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# Private Wealth

**Italy: Law & Practice**

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# ITALY

## Law and Practice

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## 1. Tax

### 1.1 Tax Regimes

#### General Principles

An individual's liability to the Italian taxation is based on their tax residence and on the source of the income: if the individual qualifies as Italian tax resident, they are subject to taxation in Italy on their worldwide sourced income, otherwise they are subject to the Italian taxation only on the income produced in Italy during the tax year.

The tax year in Italy goes from January 1st to December 31st of each year.

#### Personal Income Tax

Individuals considered to be Italian tax resident are liable to taxation in Italy on their worldwide sourced income, unless exempted for a particular provision given by a treaty against the double imposition ratified by Italy.

As a general principle, according to Article 2 of the Italian Tax Code (TUIR), an individual is deemed to be Italian tax resident if he meets at least one of the following conditions:

- The individual is enrolled in the Register of Resident Population (*Anagrafe della Popolazione Italiana*) for more than 183 days during the fiscal year;
- The individual has the "residence" in Italy as defined in the Italian Civil Code;
- The individual has the "domicile" in Italy, as defined in the Italian Civil Code.

The "residence", according to the Italian civil code, is deemed to be the place of habitual abode, while the "domicile" is the place where the individual establishes the centre of vital and economic interests.

Generally speaking, the Italian Tax Code (Article 51, paragraph 8 bis) provides a favourable tax regime for employment income produced abroad by resident individuals. Indeed, employment income related to the activity performed abroad is not taxed on actual basis but on a notional basis. The notional income (*retribuzione convenzionale*) is a lump sum amount determined annually by the Italian Authorities in accordance to the qualification of the employee, the sector of activity and the base salary received, excluding any additional remuneration, benefit and bonus the employee may receive.

In order to qualify for said tax regime all the following requirements have to be met for more than 183 days in a 12-month period:

- the employee qualifies as Italian resident;
- the services shall be performed abroad in a continuous way (ie, the work activity shall be performed exclusively abroad and no work activity has to be performed in Italy);
- the services shall be performed abroad as the sole object of the employment relationship (ie, on the basis of a specific contract).

#### Double Taxation and Foreign Tax Credit

According to Article 165, paragraph 1, of the Italian tax code, the individual will be entitled to claim the foreign tax credit for foreign taxes paid abroad on the same income.

The foreign tax credit is generally claimed through the filing of the Italian income tax return, however it could be recovered also through the Italian wage statement, in case of an employee, at the end of the fiscal year. Indeed, the employer may pay back the taxes withheld during the fiscal year directly to the employee through the payroll. This last solution is not recommended, because the exact amount of tax credit recoverable (that must respect some limits and that often is not equal to the exact amount of taxes effectively paid abroad) should be often recalculated through the Italian tax return.

In any case, Italian tax law allows the foreign tax credit only for foreign taxes which are considered as definitively paid in the foreign Country.

#### Tax Rates and Special Tax Regimes

The taxable income in Italy is subject to IRPEF (*imposta sul reddito delle persone fisiche*).

The IRPEF tax rates go from 23% to 43%, in relation to different bands:

- 23% from EUR1 to EUR15,000;
- 27% from EUR15,001 to EUR28,000;
- 38% from EUR28,001 to EUR55,000;
- 41% from EUR55,001 to EUR75,000;
- 43% over EUR75,000.

In addition, if the income is subject to taxation with progressive tax rates, regional and municipal taxes are also levied and they are calculated with the tax rates yearly issued by the regional and municipal authorities, according to the place of residence.

The tax rates can vary from 1.23% to 3.33% for the regional tax and from 0% to 0.9% for municipal tax.

#### Taxation of Interests and Capital Gains

Income deriving from interests is generally subject to taxation, depending on the source of the income, in the following ways:

- interests income deriving from bonds issued by government or similar entities, both Italian and foreign, is subject to a withholding tax rate equal to 12.5%; or
- interests income deriving from other securities issued by private banks or companies listed in the stock exchange and interests income deriving from bank or postal accounts are subject to a withholding taxation with a current tax rate of 26%.

The current taxation of dividends received by private individuals has been recently changed, assimilating non-qualifying shareholding with qualifying shareholding, therefore:

- for both non-qualifying shareholdings and qualifying shareholdings, dividends are subject to a withholding tax equal to 26% on 100% of the dividend;
- taxable base of 58.14% on the amount (therefore exemption of 41.86%) applies to dividends deriving from partnerships and natural persons who act as sole traders - on the taxable base of the dividend progressive IRPEF tax rates are applicable; and
- reduced taxable base of 5% (therefore exemption of 95%) for capital companies.

