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WEALTH MANAGEMENT IN ITALY

Q&A

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March 2018

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GENERAL QUESTIONS

1. Which legal instruments are available in Italy to leave the family wealth to one's heirs?

- The main legal instruments are hereditary succession, testamentary succession, donation, family agreements and domestic trusts.

2. May an agreement for the disposal of family wealth entered into between living people (*e.g.*, parents and their heirs) be valid?

- No. As a general statement, this sort of arrangement falls within the ban on inheritance contracts, under article 458 of the Italian civil code, therefore it would be void. Likewise, the arrangements aimed at disposing of, or waiving, the rights that may be involved in a succession still to be opened, will be null and void, as well.
- Family agreements under articles 768 *et seq.* of the Italian civil code represent the sole exception to the above (*see* Q&A 16).

3. Is this a suitable time in Italy to consider the transfer of one's wealth to the heirs?

- Yes, it is. As explained hereafter, according to the tax rules currently in force, a wealth may be transferred at reasonable costs.

SUCCESSIONS

4. When is Italian law expected to apply to successions?

- Pursuant to EU Regulation no. 650/2012, a succession under the Italian law may be opened when the deceased person, even if non-Italian citizen, had established his usual residence in Italy (unless a will had been drawn up, or the law applicable to the succession was thereby declared to be his home country law). The Italian law shall also apply to deceased Italian citizens who drew up a will specifying that the law governing their succession would be the Italian law.

5. How is an estate disposed of in case of death?

- An estate may be disposed of by will or by operation of law. As mentioned, inheritance contracts are not valid.

6. What will happen if the deceased did not leave a will?

- In the event that the deceased did not leave a will, the estate will pass to his spouse and descendants, in the first instance, and, in their default, to

the ascendants, the collaterals and the relatives, according to the order of priority and division of shares set forth in the Italian civil code.

7. What will happen if the deceased left a will?

- A will is an instrument for the testator to dispose of his estate as he thinks fit, without prejudice to the indefeasible estate (*see* Q&A 9). Because the indefeasible share has to be calculated upon opening of the succession, it may occur that a testator disposes of his estate by will in breach of the forced heirship, since the indefeasible share could not be established with certainty on the date when the will was prepared. In such circumstance, a will is not void (even if a breach was knowingly done), but the statutory heirs, who have been fully or partially deprived by will, may bring an action in abatement ("*azione di riduzione*") to seek reinstatement of the indefeasible share (*see* Q&A 9).

8. How many types of will are there?

- Wills may commonly divide into holographic wills and notarial wills, which in turn are divided into public wills and mystic wills.
- Holographic wills are valid if they are fully written, dated and signed by the testator's handwriting.
- Public wills are delivered to public notaries in the presence of two witnesses, except when four witnesses are necessary in the event that the testator is dumb, deaf, deaf-mute, or incapable of reading.
- Mystic wills may be written by the testator, or a third party, and delivered in the presence of two witnesses to a notary public, who will draw up the deed of delivery and sign it together with the testator and the witnesses.

9. What does forced heirship mean?

- This is a statutory portion of the estate reserved to the descendants, the spouse and the ascendants of the deceased. Any of these parties receiving a lower share in the estate than the statutory share (the indefeasible estate), will be entitled to lodge an action against the other heirs (action in abatement) and claim for the reinstatement of its indefeasible share. Such share may vary in accordance with the participation of the forced heirs in the estate (*e.g.*, in case of death). The indefeasible share is calculated upon opening of the succession (*i.e.*, the date of the testator's death) on the basis of the then existing inheritance wealth (*relictum*) and any other donations (*donatum*) that the deceased assigned to one or more of his forced heirs during his life.

10. Does a testator has the right to disinherit his offspring or spouse?

- No, he doesn't. In Italy, this is forbidden. Thus, they cannot be excluded from the inheritance (or their indefeasible share, at least). However, those who are guilty of any action involving an attempt to the deceased's moral or physical integrity, or testamentary freedom, may be disqualified from succession, and with effect from the date of a final and unappealable court declaration in this respect, all of their rights in the deceased's estate will be forfeited.

