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Subject: Reforms of inheritance and gift tax and of registration tax effective as from 1 January 2025

In addition to the many changes already reported, 1 January 2025 also brought a reform of inheritance and gift tax as well as of registration tax. Although the new rules set out in Legislative Decree 139/2024 were published in the Official Gazette back on 2 October 2024, they only took legal effect on 1 January 2025, specifically for deeds executed and estates opened from that date onwards. As regards inheritance tax, particular attention must be paid to self-assessment; in the case of registration tax, the changes concerning preliminary purchase agreements and business transfers are relevant. The cornerstones of the reform are as follows:

1. Inheritance and gift tax:

1.1. Obligation to self-assess:

Inheritance tax is now also subject to the obligation of self-assessment, as is the case for most other taxes and duties. Until now, within the framework of an estate, self-assessment was only provided for the settlement of mortgage and cadastral taxes (on the transfer of real property), whereas inheritance tax was determined by the tax office within 3 years of filing the return (assessment by the authorities). As in the past, the inheritance tax return must continue to be

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filed electronically within one year of the date of death (with the exception of non-resident heirs). Unlike in the past, however, since 1 January 2025 the inheritance tax due must be calculated independently and paid within 90 days of filing the return (or at least 20%, with the balance spread over eight or twelve instalments for amounts exceeding 20.000 Euro).
The Italian Revenue Agency will now only carry out checks on the calculation and the payments.
By Ruling No. 2/2025 the Agency has already set out the tax codes required for payment by means of form F24:

- 1539 – Inheritance tax, self-assessment
- 1635 – Inheritance tax, interest on payment by instalments.

The new rule applies to estates opened as from 1 January 2025; for estates opened earlier, by contrast, assessment by the authorities under the customary provisions continues to apply.

1.2. Prior gifts disregarded for inheritance purposes:

The next change, by contrast, is substantive: with it, the legislator finally takes account of the case law of recent years (and, most recently, also of the practice of the Italian Revenue Agency): when calculating inheritance tax, prior gifts made by the deceased to the same donee are to be disregarded. As a reminder: until recently, all gifts made in the past had to be reconsidered in order to ensure compliance with the tax-free allowances. This procedure was particularly disadvantageous in the case of gifts to children, because the tax-free allowance of 1 million Euro was granted only once overall.
This has now definitively come to an end, with the result that the applicable tax-free allowances apply afresh to the estate, irrespective of any earlier transfers by way of gift. The rates and tax-free allowances themselves were left untouched by the reform. The current tax rates and tax-free allowances are as follows:

Degree of relationship	Rate	Tax-free allowance
Spouse and relatives in the direct line	4%	Euro 1.000.000 per beneficiary
Siblings	6%	Euro 100.000 per beneficiary
other relatives up to the 4th degree, relatives by marriage in the direct line, relatives by marriage in the collateral line up to the 3rd degree	6%	no tax-free allowance
other heirs	8%	no tax-free allowance
Heirs with severe disabilities	various rates	Euro 1.500.000 per beneficiary

Important: the new rule still does not apply to multiple gifts („Coacervo donativo“) made during a person's lifetime, and this differing treatment of gifts and inheritances has also been noted with considerable incomprehension in the specialist press.
Example: if a child has received gifts of 950.000 Euro from his father during the father's lifetime and inherits a further 950.000 Euro on his death, no inheritance tax whatsoever is due, because both transfers are covered by the tax-free allowance of 1 million Euro in each case. If, on the other hand, the same child receives two gifts of 950.000 Euro each during the father's lifetime, gift tax of 36.000 Euro is due, because the tax-free allowance is exceeded by 900.000 Euro.
It should be added that it has meanwhile been definitively clarified that, in the case of gifts as well, gratuitous transfers made in the period between 25 October 2001 and 28 November 2006, when the then Berlusconi government had abolished gift tax, no longer have to be taken into account for the purposes of claiming the above tax-free allowances.

1.3. Trusts

Further new rules concern, among other things, the taxation of trusts. Here, gift tax may optionally be brought forward to the time at which the assets are transferred into the trust. Should you require detailed information on this, please contact us.

1.4 Tax-privileged transfers of businesses and shareholdings

As a reminder: it was only in Reply No. 72 of 18 March 2024 that the Italian Revenue Agency stated that the exemption from inheritance and gift tax does not (any longer) apply where a gratuitous transfer does not transfer a controlling interest in a corporation but merely increases it. Example: in 2023 a father gifted his son 51% of a limited liability company under a family agreement, subject to the obligation to hold it for at least 5 years. The transfer was tax-free. If, in 2024, he gifted him a further 10% on the same terms, this had to be taxed in the light of the above interpretation, since the second gift did not establish control but merely increased it.
This is where Art. 1 para. 1 letter f) of Legislative Decree 139/2024 now comes in: the subsequent increase of control is once again tax-free in the case of corporations.
It is clearly stipulated that, in order to obtain the exemption from inheritance and gift tax, an undertaking must be given to hold the shareholding or to continue the business for 5 years, and this undertaking must be set out in the deed of gift or in the inheritance tax return.
Finally, it is clarified that the above exemptions from inheritance and gift tax also apply on the same terms to foreign shareholdings, provided that the company in question has its registered office in an EU member state or in a country with which an arrangement providing for an adequate exchange of information is in place.

