Italy

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1. Types of tax

1.1 Inheritance and gift tax

Law 286/2006 and Law 296/2006 have re-introduced inheritance tax and gift tax. The new legislation brought back into force the inheritance rules (effective 3 October 2006), the gift rules (effective 29 November 2006) and most of the provisions of Law Decree 346/1990 (Inheritance and Gift Tax Code), which previously regulated inheritance and gift matters until late October 2001 (as of 25 October 2001, the inheritance and gift tax were repealed).

Law 286 introduced changes to the application of the inheritance and gift tax and the applicable tax rates. Law 296 then introduced some further minor changes.

Both inheritance and gift taxes apply to the worldwide estate when the deceased (donor) is resident in Italy at the time of death (donation). Taxation will apply only to Italian assets if the deceased was not resident in Italy.

The tax is levied on the net share of the inheritance or donation passing to the beneficiary (e.g., net of liabilities and deductible expenses, debts of the deceased, funeral and medical expenses), taking into consideration non-taxable threshold amounts that depend on the relationship between the transferor and recipient. These allowances are lifetime amounts, and a running total must be kept if an individual receives more than one gift, or a gift as well as an inheritance, from one donor.

The law provides specific rules for the determination of the taxable base for each kind of transferred asset (e.g., real estate, shares, bonds, investment funds and movable goods).

1.2 Real estate transfer tax

In addition to inheritance and gift taxes, if the inheritance or the endowment includes real estate or real estate rights, the following taxes are also due:

- Mortgage tax, which is 2% of the value of the property (this is necessary to proceed with the registration of the deed in the public registers of property).
- Cadastral tax, which is 1% of the value of the property (required for the registration of the transfer deed).

Instead of applying the aforementioned percentages on the value of the property in cases of inheritance or endowment of the "first house," the beneficiary pays a fixed rate of €200 for mortgage and €200 for cadastral taxes.

1.3 Transfer duty

A transfer tax (register tax) is levied only on the transfer of real estate (in cases where there was no inheritance or endowment). The tax rate ranges from a fixed amount of €200 up to 9% of the value of the real estate depending on the specific features of the transfer and the specific kind of real estate subject to transfer (i.e., different rules are applied with reference to luxury real estate).

1.4 Net wealth tax

As of 2011, a wealth tax on financial assets held abroad by individuals resident in Italy has been introduced at the rate of 0.1% per year on the value of the financial asset. Starting from 2014, this rate is 0.20%.

The Italian Government has also introduced a wealth tax for real estate properties held abroad by Italian tax residents. In December 2012, the Italian Government decided to postpone the entry into force of both wealth taxes to tax year 2012. Therefore, taxpayers who had already paid this tax with reference to tax year 2011 can claim a refund or use the payment as advance payment for tax year 2012 wealth tax. This wealth tax is applied at a rate of 0.76% per year on the value of the property. Taxable value is equal to the purchase cost or, in the absence of this, to the fair market value (FMV) of the property, or, in some cases, a notional value determined according to both Italian law and foreign law. It should be noted that different rules apply to real estate located in the EU and some European Economic Areas (EEA) countries, and properties held in other countries.

Under certain circumstances taxpayers are entitled to claim a tax credit equal to the amount of wealth tax already paid in the country in which the property is located; a case-by-case analysis needs to be performed.

1.5 Others

Nonresident

In tax year 2012, a new tax on real estate held in Italy replaced the ICI tax (the Italian acronym for the municipal tax on real estate). This new tax, called IMU (Unified Municipal Tax) is applied at a rate of 0.76% per year on the value of the real estate. The taxable value for IMU is calculated based on the cadastral value – i.e., a notional value – attributed to each property by the local municipal offices.

Effective 2014 tax year, Italian real estate properties are subject to "TASI" (the Italian acronym for the municipal service tax). The new tax is generally applied using the IMU rules, even in cases of IMU exemption. The applicable tax rates vary from 0.08% to 0.25%; however, when the property is already subject to IMU, the Italian tax rules state that TASI has to be applied using the lower rate.

2. Who is liable?

Inheritance tax applies to the worldwide assets of Italian residents. Assets existing only in Italy are subject to tax if the deceased was not an Italian resident at the moment of death.

In practice, when the deceased person is a resident abroad, taxation in Italy is restricted to the property and rights located in Italy. On the contrary, when the deceased person is a resident in Italy, Italian inheritance tax is governed by the principle of territoriality, meaning that the taxable estate consists of all of the property and rights transferred *mortis causa*, including those located abroad.

