of real estate by foreigners. However, can be a few exceptions for foreigners coming from countries that do not grant reciprocity rights to Italian citizens (i.e. countries which do not allow Italian citizens to purchase a property).



Incentives for restructuring works

In order to protect and boost the construction industry, the Italian government has approved a **special 110% deduction** applicable to building renovation works for energy efficiency and for seismic risk reduction work. In addition, the **possibility of assigning credit to financial intermediaries** is also given to the end of favoring the energy requalification of the buildings to become more eco-sustainable. Investors can also take advantage of the new **flat-tax regime for new residents**. In fact, individuals transferring their tax residency to Italy can take advantage of a flat tax regime (€100,000) on their foreign income.

Disclaimer: The information provided on this article (i) does not, and is not intended to, constitute legal advice; (ii) are for general informational purposes only and may not constitute the most up-to-date legal or other information (iii) this website may contain links to other third-party websites. Such links are only for the convenience of the reader; (iv) readers should contact their attorney to obtain advice with respect to any particular legal matter.

COVID-19 – Updated rules for entry in Italy

Starting from April 19 and at least until April 30:

Also travellers from countries in list D and E (see below) are required to undergo a swab (molecular or antigenic) carried out within 48 hours prior to entry into Italy and with negative result

The quarantine period for travellers from countries in list D and E (see below) is reduced from 14 days to 10 days. At the end of the 10 days isolation period, it is necessary to undergo a further molecular or antigenic test

The restrictions for travellers from and to the Austrian region of Tyrol no longer apply.

Persons travelling from Brazil are allowed entry to Italy also to join their spouse or civil partner.

The self-declaration form required upon entry will be soon replaced by an electronic form.



List of countries:

List C – Austria Belgium, Bulgaria, Cyprus, Croatia, Denmark (including the Faroe Islands and Greenland), Estonia, Finland, France (including Guadeloupe, Martinique, Guyana, Reunion, Mayotte and excluding other territories outside the European mainland), Germany, Greece, Ireland, Israel, Latvia, Lithuania, Luxembourg, Malta, the Netherlands (excluding territories outside the European mainland), Poland, Portugal (including the Azores and Madeira), Czech Republic, Romania, Slovakia, Slovenia, Spain, Sweden, Hungary, Iceland, Norway, Liechtenstein, Switzerland, Andorra, Principality of Monaco, United Kingdom of Great Britain and Northern Ireland.

List D – Australia, New Zealand, Rwanda, Republic of Korea, Singapore, Thailand

List E – Rest of the world – (all States and Territories not specifically referred to in any other list) except Brazil where different rules apply.

For further information and set of rules that apply, please refer to https://infocovid.viaggiasesicuri.it/index_en.html

Travellers from the UK, Austria and Israel will be allowed to travel to Italy

Starting from April 7 and until April 30, travellers from the UK as well as Austria and Israel will be allowed to travel to Italy and will be subject to the same requirements as arrivals from other European countries. They will be required to:

Take a COVID-19 test, with negative result, within 48 hours prior to arrival

Notify local health authority of arrival and self isolate for 5 days (exception applies to arrivals from Tyrol region – 14 days quarantine required)

Take a second COVID-19 test at the end of the 5 days quarantine period.



Schengen Area:

Limited territorial validity visas

Schengen Area: LIMITED TERRITORIAL VALIDITY VISAS

(visas valid for the issuing Member State only)

According to Article 25 of the Schengen Visa Code, Member States can exceptionally decide to issue a visa with limited territorial validity. Such visas can be issued in the following cases:

when it is considered necessary on humanitarian grounds, for reasons of national interest or because of international obligations (despite entry condition being met or despite an objection raised by another member State or if prior consultation has not been carried out)

when for justified reasons a new visa is issued to an applicant who has already used a visa allowing for a stay of 90 days during the same 180 days period

A visa with limited territorial validity is generally valid for the issuing Member State only and should be a single entry visa. If consent is granted, it may exceptionally be valid for more than one Member State.

Visas with limited territorial validity shall be issued also to applicants holding a travel document which is not recognised by all Member States.



