Purchasing a house

The purchase of a house is always an important step in our lives. Just as sale of a property marks a moment dense in meaning: varying from investment to transformation of one's assets, and from need to generational changes. In both cases the purchase or sale of a property is not something to be taken lightly.
In fact these are extremely complex operations dense in snares, which cannot be undertaken without the advice of an expert. Are you in a position to know what are the rights and obligations both of the seller and of the purchaser? And, above all, have sufficient juridical notions to avoid unpleasant surprises both if you are selling and if you are purchasing a property?
Precisely in order to guarantee the highest possible level of safety and seriousness in the purchase of assets of such outstanding value, almost all systems of our modern nations have reserved to a particular juridical figures the task of ensuring the satisfactory outcome of the investment: the civil law notary, who is universally recognised as possessing unquestionable seriousness, absolute impartiality and considerable technical preparation.
In fact, thanks to his/her intervention the civil law notary, a third party in respect of the seller and the purchaser, guarantees both parties, assuming fully and unconditionally, above all, the very heavy responsibility regarding the positive conclusion from all points of view of the purchase/sale in question.
Precisely for these reasons, he/she is in a position to provide all useful or necessary information for the satisfactory outcome of the affair.
The civil law notary has professional experience and capacity such as enable him/her to give all the necessary explanations relative to the rights and obligations of the parties to the purchase/sale, guaranteeing the protection and complete satisfaction of the interests and expectations of both.
Thus it is important to refer to the civil law notary in order to become acquainted with the snares, both for the seller and for the purchaser, that may be concealed behind an apparently commonplace purchase/sale.
Snares that, perhaps surprisingly, arise from the time of the initial decision to sell or to purchase a house.
For example, are you aware of the considerable legal consequences deriving from a simple signature on a simple proposal (more often then not irrevocable) of purchase or sale?
Do you have any idea of the ties and obligations that may arise from the endorsement of a preliminary contract, even if drawn up privately?
Accordingly it is important to take the first steps in the difficult world of the purchase/sale of real estate on the right footing: let yourself be guided by your civil law notary, who will be in a position, not only to see that you achieve your objective satisfactorily and securely, while advising you too of the best solutions from the taxation standpoint.

The role of the civil law notary

The civil law notaryis at one and the same time a public official representing the State, and a professional expert in the juridical field.
He/she is appointed by the Ministry of Justice and is assigned by the latter to a single Municipality, although, if required, he/she is empowered to carry out his/her functions throughout the territory of the District in which the place he/she is assigned to is located, coinciding approximately with that of the Province.

Accordingly, although he/she is “physically” anchored to the territory for which he/she is competent, every civil law notary may, while remaining in the place assigned him, carry out his/her office relative to properties located anywhere in the national territory: for example, the parties to a purchase/sale of a property located in Palermo may still go to a civil law notaryof Turin in order for the latter to arrange for stipulation of the contract.
Choice of civil law notary is absolutely free and left to the discretion of the parties concerned: however, in the context of the purchase and/sale of property, choice of a civil law notaries is in general reserved to the purchasing party as that liable to payment of the remuneration due to the civil law notary, save agreement to some other effect

Rights and Obligations
The purchase/sale of a property implies for both parties both rights and obligations. In fact certain rights falling to one of the contracting parties, correspond to equivalent obligations on the opposite party, so that both the seller and the purchaser find themselves involved in a reciprocal tie of demands to be met and duties to be respected.
If any of these rights/obligations, such as payment/receipt of the price and handing over/receiving the property itself may seem, by hearsay, very obvious and taken for granted, others prove to be much less obvious to most, although they may in fact be of equal importance and dignity.
Let us consider some of the opposite points of view of the seller and of the purchaser.