Similar to inheritance tax, gift tax applies to the worldwide assets of Italian residents, while assets existing only in Italy are subject to tax if the donor was not an Italian resident at the time of the donation.

2.1 Residency

An individual is considered to be a resident in Italy for tax purposes if, for the greater part of the tax period (more than 183 days in any calendar year), at least one of the following conditions is met:

- He or she is registered under the Italian Office of the Resident Population (*anagrafe della popolazione residente*).
- He or she has their domicile in Italy, according to the Italian Civil Code (i.e., where an individual has established their place of business and family life).
- He or she has established their residence in Italy according to the Italian Civil Code (i.e., the place where the individual has their habitual abode).

The Italian tax authorities may take the following into account in order to define whether an individual is a resident in Italy or not:

- Moving to Italy with the family
- Transactions effected through bank accounts opened in Italy
- Renting a home for the entire year with normal levels of consumptions of electricity, gas and telephone services that demonstrate a substantial period of presence in Italy
- Membership in social or sports clubs

The Italian tax authorities use a special intelligence group of the tax police to collect evidence to establish whether residence in Italy has been established. This group's main purpose is to demonstrate:

- The presence of an individual's business interests in Italy
- The presence of family life in Italy
- An individual's remittance to Italy of funds earned abroad

3. Rates

The new legislation has introduced new tax rates that are common to inheritance and gift taxes and mainly depend on the relationship between the deceased and the beneficiary.

As a general rule, the closer the relationship, the lower the tax rate applicable; these rates may vary from 4% to 8% and apply to the total value of the legacy or the gift, with some tax-exempt thresholds.

4. Exemptions and reliefs

The tax rates currently applicable and the tax-exempt thresholds are listed in the table below.

Beneficiary	Inheritance and gift tax and tax-exempt threshold
Spouse, linear relatives (descendant, ascendant)	4% on the total assets' value with a tax-exempt threshold of €1 million for each heir/beneficiary
Brother or sister	6% on the total assets' value with a tax-exempt threshold of €100,000 for each heir/beneficiary
Other relatives (including uncles, aunts, nephews, nieces, cousins), certain relatives by marriage	6% on the total assets' value with no tax-exempt threshold
Other persons or entities different from the ones listed above	8% on the total assets' value with no tax-exempt threshold
Persons with critical disablements within the meaning provided by the applicable Italian law	There is a tax-exempt threshold of €1.5 million for each heir/beneficiary, and over this threshold the same rates listed above apply depending on the relationship with the deceased/donor

In addition to inheritance and gift taxes, immovable properties are subject to mortgage tax and cadastral tax, which range from €200 to 3% of the property value.

Beneficiary	Mortgage tax	Cadastral tax
Spouse, linear relatives (descendant, ascendant)	‣ €200 for the main dwelling ‣ 2% on the value* of other immovable properties	‣ €200 for the main dwelling ‣ 1% on the value of other immovable properties
Brother or sister		
Other relatives (including uncles, aunts, nephews, nieces, cousins), certain relatives by marriage		
Other persons or entities different from the ones listed above		
Persons with critical disablements within the meaning provided by the applicable Italian law		

**Value is determined according to a specific formula established by the tax authorities.*

It must be noted that, for the applicability of the above-mentioned tax-exempt thresholds with regard to inheritance rules, it is necessary to consider the donations made by the deceased person to the heirs during his or her life. This means that the value of the donations made to an heir that were not subject to taxation at the time of the donation, need to be added to the value of the legacy of the considered heir and the inheritance tax would apply to the difference between this total value and the tax-exempt threshold applicable (if any).

With Law 130/2013 (so-called European Law 2013-bis), the Italian Government has modified the taxable base of the Italian Inheritance and Gift Tax. On the basis of new rules that entered into force as of 25 November 2014, two new exemptions have been introduced. First, transfers of assets to EU/EEA public entities, foundations or associations are expressly exempted from the Inheritance and Gift Tax. Moreover, the new provision established that the complete exclusion from the taxable base (already provided regarding Italian public securities) is now applicable even in cases of EU/EEA public security transfers.

5. Filing procedures

An inheritance declaration must be submitted within one year from the date of the start of the inheritance, which usually coincides with the date of the taxpayer's death.

The appropriate form can be obtained from any local inland revenue office, or it can be downloaded from the inland revenue website (www.agenziaentrate.gov.it) and submitted at the local inland revenue office where the deceased had his or her last residence. The declaration is null and void if any other form is used.

