Italy

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1. Types of tax

1.1 Inheritance and gift tax

Law No. 286/2006 and Law No. 296/2006 reintroduced the inheritance tax and gift tax. The 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 No. 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inheritance and gift matters until late October 2001 (as of 25 October 2001, the inheritance and gift tax were repealed).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 No. 286/2006 introduced changes to the application of the inheritance and gift tax and the applicable tax rates. Law No. 296/2006 then introduced some further minor changes.

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

The tax is levied on the net share of the inheritance, donation or other gratuitous transfers 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 However, based on a decision of the Italian Supreme Court, the same rule is no longer applicable when an individual receives both a gift, as well as an inheritance, from the same donor. In Circular Letter No. 29/E of 2023, the Italian tax authorities have endorsed the position of the Italian Supreme Court.

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 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)

The value of the property is determined in accordance with the rules provided for purposes of inheritance and gift taxes (see Section 6).

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 EUR200 for mortgage and EUR200 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 EUR200 up to 9% of the value of the real estate depending on the specific features of the transfer and the kind of real estate subject to transfer (i.e., different rules are applied with reference to luxury real estate). If certain requirements are met, the value of the real estate can be determined by multiplying the cadastral revenue of the real estate by specific relevant updated coefficients.

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%. Starting from 2024 the rate of 0.4% percent applies if the financial assets are held in a jurisdiction considered to have a privileged tax regime. Furthermore, as of 2023 a specific wealth tax also applies, at the rate of 0.2% per year, on the value of crypto assets held with a nonresident intermediary or stored on UBS sticks or smartphones.

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 1.06% 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, to 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 (Article 24-bis D.P.R. No.917/1986) that is applicable to individuals that transfer residency for tax purposes in Italy, provided that other conditions are met. Under this new regime, Italian "new resident" taxpayers are not subject to wealth taxation on financial assets and real estate held outside Italy. In addition, reporting obligations are not applicable to "new resident" Italian taxpayers.

"New residents" are individuals who have been nontax-resident in Italy for at least nine years out of the 10 years preceding their transfer to Italy. They are able to pay a substitutive tax (EUR100,000) to their foreign income, and the regime may be extended to family members (paying EUR25,000 each member). The regime applies for a maximum of 15 fiscal years.

The exemption from the wealth tax on financial assets and real estate held abroad and reporting obligations also apply to individuals resident in Italy who opt for the flat tax regime for retirees (Article 24-ter D.P.R. No. 917/1986). This optional regime, which provides for a 7% flat rate on all non-Italian-source income, applies to pensioners who transfer their tax residence in specific municipalities of Italy with a limited number of inhabitants as identified by the law (nearly all the eligible municipalities are in southern Italy). Any domestic income will be ordinarily taxed. One necessary but insufficient condition for accessing this regime is possessing foreign-source pension income. The regime applies for a maximum of 10 fiscal years.

1.5 Real estate property tax

Starting from tax year 2020, Italy unified the former municipal taxes on real estate IMU and TASI, providing that TASI will be absorbed by IMU. The new tax will basically maintain the rules previously applicable to IMU and TASI in terms of real estate subject to tax, taxable basis and deadlines. In terms of applicable rates, tax has a base rate of 0.86% (however, each municipality has the right to increase the rate up to 1.14% and decrease the respective rate up to exempt from payment) 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.

Moreover, real estate used as a principal abode is excluded from property tax. However, if the principal abode is luxury real estate (i.e., A/1, A/8 and A/9 cadastral categories), tax is applied at a rate of 0.5% and a general tax discount of EUR200 (however, municipalities have the right to determine applicable rates in a range between 0% and 0.6%).

In some instances the taxable basis is subject to a reduction of 50%, among others, in the event that the real estate property falls under the category of a site of cultural interest (for historical and/or artistic purposes). Because some legal conditions need to be met and a further analysis performed to apply this reduction, a case-by-case approach is recommended.

2. Who is liable?

Inheritance tax applies to the worldwide assets of Italian residents. All and only the Italian assets are subject to tax also 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. 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. No relevance is attributed to nationality/citizenship and to the domicile of the deceased/donor.

However, the general rule stated above has been changed as a result of the special "new resident" regime. For individuals who qualify for this regime, only assets located in Italy are subject to inheritance and gift taxes once they are the deceased (in respect of inheritance tax) or the donor (in respect of gift tax). Therefore, the worldwide principle is not applicable to "new resident" taxpayers, and any assets held abroad do not fall under inheritance and gift taxation rules if the deceased or donor is subject to such special regime.

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.