Example 1, visa is issued for reasons of national interest

The UN Secretary General has set up a meeting in Geneva (Switzerland) between a head of state subject to a visa ban and the opposition leader of the third country concerned in order to find a negotiated solution to the political situation in the third country. The Swiss consulate decides to issue a visa for reasons of national interest.

Example 2, visa to a person who has already spent 90 days in the Schengen area

a Pakistani national stayed in Estonia from 15 March to 15 June and set up a research project and has since returned to Pakistan. Immediately after his return, the Estonian project manager realises that it is necessary to have the Pakistani scientist come back otherwise the project will be lost. In this case a visa with limited territorial validity allowing for a stay of up to 90 days in Estonia may be issued.

Example 3, visa issued without the required prior consultation with other Member States

A Vietnamese civil servant needs urgently to travel to France to replace a colleague who was to participate in high level political negotiations with representatives of the French government. Since there is no time to carry out the necessary prior consultation of another Member State the French consulate issues a visa with limited territorial validity.



Cryopreservation of embryos: what happens in case of divorce?

A recent decision was taken by a lower Court stated that a spouse can use the embryos without the need of the other spouse's consent.

In Italy, medically assisted procreation is ruled by Law n.40/2004. This law states that it is possible, for heterosexual couples – either married or cohabiting – to be helped with artificial techniques once they have tried all the options to procreate and no therapeutic method had been effective in solving their diagnosed fertility problem.

In 2009, the Italian Constitutional Court consented the Cryopreservation of embryos, by modifying Law n.40/2004. Cryopreservation is the process of freezing and storing embryos and it is part of most in vitro fertilization programs. Before the Court's intervention, the law allowed the fertilization of a maximum of three eggs, which would be implanted simultaneously into the uterus of the mother.

Facts of the case

A married Italian couple decided to proceed with medically assisted procreation (MAP). However, since their first attempt was not successful, they decided to freeze the fertilized eggs for future attempts. As time passed by, the husband decided to divorce his wife, while she still had the desire to be a mother. The woman appealed before the Italian Court, alleging her right to be a mother by using the frozen eggs without his consent as she was no longer married to her ex-husband.

The Court's decision, delivered on January 27th, 2021, was based on Art. 6 para. 3 of Law n.40/2004 which stated: 'the will to conceive through MAP, can be revoked by either of the parents only until the egg's fertilization.' Being the frozen eggs already fertilized, the ex-husband could not revoke his consent.

The Court envisaged the prevalence of the right of the woman to use the fertilized eggs that had previously been legally frozen with the consent of her husband, although at the moment of the woman's fecundation the husband's consent was absent. She stated:

"I don't think it is fair to have your parental responsibilities taken away from you, I am grateful that the Court gave me and my child this opportunity".



Professional athletes and duelling nationalities

The practice of athletes “swapping” nationality in order to participate is not a novelty. The 1934 Italian squad that won the Jules Rimet trophy for the first time had as many as four Argentina-born ‘Oriundi’ — Luis Monti, Orsi, Enrique Guaita and Attilio Demaria. Their inclusion was heavily influenced by Italy’s fascist leader, Benito Mussolini. Mussolini was heavily investing in football at that time and was instrumental in hosting the mega event on home soil. He could not let go of this opportunity to win their maiden World Cup in order to demonstrate the country’s strength globally. Hence, he relaxed all the rules in the football federation and permitted the foreign-born players to represent Italy.

More recently, in each Olympic cycle, the controversy over whether athletes should be allowed to compete for a country where they are not from or do not live, resurfaces. The 2018 *Winter Olympics in PyeongChang* featured 178 athletes competing for a non-native nation, about 6% of the total competing in South Korea.

It is a well established principle in international law that it is for each State to determine under its law who are its nationals.

But, how does the power of States to grant citizenship matches with the rules governing sport competitions?

According to the Olympic Charter, “any competitor in the Olympic Games must be a national of the country of the NOC (National Olympic Committee) which is entering such competitor”. (Rule 41/1 Olympic Charter).

