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## 1 Connection Factors

**1.1 To what extent is domicile or habitual residence relevant in determining liability to taxation in your jurisdiction?**

According to Article 2 of the Italian income tax code, approved with Presidential Decree No. 917 of December 22, 1986 (“**TUIR**”), an individual is deemed resident for tax purposes in Italy if, for the greater part of the fiscal year (*i.e.*, for more than 183 days):<sup>1</sup>

- he/she is physically present in the Italian territory;
- he/she has his/her “residence” in Italy (habitual abode); or
- he/she has his/her “domicile” in Italy (domicile for this purpose means, by the express provision of Article 2, para. 2 of TUIR, “*the place where the person’s personal and family relationships evolve primarily*”).<sup>2</sup>

If one of the above conditions is met, the individual is deemed resident for tax purposes in Italy for the entire fiscal year.

Furthermore, unless proven otherwise, individuals who are registered in the register of Italian resident population for greater part of the fiscal year are deemed resident for tax purposes in Italy.

**1.2 If domicile or habitual residence is relevant, how is it defined for taxation purposes?**

Pursuant to Article 2, para. 2 of TUIR, for tax purposes the domicile is identified as the place where the individual has the centre of his/her personal and familial relations. On the other hand, the notion of residence for tax purposes refers to the definition provided by Article 43, para. 2 of the Italian Civil Code, according to which “*the residence is in the place where the individual has his/her habitual abode*”.<sup>3</sup>

**1.3 To what extent is residence relevant in determining liability to taxation in your jurisdiction?**

Once the requirements provided by Article 2, para. 2 of TUIR are met, an individual is deemed resident in Italy for tax purposes. Italian resident individuals are liable to tax in Italy for individual income tax (“**IRPEF**”) purposes on all income, regardless of the State where the income is produced or received (so-called “worldwide taxation principle”).

**1.4 If residence is relevant, how is it defined for taxation purposes?**

See question 1.2 above.

**1.5 To what extent is nationality relevant in determining liability to taxation in your jurisdiction?**

As a general rule, nationality is not relevant in determining tax liability in Italy.

However, Article 2, para. 2-*bis* of TUIR provides for an anti-avoidance rule, which gives relevance to nationality. According to the mentioned piece of legislation, Italian citizens who unsubscribed from the register of Italian resident population and transferred to black-listed countries are considered resident in Italy, unless proven otherwise.

In addition to the above, nationality might assume relevance in cases where an individual is considered “dual resident” due to the application of the internal legislation of two different States. In this case – should a double tax treaty on the basis of the OECD model be in force between Italy and the other State – the nationality of the individual is one of the criteria that might be considered in order to resolve the relevant dual residence conflict.

**1.6 If nationality is relevant, how is it defined for taxation purposes?**

See question 1.5 above and question 11.3 below.

**1.7 What other connecting factors (if any) are relevant in determining a person’s liability to tax in your jurisdiction?**

Pursuant to Article 3, para. 1 of TUIR, non-resident individuals are liable to tax in Italy with reference to income that is regarded as arising in Italy based on the criteria set forth in Article 23 of TUIR; specifically:

- income from plots of land and buildings located in Italy;
- income from capital paid by Italian resident entities or permanent establishments in Italy of non-resident entities;
- income from employment, if the activity is performed in Italy;
- income from self-employment deriving from activities carried out in Italy;

- business income deriving from activities carried out in Italy through a permanent establishment; and
- other income deriving from activities carried out in Italy or related to assets located in Italy (with certain exclusions).

## 2 General Taxation Regime

### 2.1 What gift, estate or wealth taxes apply that are relevant to persons becoming established in your jurisdiction?

The Italian tax legislation provides that transfers of valuable assets as a result of death or gift/donations (or certain other gratuitous transfers) are subject to inheritance and donation tax.

Inheritance and donation tax applies to:

- a transfer of assets located both in Italy and abroad, if the donor or *de cuius* is resident in Italy; and
- a transfer of assets located in Italy, if the donor or *de cuius* is resident abroad.

Rates vary depending on the relationship between the donor or *de cuius* and the relevant beneficiary. Exemption thresholds apply.

Relationship with donor (or <i>de cuius</i> )	Tax rate	Exemption threshold
Spouse or direct descendant	4%	€1,000,000
Siblings	6%	€100,000
Other relatives up to the 4 <sup>th</sup> degree of relationship	6%	N/A
Other individuals	8%	N/A

Immovable properties and certain real estate rights are subject to municipal property tax (“**IMU**”), which is applied on the cadastral value of the property/real estate right (exceptions apply). The general tax rate is 0.86%, but the municipality in which the immovable property/right is located may increase or decrease that rate. In particular, the IMU rate can be increased up to a maximum of 1.06%.

With reference to real estate properties located abroad, Italian tax resident individuals must pay a tax on the value of immovable properties located abroad (“**IVIE**”) – the rate (as at 2024) is equal to 1.06%. The taxable base of IVIE is, in principle, equal to the purchase price resulting from the purchase agreement or, in its absence, to the fair market value as calculated in the country in which the property is located. For immovable properties located in the European Union (“**EU**”), it is possible to assume as the taxable base the cadastral value as per the legislation of the country where the asset/right is located; absent a cadastral value, the taxable base is calculated as depicted above (*i.e.*, either the purchase price or the fair market value).<sup>4</sup>

Furthermore, the Italian tax legislation provides for the application of a tax on financial investments, which is due by resident individuals who hold financial instruments, current accounts and savings abroad (“**IVAFE**”). Currently, in 2024, IVAFE is applied at a rate of 0.2%. In addition, resident individuals must pay a fixed amount of stamp duty, equal to 0.2%, on an annual basis, for the financial instruments owned in the relevant bank and postal deposit accounts.

