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KeyNews

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From Business Unit Wealth Management, a selection of the most interesting Italian case law decisions and Italian Revenue Agency rulings, within the Wealth practice.

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I. Termination by mutual consent of a gift and the so-called "primary residence" regime.

The gift of a property originally purchased benefitting from the so called "primary residence" regime does not prevent the application of the tax benefits, even if the gift is subsequently terminated by mutual consent. Ruling No. 77/E of 2 February 2021.

The ruling request deals with a taxpayer who, firstly, purchased a property under the so called "primary residence" regime (*i.e.* in Italian "prima casa" regime, which, under certain conditions, provides the application of the registration tax at a lower rate, the "**Regime**"). After three years, the applicant purchased a second property. In order to benefit from the Regime also on the second purchase, the applicant undertook to sell the previously owned property, within one year from the second purchase. On such a basis, the applicant promptly gifted the pre-owned property, asking the Italian Revenue Agency to confirm that any subsequent termination of such gift would not have a negative impact on the application of the Regime.
The Italian Revenue Agency replied provided certain clarifications, as summarized in the following.

First of all, the transfer enabling the taxpayer to benefit from the Regime may also occur when the acquisition of the property follows a gift.
Moreover, the Italian Revenue Agency clarified that any subsequent termination by mutual consent of the gift deed does not negatively affect the Regime. Indeed, the termination by mutual consent - whereby the gifted property is transferred back to the donor - represents an autonomous gift which results in a new transfer of ownership (Italian Supreme Court decision No. 3935 of 19 February 2014). The Italian Revenue Agency also pointed out that such case does not fall within the hypothesis of the Regime termination set forth by Italian tax laws.
Finally, in line with the clarifications provided in Ruling No. 20/E of 14 February 2014, the termination by mutual consent of a property gift is subject to registration tax at a fixed amount (Euro 200).

II. The purchase of a property to be entrusted to a trust does not affect the application of the "price-value" regime for registration tax purposes.

The trust is not generally regarded as an autonomous taxable person, except where expressly provided by the law (e.g., application of the Italian corporate tax under Article 73 of the Italian tax code). The deed executed for the assets entrustment to a trust made by a trustee who is an individual is not, in principle, incompatible with the price-value regime (so called "regime del prezzo-valore) under Article 1, paragraph 497, Law No. 266/2005. Italian Supreme Court decision No. 3073 of 9 February 2021.

The decision at stake deals with the purchase of a residential property by an individual in his capacity as a trustee. At the time of the purchase, the trustee applied registration tax on the cadastral value of the relevant property under the so called "price-value" regime ("prezzo-valore"). Subsequently, the Italian Revenue Agency re-determined the relevant taxable basis, identifying the price resulting from the relevant deed of purchase as the correct taxable basis. The approach adopted by the Italian Revenue Agency was endorsed by the Regional Tax Court. In particular, according to the judges (i) the deed of purchase should have been attributed to the trust (and not to the trustee), since the property would have been transferred to the trust and hence would have represented a separate asset, different from those of the trustee; (ii) the trustee would have acquired the availability of the property, but only in accordance with the purposes of the trust and with the subsequent obligation to transfer it to the ultimate beneficiaries; and therefore (iii) the transfer of the property did not occur between individuals, with the consequent absence of the subjective requirement for the application of the "price-value" regime.
It should be noted that the Italian Supreme Court held that the "price-value" regime was not applicable in the case at stake, because the purchaser acted in the exercise of a commercial activity and therefore the subjective condition for the application of the regime at stake was not met.
However, the Italian Supreme Court pointed out that the purchase does not qualify as a contribution to a trust upon settlement, but rather as a typical purchase deed made by a person who qualifies as both settlor and trustee. Therefore, the Italian Supreme Court excluded "any subjective interference of the trust as such" in the purchase of the relevant property. The purchase of the property, from a subjective perspective, was in principle subject to the "price-value" regime, since it took place between two individuals.

Moreover, according to the Italian Supreme Court, even assuming that the purchase formally qualifies as an act of contribution to the trust, the subjective condition for the "price-value" regime should have been considered as being met. Indeed, the purchase should have been considered as being made by an individual. In fact, according to the judges, without prejudice the hypothesis expressly provided by the applicable Italian laws, the trust does not have an autonomous legal personality and cannot as a taxable entity for general purposes, but only in cases where the law provides so. Therefore, in principle, the act whereby the assets are transferred to a trust by a trustee who is an individual are not incompatible with the so-called "price-value" regime.

III. Annuities and inheritance and gift taxes. A knot still to be untangled.

Pursuant to Article 17(1)(c) of Legislative Decree No. 346/1990, the value of annuities for inheritance and gift taxes purposes shall be calculated by multiplying the relevant annuity by the coefficient indicated in the schedule attached to Presidential Decree No. 131/86, as in force in 2020, determined in relation to the age of the relevant

person. The decrease of the legal interest rate, affecting the coefficients to be used for the mentioned computation, leads to a huge taxable basis, which is not proportioned to the related actual values.
Ruling No. 51/E of 20 January 2021

