Italy

International Estate Planning Guide

IBA Private Tax Client Committee

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Table of Contents

I. Wills and disability planning documents

A. Will formalities

A testator may transfer his/her property and rights by drafting a will. Through testamentary provisions, the testator can attribute a share or the totality of his/her assets, or can attribute the status of legatee. The following testators cannot dispose by will: (1) individuals that have not reached the age of majority (18 years); (2) individuals interdicted because of mental infirmity; and (3) individuals who, even though not interdicted, are shown to have been, for any reason, even transitory, incapable of understanding or intending when they drafted the will. Pursuant to Italian law, there are three different ways of making a valid will:

1. Holographic will (*testamento olografo*): This is a document personally handwritten by the person making the will (testator), dated and signed at the end of the dispositions. There is no need for witnesses and there is no attestation clause. It can be a very simple letter or document. This document can be written in any language. The holographic will is presumed valid, unless the contrary is proved through a special judicial procedure (*querela di falso*);
2. Formal will (*testamento pubblico*): This is a document drafted by a notary public upon the instructions of the testator, read out by the notary public to ensure that it complies with the wishes of the testator and signed by the testator in the presence of two witnesses. The will is then lodged with the notary public; this is a fairly formal document. While it provides assurance that the will shall not be lost/disregarded, it involves a cost (notarial fees), and its contents are immediately disclosed to third parties (witnesses), who may not keep it confidential; and
3. Secret will (*testamento segreto*): This is not frequently used. It is a will drafted/written by the testator or a third party and placed in a sealed envelope, which is then delivered to a notary public. The contents of the will shall remain secret until after the death of the testator, when the sealed envelope will be opened.

Italian law also provides the validity of certain special wills that can be drafted by the testator when it is not possible to make an ordinary will: (1) wills drafted in the case of contagious disease, public calamity or accident; (2) wills drafted on board a ship or aircraft; and (3) military wills. The formalities provided for these kinds of will are softened.

A will can be revoked by the testator at any time. The revocation can be formal or implied, total or partial. Formal revocation, both total and partial, can be caused by the drafting of a new will or by a deed drafted by a notary public in the presence of two witnesses, in which the testator states that he/she revokes the prior will. Implied revocation can be caused by the following events: (1) the destruction of the will, unless it is proved that the will was destroyed by a person other than the testator or that the testator did not have the purpose of revoking it; (2) the inconsistency of certain dispositions enclosed in the new will with a previous will (in case the previous will is not explicitly revoked); (3) the removal of the secret will from notarial custody; and (4) the destruction, sale or donation of all or part of the property enclosed in the will.

The right to draft a will is not unrestricted. The power of the deceased to choose his/her heirs cannot impair the rights of a number of immediate relatives to inherit: these heirs shall receive a share of the deceased's estate despite the will. If the will has abridged this share, the value of the property transferred by the will is reduced until the legal limit is respected. It is worth noting that a testamentary disposition that violates a reserved share is valid until challenged by an entitled person. The right to inherit a reserved share of the estate is recognised for the

deceased's spouse, children and ascendants. The table below shows the reserved shares and available share provided by Italian law in several relevant cases:

Heir	**Reserved share**	**Available share**
Spouse (no children or ascendants)	1/2 to the spouse	1/2 to others
Spouse and one child	1/3 to the spouse 1/3 to the child	1/3 to others
Spouse and two or more children	1/4 to the spouse 1/2 to the children	1/4 to others
Only a child (no spouse)	1/2 to the child	1/2 to others
Only two or more children (no spouse)	2/3 to the children	1/3 to others
Only legitimate ascendants	1/3 to the ascendants	2/3 to others
Spouse and legitimate ascendants (no children)	2/4 to the spouse 1/4 to the ascendants	1/4 to others

In order to determine the reserved shares and available share, it is necessary to take into account not only the value of the estate at the moment of death but also the value of a gift made by the deceased during his/her life. After the value of the estate has been determined, the reserved share and available share shall be calculated in light of the number and the relationships of the heirs.

B. Enforceability of foreign wills

Article 46 of Law No 218 of 31 May 1995 provides that succession on death will be governed by the national law of the person whose inheritance is involved at the moment of his/her death. Under Italian law, within the limits allowed by the law on reference, the following principles can be enunciated:

- the application of the deceased's national law; and
- the universality of succession.

Law No 218 of 31 May 1995 introduced the possibility of making a *professio iuris*, on the basis of which the person whose inheritance is involved may make an express statement in testamentary form subjecting his/her entire succession to the law of the state in which he/she resides. Such a declaration will have no effect if, at the moment of death, the declarant no longer lives in that state. In the case of the succession of an Italian individual, such a choice will not prejudice the rights that the law provides for legitimate heirs resident in Italy at the time of the death of the person whose inheritance is involved. The division of the estate on succession will be governed by the law applicable to the succession; however, the recipients

may agree on the application of the law of the place for the opening of the succession or the law of the location of one or more of the assets included in the succession. On 4 July 2012, the European Parliament and the Council of the European Union adopted Regulation (EU) 650/2012 concerning 'applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession'. According to a new principle introduced by the aforementioned Regulation, the law governing succession is the law of the state where the deceased has habitual residence; by way of derogation, it is, however, possible for the testator to make a *professio iuris* by means of which the testator declares that the entire succession is regulated by his/her national law (at the time of the *professio iuris* or at the time of death) instead of the law of habitual residence. The Regulation also provides the issuance of the European Certificate of Succession in order to give legal evidence of the status and relevant rights belonging to an heir, or the powers belonging to the administrator of the estate or the executor of a will, with no need for further documentation. The Regulation came into force on 17 August 2015 (with the exception of certain provisions, already in force on 5 July 2012 and 16 November 2014).

C. Succession agreements

Succession agreements are forbidden and void, including all agreements transferring or renouncing rights upon the death of a living person. An exception is provided for 'family contracts', so-called '*patti di famiglia*'. The *patto di famiglia* was introduced in 2006 in order to regulate intergenerational transfers of business activity. By means of the *patto di famiglia*, owners of a business or shares in a company can assign all, or part, of their business or shares to one or more descendants (ie, sons and nephews). The entrepreneur can thus plan the intergenerational transfer of the enterprise in order to guard his/her future functionality. The assignment is gratuitous. The *patto di famiglia* is a consensual contract with immediate effect. The contract must have the form of a public deed in front of a notary public and all the persons who have an inheritance right recognised by law (ie, forced heirs) are requested to participate in the signing. If they do not waive their right, the assignees of the business have to reward them with an amount corresponding to their reserved legal share of the inheritance.

D. Will substitutes

On the basis of the principle of the universality of succession, all the assets directly owned by the deceased at the time of his/her death shall be considered as part of the estate. Italy does not provide any domestic laws relating to the establishment of trusts. The incorporation of a trust under Italian law is therefore not possible; hence, the law of another jurisdiction that provides for trusts would need to be chosen.

Trusts are recognised in Italy pursuant to Law No 364 of 16 October 1989, which ratified the Hague Convention of 1 July 1985 on 'the law applicable to trusts and to their recognition'.

Under Italian law, it is possible to split bare ownership from usufruct through a gift or sale. The indirect tax burden can be reduced by transferring bare ownership while retaining usufruct. Upon the death of the usufruct holder, the bare ownership automatically consolidates with the usufruct. Such consolidation is exempt from inheritance and gift tax.

Life insurance policies can also be used as an estate-planning tool to reduce the potential inheritance tax burden. Insurance is a contract whereby the insurer, against payment of a premium, undertakes to compensate the insured, within agreed limits, for damage caused by an accident, or to pay a lump sum or annuity upon the occurrence of an event contingent

upon human life. Policies may be taken out on one's own life or that of a third party. The designation of the beneficiary may be made in the insurance agreement, through a subsequent written declaration to the insurer or in a will.