Seller
Rights- The seller has the right to receive from the purchaser at the time of undersigningthe sales contract the entire sum of the price agreed on. Frequently the seller has already received an advance on such a price, generally in the form of a deposit: accordingly he/she will be entitled in such a case to the difference still owing, that is, the sales price minus the deposit. It is up to the seller to grant a respite for payment by the purchaser, which may or may not also imply the payment of interests.
It is up to the seller (among other things on the basis of the trust placed in the opposite party) to ask and to obtain from the purchaser guarantees of the satisfactory outcome of the deferred payment of the price.
The following are the alternatives: simple mention in the act of the deferment of payment; the issuing of bills of exchange with or without mortgage guarantee; taking out of a legal mortgage; or reservation of ownership until final settlement on payment of the last instalment due. In view of the complexity of this topic and above all the need for an assessment on the basis of each concrete case, it is best to refer to a civil law notary, who will suggest the best solution for the protection of your right.
Finally, a mention of the procedures of payment: since the law forbids the circulation of cash for amounts in excess of 12,500 euro, the alternatives remaining are basically as between non- transferable banker’s draft (that is issued by the bank, with guarantee of the existence of the necessary cover), non-transferable bank cheque or postal cheque (without the aforesaid guarantee) and bank credit transfer (very often the transfer proper is preceded by an irrevocable mandate given to the buyer’s bank for payment of the authorised sum of money to the seller).

Obligations and duties – The seller has first and foremost the obligation of handing over the property sold in the actual state in which it is, free of persons and things, to the

purchaser at the time of the notarial contract of purchase and sale, and accordingly contextually with the balance of the sales price. However he/she has the faculty of allowing the future purchaser to enter the property also prior to the transfer of property ownership proper, with the proviso that he/she is still the owner of the property and as such is not responsible at civic, criminal, administrative and tax level.
Vice versa, the seller may be authorised by the new purchaser to stay on in the property assigned or in any case to defer its handing over even to some subsequent time. The seller has the obligation of notifying with special form addressed to the local authority of public security (the police, or in the absence of same, the Mayor) within 48 hours from delivery, the assignment of ownership of the building, indicating the name and address of the purchaser. Finally the seller has the obligation of indicating to the civil law notary the details concerning the building permission regarding the property sold; of producing all administrative documentation in the case of a building amnesty; or presenting the Certificate of Town-planning Use issued by the competent Municipality in the case of alienation of land; of guaranteeing the buyer against eviction and errors in procedure; of paying all condominium expenses, also including those merely resolved on, up to the date of sale, save agreement to the contrary; of paying ICI (local property tax) up to and including the whole of the month of sale, if transfer takes place from 16th of the month in question onwards, otherwise for the whole month prior to that of conclusion of the contract, if the contract is signed in the first fifteen days of the month.

Rights – The buyer has first of all the right to receive from the seller delivery of the property at the time of the notarial purchase/sale contract, contextually with payment of the price, in the actual state known, with any accessories agreed on, free of persons and things.
It is licit for the purchaser to request handing over of the property in advance of the definitive transfer,: however it is not his/her right to obtain this, since this is left to the discretion of the owner to decide (not only since the full price has still not been paid over, but in view also of the continuing civil, penal, administrative and tax liability still applying to the seller connected with the fact of ownership).
Vice versa it is also possible for the buyer, in order to facilitate the seller, to postpone delivery of the property until some time subsequent to stipulation of the definitive contract, although, in such case, it would be advisable to fix a final deadline in the act itself, also foreseeing some penalty on the case of delay thereto.
The purchaser is entitled to: receive from the seller all documentation relative to the property (for example, regarding any building amnesties and regarding receipt for payment of the condominium expenses and of any loans bearing on the property); be guaranteed by the seller both against eviction and against any errors regarding the property; to obtain from the seller all useful information relative to the property.

Obligations –The main obligation of the purchaser is obviously to pay the price agreed on with the seller at the time of underwriting the purchase contract. In the case of advance payment of a sum on account or as deposit, there will obviously be the obligation of paying off the difference, that is, the sum still owing. It is licit for the purchaser to request a deferment of payment, but he does not have the right to obtain this from the seller, since it is left to the latter's discretion to grant such a request or not: in fact the obligation to full payment of the price falls on the buyer with the purchase and delivery of the property (for any forms of guarantee connected with the granting of a deferment, please refer to "Seller-Rights").

