ITALIAN CHAPTER

Raul-Angelo Papotti, Gian Gualberto Morgigni

Chiomenti Studio Legale – Milan, London

TABLE OF CONTENTS

I. WILLS AND DISABILITY PLANNING DOCUMENTS

A. WILL FORMALITIES

A testator may transfer his 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: (i) individuals that have not reached the age of majority (18 years); (ii) individuals interdicted because of mental infirmity; (iii) individuals which, 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:

a) holographic will ("*testamento olografo*") – This is a document personally handwritten by the person making the will (testator), dated and signed. There is no need of 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*");

b) formal will ("*testamento pubblico*") – This is a document drafted by an 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;

c) secret will ("*testamento segreto*") – It is not frequently used. This is a will drafted/written by the testator or by a third party and placed in a sealed envelope which is then delivered to an notary public. The contents of the will shall remain secret until after the death of the testator when the sealed envelope will be open.

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: (i) wills drafted in case of contagious disease, public calamity or accident; (ii) wills drafted on board a ship or aircraft and (iii) military wills. The formalities provided for the 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 revokes the prior will. Implied revocation can be caused by the following events:

(i) 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 to revoke it;

(ii) certain dispositions enclosed in the new will are incompatible with a previous will (in case of the previous is not explicitly revoked);

(iii) the removal of the secret will from the notarial custody;

(iv) the destruction, the sale, or the 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 of the will. If the will has abridged this share, the value of the property transferred by will is reduced until the legal limit is respected. It is worth noting that testamentary disposition that violates a reserved share is valid until challenged by a person entitled. The right to inherit a reserved share of the estate is recognized to the spouse, to children and to deceased's ascendents. In particular, please find below the reserved shares and the available share provided by the Italian law in several relevant cases:

Spouse (no children or ascendants)	1/2: reserved share to the spouse 1/2: available share
Spouse and one child	1/3: reserved share to the spouse 1/3: reserved share to the child 1/3: available share
Spouse and two or more children	1/4: reserved share to the spouse 2/4: reserved share to the children 1/4: available share
Only a child (no spouse)	1/2: reserved share to the child 1/2: available share
Only two or more children (no spouse)	2/3: reserved share to the child 1/3: available share
Only legitimate ascendants	1/3: reserved share to the ascendants 2/3: available share
Spouse and legitimate ascendants (no children)	2/4: reserved share to the spouse 1/4: reserved share to the ascendants 1/4: available share

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

B. ENFORCEABILITY OF FOREIGN WILLS

Article 46 of Law 218/1995 provides that succession on death will be governed by the national law of the person whose inheritance is involved at the moment of his or her death. Under Italian law, within

the limits allowed by the law on reference, the following principles can be enunciated: a) the principle of the application of the deceased's national law; b) the principle of universality of the succession.

Law 218/1995 has introduced the possibility of making a *professio iuris*, on the base 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 or she resides. Such declaration will have no effect if, at the moment of death, the declarant no longer lives in such State.

In the case of the succession of an Italian individual, the choice will not prejudice the rights that the law provides for legitimate heirs resident in Italy at the moment 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 except when the recipients have agreed between them the application of the law of the place for the opening of the succession administration or the location of one or more of the items included in the succession.

On July 4, 2012, the European Parliament and the Council of European Union has adopted the 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*".

The Regulation is based, with reference to successions, on a new principle in relation to the law governing the succession. In particular, according to the above mentioned Regulation, the law governing the succession is the law of the State where the deceased has the 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 the national law (at the time of the *profession iuris* or at the time of the death) instead of the law of the 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 of further documentation.

The Regulation came into force starting from 17 August 2015 (except for certain provisions, already in force starting from 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 the intergenerational transfers of a business activity. By means of the "*patto di famiglia"*, owners of a business or of shares in a company can assign all or part of their business, or shares, to one or more than one descendants (*i.e.*, sons and nephews). The entrepreneur can thus plan the intergenerational transfers of the enterprise in order to guard his 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 recognized by law (*i.e.*, forced heirs) are requested to participate to the signing. If they do not waive their right, the assignees of the business have to reward them with a sum corresponding to the legal share of inheritance.

