

Family's Usufruct Arrangement Isn't Taxable, Revenue Agency Rules

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The Italian Revenue Agency on May 30 issued Resolution 218/E stating that a couple's sale of property was not subject to capital gains tax because their usufruct arrangement with a family member satisfied the principal residence requirement.

Background

Under the general rule of article 67(1)(b) of the Italian Income Tax Code (ITC), capital gains from the disposition of real estate by individuals are not subject to income tax if the property is held for more than five years.

Despite the five-year holding period requirement, a gain from the sale of real estate is not taxable if the property has been inherited or if the taxpayer used it as his principal residence or as the principal residence of members of his family. As long as a dwelling unit is used as a principal residence, the interest the taxpayer or a member of his family has in the property is irrelevant.

A usufruct, per se, does not exist under U.S. common law. It is a legal interest in property created under the Napoleonic Code and is akin to a life estate or a term interest in property. Most of the U.S. tax issues generated by usufructs arise regarding the estate tax and regarding Louisiana decedents, as Louisiana's civil law is based on the Napoleonic Code. Perhaps the

transactions most similar to a usufruct are the creation of a life estate or the sale of a property subject to the retention of an [X]-year possessory interest on that property or part of it.

Resolution 218/E

Resolution 218/E addresses the applicability of ITC article 67(1)(b) in a case in which a husband and wife owned a piece of real estate and a usufruct was created for the benefit of the sister of one of the spouses.

The term "usufruct" here refers to a common division of ownership under Italian civil law in which one person has the use of the property and another has the ownership of it. The person with the use is said to have a usufruct of the property. Usufruct is the right to use the property, to enjoy the benefits and income of the property, and to rent out the property, without owning it.

In this case, the husband and wife had sold the property before the expiration of the five-year holding period and after the property had ceased being a usufruct because the spouse's family member had died.

Because the property had been used by a family member as her habitual place of abode for most of the taxpayers' holding period, the taxpayers met the principal residence requirement. Accordingly, the Italian tax authorities ruled that the gain from the sale of the real estate was tax free under ITC article 67(1)(b). ♦

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