

Italy: reintroduction of succession tax and new rules for gifts

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Background

As is well known, Italy abolished succession tax in 2001. Since then, movables have passed free of tax on death, whilst immovables have remained subject to stamp duty land tax at 3% (but only by reference to the official 'cadastral' value of the property, which is usually only a fraction of its market value).

At the same time, Italy abolished gift tax on lifetime gifts between close relatives, while gifts to more distant relatives (beyond the fourth degree) and strangers became subject to what is known as registration tax at 7%. The main difference between registration tax and gift tax lies in the scope of the tax, as registration tax only applies to certain transactions, rather than across the board (as was the case under the old style gift tax).

Given the limited scope of registration tax, it became possible, even after 2001, to make gifts of cash, offshore accounts and shares in foreign companies free of tax, which in turn presented big tax and estate planning opportunities using trusts.

In addition, although gifts of immovables fell within the scope of registration tax (so that transfers to distant relatives and strangers were subject to tax at 7%), various tax authorities accepted that the establishment of a lifetime trust of Italian land was only subject to a nominal registration tax of , -168. This, and the fact that Italy formally recognises trusts, contributed to the generation of a robust interest among Italians in the trust concept.

All change!

On 3 October 2006, the government of Romani Prodi made good his electoral promise to reintroduce succession tax. Not content with this, it extended the scope of registration tax to include lifetime gifts of certain types of assets not previously covered. In the future, lifetime gifts and transfers on death will be taxed at up to 4%, 6% or 8% depending on the relationship between the beneficiary/recipient and the deceased/donor and subject to certain thresholds depending on the nature and value of the asset concerned.

Outstanding issues

It should be noted from the outset that the new rules need to be ratified by the Italian Parliament within 60 days from their entry into force. In the absence of ratification, the new rules will be treated as if they had never been enacted, but any ratification (including any amendment) by Parliament will have retroactive effect. It remains to be seen how Parliament will react to the new rules, but the wording of the current law raises some important issues:

(a) Do the new rules apply to gifts of cash?

A literal reading of the law indicates that gifts of cash are now caught by the new rules. However, it is difficult to see how this will work in practice, as traditionally gifts of cash 'brevi manu', i.e. by transfer of possession, or via a bank transfer, have been outside the scope of registration tax, as they are not effected or completed by way of a stampable document.

(b) Do the new rules apply to trusts and if so, how?

The new rules applicable to inter vivos gifts also apply to so-called 'vincoli di destinazione', an embryonic form of trust recently introduced in the Italian civil code (although Italy has ratified the Hague Convention on the Law Applicable to Trusts and on their Recognition, the trust concept is alien to the Italian legal tradition).

It is not clear whether the new rules on 'vincoli di destinazione' will extend to foreign law trusts, as the two institutions are not identical (the Italian code dedicates only one article to the 'vincoli di destinazione' introducing the idea of a segregated fund, but makes no reference to trustees or their powers).

Assuming that the new rules do apply to trusts (so that their creation will be subject to registration tax at 4%, 6% or 8% depending on the degree of relationship) it is not clear from the wording of the law whether the relevant relationship for the purpose of determining the rate of tax is that which exists between the settlor and the beneficiary or the settlor and the trustee. In addition, what happens if the class of beneficiaries includes relatives of different categories and also strangers? Will the tax be levied at 4%, 6% or 8%?

Conclusion

The reintroduction of succession tax in Italy and the extension of the scope of registration tax rules to include lifetime gifts does not come as a surprise, having been part of the new government's electoral manifesto. However, the way in which the rules have been introduced (by government rather than by Parliament) and the apparent sloppiness of the drafting has set the stage for the latest Italian style drama. It remains to be seen how Parliament will react in due course. To those who intend to make a gift or establish a trust the message is: watch this space, while those who are planning an untimely death should continue hang on a little bit longer!

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