D. WILL SUBSTITUTES

On the base of the principle of universality of the 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, and the law of another jurisdiction providing for trusts would need to be chosen. Trusts are recognized in Italy pursuant to Law No 364 of October 16, 1989, that has 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 the bare ownership from the usufruct through a gift or a sale. Indirect tax burden can be reduced by transferring bare ownership with retention of usufruct. At the moment of death of the usufruct holder, the bare ownership will automatically consolidate with the usufruct. Such consolidation will happen free of any Italian tax.

Life insurance policies can also be used to reduce the amount of inheritance tax due. Insurance is a contract whereby the insurer, against the payment of a premium, binds himself to compensate the insured, within the limits agreed upon, for damaged caused to the insured by an accident, or to pay a principal sum or an annuity upon the happening of an event contingent upon human life. A life insurance can be entered into on own life or on life of a third party. The designation of the beneficiary can be made in the insurance agreement, or by a subsequent written declaration to the insurer, or under the will. Life insurance signed in favor of a third party is valid. The Italian Civil Code provides that, upon the death of the insured person, the beneficiaries do not receive the underlying capital as a consequence of a *mortis causa* transfer since they have a direct entitlement to the underlying capital; no inheritance tax is due upon such transfer by the beneficiary.

E. POWERS OF ATTORNEY, DIRECTIVES AND SIMILAR DISABILITY DOCUMENTS

One may give a power of attorney to any person to administer his assets. Such power is revocable at any time**.**

Any person who as a consequence of an infirmity, physical or mental disease cannot look after his own interests even if in part or temporarily, may be assisted by a provisional guardian appointed by the judge of the place where he is domiciled or resident. The administrated person preserves the power to act for all matters which do not require the exclusive representation or compulsory assistance of the support administrator.

In case the individual is in a condition of habitual mental infirmity that makes him incapable of looking after his interests, he/she shall be interdicted when this is necessary to provide for adequate protection.

The recourse for the opening of the disability proceeding, as well as for the opening of the interdiction proceeding, may be filed by the same individual 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 judgement declaring interdiction or disability shall be immediately noted in a special register. Both the proceedings have effect from the date of publication of the judgement.

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 10 years (Article 480 of the Civil Code). Renunciation must be effected by means of a declaration received by a notary public or by the chancellor of the Court of the district where the succession administration has been opened.

Under Italian law, unlike the position in other legal systems:

(i) renunciation is permitted until the time limit for accepting the inheritance has expired;

(ii) the share of inheritance has no connection with the community of property regime between spouses;

(iii) succession agreements are forbidden (Article 458 of the Civil Code);

(iv) there is no certificate of inheritance (please see above as regards the EU succession regulation).

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 (Article 649 of the Civil Code) gives rise to succession with specific title to a specific right (there are distinctions which however 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 property is transferred to his legal heirs pursuant to the laws of intestate succession.

In the intestate succession ("*successione legittima*"), the estate passes to the spouse and to descendants, ascendants, siblings, other relatives and then the state (Articles 565 and seq. of the Civil Code). The intestate succession operates when the deceased has not drafted a valid will or when the deceased has drafted a void will. Devolution upon intestate succession takes place automatically. No attestation by a government authority or by a Court is required. The persons to whom an estate devolves upon legitimate succession are: (i) the spouse; (ii) children (including natural children and adopted children), (iii) ascendants, (iv) collateral relatives and other relatives up to the sixth degree and (v) the State. Please find below a summary of the main cases of devolution in case of intestate succession:

Spouse in the absence of other heirs	1/1 of the estate to spouse
Spouse and one child	1/2 of the estate to the spouse 1/2 of the estate to the child
Spouse and two or more children	1/3 of the estate to the spouse 2/3 of the estate to the children
Spouse and ascendants or brothers and sisters (no	2/3 of the estate to the spouse

children)	1/3 of the estate to the brothers and sisters
A child (no spouse)	1/1 of the estate to the child
Ascendants	1/1 of the estate to the ascendants
Brothers and sisters	1/1 of the estate to the brothers and sisters

In brief, there shall be regarded as heirs, firstly, 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 the siblings of the deceased will take part in the succession. In their absence thereof, the closest relatives up to the sixth decree 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 or her own responsibility. The divorced spouse has no right to inherit, but he or she, after the death of the spouse who was required to make maintenance payment, may ask to the Court periodical payment from the estate.