Pursuant to Article 1920 of the Italian Civil Code, life insurance proceeds payable to a designated beneficiary are deemed to constitute a right of the beneficiary directly against the insurer rather than a transfer *mortis causa* from the estate of the deceased. Consequently, such proceeds do not form part of the estate for inheritance tax purposes and are exempt from inheritance tax.

E. Powers of attorney, directives and similar disability documents

One may give power of attorney to any person to administer his/her assets. Such power is revocable at any time. Any person who suffers from an infirmity, or physical or mental disease, and therefore cannot look after his/her own interests, even if in part or temporarily, may be assisted by a provisional guardian appointed by the judge of the place where he/she is domiciled or resident. The person subject to provisional custody preserves the power to act for all matters that do not require the exclusive representation or compulsory assistance of the supporting administrator. In cases where the individual is in a condition of habitual mental infirmity that makes him/her incapable of looking after his/her interests, the individual shall be interdicted when this is necessary to provide for adequate protection.

The claim for the opening of the disability proceeding, as well as for the opening of the interdiction proceeding, may be filed by the same individual that has the status to be declared or by another person, such as the spouse; persons related by blood within the fourth degree or by affinity within the second degree; the guardian or curator; or the public prosecutor. The judgment declaring interdiction or disability shall be immediately noted in a special register. Both proceedings have effect from the date of the publication of the judgment.

II. Estate administration

A. Overview of administrative procedures

Succession on death is provided by the second book of the Civil Code. The main principle is that an inheritance is not acquired without acceptance, which may be express, implied or presumed. The right to accept an inheritance elapses after ten years (Civil Code, Article 480). Renunciation must be made by means of a declaration received by a notary public or the chancellor of the court of the district where the succession administration was opened. Under Italian law, unlike the position in other legal systems:

- renunciation is permitted until the time limit for accepting the inheritance has expired;
- the share of the inheritance has no connection with the common ownership regime between spouses;
- succession agreements are forbidden (Civil Code, Article 458); and
- there is no certificate of inheritance (see above as regards Regulation (EU) 650/2012 concerning succession).

An heir is a successor with universal title and he/she is considered to receive both assets and debts. The legatee, on the other hand, taking the legacy without the requirement of acceptance, save for the possibility of renunciation (Civil Code, Article 649), gives rise to succession with specific title to a specific right (there are distinctions, however, which are not of interest in this context). The legacy will thus not give rise to debts greater than the value of the property forming its subject matter.

B. Intestate succession and forced heirship

When a person dies without a will, his/her property is transferred to his/her legal heirs pursuant to the laws of intestate succession. In intestate succession (*successione legittima*), the estate passes to the spouse and descendants, ascendants, siblings and other relatives, and then the state (Civil Code, Articles 565 *et seq*). Intestate succession operates when the deceased has not drafted a valid will or has drafted a void will.

Devolution upon intestate succession takes place automatically. No attestation by a government authority or court is required. The persons to whom an estate devolves upon legitimate succession are:

- the spouse;
- children (including natural children and adopted children);
- ascendants;
- collateral relatives and other relatives up to the sixth degree; and
- the state.

The table below depicts a summary of the main cases of devolution in the case of intestate succession:

Heirs	**Intestate estate share**
Spouse in the absence of other heirs	1/1 to the spouse
Spouse and one child	1/2 to the spouse 1/2 to the child
Spouse and two or more children	1/3 to the spouse 2/3 to the children
Spouse and ascendants or siblings	2/3 to the spouse 1/3 to ascendants or siblings (in any case, 1/4 to ascendants, if any)

In brief, the following shall be regarded as heirs: first, the surviving spouse and the descendants of the deceased. In the absence of any descendants, and in concurrence with the spouse, the legitimate ascendants and siblings of the deceased will take part in the succession. In their absence, the closest relatives up to the sixth degree will take part in the succession.

It is worth noting that the separated spouse has the same right to inherit as a cohabiting spouse, provided that the cause of the separation was not attributed by the court to his/her own responsibility. The divorced spouse has no right to inherit, but he/she, after the death of the spouse who was required to make maintenance payments, may ask the court for periodical payments from the estate.

C. The estate

The estate refers to the entire assets, rights and obligations that are transferred through testamentary or intestate succession. Succession begins at the moment of death and in the last place of domicile of the deceased. The estate is acquired by the heir on acceptance. Acceptance can be pure and simple or conditional, that is, with the benefit of inventory (*accettazione col beneficio d'inventario*). The acceptance of an inheritance may be either express, that is, through a formal declaration contained in a public deed or private writing, or tacit, when the heir performs an act that necessarily presupposes the will to accept and that could not be carried out without the status of heir. Express acceptance entails that the heir declares to accept his/her share of the estate by a formal or private deed. By contrast, tacit acceptance occurs when the heirs perform a transaction that necessarily entails consent to acceptance and that no one other than an heir would have the right to perform. Acceptance is unilateral and cannot be subjected to terms or conditions. The right to accept the estate expires after ten years, starting from the date of death. Acceptance with the benefit of inventory is made via a declaration that is certified or made before the competent civil court. The declaration is followed by the drafting of the inventory listing all the assets and liabilities pertaining to the estate. By means of acceptance with the benefit of inventory, the assets and liabilities of the deceased are kept distinct from the assets and liabilities pertaining to the heir. The heir is liable for the payment of the debts and testamentary expenses up to the net value of the assets he/she has inherited.

D. The hotchpot (collazione) and the reduction of testamentary dispositions

Children (including adopted children) and their descendants, as well as the surviving spouse, who are called to the inheritance together with other co-heirs, must bring into hotchpot (*collazione*) the assets and rights received from the deceased as gifts during his/ her lifetime. For the purpose of calculating the reserved share of the estate, not only the assets devolving upon death but also *inter vivos* gifts must be taken into account: such gifts are deemed an advance on the inheritance.

If testamentary dispositions or gifts exceed the disposable portion (*quota disponibile*), thereby infringing the forced shares (*quote di legittima*), each forced heir may bring an action for reduction (*azione di riduzione*). This action must be filed within ten years from the opening of the succession.

E. Testamentary executor

The testamentary executor shall ensure that the provisions of the deceased's last will are exactly carried out. Thus, he/she shall manage the inheritance, taking possession of the property included in the estate. The executor shall administer the assets as a fair *pater familias* and can perform all necessary acts of management. When it is necessary to transfer any property forming part of the inheritance, he/she shall request consent from the court, which shall assent after hearing the heirs.

F. Marital property

As mentioned above, Italian law reserves a share of the estate to the spouse. The amount of the shares depends on the presence of other forced heirs. One-half of the patrimony is reserved in favour of the spouse. However, in the case of concurrence with children, one-third is reserved to the child and another one-third to the spouse. When there is more than

one child, one-half of the patrimony is aggregately reserved for them and one-fourth belongs to the spouse. When the deceased does not leave children, but leaves ascendants and a spouse, one-half of the patrimony is reserved to the latter and one-fourth to the ascendants. The spouse is, in any case, granted the right to live in the house used as the family home and the right to use the furnishings with which it is fitted, if owned by the deceased or in common ownership. Such rights encumber the available portion of the estate, calculated as the amount of the share of which the deceased could dispose, deducting the debts and adding any relevant property transferred by gifts. The spouse's right to inherit is recognised if he/she is married to the deceased at the time of the succession. The right is not recognised if a decision to invalidate the marriage has occurred, as well as in the case of a divorce decree. In the case of divorce, it is necessary to distinguish between two situations. In the case in which the spouse has not been charged with separation by a final judgment, he/she has the same succession rights as a non-separated spouse. On the other hand, a spouse charged by a final judgment has a right only to an annuity if, at the time of opening the succession, maintenance has been paid by the deceased spouse. The allowance is measured by the inheritance assets, and the quality and number of legitimate heirs and, in any case, is not greater than the maintenance received from the deceased.

Property can be held by the spouses in two ways: (1) common ownership of property; and (2) separation of property. In the absence of a different agreement, common ownership of property is the legal patrimonial system for the family. However, spouses can choose a different property system.

