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Focus Update

GIFT & SUCCESSION TAX REFORM

IN ITALY

Reform published in the Official Journal, comes into force on 1/1/2025

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EXECUTIVE SUMMARY

Gift and succession tax Reform effective 1 January 2025

RATES AND DEDUCTIBLES

Provision is made for **the explicit repeal of the institution of the "coacervo successorio"**, which required the value of gifts received by the beneficiary, updated at the time of the opening of the succession**,** to be included in the net value of the estate for tax base purposes.

The rates and deductibles previously in force are not changed.

INDIRECT DONATIONS

With regard to indirect donations, the assessment of such donations by the tax authorities may be made only when the existence of such donations is evidenced by declarations made by the interested party within the framework of proceedings aimed at assessing taxes. In that case, the **8% rate** will apply **for the part exceeding the exemption where provided for**.

TRUSTS

With the reform, the transfer of assets deriving from trusts falls within the scope of the tax. The new rules also define the territoriality rules for transfers arising from trusts and other destination restrictions.

The introduction of trusts within the Inheritance Tax Act (ITA) is to be welcomed, 'importing' recent currents of interpretation into the legal fabric.

Several rules are introduced, which are discussed in more detail in the following text.

TRANSFERS OF COMPANIES AND SHAREHOLDINGS WITHIN THE FAMILY

The benefit of the tax exclusion for transfers of participations or companies is confirmed under specific conditions that vary according to the type of company. The benefit remains, in substance, subject to the **retention of control or ownership by the successors in title for a period of not less than five years** from the date of the transfer. The eligibility for the benefit is explicitly introduced for transfers of shares and stocks of companies resident in EU or EEA countries or which ensure an adequate exchange of information.

A similar provision operates in the event of the transfer of a business.

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THE INHERITANCE AND GIFT TAX REFORM

The tax reform inaugurated with Delegated Law No. 111/2023 brings with it significant innovations with respect to registration tax, inheritance and gift tax, stamp duty and other indirect taxes other than VAT. In particular, Article 10 of the aforementioned enabling act set forth the guiding principles and criteria for the rationalisation of the aforementioned taxes.

In implementation of the aforementioned Delegated Act, Legislative Decree No. 139 of 18 September 2024 was published in the Official Gazette No. 231 of 2 October 2024, which implements the delegated amendments in our regulatory system. The new rules will come into force on 1 January 2025 and will apply to public deeds drawn up, judicial deeds issued or published, notarised or registered private deeds, as well as to open successions and gratuitous deeds stipulated from that date.

As far as inheritance and gift tax is concerned, the implementation of the tax delegation led, on the one hand, to the transposition of principles already consolidated in both case law and the practices of the tax authorities, correcting some regulatory inconsistencies; on the other hand, novelties were introduced into Legislative Decree 346/90 without, however, distorting the previous tax system.

1. The adaptation of the ITA to recent clarifications in case law and administrative practice

As mentioned above, the text of the reform contains a number of amendments mainly aimed at bringing the regulatory text into line with the latest developments in Revenue Agency practice and tax case law.

First of all, there is the introduction of the legal obligation to submit the inheritance tax declaration exclusively in telematic mode, in line with what has already been established by the practices of the Revenue Agency. At the same time, a reduction in the number of documents to be attached to the declaration is envisaged, as well as the implementation of an inheritance tax self-assessment system, similar to the one already in use for mortgage and cadastral taxes;

With regard to indirect gifts, the amendment requires an interpretation adapting Article *56-bis*, paragraph 2, of Legislative Decree 346/90 to what has been outlined by case law and administrative practices. In particular, it is provided that the assessment of indirect donations by the tax authorities may be carried out only when the existence of such donations results from declarations made by the interested party within the framework of proceedings aimed at assessing taxes. In this case, the 8% rate will apply for the part exceeding the exemption where provided for.

There is provision for **the explicit repeal of the institution of the "coacervo successorio"**, regulated by paragraph 4 of Article 8 of Legislative Decree No. 346/1990, which obliged the net value of the estate, for the purposes of the tax base, also to include the value of donations received by the beneficiary, updated at the time of the opening of the succession. Instead, the institution of the "coacervo donativo" remains in force, whereby earlier gifts must be added to later ones for the purposes of erosion of the exempt exemption.