11. What rights does the deceased's spouse have?

- The surviving spouse may take part in the succession on the following assumptions: a) the marriage is valid; and b) the spouses did not divorce before the death of the testator. If these circumstances are met, the surviving spouse, in addition to his indefeasible share, will benefit from a statutory right to live in the family dwellings, and use the furniture comprised therein. The personal separation of the spouses will not entail forfeiture of any succession rights.

12. What the tax aspects of successions?

- On or prior one year next following the date of opening of the succession, a succession tax return must be filed with the competent authority of the place of residence of the deceased person.
- The succession tax is calculated by applying the following rates to the aggregate value of the assets and rights, net of the expenses at the beneficiary's charge: a) if in favour of the spouse and direct offspring: 4 percent on the net aggregate value exceeding Euro 1,000,000, per beneficiary; b) if in favour of other kins up to the fourth degree, direct and collateral affines up to the third degree: 6 percent, with an "allowance" of Euro 100,000, per beneficiary; and c) if in favour of other persons: 8 percent.
- The above "allowance" raises to Euro 1,500,000 for disabled persons, regardless of their kinship or spouse relationship.
- As far as real properties are concerned, a registration tax (2%) and a land tax (1%) shall also be levied on the value of the properties so inherited.
- The succession assets must be valued as follows: i) real properties, at their cadastral value; ii) corporate interests, at their net worth value; iii) artworks reported in the succession tax return, at their estimated value (where the artworks are not listed in the succession return and are situated into one or more real properties included in the succession, the value of these works will be included in an amount howsoever due,

corresponding to 10% of the aggregate value of the assets falling within the succession, as furniture, furnishings, artworks and jewels are supposed to belong to the deceased person) ; iv) available funds and financial investments, at their nominal value.

- The succession tax is not applicable to estates or legacies in favour of descendants, consisting of businesses or business concerns, corporate quotas or shares. As regards companies, cooperative or mutual insurance societies having their registered office in Italy, such relief is limited to the shares by which control over the business is acquired or consolidated, provided that the beneficiaries will carry on and/or maintain control on the business activity for 5 years, at least.
- The assets subject to cultural heritage restrictions, as listed in the Code of Cultural Heritage, before the opening of the succession, are exempted from the succession tax, provided that compliance with the connected obligations of preservation and protection has been ensured.
- The transfer of assets that are not situated in Italy and are owned by non-Italian residents is relieved from payment of the succession tax.

DONATIONS

13. What the features of donations?

- Donation is the legal agreement whereby a person (the donor) transfers any of his assets, rights or monies, to another person (donee), by way of gift (*animus donandi*).
- A donation must be executed and delivered as a public deed (*i.e.*, before a notary public) in the presence of two witnesses, under penalty of voidness, except where a "donation of modest value", or any assets, rights or monies that are to be considered of modest value compared to the donor's wealth, are concerned.
- A donation will only be effective upon its acceptance by the donee; the donor may only revoke a donation on the grounds of the donee's ingratitude (as defined under article 801 of the Italian civil code) or supervening heirs (assuming that on the donation date, the donor was childless or ignored to have any offspring).
- The donor or his heirs may lawfully file a petition for revocation for ingratitude against the donee, or his heirs, on or prior one year of the date when the donor has become aware of the grounds for revocation. A petition for revocation grounded on supervening descendants must be lodged within five years next following the date of birth of the last child born during the marriage, or of his recognition, if born outside the marriage.

- As at the date of opening of the donor's succession, the value of the donated assets will be reconsidered and adjusted in order to evaluate the indefeasible estate.

14. Will parents continue to receive the income from real properties and/or dividends on corporate interests, after they have donated their real properties and/or corporate interests to their children?

- Yes, they will. As regards donations or domestic trusts (*see* Q&A 18), parents may reserve for themselves a usufruct right on the donated real properties and/or corporate interests. As far as corporate interests, the usufruct right allows its beneficiary to maintain the voting rights in the shareholders' meetings, except where otherwise specified.

