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Private Wealth

Second Edition

Italy
Trends and Developments
Loconte & Partners – Studio Legale e Tributario

chambers.com

2019

Trends and Developments

Contributed by Loconte & Partners – Studio Legale e Tributario

Loconte & Partners – Studio Legale e Tributario is a tax and legal law firm, operating in Italy, in Milan, Bari, Rome and Padua, and abroad, in London and New York, with a dynamic professional team managed by the founding and managing partner Professor Stefano Loconte. The firm generally provides the clients with a wide consultancy regarding domestic and international taxation. Loconte & Partners' professionals are also deeply specialised in wealth management and asset protection, with reference to Italian and transnational structures. Loconte & Partners' wealth management team is composed of lawyers and certified accountants, providing a multi-disciplinary approach and practical solutions to clients' needs, leveraging on deep knowledge of regulations, experience and strong delivery capabilities, both on a domestic and an international level. The team aims to be a 'one-stop-shop' in the management of family assets, both in running day-to-day activities and in devising and implementing complex extraordinary transactions.

Authors

Stefano Loconte is the founder and managing partner of Loconte & Partners, and a tax lawyer, qualified to practise before the High Supreme Court. His practice areas include corporate, commercial law, tax, international law and business contracts. He is highly and specifically experienced in trust law, and is the author of several articles on trust law for specialist magazines. He is a university professor of Tax Law, Trust Law and Islamic Finance at the University LUM "Jean Monnet", Casamassima (BA). He is a member of STEP Italy and a member of the STEP Academic Community, which counts few members all over the world. He is also the global chairman of the GGI (an international alliance of accounting and law and consulting firms) Trust and Estate Planning Practice Group.

Luigi A. M. Rossi is a tax lawyer, chartered accountant and is based in Milan. Since the beginning of his career he has assisted family business, with regard to legal and tax aspects concerning estate planning and the generational transfers. An associate of Loconte & Partners since 2018, he is a member of the Global Wealth Management Team. His expertise includes tax planning for HNWI, corporate reorganisation, trust and art law. He is a member of the International Fiscal Association (IFA), the National Union of Chambers of Tax Lawyer (UNCAT) and the 'Estate Planning' Commission of the Young Accountant Association of Milan.

Angela Cordasco is a tax lawyer and senior associate and has gained important experience in tax law, becoming specialised in the taxation of individuals, especially from a cross-border perspective. She joined Loconte & Partners in 2014, where she became responsible for Loconte & Partners' London Office in 2016. She is responsible for wealth management services, with a special focus on cross-border private clients. She is also responsible for tax-compliance services for individuals with a focus on cross-border income and foreign investments, and responsible for advisory in international and domestic tax law and wealth planning, both for individuals and corporations, taxation of trusts, estates and HNWIs.

Beatrice Molteni is a trainee lawyer and a member of the Global Wealth Management Team, based in Milan. She is specialised in the wealth-planning area and in the advisory to the private clients, including both domestic and international clients. She assists and supports the team in multiple practices and collaborates with the publication of different editorials with the law firm.

Italy has never been among the most attractive countries for foreign investors, due to several reasons, such as the instability of the political system and the quite high taxation on both individuals and corporations.

However, despite the high taxation on income, Italy has very favourable tax rates on inheritance and donations (from 4% to 8% of the estate with free-tax allowances up to 1,000,000 euro) and it allows the transfer of movable and immovable assets between the generations with a very low imposition.

Therefore, in order to attract foreign people to Italy, the Italian Government has recently introduced some special tax regimes and other favourable measures aimed to incentivise foreigners to move their tax residence to Italy and, thus, to invest in the country.

The Introduction of Special Tax Regimes

The tax regime for new HNWI's residents

With the 2017 Italian Budget Law, indeed, the new Article 24-bis of the TUIR (Italian Tax Code) has been introduced, which provided for the first time ever in Italy a special flat-tax regime applicable to the foreign high net worth individuals transferring their tax residence to Italy.

The legislation, inspired by the successful experiences recorded by other foreign countries, provides a substitutive tax on all income produced abroad by the new resident instead of the ordinary taxation, in derogation of the general principle of 'worldwide income taxation', that is applicable to all individuals who qualify as tax-resident in Italy.

The concept of 'tax residence' in Italy is, however, quite different from that of those "common law" countries, such as the United Kingdom, in which the 'res non-dom' regime has been successful over the years.