Included in the community of property (*comunione legale*) are: (1) purchases made by the spouses together or separately during the marriage, unless they qualify as personal property under Article 179 of the Civil Code; (2) the fruits of individually owned property and the proceeds of each spouse's separate professional or business activity, provided that they have not been consumed at the time of dissolution of the community; and (3) businesses established and managed by both spouses after the marriage (whereas, in the case of a business pre-existing the marriage and managed by one spouse only, only the subsequent increments fall within the community).

Excluded from the community of property are: (1) property owned by one spouse prior to the marriage; (2) property acquired after the marriage by gift or succession; and (3) property intended for the personal use of one spouse.

The administration of community property belongs to each spouse severally for ordinary acts, while extraordinary acts of administration require the joint consent of both spouses.

Under the separation of property regime (*separazione dei beni*), which may be chosen by way of a prenuptial or marital agreement executed in the form of a public deed, each spouse remains the exclusive owner of the property acquired during the marriage, enjoying and administering it independently. A spouse who makes use of the other spouse's property is subject to the obligations of a usufructuary.

III. Trusts, foundations and other planning structures

A. Patrimonial funds and trusts

In order to prevent the fragmentation of complex estates, Italian law provides several institutions capable of segregating, albeit at different levels, assets. In general, a person may incorporate a patrimonial fund or family enterprise; draft a deed establishing restriction of use

over specific assets; or settle a trust. Each spouse, or both, can settle a patrimonial fund (*fondo patrimoniale*), allocating certain property, such as immovable property or movable property inscribed in public registers or negotiable instruments, in order to achieve the family's needs. The constitution shall be made through a formal deed or even by a will.

A patrimonial fund can also be settled by a third party: in this case, the spouses have to accept the settlement of the patrimonial fund. Ownership of the property constituting the patrimonial fund belongs to both spouses, unless otherwise provided in the act of settlement. The income arising from property must be used for the family's needs. The administration of property is regulated by the rules relating to the administration of common ownership. Unless expressly provided in the act of settlement, the property in the patrimonial fund cannot be sold, except with the consent of both spouses and, if there are minor children, the court's approval is compulsory. The patrimonial fund terminates when the cancellation or the termination of civil effects of marriage occurs. If there are minor children, the patrimonial fund cannot be terminated until the last child reaches the age of majority.

A family enterprise is a partnership made of certain members of a family. Any family member who carries on working services in the family enterprise on a continuing basis has the right to maintenance consistently with the financial condition of the family and to participate in the profits of the family enterprise. Under such a scenario, decisions concerning the destination of profits and contributions, as well as those pertaining to the extraordinary course of business, the business and the termination of the enterprise, are taken by the majority of the family members who participate in the enterprise. In the case of partition among heirs or of a transfer of the business, the participants have a right of pre-emption on the business.

The creation of liens, through a formal deed establishing restriction of use, can be imposed on immovable property and on other property enrolled in public registers. The creation of liens aims at realising one or more interests worthy of protection, generally relating to people with disabilities. The constrained assets and their fruits can only be used in favour of the beneficiary and may be subject to execution only with respect to debts incurred for that scope. Such destination constraints shall be provided in a formal deed, and its duration cannot exceed 90 years or, at most, the entire individual beneficiary's lifetime.

The 'trust' has been recognised in Italy pursuant to Law No 364 of 16 October 1989, which ratified the Hague Convention of 1 July 1985, having as its object 'the law applicable to trusts and to their recognition'. As there is no domestic legislation relating to trusts, they can only be established in Italy in accordance with the Hague Convention and subject to a foreign governing law. In particular, pursuant to Article 2 of the Hague Convention, the term 'trust' refers to the legal relationship created, *inter vivos* or on death, by a person, the settler, when assets (movable or immovable property) have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose. The trustee has the power and duty, in respect of which he/she is responsible, to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him/her by law. The Hague Convention also establishes that the title to the trust assets that are under the control of the trustee stands in the name of the trustee or the name of another person on behalf of the trustee, and that the trust assets constitute a separate fund and are not a part of the trustee's own estate. Eventually, another person, named the guardian, can be appointed to control and supervise the trustee's actions. The settler transfers to the trustee not only the assets but also the property right on them. However, the assets stay separate from the trustee's patrimony so that the trustee's creditors cannot impair the trust assets. The trustee's powers and duties are ruled according to the law chosen by the settler. The trustee is entitled to the transferred rights, but he/she could have some restrictions in the exercise of his/her powers of administration, appointed by the settler in the act of constitution. If the settler

provided for a protector, the trustee's administration activity will be under the control of the guardian.

A trust may have different scopes. It can be set up in order to regulate the generational transfer between the descendants of the original owner or in favour of a disabled person in order to satisfy his/her medical and economical needs through the income generated by the trust assets. A trust can also be settled by a will.

B. Associations and foundations

Associations and foundations can be incorporated for a wide variety of purposes and interests, for instance, solidarity, welfare, cultural, medical, recreational, social and sporting. Associations and foundations must be incorporated through a formal deed, and foundations may also be set up through a will. Under Presidential Decree No 361 of 10 February 2000, associations and foundations acquire a legal personality no longer by means of a government decree but by their registration in the register of legal persons. Both associations and foundations are subject to governmental control. The Civil Code also provides for the settlement of unrecognised associations and committees, without legal personality.

A thorough reform of the so-called 'third sector', of which non-profit associations and foundations are part, was provided under Legislative Decree No 117 dated 3 July 2017 (code of third-sector or 'CTS') that introduced a comprehensive legal and tax regime applicable to these kinds of entities.

The aforementioned legislative decree defined the meaning of 'non-lucrative' and 'general interest'; identified the activities that third-sector organisations can perform; and established the rules that third-sector organisations must comply with in order to be recognised as part of the sector (third-sector entity or 'ETS'). Pursuant to the aforementioned CTS and in compliance with the provisions set forth by Ministerial Decree No 106 dated 15 September 2020, the third-sector register ('RUNTS') was established. In general terms, non-profit associations and foundations qualifying as an ETS can benefit from a significant number of exemptions for both direct and indirect tax purposes. In addition, the tax exemption thresholds provided for donations carried out by individuals and corporations in favour of this kind of entity have been widely increased. The entry into force of the main provisions set forth by the CTS is subject to the European Commission's authorisation, which, at the time of writing, has not yet been released. After that authorisation, the provisions of the CTS will also apply to all ETSs regularly registered with the RUNTS.

IV. Taxation

A. Personal income tax

Pursuant to the current provisions set forth by Italian tax law, as recently amended by Legislative Decree No 209 of 28 December 2023, an individual is considered to qualify as Italian tax resident if, 'for the greatest part of the tax period' (ie, more than 183 or 184 days in leap years, even if not consecutive), taking into account also fractions of days, one of the following alternative criteria is met:

1. being physically present in Italy;

2. having his/her domicile in Italy, intended as the place where, primarily, the personal and family relationships of the individual are located;[1]
3. having his/her residence in the Italian territory pursuant to the Italian Civil Code, defined as the place where an individual has his/her habitual abode, that is, the place where the person usually physically stays and appears to be willing to stay; and
4. being enrolled in the registry of the resident population (*anagrafe della popolazione residente*), unless proven otherwise.

Should one of the aforementioned conditions be fulfilled, an Italian tax resident individual will be subject to individual income tax (*imposta sui redditi delle persone fisiche* or IRPEF) on his/her worldwide income.

IRPEF qualifies as a progressive tax that applies to the aggregate taxable income of the taxpayer. In particular, pursuant to the provisions set forth by Law No 213 of 30 December 2023 (the '2024 Budget Law'), from 1 January 2024, the income brackets currently provided have been reduced to three, each of which has a corresponding tax rate varying from a minimum of 23 per cent to a maximum of 43 per cent.[2]

Italian tax law provides for a system of deductions and allowances that can reduce the overall personal income tax liability. These include deductions for certain personal expenses (eg, healthcare, education or interest paid on mortgage loans), as well as enhanced incentives for investments in specific sectors, like innovative startups and small and medium-sized enterprises (SMEs). Some of these benefits are subject to holding period requirements and clawback provisions in case the conditions are not met.