1.5 Blocking of bank accounts in the event of inheritance:

The following rule is likely to be of practical significance: where there is only one heir to an estate, that heir is not older than 26 years of age and the estate includes real property, the bank accounts of the deceased may be released even before the inheritance tax return is filed, but solely for the payment of mortgage, cadastral and stamp taxes in connection with the estate.

1.6 Indirect gifts

Indirect gifts are subject to gift tax only if they are voluntarily registered or are ascertained by the tax office as a result of declarations made by the taxpayer in the course of audits.

1.7 Statutory rate of interest

It is clarified that usufruct, rights of residence and life annuities are to be valued on the basis of the statutory rate of interest, which may under no circumstances fall below the threshold of 2,5%.

1.8 Further changes

The consolidated act has been amended in many other places, although in many cases these are merely formal corrections or adjustments of the wording of the law to the prevailing case law and administrative practice. This concerns, for example, the definition of relatives in the direct line or the determination of the competent office of the Italian Revenue Agency.

<u>2. New rules on registration tax:</u>

2.1 Registration tax on preliminary purchase agreements:

The reform of inheritance and gift tax also brought a change to the registration of preliminary purchase agreements. As is known, the position to date was that, in the case of preliminary purchase agreements not subject to VAT, down payments were taxed with registration tax at a rate of 3%, whereas a confirmatory deposit („caparra confirmatoria“) within the meaning of Art. 1385 of the Civil Code in the same preliminary purchase agreement was subject to a reduced tax of 0,5%; this differing treatment often led to entirely absurd contractual arrangements with excessive deposits, without regard to the corresponding implications under civil law. This should now be a thing of the past: since 1 January 2025, deposits within the meaning of Art. 1385 of the Civil Code and down payments have been uniformly subject to the reduced rate of 0,5%, so that at least there is no longer any tax incentive for distortions.

Where the contract is subject to VAT, the reform does not give rise to any changes. Here the meanwhile consolidated rule applies that registration tax of 0,5% is not due on the confirmatory deposit either, provided the preliminary purchase agreement clearly stipulates that this deposit is also paid as a (first) down payment and is therefore subject to VAT.

2.2 Taxation of business sales:

As is known, the sale of businesses or business divisions is not subject to VAT but to registration tax, which is generally due on the purchase price (plus goodwill, where applicable), which as a rule results from the assets less the liabilities transferred. The relevant provisions on taxation in Art. 23 para. 4 of Presidential Decree 131/1986 have been completely revised:

Since the assets are as a rule made up of items subject to different rates (e.g. 15% for agricultural land, 9% for buildings and building land, 3% for goods held as current assets, etc.), in the past the individual tax offices applied entirely different criteria as to what they considered to be the correct allocation of the purchase price of the business to the individual assets and rates, and, depending on the tax office, the tax burden could differ considerably. A uniform set of rules has now finally been laid down by law, which must, however, be scrupulously observed when drafting future contracts. In detail, the following applies:

- Where the purchase price is clearly allocated in the deed or in the annexes to the purchase agreement to individual assets subject to different rates, taxation is carried out at those different rates in accordance with that allocation, although the office is entitled to review the allocation and, where appropriate, to challenge it.
- If, on the other hand, only a single overall price is agreed without any allocation, that price is taxed at the highest rate applicable to the assets transferred. This approach had already been applied by some offices in the past and would mean, for example, that the purchase price of a business that also includes a small plot of agricultural land is taxed in full at 15% if the contract contains no price allocation.
- It is also finally clarified that receivables included in the assets are taxed at 0,5% and not, as practised by some offices, at 3%.
- Vehicles are to be excluded from the valuation procedure, since they are taxed separately.

<u>Note: it is advisable to observe the new rules described above with the utmost care in future transfers of businesses and business divisions, in order to avoid unpleasant surprises in terms of taxation.</u>

2.3 Sale of building rights

The transfer of building rights (keyword: „sale of building volume“) is subject to registration tax at a rate of 3%. This draws a line under a discussion on the classification of these rights that has been going on for years. Mortgage and cadastral tax, by contrast, apply at a fixed amount.

2.4 Self-assessment of registration tax

Registration, mortgage and cadastral taxes were already calculated and paid, in the case of notarial deeds by the notary and in the case of lease agreements by the parties themselves. This procedure is now to become the rule; it is to be hoped that the offices will show leniency at least in the initial phase, otherwise a flood of assessment notices is to be expected.

2.5 Division of communities of heirs

When determining the value of a community of heirs to be divided, the gratuitous transfers made by the deceased during his lifetime must also be taken into account, whereas no registration tax is charged on these transfers in the course of the division. This rule fills a legal vacuum; on the other hand, this is precisely how matters were already handled in practice in the past.

We remain at your disposal for any further information.

Yours sincerely
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