A temporary regulation for the distribution of dividends, in force between 1 January 2018 and 31 December 2022, provides that dividends from qualifying shares, constituted by profits produced by 31 December 2017, are taxed with the previous rules and, thus, the progressive IRPEF tax rates applicable on a tax base are reduced to 40%, 49.72% or 58.14%, depending on the year in which the profits were produced.

Whether the dividend is distributed by a foreign company, in case of non-qualifying shareholding, a final tax equal to 26% is due on 100% of the dividend net of the tax paid in the foreign country. Otherwise, in case of qualifying shareholding, the 26% tax is due on the amount of the dividend only if it is distributed by a company located in a cooperative jurisdiction.

If the company is located in a tax-heaven jurisdiction, progressive IRPEF tax rates are applicable on 100% of the dividend, unless it is proved that the company carries on an effective activity in that country. In the latter case, the taxable basis is reduced to 50% of the dividend.

### *Capital gains*

For what concerns the capital gains, the taxable base is calculated on the difference between the selling price of the asset and its purchase cost, which may include some legal and administrative expenses. The substitutive tax rate due on capital gains is equal to 26%.

The 2018 Italian Budget Law modified the previous regulation on taxation of capital gains deriving from disposal of shares, assimilating the taxation of non-qualifying shareholding with taxation of qualifying shareholding and applying the same tax rate of 26%.

However, the previous regulation is still applicable on capital gains realised by 31 December 2018, therefore:

- capital gains from disposal of qualifying shares are taxed on 58.14% of the amount with a progressive IRPEF tax rate; and
- capital gains from disposal of non-qualifying shares are taxed with the substitutive tax rate of 26%.

### **Wealth Tax and Tax Monitoring Obligations**

Individuals who qualify tax resident in Italy must also:

- submit the so-called “RW form”, which is filed as a part of the Italian tax return and it is related to the monitoring obligations. With the RW form the taxpayers who qualify resident in Italy should declare the assets held abroad, such as real estate, financial investments, bank accounts, precious metals, artwork, luxury automobiles and yachts; and
- pay the Italian wealth tax on real estate and financial asset held abroad (IVIE and IVAFE). The wealth taxes on asset held abroad have been introduced in Italy in 2012 and they are payable by resident Italian taxpayers who hold properties and financial asset abroad.

The tax rate for the IVIE is equal to 0.76% of the purchase cost of the property and is calculated in proportion to the percentage of ownership and to the holding period (the whole year or few months). The IVAFE is, instead, equal to the fixed amount of EUR34.20 for each account in case of cash account or savings account. In the case of financial instruments, it should be calculated in proportion to value of the financial asset and to the holding period and is equal to 0.2% of the market value of the financial instruments recorded at the end of each calendar year.

### **Inheritance and Gift Tax**

In Italy the inheritance tax and the gift tax are proportional to the value of the inherited or donated assets, with different tax rates and different no-tax allowances according to the relationship between the deceased and the heirs. More precisely:

- 4% for the beneficiaries directly related to the deceased or the donor (eg, spouses, ascendants and descendants) with a no-tax allowance equal to EUR1 million of asset transferred to each beneficiary;
- 6% for siblings of the deceased or the donor, with a no-tax allowance equal to EUR100,000 of asset transferred to each beneficiary;

- 8% for beneficiaries not related to the deceased or the donor on the full value of the asset transferred, without no-tax allowances; and
- a special no-tax allowance of EUR1.5 million is granted to beneficiaries with a severe disability (recognised by the law No 104/1992); the tax rate is 4%, 6% or 8%, depending on the degree of relationship.

The connecting criteria, which establish when the inheritance or gift tax is due - provided by Article 2 of Legislative Decree No 346/1990 (which is the domestic law on inheritance and gift tax) - are the following:

- worldwide taxation principle – if the deceased qualified as an Italian tax resident, then the inheritance tax is due on the worldwide inherited assets; and
- the territoriality principle (*lex rei sitae*) – if the deceased qualified as non-tax resident in Italy at the time of death,, then the inheritance tax is due only on assets located in Italy.

Some assets (eg, real estate located in Italy, shares in Italian companies) are irrefutably deemed to be located in Italy.

## **Corporate Tax**

The standard tax rate for the corporation tax (so-called IRES) is currently equal to 24% of the taxable income, while the IRAP (regional tax on productive activities) tax rate is generally equal to 3.9%, but Italian regions can increase or decrease the standard rate up to 0.92%.

The taxable base of IRES and IRAP are basically different. Both are indeed based on profit and loss accounts, however with different adjustments.