Whereas, in connection with delivery of the property, it is up to the purchaser not to pay over the full sale price in the case of the release of the property by the seller not occurring: included in the wider context of the agreements between the parties, is choice of one of the various solutions possible (payment in full without delivery, thus granting the seller a last deadline for release of the property; foreseeing a penalty; or payment of the balance price on delivery only: in this last case it will however be necessary following the purchase/sales contract to draw up a further notarial act known as acquittal, by means of which the seller, by handing over the building and receiving the balance price from the purchaser, leaves the latter a liberatory receipt (in fact an acquittal) for payment of the sales price .

Snares

In the purchase and sale of a building, as from what we defined as phases preceding the definitive act, the civil law notary carries out a very delicate and important function: that of verifying that in fact the seller can freely sell that property and that the purchaser, in his turn, can freely purchase it. To give an example, and merely to quote certain of the most important aspects, the civil law notary carries out the function of ensuring certainty regarding the personal identity of the parties (in other words, that the seller and, accordingly, owner of that property is precisely that seller and owner); of guaranteeing the full ownership, entitlement and availability by the assignor, of that given property as well as its complete freedom from mortgages, distraints and any other kind of ties or limitations, he/she has the task of ascertaining that the seller has been satisfied and that thus he has received from the purchaser the consideration agreed on and that, meanwhile, the purchaser has received from the seller the keys of the new house, enabling him (finally) to truly enter into possession of the same; and, finally, to advise the buyer adequately (as well as the seller, as explained more fully hereafter…) of any taxation implications, suggesting the best and most advantageous solutions from an economic point of view in the case in point.

And these are only some of the many extremely important tasks that the civil law notary, in his twofold capacity of free professional and public official, is required to perform when he is entrusted with the job of accompanying the whole course of a purchase/sale of property; a quite long and laborious process of which the conclusion and undersigning of the definitive contact is only one phase, albeit central and emblematic, with stipulation of the notarial act in fact representing, basically, the exterior side (metaphorically speaking, the tip of the iceberg!) of all the obscure but fundamental work carried out by the civil law notary (work which in fact is not destined to end with the drawing up and signing of the contract, but which continues, with equal intensity and importance, also thereafter, for the carrying through of other important procedures such as registration, transfer and above all transcription of the contract).

The owner of a property cannot always sell it when and as he/she wishes, just as not all subjects can feely become purchasers of a property: it may happen that there are ties or limitations which permit the sale or purchase only after having carried out a whole series of formalities.

Availability

- If one spouse wishes to sell a property, it will be necessary to verify whether there is or is not the need to obtain the other spouse's consent (See "*A particular case*" to the related paragraph).

- If a minor or legally incapacitated person are owners of a property, it will be necessary to obtain the authorisation of the judge for sale, and the intervention of their guardian or parent or legal representative; the same happens if they purchase a property.
- If the property inherited is in communion between the different co-heirs, in order to sell the share of one of them, it is necessary first of all to "offer it" to the other joint owners and, only if the latter decline to purchase it, can it be assigned to subjects outside of the communion;
- For the sale of agricultural land, if the immediate neighbours or the persons settled on the same are farmers, it is necessary to notify them of the intention of selling the property and, only if the latter refuse to purchase it, can it be sold, on the same conditions as those notified, to outside parties;
- In order to sell a non-residential property granted in lease, it is necessary first of all to offer it on sale to the tenant; in certain cases even apartments for residential use may be subject to this type of procedure;
- If the purchaser or seller of a property is a company, whether of persons or of capital, or a body in general, it is necessary for the subject having the power of representing the company and of making purchases or sales on behalf of the same to participate in the act, following authorisation (if required) of the competent internal organ;
- If a property is included in the category of popular economic or "public" housing in general, there may be innumerable limits to its sale/purchase (tied price, temporary prohibition of alienation, subjective requirements regarding the buyer, temporary duration of ownership, prior authorisations required).