In Italy, an individual is a tax resident if at least one of the following conditions is met:

- the individual is registered with the Municipal register of resident population for more than half of the tax year (ie, the calendar year). When fulfilled, this condition is sufficient to qualify the taxpayer irrefutably as an Italian resident;
- the individual has placed in Italy his or her 'residence', ie, 'the place of habitual abode';
- the individual has placed in Italy the 'domicile', ie, the 'main centre of business and interests'.

The new tax regime is available to individuals moving their tax residence to Italy – on the terms described above – provided they have not been resident in Italy in nine out of the ten previous years. The option can be extended to one or more related persons (registered partner, children, parents etc) on the same conditions.

In order to obtain the special tax regime, the taxpayer should opt for it through his or her Italian tax return relating to the tax period in which he or she moves to Italy.

However, a preliminary ruling request can be filed with the Italian Revenue Service, in order to obtain confirmation that each specific case fulfils the conditions required for granting the benefits.

The request can be approved or rejected within 120 days, and the decision is final. If no answer is provided, the request is deemed approved. The approval is binding on Italian Tax Authorities as a whole.

In exercising the option, the taxpayer must indicate the country of his or her last tax residence. It is stated that, in addition to ordinary international exchange of information procedures, this information will be shared with the country of origin of the incoming taxpayer.

The special regime consists of a derogation from the ordinary 'worldwide income' principle applicable to Italian tax residents: all foreign-source income generated during the validity of the option is subject to an overall forfait flat tax.

This 'substitutive tax' is fixed at EUR100,000 per year, plus EUR25,000 per year for each family member covered by the option. The flat tax must be paid on ordinary due dates for tax filings.

Since the above tax represents a 'substitutive tax' of the Personal Income Tax (so-called IRPEF), no rule of ordinary taxation will be applied (ie, no Italian tax credit is granted for any taxes paid abroad).

However, the tax payer can request exclusion of income generated in certain countries from the substitutive tax system, so that they will be subject to ordinary taxation and tax credit may be granted (the so-called 'cherry-picking' system).

The categories of foreign income that may be covered by the new tax regime are: income from foreign real estate; foreign-source investment income; income from employment work performed abroad; income from self-employment activities performed abroad; business income derived from foreign permanent establishments; capital gains derived from sale of foreign assets and miscellaneous income derived from foreign sources.

Capital gains derived from disposal of qualified capital shares in foreign companies are expressly excluded from the special regime if realised within the initial five years of the validity of the option, and are therefore subject to ordinary taxation.

A capital share is 'qualified' when (i) it represents a share of 25% or more in the capital or net worth of a company, or

more than 20% of the votes to be exercised at ordinary shareholder meetings, if the company is not listed on a regulated exchange; or (ii) it represents a share of 5% or more in the capital or net worth of a company, or more than 2% of the votes to be exercised at ordinary shareholder meetings, if the company is listed on a regulated exchange.

The effects of the regime

Taxpayers admitted to the special regime (and their relatives if the option is extended to them) will only pay the substitutive tax on all foreign-source income unless they have requested the exclusion of any country.

However, they will be subject to ordinary Italian taxation on their domestic income.

In addition, they are exempted from reporting obligations concerning assets held abroad by the tax residents in Italy and therefore are not required to file the so-called 'RW Form' and they are exempted from Italian estate tax on foreign movable and immovable assets (IVIE and IVAFE).

The special tax regime can last for a maximum of 15 years from the initial exercise of the option and can be surrendered at any time by the taxpayer. The regime can also expire if the flat tax is not paid on due dates.

In both cases, it will not be possible for the taxpayer to exercise the option again.

The effects on inheritance tax and the wealth planning

Foreign assets are excluded from Italian inheritance and gift tax if the transfer takes place (as a consequence of death or donation) during the period of validity of the option. Assets located in Italy are subject to ordinary inheritance and gift tax, although it is worth noting that the Italian regime is very favourable (rates vary between 4% and 8%, with very high tax allowances).

The above provision, indeed, is quite important for good wealth planning, especially considering that the inheritance tax rates of the other Europeans countries are really high and can range between 20% and 45%.

Therefore, if the deceased benefits from the new tax regime upon the death he or she is totally exempted on the taxation of the asset held abroad.