The Ruling at stake deals with a succession, where the applicant is the spouse of the deceased and has been appointed sole heir. The deceased was the owner of a pharmacy (included in the estate) and established in favour of one of his employees a legacy ("*legato*") relating to the pharmacy. Such employee was obliged to pay, in favour of the heir, a life annuity on an annual basis.
For inheritance and gift taxes purposes, the charge borne by the legatee is regarded as a legacy in favour of the beneficiary. Therefore, the heir was under the obligation to report the life annuity (granted to her by virtue of the legacy) in the inheritance tax return.
Moreover, as to the computation of the taxable basis for inheritance and gift taxes purposes pursuant to Article 17(1)(c) of Legislative Decree No 346/1990, the value of the life annuity included in the estate and the related computation of the tax due led to a huge amount, totally inconsistent with the reality.
This distorting effect derives from the constant decrease of the legal interest rate, which has an impact on the coefficients used to calculate the value of the asset (*i.e.,* the annuity) and the relevant taxable basis.
The legal interest rate for 2021 has been set at 0.1%. Assuming a scenario in which the beneficiary is 60 years old, the computation coefficient would be equal to 6,000. In such a scenario, an annuity with a value of Euro30,000 would lead to a taxable basis equal to Euro 180,000,000.
In view of the above, the Italian Revenue Agency was questioned on the possibility to interpret the above-mentioned rule in accordance with the provisions of Article 671 of the Italian Civil Code, whereby "the legatee is obliged to fulfil the legacy and any other burden imposed on him within the limits of the value of the underlying asset".
The Italian Revenue Agency considered that the annuity should have been considered as a fixed-term annuity, rather than a life annuity. Indeed, the parties established both the value of the relevant asset and the time and manner of its payment.
Therefore, the relevant provision to be applied in the case at stake is Article 17(1)(b) of Legislative Decree 346/1990, concerning fixed-term annuities (and not life annuities). Such provision provides that the relevant calculation is to be made taking into account the present value of the annuity, calculated at the legal interest rate, which should not be higher than 2,000 times the annuity. Such a value, that is lower in view of the different computation method, falls within the scope of the Euro 1 million allowance relating to the inheritance tax to be applied to the assets transferred in favour of the spouse and relatives in the direct line.

IV. ***In case of a transnational succession, an Italian Court must use the criteria of Italian law to identify the applicable rule of conflict and then preliminary qualify the relevant question as a question of succession (and as such to be governed by Article 46 of Law 218 of 31 May 1995). If the applicable law, thus identified, provides for a so-called "splitting" effect by subjecting movable property to the law of the de cuius' domicile and immovable property to the lex rei sitae - with consequent reference back to Italian law - two successions are opened and two inheritance assets are formed, each subject to different laws that verify the validity of the title of succession, the identification of the heirs, the determination of the shares and the protection of the legitimates.***

Italian Supreme Court in Joint Sections decision no. 2867 of February 5, 2021.

In this case, the complaining party was an Italian citizen married to an English citizen domiciled and deceased in the United Kingdom. Before his marriage to her, the deceased had made a Will in the United Kingdom, appointing his children as his heirs and giving the complaining party a legacy.
The complaining party then submitted an action for petition of inheritance before the Court of Milan and requested, principally, to ascertain that the testator's Will had been revoked by his subsequent marriage to her, in accordance with the provisions of the Will Act of 1837.
The complaining party alleged that, as a consequence of such revocation of the Will, the deceased's succession was to be considered "*ab intestate"* and then, she (i.e. the complaining party), in her capacity as wife, was entitled - in accordance with English law - to receive all the movable property of the deceased as well as - in accordance with Italian law, applicable by virtue of the " reference back" to Italian law provided by English law - one third of the

immovable property. The decision of the Court of First Instance, which granted the plaintiff's request, was then confirmed on appeal.

In this decision, the Supreme Court clarified that the applicable legal framework is to be found in Law 218 of 31 May 1995 ("**Law 218**"). Therefore, the qualification of the question relating to the revocation of the Will provided by the Wills Act 1837 as a question of succession (and not as a matrimonial question) must be made on the basis of Article 46 of Act 218; the relevant "conflict rules" must also be identified according to the *lex fori* and therefore must be found in Article 13 and Article 46 of the same Law 218.

In particular, as per article 46, the law applicable to a succession is the national law of the deceased person; in addition, the same article provides also the principle of the "unity of the succession".

In the present case, the national law of the testator would therefore be English law. However, English private international law splits the rules applicable to a succession, subjecting movable property to the law of the de cuius's domicile and immovable property to the *lex rei sitae* - with a consequent reference back to Italian law, admitted by art. 13 of the Law 218; therefore, the principle of the "reference back" admitted under art. 13 of the Law 218 makes the affirmed principle of the "unity of succession" set out in article 46 more flexible.

The Supreme Court therefore acknowledges that - from the point of view of the law governing the international succession - the simultaneous presence of the "rule of the unitary and universal nature of the succession" and the "rule of renvoi" imposes on the judges the task of carrying out a difficult coordination.

It follows that, given that different laws are applicable to the same succession, by virtue of the system of "splitting", two successions are opened and two inheritance assets are formed, each subject to different laws that verify the validity of the title of succession, the identification of the heirs, the determination of the shares and the protection of the legitimates.

Finally, it should be pointed out that, although this ruling relates to the Italian private international law rules applicable to successions at a date prior to the enactment of EU Regulation 650/2012, the Supreme Court's statement contains principles that are also applicable in the light of the new rules, since the aforementioned "splitting" can also occur in application of EU Regulation 650/2012.