## **Taxation of Trusts**

Italy does not have a proper regulation for trusts, however the institute of trust has been recognised in Italy through the ratification of the Hague Convention of 1 July 1985.

The tax liability of trusts has been recently regularised by the Italian tax lawyer with the 2007 Budget Law and, more specifically, by Article 1, comma 74-76, which definitively modified Article 73 of the Italian Income Tax Code, introducing for the first time the “Trusts” among the taxable entities (See **3.1 Types of Trusts, Foundations or Similar Entities**).

Generally speaking, to define the taxation of a resident taxpayer who qualifies as beneficiary of the income of a trust, it is necessary to analyse the three type of trust regulated by the Italian tax system:

- Trust where beneficiaries of income have been appointed (so-called “transparent trust”): the trust’s income is attributed to the beneficiaries regardless of its distribution and the beneficiaries are taxed directly on their share of trust’s income.
- Trust where beneficiaries of income have not been appointed (so-called “opaque trust”): The trust will be liable to the income taxation.
- Mixed trust (both transparent and opaque): the trust deed provides that a part of the trust income should be allocated as capital and another part will be distributed to the beneficiaries - in this case, beneficiaries are liable to taxation only on the income distributed.

The inheritance and gift taxes on the trust’s asset shall be paid when the asset is distributed to the beneficiaries but it is not a straightforward matter since there are two different jurisprudential approaches to indirect taxes on trusts.

The inheritance and gift tax is calculated with regard to the degree of relationship between the deceased/donor and the heir/donee and applying the current tax rates and allowances.

## **Special Tax regimes**

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

### *New Residents Tax regime*

The 2017 Italian Budget Law approved the “res non-dom regime”, addressed to foreign high net worth individuals who want to move their tax residence to Italy after having lived abroad nine out of the ten previous years, before opting for the new regime. The legislation, inspired by the successful experiences recorded by others foreign Countries, provides a substitutive tax equal to EUR100,000 per tax year 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 special tax treatment can last for maximum 15 years and it can be extended also to the family members.

The taxpayer who opts for the flat tax is also exempted from reporting obligations concerning assets held abroad (RW Form) and from the payment of Italian wealth tax on real estate and financial asset held abroad.

## *Tax Incentives for pensioners*

In 2019 a new tax relief has been introduced for pensioners who receive pension income from a foreign country and want to move to the Southern Italy.

Taxpayers applying for the regime, who should have necessarily lived abroad for the last five years before transferring their residence to Italy, 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 option can last for a maximum of ten years and exempts the taxpayer from the monitoring obligations and from the payment of the wealth taxes.

## **Income Tax Planning**

Besides the favourable tax regimes recently introduced, a good income tax planning is necessary if an individual is tax resident in Italy or is the beneficiary of Italian sourced income.

As stated, if an individual qualifies as Italian tax resident, they are subject to worldwide sourced income in Italy, also on the income taxed in the country of source. In order to avoid the double taxation, Italy has signed many Tax Treaties with a large number of countries against the double taxation on income and also some few Treaties against the double taxation for inheritance and gift tax purposes.

It is necessary to identify, then, when the tax treaty is applicable and which are the mechanisms provided by the domestic law for avoiding the double taxation (eg, the mechanism of tax credit provided by Article 165 of the TUIR).

For what concerns the use of trust or similar entities, it is also necessary to be careful with the taxation of trust's income. Since the instrument of trust is getting more used in Italy during the last years, unavoidably the Italian tax authority is paying more and more attention to the correct taxation of the income produced by the trust and the income distributed to the beneficiaries.

## **1.2 Stability of the Estate and Transfer Tax Laws**

Estate planning represents an interesting focus for HNWI and many aspects need to be considered when there is an investment in real estate, especially for the fiscal effects that will follow the investment. In fact, the effects will be different and based on the type of the property and the seller (ie, a company or an individual who runs a business activity or not), particularly the VAT regime.

It is worth a mention that a favourable fiscal regime would apply where a residential property is bought by an individual with the aim of being their primary residence. With regard to inheritance and gift tax and immovable properties, the taxable base is the fair market value. However, the Italian tax authorities cannot give a value higher than the one declared in the donation deed or in the inheritance tax return, if it is at least equal to the cadastral value of the real estate. Further, the mortgage and cadastral taxes are levied on any transfer of Italian-situs immovable property with a 3% rate, which applies even when the transfer is exempt from inheritance and gift tax.

The attractive Italian tax regime is related to the inheritance and gift tax, since the tax rates are still very low, compared to the tax rates in force in the other European States, and the tax-free allowances are really favourable to the taxpayer.