It should obviously be considered that, if the asset is located in another country, the domestic tax law of that country can be applied.

The new favourable regime for pensioners moving to Southern Italy

After two years since the introduction of the substitutive tax regime for the new residents, the Italian Government decided to increase the tax incentives for people who want to move and invest in Italy, addressing a new tax relief to pensioners.

The 2019 Italian Budget law, indeed, introduced another special tax regime for people who want to move to Southern Italy, in order to promote the development of that area.

In order to benefit from the new regime, the taxpayer should transfer his or her residence to the South of Italy and, more specifically, to a municipality with a population of fewer than 20,000 inhabitants, belonging to the following regions: Sicilia, Calabria, Sardegna, Campania, Basilicata, Abruzzo, Molise and Puglia.

The provision, introduced by Article 24-ter of the TUIR, is aimed to incentivise foreign wealthy people to invest their money in the South of Italy, which is an area characterised by beautiful landscapes and a high quality of life, but also by a large emigration of young people, who move abroad looking for a job.

The taxpayer who opts for the new regime can benefit from a reduced tax rate of 7%, rather than a progressive tax rate up to 43%, both on the pension income and on all the income produced abroad during the period of the validity of the tax regime.

The applicants are to opt for the new regime through the tax return related to the first fiscal year for which the election is made.

The option can last for a maximum of six years and it can be surrendered at any time by the taxpayer.

In addition to opting for the new residents' flat-tax regime, the taxpayer can request the exclusion of income generated in certain countries from the option, so that they will be subject to the ordinary taxation and the tax credit may be granted.

Finally, the new regime for pensioners also grants the possibility to the taxpayers to be exempted from reporting obligations concerning assets held abroad by tax residents in Italy (and therefore are not required to file the so-called 'RW Form') and to be exempted from Italian estate tax on foreign movable and immovable assets (IVIE and IVAFE), which is equal to 0.2% on the balance of the movable asset and 0.76% on the purchase price of the properties abroad.

The effects on inheritance tax and wealth planning

Although the two regimes introduced by the Articles 24-bis and 24-ter of TUIR have many similarities, the option available for foreign pensioners has significant differences.

Among other things, it should be noticed that the new scheme for retired people does not exempt the taxpayers from the payment of inheritance tax and the gift tax on the asset held abroad.

This is a very disadvantageous point, considering that the regime is addressed to pensioners and they are generally interested in an accurate estate planning.

However, it is again worth emphasising that the Italian tax rates are still quite generous, therefore even if they are applicable to the estate, the cost will not be too high.

Another difference between the two regimes is in the tax treatment of the capital gains on qualified foreign capital shares.

While the new residents' regime expressly excludes from the taxable base of flat-tax any capital gains derived from the disposal of qualified capital shares in foreign companies if realised within the initial five years of the validity of the option – therefore they remain taxable according the ordinary rules - the new regime for pensioners does not say anything about that, so capitals gains realised abroad are also taxed with the 7% tax rate applied.

The above consideration should therefore be analysed very carefully by all those who are thinking about a wealth planning, considering that the two regimes are not incompatible with each other: it means, for instance, that a pensioner can opt for the regime of 24-ter of TUIR and benefit from the 7% tax rate on capital gains from qualified shares held abroad and, the following year, he or she can choose the new residents' regime (if he or she meets the criteria) and benefit from the exemption of the inheritance tax.

New Tax Benefits for Investing in Italian Companies

The Italian Government has increased the attractive measures for those who want to invest in the Italian companies, granting many tax benefits to the investors.

Some tax measures, indeed, even if introduced only over the last few years, have been increased or extended by the 2019 Italian Budget Law and the so-called 'Growth Decree' ('*decreto crescita*'), which recently entered into force.

First of all, the increased tax benefits for both individuals and legal entities investing towards innovative start-ups and small- and medium-sized enterprises (SMEs) should be mentioned.

An innovative start-up is an Italian resident capital company, which meets some criteria and has as its business objective the development or marketing of hi-tech goods and services. A small- or medium-sized enterprise is a company with fewer than 250 employees per year and with an annual revenue of under EUR50 million.

The law provides that the mentioned investments will benefit from a substantial break on Italian income tax (IRPEF allowance for individuals, IRES deduction for corporations) and the 2019 Italian Budget Law increased it from 30% to 40% (if the investment is made from 1 January 2019 to 31 December 2019) of the amount invested up to EUR1,000,000, thus the maximum annual benefit available is equal to EUR400,000.

