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FOREWORD.

Edited and written by:

CALDARA & ASSOCIATI

For a long time, Italy has represented one of the favorite destinations of citizens from all over the world not only for tourism but also for residence relocation.

This stems from environmental and cultural factors (the “Bel Paese,” the “Dolce Vita” ethos) and, more recently, from a more attractive regulatory system, both for individuals who want to work in Italy and for wealthy individuals who simply want to live there.

Therefore, this guide is aimed primarily at these categories of individuals, leaving out those carrying out commercial activity, for the sake of simplicity.

The various topics will be covered by imagining the time sequence of a hypothetical move to Italy by a foreign individual, starting, for Extra-EU individuals, with the application for a visa and the consequent acquisition of a residence permit, and enrollment in the resident population registry (anagrafe).

We will then summarize the predominant tax regimes which apply to those who become resident in our country with some insights relating to issues that very frequently arise in practice in: the purchase of real estate, the taxation of financial assets and compliance obligations related to foreign assets.

In fact, foreigners who have come to Italy often

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maintain ties with their country of origin, and not only because of investments made in the past of which they have decided to retain possession.

Moreover, some brief guidelines will be dedicated, in this regard, to the trust instrument, commonly utilized by individuals coming from common law countries, who need to be aware of the Italian tax implications arising from the existence of a foreign trust, albeit irrevocable and discretionary.

The guide concludes with an in-depth look at succession and family law aspects, bearing in mind that there are very important differences, beyond tax considerations, that should never be overlooked when deciding to undertake a transfer of residence.

FOREWORD _

Caldara & Associati is a tax and legal advisory firm operating in Milan and Florence. The firm is particularly focused on the world of wealth planning and family office, assisting individuals (HNWI, artists and sportsmen, top managers, private investors) holding companies, trust and foundations, with both tax and legal advice. Thanks to its membership in a leading international network, C&A is able to assist its private clients not only in domestic but also in cross-border matters, supporting them in the most important decisions, such as generational transitions, purchase and sale of share packages, family relocation, charity activities, etc. The private clients practice relies on the simultaneous presence of both accountants and lawyers and allows C&A to provide “tailor-made” solutions which cover not only tax aspects but all the civil matters related to private clients and wealth planning

1.

ITALIAN VISAS: FORMALITIES AND TIMELINE FOR EU AND NON-EU CITIZENS



1. ITALIAN VISAS: FORMALITIES AND TIMELINE FOR EU AND NON-EU CITIZENS

While EU citizens enjoy freedom of movement within the EU, entry into Italy of nationals from non-EU countries is generally subject to the issuance of an entry visa and residence permit. Italy's attractiveness is enhanced by the existence of easier procedures for the entry of HNWI from non-EU countries into Italy, for whom, in the case of the so-called "Investor Visa", there is not even a minimum number of days of stay required.

Entry into Italy of EU citizens and their "family members"

Citizens of European Union Member States have the right to move and reside freely within the territory of the European Union. Therefore, their entry into Italy is subject only to the possession of a valid identity document and is not subject to any formality for stays of less than 90 days. In the event that the stay is longer than that period, it would be necessary to proceed with enrollment in the municipal population registry (Anagrafe) by providing proof that they have sufficient economic resources, are enrolled in the national health service or have a health insurance policy. Directive No. 2004/38/EU extends the right to freedom of movement to the "family members" of EU citizens, whatever their nationality. Those eligible to exercise this right are, among others, the spouse, direct descendants (children, grandchildren) under the age of 21 or dependent, and the partner with whom a registered partnership has been contracted that the host state equates to marriage. In cases where the stay of family members is longer than 90 days, it would be necessary for them to apply for an EU citizen family member residence permit.

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The entry into Italy of citizens of Non-EU countries

The entry into Italy of non-EU citizens is regulated by Italian laws (Legislative Decree 286/1998 - Testo Unico sull'Immigrazione) and EU regulations (EU Regulation No. 2016/399 – “Schengen Borders Code”). In general, the provisions require a non-EU citizen to obtain a visa to enter Italy, regardless of the length of stay. The entry visa must be applied for at the Italian diplomatic or consular offices where the applicant has his or her habitual place of residence. Following its issuance, the foreigner must enter Italy within the period of validity of the visa and formalize the application for a residence permit within 8 days of entry by appearing in person at the competent police department (Questura) in the place of residence in Italy or, depending on the type of residence permit to be applied for, at any post office in the territory, after filling out the relevant postal kit.

Types of visas and related residence permits

Citizens of any of the countries listed in Regulation (EC) No. 539/2001, are exempt from the visa requirement for entry into Italy for stays of less than 90 days. For example, included in the list are: United States, Canada, Brazil, Venezuela. The most common types of Italian entry visas are as follows:

- work visas (subordinate and self-employed)
- investor visas, and
- visas for elective residence.

The issuance of some visas (especially those for employment and self-employment) is subject to the provisions and procedures laid down in the so-called “Flow

1. ITALIAN VISAS: FORMALITIES AND TIMELINE FOR EU AND NON-EU CITIZENS

Decrees” which are issued periodically to establish the number of entries for work in Italy, or “quotas,” available from time to time. This system, which is tied to the issuance of the “Flow Decree” and the availability of quotas to enter Italy for work, is extremely rigid in that despite the desire to enter Italy for work, the conditions for issuing a visa might not be met.

Entry visas for work purposes subject to the provisions of the “Flow Decrees” (employment-self-employment-start-up)

■ **Employment visa**

The procedure for this type of visa application is preceded by a request by the Italian employer to the competent immigration office (Sportello Unico per l'Immigrazione) for a certificate of no impediment (nulla osta al lavoro) and its subsequent issuance. The application for the certificate of no impediment must be accompanied by documentation pertaining to the work activity that the foreign worker is going to perform, the company that is intending to hire the worker, and the worker's housing situation once he or she arrives in Italy. The employer submits a contract proposal in which he or she requests that the worker enter Italy to sign a contract of employment, which will be signed when the procedure has been completed and the worker has entered Italy with a regular visa. If the documentation submitted is in

The entry into Italy of Eu citizens is not subject to any formality for stays of less than 90 days



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order and there are “quotas” available under the “Flow Decree” in force at that time, the competent immigration office will issue the work authorization in favor of the foreign worker who, by presenting himself at the Italian Consulate in his country of origin, will obtain the relevant entry visa and then the residence permit. The duration of the residence permit may vary from one year (fixed-term employment contract) to two years (permanent employment contract).

■ **Self-employment visa**

The self-employment visa must be applied for if entry into Italy is for the purpose of carrying out a professional activity, establishing a company, or investing in Italian existing companies.

According to the procedure, it is necessary to appoint an Italian representative to apply for a no impediment (entry clearance) (nullaosta provvisorio all’ingresso) at the competent police department, after preparing all the necessary documentation.

It is necessary to prove that the applicant meets the professional requirements as well as having housing at disposition and has an income higher than the minimum level required to benefit from free National Health Service assistance.

In the case of entry for self-employment, the duration of the residence permit may vary from one to two years.

■ **Italia Startup Visa**

The Italia Startup Visa provides for the issuance of an entry visa to those foreign individuals intending to set up a startup in Italy (or who are hosted by a so-called Italian “certified incubator”) with financial resources of no less than EURO 50,000. The application procedure,

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which is entirely telematic, is managed by the Ministry of Economic Development. The visa can also be applied for by those who invest at least EURO 100,000, and assume a managerial position, in an Italian “innovative” start-up that has been in existence for at least three years. The duration of the residence permit in this instance is for one year.