For the above reasons, the Italian Legislator drafted a bill in 2015 which provided an increase of the applicable tax rates in combination with a significant reduction of the no-tax allowances available.

The proposal has not yet been definitely approved by the Italian Parliament, but it is reasonable to assume that a tax reform will be approved in the not too distant future.

## **1.3 Transparency and Increased Global Reporting**

In the past, due to the lack of exchange of information between countries many Italians have moved their asset abroad in order to escape the high taxation in Italian and hiding their taxable income.

For this reason, the Italian Government launched the voluntary disclosure program in 2015 and then in 2017, giving to the Italian tax residents the last opportunity for regularising the asset held abroad, in terms of financial monitoring obligation and income taxation.

Moreover, Italy has implemented both the Foreign Account Tax Compliance Act (FATCA) and the OECD Common Reporting Standard (CRS). Due to the application of CRS, the Italian tax authority indeed started to exchange information with other countries, collecting information on Italian residents with asset abroad. In particular:

- the actual residence status of people who moved their tax residence from Italy to another country;
- the accuracy of the data reported in the monitoring obligation form (RW) by the Italian residents; and
- all the structures virtually set up only to reduce the tax liability in Italy.

## **Tax Avoidance**

The Italian Tax Revenue is making a great effort to identify and discourage the development of interposed entities aimed only to hide asset and income produced. In this sense, the Italian Law provides a specific administrative offence called “tax avoidance”, punishable by the law.

Tax avoidance includes any legal strategy or interpretation of tax law and its omissions aimed only to reduce tax charges.

## **2. Succession**

### **2.1 Cultural Considerations in Succession Planning**

Differently to other European countries, good succession planning is uncommon between entrepreneurs and high net worth individuals in Italy. The reasons for this include the favourable taxation on estate, which provides no worries to the deceased regarding the tax consequences of the generational transfer. In addition, forced heirship guarantees that heirs will receive due quota of the estate without the necessity of opting for a will.

Although Italy is characterised by the high value of an individual's estate (despite the lower income average), the culture of succession planning has shown an increase only in the last few years.

### **2.2 International Planning**

In recent last years, Italy has undoubtedly assisted the emigration of young people due to the general phenomenon of globalisation and the lack of job opportunities in Italy. It is, for instance, always more common for high net worth individuals to buy properties abroad for the benefit of their children so that they may live and work abroad. Moreover, it is common for retirees to move abroad in their later years.

Thus, it is strictly necessary to look at the other jurisdictions private succession law when approaching the matter of succession, most importantly whether the deceased is tax resident in another country or the asset is abroad.

According to the provision of Article 21 of the EU Regulation No 650/2012, as a general rule, the law applicable to the succession as a whole shall be the law of the State of habitual residence of the deceased as of the time of death.

### **2.3 Forced Heirship Laws**

The Italian succession law provides the forced heirship rules with Articles 536 et seq of the Italian Civil Code. According this regulation, the definition of forced heirs involves:

- the surviving spouse;
- the children of the deceased and, if they die before the deceased or do not accept the heritage, the grandchildren shall succeed in the same position as the children;
- in the absence of children, the ascendants of the deceased shall succeed.

The forced heirship rules provide that the reserved quota of the estate shall be necessarily transferred to the heirs and cannot be freely disposed of. The quota reserved to each forced heir depends on the composition of the family of the deceased upon their death. For instance, if a family is composed of the spouse and two children, the quota reserved to the children is 50% of the estate (25% per child) and the quota reserved to the spouse is 25%. In this case the remaining 25% of the estate can be freely disposed of.

It's worth underlining that the lifetime gifts shall be considered – and must be added to the estate received - in order to calculate the quota reserved to the forced heir, even if at the time of the gift there was no connection with Italy. Whether the lifetime gifts prejudice the reserved quota of the heirs, they can apply for the “reduction”, which is a remedy provided by the Italian civil law aimed to making transfers in excess of the disposable quota partially or totally ineffective. (see 5. **Wealth Disputes**)

Finally, same-sex civil unions were recognised by the Italian civil law in 2016. Therefore, same-sex civil couples are now subject to the same succession law and the same tax regime of marriages. (See 9.2 **Same-Sex Marriage**)

### **2.4 Marital Property**

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.

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 their own debts with their own property.

Prenuptial agreements and postnuptial agreements, unlike in some other jurisdictions, are null and void in Italy because they are not recognised by the Italian jurisdiction. Therefore, even where the parties had entered into a prenuptial agreement, the Italian Court would not enforce it. However, in 2019 Italian

Council of Ministers approved a draft of law relating to the introduction of prenuptial agreements, to allow spouses to regulate their personal and economic relationships.

