

Diversity and Inclusion

A short guide to rights and taxes
for LGBT+ moving to ITALY



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The Firm

Pirola Pennuto Zei & Associati is a leading Italian independent tax and legal advisory firm. The Firm boasts more than 600 professionals with technical and specialist skills, who provide a wide range of tax, legal and company law services in Italy and abroad, where the Firm operates both from its own offices and with the assistance of a wide network of corresponding firms.

In assisting its clients, the Firm uses advanced methodologies and a multidisciplinary approach through its lawyers and accountants who, with a focus on the most diverse sectors, offer services and customised solutions, ensuring maximum efficiency, thanks notably to constant upgrading and internal exchanges.

We're really proud of our record on diversity and equality at Studio Pirola and we hope you find this short booklet useful.

Introduction to booklet

This short booklet is addressed to people in “same sex relationships” that currently live in Italy or plan to move to Italy to guide them primarily through the **rights** that they have fought so hard to achieve.

The booklet elaborates as well on the main **fiscal aspects** that may be of interest for same sex couples, including new attractive tax regimes for expats, HNWIs and pensioners moving to Italy.

EU Law (principles)

- EU law, while not obliging Member States to allow or recognise same-sex partnerships or marriages, it does oblige Member States to treat same-sex couples equally to opposite sex couples when they are applying EU law (including the law relating to free movement, migration and asylum).
- EU law requires the Member States:
 - to guarantee single-parent families, unmarried couples and same-sex couples **equal rights** compared to traditional families, in particular with regard to tax legislation, property regimes and social rights;
 - to recognize the right to marry and adopt minors, **expanding the concept of family.**

Italian legislation

- Thanks to the approval of the so called “Legge Cirinnà”, Law n. 76 of 20 May 2016 (effective as from 5 June 2016), **the Italian legislation recognizes** two forms of couple's relationships between persons of the same sex:
 - Registered partnerships or **civil unions**;
 - *De facto* partnerships.
- Italian law recognize married same-sex couples only as **civil unions**:
 - Same-sex marriages performed abroad must be registered as civil unions, regardless of whether the couple wed before or after Italy introduced civil unions in 2016.

Civil Unions – rights and duties

- Civil unions are equivalent to marriage with regard to most rights and duties (see below), except parenthood (stepchild or joint adoption) and reproductive rights (IVF for lesbian couples).

Rights

- Property rights
- Inheritance rights
- Marital leave
- Welfare

Duties

- Mutual duty to provide moral and material assistance
- Co-habitation
- Contribution to common needs

Civil Unions – the procedures

- The procedure to **enter into a civil union** is divided in two steps:
 1. Requesting an **appointment** to the town hall.
 2. Civil union **ceremony** (performed by the mayor or one of the deputies) in the presence of:
 - (i) two ceremony witnesses and, if necessary, an interpreter;
 - (ii) witnesses may be of any nationality but must be over 18 years old.

Civil Unions - immigration rights

- If civil union is considered equivalent to marriage, the partners will have the same **immigration rights**: this means that a registered partner has the right to accompany the other if he decides to move to another country **that recognizes the Civil Unions, such as Italy.**
- The **Italian civil code recognizes same-sex marriages contracted abroad**: these will be registered in Italy as civil unions. The procedure to obtain the recognition of a same-sex marriage contracted abroad involves the transcription of the marriage deeds in the registries of civil unions. The transcription may result either:
 - from the delivery of the deeds by at the Italian Consular office of the State in which the marriage was celebrated;
 - direct submission by the interested parties (or by a person with a power of attorney).

Civil Unions – main features (i)

Property regimes

- Unless otherwise agreed by the parties, the property regime is the legal communion of assets.
- Parties may opt for the separation of assets or for other available property regimes (conventional communion or the patrimonial fund).

Power of attorney

- Each partner of the civil union may give power of attorney (full or limited), in case of:
 - disease, for health decisions (including hospital visitation rights);
 - death, with regard to organ donation, body treatment methods and funeral celebrations.

Civil Unions – main features *(ii)*

Inheritance rights

- With reference to the inheritance, parties of the civil union have the same rights required by law to the marriage.
- In the event of the death of a party, the situation differs in case of testate and intestate succession and depending on whether the deceased leaves behind one or more children.