Secondly, new rules have been provided for the so-called 'Individual Saving Plans' (Piani individuali di risparmio – or PIR), which are investment tools, introduced by the Italian Government in 2017 with the goal of matching the tax benefits of the investor with the need to boost the cash flow of the Italian SME's (small- and medium-sized enterprises).

The investor who subscribes to a PIR under certain conditions can be exempted from any tax on profits and capital gains produced by each investment and is also exempted from the inheritance and gift tax on those assets. The tax incentives, however, are subject to investments limited to EUR30,000 euros per tax year, with a holding period of five years, and a maximum of EUR150,000 per investor.

Finally, new tax savings have been granted in relation to the European long-term investment funds (ELTIFs),which have recently entered into the Italian market and Italian legislation.

ELTIFs are long-term investments and typically illiquid. They are aimed at financing projects with an average duration from seven to ten years and, often, the instruments through which investments are made do not allow an early liquidation of their shares.

For this reason they are particularly addressed to high net worth individual investors with an asset typically higher than EUR500,000 euros, who can allocate a portion of their assets to investments at medium to high risk with an higher remuneration.

According to the new 'Growth Decree' the income derived from the above investments is tax-exempted and the investments' asset transferred to the heirs is exempted from inheritance tax.

The Use of Trust in the Estate Planning

Italy does not have a proper trust regulation; however, the institute of trust has been recognised in Italy through the ratification of the Hague Convention of 1 July 1985 and trusts are fairly used for both family and business planning (trust as shareholders' agreement, trust holding, etc).

Trusts could indeed be very useful in estate planning, considering that the inheritance and gift taxes on the trust's asset shall be paid when the asset is transferred to the trust and not when it is distributed to the beneficiaries, since establishment of the trust and the subsequent devolution to the beneficiaries of the trust fund are considered two autonomous events from the tax point of view, which therefore creates different tax events.

It is worth specifying that the indirect taxation of the trust has not been a straightforward matter and the Supreme Court of Justice in Italy has issued many sentences in order to clarify the tax event which determines the applicability of the inheritance or gift tax (ordinances No 5322/2015, No 3886/2015, Nos 3735 and 3737/2015, No 734/2019, sentence No 4482/2016, etc).

The advantage of anticipating the tax event for inheritance and gift tax purposes is that it allows the trust to benefit from the current – and very low – tax rates, avoiding the risk of a future increase, which was provided for by a law proposal of the Italian Parliament in 2015 but never became effective.

The current inheritance and gift tax rates are indeed very low compared to the average of the other European countries and they are calculated, in the case of trusts, on the basis of the degree of relationship between the settlor and the beneficiaries, described as follows:

- 4% for the beneficiaries directly related to the settlor (eg, spouses, ascendants and descendants) with a no-tax allowance equal to EUR1,000,000 of asset transferred to the trust fund;
- 6% for siblings of the settlor, with a no-tax allowance equal to EUR100,000;
- 8% for beneficiaries not related to the settlor on the full value of the asset transferred to the trust fund.

A special tax exemption is granted, under certain conditions, to the transfer of the assets to the trust trust established for beneficiaries with a severe disability (recognised by the law No 104/1992), due to the provision of Law No 112/2016.

The Impact of the Reform of the Italian Civil Code on the Development of the Wealth and Estate Planning

The Italian Government has recently approved a draft law with the purpose of authorising the adoption of many decrees aimed also at reforming key aspects of the Civil Code. Many points included in the decrees mentioned, if implemented in the near future, may have a tremendous impact on wealth and estate planning.

The introduction of prenuptial agreements

One of the proposed modifications concerns the introduction of the possibility to draft prenuptial agreements for the purpose of regulating personal and property relations between the spouses in the event of a potential divorce. The effect of such provision will have a remarkable influence, since currently prenuptial agreements (as for post-nuptial agreements) are not recognised by Italian jurisdiction, with an express general prohibition provided by the Article 160 of Civil Code, which establishes the unavailability of the rights arising from the marriage.

Italian law provides for two types of conventional marital property regimes: separation of property and conventional community of property, either of which can be chosen by the parties upon marriage.