As a general remark, it is worth clarifying that IRPEF is levied on personal income included in any of the following categories: (1) income from immovable property (*redditi fondiari*); (2) income from capital (*redditi di capitale*); (3) income from employment (*redditi di lavoro dipendente*); (4) income from self-employment (*redditi di lavoro autonomo*); (5) business income (*redditi di impresa*); and (6) miscellaneous income, including capital gains (*redditi diversi*).

In addition, regional and municipal surcharges apply to the overall IRPEF taxable income at different rates depending on the region and municipality of the tax domicile of the individual (the overall rate of such surcharges can range between 1.5 per cent and four per cent).

It is also worth mentioning that the great majority of investment and trading income is generally subject to a flat 12.5 per cent or 26 per cent substitute tax.

Finally, certain exemptions are provided (eg, capital gains realised upon the disposal of immovable property held for at least five years or inherited).

1. INCOME FROM IMMOVABLE PROPERTY

As a general rule, income deriving from immovable property that is not rented out is determined based on the ordinary average income for cadastral purposes. The ordinary average cadastral income (*rendita catastale*) is set forth by the competent local office for each registered property, taking into account a variety of factors, such as the area where the property is located, its intended destination and the actual features of the property. Also, with respect to land, the relevant income is determined on the basis of the ordinary average

[1] According to the provisions in force prior to the aforementioned amendments set forth in Legislative Decree No 209/2023, the notion of domicile, relevant for tax purposes, is related to the centre of personal and business interests of the individual, irrespective of any physical presence.

[2] Indeed, according to the 2024 Budget Law the new IRPEF progressive rates will be based on the three following income brackets: (1) up to €28,000: 23 per cent; (2) over €28,000 and up to €50,000: 35 per cent; and (3) over €50,000: 43 per cent.

income for cadastral purposes. In this case, however, cadastral income is composed of two items of income: the so-called '*reddito dominicale*' and the so-called '*reddito agrario*'. However, for residential property that is not rented out, the Local Property Tax (*imposta municipale unica* or IMU), technically a wealth tax, generally also absorbs the personal income tax due.

Where the property is rented out, the relevant income is determined as the higher between the ordinary average cadastral income and the actual rental income adjusted by a flat reduction of up to five per cent. In such a case, the income derived by the individual from real estate property shall be included in its overall taxable income and subject to IRPEF at ordinary progressive tax rates ranging from 23 per cent to 43 per cent, unless the landlord (being a private individual) opts for the substitute flat tax regime, at a 21 per cent rate, on the income deriving from the lease of residential property ('*cedolare secca*') derogating both the ordinary IRPEF regime, and relevant surcharges and registration and stamp duty to be applied to the lease agreement.[3]

In the case in which the individual is not resident in Italy, he/she will generally have to file an income tax return in Italy in order to report the relevant income from immovable property (as well as other Italian source income, if any). *De minimis* exemptions are provided.

Capital gains realised by individuals (either Italian or non-Italian resident), upon disposal of residential property and agricultural land, are not subject to tax in Italy, provided that the property has been held for at least five years prior to the disposal. If the aforementioned condition is not satisfied, the capital gain (equal to the difference between the sale price and the purchase price, increased by any expenses related thereto, as the notarial fees) shall be included in ordinary taxable income and subject to tax at progressive rates, as indicated above. However, as an alternative to the ordinary IRPEF regime, the seller may elect for the application of a 26 per cent substitute tax to such a capital gain; this election has to be made within the relevant formal deed of transfer.[4]

2. FINANCIAL AND TRADING INCOME[5]

As a general rule, income from capital (dividends, interest deriving from bonds and proceeds deriving from investment funds), if received by private individuals not engaged in entrepreneurial activity, is subject to a substitutive tax or to withholding tax as a final payment levied at the rate of 26 per cent. As regards dividends, Italian resident individuals shall be subject to withholding tax equal to 26 per cent on the full amount of the dividend, unless the company is resident in a low tax jurisdiction (in this case, the dividends would be included in the IRPEF taxable basis and subject to progressive rates). Capital gains deriving from the transfer of shares or securities give rise to the category of miscellaneous income (*redditi diversi*). For Italian resident individuals, capital gains on the transfer of shares shall be subject, in Italy, to a 26 per cent substitute tax. As regards capital gains arising from the

[3] For the sake of completeness, it should be pointed out that the 2024 Budget Law set forth an increase up to the 26 per cent rate for lease agreements regarding residential property with a duration not exceeding 30 days. However, if an individual holds more than real estate units, one among them can still be subject to the reduced 21 per cent rate upon the taxpayer's choice.

[4] Specific rules apply to capital gains deriving from the sale of immovable property, whose renovation benefitted from certain tax credits.

[5] That being said, for the sake of completeness it should be pointed out that in the context of a comprehensive tax reform that is currently being implemented in Italy, the Italian legislator has discussed the intention to create a unique category of financial income that includes both capital income and miscellaneous income with a financial nature. According to the revised provision, the taxable basis would be determined on all positive and negative financial income received or realised during the tax period, with the possibility to carry forward losses. Such an envisaged reform could also have a significant impact with reference to applicable regimes regarding tax compliance.

transfer of securities other than shares, Italian individuals are subject to a 26 per cent substitute tax. With specific regard to the calculation of capital gains, the taxable basis is represented by the difference between the consideration paid by the purchaser and the acquisition cost. It is worth clarifying that, pursuant to Law No 207 of 30 December 2024 (ie, the 2025 budget law), it is possible to step up the value of shareholdings (as well as agricultural and building plot) held on 1 January of any given year by: (1) paying an 18 per cent substitute tax (to be fully paid or paid in a maximum of three instalments) by 30 November; and (2) by obtaining an appraisal drafted by a qualified professional certifying the value of such unlisted shares or building plot. Such a substitute tax is also applicable to step up the value of listed shareholdings held as of 1 January of any given year, whose taxable basis shall be determined on the basis of the fair market value to be determined on the basis of the arithmetic average of prices recorded in the stock exchange with reference to December.

That being said, the tax compliance regime for trading income is regulated under three regimes.

Under the tax return regime (*regime della dichiarazione*), which is the standard regime for the taxation of capital and miscellaneous income realised by Italian resident individuals not engaged in entrepreneurial activity, the substitute tax on capital gains will be chargeable, on a cumulative basis, on all capital gains, net of any incurred capital loss. These individuals must report overall capital gains realised in any tax year, net of any relevant incurred capital loss, in the annual tax return to be filed with the Italian tax authorities for such a year and pay the substitute tax on such gains, together with any balance on income tax due for such a year. Capital losses in excess of capital gains may be carried forward against capital gains realised in any of the four succeeding tax years.

As an alternative to the tax return regime, Italian resident individuals not in connection with entrepreneurial activity may elect to pay the substitute tax separately on capital gains realised on each transfer of shares pursuant to the so-called '*risparmio amministrato*' regime (*regime del risparmio amministrato*). Such separate taxation of capital gains is allowed subject to: (1) the shares being deposited with authorised banks, *società di intermediazione mobiliare* (SIM) or certain authorised financial intermediaries; and (2) an express election for the *risparmio amministrato* regime being made promptly in writing by the relevant shareholder. The financial intermediary, on the basis of the information provided by the taxpayer, accounts for the substitute tax in respect of capital gains realised on each operation, net of any previously incurred capital loss, and is required to pay the relevant amount to the Italian tax authorities on behalf of the taxpayer, deducting a corresponding amount from proceeds to be credited to the shareholder. Under the *risparmio amministrato* regime, where a share transfer results in capital loss, such a loss may be deducted from capital gains subsequently realised in the same tax year or in the following tax years up to the fourth year. Under the *risparmio amministrato* regime, the shareholder is not required to declare capital gains in his/her tax return.