Regarding inheritance declarations, Law Decree 175/2014 has established an exemption from filing requirements for spouses and linear relatives. More precisely, when the total assets value is lower than €100,000 and there are no rights on the real estate property, an inheritance declaration is not required.

If the deceased was not resident in Italy, the inheritance must be reported at the local area office where the deceased last had residence in Italy.

If there is real estate in the inheritance, mortgage and cadastral taxes as well as stamp duty must be paid using a specific form before submitting the declaration of inheritance. Furthermore, within 30 days of the submission of the inheritance declaration, a request for transfer of the property must be submitted to the Inland Revenue office. Even if more than one person is obliged to submit the declaration, it is sufficient if it is submitted by just one of these persons.

Endowment deeds and other voluntary deeds must be registered electronically within 30 days of the stipulation of the deed if they are done through a public deed or an authenticated private agreement.

6. Assessments and valuations

The taxable base is determined by the heirs and legatees according to the specific rules provided by the inheritance law. For example:

- Real estate and rights from real estate: the evaluation of the property is done by multiplying the cadastral revenue by the relevant updated coefficients.[1]
- Shares in the capital of a company: the value is given by the net equity.
- Companies: the value is given by the net equity without evaluating immovable goods and goodwill.

The taxes are self-assessed and paid by the heirs and legatees, or their legal representatives, before the filing of the inheritance declaration.

7. Trusts, foundations and private purpose funds

In 2007, for the first time, the Italian Government provided a set of rules on the tax treatment of trusts. These provisions determine the tax residency of a trust and its taxation: i.e., taxation on the trust itself vs. taxation on the identified beneficiaries of the trust.

The criteria to determine whether a trust is resident have not been affected by the recent changes in legislation, which merely introduced rebuttable presumptions of residence for trusts (presumptions apply only to certain trusts settled in a country listed as an uncooperative tax haven by the Organisation for Economic Co-operation and Development (OECD), i.e., in a country not providing for effective exchange of information with Italy). The Italian tax authorities set forth clarifications regarding the application of corporate residence criteria for trusts.

[1] With particular reference to real estate, the value declared in the inheritance declaration cannot be challenged by the tax authorities if it has been determined by applying the so-called "cadastral value" (i.e., a notional value determined by the local land offices).

Given the recent introduction of tax rules on trusts and the relatively untested practice, there is a high degree of uncertainty in relation to the tax treatment of foreign trusts and the related distributions to resident and nonresident beneficiaries, especially with reference to indirect taxation of trust set-up.

No specific provisions have been introduced with regard to distributions to beneficiaries. As suggested by most tax scholars, a distinction needs to be made, depending on whether the taxable income has been attributed to the identified beneficiaries or not.

If the taxable income has been attributed to the identified beneficiaries, the distributions should not be relevant for income tax purposes (irrespective of the application of exemption regimes when computing the taxable income to be attributed to the identified beneficiaries).

If the taxable income has not been attributed to the beneficiaries, it must be considered that no catch-all provision exists, and therefore, in order to constitute taxable income, the distribution should fall within the categories of income provided by the law. In the past, the tax authorities maintained that distributions to beneficiaries might fall within the categories of periodic payments or income from capital. However, in most cases, the distributions do not qualify as such.

Based on the above, a case-by-case analysis would be necessary to verify the correct tax treatment.

8. Grants

This does not apply to Italy.

9. Life insurance

Italian tax law provides a very complex set of rules with respect to the taxation of income deriving from life insurance. The tax treatment depends on several factors (e.g., when the individual has bought the insurance, specific terms and conditions of the contract, and how the proceeds are paid out).

As a general rule, the policy owner is entitled to a tax credit of 19% of the premiums paid up to a certain threshold.

According to domestic tax law, financial insurance (life and capitalization insurance policies) is subject to the following tax treatment:

- If the capital is paid as a consequence of the death of the policyholder, no taxation occurs.
- If the payment of capital is linked to the policyholder's survival, Italian tax law provides two different methods of taxation, depending on when the insurance policy was purchased:

  1. Insurance policy purchased before 1 January 2000: a flat tax rate of 26% applies to the difference between the payment received and the sum of the insurance premiums paid. The taxable base is reduced by 2% for each year following the tenth year from the date of stipulation.

  2. Insurance policy purchased after 1 January 2000: a flat tax rate of 26% applies to the difference between the payment received and the insurance premiums paid and not deducted from the tax liability of the previous tax years.

In cases where income from the insurance policy is paid to a nonresident of Italy, it will be necessary to verify the provisions of the double tax treaty in place between the countries involved.