C. THE ESTATE

The estate is the whole of assets, rights and obligations that are transferred through testamentary or intestate succession. Successions begins at the moment of the death at the last place of domicile of the deceased. The estate is acquired by the heir with the acceptance. The acceptance can be pure and simple or conditional, *i.e.* with the benefit of inventory ("*accettazione di inventario*"). The acceptance can also be express or implied. The express acceptance entails that the heir declares to accept his/her share of the estate by a formal deed or by a private deed. Instead, the implied acceptance occurs when the heirs perform a transaction which necessarily entails consent to acceptance and which no one other than an heir would have the right to perform.

The acceptance is unilateral and cannot be subjected to terms or conditions.

The right to accept the estate expires after 10 years starting from the day of the death.

The acceptance with benefit of inventory is made by a declaration, certified or made before the competent civil Court. The declaration is followed by the drafting of the inventory listing all the assets and the liabilities pertaining to the estate. By means of the acceptance with benefit of inventory the assets and the 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 COLLATION ("COLLAZIONE") AND THE REDUCTION OF TESTAMENTARY DISPOSITIONS

Children (and their descendants) and the spouse who are in concurrence in the succession shall share with the co-heirs all the assets and rights they received from the deceased by gift. In order to calculate the reserved share of the estate it is necessary to take into account not only the assets transferred after the death of the deceased but also the gifts made whilst the deceased was alive: the gifts made during the testator's lifetime are considered to be an advance receipt in respect of the inheritance (principle of the so called "*collazione*").

If testamentary dispositions or gifts exceed the share which the deceased could dispose of ("*quota disponibile*"), each forced heir can claim for the reduction. The claim for the reduction has to be filed within ten years from the devolution of the estate.

E. TESTAMENTARY EXECUTOR

The testamentary executor shall ensure that the provisions of the deceased's last will are exactly carried out. Thus, he shall manage the inheritance, taking possession of the property included in the estate. The executor shall administer 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 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 favor of the spouse. However in 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 of the patrimony of the deceased 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 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 the property transferred by gift.

The spouse's right of inheriting is recognized if he/she is married to the deceased at the time of the succession. The right is not recognized if a decision of invalidation of the marriage has occurred as well as in case of decree of divorce. In case of divorce it is necessary to distinguish between two different cases. In case the spouse has not been charged with separation by a final judgement he has the same succession rights as a non-separated spouse. On the other hand a spouse charged by a final judgement, has a right only to an annuity if, at the time of opening the succession, a maintenance has been paid by the deceased spouse. The allowance is measured by the inheritance assets and by the quality and number of the legitimate heirs and, in any case, is not greater than the maintenance received by the deceased.

The property can be held by the spouses in two different ways: the common ownership of property and the separation of property. In the absence of a different agreement the common ownership of property is the legal patrimonial system of the family. However spouses can choose a different property system. In common ownership are included: purchases made by the two spouses together or separately during the marriage, excluding those relating to individual property; the fruits of the property owned individually by each spouse and the proceeds of the separate activities if they have not been consumed at the time of dissolution of common ownership, as well as businesses operated by both spouses and established after the marriage. There shall not be included the property which, before the marriage, was owned by the spouse, the property acquired after the marriage as a result of a gift or succession, as well as any property of strictly personal use of each spouse. The administration of property in common ownership belongs to each spouse severally.

Under the separation of property regime, the spouses agree that each of them holds the ownership of the property acquired during the marriage and each spouse has the enjoyment and the administration

of the property of which he has exclusive ownership. A spouse who enjoys the property of the other spouse is subject to all obligations of a usufructuary.

III. TRUSTS, FOUNDATIONS AND OTHER PLANNING STRUCTURES

A. 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 a family enterprise, or draft a deed establishing restriction of use over specific assets or may settle a trust.

Each spouse, or both, can settle a patrimonial fund ("*fondo patrimoniale*")**,** allocating certain properties, such as immovable property or movable properties inscribed by public registers or negotiable instruments, in order to to achieve the the family's needs. The constitution shall be made through a formal deed or even by will. A patrimonial fund can be settled also 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 the properties must be used for the needs of the family. The administration of the 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 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 right to maintenance consistently with the patrimonial condition of the family and to participate in the profits of the family enterprise. Under such 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 majority of the family members who participate in the enterprise. In case of partition among heirs or of a transfer of the business the participants have a right of preemption on the business.

The creation of liens, through a formal deed establishing restriction of use, can be imposed on immovable property and on other properties enrolled in public registers. The creation of liens aims to realize one or more interest worthy of protection, generally relating to people with disabilities. The constrained assets and their fruits can only be used in favor 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 ninety years or, at most, the entire individual beneficiary's lifetime.