Visa for “highly skilled” self-employed or employed workers

“Highly skilled” workers, both self-employed and employed, may enter Italy at any time of the year regardless of the “Flow Decrees” procedure, subject, of course, to possession of the relevant entry visa.

This type of visa applies to:

- executives or “highly specialized” personnel of companies with offices or branches in Italy
- executives or “highly specialized” personnel of representative offices of foreign companies having their principal place of business in a member state of the World Trade Organization
- employees of companies based abroad who are temporarily transferred to Italian companies to perform services under contract with another company.

The procedure, depending on the type of work to be performed in Italy, will be activated by the worker abroad or by the employer. The duration of the entry visa is one year and allows the issuance of a residence permit lasting one or two years depending on the type of work contract in Italy.

The duration of the entry visa is 1 year and allows the issuance of a residence permit lasting 1 or 2 years

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“Digital Nomads”

Law No. 25/2022 recently introduced a further possibility for entering Italy. According to the new rule, foreign individuals performing highly qualified work, even on a self-employed basis, through remote work may enter Italy without requesting a no impediment certificate.

However, this provision requires a further decree that has not yet been issued to date.

Entry visas and residence permits for family members

Family entry visas may be issued to the spouse (married or civilly united) and the worker's dependent minor or adult children. The issuance of the visa is subject to the conditions of income and housing. If dependent family members enter at the same time as the worker, they will need to obtain a personal no impediment certificate (nullaosta per familiare al seguito) issued by the competent immigration office. The no impediment certificate will allow them, once in Italy, to obtain the relevant residence permit. The duration of the residence permit is linked to the duration of the residence permit of the family member who requested family reunion

Investor visa

The 2017 Budget Law introduced into Italian immigration law a new type of visa for non-EU citizens intending to make a major investment or philanthropic donation in strategic assets for the development and competitiveness of the Italian System. To specify, the visa can be issued for:

- investment in government bonds for at least 2 million

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- investment in an Italian company for at least 500,000 Euros
- investment in an “innovative” startup, as defined by Legislative Decree No. 179/2012, for at least 250,000 Euros
- philanthropic donations of at least 1 million Euros in the areas of culture, education, immigration management, scientific research, or conservation of cultural and landscape heritage. The procedure for verifying the existence of the requirements is managed directly by the Ministry of Economic Development and is outside the ambit of the so-called “Flow Decree”. Family members of the investor visa holder, provided the conditions are met, may obtain a visa for family reunion purposes. The duration of the residence permit is two years and is renewable for another three years. Furthermore, Law No. 120/2020 introduced two important incentives specifically aimed at the so-called HNWIs. These are, namely, the possibility of making the above investments through an SPV (Special Purpose Vehicle) and the exemption from the obligation to spend a minimum number of days in Italian territory to maintain immigrant status.

Elective residency visa

The elective residency visa is issued to foreign nationals intending to move to Italy without working. It can be obtained by all individuals who have regular and substantial economic resources and accommodation in Italy. This kind of visa can also be issued to the applicant's spouse and minor or adult dependent children if economic resources are considered appropriate by the Italian Consulate. The elective visa leads to a one-year residence permit.

2.

RESIDENCE RELOCATION IN ITALY



2. RESIDENCE RELOCATION IN ITALY

EU citizens intending to stay in Italy for more than three months and non-EU citizens with a regular residence permit must register with the registry of the resident population ("Anagrafe"). The relocation planning should consider the tax consequences arising from the enrolment with the resident population registry.

The residence registration from a civil perspective

From a civil perspective, enrollment with the registry of the resident population leads to a connection with the Italian territory which confers certain constitutional rights including access to the National Health Service. For administrative purposes, the residence procedure requires the registration of the individual at the Registry office of an Italian municipality (Art. 1, Law No. 1228/1954). The registration is subject to:

- the attribution of an Italian tax code, to be requested from the Italian Tax Authorities, and
- the identification of the place of habitual abode.

Both EU citizens, after three months of entry into Italy, and non-EU citizens are subject to this procedure. It is important to note that for non-EU citizens the registration is subject to the prior issuance of a visa and its related residence permit. The visa and residence permit procedure may take from about five to nine months, depending on the visa.

On the other hand, in cases where entry into Italy has taken place following the issuance of an entry visa for work or family reunion, the registry registration procedure can also be undertaken with only the filing of the receipt of the residence permit application.

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The residence registration is not immediate as the process commences approximately two months after the date of the request. From that moment the competent municipal authorities have a period of forty-five days to carry out the necessary formalities to verify the actual presence of the applicant in the declared place of abode and the truthfulness of the information provided with the registration request (Art. 4, Law No. 1228/1954). In any case, the formal registration will be backdated with effect from the date of submission of the application.

Non-EU citizens are also required to renew the declaration of habitual abode at the competent municipal office within 60 days from the date of renewal of the residence permit.

“Residence” and “domicile” under the Italian Civil Code

As described above, the registered residence (*residenza anagrafica*) is the formal notice of the place where the person has his or her habitual abode. Article 43 of the Italian Civil Code makes a distinction between:

- the “domicile”, representing the place where the individual has established the principal location of his or her affairs and interests, and
- the “residence”, defined as the place where the person has his or her habitual abode.

Often domicile and residence are in the same physical place. However, the personal and economic activity may take place in more than one place: for this reason, the legal definitions merit some further consideration.

2. RESIDENCE RELOCATION IN ITALY

Domicile

Under Italian law, “domicile” is defined as the place where an individual has established the principal location of his or her affairs and interests which means their personal, social, moral, and economic relationships. Included in this definition, for example, are interests pertaining to married life or flowing to the place where the family or close personal relationships lie. Such is the importance of the concept of business and interests that, even, the physical presence of the person in that place is not required for domicile to be considered to exist there. What is relevant, therefore, is only the subjective element and, that is, the person’s will to establish and maintain in a certain place the principal location of his or her business and interests. Moreover, for administrative purposes, the choice of domicile does not require any formality and, therefore, there is no necessity to advise the competent municipality.

Residence

“Residence” differs from “domicile” in the sense that its identification requires the combination of two elements, one of which is subjective and the other objective. That is to say, both the person’s habitual physical permanence in a particular place (the abode) and the intention to live there permanently, as demonstrated by living habits, plus the conduct of normal social relations, are necessary. As mentioned above, the place of habitual abode and, therefore, residence must be reported to the ap-

“Domicile” is the place where an individual has established the principal location of his affairs and interests



2. RESIDENCE RELOCATION IN ITALY

propriate registry office.

Residence for Italian tax purposes

Under Italian taxation laws, the concept of “residence” takes on an additional and specific connotation. The tax law, in fact, lays down which tax regulations will apply depending on whether or not an individual is resident in Italy for tax purposes (“Italian tax resident”). In fact, Italian tax resident individuals are taxed on all income wherever it is generated, in application of the “worldwide income principle”. Conversely, individuals who are not resident for tax purposes in Italy (“non- Italian tax resident”) are taxed by the authorities only on Italian-source income (Art. 23 TUIR). According to Art. 2, second paragraph of ITC, individuals are deemed to be tax resident in Italy if, for the greater part of the fiscal year (ie. for more than 183 days or 184 in the event of a leap year):

- they are registered in the registry of the resident population or
- they have their domicile or residence (as per the definition laid down by the Italian Civil Code) in Italy.