## 2.5 Transfer of Property

Generally speaking, the transfer of a property is a taxable event for personal income tax purposes. The capital gain obtained, which is the difference between the sale cost and the purchase cost, is subject to personal income tax or corporate tax if the property was held by a company. However, capital gains realised upon disposal of properties are not subject to tax in Italy, whether the property has been held for at least five years prior to disposal or it has been used for habitual abode.

In the case the property is received by gift, the five-year holding period is determined in relation to the date on which the immovable property was acquired by the donor. In case the property is inherited, the inheritance tax is due by the heir. For the determination of the inheritance tax, the value of properties located in Italy is the market value as of the date of the demise.

However, since it is sometimes difficult to find out the market value and it is quite often higher than the cadastral value, the Law provides that if the stated value is at least equal to the cadastral value, no further claims can be raised by the Italian Tax Revenue (Article 34, chapter 5 of the Italian Code on Successions).

For what concerns the effects on the value of the asset donated or inherited, a gratuitous transfer of asset, both for donation or succession, does not trigger capital gains tax or exit taxes, therefore, no step up occurs.

## 2.6 Transfer of Assets: Vehicle and Planning Mechanisms

In Italy there is an exception from the ban of succession agreements, as noted in the Article 768 of the Italian Civil Code, regulating the so-called “family pact”.

Under a family pact a business or a qualifying participation in a family business company can be transferred, under an agreement shown by a public deed, to the living forced heirs. The pact is valid under the condition whereby the other forced heirs, not receiving the company's shares, are either granted a cash or some other asset by the transferees or renounce, totally or partially, to their reserved quota.

Life insurance policies are also widely used in Italy, as they grant more benefits to the policyholder. From an income tax perspective, income is not taxed until the policyholder decides to redeem the policy and the beneficiary, in case of death of the

insured person, is exempt from the tax on the portion related to the life risk component.

## 2.7 Transfer of Assets: Digital Assets

In Italy does not exist any specific instrument or provision for purposes of succession of digital assets. As a consequence of this current state of the affairs, it is suggested to always include, for example, crypto-currencies in the will, in order to give specific provisions to the heirs so that they can easily have access to the fund and handle the inheritance left from the *de cuius*. In the future, a statement by the legislator is highly recommended.

## 3. Trusts, Foundations and Similar Entities

### 3.1 Types of Trusts, Foundations or Similar Entities

The settlement of trusts has increased in the last few years because of the growing interest for this instrument. Trusts in Italy include the following:

- purpose trusts and trusts with beneficiaries: when the trust fund is managed to achieve a goal, it is a “purpose trust”, whereas, when the trust fund is managed for the interests of one or more beneficiaries, it is a “trust with beneficiaries”;
- trusts of public interest purpose (charitable trust): when the purpose of the trust falls within some categories that have been characterised over time at the jurisprudential level -the use of this type of trusts was less common in Italy than in the common law countries, but they are going to spread increasingly;
- fixed trusts and discretionary trusts: a trust with beneficiaries is called a fixed trust if the trust deed grants the beneficiaries rights on the income of the trust and on the trust fund. With the discretionary trust, the trustee will identify the beneficiaries, whether or not to assign benefits and how much should be distributed;
- protective trusts: it is a type of trust that is used if the beneficiary is prevented from having his own interests, or the creditors to execute acts of execution on those assets;
- self-declared trust: when the settlor appoints himself/herself as a trustee. It has been widely discussed between trust's experts and the Italian Supreme Court about the validity of this type of trust but nowadays it is listed among the trusts recognised by the Italian jurisdiction.

### Use of Trusts in Italy

A wide range of different uses of trust instrument has been developed in Italy. Family trusts are the first kind of trust used, above all trusts for disabled people and trusts set up for inheritance planning and for asset protection for family needs.



Other than trusts, in Italy fiduciary companies are much more common, for the many advantages related and the less restrictions.

Foundations are also getting more used in Italy during the last years. The use of foundations is mainly related to the philanthropic and charitable purposes.

Also, the Legislative Decree No 117/2017 approved a reform of non-profit entities (ETS), which changed the previous regulation and provided all the obligations and the tax advantages for all those non-profit qualified entities, whether they qualify as non-commercial.

### 3.2 Recognition of Trusts

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 July 1st 1985. The Convention pursued the aim of harmonising the Private International rules, related to trusts, in order to allow civil law countries to borrow the trust instrument from foreign jurisdictions whose legislation regulates the trust instrument properly.