The "*trust*" has been recognized in Italy pursuant to law No 364 of October 16, 1989 that has ratified the Hague Convention of 1 July 1985 having as 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 Convention, the term "trust" refers to the legal relationship created – *inter vivos* or on death – by a person, the settlor, 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 the duty, in respect of which he 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 by law.

The Convention also establishes that the title to the trust assets which are under the control of the trustee, stands in the name of the trustee or in 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 guardian, can be appointed in order to control and supervise trustee's actions.

The settlor transfers to the trustee not only the assets but also the correlate 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 settlor. The trustee is entitled to the transferred rights but he could have some restrictions in the exercise of his powers of administration, appointed by the settlor in the act of constitution. If the settlor provided for a protector, the trustee's administration activity will be under 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; in favor of a disabled, in order to satisfy his medical and economical needs through the income generated by the trust assets. A trust can also be settled by will.

B. ASSOCIATIONS AND FOUNDATIONS

Associations and foundations can be incorporated for the purposes of an ideal aim.

Associations and foundations must be incorporated through a formal deed and, in the case of 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 unrecognized associations and committees, without legal personality.

IV. TAXATION

A. PERSONAL INCOME TAX

Pursuant to Italian law, an individual is considered resident in Italy for tax purposes, if he is registered in the Civil Registry of the resident population or is resident or domiciled in Italy for the greater part of the tax year (*i.e.*, more than 183 days a calendar year).

Italian resident individuals are subject to individual income tax ("IRPEF"). IRPEF is a progressive tax that applies to the aggregate taxable income of the taxpayer. In particular, five income brackets are provided, each of which has a corresponding tax rate that varies from a minimum of 23% to a maximum of 43%. Local surcharges up to 2 per cent may also apply depending on the taxpayer's region and municipality. A system of tax allowances is provided, depending on the category of income received by

the taxpayer. Other allowances providing a 19% deduction from taxes of certain personal expenses are granted.

IRPEF is levied on personal income included in any of the following categories:

(i) Income from immovable property (redditi fondiari);

(ii) Income from capital (redditi di capitale);

(iii) income from employment (redditi di lavoro dipendente);

(iv) income from self-employment (redditi di lavoro autonomo);

(v) business income (redditi di impresa); and

(vi) miscellaneous income, including capital gains (redditi diversi).

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 the lands the relevant income is determined on the basis of the ordinary average income for cadastral purposes. In this case, however, the cadastral income is composed by two different items of income: the so called "*reddito dominicale*" and the so called "*reddito agrario*".

However, for residential properties which are not rented out, the Local Property Tax ("IMU") – technically a wealth tax – absorbs also the personal income tax due.

For agricultural lands which are not rented out, the aforementioned rule applies only partially. Indeed, in such a case, IMU absorbs only the portion of the cadastral income referred to *reddito dominicale*, while the item of income referred to *reddito agrario* shall be still subject to personal income tax.

Differently, in case 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 15%. In such a case, the income derived by the individual from real the estate property shall be included in its overall taxable income and subject to personal income tax (*IRPEF*) at ordinary progressive tax rates ranging from 23% to 43%.

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

Capital gains realized by individuals (either Italian or non-Italian resident) upon disposal of residential properties are not subject to tax in Italy, provided that the property has been held for at least 5 years prior to the disposal.

If the above mentioned condition is not satisfied, the capital gain (equal to the difference between the sale price and the purchase price, increased of any expenses related thereto, as the notarial fees) shall be included in the ordinary taxable income, subject to tax at progressive rates as indicated above.

However, as an alternative, the seller may elect for the application of a 20% substitute tax; this election has to be made within the relevant formal deed of transfer.

2. INCOME FROM CAPITAL AND CAPITAL GAINS

As general rule, income from capital, if received by private individuals not engaged in entrepreneurial activity, is subject to a substitutive tax or to a withholding tax as final payment levied at the rate of 26%.

As regards dividends, Italian resident individuals shall be taxed as follows: (i) only the 49,72% of the amount received will be taxed at progressive rates in case of qualifying shareholding; or (ii) the full amount is subject to a withholding tax equal to 26% in case of non-qualifying shareholding. Capital gains deriving from the transfer of shares or securities give rise the category of miscellaneous income (*redditi diversi*).