In this regard, the identification of the place of habitual abode (“residence”) can be objectively verified, on the other hand, the identification of “domicile”, that is, the place where the person’s vital interests are located, might trigger some issues. At the national level, the Supreme Court has given priority value to the place where personal and family interests are located (Supreme Court, Decision No. 6501/2015), thus conforming to the principles issued at OECD level. In this sense, the circumstances taken into consideration have been, for example: the physical presence of the individual and his

2. RESIDENCE RELOCATION IN ITALY

family members in Italy, the availability of a home or the location of the schools attended by the children (Supreme Court, Decision Nos. 9856/2008 and 13803/2001). In some more recent judgments, however, in establishing the place of domicile, the Supreme Court seems to have given preeminent value to economic interests (Supreme Court, Decision Nos. 11620/2021 and 3992/2021). In any case, the above principles must be applied taking account of the temporal requirement of the rule by verifying, if at least one of the above conditions exists for the greater part of the fiscal year. Therefore, a residence registration that occurred between January 1 and July 2 and is maintained continuously during that period satisfies the temporal requirement of the rule, resulting in the acquisition of Italian tax residence for the entire year.

“Dual tax residence” cases

If the transfer of residence takes place during the year, the application of Italian tax rules may lead to “double taxation” or, even, “double non-taxation” situations.

In this regard, it should be noted that most of the Conventions against double taxation entered into by Italy contain particular criteria for resolving cases of double taxation (the so-called “tie breaker rule”). These criteria, in order of priority, are:

- the availability of a permanent home; or, in the case of a permanent home being available in both States,
- the center of vital interest (“domicile”). In the case of a center of vital interest in both States or in the absence of a permanent home, reference can be made to,
- the habitual place of abode. Where these rules do not apply, reference may be made to

2. RESIDENCE RELOCATION IN ITALY

- nationality, or
- to the criteria agreed upon by the States in a specific case.

Finally, it should be noted that the OECD Commentary provides for the application of the so-called “tie breaker rule” even in cases where dual residence occurs during a fraction of a year (so-called “split year”). According to the Italian Tax Authorities Guidelines (see Resolution No. 471/E/2008) this criterion applies only when it is expressly provided for by the Convention against double taxation in force between Italy and the foreign State involved. From a practical point of view, the “split year” principle only applies to the Conventions against double taxation in force between Italy and Germany and Italy and Switzerland.

The Italian Conventions against double taxation contain particular criteria for resolving cases of double taxation

3.

ITALIAN TAX REGIMES FOR HIGH NET WORTH INDIVIDUALS, WORKERS AND PENSIONERS



3. ITALIAN TAX REGIMES FOR HIGH NET WORTH INDIVIDUALS, WORKERS AND PENSIONERS

Italy is among the top destinations worldwide chosen by foreigners to transfer their residence. History, culture and quality of life, combine with a favorable tax system. In recent years, Italy has introduced tax incentives which are very competitive and aimed at attracting human capital. Since 2016, Italy has introduced several special tax regimes aimed at attracting the so-called High Net Worth Individuals and foreign pension holders. Furthermore, existing regimes in favor of workers, whether employed or self-employed, have been reinforced. In addition, along with the provision of special tax regulations, changes were also made to immigration laws to facilitate the relocation to Italy from non-EU countries as well. In fact, all facilitative tax regulations are closely linked to the transfer of residence, which, for tax purposes, require the existence of at least one of the following three circumstances in Italy for more than 183 days in the calendar year:

- enrollment with the resident population registry (iscrizione anagrafica)
- the physical presence of the subject (residence)
- the location of the center of vital interests (domicile).

Italian Non-Dom Regime - Art. 24-bis ITC

The Italian Non-Dom Regime can be adopted on an optional basis and is aimed at High Net Worth Individuals who have not been tax resident in Italy for at least 9 out of the 10 years preceding the exercise of the option. For the purposes of the rule, nationality is not relevant, so that even Italian citizens who can show that they have been tax resident abroad during the reference period required by the rule can access the Italian Non-Dom Regime.

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Effects and duration of the Italian

Non-Dom Regime

Under the Italian Non-Dom Regime foreign source income is subject to a substitute tax of 100,000 Euros per year and foreign assets are exempt from reporting obligations (RW Form) and from the payment of Italian wealth taxes (IVIE and IVAFE). Conversely, Italian-source income will be subject to ordinary taxation regulations, resulting in the application of progressive personal income tax (IRPEF) rates. An anti-avoidance rule is applicable to capital gains from the sale of so-called “qualified shareholdings” (ie. in the case of unlisted companies, shareholdings exceeding 25 percent of the capital or with voting rights exceeding 20 percent) held in foreign companies. Specifically, capital gain is taxed in Italy, on an ordinary basis, if the sale takes place in the first 5 years after the exercise of the option. The payment of the substitute tax does not entitle the taxpayer to claim a credit for the foreign taxes. It is however possible to exclude income from one or more foreign jurisdictions from the application of the substitute tax, with the result that such income will be ordinarily taxed in Italy and eligible for credit for taxes paid abroad. The scheme is valid for a maximum of 15 years and can be exercised only once. Therefore, should the person renounce the benefit, he or she will not be able to access it again.

Extension of the tax benefit to family members

The option to access the Italian Non-Dom Regime can also be extended, on a voluntarily basis, to the family members of the applicant. In this case, an additional amount of 25,000 Euros for each family member will fall due.

3. ITALIAN TAX REGIMES FOR HIGH NET WORTH INDIVIDUALS, WORKERS AND PENSIONERS

The procedure for accessing the Italian Res-Non-Dom Regime

The applicant can exercise the option in the tax return referring to the tax period in which the tax residence in Italy was transferred or in the following year's tax return. Alternatively, it is possible to request a tax ruling to obtain the prior opinion of the Italian Tax Authorities. Although not a condition required by the rule, the tax ruling is strongly recommended to avoid the risk of any assessment by the Italian Tax Authorities. It may be useful to submit a request to the Italian Tax Authorities for the disapplication of the anti-abuse rule provided for the sale of "qualified shareholdings" in foreign companies as well as to obtain confirmation of the foreign source of one or more types of income.

Italian inheritance and gift taxes

Under the Italian Non-Dom Regime foreign assets are exempt from Italian inheritance and gift taxes. However, the above-mentioned exemption applies for tax purposes only and does not derogate from the Italian civil law principles governing inheritance matters. Therefore, the ordinary rules on the succession of forced heirs and their right to the reserved share will continue to apply.

Impatriati Regime – Article 16 of Legislative Decree No. 147/2015 (as amended)

The Impatriati Regime is aimed at individuals who are

Under the Italian Non-Dom Regime foreign assets are exempt from Italian inheritance and gift taxes

3. ITALIAN TAX REGIMES FOR HIGH NET WORTH INDIVIDUALS, WORKERS AND PENSIONERS

employed or self-employed and have been tax resident abroad for at least two tax periods before moving to Italy. As nationality is not relevant, Italian citizens who have been resident abroad during the period required by the rule are also eligible. It is also a requirement that the applicant maintains residence in Italy for a period of at least 2 years and works predominantly (i.e., for more than 183 days) in Italy.