Freedom
- If the property is classified as a "cultural asset" or if it is liable to particular artistic-landscape ties it is necessary, in certain circumstances, to obtain the authorisation of the competent authorities in order for it to be sold, and it is liable to pre-emption for purchase by the Superintendency;
- it may happen that certain formalities still have to be carried out on the property (usually mortgages) that prevent it from being completely "free"; the civil law notary is in a position to check up on the existence of such circumstances and to advise on the best solutions;
- in other cases the property may be encumbered with a right or easement (perhaps the most common is the right of way, for pedestrians or vehicles, in favour of the owner of the right and bordering on the property put up for sale) which may prevent its full and complete utilisation: it is important to establish already before undertaking the sale or purchase whether any such type of encumbrance exists.

Regularity
- When a property (apartment, garage, commercial premises, etc.) is sold, it is always necessary to verify its regularity from the building point of view, that is, the existence of a building licence or of concessions for any subsequent works carried out (this is often the case of works carried out without authorisation but thereafter "legalised" on the basis of a building permission on the occasion of an amnesty.);
- For land, it is always important to check on the "nature" of the same (that is, if this is agricultural land, whether it can be legally built on, or whether they are any landscape, archaeological or other ties attached to it) by means of the Certificate of Town-planning

Use and to control that any subdivision of the land in question is in accordance with the law;
- For any type of building it is necessary to control its regular entry in the land register;
- In the case of buildings, it is fundamental to ascertain whether the use made of the same is in accordance with that foreseen in the project and to that foreseen in the land register.

A particular case
Purchase/sale by spouses
Following marriage, in the absence of an explicit declaration to the contrary at the time of its celebration, the spouses find themselves bound by a system of legal communion of goods, since this is the legal system automatically applying since 20/09/1975 in our system.
This means that any purchase a spouse may make while the marriage holds good, is included in the legal communion (or very simply, in joint ownership) with the other spouse. The only exclusions envisaged by the law (to mention just the most important of them) are acquisitions by donation or by succession as a result of death, and of course those made prior to the marriage itself. Our legislation likewise foresees that in the following cases the goods acquired are not included in the joint ownership with the other spouse:
-goods of a strictly personal nature and their accessories (art. 179 c) of the Civil Code);
- goods which serve for the exercise of a profession excluding those used for the management of a firm which is in communion between the spouses (art. 179 d) of the Civil Code),
- goods acquired with the price of the transfer or exchange of the personal goods listed in art. 179 of the Civil Code providing this is explicitly declared in the act of purchase (art. 179 f) of the Civil Code. However in such cases the spouse who is not the purchaser of the goods must intervene in the contract to confirm exclusion from joint ownership of the good acquired in this way.
In the case of the spouses having opted from the outset of the marriage for separation of goods (making this choice on celebration of the marriage) or stipulating a marriage agreement, following marriage itself, by means of which they opt for separation of goods, no problem arises for purchases: each spouse will be the and exclusive holder of the good acquired thereafter. Whereas, as far as sales are concerned, in order to ascertain whether a given good is the exclusive property of the person in whose name it is or also of his/her spouse, reference should always be made once more to the patrimonial system existing between them and, in the case of legal communion, to the time of the purchase and well as the status of its origin.
To know more on whether a good comes under the communion between spouses or not, do not hesitate to consult the civil law notary!

Proposals
The proposal of sale or purchase is a document which the parties can sign before the purchase/sale proper. It consists of the expression of the will to sell on the part of the owner of the property to a probable purchaser or of an expression of the will to purchase by a possible purchaser to the owner of the property: in both cases, despite what may commonly be believed, with acceptance of the proposal, the purchase/sales contract is perfected and binding on both parties.

