

Imminent amendments to gift tax and inheritance tax

# Italy: An urgent call for estate planning

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A draft bill has been recently introduced to the Italian Parliament which aims to amend the currently levied gift tax and inheritance tax. Although the hearings on the proposed bill have not started yet, it is true that there has been a lot of talk regarding this issue lately, and it is highly foreseeable that in the very near future, a radical change will be applied to the legislation to such an extent that will be considerably detrimental to taxpayers (possibly by means of a sudden intervention by the Government instead of a long discussed reform by Parliament).

After being reintroduced in the Italian

legal system in 2006, gift tax applied to gifts made during a donor's life and on transfers upon death is (presently) considerably lower than in most countries.

As far as inter vivos gifts are concerned, if the donor and/or the recipient are Italian residents at the time of the gift, the gift tax is always levied, regardless of whether assets or rights are located abroad, and whether the gift is performed by way of a deed executed abroad.

In relation to transfers on death, inheritance tax is levied on any transferred asset or right, whether or not the transferred assets and rights are located in Italy or abroad, if the deceased is resident in Italy at the time of his / her death.

The tax base of both of the levies is

constituted by the value of the transferred assets or rights. The tax rate currently applicable to transfers both inter vivos and on death varies in relation to the kinship between the donor and the donee or between the deceased and the heir or legatee:

- i. transfers to the spouse or lineal relatives are taxed at 4%;
- ii. transfers to relatives in collateral line up to the fourth degree, to lineal relatives in law up to the fourth degree and to relatives in law in collateral line up to the third degree are taxed at 6%;
- iii. transfers to other unrelated subjects are taxed at 8%.

For the sake of clarity, Italian law de-

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defines “lineal relatives” as individuals who descend from one another (e.g. father-son), while “relatives in collateral line” share one ancestor (e.g. the father or the grandfather) but do not descend one from the other (e.g. siblings or cousins).

In order to calculate the degree of “lineal relation” you have to count each individual up to the common ancestor (albeit without counting the common ancestor).

In order to calculate the degree of “relation in collateral line” you have to count each generation upwards to the common ancestor (albeit once again without counting the common ancestor) and then descending from him/her.

“Relation in law” refers to the legal relationships between a spouse and the other spouse’s relatives.

The degree of “relation in law” is the same degree of “relation” which links one of the spouses (e.g. father-in-law and son-in-law are first degree relatives-in-law because the spouse is a first degree relative of her father). Furthermore, relatives-in-law can be lineal or collateral: the former if the relatives of the spouse are linear relatives, the latter if the relatives of the spouse are collateral relatives.

Specific thresholds are then provided for transfers benefiting certain classes of individuals:

i. the spouse or lineal relatives of the transferor are taxed on the net value

exceeding EUR 1 million for each transferee;

ii. siblings of the transferor are taxed on the net value exceeding EUR 100,000 for each transferee;

iii. transferees with serious disabilities are taxed on the net value exceeding EUR 1.5 million for each transferee, regardless their ties with the transferor.

Transfers inter vivos and on death which are in favour of the State and other local authorities, public bodies, political parties, foundations, legally recognized associations and other non-profit entities whose purpose are exclusively of public interest, are exempt from the above.

The proposed reform will likely increase the tax rate to 7% for the spouse or lineal relatives of the transferor, to 8% for siblings, to 10% for relatives in collateral line up to the fourth degree, for lineal relatives in law up to the fourth degree and for relatives in law in collateral line up to the third degree, to 15% for other unrelated subjects. It is worth underlining that each of these percentages would then be tripled for transfers over EUR 5 million.

Furthermore, the threshold for the spouse or lineal relatives of the transferor will be reduced to EUR 500,000.



As if all the above were not enough, the tax burden is set to increase even more in the foreseeable future where real estate is transferred: in such cases, the tax base of gift tax and inheritance tax is the cadastral revenue multiplied by the relevant coefficients; concurrently with the reform of gift tax and inheritance tax, the Italian Legislator is also performing a comprehensive review of the Land Registry, which will in turn lead to an overall increase in cadastral revenues. The latter reform will therefore also have a very direct and negative impact on the gift tax and inheritance tax burden.

In light of such concerning developments, you can see why practitioners with Italian resident clients and/or those with interest in Italian assets are best advised to suggest taking urgent, even immediate, action to mitigate (future) liabilities by freezing the current lower taxation levels immediately. It’s now or never!



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