It is worth noting the inclusion in Article 7 of Legislative Decree 346/90 of the rates and exemptions for calculating the tax, in accordance with Article 2, paragraph 47, of Law Decree 262/2006, which reintroduced the inheritance and gift tax (abolished since 25 October 2001 by Law 383/2001). **The applicable rates do not change** and remain among the lowest in Europe (Table below).

DEGREE OF RELATIONSHIP	EXEMPT EXEMPTION	ALIQUOTE
Spouses and relatives in the direct line	EUR 1 million	4%
Brothers and sisters	100 thousand euro	6%
Other relatives up to the 4th degree and relatives-in-law up to the 3rd degree	No deductible	6%
Other subjects	No deductible	8%
In the case of a severely disabled heir, the deductible is 1,500,000 euro		

2. Trusts and the indirect tax reform

The new Article 1 of Legislative Decree No. 346/1990 provides that inheritance taxes are due in respect of transfers of assets and rights by inheritance upon death, by gift or free of charge, including transfers resulting from trusts and other destination restrictions. **The new text of the rule does not determine a real change;** in fact, in the past, transfers through trusts were in any case subject to indirect taxation as a result of the assimilation to 'destination constraints' pursuant to Article 2, paragraph 47 of Law Decree No. 262/2006, but **the inclusion of the term 'Trust' for the first time in the Consolidated Inheritance and Gift Tax Act** confirms the now full clearance of the institution in the Italian legal and tax landscape.

The 'exit' tax is also confirmed, as it is provided that the tax applies at the time of the '*transfer of the assets and rights in favour of the beneficiaries*'. According to Circular No. 34/E/2022, the taxable moment should be identified when a 'stable' attribution takes place, to be understood also when '*already at the time of the creation or endowment of the trust, in the hypothesis that the identified (or identifiable) beneficiaries are the holders of full and enforceable rights, not subordinated to the discretion of the trustee or settlor, such as to allow them the enrichment and expansion of their legal and patrimonial sphere already at the time of the creation of the trust*'.

Also of particular relevance is the possibility - previously not provided for - whereby the settlor of the trust or other

destination restriction or, in the case of a testamentary trust, the trustee may **opt to pay the tax at the time of each act of disposition of the assets and rights or at the time of the opening of the succession** (i.e. at the time of the disposition of the trust property). In such a case, the taxable base as well as the applicable exemptions and rates are determined pursuant to the provisions by reference to the relationship between the settlor and the beneficiary resulting at the time of the transfer or the opening of the succession. In addition, where **it is not possible to identify the 'category of beneficiary'** at the time of the transfer or the opening of the succession, **the tax is calculated on the basis of the highest rate, without the application of the deductibles**.

The phrase '*category of beneficiary*', which replaces the wording previously circulated in the draft that referred to the case in which the beneficiaries were not identified, is intended to clarify that, at the time of the transfer of assets or the opening of the succession, the class of relatives or relatives-in-law for whom the taxation - rate and exemption - is homogeneous must be determinable.

In connection with this option, it should be noted that **subsequent transfers to the beneficiaries are not subject to the tax**.

It is important to note that this possibility is also granted to **trusts already created on the date of entry into force of this provision**. It will be necessary to understand whether this option is admissible for trusts already in existence but only for acts of disposition subsequent to the date of entry into force of the decree, or whether this option is also admissible for those pre-existing trusts that have already received acts of disposition but have not subjected them to 'incoming' taxation. In any event, a measure of the Director of the Revenue Agency will lay down the detailed rules for the implementation of these provisions.

In relation to the territorial prerequisites of the tax in the case of trusts and other destination restrictions, it is clarified that the tax is due in respect of all assets and rights transferred to the beneficiaries, if the settlor is resident in the State at the time of the separation of assets (i.e. of the deed of disposal in trust). In the case of a non-resident settlor, the tax is due only in respect of the assets and rights existing in the territory of the State transferred to the beneficiary.

3. Amendments to the ita regarding transfers of companies and shareholdings

Also worth mentioning are amendments to Article 3(*4-ter*) of the ITA, which provides for an exemption for transfers involving companies or participations.

Although the rule was originally very clear, over the years it has undergone restrictive interpretations by both practice and jurisprudence that have led to its gradual departure from its literal meaning. This was probably the reason

that prompted the legislature to intervene to provide more clarity.