2.1 Residency

An individual is considered to be a resident in Italy for income tax purposes if, for the greater part of the tax period(more than 182 days in any calendar year or more than 183 in case of leap year, also considering fractions of a day),at least one of the following conditions is met:

- He or she has his or her domicile in Italy (defined as the place where the individual's personal and family relationships are primarily developed).
- He or she has his or her residence in Italy in accordance with the provisions of the Italian Civil Code.
- He or she is physically present in Italy.

In addition, unless proven otherwise, a person is deemed to be resident in Italy if is registered under the Italian Office of the Resident Population for the greatest part of the tax period.

The Italian tax authorities may take the following into account to define whether an individual is a resident in Italy:

- 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 consumption 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

For purposes of inheritance and gift taxes, no specific definition of residence is included in the Inheritance and Gift Tax Code or in other laws.

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.

Generally, 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 No. 76/2016, any rules previously applicable in case of marriage (i.e., between spouse of different sexes) have been directly extended to same-sex civil partnerships. On the contrary, the law does not provide the same extension for cohabitants.

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 EUR1 million for each heir or beneficiary
Brother or sister	6% on the total assets' value with a tax-exempt threshold of EUR100,000 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

Beneficiary	Inheritance and gift tax and 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 EUR1.5 million for each heir or beneficiary, and over this threshold the same rates listed above apply depending on the relationship with the deceased

* Note that according to the Italian Supreme Court, certain kinds of minor transfers between spouses (e.g., wire transfer of cash) could be considered as a gift falling into the scope of gift tax, if they are significant enough to realize a stable increase in the assets of the donee and an impoverishment of the assets of the donor. Therefore, a case-by-case analysis would be necessary to verify the correct tax treatment.

In addition to inheritance and gift taxes, immovable properties are subject to mortgage tax and cadastral tax, which range from EUR400 to 3% of the property value.

Beneficiary	Mortgage tax	Cadastral tax
Spouse or linear relatives (descendant, ascendant)	EUR200 for the main dwelling 2% on the value* of other immovable properties	EUR200 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		

* The value of the property is determined in accordance with the rules provided for the purposes of inheritance and gift taxes (see Section 6).

It must be noted that for the applicability of the aforementioned tax-exempt thresholds with regard to inheritance rules, according to 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.

However, according to the Italian Supreme Court, the rule is still applicable where an individual receives more than one gift from the same donor; therefore, the value of the donations made to an individual needs to be recorded any time a new gift is granted to check if the cumulative sum exceeds the amount of threshold.

Italian tax authorities recently endorsed the above position of the Italian Supreme Court by publishing Circular Letter No. 29/E of 2023.

Specific exemptions from inheritance and gift taxes are provided by the Inheritance and Gift Tax Code and by other laws. Among others:

- Transfers in favor of the state, regions, provinces and municipal districts
- Transfers in favor of government bodies, foundations or legal associations (even if established in the EU, EEA and, subject to reciprocity, in other countries) for the purpose of assistance, study, scientific research, education or similar public utility purposes
- Transfers in favor of bank foundations referred to in Legislative Decree No. 153/99
- Transfers in favor of political movements and parties

- Transfers in favor of third-sector bodies referred to in Legislative Decree No. 117/2017 (enti del terzo settore), including social cooperatives and not including social enterprises incorporated in the company form, used in the course of statutory activities for the exclusive pursuit of civic, charitable and socially useful purposes
- Transfers of a business or of a participation in companies or partnerships in favor of the spouse or descendants if certain conditions are met (see Section 10.1). Furthermore, the following are excluded from the estate and thus not subject to inheritance tax, among others:
  - Severance payments in the event of the death of the employee
  - Insurance policies
  - Public debts securities (issued by the Italian government and by EU/EEA countries)
  - Other government, state-guaranteed or equivalent securities (including EU/EEA securities)
  - Vehicles registered in the public motor vehicle register (an exemption from the gift tax is set forth by law, too)
  - Cultural properties, if certain conditions are satisfied (in case of gifts, a fixed amount is due)
  - Financial instruments held by the deceased in an individual savings plan (piano individuale di risparmio)

The Inheritance and Gift Tax code provides that gift tax does not apply in cases of gifts or other gratuitous transfers connected with deeds concerning the transfer or establishment of rights in rem in immovable property or the transfer of businesses, if the deed is subject to the application of transfer tax, at a proportional rate, or value-added tax (VAT).

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.

On 23 January 2017, the Italian tax authorities launched an online platform that enables the declaration to be filed electronically, and starting from 2019, electronic filing is the only allowed procedure.