15. What the tax aspects of donations?

- From a fiscal perspective, donations are quite an attractive tool in Italy, in this very moment in history. As a matter of fact, the tax due results from the application of the following rates to the aggregate value of the assets and rights net of the expenses at the beneficiary's charge: a) if in favour of the spouse and direct offspring: 4 percent on the net aggregate value exceeding Euro 1,000,000, per beneficiary; b) if in favour of other kins up to the fourth degree, direct and collateral affines up to the third degree: 6 percent, with an "allowance" of Euro 100,000, per beneficiary; and c) if in favour of other persons: 8 percent.
- The above "allowance" raises to Euro 1,500,000 for disabled persons, regardless of their kinship or marital relationship.
- As far as real properties are concerned, a registration tax (2%) and a land tax (1%) shall also be levied on the value of the donated properties.
- The assets assignable by donation must be valued as follows: i) real properties, at their cadastral value; ii) corporate interests, at their net worth value; iii) artworks, at their estimated value; iv) available funds and financial investments, at their nominal value.

FAMILY AGREEMENTS

16. What the features of family agreements?

- Family agreements were introduced in the Italian legal system under Law no. 55/2006, in order to harmonize the forced heirs' rights and the need for entrepreneurs to avoid uncertainty of succession to their own business (or corporate interests) for the benefit of one or more of their descendants. Thus, they were so enabled, on the one hand, to enter into

legal arrangements in this respect and, on the other hand, to put in place supplementary protections in favour of those forced heirs deprived of the business' ownership.

- Consistently with the provisions of law on family businesses, and on the different types of undertakings, this agreement allows entrepreneurs and stakeholders to transfer all or part of their business and their interests, respectively, to one or more of their descendants, without triggering the ban to enter into inheritance contracts, pursuant to article 458 of the Italian civil code.
- Under penalty of voidness, a family agreement must be executed and delivered as a public deed by the spouse and all of those that would qualify as forced heirs (*see* Q&A 9), had the succession to the entrepreneur's wealth be opened on the same date.
- Their participation is a condition subsequent for the validity of the family agreement, and aims at avoiding any future judicial claims brought by injured heirs deprived of their indefeasible share, and, as a consequence, any restatement of the provisions thereof.
- In contrast, the provisions of law clearly identify the beneficiaries of the entrepreneur's assignments in his descendants (*i.e.*, the assignees), but not his brothers and sisters, nor his spouse. The assignee, or assignees, are bound to compensate non-assignees with such contributions in cash or in kind up to the value of their respective indefeasible share, except for their waiver upon execution of the family agreement.
- The parties to a family agreement will be entitled to claim for its annulment on or prior one year of the date of execution thereof, where their consent was impaired by errors, wilful misconduct or undue pressure.
- As at the date of opening of the succession, the spouse and any other forced heirs, who did not take part in the family agreement, will be entitled to request the beneficiaries of the family agreement to pay them an amount corresponding to their respective indefeasible shares.

17. What the tax aspects of family agreements?

- The donation tax is not applicable to the transfer of those quotas or shares whereby control over a business is acquired or consolidated, provided that the beneficiaries will carry on and/or maintain control on the business activity for 5 years, at least.

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DOMESTIC TRUSTS

18. What the features of domestic trusts?

- The so-called "domestic" trust is an instrument created in accordance with the provisions of the Hague Convention of 1.7.1985, ratified in the Republic of Italy by law no. 364 of 16.10.1989, and entered into force on 1.1.1992 (the "Hague Convention"). For the purposes of the Hague Convention, the term "trust" refers to the legal relationships created – *inter vivos* or on death – by a person, the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose.
- Especially in recent years, this instrument has been raising growing consensus in Italy, as it has proved to be more suitable to achieve a number of purposes that other traditional instruments available in our legal system were often unable to attain.
- By means of a discretionary trust, a settlor may immediately establish his succession plan, and allocate his estate to any beneficiary throughout the term of the trust. This may be done in contemplation of the needs emerging from time to time, while still benefitting from the tax relief granted under the Italian law (*e.g.*, he will be entitled to reserve a decision on whom, among his underage or young children, will receive the family business, and leave the rest of the estate to the other heirs).
- Trusts are endowed with the following features:
  - Segregation, which prevents the general state of affairs of a person from affecting the assets "subject to segregation", either during his life or after his death, or his relationship with these assets: this being a natural and mandatory requirement of any trust;
  - Reliance-devolution to an entity (the trustee), in order to allow such entity to manage, administer and correctly improve the trust assets;
  - The objects underlying the establishment of the trust, which must deserve protection under article 1322 of the Italian civil code. The objects essentially represents a point of reference for both the trustee, in the performance of his duties, and the judicial authorities, for a general appraisal of the trust, when resorted to settle any issues or disputes in connection therewith.
- It is worth pointing out, also, that the trustee's obligations are of a fiduciary nature, and stand for the benefit of the beneficiaries, or better, of the objects set out in the memorandum of association of the trust.