### 2.2 How and to what extent are persons who become established in your jurisdiction liable to income and capital gains tax?

Italian resident individuals are subject to IRPEF, which is levied on personal income falling under any of the following categories (listed in Article 6 of TUIR): property income; capital income; employment income; self-employment income; business income; and miscellaneous income (listed in Article 67 of TUIR), including capital gains.

The IRPEF taxable base is the personal aggregate worldwide income (based on the “worldwide taxation principle”).

The IRPEF rate varies depending on the taxable base as Italy applies progressive tax rates to the following brackets of income:

- up to €28,000: 23%;
- from €28,000 to €50,000: 35%; and
- over €50,000: 43%.

Regional and municipality surcharges apply at the average rate of 4% (see question 2.3 below).

Financial income (*e.g.*, dividends and capital gains deriving from the disposal of financial assets) are subject to a final withholding tax/substitute tax at the rate of 26% (exceptions apply).

### 2.3 What other direct taxes (if any) apply to persons who become established in your jurisdiction?

In addition to IRPEF, resident persons are subject to municipal and regional surcharges. The rate of these surcharges must be determined on the basis of the rates set, respectively, by the municipality and the region where the individual is domiciled for tax purposes on January 1 of each fiscal year.

The current regional surcharge ranges from 1.23% to 3.33%. The municipal surcharge ranges from 0% to 0.9%.

### 2.4 What indirect taxes (sales taxes/VAT and customs & excise duties) apply to persons becoming established in your jurisdiction?

The Italian tax legislation provides for three main indirect taxes: VAT; registration tax; and excise duties.

VAT is a general tax on consumption, which is applied at different rates:

- the standard rate is 22%;
- the reduced rate is 10%; and
- in addition, certain goods and services are subject to the super-reduced rates of 4% (*e.g.*, for food, beverages and agricultural products) and 5%.

However, there are also services that are exempt from VAT (*e.g.*, medical, education, insurance and banking services).

The Italian registration tax (“*imposta di registro*”) is a tax levied when certain legal acts or contracts are registered with the Italian Tax Authority. It commonly applies to agreements for lease and transfer of real estate. Registration tax may apply on the lump sum or proportionally on the value of the transaction, depending on the type of contract or transaction. In case of proportional registration tax, the applicable rate varies depending on the specific transaction and assets involved.

In addition to registration tax, agreements for the transfer of real estate are also subject to mortgage and cadastral taxes, which apply on the lump sum or proportionally (with different rates) depending on the type of transaction.

Finally, excise duties are taxes levied on the production and consumption of certain goods (energy products, electricity, alcohol products and manufactured tobacco products).

### 2.5 Are there any anti-avoidance provisions that apply to the offshore arrangements of persons who have become established in your jurisdiction?

As mentioned in the answer to question 1.1 above, Article 2, para. 2-*bis* of TUIR provides that Italian citizens who have been removed from the register of Italian resident population and transferred to black-listed countries are deemed resident in Italy by operation of law, unless proven otherwise.

In addition, the Italian tax legislator has also implemented Directive 2016/1164/UE (*i.e.*, Anti-Tax Avoidance Directive), whose purpose is to counter tax avoidance schemes by providing rules against the erosion of taxable bases in the internal market and the shifting of profits out of the Italian market.

According to Article 47 of TUIR, dividends distributed by companies established in black-listed countries, as identified in Article 47-*bis* of TUIR, are subject to a special regime, according to which they are fully subject to IRPEF in the hands of the recipient (*i.e.*, they are not subject to the ordinary final withholding tax of 26%). A withholding tax at the rate of 26% is still applicable but as advance payment.

As better clarified in the answer to question 9.2 below, a specific tax treatment is also provided in relation to distributions of income made to Italian resident beneficiaries of trusts established in black-listed countries.

### 2.6 Is there any general anti-avoidance or anti-abuse rule to counteract tax advantages?

Italy has always had a *quasi*-general anti-avoidance rule. The new version of the anti-avoidance rule is contained in Article 10-*bis* of Law No. 212 of July 27, 2000 (“**Law 212**”). Abuse of rights is realised where the taxpayer carries out one or more transactions in the absence of economic substance. By means of such transactions, even if formally complying with the tax rules, the taxpayer essentially wants to realise undue tax advantages.

In order to fall within the scope of Article 10-*bis* of Law 212, three conditions must be fulfilled:

- undue tax advantage;
- absence of economic substance; and
- failure of the so-called “principal purpose test”: the primary purpose of the transaction is to obtain a tax benefit.

The absence of even just one of the mentioned requirements prevents the transaction from being qualified as abusive, within the meaning of Article 10-*bis* of Law 212.

### 2.7 Are there any arrangements in place in your jurisdiction for the disclosure of aggressive tax planning schemes?

Directive 2018/822/UE (“**DAC 6**”) – which has been implemented by the Italian tax legislator with Legislative Decree No. 100 of July 30, 2020 (“**Dlgs 100/2020**”) – introduced mandatory disclosure rules that are applicable to cross-border arrangements.

In particular, Dlgs 100/2020 regulates the automatic exchange of information on cross-border transactions that may be potentially aggressive between the Italian Tax Authority and the other foreign competent authorities, also involving the intermediaries that are obliged to collect the relevant information.