Lastly, as a third alternative regime, any capital gains realised by Italian resident individuals holding financial activities not in connection with entrepreneurial activity who have elected for the Asset Management Option (*risparmio gestito*) will be included in the computation of the annual increase in value of the managed assets accrued, even if not realised, at year-end, subject to the Asset Management Tax to be applied on behalf of the taxpayer by the managing authorised intermediary. Under the Asset Management Option, any depreciation of the managed assets accrued at year-end may be carried forward against any increase in value of the managed assets accrued in any of the four succeeding tax years. Under the Asset

Management Option, the taxpayer is not required to report capital gains realised in his/her tax return.

3. TAXATION OF TRUST DISTRIBUTIONS

As a preliminary remark, the tax residence of trusts is determined according to the general principles set forth for other entities subject to corporate income tax. In particular, entities are considered to be resident in Italy when, for the greater part of a taxable year, one of the following is located in the Italian territory: (1) their legal seat; (2) their place of effective management (ie, the place where the entity's strategic decisions are made); or (3) the principal place of ordinary management (ie, the place where day-by-day management is carried out). Italian tax law also provides for a rebuttable presumption according to which, under certain conditions, trusts are considered to be tax resident in Italy. In particular: (1) trusts established in non-white list jurisdictions (other than those under Ministerial Decree 4 September 1996 pursuant to Article 11(4)(c) of Legislative Decree 239/1996) are presumed to be tax resident in Italy if at least one settler and at least one beneficiary are Italian tax residents; or (2) trusts established in non–white list jurisdictions (other than those under the above Decree) are presumed to be tax resident in Italy if, after their establishment, an Italian tax resident transfers to the trust the ownership of real estate or real rights in real estate (even partially), or places a destination restriction on such assets.

As a general rule, trusts are treated as autonomous taxable persons pursuant to Article 73 of the Income Tax Consolidation Act (ITCA) for the purposes of Italian corporate income tax, to the extent that they are not considered as 'disregarded' for Italian tax purposes

According to Italian tax law, Italian resident trusts are taxed on their worldwide income, whereas non-Italian resident trusts are taxed exclusively on their Italian-source income.

Italian tax law provisions set out a distinction between transparent trusts (ie, trusts whose beneficiaries are 'identified' and are entitled to receive the income of the trust) and opaque trusts (ie, discretionary trusts). According to the Italian tax authority's interpretation, a beneficiary shall be regarded as identified when he/she is not only named among the trust's beneficiaries but also has an actual and enforceable right to claim the payment of his/her annual portion of the trust's income.

A transparent trust is regarded as a flow-through entity for corporate income tax purposes, as its income is taxable in the hands of the beneficiaries on an accrual basis, regardless of any actual distribution, in the same proportion as indicated in the trust deed or in other subsequent deeds or, in the lack of any such provisions, in equal parts and qualified as income from capital subject to personal income tax at progressive rates (up to 43 per cent, plus local surcharges).

Income realised by an opaque trust is subject to corporate income tax in the hands of the trust itself. As regards the income taxation of the beneficiaries, any distributions made by an opaque trust are not subject to income tax in the hands of the beneficiaries, unless the trust is established in a low-tax jurisdiction. Indeed, according to Article 13 of Law Decree No 124 of 27 October 2019, income distributions made by opaque trusts established in 'low-tax jurisdictions' qualify as income from capital subject to IRPEF up to a 43 per cent rate (plus local surcharges) in the hands of Italian tax resident beneficiaries. The trust is considered as located in a low-tax jurisdiction if the tax rate applicable in such a jurisdiction is lower than 50 per cent of the tax rate that would have applied if the entity had been resident in Italy. Furthermore, according to a presumption set forth by the new rule, distributions made by non-Italian tax resident opaque trusts to Italian resident beneficiaries must be regarded as income

distributions, unless there is adequate evidence that the amounts distributed represent capital.

It is worth noting that Circular Letters No 43/E of 2009 and No 61/E of 2010, issued by the Italian tax authorities, listed some cases in which a trust should be considered a disregarded entity for tax purposes: (1) a trust whose settler (or beneficiary) can terminate at any moment; (2) a trust in respect of which the settler has the discretion to appoint himself/herself as a beneficiary; (3) a trust in respect of which the settler or the beneficiary have such powers that the trustee cannot freely exercise its powers without the consent of the same settler or beneficiary; and (4) a trust for which the settler has the right to modify the beneficiaries. In the case in which a trust is regarded as interposed for income tax purposes, the assets of the trust fund are considered as directly held by the ultimate owner (the settler and/or beneficiaries, as the case may be), and income is directly attributed to such an ultimate owner and taxed accordingly.

4. SPECIAL TAX REGIMES FOR NEW RESIDENTS

a. Italian 'res non-dom' regime

The budget law for 2017 introduced a favourable and optional Italian 'res non-dom' regime for individuals that wish to move their tax residence to Italy that entered into force on 1 January 2017. Such a regime represents a more convenient regime than the ordinary one applicable to Italian resident individuals. It provides for privileged taxation, derogating the ordinary IRPEF regime related to the determination of Italian resident individuals' worldwide income. The option of the 'res non-dom' regime provides for a yearly substitute tax on any foreign source income received by new Italian residents, with the sole exemption of capital gains upon the disposal of 'qualified' participations in non-Italian tax resident companies/partnerships[6] (the 'Anti-Avoidance Rule') realised during the first five tax periods of the regime's validity. Such capital gains are indeed subject to the ordinary 26 per cent substitute tax, unless a specific waiver by the Italian tax authorities is obtained, as is clarified in more detail below.

A recent law change sets the annual substitute tax to €200,000 for new Italian residents relocating on or after 9 August 2024. Conversely, individuals who moved to Italy before that date remain subject to the prior €100,000 amount. In addition, a further yearly €25,000 substitute tax is due for each family member to which the option for the 'res non-dom regime' has been extended. That being said, individuals opting for the 'res non-dom regime' may choose to exclude one or more foreign states from the scope of application of the regime (so-called 'cherry picking'). In such a case, any income arising from an excluded state will be taxed pursuant to the ordinary IRPEF regime (or benefit from the reduced taxation set forth by the relevant double tax treaty entered into with Italy, if any). The 'res non-dom' regime is granted for a maximum of 15 tax years and is revocable, but if revoked, cannot be restored. From a formal standpoint, the option for the 'res non-dom' regime is exercised by flagging a specific section of the yearly personal income tax return related to the first tax period of the 'res non-dom' regime's validity (ie, the yearly tax return related to tax period 2025, to be filed by 31 October 2026), whereas the yearly substitute tax has to be paid within the ordinary deadline for the balance of the previous tax period and first advance payment for the current tax period (ie, for the 2025 tax period, the yearly substitute tax will have to be paid by 30 June

[6] A 'qualified' participation corresponds to more than two per cent of the capital of listed companies/partnerships or more than 20 per cent of the capital of non-listed companies/partnerships. In order to determine whether a qualified participation is sold, it is necessary to cumulate the disposals of participations made over a period of 12 months.

2026). The Italian tax authorities, in addition to the implementing rules that granted guidance for the application of the regime, also published Circular Letter No 17/E of 2017 regarding several interpretive issues concerning the 'res non-dom' regime. In particular, with respect to disregarded entities, if non-Italian resident companies held by new Italian residents are considered as disregarded for Italian tax purposes, Italian source income arising from the underlying assets of the disregarded company would not be covered by the substitute tax, but rather be subject to ordinary IRPEF rules. On the other hand, if the non-Italian resident that disregarded foreign companies received foreign source income, this would, in any case, be covered by the substitute tax. The same rules would apply to foreign trusts that are deemed to be disregarded pursuant to the guidance set forth by the Italian tax authorities.