Usually the proposal, whether of purchase or sale, is irrevocable: that is to say, the proponent undertakes to maintain it firm for a certain period of time during which, even if he/she should wish to revoke it, because perhaps he/she has changed his mind, he/she cannot do so or if he/she does so, this is without effect. Contrary to what may be commonly believed, it is accordingly no longer easy once the proposal is signed, to withdraw from the same, since such a proposal implies obligations on the parties who have undersigned it.
For these reasons, it is important, before putting one's signature to any document regarding the purchase and sale of a property, to consult a civil law notary.
He will be in a position to give you all the necessary information on the nature of the document to be signed and on the content of the document, so as to prevent you from having unpleasant surprises.

Preliminary contracts
It often happens that, after viewing and choosing the house to be bought, substantial agreement is reached with the opposite party, although not as yet formalised in writing.
Thus it is advisable, as from this moment, to refer to the civil law notary even before the signing of the preliminary contract of purchase/sale (what is known as the preliminary contract).
In fact, in the preliminary contract both parties thereto undertake to stipulate, within a certain date and on given conditions, the definitive purchase/sales contract. Such a preliminary agreement (even if concluded privately) implies commitments which are juridically valid and fully binding for the parties to the contract (and as such even enforceable obligatorily with the intervention of the Judge).
Thus it will be easy to understand how advisable it is to carry out a whole series of controls and inquiries to which reference was just made (full entitlement of the seller, freedom of the building from any kind of tie and encumbrance, regular entering in the land register and town development plan) prior to endorsement of this preliminary contract which, we repeat, not only is legally binding on the contracting parties even if drawn up privately, but also as far as procedures are concerned for the future purchaser, implies the contextual payment of a sum of money (often even a very large one) as advance on the final figure agreed on. Accordingly by having immediate recourse to the civil law notary, it should be possible to get a complete juridical picture of the situation, to obtain precious information and advice for the positive outcome of the purchase/sale and, thus basically to avoid the risk of concluding preliminary contracts (with consequent assumption of undertakings and payment of sums of money) which probably would not have been undersigned at all if the details of the situation had been known, and in any case not on those conditions and in those terms.
By means of his intervention, in a position of impartiality (thus guaranteeing also the future seller himself/herself), the civil law notary offers both parties his juridical preparation, advising the best solutions for the case in point, carrying out all the controls and the investigations required (or in any case necessary with a view to the subsequent definitive contract), personally drawing up the preliminary contract and in this way at times even conciliating and mediating, as far as possible, the different positions of the parties (for example regarding any advances on the amount stipulated, the fixing of the final deadline for stipulation of the definitive act – since well aware, after assessing the whole question, of the technical times required for arriving at the final stipulation – for the handing over of the keys, just to quote a few of the most delicate and statistically most debated points between the parties to such a contract).
So that, even if today very frequently real estate agencies, besides carrying out their usual activity of mediation, also deal with the drawing up and stipulation of the

preliminary contract, it would appear advisable in general to refer to your civil law notary whose good offices will be required for the definitive contract, for the purpose of obtaining from him/her, after showing the note on the preliminary contract to be undersigned, all the appropriate information and suggestions, as clearly pointed out already.
A law dated 1997 has made it possible to transcribe preliminary contracts providing they are borne out by a public deed or an authenticate private contract (so that the "intervention" of the civil law notary already becomes indispensable), the effects of which cease and are considered never to have applied if within one year from the date agreed on by the parties for the conclusion of the definitive contract, and in any case within three years from the aforesaid transcription, transcription of the definitive contract has not taken place.
Transcription of the preliminary contract protects the purchaser from any prejudicial event that might affect the building (for example: mortgages or distraints) in the lapse of time between the preliminary and definitive contracts; even in the case of bankruptcy of the seller, transcription of the preliminary contract makes it much easier to recover completely or in part any sums paid over.
The notary will be pleased to give you all the necessary information on the nature of the document to be signed and on the content of the document, so as to avoid your having unpleasant surprises.