- Therefore, the trustee must:
  - avoid any essential conflict of interest with the trust assets,
  - not gain any direct or indirect advantage from the trust,
  - maintain a good-faith conduct,
  - not commingle his assets with the trust assets,
  - represent his capacity as trustee to third parties, at any time,
  - keep accurate records of all of its activities.
- Having regard to the law applicable to trusts, a distinction ought to be made between the establishment and the devolution of a trust. In the first case, article 6 of the Hague Convention provides that "*A trust shall be governed by the law chosen by the settlor.*" Such choice must be express or implied in the terms of the instrument creating the trust and the law ought to be selected of a foreign Country that recognized trusts in its jurisdiction.
- Comparably to wills, contributions of assets to a trust to the complete or partial detriment of the indefeasible share will be valid, though subject to the forced heirs' action in abatement.

19. Does a trust represent a protection of the settlor's and its beneficiaries' wealth?

- Yes, it does. The trust assets are segregated from the wealth of the settlor, the beneficiaries and the trustee (therefore, they can't be apprehended by their respective creditors), on the following conditions:

a) The settlor may transfer his assets to the trust in the absence of any pending insolvency proceedings or enforcement procedures at his charge; where these circumstances occur, during the five-year period next following the date of contribution, the trust assets will be subject to creditors' potential clawback actions, whereby the contribution of assets to the trust will be declared null and void;

b) The trustee shall always be bound to declare his capacity as trustee in the scope of his duties; in such circumstance, his creditors will not be able to seek enforcement against the trust assets, nor will the trust assets fall within his succession or separation from his spouse (where the trustee is a natural person);

c) Those beneficiaries that have not been expressly designated by name, or are subject to conditions, will not benefit from any immediate right on the trust. Therefore, their creditors may not seek enforcement against their rights. In any event, a "protective clause" will be inserted in the memorandum of association of the trust (as

contemplated by many trust legislations, *e.g.* Jersey, art. 35). Such clause will grant the trustee the right to transfer any assets, monies or rights placed in the trust fund to the beneficiaries in the event that they are subjected to any insolvency proceedings or enforcement procedures.

20. What the tax aspects of domestic trusts?

- Because the memorandum of association of the trust deploys its function in the plan of allocation of the settlor's estate, rather than representing a real deed of contribution of his assets, it may be considered as a deed lacking of any objects of a capital or financial nature.
- As a result, a fixed registration tax of Euro 200.00 will be due if the deed is executed and delivered as a public deed or a notarised private deed.
- In principle, the deed of contribution of assets to the trust is considered as a contribution on a gratuitous basis and is liable to succession and donation taxes. Therefore, reference is to be made to the provisions explained in Q&A 15 on donation matters (including with regard to the "allowances"), as the relationship existing between the settlor and any individual beneficiary is to be taken into account to establish the applicable rate.
- Likewise with family agreements, the donation tax shall not apply to contributions to trusts of those stakes whereby control over a business is acquired or consolidated, provided that the trustees continues to run and/or maintain control on the business for a period of 5 years, at least.
- Upon dissolution of the trust, the devolution of the assets placed in the trust to the final beneficiaries will not constitute a supplementary tax assumption, for the purposes of the donation tax.

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