Civil Unions - income tax

- Italian tax law does **not recognize the concept of “family unit”**
 - *each party of a civil union has a distinct and separate tax obligation and has to file his/her individual tax return.*
- **Deductions for family circumstances** are also available on an individual basis (i.e. for each party of the civil union on a separate basis)
 - *e.g., 50% of expenses incurred on international adoptions.*
- Certain items of income are statutorily **attributed in equal parts** to each party
 - *e.g., income derived from property of minor children which is subject to their parents’ life interest.*

Civil Unions - inheritance and gift tax

- *Mortis causa* and *inter vivos* transfers of assets and rights, including **all assets and rights**, wherever located, **if the deceased/donor was resident in Italy at the time of death or gift**:
 - **Tax rate: 4%** if the transfer is made in favour of the party of the civil union, with a tax free threshold of EUR 1,000,000 (taking into account any previous donation made by the deceased to the beneficiary);
 - **Taxable base** for inheritance and gift tax is generally the fair market value of the transferred assets and rights with some exceptions (e.g. shares in non-listed companies and real estate in Italy);
 - **Exemptions:** e.g. State bonds, life insurances, and the transfer of business concerns and controlling shareholdings to the spouse and direct descendants, when certain conditions are met.

Special tax regimes

In recent years, Italy introduced **optional** tax regimes for foreign resident individuals that intend to relocate to Italy, namely:

1. the “**Flat tax regime**” for High Net Worth Individuals (HNWIs);
2. the “**Pensioners tax regime**” for pensioners and retired individuals;
3. the “**Impatriate workers regime**” for employed and self-employed workers.

<<Flat tax regime >>

- **SCOPE:** individuals, whether Italian or foreign nationals, who do not qualify as Italian resident in at least 9 out of 10 tax periods prior to the acquisition of Italian tax residence.
- **TAX BENEFITS:**
 - the payment of a **flat tax equal to € 100,000** per year with regard to foreign-source income and gains, regardless of whether the income is remitted to Italy;
 - **an exemption from wealth taxes** (IVAFE at 0,2% at and IVIE at 0,76%) on the foreign-held financial products and foreign real estate that they own and **no reporting obligations** on foreign-held assets;
 - **an exemption from inheritance and gift tax** with regard to foreign assets;
 - extension to one or more eligible **family members** (including the party to a civil union) through an additional payment of **25,000 Euro for each individual**.
- **DURATION:** fifteen tax periods.

<<Pensioners tax regime >>

- **SCOPE:** individuals, whether Italian or foreign nationals, who meet the following **cumulative requirements**:
 - receive a foreign pension;
 - have not been Italian tax resident for the in the 5 tax periods prior the one for which the option is effective;
 - have been tax resident in a cooperative jurisdiction;
 - transfer their tax residence in a municipality with a population not exceeding 20.000 inhabitants located in Southern regions (Calabria, Campania, Basilicata, Abruzzo, Molise and Puglia) or in insular regions (Sicily and Sardinia).
- **TAX BENEFITS:**
 - the **payment of a tax equal to 7 per cent on foreign source income and gains** (e.g., foreign pension, financial income, rental income, etc.), *in lieu* of personal income tax;
 - the **exemption from wealth taxes** and from **reporting requirements**.

<<Impatriate workers regime >>

- **SCOPE:** individuals, whether Italian or foreign nationals, if the following **requirements** are met:
 - acquisition of Italian tax residence;
 - non-resident *status* in at least 2 tax periods prior to that of acquisition of Italian tax residence;
 - commitment to maintain Italian tax residence for at least 2 years.
- **TAX BENEFITS:**
 - italian-sourced income (including employment and self-employment income) is **subject to tax in the amount of either 30 per cent or 10 per cent** (for individuals relocating to a southern Region of Italy, including Sicily and Sardinia);
 - therefore, in case of income exceeding euro 75.000, the rate for personal income taxes (including local surcharges) of roughly 45 per cent can be **reduced to either 4.5 per cent or 13 per cent**.
- **DURATION:**
 - **five** tax periods;
 - **additional five** tax periods if certain conditions are met.

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