Effects of the Impatriati Regime

The regime provides for a tax-free allowance on income derived from employment or self-employment activity carried out in Italy. In the first 5 years of its application, such income will be exempt to the extent of 70 percent, or 90 percent, if the person transfers his or her tax residence to one of the southern Italian regions (Abruzzo, Molise, Basilicata, Campania, Puglia, Calabria, Sicily, Sardinia). Thereafter, the benefit can be extended for an additional 5 years if the person:

- has a minor or dependent child
- purchases residential property in Italy after moving to Italy or in the previous 12 months.

In addition, if the person has three children, a 90 percent exemption is granted during the 5 years following the first period of validity of the option. It should be noted that for self-employment activity, tax savings cannot exceed the amount of 200,000 Euros in three tax periods, in application of European rules on State Aid.

Foreign-source income, on the other hand, will always be taxed in Italy according to ordinary rules and subject to reporting obligations (RW Form) and wealth taxes on foreign assets (IVIE and IVAFE) will apply.



3. ITALIAN TAX REGIMES FOR HIGH NET WORTH INDIVIDUALS, WORKERS AND PENSIONERS

Italian inheritance and gift taxes

The Impatriati regime does not derogate from the application of Italian inheritance and gift tax, which, therefore, will be due on all assets, situated worldwide.

The procedure for accessing the Impatriati Regime

The applicant intending to access the regime must notify the employer. The latter will apply the exemption by subjecting the already reduced tax base (30 percent or 10 percent of income) to taxation. Alternatively, the election may be made in the tax return of the applicant.

Remote working

Individuals who have relocated to work in Italy in remote working mode are also eligible for the Impatriati Regime. Thus, the benefit is recognized both in the case of a foreign employer and if the self-employed activity is carried out in favor of foreign clients.

Professional sportsmen

The Impatriati Regime can also be adopted by professional sportsmen, with some limitations:

- the duration of the regime is limited to 5 tax periods
- income will be taxed at the rate of 50 percent, with no possibility of further reductions
- an additional 0.5 percent tax will be payable on gross income.

The Retired Regime - art. 24-ter ITC

Individuals who have been resident abroad for the previous 5 years and who transfer their tax residence in Italy to a municipality with a population of no more than

3. ITALIAN TAX REGIMES FOR HIGH NET WORTH INDIVIDUALS, WORKERS AND PENSIONERS

20,000 in southern Italian regions (Abruzzo, Molise, Basilicata, Campania, Puglia, Calabria, Sicily, Sardinia) and who receive pension income from foreign entities, may opt for the application of the scheme. Access to the scheme is also permitted for Italian citizens who can show that they have been tax residents abroad during the relevant period. It is also required that an agreement for administrative cooperation is in force between Italy and the foreign country in which the person concerned has maintained residence.

Effects of the Retired Regime

As a result of exercising the option, all foreign source income, thus not only pension income, is subject to a 7 percent substitute tax, with no possibility of benefiting from foreign tax credit. Conversely, Italian-source income will be subject to taxation according to ordinary rules. The Retired Regime has a maximum duration of 10 tax periods and provides exemption from reporting obligations (RW Form) and payment of wealth taxes on foreign assets (IVIE and IVAFE).

Main differences between the Neo-Dom Regime and the Retired Regime

Unlike the Art. 24-bis regime, there is no exemption for inheritance and gift taxes on foreign assets, but on the other hand, there is no anti-abuse rule against the sale of qualified shareholdings, which therefore enables the reaping of an immediate benefit from the 7 percent substitute tax.

3. ITALIAN TAX REGIMES FOR HIGH NET WORTH INDIVIDUALS, WORKERS AND PENSIONERS

The procedure for accessing the Retired Regime

The option must be exercised by the person named in the tax return.

As a result of exercising the Retired Regime, all foreign source income is subject to a 7% substitute tax

4.

TAXATION ON ITALIAN ESTATE PROPERTIES



4. TAXATION ON ITALIAN ESTATE PROPERTIES

Investments in real estate in Italy are subject to direct and indirect taxation on the purchase, their income and the transfer by gift or succession.

The applicable tax regime mainly depends on the nature of the seller (e.g., an individual as opposed to an entity subject to Italian VAT) and the characteristics of the real estate to be transacted.

General remarks

This document will refer only to real estate classified as residential property according to its cadastral category (i.e., from A/1 to A/9). Furthermore, as explained below, registration tax will be calculated on the cadastral value which often, even in the most famous Italian municipality, is lower than the market value. Therefore, the cadastral value could result in a reduced effective taxation. Finally, a buyer purchasing a property to be used as a “first home” (prima casa) can benefit from a reduction in the applicable rates of taxation for registration tax (stamp duty) and VAT.

Taxes on property purchase

Generally speaking, the purchase of a real estate property in Italy is subject to:

- Registration tax (stamp duty)
- VAT
- Mortgage and cadastral taxes

Registration tax (stamp duty) or VAT

Registration tax (stamp duty) and VAT are alternatives. Therefore, if VAT is payable, the registration tax (stamp duty) due is generally a fixed sum (currently 200 EURO).

4. TAXATION ON ITALIAN ESTATE PROPERTIES

How to determine if registration tax (stamp duty) or VAT is due

Whether or not registration tax (stamp duty) or VAT is payable depends on the nature of the seller. To be specific, if the seller is a VAT entity such as a construction company, and the property is sold within five years from its construction, the purchase will be subject to:

- 10 percent VAT (22 percent for “luxury homes” classified as such by the applicable cadastral category) levied on the purchase price as indicated in the Deed of Sale, and
- the fixed sum of 200 EURO registration tax (stamp duty), mortgage and cadastral taxes.

Conversely, in the case of a private seller (eg. an individual or individuals) the property purchase will be subject to:

- 9 percent registration tax (stamp duty) levied on the cadastral value if the buyer is an individual
- Mortgage and cadastral taxes payable at the fixed amount of 50 EURO each.

These same above-mentioned taxes will apply if the seller is a construction company, and the sale is executed after five years from the date of construction

Purchase of a property qualifying as a “first home” (prima casa)

The purchase of a property qualifying as a “first home” benefits from the reduction of the VAT and registration

The purchase of a property qualifying as a “first home” benefits from the reduction of the VAT

4. TAXATION ON ITALIAN ESTATE PROPERTIES

tax (stamp duty) payable such as:

- 4% VAT if the seller is a construction company and the property is sold within five years from its construction, plus registration tax (stamp duty), mortgage and cadastral taxes applied at the fixed amount of €50 each.

- 2% registration tax (stamp duty) if the seller is an individual or a construction company that sells the property after five years from its construction, plus mortgage and cadastral taxes applied at the fixed amount of €200 each

The above-mentioned tax rates apply under the following conditions:

- the property must not be classified as a luxury home, villa, or as having an artistic value (cadastral categories A/1, A/8, A/9)

- the property must be in the Municipality where the buyer has his residence

- if the purchaser is resident in another municipality, he or she must transfer his residence to the municipality where the property is located within eighteen months from the date of purchase.

Furthermore, a “first home” buyer can deduct from his/her personal income tax 19% of the mortgage interest paid up to an overall amount of EURO 4,000 per year.

Taxes on real estate income

In the event that the property is rented to third parties, rental income is subject to personal income tax (IRPEF) calculated at progressive tax rates (from 23 percent to 43 percent). Alternatively, individuals can benefit from the 21 percent flat-tax (cedolare secca) to be applied at

4. TAXATION ON ITALIAN ESTATE PROPERTIES

the lessor's option.