The conventional community of property regime provides that, as of the date of marriage, all property belongs to both spouses in equal shares (even if this regime is much less common nowadays).

The separation of property, instead, provides that, upon marriage, each spouse maintains exclusive ownership and the right to use and administer property acquired before and after the marriage without exception, and shall meet his or her own debts with his or her own property.

Through the introduction of prenuptial agreements the Government finally recognises the advantage regulating in advance nuptial relations in order to limit all the possible problems related to rights and obligations of the couple, since the contents of the agreement will not be delimited to property rights but also to the criteria of family life and children's education.

Since same-sex civil unions were recognised by Italian civil law in 2016, prenuptial agreements of same sex civil couples will be subject to the same regime applying to married couples.

The abolition of ban of succession agreements

In relation to successions, the decree provides for the possibility to stipulate succession agreements, which actually are forbidden by Article 458 of Civil Code. In more detail, the possibility has been provided, under specific conditions, to enter into agreements with the aim of regulating the distribution of specific assets of the estate to certain heirs, establishing in advance the allocation of the goods. Other type of agreements may be implemented with the possibility of renouncing ahead of time to the rights that may arise from a succession.

Finally, many provisions have been established to simplify the inheritance rules according to the European Certificate of Succession introduced by Regulation (EU) No 650/2012, with the goal of giving certainty to the circulation of inherited goods.

Towards the regulation of Trust Law in Italy

The only regulatory news involving the instrument of trust was introduced by the Law No 112/2016, which has been already mentioned under the heading 'The use of trust in the estate planning', with the aim of facilitating assistance and to promote the autonomy and independence of disabled people. Thus, the legislator granted some tax benefits for the disbursements from private individuals through the institution of trusts and other juridical instruments aimed to cover a life-time's assistance to disabled people and their special needs.

Other than the above provision, the main legal framework in relation to trusts depends upon international rules, the internal judge's decisions, and the Italian Tax Authority circulars.

The Italian Legislator, aware of the wide use of the trust for regulating different and heterogeneous issues, has provided an act which will also enable regulation of the trusts on an internal level. The rules, if implemented, will have a great impact on private clients and the whole wealth planning sector, considering that the use of the trust is increasing significantly as a result of its appreciated flexibility and possibility to regulate heterogeneous circumstances.

A specific internal law, in accordance with the principles of the Hague Convention, would be more than welcome.

Loconte & Partners – Studio Legale e Tributario

Via Fratelli Gabba
3 – 20121
Milan

LOCONTE & PARTNERS

Tel: +39 024 5476 250
Fax: +39 024 5476 251
Email: milano@studioloconte.it
Web: www.loconteandpartners.it

The reform of the Third-Sector Bodies

New trends also concern Charitable Planning, due to a recent massive reform of the 'third sector', which involves Associations, Private Foundations and entities that aim to pursue a bountiful scope. Philanthropy is indeed recently moving towards a promising future and new forms of community charities are emerging.

In 2016, the Italian Government approved, with Law No 116/2016, a Legal Reform that introduced for the very first time a complete regulation, both civil and fiscal, for all the third-sector bodies: it gives a unitary definition and general guide lines for the activities (ie, institutional) that need to be done by them. This Reform implemented the discipline from different points of view: it has introduced a new national register but it has also reorganised the general administration.

The Italian tax legislation about philanthropic donations provides that, if the donor is an individual tax resident in Italy and he or she makes a donation to the so-called third-sector bodies, he or she can benefit from a deduction of 30% of the donation from the personal income incurred from the taxpayer (or 35% if the donor is a non-profit organisation), up to a maximum donation of EUR30,000 for each tax year.

As an alternative, donations made by cash or in-kind contributions are deductible from the taxable base of individuals, philanthropic bodies and business enterprises up to 10% of the total declared income. In addition, there is the exemption from the inheritance and gift tax for all the donations to the third-sector bodies.

In order to co-ordinate the recent modifications that have emerged from the reform, the draft law of the reform of the Civil Code established a specific enabling act to modify the articles dedicated to Associations and Private Foundations.

It is clear that developments in the private wealth sector now depend heavily on that wide range of changes to the provisions of the Civil Code that have not been this remarkable since its adoption in 1942.

The law decrees are supposed to be adopted within one year from the entrance in force of the draft law, so this massive reform will likely start in 2020 and will open a new era for the wealth-planning sector.