Content of the proposal and of the preliminary contract
For example, the following are the requirements which should be included in a sales or purchase proposal and in a preliminary purchase/sales contract:
- precise description of the property(ies);
- exact identification of the owner(s) and of the purchaser(s);
- obligations of the seller and of the purchaser;
- the sales price and proposed payment procedures:
- conditions of purchase/sale and guarantees of the same;
- documents on the origin of the property(ies);
- indication of the presence of any mortgage formalities;
- as from when possession of the property(ies) dates.

The civil law notary knows what are the elements that a "good" proposal or a "good" preliminary contract" should contain, in the interest both of the would-be seller and of the would-be buyer.

Purchase/sale
In general the purchase/sale is the contract having the purpose of transferring the ownership of a house or the transfer of some other right for the equivalent of a price; more generically it could be said that the purchase/sale of real estate is the formal agreement by means of which one party, called the seller, transfers to another, called purchaser, the ownership of a given property against payment of the price agreed on.
Our juridical system, in view of the extreme importance of real estate ownership, not only requires that the agreement of the parties is expressed in written form, but also requires the observance of certain essential rules, the presence of certain fundamental requirements and the contextual fulfilment of certain particular obligations.
Precisely for these reasons and above all for the purpose of safeguarding the high value of the stake involved, the task of dealing with real estate purchase/sales has been entrusted to the civil law notary, in his/her twofold capacity of public official and

expert professional in the juridical field, who may also suggest alternative solutions better suited to achievement of the result hoped for in relation to each concrete case.

Form

Purchase/sale may quite rightly be considered as the notarial act par excellence, in view among other things of all the obligations which the law imposes on the civil law notary following its stipulation (to quote the most important only: registration, transfer, communications to the competent authorities foreseen by the law…).

It is the notary who draws up the contract, having inquired as to the will of the parties and after pinpointing all useful information and carried out all the necessary controls for the satisfactory outcome of the purchase/sale.

It is the notary once more who reads out the contract to the parties, all of whom may not be contextually present: in fact, the intervention of the contracting parties is possible even separately; the notary (who in any case will always be present) will appraise the necessity, the advisability and the juridical admissibility of such a possibility.

If the parties so require or the notary considers appropriate, or perhaps even necessary (this is the case of an illiterate or of a blind person), two witnesses may also be present at the reading, who are not relatives or with an interest in the purchase/sale.

The undersigning by the parties, and possibly also by the witnesses, and finally by the civil law notary undoubtedly represent the final seal, the most emblematic and quite rightly the most important moment (above all from the emotional point of view) of the purchase/sale.

Notarial law requires a veritable undersigning complete with name and surname (that is, a full, clear and legible signature): thus it is no mere whim of the notary to require this.

If one of the parties cannot or is unable to undersign, in addition to the necessary and contextual presence of all the parties and also of the witnesses, it is sufficient that for the party to declare the reason explaining such an impossibility.

Requirements (content)

In the purchase/sale contracts the registry office details are given both of the seller and of the purchaser, a description of the property to be transferred, with indication of its location, of its nature, and of its boundaries as well as its land register identification and any obligatory information at town plan and development level.

Of course the purchase price of the property is indicated and the payment procedures foreseen (that is, whether it has already been paid for or is being paid for contextually, with consequent issuing of a acquittal by the seller, or else if a respite in payment is envisaged); it is specified if delivery of the property has already taken place (and the keys handed over!), or else takes place contextually, or is due to take place by no later than a certain date (possibly foreseeing a penalty in case of delay); it refers to the guarantee provided by the seller regarding the full availability and unencumbered status of the property or, vice versa, the indication of any ties or encumbrances and of the procedures for extinction and cancellation of the same; while, finally, a whole series of specific agreements may be included, which vary from one case to another, on the basis of what is requested by the contracting party and advised by the civil law notary, in general so as to avoid possible future discussions (examples of this could be: the sharing out of the condominium expenses, any assignment, together with the property, also of certain furnishings or accessories of the same; the foreseeing of derogations or extensions of the traditional guarantees…).