Property tax

Italian lands and buildings are subject to Italian municipal tax (IMU) applied on the cadastral value of the property. Tax rates depends on the municipality and the cadastral nature of the property, and they may vary from 0.46 percent to 1.06 percent. Where the property is the individual's "principal dwelling" IMU would not be payable.

Gift and succession taxes

Gift and succession taxes on real property are subject to the same rates and thresholds. For example, in the case of a gift or succession in favor of a spouse and direct descendants (parents-children, grandparents-grandchildren), the gift and succession taxes will be calculated on the cadastral value of the property at the rate of 4 percent on the amount exceeding the threshold of EURO 1 million for each beneficiary. Furthermore, mortgage and cadastral taxes will be payable at the rate of 3 percent without any threshold. The heirs and the donees may apply for the application of the "first home" tax regime, provided that the conditions exist, thus benefitting from the application of mortgage and cadastral taxes of a fixed sum (EURO 200 each).

Sale of the property

In the event of a sale of the property, the capital gain will be taxed in Italy at personal income tax rates. However, it is worth noting that, for individuals, capital gain arising from the sale of a "first home" or other properties held for

4. TAXATION ON ITALIAN ESTATE PROPERTIES

more than five years, are not taxed. Therefore, in those cases, the capital gain will be fully exempt from taxation in Italy. Conversely, if the property is not the “first home” or if it is sold during the first five years from the date of purchase the capital gain would be subject to personal income tax levied at progressive tax rates.

However, it is possible to ask the Italian Notary for the application of a 26 percent substitutive tax provided that the capital gain does not arise from:

- professional activity
- business activity (carried out through a corporate entity, limited partnership, partnership)
- employment activities.

In the event of a sale of the property, the capital gain will be taxed in Italy at personal income tax rates

5.

TAXATION OF FINANCIAL ASSETS



5. TAXATION OF FINANCIAL ASSETS

Income derived from financial assets are generally subject to a substitutive tax applied at the rate of 26 percent.

However, the way it is treated for tax purposes and the possibility of setting off capital gains with losses arising from the financial assets depends on the nature of the income as per the Italian tax law.

Taxation of income from financial assets

Taxation of income from financial assets necessitates making a distinction between so-called "other income" and "capital income."

Other income

The "other income" category includes capital gains and capital losses, which can be offset against each other and are calculated taking into account the inherent costs. The net result is subject to substitute tax of 26% and any loss can be carried forward over the next 4 years and offset against future gains.

Capital income

Included in this income category are, among others:

- dividends
- coupons on corporate and government bonds
- interest on loans
- income distributed by investment funds or derived from insurance policies.

Capital income is subject to a substitute tax of 26 percent (or 12.50 percent in the case of government bonds) but unlike other income, there is no concept of loss, nor is there the option of offsetting.

5. TAXATION OF FINANCIAL ASSETS

Special cases

Individuals investing in mutual fund shares (OICRs, FIAs, ETFs, etc etc) should bear in mind some exceptions:

- capital gains are treated as capital income and therefore cannot be offset against any capital losses;
- if the fund is established outside the EU, or if the managing entity is not a supervised entity, no substitute tax applies, but marginal IRPEF (23 percent to 43 percent) plus municipal and regional surcharges.

Double taxation treaties and credit for tax paid abroad

Income subject to the 26 percent substitute tax cannot benefit from the credit for taxes paid abroad.

However, for dividends and interest it is possible to apply the tax treaties against double taxation and claim the more favorable conventional withholding taxes applied by the source State.

Entry tax

It is worth noting that individuals relocating to Italy are not subject to any entry tax in Italy.

Therefore, according to the Italian Tax Authorities Guidelines, any capital gain will be determined on the basis of the historic cost of the asset or, alternatively, at the higher value if the foreign State applied an exit tax on the asset at the moment of the transfer.

Exit tax

In the case of transfer from Italy to abroad individuals are not subject to exit tax.

6.

TAX COMPLIANCE OF FOREIGN ASSETS AND THE ROLE OF THE ITALIAN FIDUCIARY COMPANIES



6. TAX COMPLIANCE OF FOREIGN ASSETS AND THE ROLE OF THE ITALIAN FIDUCIARY COMPANIES

Foreign nationals who move to Italy often retain ownership of financial and real estate assets abroad.

One of the most frequent mistakes is to think that since these assets continue to be subject to taxation in the home state, it is not necessary to declare them in Italy as well. Unless the individual has opted for the Italian Neo-Dom Regime (Art. 24 bis of ITC) or for the Retired Regime (Art. 24 ter of ITC), foreign assets are subject to monitoring obligations and taxes. Failure or incomplete filing of the RW Form is subject to penalties applied on a proportional basis from 3% to 15%, or from 6% to 30%, depending on whether the State where the assets are held is a "White list" or "Black list" country.

The RW Form and Wealth taxes on foreign assets

Italian tax resident individuals must file the so-called RW Form reporting the value of all the assets held abroad and pays wealth taxes (IVIE and IVAFE) calculated on the basis of the percentage of ownership and the number of days.

Foreign real estate assets

Foreign real estate properties are subject to IVIE generally levied at the tax rate of 0,76%. It is calculated on:

- the cadastral value (for real estate properties in EU Countries)
- the purchase price (extra-EU Countries) as reported in the purchase contract
- the market value as of 31 December of each fiscal year, if the purchase contract is not available

In the case of double taxation, the taxpayer should be

6. TAX COMPLIANCE OF FOREIGN ASSETS AND THE ROLE OF THE ITALIAN FIDUCIARY COMPANIES

entitled to deduct – directly in the Italian tax return – a foreign tax credit for wealth taxes paid abroad on the same properties. It is worth noting that after Brexit, the cadastral value criterion will no longer apply to properties in the UK and the IVIE will be due on the purchase cost (if available) or on the market value.

Foreign financial assets

Financial assets held abroad are subject to IVAFE levied at a 0.20% tax rate. It is calculated on the market value of the investment (i.e., investment funds, shares, life insurance, bonds) held outside of Italy at the end of each calendar year. In the case of double taxation, the taxpayer should be entitled to deduct – directly in the Italian tax return – a foreign tax credit for wealth taxes paid abroad on the same assets. Foreign bank accounts are subject to IVAFE applied as a fixed sum of EURO 34.20 and it falls due on each bank account (even if belonging to the same financial intermediary), regardless of the value of the account itself. However, the flat amount is due only when the annual average value of the account is higher than EURO 5.000,00 throughout the fiscal year concerned.

Failure or incomplete filing of the RW Form

Failure or incomplete filing of the RW Form is subject to penalties applied on a proportional basis from 3% to 15%, or 6% to 30%, depending on whether the State where the assets are held is a “White list” or “Black list” country.

Italian fiduciary companies

Foreign assets may also be assigned to or just admini-

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stered by a fiduciary company resident in Italy.

In this case, the given assets and rights do not form part of the patrimony of the company, but they always remain in the dominion of the mandatory agent. Therefore, the individual, although remaining to all intents and purposes the owner of the assets, can register assets in the fiduciary company's name for reasons of confidentiality. Furthermore, Italian fiduciaries companies act as a withholding agent levying wealth taxes (and also substitute taxes) on behalf of the client who is also exempted from filling in the RW form.