### 3.3 Tax Considerations: Fiduciary or Beneficiary Designation

The Italian tax authority is paying more attention to foreign trusts, analysing if they have been set up in order to pursue the scope as indicated in the trust deed or if they have been created to hide to assets from the Italian Revenue or for a tax saving.

Trusts are considered interposed when the settlor did not intend to dispose of the asset and retains complete control of it, even if it is formally transferred to the trustee. An individual cannot be appointed as trustee and a beneficiary of a trust at the same time, whereas it is possible that the settlor and the beneficiary are the same person (even if this kind of trust is pretty frowned upon by the Italian Tax Authority).

Moreover, a decree issued in October 2019 (Law Decree No 124/2019), clarified the tax treatment of income generated by opaque foreign black-list trusts received by Italian residents. In particular, while distributions made out of capital generally continue to be considered non-taxable, any distributions out of income generated by a foreign black-list trust will be taxed in the hands of the Italian residents who receive said income.

### 3.4 Exercising Control over Irrevocable Planning Vehicles

As a general principle, a trust, when it is created, is irrevocable, although the trust deed can expressly provide for its revocation.

Except from some few hypotheses in which the revocation of the trust is peacefully accepted, in most cases it appears quite evident that if the settlor has the power of revocation of trust, it has direct implications on the typical effects of the trust, since the main purpose of segregation would be jeopardised.

However, it is also true that, during the “life” of the trust, the need or opportunity to diverge, temporarily or permanently, from what was initially agreed upon when the trust was set up can occur.

## 4. Family Business Planning

### 4.1 Asset Protection

The asset protection planning is always specifically determined and based on very inner circumstances that belong to the family. In fact, there is no a solution valid for every family because many elements need to be considered before giving any suggestion. For example, the key element for the family business planning is the essential communication between family members in order to avoid any disruption or fragmentation in the business and to avoid claims between forced heirs.

There is often no elaboration of the will and the succession becomes more complex. In fact, the family planning is essential, especially for the family enterprises that need to elaborate an efficient plan in order to survive to the next generations. With regard to the family asset protection planning, probably the most popular instrument used is the “*fondo patrimoniale*” that consists in an agreement between the spouses to give properties or other registered assets in a separate family fund for the purpose of satisfying the needs of the family.

### 4.2 Succession Planning

The use of the “family pact” represents one of the most popular and efficient solution for the generational transfer of a family business. In particular, the use of the “family pact” represents a good solution for the continuity of company’s governance. The use of this instrument can ensure protection of the business and the satisfaction of the forced heirs. One or more of them will receive the business company’s shares and the others will receive cash or some other assets by the transferees or renounce to their reserved quota. After the sign of the agreement, the clauses can not be change.

Also, a good tax result is granted by Article 3 paragraph 4 of Legislative Decree No 346/1990, which specifies that, as long as certain conditions are met, the transfer of companies (also a unit of a company), companies participations or shares, if made in favour of the entrepreneur’s spouse or his descendants, is fully exempt from the Inheritance and Gift tax. Also, another

method used in the family planning is the “usufruct”. In general terms, usufruct grants the right to enjoy the asset by using and receiving its fruits as if the person holding the right (*usufruttuario*) is the owner. Therefore, the usufruct holder is obliged to take care of the administration of the asset. This right is not transferable to the heirs.

What is left to the owner is the bare ownership (*nuda proprietà*). The usufruct right may last no longer than the life of the usufruct holder.

If the full owner donates the bare ownership, it is subject to the gift tax, however the taxable base is lower than it would have been if the full ownership was donated. Upon the death of the usufruct holder, the bare owner becomes full owner, without paying any inheritance tax. Another method for asset protection is setting up a trust.

Trusts are very useful to prevent conflicts and other disagreements and, on the other hand, assure a unitary management without any disintegration. The trust in this case can be regulated by specific rules aimed to ensure that all the needs of the family members are met and that the trustee will act in the interest of the beneficiaries with the aim to preserve the business and their wills.

### 4.3 Transfer of Partial Interest

The transfer of partial interest in an entity represents a method of transfer of property. The Italian legal system provides rules, considering also the protection of all the people involved. The business owner obtains capital gains that will be taxed with reference to all the values realised after the operation, according to the Italian Tax Code.

## 5. Wealth Disputes

### 5.1 Trends Driving Disputes

Wealth disputes are mainly related to inheritance issue and right of succession. The problems and conflicts between heirs usually arise because of the lack of succession planning. The co-ownership between the heirs of the assets can end only after the division, which can attribute to each heir an exclusive portion of the estate.