## 3 Pre-entry Tax Planning

### 3.1 In your jurisdiction, what pre-entry estate, gift and/or wealth tax planning can be undertaken?

An in-depth analysis of the specific portfolio of the individual

moving to Italy would be necessary in order to identify whether pre-entry tax planning can be undertaken. However, by way of example, the Italian legislation – as better illustrated in the answer to question 9.2 below – provides for a specific taxation regime applicable to trusts resident in black-listed countries. In this respect, relocating the residence of the trust to a white-listed country could be explored as a potential solution to mitigate the application of this regime.

### 3.2 In your jurisdiction, what pre-entry income and capital gains tax planning can be undertaken?

An in-depth analysis of the specific portfolio of the individual moving to Italy would be necessary in order to identify whether pre-entry tax planning can be undertaken. This may involve reviewing the double tax treaties in place between Italy and other countries to determine whether restructuring the portfolio could enhance tax efficiency.

### 3.3 In your jurisdiction, can pre-entry planning be undertaken for any other taxes?

See questions 3.1 and 3.2 above.

## 4 Taxation Issues on Inward Investment

### 4.1 What liabilities are there to tax on the acquisition, holding or disposal of, or receipt of income from investments made by a non-resident in your jurisdiction?

This section deals only with investments in financial instruments.

Acquisition of shares (not quotas) triggers application of the so-called “*tobin tax*” at the rate of 0.1% or 0.2%, depending on whether the relevant company is listed or not.

In case of disposal of financial instruments, the following taxes may apply:

- **Income taxes.** Capital gains arising from disposal of quotas of Italian resident companies are, in principle, subject to a substitute tax at the rate of 26%. However, capital gains are exempt in the following cases:
  - capital gains arising from disposal of non-qualified participations<sup>5</sup> in listed companies; and
  - capital gains arising from disposal of non-qualified participations earned by recipient tax resident in white-listed countries.
- **Indirect taxes.** *Tobin tax* (see above) and negligible stamp duties.

Profits deriving from holding financial instruments (*i.e.*, dividends, interest and similar income) are, in principle, subject to taxation in Italy by means of application of final withholding tax/substitute tax at the rate of 26% (which can be reduced pursuant to double tax treaties).

### 4.2 What taxes are there on the importation of assets into your jurisdiction, including excise taxes?

According to Article 1, para. 1 of Presidential Decree No. 633/1972, VAT applies on importations. In addition, specific import duties on importations apply.

#### 4.3 Are there any particular tax issues in relation to the purchase of residential properties by non-residents?

The purchase of a residential property in Italy by a non-resident individual triggers application of registration tax or VAT (depending on several circumstances), mortgage tax and cadastral tax.

In addition, IMU will be due (see question 2.1 above).

Income generated by the exploitation of the properties is also subject to income tax. A special regime may be applied for income deriving from rentals (so-called “*cedolare secca*”, which allows application of a substitute tax at the rate of 21%). Furthermore, the mere holding of a legal title over a non-rented property (or of certain real estate rights) triggers income tax over the so-called “cadastral income” of the relevant property. In case of non-resident individuals, payment of IMU on the property absorbs income tax on the cadastral income.

## 5 Taxation of Corporate Vehicles

#### 5.1 What is the test for a corporation to be taxable in your jurisdiction?

Pursuant to Article 73, para. 3 of TUIR, companies are tax resident in Italy if, for the greater part of the fiscal year, they have their legal seat, place of effective management or place where ordinary management is mainly carried out in Italy.

For these purposes, the term “place of effective management” is defined as the place where the strategic decisions are taken on a regular and coordinated basis, while the term “place of ordinary management” is defined as the place where day-to-day management activities of the whole entity are carried out on a regular and coordinated basis.

In addition, unless proven otherwise, a foreign company is presumed to be resident for tax purposes in Italy if it controls a resident company and:

- is directly or indirectly controlled (subject to dominant influence) by an Italian resident person (company or individual); or
- is managed by a board of directors or other governing body composed of a majority of Italian resident persons.

#### 5.2 What are the main tax liabilities payable by a corporation which is subject to tax in your jurisdiction?

Italian tax resident corporations are subject to two main taxes:

- corporate income tax (“**IRES**”): at the rate of 24%, which applies to the positive result/profit shown in the profit and loss account prepared for the relevant financial year, adjusted pursuant to the rules provided for by the relevant tax regulations, regardless of the source of the income (based on the “worldwide taxation principle”); and
- regional production tax (“**IRAP**”): at the rate of 3.9%,<sup>6</sup> which applies on the net production value (“*valore della produzione netta*”). The way the taxable base is computed changes depending on the type of activity carried out.

#### 5.3 How are branches of foreign corporations taxed in your jurisdiction?

The tax regime of branches is broadly the same as the tax regime of corporations.

## 6 Tax Treaties

#### 6.1 Has your jurisdiction entered into income tax and capital gains tax treaties and, if so, what is their impact?

Italy has signed several double tax treaties (more than 100) with foreign countries to avoid double taxation on income and capital.

The double tax treaties have the purpose of allocating the taxing power of the two contracting States to avoid or limit double taxation on a given income. Depending on the specific category of income, the double tax treaty may either exclude the taxing power of one of the two States or limit it (by way of example, providing for a maximum of withholding taxes).

#### 6.2 Do the income tax and capital gains tax treaties generally follow the OECD or another model?

Double taxation treaties entered into by Italy are, for the most part, based on the model convention developed by the OECD.

