

Italy

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1. Types of tax

1.1 Inheritance and gift tax

Law 286/2006 and Law 296/2006 have reintroduced 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inheritance and gift matters until late October 2001 (as of 25 October 2001, the inheritance and gift tax were repealed).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 (donation) when the deceased (donor) is resident in Italy at the time of death. 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 nontaxable 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, from one donor. However, based on a recent decision of the Supreme tax court, the same rule is no longer applicable when an individual receives both a gift as well as an inheritance, from the same donor.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 above 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 applies at the rate of 0.1% per year on the value of the financial asset. Starting from 2014, this rate is 0.20%.

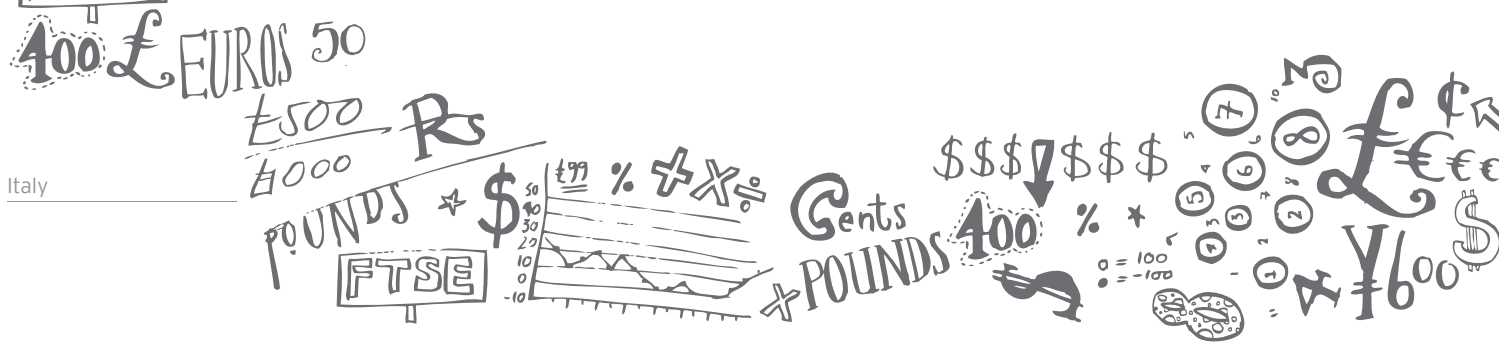
The Italian Government also introduced, starting from tax year 2012, a wealth tax for real estate properties held abroad by Italian tax residents. This wealth tax is applied at a rate of 0.76% per year on the value of the property. Taxable value is equal to the purchase cost or, in the absence of this, 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 European Union (EU) and some European Economic Area (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.

Italy has recently introduced a “new resident” regime that is applicable to individuals that transfer residency for tax purposes in Italy, provided that other conditions are met and a ruling is issued by Italian tax authorities. Under this new regime, Italian “new resident” taxpayers are not subject to wealth taxation on financial assets and real estate held outside of Italy. In addition, reporting obligations are not applicable to “new resident” Italian taxpayers.

1.5 Real estate property tax

In tax year 2012, a new tax on real estate held in Italy replaced the municipal tax on real estate (ICI tax). This new tax, called Unified Municipal Tax (IMU) is generally applied at a rate of 0.76% (however, each municipality has the right to increase the rate up to 1.06% and decrease up to 0.6%) 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 from the 2014 tax year, Italian real estate properties are subject to municipal service tax (TASI). 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?

In practice, when the deceased person is a resident abroad, taxation in Italy is restricted to the property and rights located in Italy. 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 based in Italy are subject to tax if the donor was not an Italian resident at the time of the donation.

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:

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

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:



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. On this matter, it has to be mentioned that, due to the entering into force of Law 76/2016, any rules previously applicable in case of marriage (i.e.: between spouse of different sexes) has been directly extended to same-sex civil partnerships.

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 or linear relatives (descendant, ascendant)	4% on the total assets' value with a tax-exempt threshold of €1 million for each heir or beneficiary
Brother or sister	6% on the total assets' value with a tax-exempt threshold of €100,000 for each heir or beneficiary
Other relatives (including uncles, aunts, nephews, nieces and cousins) and 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 or beneficiary, and over this threshold the same rates listed above apply depending on the relationship with the deceased

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 or linear relatives (descendant, ascendant)	<ul style="list-style-type: none"> ▶ €200 for the main dwelling ▶ 2% on the value* of other immovable properties 	<ul style="list-style-type: none"> ▶ €200 for the main dwelling ▶ 1% on the value of other immovable properties
Brother or sister		
Other relatives (including uncles, aunts, nephews, nieces and cousins) and 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 aforementioned tax-exempt thresholds with regard to inheritance rules, based on a recent decision of the Italian Supreme Court, it is no longer necessary to consider the donations made by the deceased person to the heirs during his or her life.



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 and EEA public entities, foundations or associations are expressly exempt from 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 and EEA public security transfers.

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.

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

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.

6. Assessments and valuations

- ▶ 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.

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).



7. Trusts, foundations and private purpose funds

In 2007, 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.

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 setup.

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 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:



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 one child and no spouse	One-half of the inheritance assets
Two or more children but no spouse	A total of two-thirds of the inheritance assets in equal shares
One or more <i>ascendenti</i> (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 <i>ascendenti</i> but no children	To the spouse – one-half of the inheritance assets, and to the <i>ascendenti</i> – 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.



10.5 Intestacy

10.6 Probate

11. Estate tax treaties

11.1 Unilateral rules



11.2 Double-taxation treaties

Italy has concluded inheritance tax treaties with Denmark, France, Greece, Israel, Sweden, United Kingdom and United States of America.

The treaties mentioned above only cover inheritance taxes, with the exception of Italy-France treaty, that covers gift tax as well.

12. Other

12.1 Indirect taxation on trust and similar structure

As mentioned above, new legislation has introduced 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* 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 clarification on the taxation of trusts; however, 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.

However, it is important to note that this aspect is subject to evolution. Indeed, with reference to the so-called "*trust autodichiarati*" (i.e., a self-declared trust), the Italian Supreme Court recently repealed the previous court decisions. Under the new approach, which is contrary to the position of the Italian tax authorities, self-declared trusts are not subject to gift tax in the hands of the settlor at the moment of the setup. Gift tax will be applicable only to beneficiaries as soon as the ownership of the segregated assets is transferred to them.