Regarding inheritance declarations, Law Decree No. 175/2014 has established an exemption from filing requirements for spouses, civil partnership and linear relatives when the total asset value is lower than EUR100,000 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, in certain instances, 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 according to the specific rules provided by the Inheritance and Gift Tax Code. For example:

- Immovable properties: The value is bsed on their fair market value at the moment of death or donation. However, the value declared in the inheritance return 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), which is normally lower than the market value.
- Listed participations: The value is equal to their average market price in the 90-day period prior to the succession's opening or the gift.
- Shares or quotas in the capital of a nonlisted company: The value is based on the proportional quota of the company's net equity, as resulting from the last balance sheet approved.
- Businesses: The value is based on the value of the single assets and liabilities without including goodwill.
- Bonds: The value corresponds to the value of similar listed securities or, if they are lacking, must be computed on the basis of objective criteria.
- Quotas of investment funds: The value corresponds to the value stated in the reports prepared pursuant to the law or regulatory provisions.

A rebuttable presumption, not applicable to the nonresident deceased, applies whereby cash, jewelery and furniture are deemed to have been transferred for a value of at least 10% of the overall net taxable amount of the assets, even if undeclared or declared for a lesser amount. This presumption can be rebutted only by making an inventory of the properties belonging to the deceased upon death, carried on according to the civil law provisions.

Inheritance tax is self-assessed by the heirs and legatees, or their legal representatives, within one year from the date of the start of the inheritance, which usually coincides with the date of the taxpayer's death.

After receiving the declaration of estate, the relevant local tax authority office sends to the heirs and legatees a settlement notice stating the inheritance tax.

Payment must be made by form F24 within 60 days of the date on which the settlement notice is served. Once this time limit has expired, interest on arrears will be payable in addition to fines.

7. Trusts, foundations and private purpose funds

Italy does not have an internal law that regulates trusts, however, trusts are recognised in Italy by Law No. 364/1989 that ratified the Hague Convention of 1 July 1985 on "the law applicable to trusts and to their recognition."

In 2007, the Italian government provided a first set of rules on the tax treatment of trusts. These provisions determine the tax residency of a trust and its taxation: taxation on the trust itself, if the beneficiaries are not identified (i.e., opaque trusts) vs. taxation on the identified beneficiaries of the trust (i.e., transparent trusts).

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 and the cases in which trusts are disregarded for tax purposes (see, *inter alia*, Circular Letter No. 61/E of 2010). This typically happens when the trust is revocable and in all the other cases in which the trust is irrevocable but the settlor or the beneficiaries have powers, or de facto exercise influence, in relation to the management of the trust and/or distributions to the beneficiaries.

On 20 October 2022, Italian tax authorities published Circular Letter No. 34/E of 2022, which sets out the direct and indirect taxation rules for resident and nonresident trusts.

The Italian tax authorities confirmed that the settlement of goods and rights into a trust generally does not qualify as a taxable event for the grantor; however, the settlement into a trust of (i) selected financial assets and (ii) goods or rights held by an entrepreneur may be subject to taxation so that a case-by-case analysis is always needed at the time of the trust is set up.

Furthermore, Italian tax authorities also confirmed that the distributions to Italian resident beneficiaries are, in some cases, not relevant for income tax purposes; however, Circular Letter No. 34/E of 2022 clarified with respect to opaque trusts that:

- Income distributions from opaque trusts which do not carry out a commercial activity and which are not established in low-tax jurisdictions are not taxable against the trust's beneficiaries.
- The distributions from nonresident opaque trusts established in low-tax jurisdictions (if there is a nominal taxation level lower than 50% of the applicable rate in Italy) are presumed to be capital income; these distributions, to the extent that distributions of income, should be taxable against the Italian resident beneficiaries with progressive rates (up to 43% plus between 2.54% and 3.33% of local taxes). The Italian tax authorities also clarified that it is possible to displace this presumption by demonstrating through account records and non-account records (i.e., financial statements) the distinction between income and capital.
- The distributions of income from Italian resident commercial opaque trusts to the beneficiaries qualify as capital income, and the trusts should also apply the withholding tax to the income distributed.

In case of identified beneficiaries (i.e., transparent trust), namely beneficiaries with a current unconditional right to claim a share of the income generated by the assets held in trust, the income received by the trust is subject to taxation against such beneficiaries even if not distributed to them. Therefore, as long as the same flows of income have been already taxed, the following pay-out to identified beneficiaries should not be relevant for income tax purposes.

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

A life insurance contract is a contract under which a party (the insurer), in connection with certain events in the life of the insured, undertakes, against payment of a premium, to pay a principal sum or an annuity.