10. Civil law on succession

10.1 Estate planning

Italy has some interesting estate planning opportunities. Below, we briefly mention the favorable regime applicable to the transfer *inter vivos* (gift) or *mortis causa* (inheritance) of shareholdings in Italian resident corporations (in cases where the shareholding represents the majority of the voting rights in the general shareholders' meeting).

In these cases, where the beneficiaries continue the business activity (maintaining control of the company) for at least five years, no inheritance and gift tax apply. If during the five-year blocking period the above-mentioned requirement is not met (e.g., because the beneficiaries sell a line of business), taxes and penalties will apply.

10.2 Succession

Who is subject to the Italian succession law?

The Italian succession law follows universal succession principles according to:

- The law of the deceased's nationality

  or
- The location of real or personal property

Heirs have universal succession, and unless he or she refuses to accept the inheritance, they are personally liable for the deceased's debt plus the total taxes due. These obligations are placed upon all the heirs jointly. The heir succeeds to the decedent in all aspects. However, his or her liability is limited to the value of the inheritance received in cases where the heir accepts the inheritance with the benefit of the separation of the property of the deceased from that of the heir (Article 512 of the Italian Civil Code). In such a case, the heir is obliged to make an inventory of property and present it for creditors when relevant.

A legatee under a will has only a personal claim against a compulsory heir (subject to forced heirship laws) and is not liable for a decedent's debts, although he or she is liable for relevant taxes on any legacy.

The main connecting factor for succession purposes is the citizenship of the decedent. In contrast, residence is relevant to tax liability. As noted above, as a general rule, taxation will occur on the basis of worldwide assets if the deceased was an Italian resident, but if the deceased was considered to be a nonresident, taxes are due only for the assets located in Italy, subject to any applicable tax treaties.

10.3 Forced heirship

In the Italian legal system, according to Sec. 46§1, Law No. 218/1995, heirship of an Italian citizen is governed by Italian law.

The rules governing hereditary succession in Italy provide that certain persons, such as spouses, children and legitimate descendants, are considered forced heirs (*heres necessarius*).

This compulsory share or forced heirship is called *legittima*. Forced heirship applies to all of the deceased's assets and to all of the inheritance rights.

If the deceased makes a disposition prejudicing the rights of any of these heirs, such dispositions can be challenged before an Italian court and the heirs can make a claim for the associated damages suffered. In the same way, lifetime gifts (donations) can be challenged before an Italian court, even if performed in favor of other legitimate heirs.

In practice, forced heirship rules restrict the ability to decide how assets should be distributed after death.

The following relatives are entitled to receive the following minimum statutory shares, it being further understood that neither burdens nor conditions can be imposed on such shares as listed in the table below.

Only 1 child and no spouse	One-half of the inheritance assets
2 or more children but no spouse	A total of two-thirds of the inheritance assets in equal shares
1 or more "*ascendenti*" (ancestors)	Generally parents, but no spouse and no children — one-third of the inheritance assets
Only a surviving spouse	One-half of the inheritance assets
A surviving spouse and a child	To the surviving spouse — one-third of the inheritance assets and to the child — one-third of the inheritance assets
A surviving spouse and children	To the spouse — one-quarter of the inheritance assets and to the children in equal shares — one-half of the inheritance assets
A surviving spouse and "*ascendenti*" but no children	To the spouse — one-half of the inheritance assets and to the "*ascendenti*" — one-quarter of the inheritance assets
Separated spouse not charged with separation	Same provisions applying to non-separated spouse
Separated spouse charged with separation	Living allowance if at the time of the succession, the surviving spouse enjoyed support from the deceased spouse

Sec. 46§2, Law No. 218/1995 allows the person whose inheritance is at stake to opt — by express testamentary disposition — for his or her succession to be governed by the law of the country in which the latter resides, provided that he or she continues to reside in that country until he or she dies. Such a choice cannot infringe upon or jeopardize the rights of the forced heirs residing in Italy at the time of the death.

10.4 Matrimonial laws and civil partnerships

The Italian matrimonial law normally applicable to all property acquired during marriage is joint ownership. However, at any time the spouses can draw up an agreement (in the form of a public deed or specific declaration in case the choice is made on the day of the marriage) in order to elect for separation of property acquired during the marriage. Assets acquired before the marriage remain the separate (individual) property of each spouse.

For estate planning purposes, it is possible to set up a patrimonial fund (*fondo patrimoniale*). This may be a unilateral declaration of trust by either of the spouses or a trust formed by a third party in favor of the family by way of a transfer of assets to the spouses as trustees.