For Italian resident individuals, capital gains on the transfer of shares shall be taxed in Italy as follows: (i) only the 49,72% of the paid amount will be taxed at the applicable marginal rate in case of qualified shareholding; or (ii) the full amount is subject to a 26% substitute tax in case of non-qualified shareholding.

As regards capital gains arising from transfer of securities other than shares, Italian individuals are subject to a 26% substitute tax.

With specific regard to the calculation of the capital gain, the taxable basis is represented by the difference between the consideration paid by the purchaser and the acquisition cost; please note that optional step up regimes may be available.

The tax compliance is regulated under three different regimes.

Under the tax declaration regime (the *"Regime della dichiarazione"*), which is the standard regime for 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 declaration to be filed with the Italian tax authorities for such year, and pay the substitute tax on such gains together with any balance on income tax due for such 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 declaration 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 (the "*Regime del risparmio amministrato*"). Such separate taxation of capital gains is allowed subject to: (i) the shares being deposited with Italian banks, *società di intermediazione mobiliare* (SIM) or certain authorised financial intermediaries; and (ii) 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 authority 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 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 tax return. This regime can be used by individuals taxpayer for miscellaneous income, with the exception of the capital gains arising from the transfer of qualifying shareholdings.

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 tax return. This regime can be used by individuals taxpayer for income from capital and miscellaneous income, except from the capital gains arising by the transfer of qualifying shareholdings.

3. TAXATION ON TRUSTS DISTRIBUTION

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, either their legal seat, or place of management or main purpose is in the Italian territory. Non-resident trusts are taxable on any Italian-source income only.

The law provisions of the Finance Act for 2007 also introduced a set of presumptions under which certain trusts shall be regarded as resident of Italy for income tax purposes, in case certain conditions are met. These presumptions can be rebutted subject to the evidence that the trust's effective place of management and main purpose were not located in Italy for more than 183 days in a given taxable period.

Further, the law provisions set out a distinction between opaque trusts (*i.e.*, discretionary trusts) and transparent trusts (*i.e.*, trusts whose beneficiaries are identified). According to the tax authorities' interpretation, a beneficiary shall be regarded as identified when he is not only named amongst the trust's beneficiaries, but also has an actual and enforceable right to claim the payment of his share of the trust's income.

In particular, income realized by an opaque trust is subject to corporate income tax in the hands of the trust itself. On the contrary, a transparent trust is regarded as a flow-through entity for corporate income tax purposes, as its income is taxable in the hand 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. In this case, the Italian resident beneficiaries will have to include their respective share of the trust income in their own Italian tax return, to be subject to personal income tax at progressive rates (up to 43%, plus local surcharges).

As regards the income taxation of the beneficiaries, any distributions made by an opaque trust is not subject to income tax in the hands of the beneficiaries.

Finally, it is worth noting that the Circular Letters No. 43/E of 2009 and No. 61/E of 2010, issued by the Italian tax authority, listed some cases in which a trust should be considered an interposed entity for tax purposes:

(i) a trust which settlor (or beneficiary) can terminate at any moment;

(ii) a trust in respect of which the settlor has the discretion to appoint himself as beneficiary;

(iii) a trust in respect of which the settlor (or the beneficiary) has such powers that the trustee cannot freely exercise its powers without the consent of the former; and

(iv) a trust which settlor has the right to modify the beneficiaries.

B. INHERITANCE AND GIFT TAX

1. GIFT, ESTATE, AND INHERITANCE TAX

Inheritance tax and gift tax are provided by Presidential Decree No. 346 of 31 October 1990. As regards inheritance tax, the taxable event is the *mortis causa* transfer to the heir(s) or to the legatee. Transfer upon death but not *mortis causa* are not subject to inheritance tax (e.g., the consolidation of the bare ownership with the usufruct is not subject to inheritance and gift tax).

For gift tax purpose, the taxable event is represented by the gift *inter vivos* and the creation of liens on assets for a specific purpose.

Both the taxes aim to affect the net increase of patrimony resulting after the succession on death or gift dispositions.

For sake of completeness, it is worth pointing out that, according to the interpretation put forward by the Italian tax authorities (and recently upheld by the Supreme Court), any trust deed providing for the transfer of assets to the trust is subject to the inheritance and gift tax.

As a general rule, an Italian resident person (deceased or donor) is subject to inheritance and gift tax on any assets and rights transferred *mortis causa* or *inter vivos*, wherever situated. Conversely, a non-resident person (deceased or donor) is generally subject to inheritance and gift tax on any assets and rights located in Italy only.