As anticipated above, pursuant to the Anti-Avoidance Rule, capital gains arising from the disposal of foreign 'qualified' shareholdings are not covered by the substitute tax of the 'res non-dom' regime if they occurred during the first five tax periods of the application of the regime, and ordinary domestic rules shall therefore apply (ie, such capital gains will be generally subject to the ordinary 26 per cent substitute tax). However, the Anti-Avoidance Rule may be disregarded, subject to prior clearance from the Italian tax authorities, provided that certain conditions are met; as a result of the disapplication of the Anti-Avoidance Rule, capital gains realised during the first five tax periods of the regime's validity would also be covered by the €200,000 substitute tax.

Applicants can file a preliminary tax ruling request before the Italian tax authorities aimed at asking for confirmation:

- of the applicant's eligibility for the 'res non-dom' regime;
- of the tax qualification (as disregarded or validly existing for Italian tax purposes) of the companies and/or trusts participating, directly and indirectly, by the applicant;
- of whether the tax qualification of a given item of income that will be received by the applicant (eg, employment income, directorship fee and pension) is foreign-sourced and then covered by the yearly substitute tax; and
- of the disapplication of the Anti-Avoidance Rule.

The tax ruling request can be submitted even before an individual acquires Italian residence, and no adverse consequence will arise in the case in which, at a later stage, the individual decides not to relocate to Italy. The Italian tax authorities must reply to the ruling request within 90 days after the submission. Such a deadline can be postponed by 60 days, if the authorities require the applicant to provide additional information and/or documentation. The aforementioned temporal terms are suspended for 30 days in August.

b. Tax regime for foreign pensioners moving to Italy

The budget law for 2019 provided for a new favourable tax regime for individuals holding foreign pensions and moving their tax residence to Southern Italy, which entered into force on 1 January 2019. The regime is applicable as an option when an individual, irrespective of his/her age and citizenship: (1) receives a foreign pension paid by a foreign entity; (2) moves his/her tax residence to an Italian municipality with a population not exceeding 20,000 inhabitants and located in one of the Italian Southern Regions of Sicily, Calabria, Sardinia, Campania, Basilicata, Abruzzo, Molise or Puglia (or in other municipalities with a population not exceeding 3,000 inhabitants and listed in Law Decree No 189 of 17 October 2016); and (3) has not been resident for tax purposes in Italy for at least five tax periods prior to the period in which the option becomes effective. The regime derogates the ordinary IRPEF regime and provides for the application of a flat tax at a seven per cent rate on any foreign-

sourced income. Any domestic income will be ordinarily taxed. The applicant could choose to exclude one or more income-source countries from the scope of the application of the regime on a cherry-picking basis. In such a case, any income arising from an excluded state will be taxed pursuant to the ordinary IRPEF regime. In the case in which an individual opts for the regime, the domestic tax credit for taxes paid abroad does not apply (except for states that, according to the cherry-picking criteria, have been excluded from the scope of application of the regime).

The option for the regime has a ten-year validity; is exercised in the income tax return related to the tax period in which the tax residence is transferred to Italy; and is revocable, but if revoked, cannot be restored. Finally, the regime cannot be extended to the family members of the relocating individual.

c. The Italian inpatriate tax regime

On 1 January 2024, the Italian inpatriate tax regime was significantly amended in the context of a wider tax for a reform that is currently being implemented in Italy. Indeed, the former regime[7] has been repealed and, consequently, a new inpatriate revised regime applies in the case of workers transferring their tax residence to Italy pursuant to Italian domestic rules starting from the 2024 tax period. In a nutshell, the revised regime reduces the scope of application and magnitude of tax benefits available to workers relocating to Italy, and also modifies the relevant time thresholds and requirements to be considered for the purposes of benefitting from tax relief.

In particular, the following requirements will have to be fulfilled:

1. commitment to maintaining a tax residence in Italy as a foreign tax residence for at least four tax periods; clawback of the tax benefit plus interest for late payment applies in case such a commitment is not fulfilled;
2. non-Italian tax residence for at least three tax periods before the relocation to Italy. In the scenario in which the working individual relocates to Italy maintaining a working relationship with the same employer or with an employer belonging to the same group, the new inpatriate tax regime requires that:
    i. the individual has been a non-Italian tax resident for at least six tax periods to the extent that the individual was not previously employed in Italy by the same employer or an employer belonging to the same group, or

[7] The former version of the Italian inpatriate tax regime is still applicable to individuals who relocated after 29 April 2019 to 31 December 2023. In a nutshell, the prior version of the regime provided for a partial exemption from IRPEF for Italian-sourced employment income, self-employment income and business income. In particular, non-Italian tax resident individuals who transferred their tax residence to Italy pursuant to the Italian domestic rules (ie, they enrolled in the registry of the Italian resident population and had their domicile or residence in Italy for most of a given tax period) shall be subject to IRPEF for five tax periods on a portion equal to 30 per cent of their employment income, quasi-employment income, self-employment income and business income. Further reduction of the taxable basis and extensions of the duration of the regime are provided by Italian tax law to the extent that certain conditions are met (eg, purchase of an Italian situs residential property, presence of children or transfer of residence to certain regions of Southern Italy).The prior inpatriate regime would apply if the following conditions are met: individual has not been resident in Italy in the two tax periods preceding the transfer and undertakes not to transfer his/her tax residence abroad before the expiry of two years after the relocation to Italy; if an outbound transfer occurs within this two-year period, the tax benefits would be clawed-back, and penalties and interest would apply; and (2) the activity is performed in Italy for a period exceeding 183 days (184 in leap years) during the calendar year.

ii. the individual has been a non-Italian tax resident for at least seven tax periods to the extent that the individual was previously employed in Italy by the same employer or an employer belonging to the same group;

3. working activities are conducted in Italy for the greatest part of the relevant tax period; and
4. the working individual meets the criteria of high qualification or specialisation defined by Legislative Decree No 108 of 28 June 2012 and Legislative Decree No 206 of 9 November 2007. The above criteria refer to: (i) the achievement of a higher education qualification issued by competent institutions, certification of the completion of a three-year higher education course of study and the achievement of the related higher professional qualification; and b) holding the requirements established by Legislative Decree No 206 of 9 November 2007 with regard to the exercise of the professional activities regulated therein.

On the basis of the aforementioned requirements, the IRPEF will apply to: (1) 50 per cent of any Italian-sourced employment, quasi-employment (eg, directorship fees) and self-employment income; or (2) 40 per cent of such items of income if the worker relocates to Italy with his/her minor child or in case of birth/adoption of a child in Italy.

In any case, the benefit reduction will apply up to a maximum income of the annual threshold equal to the yearly threshold of €600,000. Please note that self-employment income would continue to be subject to the *de minimis* rule established by EU rules.

The revised regime will be valid for five tax periods.

As a final remark, it is worth pointing out that workers who enrolled in the registry of the Italian resident population by 31 December 2023 can continue to apply the 'old' inpatriate regime (ie, the regime that was in force before the aforementioned amendments introduced from 1 January 2024). This also holds true with reference to professional sportspeople who entered into an employment agreement by 31 December 2023 who, in a nutshell, will continue to benefit from the favourable regime.

C. Inheritance and gift tax

1. OVERVIEW

Inheritance tax and gift tax are provided for in Presidential Decree No 346 of 31 October 1990 and were recently amended by Legislative Decree No 139 of 18 September 2024, effective from 1 January 2025. In principle, as regards inheritance tax, the taxable event is the *mortis causa* transfer to the heir(s) or legatee. Transfers upon death but not *mortis causa* are not subject to inheritance tax (eg, the consolidation of bare ownership with the usufruct is not subject to inheritance and gift tax). Conversely, for gift tax purposes, the taxable event is represented by the gift *inter vivos* and the creation of liens on assets for a specific purpose. Both taxes aim to affect the net increase of patrimony resulting after succession on death or gift dispositions.