In the context of life insurance and capitalization contracts, it is possible to identify:
- Contracts that cover specific risks (e.g., case of death)
- Contracts with primarily financial purposes
- Based on the provisions of the Italian Civil Code:
- Amounts owed by the insurer to the contractor or beneficiary of the insurance policy cannot be subject to enforcement or precautionary action

Creditors and heirs of the contractor of the policy can claim only the premiums paid by the latterUpon the death of the insured person, the beneficiaries receive the underlying capital *iure proprio* and *not iure successionis* (as a result, the sums received by the beneficiaries because of the *mortis causa* transfer are not subject to inheritance tax)

Italian income 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, life insurance and capitalization contracts are subject to the following tax treatment:
- Capital received on death under life insurance contracts covering demographic risk are exempt from personal income tax (IRPEF) (on the contrary, the part of capital that does not cover the demographic risk may be taxed. See the following point)
- If the payment of capital is linked to a financial component, constitutes income from capital the difference between the amount received and the premiums paid. In this respect:
  1. Insurance policy purchased before 1 January 2000: a flat tax rate of 12.5% applies to the difference between the payment received and the sum of the insurance premiums paid. Taxable base is reduced by 2% for each year following the 10th year from the date set up of the policy
  2. Insurance policy purchased after 1 January 2000: the income, as determined above, is subject to the tax rate of:
     - 12.5%, if accrued by 31 December 2011
     - 20%, if accrued in the period comprised between 1 January 2012 and 30 June 2014
     - 26% if accrued as of 1 July 2014

Even after 31 December 2011, the portion of gains deriving from State bonds will be taxed at 12.5%.

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. First of all, we briefly mention the favorable regime applicable to the transfer *inter vivos* (gift) or *mortis causa* (inheritance) of Italian businesses and shareholdings in Italian resident companies and partnerships.

More precisely, it is exempted from inheritance and gift taxes the transfer[1] of a business or of a participation in companies or partnerships in favor of the spouse or descendants if they carry out an effective business activity for at least five years. With regard to participation in companies, it is also required that the recipient receives a controlling stake or achieves control of the company taking also into account other participations owned before the transfer. A recent judgment of the Italian Supreme Court has confirmed that, in compliance with the freedom of establishment principle, the exemption also applies to UE companies under the same conditions required for the Italian entities.

If during the five-year blocking period the abovementioned requirement is not met (e.g., because the beneficiaries sell a line of business), taxes and penalties will apply.

Another estate planning tool is represented by the possibility of transferring the family business under the "family contracts" (the so-called *Patto di Famiglia*), which to date, represents the only form of succession agreement allowed by the law in Italy. The *Patto di Famiglia* allows the entrepreneur, through the stipulation of a contract, to transfer, while he or she is still alive, his or her business (or shares or quotas in a company) to the descendant (i.e., sons/daughters and nephews/nieces) whom he or she deems best suited to take over the leadership of the enterprise, providing for adjustments in favor of all the other descendants and those who would be legitimate heirs[2] if, at that time, the entrepreneur's succession were to open.[3] The adjustments must be made in compliance with the forced heirship rules (see Section 10.3). The nonassignees can waive their right. At the opening of the succession, the supervened spouse and other forced heirs may demand from the beneficiaries of the *Patto di Famiglia* (assignees and nonassignees) the payment of a sum corresponding to their share of the legitimacy increased by legal interest. What received by the parties as a result of the *Patto di Famiglia* is not subject to hotchpot and action for reduction.

The Italian Supreme Court has recently clarified that, for gift tax purposes, the adjustments made in the context of the *Patto di Famiglia* are to be considered as gifts made by the entrepreneur (and not by the assignee) to the benefit of the nonassignees. As a consequence, the tax rates and allowances have to be applied based on the degree of kinship between the entrepreneur and the nonassignee (see Section 4).

10.2 Succession

Since Italy is a member of the European Union, EU Regulation No. 650/20 concerning "applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession" applies to the succession of any individuals deceased on or after 17 August 2015.

According to the Regulation in question, as a general rule, the law governing succession is the law of the state where the deceased has habitual residence.

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[1] Even through the so called *Patto di Famiglia*. See below in this section.

[2] See Section 10.3.

[3] Like the spouse, who, under the *Patto di Famiglia* can only be indemnified but cannot take of the leadership of the enterprise.

By way of derogation, it is, however, possible for the testator, by way of a *professio iuris*, to choose the law of the state from which he or she derives nationality (at the time of the *professio iuris* or at the time of the death) as the law to govern his or her succession.