#### 6.3 Has your jurisdiction entered into estate and gift tax treaties and, if so, what is their impact?

Italy has concluded seven inheritance tax treaties with the following States:

- USA;
- Sweden;
- Greece;
- United Kingdom;
- Denmark;
- Israel; and
- France (this one also covers gift tax),

aimed at preventing/reducing double taxation on inheritance (and, only in relation to France, gifts).

#### 6.4 Do the estate or gift tax treaties generally follow the OECD or another model?

Double taxation treaties concerning inheritance and gift taxes are based on two OECD models:

- the first OECD model convention, which exclusively addresses inheritance tax; and
- the second OECD model convention, which pertains to both inheritance and gift taxes.

## 7 Succession Planning

#### 7.1 What are the relevant private international law (conflict of law) rules on succession and wills, including tests of essential validity and formal validity in your jurisdiction?

According to Italian/EU rules (*i.e.*, Council Regulation (EC) No. 650/2012 of July 4, 2012, which entered into force on August 17, 2015), the law applicable to the succession as a whole shall be the law of the State in which the deceased had his/her habitual residence at the time of death. Exceptionally, if it is clear from all of the circumstances of the case that, at the time of death, the deceased was manifestly more closely connected with a State other than the one whose law would apply under

the above criterion, the law applicable to the succession will be the law of that other State.

The rule must be applied to European citizens and European resident aliens (see Court of Justice of the EU, October 12, 2023), and a person of multiple nationalities may choose the law of any of the States whose nationality he/she possesses at the time of the choice or at the time of death.

The choice must be made expressly in a declaration, in the form of a disposition of property on death or in a will. The substantive validity of the act by which the choice is made shall be governed by the law chosen or, if different, by the law of the State in which the declaration is executed.

All successions opened before August 17, 2015 and any gaps in the EU Council Regulation are governed by the Italian private international law (Law No. 218/1995). This law also applies when an Italian citizen chooses a succession that jeopardises the rights of legitimate heirs.

From the Italian point of view, a will must be drawn up: in holographic form (*i.e.*, fully signed, dated and undersigned by the testator in his/her own hand); in secret form (drawn up by the testator by any means and delivered to a notary who certifies the delivery in the presence of witnesses); or in public form (drawn up and received by the notary in the presence of witnesses).

The Convention providing for a uniform law on the form of an international will (Washington, D.C., 1973) was ratified by Italy in 1990. A will drawn up in accordance with the requirements of the Convention (*i.e.*, an international will) is fully effective in Italy, irrespective of the place where it was drawn up, the status of the property, and the nationality, residence or domicile of the testator.

Italian law does not require probate proceedings to prove the validity of a will.

#### 7.2 Are there particular rules that apply to real estate held in your jurisdiction or elsewhere?

The law applicable to succession, determined according to the above criteria, does not consider the nature of the assets (movable or immovable) that make up the estate as a whole. However, if the succession is governed by a non-European law that only regulates the transfer of assets located in the territory of the applicable law, immovable assets located in Italy will be governed by Italian law. In fact, the Italian rules of private international law provide for the acceptance of such backward reference in Italian law. Therefore, in such cases, the succession must be divided into two separate estates, each governed by its own applicable law (see Court of Cassation, Plenary Session No. 2867 of February 5, 2021).

#### 7.3 What rules exist in your jurisdiction which restrict testamentary freedom?

The ability to dispose of one's property through a will is not absolute. Indeed, Italian mandatory inheritance law reserves a share of the estate to the heirs who are the spouse, the sons and daughters (if one of them died before his/her parent, their descendants, if any, take their place) and, if the deceased has no sons or daughters, also the ascendants (together, the "forced heirs"), regardless of the wishes of the deceased. The inheritance shares reserved to the forced heirs depend on the relationship between the deceased and those heirs, as well as the number of persons who compose each class (children or ascendants).

## 8 Powers of Attorney

### 8.1 In your jurisdiction, can an individual create a power of attorney which continues to be effective after the individual has lost capacity?

No. However, pursuant to Article 1722 of the Italian Civil Code, a power of attorney remains in force even after the grantor's loss of capacity if it is granted for: (i) the rendering of activities connected to the exercise of entrepreneurial activities; and/or (ii) the benefit of the attorney and/or third parties.

### 8.2 To what extent would such a power of attorney made by an individual in their home jurisdiction be effective to allow the attorney to deal with assets belonging to the individual which are located in your jurisdiction?

The Italian legal system allows the use of a foreign power of attorney, provided that it complies with the formalities required by the law of the State in which it is executed.

## 9 Trusts and Foundations

### 9.1 Are trusts recognised/permitted in your jurisdiction?

Italy is a non-trust country, but it is a party to the 1985 Hague Convention on the recognition of trusts, which entered into force in 1992, which fully recognises the effects of a trust governed by foreign law.

### 9.2 How are trusts/settlers/beneficiaries taxed in your jurisdiction?

In principle, resident and non-resident trusts are subject to IRES. The tax treatment applicable to the income of trusts varies in principle depending on whether the trust qualifies as transparent or opaque.

#### ■ Transparent trust

A trust is considered "transparent" in case its beneficiaries are "identified". According to the Italian Tax Authorities, beneficiaries qualify as "identified" (and the trust qualifies as transparent) if the beneficiaries are "*punctually identified and have the right to claim from the trustee the allocation of that part of the income that is imputed to him or her by transparency*" (unofficial translation).

Any income generated by a transparent trust is subject to taxation in the hands of the beneficiary at the moment the income is generated – irrespective of the actual distribution to the beneficiary – by applying the tax regime to which that beneficiary is ordinarily subject. In case the beneficiary is an individual, the income is subject to IRPEF at the ordinary progressive rates (up to 43%).