2. RESIDENCE

Inheritance and gift tax, previously abolished in 2001, were reinstated in 2006 in the Italian tax system and recently amended by Legislative Decree No 139/2024. Italian law provides for a worldwide system for inheritance and gift tax purposes. As regards the territorial scope of application, the following rules apply: (1) if the deceased (or donor) was resident in Italy at the time of death (or when the gift was made), inheritance and gift tax would apply to all

assets, wherever located; (2) by contrast, where the deceased (or donor) was not resident in Italy at the time of death (or when the gift was made), inheritance and gift tax would only apply to Italian situs assets. Such a territoriality principle, following the amendments of Legislative Decree No 139/2024, will also be expressly applicable with reference to asset contribution to trusts. Differently from other jurisdictions, no relevance is attributed to nationality/citizenship and the residence of the heir/donee. For the purposes of the application of inheritance and gift tax, the term 'resident' is not specifically defined. Thus, the qualification of the term 'resident' has to be identified on the basis of Article 43 of the Civil Code, which sets forth that the residence is the place where a person has his/her habitual abode. The habitual abode is verified through the connection with a specific immovable property and the intent to habitually reside there. It should be noted that only a few double tax treaties for the avoidance of double taxation with respect to taxes on inheritances and gifts are in force (those concluded with France, the United Kingdom, Greece, Denmark, Israel, Sweden and the United States).

Under domestic provisions, foreign tax payable in another state in relation to assets located in that state can be deducted from Italian inheritance and gift tax up to its amount, as computed in proportion to the value of the relevant property. Italian law provides an unchallengeable presumption, based on which certain assets are deemed to be located in Italy. In particular, the following assets are considered located in Italy for inheritance and gift tax purposes:

- assets enrolled in public registers in Italy (eg, cars);
- shares and quotas of Italian resident companies if their registered office (or legal seat), place of effective management or main business purpose is in Italy;
- bonds and other securities, other than shares, issued by the Italian Government, or by Italian resident companies if their registered office (or legal seat), place of effective management or main business purpose is in Italy;
- securities representing goods, which are located in Italy;
- receivables and cheques if the debtor/issuer is resident in Italy;
- receivables linked to goods located in Italy; and
- goods in transit with the final destination within Italy.

3. RATES OF INHERITANCE AND GIFT TAX

The tax rates of inheritance and gift tax not only depend on the amount received by each beneficiary/donee but also on the proximity of the relationship between the deceased/donor and the heir/donee. Under the provisions currently in force, transfers of assets and rights as a result of death, donation or other gratuitous transfers are subject to inheritance and gift tax as follows:

- transfers in favour of spouses and direct descendants or direct ancestors are subject to tax at the rate of four per cent on a value exceeding €1,000,000;
- transfers in favour of siblings are subject to tax at the rate of six per cent on a value exceeding €100,000;
- transfers in favour of relatives up to the fourth degree or relatives-in-law up to the third degree are subject to tax at the rate of six per cent; and
- any other transfer is subject to tax at the rate of eight per cent.

If the transfer is made in favour of persons with disabilities, the tax applies to a value exceeding €1.5m. The allowance applies to each beneficiary (eg, in the case of a property worth €3m that is inherited by the spouse and a child in equal parts, each beneficiary would have a share of €1.5m; the amount can be reduced by the €1m personal allowance; therefore,

each beneficiary would have a taxable inheritance of €0.5m, on which four per cent tax would be payable).

Notwithstanding the above, certain special exemptions are set forth by law. It is worth noting that cadastral and mortgage taxes would be levied on any transfer of Italian-situs real estate, either *inter vivos* or *mortis causa*, at an aggregate rate of three per cent. Cadastral and mortgage taxes apply on the same tax base provided for inheritance and gift tax purposes. Such taxes apply to the transfer of immovable property located in Italy, regardless of whether such transfers are exempt for inheritance and gift tax purposes.

4. EXEMPTIONS

Exemptions from inheritance and gift tax are provided for *mortis causa* transfers of certain assets. Assets of cultural value that have been recognised as such by an Italian competent authority (ie, *Ministero dei beni culturali*) prior to the death of the individual are exempt from inheritance tax. A 50 per cent exemption applies to Italian immovable property of cultural value recognised as such after the transfer upon death. Public debt securities (issued by the Italian Government and EU/European Economic Area (EEA) countries) and insurance policies are also exempt for inheritance tax purposes only. Transfers in favour of the state, regions, provinces and municipal districts are exempt. Transfers in favour of government bodies, foundations, *organizzazione non lucrativa di utilità sociale* (ONLUS or non-profit organisation of social utility) or legal associations that have assistance, study, scientific research, education or similar public utilities, are exempt too. An exemption applies to the transfer of a business, or participation in companies or partnerships in favour of the spouse or descendants (ie, sons and nephews), provided that they carry out effective business activity for at least five years. This exemption applies only if the recipient receives a controlling participation or achieves control of the company, taking into account other participations owned before the transfer. The transfer of interest in commercial partnerships is exempt for inheritance and gift tax purposes, and in the case in which the considered heir/donee does not acquire or attain the control over the partnership. The latter exemptions also apply in the case of the transfer of participations in companies resident in the EU or South Eastern Europe (SEE) states, or states that allow an adequate exchange of information. The Italian tax authorities have clarified that the exemption applies: (1) to the transfer of a controlling shareholding in joint ownership to the descendants; and (2) to the transfer of a controlling shareholding in favour of a trust, whose beneficiaries are descendants or the spouse of the settler. For direct tax purposes, the *mortis causa* transfer of a participation does not trigger the taxation of the latent capital gains in the hands of the heir; moreover, the tax base of the participation transferred is stepped up to the value declared for inheritance tax purposes. An exemption from inheritance and gift tax is provided, starting from 2017, for assets contributed to a trust in favour of people with severe disabilities, along with mortgage and cadastral taxes applied at a flat fixed amount to the same contributions. Moreover, the Italian ‘res non-dom’ regime provides, inter alia, for the exemption from inheritance and gift tax on non-Italian assets of individuals that have successfully opted for the Italian ‘res non-dom’ regime.

5. VALUE OF THE ASSETS

The methods for the valuation of assets depend on the category of assets transferred. As a general rule, the taxable basis for inheritance and gift tax purposes is the fair market value of the transferred assets at the moment of death or the gift. As regards immovable property, the taxable base is the fair market value; this being said, the Italian tax authorities cannot assess the value declared if it is at least equal to the cadastral value (*valore catastale*) of the assets.

The cadastral value is a 'standard' value, to be determined by multiplying the ordinary average income (*rendita catastale*) set by the competent local office for each registered property by a specific coefficient. The reference to the cadastral value as the taxable amount may result in significant tax savings, given that it is normally lower than the market value. The value of unlisted participations corresponds to the proportional quota of the company's net equity, as resulting from the last approved financial statements. Increases that occur up to the date of succession must be taken into account. The value of listed shares is equal to their average market price in the 90-day period prior to the succession's opening or the gift. The value of an enterprise transferred by succession is equal to the value of its comprehensive assets reduced by the business's losses and excluding goodwill.