Furthermore, where, by way of exception, it is clear from all the circumstances of the case that, at the time of death, the deceased was manifestly more closely connected with another state, the law of that state applies.

Once the law applicable to the succession is identified, such law, subject to certain exceptions, governs the entire succession and thus is applied irrespective of where the assets constituting the estate are located.

Based on the Italian legislation, heirs have universal succession, and unless they refuse 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.

As noted above, and 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

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 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 *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 and the right to live in the house used as a family home and to use the furniture contained therein

A surviving spouse and a child	To the surviving spouse – one-third of the inheritance assets, the right to live in the house used as a family home and to use the furniture contained therein To the child – one-third of the inheritance assets
A surviving spouse and children	To the spouse – one-quarter of the inheritance assets, the right to live in the house used as a family home and to use the furniture contained therein 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, the right to live in the house used as a family home and to use the furniture contained therein To the *ascendenti* – one-quarter of the inheritance assets
Separated spouse not charged with separation	Same provisions applying to non-separated spouse (also the right to live in the family house)
Separated spouse charged with separation	Living allowance if at the time of the succession the surviving spouse enjoyed support from the deceased spouse

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.

Pre/post-nuptial agreements dealing with the effects of a future legal separation/divorce (in terms of maintenance rights) are null and void in Italy.

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*" (i.e., creation of encumbrances or other restrictions on the use of certain assets) and, as a consequence, they would consider it subject to gift tax or inheritance tax. Based on the above, a case-by-case analysis would be necessary to verify whether gift/inheritance tax is applicable or not to a *fondo patrimoniale*.

As far as civil partnerships are concerned, a new law (Law No. 76/2016) entered into force in Italy providing for civil partnerships between same-sex individuals. Following this new law, partnerships previously not recognized by law are now subject to the main rules applicable to heterosexual married couples. As a result, references in the rules to "spouse" have been changed to "partner of a civil partnership." On the contrary, the law has not provided the same extension for cohabitants.

10.5 Intestacy

Under the 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.

Based on the Italian Civil Code, succession agreements, or agreements whereby a person disposes of his/her rights under a future succession, are null and void, with the only exception of succession agreements for the transfer of family-owned businesses (see Section 10.1).

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 handwritten by the person making the will (testator) and which is 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. The Inheritance and Gift Tax Code provides an irrebuttable presumption, based on which certain assets are deemed to be located in Italy. More precisely, the following assets are considered located in Italy for inheritance and gift tax purposes:
- Assets recorded in the public registers in Italy
- Shares or quotas of companies and participations in entities other than companies that have their registered office or place of administration or main business in Italy
- Bonds and other securities, other than shares, issued by the Italian government or companies and entities that have their registered office or place of administration or main business in Italy
- Securities representing goods located in Italy
- Receivables and checks if the debtor/issuer is resident in Italy
- Receivables secured on property existing in Italy up to the value of such property, regardless of the residence of the debtor
- Goods in transit with the final destination within Italy

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 the Italy-France treaty, which covers gift tax as well.

12. Other

12.1 Indirect taxation on trust and similar structure

As mentioned above, Circular Letter No. 34/E of 2022, sets out indirect taxation rules on trust and similar structures.

More specifically, the Italian Tax Authority modified its previous interpretation that was set forth in Circular Letter No. 48/E of 2007, which had provided that gift/inheritance tax is immediately applicable to the transfer of assets and rights from the settlor to the trust. The change in interpretation was to take into account recent decisions of the Italian Supreme Tax Court and confirms that:

- Except for some residual cases, the transfer of rights and assets into a trust does not constitute an immediate transfer of ownership for the beneficiaries and so should be considered as tax neutral
- The taxable event of gift/inheritance tax shall occur at the time of transfer of property to the beneficiaries
- With regard to trusts, gift/inheritance tax is levied on the worldwide assets transferred by an Italian resident transferor and only on the Italian-situs assets transferred by a non-Italian-resident transferor
- The status of Italian resident or non-Italian resident of the transferor and the location of assets contributed to the trust must be evaluated at the time in which assets are contributed to the trust
- The applicable tax rates and tax-exempt thresholds should be determined based on the relationship between the settlor and the beneficiaries at the time in which assets are transferred to the beneficiaries (see Section 4)
- The taxable base for gift/inheritance tax purposes must be determined at the time in which assets are transferred to the beneficiary

In addition, the Italian Tax Authority clarified that, where gift/inheritance taxes were already applied at the time of settlement of the asset into the trust, relying on the previous interpretation of the Italian Tax Authority, no further tax will be due at the time any assets are subsequently transferred to the beneficiaries if certain conditions are met.