Please note that the subsequent actual distribution to the beneficiary is not subject to income tax.

#### ■ Opaque trust

A trust is considered "opaque" in case the beneficiaries are not "identified" (in the meaning described above).

Any income generated by an opaque trust is subject to IRES in the hands of the trust at the ordinary rate of 24%. The taxable base of the income varies depending on whether the trust carries out commercial activity or not.

Please note that the subsequent actual distribution to the beneficiary is not subject to income tax.

With specific reference to trusts that are resident for tax purposes in a black-listed country, any distribution of income from the non-resident trust to the beneficiary is considered taxable capital income, even if the non-resident trust qualifies as opaque.

Contributions of assets to trusts and distributions to trust beneficiaries may be subject to inheritance and gift tax.

According to Legislative Decree No. 139 of September 18, 2024 (“**Dlgs 139/2024**”), some relevant changes have been introduced with reference to inheritance and gift tax in relation to trusts.

Originally, the Italian Tax Authorities were of the view that contributing assets to a trust was an event subject to inheritance and gift tax.

This position has been criticised by scholars, who sustained that the event relevant for the application of inheritance and gift tax was the actual distribution to the beneficiaries of the trust. The Italian Supreme Court, by means of several decisions, finally endorsed the position of the scholars, leading the Italian Tax Authority to review its position and accepting the solution, according to which only the actual distribution of assets to the beneficiaries are relevant for inheritance and gift tax.

Dlgs 139/2024 definitively clarified that “*for trusts the inheritance and gift tax is due on all assets and rights transferred to the beneficiaries, if the settlor is Italian resident at the time of the contribution of the assets to the trust*” (unofficial translation). Furthermore, the same decree provided for the possibility for the settlor to opt for the application of inheritance and gift tax at the moment of each contribution of assets to the trust. Should such option be exercised, subsequent distribution to the beneficiaries is irrelevant for inheritance and gift tax purposes. The option shall be evaluated on a case-by-case basis.

The new mentioned provisions will apply with reference to contributions to trusts made starting from January 1, 2025 (also in case of trusts already set up at the date of entry into force of the new provisions).

### 9.3 How are trusts affected by succession and forced heirship rules in your jurisdiction?

According to the 1985 Hague Convention, the forced heirs’ rights shall be preserved. The Italian Courts ruled that these rights were protected by the domestic claims and excluded the possibility of an application for non-recognition of the trust.

### 9.4 Are private foundations recognised/permitted in your jurisdiction?

Yes, they are permitted.

### 9.5 How are foundations/founders/beneficiaries taxed in your jurisdiction?

According to Article 73 of TUIR, foundations are subject to IRES. In particular, they can be qualified as:

- commercial entities, if their exclusive or prevalent object is a commercial activity; in this case, all income is considered business income pursuant to Article 81 of TUIR; or
- non-commercial entities, if their exclusive or prevalent object consists of an activity that cannot be identified as commercial; in this case, Article 143, para. 1 of TUIR applies, and, so, the total income is constituted by

the sum of the different categories of income listed in Article 6 of TUIR (*i.e.*, property income, capital income, business income and miscellaneous income), wherever produced and whatever its destination.

In order to identify the exclusive or prevalent purpose of foundations, the Italian tax legislation provides that this is determined based on the law, the deed of incorporation and the bylaws.

### 9.6 How are foundations affected by succession and forced heirship rules in your jurisdiction?

They are treated as trusts (see question 9.3 above).

## 10 Matrimonial Issues

### 10.1 Are civil partnerships/same-sex marriages permitted/recognised in your jurisdiction?

Civil partnerships are recognised in Italy, under certain conditions, but same-sex marriages are not permitted and are not recognised if executed abroad. According to Law No. 76/2016, a civil partnership grants many of the rights granted to married couples, such as inheritance and pensions rights, health decision rights and social benefits; however, civil partnerships do not include the right to joint adoption or stepchild adoption.

### 10.2 What matrimonial property regimes are permitted/recognised in your jurisdiction?

According to the prevailing Italian/EU law, the law applicable to the matrimonial property regime shall be the law of the State: (a) of the spouses’ first common habitual residence after the conclusion of the marriage; or, failing that, (b) of the spouses common nationality at the time of the conclusion of the marriage; or, failing that, (c) with which the spouses jointly have the closest connection at the time of the conclusion of the marriage, taking into account all of the circumstances.

Under Italian law, the default matrimonial property regime is joint property, but the couple can opt for the separation of property.

In accordance with Council Regulation No. 1103/2016 (and Law No. 218/1995), the spouses can opt for another governing law, choosing a State which at least one of them is a national or one of them is a resident. The choice will be expressed in a written agreement, which is governed by the law chosen. Foreign citizens residing in Italy must register the agreement with the Civil Registry of the municipality where they reside.

### 10.3 Are pre-/post-marital agreements/marriage contracts permitted/recognised in your jurisdiction?

It depends on the scope of the provisions contained in the agreement.

Dispositions regarding the matrimonial property regime are allowed if they are compliant with the prevailing Italian/EU law. Dispositions regarding dissolution of marriage and legal separation, as well as any economic arrangement made in view of a divorce (or legal separation) are not allowed and are entirely void. Dispositions regarding the estate/inheritance rights are allowed if these are compliant with the prevailing Italian/EU law and the formal requirements according to the law governing the estate and the *situs* where they are executed.