With regard to the trust, under certain circumstances the Italian tax authorities would likely consider this kind of arrangement to be equivalent to the setting up of "*vincoli di destinazione*" and, as a consequence, they would consider it subject to gift tax. Based on the above, a case-by-case analysis would be necessary to verify whether gift tax is applicable or not to a *fondo patrimoniale*.

As far as civil partnerships are concerned, a new law is under discussion that would recognize a special civil partnership for same-sex individuals. Since this new measure would specifically extend the provision of Italian matrimonial laws to same-sex registered couples, we expect that this will be an important element to be considered for same-sex couples who are affected by Italian inheritances or gifts, or are planning real estate investment in Italy.

10.5 Intestacy

Under Italian law of succession, a person may dispose of his or her property or estate for the time after death by will (*testamento*) or, alternatively, let the law deal with this matter.

When a person dies without a valid will, Italian law states who is going to inherit and how much (*successione legittima*). When a person dies leaving a valid will, the law will ascertain the validity of the will, provide a set of formalities to be complied with, and in some cases taxes to be paid, and ensure that the will is implemented and the relevant assets are legally transferred to the persons or beneficiaries entitled (*eredi* or *legatari*).

Italian law will also ensure that the immediate members of the deceased's family are not deprived of their minimum statutory share of the estate (see Section 10.3).

Under Italian law there are three ways to make a valid will:

1. Handwritten will (*testamento olografo*) — this is a document personally handwritten by the person making the will (testator), dated and signed. There is no need for witnesses and no attestation clause. It can be a very simple letter or document.
2. Formal will (*testamento pubblico*) — this is a document drafted by an Italian notary upon the instructions of the testator, read by the notary to ensure that it complies with the wishes of the testator and signed by the testator in the presence of witnesses.
3. Secret will (*testamento segreto*) — this is a will drafted and written by the testator and placed in a sealed envelope, which is then delivered to an Italian notary.

10.6 Probate

Italian law does not require executors to be appointed; however, when a person dies owning property (land or buildings), it may be necessary to collect documentation, organize certified translations of documents, appoint a local notary and follow special procedures.

After completing the probate procedure, it will be possible to re-register the immovable assets in the name of the heirs (the Italian legal procedure defined as *voltura*).

11. Estate tax treaties

11.1 Unilateral rules

Unilateral relief is available in Italy for residents and nonresidents with respect to foreign gift and inheritance taxes paid on assets situated abroad that are also liable to Italian inheritance and gift tax. The relief is by way of credit, up to a maximum of the Italian tax attributable to those assets.

11.2 Double-taxation treaties

Italy has concluded inheritance and gift tax treaties with Denmark, Greece, Israel, Sweden, the United Kingdom and the United States.

12. Other

As mentioned above, the new legislation has introduced some new rules on the scope of the application of gift tax, the main changes being that in addition to donations, the transfer of assets made without consideration (*atti di trasferimento a titolo gratuito*) and the setting up of "*vincoli di destinazione*" (i.e., creation of encumbrances or other restrictions on the use of certain assets) are now subject to gift tax.

The Italian tax authorities have clarified that the setting up of a trust on certain assets needs to be deemed to fall within the notion of *vincolo di destinazione*; as a consequence, the gift tax would be applicable to the trust. The same conclusions may be reached with respect to the creation of fiduciary obligations.

In the last four years, the Italian tax authorities have provided several pieces of guidance and clarifications on the taxation of trusts; however, at the same time, Italian tax courts have taken different and often contrary approaches. Thus, there is a high degree of uncertainty.

The Italian tax authorities have also confirmed that gift tax applies both to purpose trusts (i.e., where the beneficiaries are not identified) and to trusts where the beneficiaries are clearly identified by the settlor. For the purposes of applying the correct tax rates and tax-exempt thresholds, the tax authorities have clarified that when the beneficiaries are identified, gift tax applies, taking into consideration the relationship between the settlor and the beneficiaries. On the contrary, when no beneficiaries are clearly identified, the relationship between the settlor and the trustee must be considered.

A different approach is taken by most scholars and tax experts, who maintain that entering into a trust deed does not determine any actual transfer of assets (and consequent enrichment) to the trustee; therefore, in theory, this transfer would not be subject to gift tax when the trust is set up.

In accordance with the most recent decisions of the Tax Supreme Court, the approach of the Italian tax authority has been recognized regarding the application of gift tax with proportional tax rate at the moment of the trust set-up, since any kind of assets and real estate transaction that implies an ownership transfer falls under the tax application with reference to indirect tax.