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Decision No. 7442 dated March 20, 2024 of the Italian Supreme Court: Italian donation tax does not apply to “indirect donations”

With its Decision No. 7442 published on March 20, 2024 (“**Decision 7442**”), the Italian Supreme Court provided a detailed analysis of the tax regime applicable to “indirect donations” (*donazioni indirette*, e.g., a parent pays the price for a property purchased by his/her son/daughter) and “informal donations” (*donazioni informali*, e.g., direct wire transfer from parent to son/daughter)¹.

According to Decision 7442, “indirect donations” and “informal donations” are not subject to the Italian donation tax except in specific cases listed by the Italian donation tax code (testo unico delle disposizioni concernenti l'imposta sulle successioni e donazioni).

More in details, the Italian Supreme Court stated that:

- (i) the Italian law does not provide for an obligation to register with the Italian Tax Authorities “indirect donations” and “informal donations” (irrespective of whether such donations result or not from deeds which are themselves subject to registration); and
- (ii) pursuant to the Italian donation tax code, “indirect donations” and “informal donations” are subject to donation tax exclusively in the following cases:
 - a. the donor or the donee voluntarily registers the donation with the Italian Tax Authorities. In this case ordinary rates (from 4% to 8% depending on the family relationships between donor and donee) and exemption² apply;
 - b. the relevant donation has been assessed by the competent Tax office, the assessment being possible only where:
 - the existence of the donation results from specific declarations made either by the donor or by the donee in the context of a tax assessment procedure³; and
 - the amount of the donation exceeds the applicable exemption thresholds.

In this case, according to Decision 7442, donation tax applies at 8% rate irrespective of the family relationship between donor and donee, but no penalties apply.

The Decision 7442 is particularly relevant as it appears to contradict the position of the Italian Tax Authorities (Circular Letter No. 30/E dated August 11, 2015) according to which “donation tax applies to indirect donations resulting from deeds subject to registration and to other inter vivos gift [liberalità tra vivi] characterized by the absence of a written deed subject to registration” (courtesy translation).

¹ For sake of completeness, it should be noted that, according to Italian Civil law, donations must be made by means of a Notarial Deed, before a Notary Public and with the presence of two witnesses. A donation not compliant with such formalities can be declared null and void from a civil perspective. However, the Italian Supreme Court, in Decision 7442, clarified that “the failure to comply with the public form required for civil law purposes and the related sanction of nullity, if relevant in civil law terms to protect the donor, have no consequences for tax purposes” (courtesy translation).

² Pursuant to the Italian law, the following exemption thresholds apply in case of donations:

- Euro 1,000,000.00 for spouses, ascendants and descendants;
- Euro 150,000.00 for siblings;
- Euro 1,500,000.00 in case of individuals with disabilities.

³ By way of example, it can happen that in the context of a tax assessment procedure for individual income tax purposes, a taxpayer is requested to justify his/her spending capacity.

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