Often, in absence of an agreement and in absence of a will, the only way to solve the problem is to claim an action in front of the Court.

In case of disagreement, there are two types of legal actions available to the heirs in order to reduce the part of the estate

received by the other heirs or legatees and to obtain an equal redistribution in compliance with their forced heirship quota.

Since 2013, any legal action against the co-heirs must be preceded by the attempt to solve the issue through the compulsory alternative dispute resolution (Arbitration), which should reach an agreement in a shorter time.

### 5.2 Mechanism for Compensation

The Italian Law provides that the aggrieved parties can generally obtain financial compensation for their loss or for the damage caused by the other party. Many remedies are offered to the parties involved in this kind of disputes, although the main source of compensation is the reimbursement of the economic loss.

## 6. Roles and Responsibilities of Fiduciaries

### 6.1 Prevalence of Corporate Fiduciaries

In Italy, the fiduciary companies actually turn out to be one of the strongest instruments for the wealth planning and for the protection of personal and fiscal information that the client wants to keep confidential. The fiduciary companies are mainly used by the banks in order to offer investment solutions aimed to satisfy, during all the time and with the complete confidentiality, the needs of the client related to the risks beyond the direct control of financial instruments. The qualifying element of the relationship is the strict confidentiality in front of third parties; this means that the protection is guaranteed and especially the real identity of the owner of the assets will always be hidden by a bond of confidentiality that cannot be broken, otherwise the right of compensation for damage can be claimed by the client.

### 6.2 Fiduciary Liabilities

As professional operator, the fiduciary company is responsible for all the possible losses and damages arising from a bad or negligent management of the client’s assets. The responsibility for the non-fulfilment of the duties declared in the fiduciary agreement follows the Italian rules applied to the “diligence of the agent”.

### 6.3 Fiduciary Regulation

A particular type of fiduciary company plays the role of “portfolio manager” through a particular kind of fiduciary agreement regulated under the Italian law. This kind of agreement is aimed to increase the value of the clients’ financial asset and at the same time the fiduciary is required to transfer to the client the assets invested. The main characteristic of this management is to operate dynamically and discretionally in order to obtain profits from the investment.

## 6.4 Fiduciary Investment

The modern portfolio theory is based on the diversification of the investments made by the agent. The point is that it is always suggested to invest in different kind of asset in order to avoid high risks for the investor. According to this theory the characteristic of security investment is based on the correlation among security returns.

The fiduciary agent should try to build a portfolio of investments based on the optimisation and maximisation of the market risk through a reasonable and right selection of the investments (or asset allocation). Of course, the combination selected strictly depends on the purposes that the client wants to achieve and so the financial activity will be submitted to that. The fiduciary companies hold the client's asset but it remains separate from its own asset. The activity of the fiduciary company includes making investments through the sale or acquisition of movable and immovable asset.

## 7. Citizenship

### 7.1 Requirements for Domicile, Residency and Citizenship

The obtainment of the Italian citizenship is automatic in some circumstances:

- by birth, if at least one of the parents is an Italian citizen or if the parents are unknown or stateless; or
- by adoption from Italian parents, if the child is a foreign minor; or
- by a judge's decision, that states the parent-child relationship.

In any case, it is always mandatory declaring a child's personal details upon his birth in the civil register of the Municipality of residence. Also, in Italy, there is no application of the right of the *jus soli*. The obtainment of the Italian citizenship is also given, if requested, by marriage with an Italian citizen, after two years from the date of the marriage if they live in Italy, or after three years if they live abroad.

The "residence", according to the Italian civil code, is deemed to be the place of habitual abode, while the "domicile" is the place where the individual establishes the centre of vital and economic interests. Also, in general, to obtain Italian residency, a person has to be enrolled in the registry of resident population. Due to the COVID-19 situation, some deadlines have been postponed or suspended by the Authorities.

## 7.2 Expeditious Citizenship

In some cases, people may obtain Italian citizenship by decree of the President of the Italian Republic, if the foreigner is recognised as having performed "eminent services to Italy" or if there is "an exceptional interest for the State". In any circumstance, it represents a special procedure and definitely not usual.

## 8. Planning for Minors, Adults with Disabilities and Elders

### 8.1 Special Planning Mechanisms

The Italian legislator has introduced the Law No 112/2016 with the aim to facilitate the disbursements from private individuals, the subscription of insurance policies and the institution of trusts, and other juridical instruments aimed to cover a life-time assistance to people with a severe disability, which causes the need of a continuative and global assistance.