In any case however, it is the civil law notaries task to ascertain the will of the parties and to translate it into the best possible juridical formulation, in order to meet as far as possible equally the opposite interests of the parties.

Alternatives (to purchase/sale)

Purchase/sale differs substantially from exchange, donation and division.

In fact, an exchange implies the reciprocal transfer of given properties from one owner to the other: basically then, an exchange takes place between one property and another, exchange which may however also be accompanied by the giving of a sum of money as difference, when there is a disparity in values between the properties exchanged.

By means of donation, as in the case of purchase/sale, we are looking at a property transfer, but in the absence of a sale price: that is to say, the original owner of the good does not receive any price from the acquirer, since it is his intention to give it away freely, out of a spirit of liberality.

Finally, with division, several subjects who are indivisibly joint owners of several properties decide to assign to themselves the individual goods in exclusive ownership, thus removing the communion existing between them: in this case no transfer of ownership takes place, but we are dealing here exclusively with the concentration of someone's own entitlement over a specific property (or over a given part of the same).

As in the case of exchange, in division too there may be differences payable by certain of the sharers and in favour of others, for the purpose of compensating any inequalities between the values of the goods allotted.

Tax profit

At the time of the purchase of a property the Italian taxation legislation foresees payment of given taxes and duties, to be paid in general contextually with stipulation of the notarial contract of purchase/sale, into the hands of the notary who thus carries out the "heavy" task of collecting taxes.

Such taxes are by now almost exclusively payable by the purchaser; however a number of important taxation aspects subsist regarding the seller.

Purchaser (taxes on purchase)

The normative rules regulating the case in point are extremely complex and may be schematically simplified, with regard to a subjective profile and to an objective one.

From the former point of view, it is advisable to underline that the two principal types of taxes correlated to purchase/sale of property are two in number: registration fee (and the relative mortgage and land register taxes) and VAT.

The application of one or the other tax is directly connected with the subjective qualification of the selling party: in fact VAT is applied in general and save any particular exclusions, to all sales effected by companies, whoever the purchaser is; whereas the registration fee is applied, in all cases in which the seller is a private subject who is not an entrepreneur as well as in certain particular cases of sales by companies, in view of the kind of good property purchased and sold (objective profile)

The application of one type of tax thus precludes the application of the other.

In the framework of every type of tax, there is then a diversification of rates (that is, of the percentage of taxation to be calculated on the declared values) in consideration once more of the nature of the property and of the subject purchasing it (and of any particular concessions that the same may request).

Schematically and exemplifying, we could synthesise the situation as follows:

- sale by building company: VAT (4% - 10% - 20%) (save agricultural land)

- sale by different companies: VAT (4% - 10% - 20%) (if non-residential properties and land where building is permitted, otherwise registration tax);
- sale by private individuals: registration tax (3% - 10% - 11% - 18%) (in view of the nature of the property).

Concessions (purchase of the so-called first house for residence)
As seen earlier, in order to determine the type of tax, the sums and procedures of payment of the sums to be paid over, for fiscal purposes, as a result of the purchase of what is known as the first house for residence, consideration should be paid first of all to the seller subject. In fact, when the seller is the company which built (or restructured) the property, the purchase/sale is liable to VAT, which the purchaser has the obligation of paying over to the company itself and not to the civil law notary, contextually with payment of the sales price (both whether paid – as rarely happens – in a single payment at the time of handing over the property and of undersigning the notarial contract of purchase, or if paid – as happens much more frequently – in several instalments as advance payment) and on presentation of regular invoice (or regular invoices, in the case of several payments); the amount of VAT to be paid over to the builder is equivalent to 4% of the sales price agreed on, as shown in the invoice (or invoices) and declared in the act of purchase/sale in the presence of the civil law notary.