#### 10.4 What are the main principles which will apply in your jurisdiction in relation to financial provision on divorce?

If the spouses intend to file for divorce, or during the divorce proceeding, the spouses can enter into a settlement agreement to rule on the consequence of the divorce; in both cases, the agreement will be ratified by the Court.

## 11 Immigration Issues

#### 11.1 What restrictions or qualifications does your jurisdiction impose for entry into the country?

EU/EEA/Swiss nationals may require an identity card or passport, and no visa is required. If they plan to stay for more than 90 days, they must register with the local authorities.

Other nationals must have the following documents: valid travel document (*i.e.*, passport); and entry visa. The type of visa required depends on the purpose for entering the EU. There are two types of visa:

- Short-term visa: for stays of less than 90 days, for which no special fulfilment is required.
- Long-term visa (and once in Italy, also a resident permit): for stays longer than 90 days, for which it is required to provide the following: the purpose of the journey; the means of transport used; the conditions of accommodation; and the availability of sufficient means of subsistence for the duration of the journey, the stay and, except in the case of entry for employment, the return to the country of origin.

More documents may be required in accordance with the purpose of the visit.

#### 11.2 Does your jurisdiction have any investor and/or other special categories for entry?

A non-EU citizen may obtain an Italian investor visa and once in Italy, an Italian investor residency permit on condition that he/she invests in Italian strategic assets.

The eligible investment for requesting the investor visa, and maintaining the investor residency permit, is as follows:

- €2,000,000 invested in Italian bonds;
- €500,000 invested in stakes or shares of limited companies incorporated and resident in Italy for tax purposes;
- €250,000 invested in stakes or shares in innovative startups; or
- €1,000,000 donated to a project of public interest in the field of culture, education, immigration management, scientific research or preservation of cultural and natural heritage.

In addition to fulfilling the investment requirement, an applicant for an investor visa will also be required to prove that he/she has sufficient financial resources to support himself/herself during the planned stay in Italy.

The eligible investment must be perfected within three months from arriving in Italy.

#### 11.3 What are the requirements in your jurisdiction in order to qualify for nationality?

Citizenship is acquired automatically or recognised:

- by birth if:
  - one parent holds Italian citizenship;
  - an ancestor (male line before 1948, both male and female line after 1948) holds Italian citizenship and

the ancestral line through the generations was not interrupted by renunciation or withdrawal by an Italian citizen ancestor;

- born in Italy of unknown parents;
- a foreigner from a State whose legislation does not provide for the transmission of the parents' citizenship; or
- an Italian citizen recognises a minor child after his/her birth; and
- by adoption of a minor child made by an Italian citizen; and
- by acquisition or re-acquisition of Italian citizenship by one of the parents of the minor child.

Citizenship may instead be applied for by:

- an adult who, within one year from the recognition of his/her parents' nationality, declares his/her wish to acquire Italian nationality, while retaining foreign nationality;
- a child born in Italy of foreign parents who has reached the age of 18 and has resided "legally and continuously" in Italy;
- a foreigner residing in Italy for at least three years, whose father or mother or one of their direct second-degree relatives in the ascending line is a citizen by birth;
- an adult foreigner adopted by an Italian national who has resided legally in Italy for at least five years following the adoption;
- a foreigner who has served, including abroad, for at least five years in the service of the State;
- a European citizen if he/she has been legally residing in Italy for at least four years;
- a stateless person who has been lawfully resident in Italy for at least five years;
- a foreigner who has been residing legally for at least 10 years in Italy; or
- through a marriage or civil partnership, after three years, which may be reduced to two if the spouse or civil partner resides in Italy; those terms are reduced by half if the couple has a child or adopts a minor child.

#### 11.4 Are there any taxation implications in obtaining nationality in your jurisdiction?

As described in the answers to questions 1.1 and 1.3 above, nationality is not relevant for tax purposes. It can be relevant when applying a double tax treaty in case of dual residence.

#### 11.5 Are there any special tax/immigration/citizenship programmes designed to attract foreigners to become resident in your jurisdiction?

The main Italian special regimes aimed at attracting human capital in Italy are as follows:

- 1) "Res non-dom" regime  
The Italian "res non-dom" regime ("**Regime**") allows individuals who become resident in Italy for tax purposes to opt for a yearly flat tax of €200,000<sup>7</sup> on income deriving from sources outside Italy, regardless of the amount of such income.

In order to opt for the Regime, eligible taxpayers must not have been resident in Italy for tax purposes for at least nine out of the 10 years preceding the year in which Italian tax residency was obtained. Once this condition is met, the option is available regardless of the taxpayer's nationality (*i.e.*, it is available for both non-Italian and Italian nationals).

The Regime is optional and provides for a yearly substitute flat tax of €200,000 on foreign sourced income received by individuals who have transferred their tax residence to Italy. The only exception is that, during the first five years, the new resident will still be taxed on capital gains from the sale of a “qualified interest”<sup>8</sup> in business entities.<sup>9</sup>

No tax credit against the €200,000 annual amount is available for payments made for foreign taxes.

Income from Italian sources will be taxed in accordance with the Regime ordinarily applicable to Italian tax residents.

The option can be voluntarily terminated and may not last for more than 15 years.

The taxpayer may carve out foreign income deriving from a given jurisdiction. In this case, foreign tax credit is available.

Even if the 15-year term has not expired, the option is revoked if the taxpayer:

- (a) does not pay, in time, in full or in part, the substitute tax; or
- (b) transfers his/her tax residence outside Italy.