It is worth noting that there are many activities that can be carried out through a fiduciary mandate: administration of assets and values, cooperation to the incorporation of companies, capital increases of authorized share capital, debenture loans, and shareholders' loans, corporate agreements or agreements between companies, compliance, representation at shareholders' meetings, fiscal consolidation for administered portfolios at various bank and financial intermediaries, confidentiality preservation, etc.



TRUSTS IN ITALY



7. TRUSTS IN ITALY

Recognition of trusts in Italy

Insofar as the Hague Convention (“on the Law applicable to Trusts and their recognition”) has been ratified by the Italian Parliament, Italy was among the first Countries (of Civil Law tradition) to welcome the trust instrument into its legal system.

According to the wording of the Convention the essential features (necessary for a trust to be binding and then enforced) can be summarized as:

- the assets are placed by the Settlor under the control of a Trustee
- the Trustee has the power and the duty to manage, to employ or to dispose of the trust assets for the benefit of one or more beneficiaries or for the purpose the trust has been formed. Moreover, the Hague Convention establishes that the reservation of any power or right by the Settlor does not mean that the trust is void (art 2, par 3). This latter specification comes from the judicial and practical experience of the common law countries.

Governing law

Despite the fact that Italy welcomed the trust into its legal system, no particular rules have since been issued. This means a trust formed in Italy must nevertheless be governed by a foreign law. This governing law can either be chosen by the Settlor (Art.6) or the Convention provides indications of different connecting factors (Art 7) to be used in the case of the lack of a proper choice. It often happens in general practice that a trust has most of its elements strictly connected to Italy (Settlor, Trustee, Beneficiaries, trust fund assets and estate...) and only the governing law is the foreign element of this legal structure; this is what the trust professionals call “trust

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interno". As long as the Settlor follows the Convention requirements, the trust so formed presents at least these peculiar features and produces these effects:

- the asset within the trust fund shall constitute a separate fund and is not part of the Trustee's estate
- the assets are held in the name of the Trustee (or of another person on behalf of the Trustee)
- the Trustee has the power and the duty to manage, to use or to dispose of the assets pursuant to the specific terms of the trust and the duties laid down in the governing law.

Lastly, it is worth mentioning that a Settlor is absolutely required to transfer the assets to the Trust fund in order for the trust to be effective. This last comment has a particular influence on the way the trust is treated for tax purposes. Since its implementation the Hague Convention and the trust have been extensively used in professional practice towards the protection of assets for future generations or to assist in situations of diminishing awareness, just to mention two areas in the lives of the private person. This use in legal practice has certainly driven the wide-open recognition of trust deeds even those drawn up in foreign countries and whose "actors" aren't "settled" in Italy. Apparently, all the boundaries seem to have been broken down but it is important to recall that the inheritance rights of legitimate heirs or creditors' claims, or the family patrimonial regime still remain a steadfast rock in the Italian legal system.

Italian tax regime applicable to trusts

Tax rules applicable to trusts were introduced in 2017, with the Italian Finance Act and they consider trusts to be "legal entities" subject to corporation tax. However,

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the application of the Italian tax provisions depends on whether a trust is tax resident in Italy or not and whether or not it carries out commercial activities. It is worth noting that Italian rules do not have regard to the residence of the Trustee but the place of residence of the trust as if it had a legal personality. In this sense, a trust is considered an Italian tax resident if either its seat of management or its main object is located in Italy for most of the tax period (183 days or 184 in the case of leap years).

Residence test

In addition, Italian tax law sets forth an anti-avoidance provision which applies to trusts established in off-shore jurisdictions even if the trust has a close connection with the Italian territory. Therefore, a trust established in a country which is not included in the list of Countries that permit an exchange of information with Italy it may be deemed to be Italian tax resident if it has been set up

- by an Italian tax resident Settlor
- for the benefit of one or more Italian tax resident beneficiaries or involving the transfer of Italian real estate properties.

The taxation of trusts

For Italian tax purposes, trusts can be categorized as transparent trusts (trust trasparente) and opaque trusts (trust opaco) depending on whether or not there are identified beneficiaries.

Italian tax law sets forth an anti-avoidance provision which applies to trusts established in off-shore

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Opaque trusts

A trust opaco is a trust without identified beneficiaries. For instance, a trust is opaco where the trustee has a discretionary power to distribute income and capital to beneficiaries. The trust income is taxed at trust level as follows: 26% substitute tax on financial income (except for dividends which are subject to corporate income tax of 24% and government bonds which are subject to a 12.5% substitutive tax), 24% corporate income tax for other income, generally.

Transparent trusts

Italian Tax Authorities clarified that, in order to qualify as a transparent trust, identified beneficiaries must be entitled to receive the trust income and the Trustee has no power to decide upon the amount, the timing or who the beneficiaries are, of the distribution. Income is determined at trust level and subject to personal income tax in the hands of the beneficiaries.

Tax on distributions

The tax regime which applies to beneficiaries will be subject to careful analysis. According to the amendments introduced by Legislative Decree No. 124/2019, income paid to Italian tax resident beneficiaries by trusts and similar institutions established in States deemed as "low tax jurisdictions", qualifies as income taxed in the hands of the beneficiaries. The application of the rule is currently under discussion; in the draft of the Circular issued on August 2021, Italian Tax Authorities clarify that a jurisdiction will be considered a "low tax jurisdiction" in cases where the nominal level of taxation applicable to trust income is less than 50% of the applicable Ita-

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lian rate. This could lead to even EU/EEA Countries being considered to be “low tax jurisdictions” if the trust established in any of them is not subject to any taxation.

Reporting obligations (RW Form)

In the case of a foreign Trust, Italian tax resident beneficiaries must declare the value of the trust in the RW Form each year. Conversely, IVAFE is not due. According to the position taken by the Italian Tax Authorities in the draft of the Circular issued in 2021, even the beneficiaries of foreign opaque trusts are subject to the Italian reporting obligation (RW Form). This applies for example, where the beneficiaries of a trust are identified or can be easily identified, in the trust deed and any other relevant documentation. Conversely, second-degree beneficiaries will not be subject to reporting obligations unless they have already received a distribution from the trust. Failure to file or an incomplete filing of the RW Form is subject to penalties applied on a proportional basis from 3% to 15%, or 6% to 30%, depending on whether the State where the assets are held is a “White-list” or “Black-list” country.

8.

PATRIMONIAL REGIMES FOR SPOUSES AND REGISTERED PARTNERS



8. PATRIMONIAL REGIMES FOR SPOUSES AND REGISTERED PARTNERS

Freedom of movement of people within the EU member States has certainly led to new ways of organising life for couples. This means, to some extent, a change in the legal and judicial environment for patrimonial arrangements in the case of marriage, civil partnership, or a common estate for family purposes. Every member State, both those in the common law and civil law traditions, have their own private international law rules which aid in discovering what law applies in the event of cross border patrimonial issues in different fields. Italy, for instance, defers to Law 218/1995: Articles 29 and 30 state that the patrimonial regime between spouses (and civil registered partners) is governed by the common national law of the two. As a residual criteria the partners can choose the law of the State where the couple has settled, or where their common life is basically being conducted. This set of rules certainly provides assistance in solving cross border problems; nonetheless a clash of legal issues may often arise. These regulations are, namely, EU Regulation No. 1103 and No. 1104 of 2016. They have been drafted as twin regulations and their wording is focused on avoiding misunderstandings at a literal level among States. The Regulations then deal with the private-international law aspects of the property regimes of couples and registered partners, including applicable law, jurisdiction, recognition and enforcement of foreign decisions and Deeds. According to the "Whereas" of the Regulations: "The objectives

The partners can choose the law of the State where the couple has settled, or where their life is being conducted

8. PATRIMONIAL REGIMES FOR SPOUSES AND REGISTERED PARTNERS

of this Regulation [are], namely the free movement of persons within the Union, the opportunity for spouses/partners to arrange their property relationships in respect to one another and third parties during their life as a couple and when liquidating their property, and to provide greater predictability and legal certainty". That is why new regulations have been adopted within the EU to harmonize the basic principles referred to above.