Bye-law to Rule 41 indicates that “ a competitor who has represented one country in the Olympic Games and who has changed his nationality or acquired a new nationality, may participate in the Olympic Games to represent his new country provided that at least three years have passed since the competitor last represented his former country.

In the last decades there have been a lot of controversies regarding the “nationality swapping” of many professional athletes.



One of the most recent cases is the tennis star, Naomi Osaka who renounced U.S. citizenship and opted to take Japanese nationality for the 2020 Tokyo Olympics. The upcoming Olympic games influenced her decision to pursue the Japanese nationality in Tokyo.

Every Olympic sport has an international federation that may choose to impose additional nationality requirements on top of Rule 41.

To tackle the controversial practice of “swapping citizenship” in professional sports, the IAAF Council announced in 2017 that all new transfers of allegiance in athletics were frozen with immediate effect. IAAF President, Sebastian Coe, commented:

“It has become abundantly clear with regular multiple transfers of athletes especially from Africa that the present rules are no longer fit for purpose and are open to abuse.”

Hamad Kalkaba Malboun, Africa Area Group Representative added that:

“The present situation is wrong. What we have is a wholesale market for African talent open to the highest bidder.”



Athletes must demonstrate to have a “genuine, close, credible and established link to the new Country”.

In March 2018, IAAF approved new rules (Rule C.3.4). An athlete who has never competed on behalf of a Country shall be eligible to represent a Member in a Competition if they are a Citizen of the Country by virtue of:

- a. having been born or having a parent or grandparent who was born in the Country; or*
- b. having Resided in the Country for at least three years; or*
- c. they have been granted refugee status or asylum status and permission to Reside in the Country; or*
- d. they are a Citizen of the Country by virtue of marriage, by virtue of Residence for less than three years, or by virtue of another means of naturalisation and the approval of World Athletics is obtained which approval shall be conditional upon: (i) the athlete observing a waiting period of three years ; and (ii) the athlete demonstrating that they have a genuine, close, credible and established link to that Country (e.g., through Residence there) and/or will have such a link by the end of the waiting period.*

What does it mean “genuine, close and credible” link?

The principle that citizenship should depend on the existence of a “genuine link” is based upon the Nottebohm decision by the International Court of Justice (1955). According to the Court, factors which are taken into consideration for determining that the link is effective (i.e. genuine) are:

- the habitual residence of the individual
- the centre of his interests
- his family ties, his participation in public life
- attachment shown by him for a given country and inculcated in his children



This orientation has been confirmed recently also by the European Commission, while dealing with the controversial citizenship-by-investment programs established by some Member States (Malta, Cyprus).

The EU Commission confirmed that “Member States generally regard the establishment of a genuine link as a necessary condition for accepting third-country nationals into their societies as citizens”.



The “genuine link” principle is debated

The need to prove a genuine link in order to obtain citizenship is however disputed by many authors (*). Also the European Court of Justice affirmed that “it is impermissible for Member States to restrict the effects of the grant of the nationality of another Member State by imposing an additional condition for recognition of that nationality” (*).

Furthermore, as noted by Martijn van den Brink, at least three practices implemented by EU Member State are incompatible with the principle of genuine links.

- (a) Some forms of discretionary naturalization, such as the granting of citizenship to individuals who make exceptional economic, scientific or athletic contribution to the country;
- (b) Naturalization policies that seek to remedy past injustices, such as Spain and Portugal granting citizenship to descendants of Sephardic Jews;
- (c) Investor residence schemes which allow beneficiaries to acquire citizenship without actually being present in the country.

Conclusions

To use the words of the International Law Commission (supported by many authors), the genuine link requirement proposed by Nottebohm cannot be applied strictly, because:

“it would exclude literally millions of persons from the benefit of diplomatic protection. In today’s world of economic globalization and migration, there are millions of persons who have drifted away from their State of nationality and made their lives in States whose nationality they never acquire.

Moreover, there are countless others who have acquired nationality by birth, descent or operation of law of States with which they have a most tenuous connection. Even supporters of Nottebohm, like Brownlie and van Panhuys, accept the need for a liberal application of Nottebohm”. (International Law Commission, First Report on Diplomatic Protection, p. 229, para 117).

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