If an individual moves to Italy together with family members, the option can be extended to those family members, and each of them will be liable for an annual flat tax of €25,000 instead of €200,000. Each member of the family who opts for the Regime must also meet the eligibility requirements.

In principle, individuals who are residents in Italy for tax purposes must include in their annual tax return financial investments and other assets held outside of Italy, whether or not these investments and assets generate income (“**RW reporting obligations**”). In addition, IVIE (see question 2.1 above) and IVAFE (see question 2.1 above) are due. New tax residents who choose to be taxed under the Regime will also be exempt from RW reporting obligations and from IVAFE and IVIE.

In principle, Italian tax residents are normally liable for gift tax and inheritance tax on transfers of assets by way of lifetime gift, inheritance or bequest at death, regardless of the physical location of the assets, whether in Italy or abroad (see question 2.1 above). According to the Regime, during the election period, inheritance and gift tax will only be levied on assets and rights situated in Italy. In other words, new tax residents will be exempt from gift and inheritance tax on transfers of assets located outside Italy.

## 2) *Regime Impatriati*

Article 5 of Legislative Decree No. 209 of December 27, 2023 (“**Dlgs 209/2023**”) regulates the preferential tax regime in favour of Impatriate Workers. Individuals transferring their tax residence to Italy on or after January 1, 2024 may benefit from a 50% exemption of their Italian-source employment and self-employment income up to €600,000, provided that the following conditions are met:

- they commit to maintaining their residence in Italy for at least four years;
- they were not resident in Italy in the three years preceding the transfer. However, if they are employed with the same employer they had before the transfer, or with an employer of the same group, the required period of residence outside of Italy is increased to six or seven years, depending on the specific circumstances;
- they are mainly working in Italy; and

- they qualify as highly skilled or specialised workers, as defined by Legislative Decree No. 108 of June 28, 2012 and Legislative Decree No. 206 of November 9, 2007.

According to Article 5, para. 4 of Dlgs 209/2023, the reduction is set at 60% in the following cases:

- if a worker moves to Italy with a minor child; or
- in the event of the birth of a child or the adoption of a minor during the period of benefit. In this case, the benefit is granted starting from the fiscal year in which the birth or adoption occurs and for the remaining duration of the preferential regime.

The increased benefit, as outlined in the subsequent para. 5 of Article 5, applies on the condition that during the period of the Regime, the minor child or adopted minor is resident in Italy.

According to Article 5, para. 8 of Dlgs 209/2023, the new provisions apply to individuals who transfer their tax residence to Italy starting from fiscal year 2024.

## 3) Pensioners’ regime

Law No. 145 of December 20, 2018 introduced a favourable regime providing for the application of an individual substitute tax equal to 7% on all non-Italian source income earned by foreign pensioners transferring their tax residence in the southern regions of Italy. The optional tax regime is available for the year in which the transfer of tax residence occurs and for the following nine years.

The 7% substitute tax applies to all non-Italian sourced income (*i.e.*, not only non-Italian pensions but potentially all types of non-Italian sourced income) while all income realised in Italy is subject to ordinary individual taxation rules.

The pensioner can select specific foreign countries to be excluded from the optional tax regime, and the income deriving therefrom is subject to Italian ordinary taxation, with the possibility to benefit from foreign tax credit. In order to opt for the special tax regime, the following conditions must be met:

- i. the individual must receive a “pension income” paid by a non-Italian entity;
- ii. the individual must not have been Italian tax resident for at least five years before exercising the option for the Italian optional tax regime;
- iii. the country where the individual was tax resident before the relocation to Italy is included in the Italian white list of countries providing for adequate exchange of information with Italy; and
- iv. the individual must transfer their residence to a municipality having no more than 20,000 inhabitants located in one of Italy’s southern regions (*i.e.*, Abruzzo, Apulia, Basilicata, Calabria, Campania, Molise, Sardinia or Sicily).

## 12 Reporting Requirements/Privacy

### 12.1 What automatic exchange of information agreements has your jurisdiction entered into with other countries?

The procedures for the automatic exchange of information involving Italy are based on three main sources:

- bilateral Double Taxation Conventions or Tax Information Exchange Agreements signed with States

and territories with which Italy has not signed a Double Taxation Convention;

- EU Directives (DAC 1–7); and
- international agreements signed by Italy (such as the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and the FATCA agreement).

Italy has currently signed 24 bilateral agreements on the exchange of information and 12 bilateral agreements on the conduct of simultaneous tax audits.

**12.2 What reporting requirements are imposed by domestic law in your jurisdiction in respect of structures outside your jurisdiction with which a person in your jurisdiction is involved?**

The Italian tax legislator has implemented DAC 6, through Dlgs 100/2020, on the mandatory automatic exchange of information.

In particular, Dlgs 100/2020 provides a systematic framework for regulating the automatic exchange of information between the Italian Tax Authority and the foreign competent authority of the other contracting State with which specific agreements on the automatic exchange of information are in place, in the field of cross-border arrangements. The relevant arrangements may involve potentially aggressive cross-border tax planning.

Dlgs 100/2020 also introduced a specific reporting obligation for some intermediaries (involved in the implementation of such mechanisms) and for taxpayers, which are obliged to collect the relevant information and subsequently report them to the Italian Tax Authority.

**12.3 Are there any public registers of owners/beneficial owners/trustees/board members of, or of other persons with significant control or influence over companies, foundations or trusts established or resident in your jurisdiction?**

Currently, the Italian register on beneficial ownership and the obligation to report data of beneficial owners is not in place.