Scope: The patrimonial relationship between spouses and partners during a marriage/a registered partnership and in the event of its dissolution/annulment.

Applicable Law: in both regulations the main criteria to be adopted is the Law of the habitual residence of the couple or members of the future couple (Art 22). This means that both spouses or partners can choose the law of the State where they have already fixed their habitual residence or, alternatively, where they are intending to move and settle down. Both regulations require this choice to be expressed in writing, dated and signed by both parties. The choice of law ("profession iuris") provisions embodied in the regulations are of universal application (Art. 20) so that the law designated or chosen shall be applied whether or not it is the law of an EU Member State.

Alternative criteria: Where the spouses or the partners do not choose a governing law both regulations provide for different criteria to be followed (Art 26 EU Reg. 1103 for married couples): the law of the State a) of the common habitual residence; b) of the common nationality; c) with which there are the closest connections. (Art 26 UE Reg 1104 for registered partners) a) the law of the State in which the partnership was created or registered; then

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the common habitual residence of the partners.

Jurisdiction: Indeed, the Regulation sets out not only the conflict of laws rules, which override those contained in Art. 30 of Law No. 218/1995, but also the rules on jurisdiction and the recognition of foreign decisions.. The only limitations set out relate to the personal estate and properties of the husband or wife in the case of a married couple and of the members of registered partnership, those placed outside of the patrimonial regime, are usually as result of a family succession.

Example 1: a married couple is resident in France; they both have German nationality (just to give an example) and they have a home in Spain where they spend long periods of time in smart working. Under EU Regulations:

- they can choose the law of the common habitual residence (or the habitual residence of one of them), that is to say France in the instant case (Art. 22)

or

- in the absence of a choice (Art. 26), either the law of the State of the common habitual residence, the law of the State of their common nationality (Germany), or the law of the State with which the couple has the closest connection (maybe Spain?) shall apply.

Example 2: one of the partners, of a registered partnership, is habitually resident in Austria. The other partner is intending to become resident of Austria but is currently a US national. The partnership was registered in Italy, where the partners have a house at the seaside, and they spend their holidays. As far as EU Regulation No. 1104 is concerned:

- They can choose the law of the State where both partners or one of them is habitually resident (Austria or USA); Italian law as the partnership has been registered

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in Italy (Art. 22)

or

- in the absence of a choice (Art. 26), the law of the State where the registered partnership was created (Italy) will be applied and by way of exception, the law of the State of the common habitual residence.

It is worthy of note that, besides resolving the conflict of laws issues, both EU regulations enhance the possibility for couples to plan their property arrangements during the relationship and regulate the effects in the event of a dissolution or annulment.

9.

CROSS-BORDER SUCCESSION AND PLANNING



9. CROSS-BORDER SUCCESSION AND PLANNING

The EU Regulation 650/2012 on cross-border succession and planning. What are we talking about?

Talking about succession is a bit of a spine-chilling topic. Succession planning might seem even worse than that. Recent studies have demonstrated that successful succession planning usually facilitates the handover and prevents the family wealth from being misused and often dissipated or lost.

Why has this EU Regulation been introduced?

- for the harmonization of legal concepts,
- to try to make the cross-border inheritance process easier for the family and for the heirs in general and
- to make succession planning a new tool of wealth transmission.

First of all, the long-enduring development of the initial idea (of common principles in the inheritance process) conflicts with the inevitable differences between the private international law rules of each of the member States. This led to what is commonly referred to as a “juridical compromise”. We can easily trace its footprints in the enormous initial part of the “83 Whereas”. The different approaches to inheritance issues have obliged the EU Law maker to look at different concepts and regulate them in order that they can be applied directly within the individual jurisdictions of each of the member States.

This leads to the second crucial point: an EU Regulation, unlike other international legal instruments, is directly

Successful succession planning facilitates the handover

9. CROSS-BORDER SUCCESSION AND PLANNING

enforceable in each member State jurisdiction and that means that all the regulations form part of Italian law to the same extent as any other provisions on the subject; and such is the case in each member States. This is quite important in that it relates to the substantial part of the EU Regulation, that is to say the new instrument embodied in the form of the EU Succession Certificate. This is the innovative part of the Regulation which enables the capacity of heirs to be recognized before the Authorities of the Member States and, generally, before the Authority of any State which is entitled to deal with inheritance matters (eg. Revenue Agencies, Estate Registries etc). This is, in fact, the innovative part of the UE Regulation: the creation and direct enforceability of a legal instrument – the Certificate – which definitely has a new impact on cross-border succession relationships. The final new concept expounded by the EU Regulation is the right to plan succession; the succession planning extensively used in the Anglo-US world, has become a closer concept also to Civil Law countries like Italy.

What are the relevant issues?

The Scope of the Regulation is to deal with the estates of a deceased person (Art.1). That seems quite easy to understand but on a deeper level it brings about a lot of related problems and issues, eg. the status and the capacity of a natural person, the property regimes for spouses and partners, the fiscal consequences of inheritance rights, just to mention a few, whose definition and regime are called for in other documents.

9. CROSS-BORDER SUCCESSION AND PLANNING

What are the main criteria for a succession to be effectively dealt with as a whole?

- art 21 of the EU Reg establishes that: unless otherwise provided the law applicable to the succession as a whole is the law of the State of the habitual residence of the deceased. This general rule applies to the succession of any person deceased within the jurisdiction of the EU, both in cases where there is a will or in the case of intestacy.
- art. 22 of the EU Regulation lays down the Choice of Law rule (better known as *professio iuris*). It states that a person (the future deceased) may choose the law of her/his actual nationality (or future nationality in the case of an incoming change/addition) as the law governing the succession of their estate as a whole.

How may this choice of law be effected?

- according to Art. 22 (para 2) the choice shall be made expressly in a declaration. That means that a person should clearly state that choice in her/his will or, at least, it should be demonstrated by the terms of the will (eg. "I choose the Law of France to govern my succession" or "The law of the State where I was born and of which I am a national will govern the processing of my inheritance when I pass away")
- the person can choose the law of a member State (EU member States bound by the Regulation) or potentially the law of any State in the world. This is what is known as the Universal Application of the EU Regulation (Art. 20). This principle assists in handling the succession as a whole and has its own particular consequences in regard to jurisdiction as well (See Art. 34 concerning the

9. CROSS-BORDER SUCCESSION AND PLANNING

renvoi in private international law).

What happens then?

