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WEALTH RESTRUCTURING

The current emergency is an opportunity to review the family and wealth situation of the individuals in order to make more efficient structures, both from a business and private prospective.

We analysed the main Italian provisions concerning inheritance and gift taxes, the drafting of a will and tax incentives introduced to attract human capital to Italy.

Although the current emergency has caught everyone unprepared, it is an opportunity to review the family and wealth situation in order to make more efficient structures, both from a business and private prospective.

Transfers in favour of spouse and descendants

In light of the current fluctuation of many assets' value, it could be efficient to make transfers in favour of family members, also in the context of succession planning. Such transfers can also be made through a trust (with the settlor's family members as beneficiaries).

In addition, the individuals may be interested in the Italian inheritance laws, as the Italian inheritance and gift taxes are significantly low if compared to other similar countries (e.g. France) and it is possible that, in light of the Italian current political-economic situation, in the future, the inheritance and gift taxes may be raised.

In Italy, the inheritance and gift taxes is applied with the following rates: (i) 4% in the case of transfers in favour of spouses, descendants and ascendants (with a deductible amount of € 1 million for each beneficiary), (ii) 6% in the case of relatives up to the fourth degree, (with regard to the transfer in favour of siblings, there is a deductible amount of € 100,000) and (iii) 8% in all other cases. In all cases, a deductible amount equal to € 1.5 million is granted when the transfer is in favour of disabled people.

In addition, Italian laws provide significant tax allowances in order to facilitate the transfer of (i) participations in partnerships or (ii) controlling participations in limited liabilities companies and joint stock companies, in favour of the spouse and of the descendants of the entrepreneur/shareholder. In this case, provided that certain requirements are met, the transfer is completely tax free (regardless the value of the participation transferred). This exemption also applies in case the transfer of participations (or controlling participations) take place through a trust with a spouse and / or descendants as beneficiaries.

Draft a will

Please note that under Italian law there are two kinds of succession procedures: (i) the so-called "legitimate" succession (applicable in case the deceased has not made a will) and (ii) the so-called "testamentary" succession (applicable in case the deceased has made a will).

If the deceased dies without having made a will, the legitimate succession rules apply and law determines which individuals have succession rights and the corresponding quotas of the estate to which they are entitled.

On the contrary, if the deceased has made a will, then the provisions of the will shall regulate the succession, on condition that (i) they are compliant with the quotas that are mandatorily reserved by law to some specific heirs (e.g. the wife and the children) and (ii) that they are comprehensive and thus suitable to regulate the entire succession.

Therefore, in order to avoid that the legitimate succession rules apply, it is advisable to draft a will. A will is a revoked act by which a person disposes of all or part of his assets.

Tax aspects

In light of the current situation, please note that many countries compete with other countries in order to attract capital and private wealth: therefore, it is important to analyse the tax laws of these countries in relation to personal income taxes, inheritance and gift taxes and corporate taxes.

In this regard, some tax incentives have recently been introduced to attract human capital to Italy. In particular:

- A special tax regime for high-net-worth individuals so-called “Res non-Dom Regime”, somehow inspired by the UK “resident non-domiciled regime”. The Res non-Dom Regime provides for a yearly € 100,000 substitutive tax on foreign-sourced income and on foreign assets held by individuals who transfer their tax residence in Italy;
- A tax regime for pensioners (so-called “Pensioners Regime”). The Pensioners Regime is aimed at attracting individuals holding foreign pensions to the south of Italy and provides for a yearly 7% substitutive tax on all foreign-sourced income derived and on foreign assets held by individuals who have transferred their tax residence in Italy;
- A tax regime for inbound workers (the so-called "Inbound Workers Regime"). The Inbound Workers Regime provides for an income exemption of 70% (or 90% under certain conditions) of income from employment and self-employment for those who have transferred their fiscal residence in Italy. In addition, the inbound workers shall carry out his/her activity mainly in Italy.

The temporary closure of the borders may force some individuals to remain in a different country for more than six months. This situation could lead to problems related to tax residence and therefore the individuals may have tax obligations in that country. However, according to OECD recommendations, these temporary circumstances should not affect the tax residence status of individuals.

Finally, the Italian Government is adopting tax measures in order to support enterprises and families in this emergency situation. We recommend that you monitor the development of this situation.

Gianni, Origoni, Grippo, Cappelli & Partners has set up an in-house **Task Force** to constantly monitor the evolution of legislation in the regions affected by the Coronavirus and is at your entire disposal to support you in defining, drafting and implementing the most advisable strategies to limit the impact of the spread of the Coronavirus on the operations of your business and the management of your existing commercial relations. For our previous newsletters on this subject, please click here.

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