In particular, the trust permits to transfer the assets of the settlor in the fund in order to use them to ensure a long health assistance to the beneficiary, who is the person with disabilities. In fact, the trust will end when the beneficiary will be deceased. During the existence of the trust, the roles of the trustee and of the guardian will be crucial: they will always have to act for the beneficiary in accordance to their needs and they will have to realise the best life-project for them. In any case, some "de residuo" beneficiaries can be nominated in the act of constitution of the trust by the settlor.

### 8.2 Appointment of Guardian

The law provides the possibility to nominate, by a decree of the judge, a legal guardian for children or for people with a specific level of disability (elderly people, etc). The role of this tutor must result from a written document duly signed and dated by the judge. Guardians can be also chosen in the will of a parent. This guardian takes care of the education, they have the personal and the financial representation of the individual in case of need and they have to report to the judge their activities.

### 8.3 Elder Law

Response The Law 104/1992 is aimed to give assistance, social integration and other rights to people with serious illness. The recipients are disabled people but also their families. In fact, there are special provisions for those "caregivers" in order to assure them the rights to assist people in illness.

Also, specific tax deduction are provided for the "caregivers" of relatives with at least eighty years: in this case, a deduction of the 19% from the cost incurred for the health assistance (until a maximum of EUR10,000 spent in total) is guaranteed.

All these provisions must be confirmed by an official certificate that declares the level, and the gravity, of the illness or the handicap of the patient, otherwise, the special rules just mentioned cannot be applied.

## 9. Planning for Non-traditional Families

### 9.1 Children

Since 2012, children born out of wedlock and adopted children are recognised as forced heirs by the law. There is no discrimination between them and the others heirs as they have the exact same rights. Italian jurisdiction does not permit surrogate pregnancy arrangements.

### 9.2 Same-Sex Marriage

Since 2016, Italy recognises the civil partnership between two people of the same-sex.

According to this union, the couple can benefit from most of the rights applied to the heterosexual married couple (ie, the inheritance and gift rules and other rightful rights). The major difference between the two legal institutions is that there is no recognition of step-child adoption for civil partnerships which means that the one partner cannot adopt the child of their partner.

In addition to these provisions, since January 2019, in case of marriage between two people from different EU countries, the couple could choose the law applicable to the marriage.

## 10. Charitable Planning

### 10.1 Charitable Giving

Philanthropy represents a very good opportunity to invest money and recently, it is moving towards a promising future and new forms of community charities are emerging.

The Italian tax law provides that if the donor is Italian tax resident and the gift is made in favour of “non-profit entities”, he can benefit of a deduction of 30% on the costs incurred from the taxpayer (or of 35% if the donor is a non-profit organisation), until a maximum donation of EUR30,000 for each tax year.

Alternatively, donations made by cash or in-kind contributions are deductible for individual, philanthropic entities and business enterprises until the 10% of the total declared income. In addition, inheritance and gift tax are not due on donations to the “non-profit entities”. Generally, each tax law of the EU Member State does not permit the deductibility of the donations made to the charities not based in the same Member State of the donor, but the European Union Court of Justice, in 2009, (C318/07 Hein Persche v Finanzamt Lüdenscheid) recognising the principle of the free movements (Article 56 of the Treaty on the Functioning of the European Union) affirmed that, in such cases, the donor should benefit of the same tax law applied in the State of the non-profit organisation.

In 2016, the Italian Government approved, with the Law No 106/2016, a Legal Reform that introduced for the very first time an organic discipline, both civil and fiscal, for all the “non-profit entities”. Some of the Legislative Decrees expected are still not fully be implemented, so the legislator is still working on these issues.

### 10.2 Common Charitable Structures

In order to satisfy the needs of the donors many instruments can be used for charitable planning, such as the charitable trusts and the private foundations. This type of trust represents a good instrument to pursue a bountiful scope through devolving all the assets to a specific cause, obviously previously mentioned in the trust deed. By giving assets into this structure, many fiscal advantages are insured.

On the other hand, private foundations are usually founded by HNWI and their families and they have a deep social impact on the community. The foundation is set through a public deed or through a will that gives wealth to the pursue of a specific scope. In Italy, there are the operating and the grant-making foundations, depending on how the gifts are managed. The foundations can detain shareholdings but this cannot represent the mainly activity accomplished by the foundation. The family foundation is also an excellent method to manage the family wealth, potentially without being bound under restrictions of time.

Of course, both charitable trusts and private foundations are aimed to give a concrete help in many local and weak sectors of the society.

**Loconte & Partners** 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. The firm generally provides 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 multidisciplinary approach and practical solutions to clients' needs, leveraging 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



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