Analysing the Will is of utmost importance. It's necessary to find out what the legacy consists of. In the Will the deceased person should have written his/her last wishes concerning how the transmission of the estate should be dealt with. Following on that, and bearing in mind the EU Regulation rules, the heirs (or those family members with some entitlement to the deceased's estate) can scout for which governing law is to be applied. Afterwards, the heirs should be cautious about evaluating the fiscal impact of the succession in the place where the assets are located. The EU Regulation, in fact, does not deal with fiscal matters and each State (whether an EU member or not) has its own provisions and, usually, the State is bound by double tax treaties or agreements which focus on that. From a practical point of view the EU Regulation also provides for the Recognition, Enforceability and Enforcement of decisions (Art. 39) on succession matters. This part of the regulation is extremely important, also for professionals, because it clearly states that the recognition of the inheritance rights of heirs can be a question of fact as soon as the inheritance process begins. Examples:

- Mr M is an Austrian citizen whose habitual residence is in the USA (Colorado State). He is married to a US Citizen. He owns a property in Italy and other properties in Austria where a part of his family still lives.

Given this situation he decides to make a will.

- He could make an Austrian will in which he could elect Colorado State Law to apply to his whole estate;

- He could make an Austrian will in which the choice is

9. CROSS-BORDER SUCCESSION AND PLANNING

directed to the Austrian law (his nationality). That choice of law applies to the entire estate wherever it is located (Austria, Italy and the US);

- Ms W is an Italian citizen whose domicile is in the UK. She has some immovable properties in Italy, a flat in Liverpool and some movable assets in a UK bank. She's planning her succession in order to be sure her children will be protected and will inherit at least her family properties in Italy.

-She can make a will in which she chooses the Italian law to govern her estate. When she passes away her children find out that the UK is not bound by EU Regulations; that means the succession is not considered as a whole. Insofar as the Italian properties are concerned the children will be considered as legitimate heirs. In regard to the flat in Liverpool or the movable assets in the UK bank they will be dealt with in accordance with the UK laws of succession (and related taxation).

-In the event that she makes a will in which she chooses the law of her habitual residence (or she refers to UK "domicile") she probably achieves the same solution: The UK jurisdiction distinguishes movable assets (law of domicile) and properties and immovable assets (*lex rei sitae* – the law of the place where the assets are located). Unless they have opted for the application of the Italian Neo-Dom Regime, foreign citizens who have moved to Italy and have acquired tax residence are subject to Italian inheritance and gift taxes. Italian tax law applies regardless of the law that has been chosen to regulate the succession from a civil point of view.

10.

INHERITANCE AND GIFT TAXES



10. INHERITANCE AND GIFT TAXES

Italian Inheritance and gift tax is levied on worldwide assets if the deceased or donor had his or her habitual abode in Italy at the date of demise or gift, otherwise it only applies to assets situated in Italy.

Applicable tax rates and thresholds

Transfers upon death and gifts are subject to inheritance and gift tax at the following rates and with the following exemption thresholds:

- 4 per cent if the transfer is made to spouses and direct descendants or ancestors; here, the transfer is subject to tax on amounts exceeding 1 million Euros (this exempted sum applies to each beneficiary)
- 6 per cent if the transfer is made to brothers and sisters; here, the transfer is subject to tax on amounts exceeding 100,000 Euros (this exempted sum applies to each beneficiary)
- 6 per cent if the transfer is made to other relatives up to the fourth degree, to persons related by direct affinity as well as to persons related by collateral affinity up to the third degree
- 8 per cent in all other cases.

Taxable base

The rules for the calculation of the taxable base may be extremely favorable. For instance, the value of Italian real estate is, in principle, equal to its fair market value, but the tax office cannot dispute the value declared if it is at least equal to the value resulting from the cadastral registers, which is generally much lower than the fair market value. Exemptions from inheritance and gift tax may apply to assets of cultural value, and even government bonds are free from inheritance tax.

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The transfer of businesses and participations in companies and partnerships to spouses or descendants are exempt from inheritance and gift taxes. Furthermore, payments made under an insurance policy are exempted from inheritance and gift tax. Foreign insurance policies need to be carefully analyzed in order to determine whether they comply with Italian law requirements for exemption. Finally, as far as joint assets (i.e. a bank account) are concerned, inheritance tax will be payable only on the quota owned by the deceased individual.

Estate and gift tax treaties

Individuals who are subject to Italian inheritance and gift tax on their worldwide assets can benefit from the Italian inheritance, estate, and gift tax treaties, which may preclude the levy of more burdensome taxes in other jurisdictions. Treaties for the avoidance of double taxation on inheritance and estate tax are in force with Denmark, France, Greece, Israel, Sweden, the United Kingdom and the United States. The treaty with France also covers gift tax. For instance, a foreign national may transfer his or her habitual abode to Italy and become immediately exposed to Italian inheritance tax on his or her worldwide estate, but, as a consequence, he or she may become treaty protected from foreign inheritance tax depending on the provisions of the treaty in force.

For the application of the treaty where a deceased person was domiciled at the time of his death needs to be determined in accordance with the law in force in that territory. In this regard, a deceased person could be deemed to be domiciled in the territory of more than one State, for example. In this case, it is necessary to look at the provisions of the applicable tax treaty and the rules

10. INHERITANCE AND GIFT TAXES

aimed at resolving cases in which both States have the power to tax. For example, under Art. II of the treaty in force between Italy and the UK, this case would be resolved in accordance with the following rules:

- an individual shall be deemed to be domiciled in the territory of the States in which he had a permanent home available to him at the time of his death
- if he or she had a permanent home available to him in the territory of each of the States he shall be deemed to be domiciled in the territory of the State with which his personal and economic relations were closest (center of vital interests)
- if the State in whose territory the individual had his center of vital interests cannot be determined, or if he or she had not a permanent home available to him in the territory of either State, the individual shall be deemed to be domiciled in the territory of the State in which he or she had an habitual abode
- if the individual had an habitual abode in the territory of each of the States, or in the territory of neither, he shall be deemed to be domiciled in that of which he was a national
- if the individual was a national of both territories or of neither of them, the taxation authorities of the States shall regulate the taxation by a mutual agreement.

Credit for foreign inheritance tax

In general, Italian tax laws recognize a credit for succession taxes paid abroad. It is possible to deduct the inheritance taxes paid in a foreign State on the same assets up to the amount of the Italian inheritance tax.

There might be specific provisions derogating from this rule set forth in the treaties entered into by Italy.

EDITED AND WRITTEN BY _



Massimo Caldara - Dottore Commercialista

Massimo is the Managing Partner of Caldara & Associati, which he founded in 2020, after more than twenty years of professional experience gained first at international firms and then at a leading boutique firm in Milan he co-founded. With a special focus on HNWI clients, and particular expertise in succession planning, corporate reorganizations and family relocations, Massimo supports both domestic and international clients in wealth planning and family office matters. He is member of STEP Italy and he is enrolled in the Order of Chartered Accountants of Milan and the Register of Auditors and in the register of the Independent financial advisors.



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Martina is a Lawyer and she's a member of the local Bar Association. She deeply developed her practice in the field of protection and transmission of wealth by legal tools like trusts, family agreements and other civil law instruments. Her practice is also focused to cross border issues regarding inheritance and beneficiaries rights. With the team of Caldara & Associati she currently handles clients' issues from the problem-solving phase through a more constructive approach and then to the drafting stage of legal instruments (like Trust or family agreements). Since 2005 she is an active member of STEP (Society of Trust and Estate Practitioners) and deeply involved in the running of the STEP Italian Branch (STEP Italy) as former Deputy Chairman and actual Chair of the Mental Capacity Special Interest Group (SIGs). As Senior Counsel at Caldara & Associati she runs the Florence Office and moves frequently to Milan.



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