Accordingly, although the principal tax should be paid by the purchaser to the seller (who will thereafter pay it over to the Inland Revenue) together with the purchase price, at the time of the veritable transfer of ownership of the property, the purchaser likewise has the obligation of paying to the notary, in addition to his (hopefully!) legitimate remuneration for all the work carried out and which has to be carried out still, also a series of taxes and duties directly connected with stipulation of the contract of purchase/sale (as an example, we could quote registration mortgage and land register taxes, to quote only the most important of them), and which the notary accordingly has the duty of repaying to the State at the time of completing all the various obligations to which he/she is liable as an result, precisely, of the purchase/sale of property (registration of the contract, transcription of the same in the competent Conservatory of Real Estate Registers and its transfer to the competent Land Register).
Whereas, in the case in which the seller is not a building firm but a private individual (it could also be a business or a company but which does not carry out a building activity: it will in any case be the task of the civil law notary entrusted with the stipulation, in agreement with the public accountant of the seller, to verify which taxation rules apply in the case in point), the purchaser has the obligation to pay the civil law notary, at the time of undersigning of the purchase/sales contract, a sum equivalent to 3% of the sales price agreed and declared in the notarial act, as registration tax, in addition to another sum for the payment of a series of other taxes and duties connected with stipulation of the contract and with the consequent transfer of ownership (mortgage, land register, stamp taxes etc., as indicated earlier in connection with the case of the subject liable to VAT).
All of which sums are collected by the civil law notary in his (somewhat unfortunate!) capacity of tax collector for the State to which he arranges to pay them over at the time of completion of all the obligations prescribed by the law.
Four requirements are laid down by the norms in force for benefiting from the tax concessions regarding the purchase of a first house, consistent precisely with the application of one of the two alternatives envisaged: the rate at 4% (for VAT) and at 3% (for registration tax) instead of at 10%: The former, of an objective character, consists of the house to be purchased being a “non-luxury dwelling”; while the other

three, of subjective nature, consist of having one's own registry office residence within eighteen months from signing of the purchase contract or carrying out one's own activity there), not being the exclusive owner (even in communion with one's own spouse) of another residential house in the same Municipality where precisely the property purchased is located, and finally not being the owner even of a share (even in communion with one's own spouse) in another residential house purchased benefiting already from the tax concessions regarding the so-called first house.
Once the aforesaid tax concessions are utilised, it is not possible to resell the property acquired until five years have elapsed from the date of the act, on pain of the payment of a sum equal to the difference between the tax paid and the tax which should have been paid for a "second house", plus a sanction equal to 30% plus interests. The present norms however permit resale of the "first house" without incurring the obligation to pay the aforesaid sanction in the case when within one year from the date of sale of the house, steps are taken to repurchase another one for residential use. Moreover in this case not only is payment of the further tax with relative sanction avoided, as said, but it is possible also to deduct from the sum due as registration tax for the new purchase the amount of the tax (of registration or on the added value) already paid on the occasion of the first purchase (the classic "two birds with one stone"!): in technical terms, this is what is commonly termed a "tax offset", regarding the procedures and ambit of application of which it is undoubtedly worthwhile referring to your civil law notary who, assessing with specific attention the concrete case, will suggest possible solutions and will advise you in such a way as to guarantee the greatest economic saving permitted by the law.

Seller (taxation aspects connected with purchase/sale)
Having considered this question also from the viewpoint of the seller, it would be advisable, from this point of view once more, to remember that the very onerous INVIM (a tax originally levied on the alienator as a consequence of the assignment of a property) has been abolished once and for all, with twofold untold relief also for the civil law notary him/herself, in view not only of the complexity of calculating it, but also (as always) on account of the burdensome role of tax collector which he/was required by the law to carry out.
Notwithstanding which, it would finally seem expedient to underline that the seller could in any case be obliged to payment of certain sums when it comes to filling in his tax returns if he should resell within 5 years from purchase a property which he has not lived in (although purchased as first house) and at a higher price than that of its purchase: in this case too, in view of the complexity of the case in point and above all the need for a concrete assessment, it is advisable to refer to the civil law notary, who will be pleased to provide you with all the necessary information.

(from http://www.notariato.it/eng/home.aspx).