2. DOMICILE AND RESIDENCY

Inheritance and gift tax, previously abolished in 2001, has been reinstated in 2006 in the Italian tax system.

Italian law provides for a worldwide system for inheritance and gift tax purposes.

As regards the territorial scope of application, the following rules would apply:

(i) in case 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 on all assets, wherever located;

(ii) on the contrary, in case 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 on Italian-*situs* assets.

The rules governing the territorial scope of the inheritance and gift tax are based on the residence of the decesead (or donor) at the time of death (or when the gift was made). In particular, in case of a non-resident decesead/donor, only the assets located in Italy are subject to inheritance and gift tax. No relevance is connected to nationality/citinzenship and to the domicile. 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 is worth pointing out that only few Bilateral Agreements 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 inheritance tax payable in another State in relation to property located in that State can be deducted from the Italian inheritance and gift tax up to its amount, as computed in proportion to the value of the relevant property.

The Italian law provides an unchallengeable presumption, on the base of 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:

(i) assets enrolled in the public registers in Italy (e.g., cars);

(ii) 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;

(iii) bonds and other securities, other than share, issued by the Government of Italy or by Italian resident companies if their registered office (or legal seat), place of effective management or main business purpose is in Italy;

(iv) securities representing goods, which are located in Italy;

(v) receivables and cheques if the debtor/issuer is resident in Italy;

(vi) receivables linked to goods located in Italy;

(vii) goods in transit with the final destination within Italy.

3. RATES OF INHERITANCE AND GIFT TAX

The tax rates of inheritance and gift tax do not depend solely on the amount received by each beneficiary/donee, but also on the proximity of the relationship between the deceased/donor and the beneficiary/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:

(a) transfers in favor of spouses and direct descendants or direct ancestors are subject to tax at the rate of 4%, on the value exceeding Euro 1,000,000.

(b) transfers in favor of siblings are subject to tax at the rate of 6%, on the value exceeding Euro 100,000;

(c) transfers in favor of relatives up to the fourth degree or relatives-in-law up to the third degree are subject to tax at the rate of 6%; and

(d) any other transfer is subject to tax at the rate of 8%.

If the transfer is made in favor of persons with disabilities, the tax applies on the value exceeding Euro 1,500,000.

The allowance applies to each beneficiary (*e.g.*, in case of a property worth 3 million that is inherited by the spouse and a child in equal parts, each beneficiary would have a share of 1.5 million. Such amount

can be reduced by the 1 million personal allowance; therefore, each beneficiary would have a taxable inheritance of 0.5 million, on which the 4% tax would be payable).

Notwithstanding the above, certain special exemptions are set forth by law.

Inheritance and gift tax are strictly related. In order to avoid a duplication of the benefit of the allowances, the exempt amount is eroded by the previous gifts that effectively has benefited from the exemption.

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 3%. 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 properties 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 recognized as such by Italian competent Authority (*i.e.*, "*Ministero dei beni culturali*") prior the death of the individual are exempt from inheritance tax. A 50% exemption applies to Italian immovable property of cultural value recognized as such after the deceased.

Public debts securities (issued by the Italian government and by EU/EEA countries) and insurance policies are also exempt for inheritance tax purpose only.

Transfers in favor of the State, regions, provinces, municipal districts are exempt. Transfers in favor of government bodies, foundations, ONLUS or legal associations which have assistance, study, scientific research, education, or similar public utilities, are exempt too.

An exemption applies to transfer of a business or of a participation in companies or partnerships in favor of the spouse or of descendants (*i.e.*, sons and nephews), provided that they carry out an effective business activity for at least 5 years. This exemption applies only if the recipient receives a controlling stake or achieves control of the company taking into account other participations owned before the transfer.

Transfers of quotas in partnerships are exempt under inheritance and gift tax purpose also in the case the heir/done does not acquire or reach the control. The latter exemptions should apply also in case of transfer of participations in non-resident partnerships.

The Italian tax Authorities have clarified that the exemption applies (i) to the transfer of a controlling shareholding in joint ownership to the descendants and (ii) to transfer of a controlling shareholding in favor of a trust, whose beneficiaries are descendants or the spouse of the settlor.

For direct tax purposes, the *mortis causa* transfer of a participation does not trigger the taxation of the latent capital gains in the hand of the heir; moreover, the tax base of the participation transferred is stepped up to the value declared for inheritance tax purpose.