6. INDIRECT TAXES APPLICABLE TO TRUSTS

The territoriality principle for the application of inheritance and gift tax shall be assessed based on the new provision set forth in Article 2, paragraph 2-bis of Legislative Decree No 346/1990. Indeed, Italian inheritance and gift tax will apply: (1) with reference to all the assets transferred to the trust at the moment of segregation, if the settler is an Italian tax resident individual; or (2) only with reference to Italian-situs assets transferred to the trust, in the case in which the settler is a non-Italian tax resident. That being said, it is worth addressing when the taxable event is considered to occur. Indeed, by means of the prior interpretation of the Italian Supreme Court, that was only later acknowledged by the Italian tax authorities by means of Circular Letter No 34/E of 2022, and by the newly introduced provision of Article 4-bis of Legislative Decree No 346/1990, it finally confirmed the Italian indirect taxation regime applicable to different phases of the trusts: the set-up of the trust, the attribution of assets to the trust and the gratuitous transfer of the assets to the beneficiaries. In a nutshell, the transfer of an asset (eg, a real estate property) to a trust does not entail the immediate and actual transfer of the ownership of such an asset but shall rather be considered as a mere impoverishment of the settler related to the trust's purposes. The final transfer, rather than the mere entering into deeds establishing a 'restriction of use' in respect to a definite purpose on certain assets or rights (and therefore any trust settlement), shall trigger the application of inheritance and gift tax. On this basis, according to the new provision, Italian inheritance and gift tax shall apply at the moment of the transfer of the trusts' assets to the beneficiaries of the trusts as a final transfer, when the enrichment of the beneficiary effectively occurs. This holds true unless the specific option under paragraph 3 of Article 4-bis is exercised, whereby inheritance and gift tax are applied at the time of the transfer of assets from the settler to the trust. Such an option may be exercised by the settler in order to anticipate the taxable event, or by the trustee in the case of testamentary trusts. That being said, for the purposes of determining the applicable rates of Italian inheritance and gift tax, the line of kinship existing between the settler and the beneficiary of the trust at the moment when the assets are attributed to the trust should be considered. Moreover, the moment when the assets are transferred to the trust should have relevance in determining whether the territoriality criteria for the application of Italian inheritance and gift tax are satisfied. In such a case, the application of such criteria would be straightforward if the settler is an Italian tax resident individual. By contrast, certain issues of interpretation may arise if the settler is a non-Italian tax resident individual, and the transfer of assets to the trust would be relevant for inheritance and gift tax purposes only in the scenario where, at the moment of attribution of the assets to the trusts, such assets are considered Italian-situs assets.

C. *Local property tax*

No general 'net worth tax' is levied in Italy. However, any person owning a real estate asset located in Italy (either a building or land) is subject to the local property tax (ie, the aforementioned IMU), regardless of its status and residence. IMU applies to the cadastral value (*valore catastale*) of the property. The cadastral value is a standard value that is determined by multiplying the ordinary average income (*rendita catastale*), set by the competent local office for each registered property, by a specific coefficient (eg, 160 for residential property, 135 for agricultural land not used in the framework of farming activity). As stated above, the cadastral value of a given property is usually much lower than its actual market value. IMU applies at the base rate of 0.86 per cent. Depending on the municipality where the property is located, the base rate can be increased or decreased by up to 0.3 per cent. IMU is payable yearly in two instalments, due in June and December of each year. The same rule also applies, with certain limitations, to agricultural land that is not rented out.

D. *Wealth tax on financial assets held abroad*

From 2012, Article 19 of Decree No 201 of 6 December 2011 introduced a tax on the value of financial assets held abroad by Italian resident individuals (*imposta sul valore delle attività finanziarie detenute all'estero* or 'IVAFE'). The taxable value is represented by the value of the financial assets. The value is calculated on the basis of the market value, recorded at the end of each calendar year in the place where the assets are held, also using the documentation of the foreign bank or financial institution or, failing that, according to the nominal value of the financial asset. The tax rate for financial activity conducted abroad is equal to the ordinary 0.2 per cent, or 0.4 per cent as from the 2024 tax period with reference to financial instruments held in countries listed under Ministerial Decree 4 May 1999 (blacklisted countries). Taxpayers are entitled to an Italian tax credit equivalent to the amount of wealth taxes paid in the state where the financial assets are held (up to an amount equal to the Italian wealth tax due). For the sake of completeness, it should be pointed out that individuals benefitting from the Italian 'res non-dom' regime are exempt from IVAFE for the whole regime's validity.

Finally, since 2023, a 0.2 per cent annual levy on crypto assets has been due: (1) stamp duty (*imposta di bollo*) if held with Italian intermediaries; or (2) a self-assessed 'tax on the value of crypto assets' at 0.2 per cent where no Italian intermediary applies stamp duty (eg, self-custody or non-Italian tax resident custodians). This supersedes earlier practice that excluded crypto assets held abroad from wealth tax on financial assets held abroad (IVAFE).

E. *Wealth tax on financial assets held in Italy*

Pursuant to Article 19 of Decree No 201 of 6 December 2011, a proportional stamp duty applies on an annual basis to the periodic reporting communications sent by financial intermediaries to their clients for the securities deposited therewith. This stamp duty applies at a rate of 0.2 per cent and cannot exceed €14,000 for taxpayers other than individuals. This stamp duty is determined on the basis of the market value or, if no market value is available, the nominal value or redemption amount of any financial product or financial instrument. The periodic reporting communications are considered to be sent by the financial intermediary at least once a year, even for instruments for which it is not mandatory. In the case of reporting periods of less than 12 months, stamp duty is payable pro rata. Pursuant to the implementing decree issued by the Italian Ministry of Economy on 24 May 2012, stamp duty applies to any

investor who is a client of an entity that exercises, in any form, banking, financial or insurance activity within the Italian territory.

F. *Wealth tax on immovable property held abroad*

Italian resident individuals owning immovable property (eg, land, buildings and apartments) located abroad are subject to tax on such immovable property (*imposta sul valore degli immobili esteri* or 'IVIE'). The taxable base is the value as declared in the purchase agreement or the fair-market value set in the state in which the property is located. Starting from the 2024 period, the tax rate increased up to 1.06 per cent, in lieu of the former 0.76 per cent applicable until 31 December 2023. In respect of immovable property located in an EU country, the tax base is the cadastral value used in the relevant foreign country as the taxable base for the purposes of any property or transfer taxes. In the absence of the cadastral value, the tax base is represented by the cost of the property declared in the transfer documentation or by the market value of the immovable property. Foreign real estate taxes are creditable against this tax.

For the sake of completeness, it should be pointed out that individuals benefitting from the Italian 'res non-dom' regime are exempt from IVIE for the whole of the regime's validity.

G. *Tax monitoring rules on foreign assets*

Any individual resident in Italy for income tax purposes shall duly report any financial investments, any assets held abroad and crypto assets in the yearly income tax return. Taxpayers are also required to report foreign operations and activity when they may be considered the 'beneficial owner' (*beneficiario effettivo*) of those foreign operations and activity. The Italian tax authorities have clarified the meaning of the term 'beneficial owner' for the purposes of this specific reporting obligation by referring to the definition of 'beneficial owner' set forth by the Italian anti-money laundering laws. In particular, the reporting obligation applies in cases where the foreign operations and activity, although formally owned by a company or other legal entity (eg, foundations or trusts), are instead referable to individuals who, from a look-through perspective, are the 'effective beneficiaries' of the assets. With specific reference to interactions between trusts and Italian tax monitoring obligations, it is worth mentioning that Circular Letter No 34/E of 2022 identified a number of cases in which beneficiaries of foreign trusts are required to comply with Italian tax monitoring obligations. In particular, Italian tax resident beneficiaries of non-discretionary trusts are required to fulfil Italian tax monitoring obligations that disclose the value of foreign investments and financial assets held by the trust, as well as their share in the trust's estate. On the other hand, Italian tax resident beneficiaries of discretionary trusts shall comply with Italian tax monitoring obligations only where the trustee notifies them of the intention to distribute the income and/or capital of the trust. Lastly, it has also been confirmed that no tax monitoring obligations arise in the hands of second-degree beneficiaries (ie, individuals becoming beneficiaries of the trust only insofar as the identified beneficiary ceases to be so). This holds true unless the relevant provisions of the trust provide that they could, even only potentially, claim the right to receive a distribution from the trust.

The applicable administrative penalties for the incorrect reporting of the monitoring obligations range from three per cent to 15 per cent of the value of the assets unreported in the tax return (such administrative penalties are doubled for foreign assets held in blacklisted jurisdictions).

For the sake of completeness, it is worth pointing out that individuals benefitting from the Italian 'res non-dom' regime are exempt from tax monitoring obligations for the whole regime's

validity, with the exception of a qualified shareholding held in foreign companies for the first five tax periods of the regime’s validity.