Analysing the text of the new wording of the rule, it can be seen that the substance remains unchanged with respect to the previous version, except for the last sentence, which incorporates the indications of the Supreme Court of Cassation concerning participations in non-resident companies. However, the new wording of Paragraph *4-ter* of the ITA adopts a more didactic drafting technique that is hopefully capable of unequivocally clarifying the meaning of the rule.

In fact, the distinction of the objective requirements for the application of the exemption is more pronounced depending on whether the object of the attribution is:

- businesses or branches thereof, provided that the successors in title continue the business activity for a period of not less than five years from the date of the transfer;

- shares in resident corporations, provided that the successors in title hold control for a period of not less than five years from the date of transfer;

- shares in partnerships (i.e., s.n.c., s.a.s. and, it would seem, s.s.) the benefit applies provided that the successors in title hold the right for a period of not less than five years from the date of the transfer.

The application of the exemption will also apply with respect to transfers of shares and stocks of companies resident in EU/EEA countries or ensuring an adequate exchange of information, under the same conditions as for transfers of shares and stocks of resident entities.

Finally, it is interesting to note that the benefit is limited to participations through which control is acquired or "*integrated an already existing control*". The possibility of benefiting from the relief also in the case of pre-existing control differs from the answer given by the Agenzia delle Entrate no. 72/2024 in which the possibility of benefiting from the relief in the case of transfer of quotas or shares for which the beneficiary already had control was excluded.

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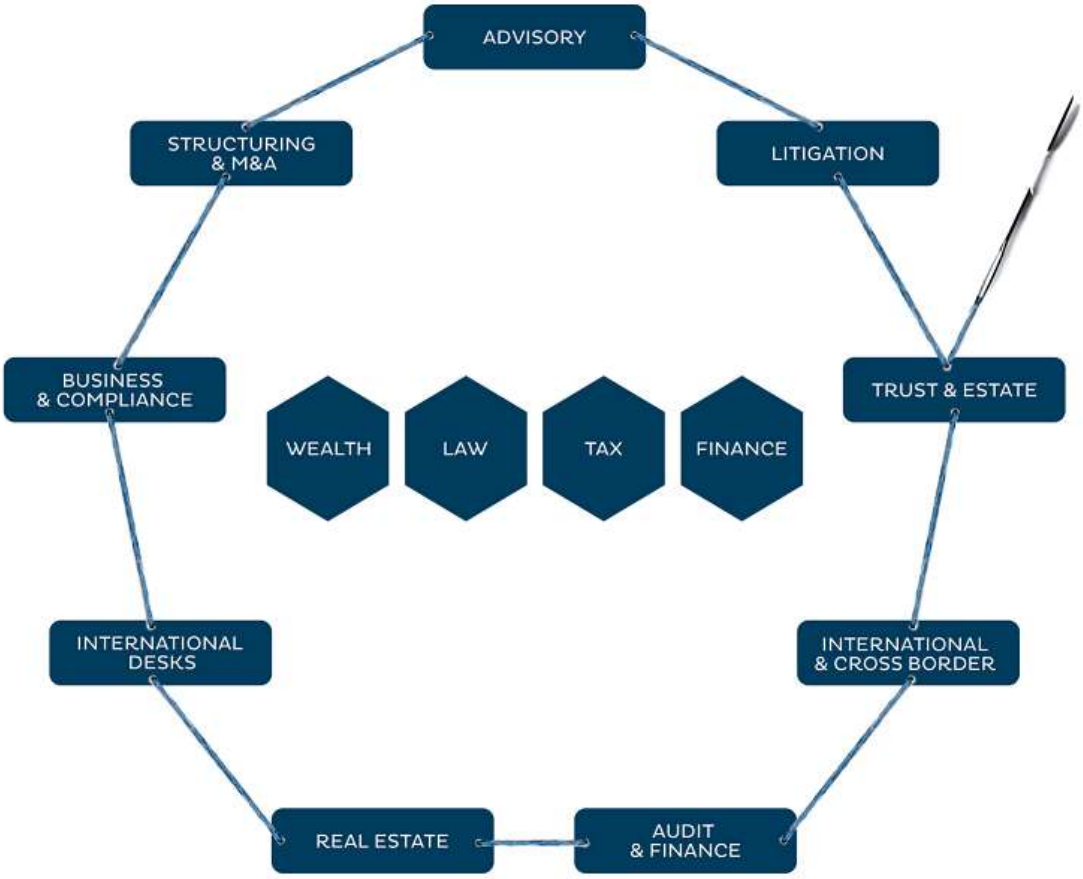

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