The requirement to keep a register of beneficial owners and the related obligation to report beneficial owners' data are governed by Article 21 of Legislative Decree No. 231 of November 21, 2007. This provision, however, stated that the actual establishment and maintenance of the aforementioned register will be covered by future ministerial decrees. The Italian beneficial ownership register was finally materially established with the adoption of Ministerial Decree No. 55/2022 and the implementing ministerial decrees of March 16, 2023, April 12, 2023, April 20, 2023 and September 29, 2023.

Following the issuance of the latter decree, the establishment of the register of beneficial owners and the obligation to report beneficial ownership to the register should have come into force on December 8, 2023. However, the operation of the register and the reporting obligation were suspended with effect from December 7, 2023 following an appeal of the aforementioned decrees before the Administrative Court of Lazio. As a result of the appeal, a judicial process began that, to date, still sees the effectiveness of the aforementioned register suspended. Currently, the decision on the legitimacy of the decrees (and, consequently, of the communications of the ultimate beneficial owner to the register of beneficial owners) has reached the "Consiglio di Stato" (the Italian last level of administrative judgment), which has referred the matter to the European Court of Justice.

We will therefore have to wait for the relevant ruling to understand what the outcome of the Italian beneficial owners' register and the related reporting obligation will be.

**12.4 Are there any public registers of beneficial owners of, or of other persons with significant control or influence over, real estate located in your jurisdiction?**

Yes. Information on deeds of transfer of ownership and other land rights, as well as the creation and cancellation of mortgages, can be found in the Italian Land Registry. In addition, the autonomous provinces of Trento, Bolzano, Trieste and Gorizia maintain their own registers. The registers are open to the public on payment of a small tax. The information contained in the land registers is organised by subject (natural or legal person); however, it is possible to search both by person and by property (cadastral information).

## 13 Future Developments

**13.1 How do you see the climate for foreigners wanting to come and live in your jurisdiction developing over the next few years?**

Italy is traditionally a country of strong migration flows and is used to welcoming foreigners. In line with this tradition, the legal system continues to provide new opportunities for the reception of foreigners who intend to stay in the country for long periods. For example, the law of February 29, 2024 introduced a new form of long-term visa, the so-called "digital nomad visa". This visa allows digital nomads outside the EU to legally live and work in Italy, as freelancers, self-employed individuals and foreign company employees who can perform their work duties remotely using digital tools. The visa typically grants a one-year stay with the possibility of renewal. The new visa is a significant step for Italy, making the country competitive in the global digital nomad market. It is a win-win situation, as digital nomads get to experience the beauty and culture of Italy while contributing to the local economy. Eligible documentation can include employment contracts, invoices or other relevant documents. Digital nomads must have comprehensive health insurance coverage that is valid for the entire duration of their stay in Italy. Additional documentation may be required depending on the specific circumstances.

**13.2 A European human rights decision in the summer of 2024 has recently held that there is no unconditional human right to inherit from your parents: is this principle or any associated issue arising out of testator mobility or out of the modern varied composition of families a subject of debate, social, political or academic, in your jurisdiction? If yes, please elaborate on current norms and possible directions of travel.**

In recent decades, several proposals have been made to abolish the forced heirs' rights (see the 2024 Budget Law), and all of these proposals have been rejected. Under Italian law, however, there is only one exception to these rights: the so-called "*patto di famiglia*". This is an instrument that allows the donor/entrepreneur ("settlor") to transfer his/her family business to one or more of his/her descendants ("assignee(s)"), who must compensate the other forced heir(s) ("non-assignee(s)"). The

“*patto di famiglia*” agreement must be executed as a public deed, with the participation of all of the forced heirs who, at the time of signing, would have a reserve right under the mandatory laws of inheritance. Moreover, by way of derogation from the general rules, the agreement consents to the family business being treated as a separate asset of the entrepreneur, and its value is not calculated for the purpose of determining the complex value of his/her estate (see question 7.3 above). In other words, the agreement divides the succession into: one relating to the family business at the time the agreement is signed; and the other relating to all of the assets at the time of the entrepreneur’s death.

## Endnotes

- 1 Also fractions of days are relevant.
- 2 Unofficial translation.
- 3 Unofficial translation.
- 4 In case of real estate located in the United Kingdom, prior to Brexit it was possible to use the property’s Council Tax valuation as the IVIE taxable base. However, following Brexit, this option is no longer available, which has generally led to a significant increase in the final tax burden.
- 5 “Qualified participation”: quotas or shares representing overall (i) more than 20% (2% in case of equity securities listed on regulated markets) of voting rights exercisable at ordinary shareholders’ meetings, or (ii) more than 25% (5% in case of equity securities listed on regulated markets) of the equity or other participation in the capital.
- 6 The rate can vary from region to region.
- 7 Please note that Law-Decree No. 113 of August 9, 2024 increased the amount of the flat tax from €100,000 to €200,000. The new measure of the flat tax applies to individuals who move to Italy after August 10, 2024.
- 8 “Qualified interest”: equity securities, other than savings shares, and rights through which participations may be acquired, representing overall (i) more than 20% (2% in case of equity securities listed on regulated markets) of voting rights exercisable at ordinary shareholders’ meetings, or (ii) more than 25% (5% in case of equity securities listed on regulated markets) of the equity or other participation in the capital.
- 9 According to the non-public position of the Italian Tax Authorities, the ordinary taxation can be avoided by filing a ruling with the Italian Tax Authorities illustrating that the taxpayer intends to remain in Italy for more than five years.



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