

29 August 2024

“Patto di famiglia”: the latest tax news

Decision No. 252 dated May 22, 2024 of the Tax Court of First Degree of Bergamo: payments made by the “assignee” of the business to the “non-assignee” in the context of a “patto di famiglia” arrangement are subject to donation tax with the rates (and other rules) applicable on the basis of the family relationship between the settlor and the “non-assignee”.

Whit its decision No. 252 issued on May 22, 2024 (“**Decision 252**”) the Tax Court of First Degree of Bergamo takes the view on some Italian donation tax matters which are relevant to a “*patto di famiglia*” as regulated by the Italian Civil Code.

1. The “patto di famiglia” in a nutshell

The “*patto di famiglia*” is an agreement which, derogating to the general rules, enables the donor/entrepreneur (“**Settlor**”) to organize his/her family business transfer by:

- (i) allocating the business to one or more of his/her descendants (“**Assignee/s**”);
- (ii) compensating other heir/s (“**Non-assignee/s**”) by instructing the Assignee/s to assign them assets other than the business.

The “*patto di famiglia*” agreement must be executed as a public deed, with the participation of all heirs who would have a claim under inheritance laws (so-called “*legittimari*”).

According to the provisions of the Italian Civil Code, the Assignee/s must compensate the Non-assignee/s with assets equal to his/her/their heirship share as determined by the rules provided for by the Italian Civil Code (“*quota legittima*”).

As to the tax treatment applicable to the “*patto di famiglia*” for donation tax purposes:

- (a) the transfer of the business from the Settlor to the Assignee/s, is expressly exempt from donation tax;
- (b) the transfer of assets made by the Assignee/s to the Non-assignee/s are subject to ordinary donation tax¹ (as there is no specific provision providing for an exemption).

¹ Italian donation tax applies with rates and exemption thresholds which depend on the family relationship between donor and donee:

Relationship with the donor	Tax rate	Exemption threshold
Spouse or direct descendant	4%	€ 1.000.000 for each donee
Siblings	6%	€ 100.000 for each donee
Other relatives up to the 4th degree of relationship	6%	N.A.
Other individuals	8%	N.A.

2. Decision 252

According to Decision 252, transfer of assets from the Assignee/s – in money or in kind – to the Non-assignee/s in the context of a “*patto di famiglia*” is subject to donation tax applying the rates (and other rules, including exemption thresholds) on the basis of the family relationship between Settlor and Non-assignee rather than (as argued by the Italian Tax Authorities) between Assignee and Non-assignee.

This conclusion is grounded on the following: the transfer made by the Assignee to the Non-assignee cannot be regarded as donation from the Assignee as such payments originate from an obligation contracted by adhering to the “*patto di famiglia*” and, in other words, from the will expressed by the Settlor. Specifically, the Tax Court stated that “*it cannot be said in this case that the transfer from the assignee to the non-assignee constitutes a donation because the person performing the transfer is not the disposer of the “patto di famiglia”, and further because the transfer performed is not a gratuitous act, as it involves the settlement of a debt that the same person has to fulfill. This obligation amounts to a burden attached to the donation made through the “patto di famiglia”, thus comparable to what occurs through a modal donation*” (unofficial translation).

As a consequence, the transfer made by the Assignee to the Non-assignee shall be treated as a donation made by the Settlor in favor of the Non-assignee for donation tax purposes.

The position expressed by the Tax Court of First Degree of Bergamo aligns with the recent case law of the Italian Supreme Court (including decision No. 29506/2020, decision No. 19561/2022) and with decisions from other Tax Courts of merit (such as decision No. 3245/2023 of the Tax Court of First Degree of Milano and decision No. 129/2023 of the Tax Court of First Degree of Firenze).

Given the more and more consolidated stance of the jurisprudence on this matter, hopefully the Italian Tax Authorities will reconsider their view on the matter and align with the outcome of the case law.

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