5. VALUE OF THE ASSETS

The methods of valuation of the 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 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 for 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 with the proportional quota of the company's net equity, as resulting from the last financial statement approved. Increases occurred until the date of succession must be taken into account.

For the evaluation of the listed participations it is necessary to refer to the market value, considering the average price of the last quarterly preceding 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 the goodwill.

6. TAXATION OF THE TRANSFER OF ASSETS TO A TRUST

According to the interpretation put forward by the Italian tax authorities, any trust deed providing for the transfer of assets to the trust ("*atto dispositivo*") is to be regarded as a gratuitous transfer, being therefore subject to inheritance and gift tax at proportional rates. In particular, the application of the tax at proportional rates should be made on the basis of the relationship existing between the settlor and the identified beneficiaries of the trust (if any) at the time of the relevant transfer to the trust .

In any case, in the Italian tax authorities' position the 8% rate shall be levied when (i) the beneficiaries of the trust are persons other than those benefiting from the reduced rates, or (ii) the trust has no beneficiaries (*i.e.*, purpose trust), or (iii) the beneficiaries cannot be identified (for instance in case of discretionary trusts). Any subsequent transfer of the trust's assets to the beneficiaries does not trigger the application of inheritance and gift tax.

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 a land) is subject to a local property tax (*imposta municipale propria*, "**IMU**"), regardless of its status and residence.

IMU applies on the "cadastral value" ("*valore catastale*") of the property. 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, for a specific coefficient (e.g., 160 for residential properties, 135 for agricultural lands not used in the frame of a farming activity). Please remind that the cadastral value of a given property is usually much lower than its actual market value.

IMU applies at the base rate of 0.76 per cent. Depending on the municipality where the property is located the base rate can be increased or decreased by a percentage up to 0.3%. IMU is payable yearly in two installments, due in June and December of each year.

For residential properties which are not rented out, IMU absorbs also the income tax due in relation to those properties. The same rule also applies, with certain limitations, to agricultural lands which are not rented out.

The Local property tax is not deductible for the purpose of income taxes.

D. STAMP DUTY

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. The stamp duty applies at a rate of 0.2 per cent. and cannot exceed EUR 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 instruments.

The statement is considered to be sent at least once a year, even for instruments for which is not mandatory nor the deposit nor the release or the drafting of the statement. In case of reporting periods of less than 12 months, the stamp duty is payable pro-rata.

Pursuant to the implementing decree issued by the Italian Ministry of Economy on 24 May 2012, the stamp duty applies to any investor who is a client of an entity that exercises in any form a banking, financial or insurance activity within the Italian territory.

E. TAX ON FINANCIAL ASSETS HELD ABROAD

A new levy on financial assets held abroad has recently been introduced. In particular, as from the 2012 tax period it is established a tax on the value of financial assets held abroad by Italian resident individuals.

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 hold, 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 the financial activity held abroad is equal to 0.2 per cent.

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).

F. TAX ON IMMOVABLE PROPERTY HELD ABROAD

Italian resident individuals owning immovable property (e.g., land, buildings and apartments) located abroad are subject to tax on such immovable property. The taxable base is the value as declared in the purchase agreement or the fair market value set in the country in which the property is located. The tax rate is equal to 0.76 per cent.

In respect of immovable property located in a EU country, the tax base is 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.

G. TAX MONITORING RULES ON FOREIGN ASSETS

Any individual, being resident in Italy for income tax purposes, had to duty report any financial investments and assets held abroad in the tax return.

Taxpayers are bound to report the foreign operations and activity also when they may be considered the "effective beneficiary" (*beneficiario effettivo*) of those foreign activity and operations. The Italian tax Authority has clarified the meaning of the term “effective beneficiary”.

The reporting obligation applies in cases where the foreign operations and activity, although formally owned by a company or other legal entity (e.g., foundations or trusts), are instead referable to individuals who – in a look through perspective – are the "effective beneficiary" of the assets.

Specifically, with regard to companies, a person can be considered as effective beneficiary whenever he, directly or indirectly, holds a participation of 25% in the share capital or voting rights or in some other way can exercise control over the direction of the company. Other legal entities, such as trusts or foundations, fall within the concept whenever future beneficiaries have already been identified who are entitled to at least 25% of the assets of the foreign entity.

The penalties are set at a minimum of 3% up to a maximum of 30% of the value of the assets unreported in the tax return.