



TOPHIC MARCH

# Relocation and international successions: why planning cannot stop at taxation

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## Overview

Our experts provide an overview of the main legal and tax implications related to international relocation. Relocating to a new country is not merely a change of residence, but a true transformation of one's entire personal, family, and financial context. Italy is becoming increasingly attractive due to its quality of life, strategic location, and favorable tax regimes; however, focusing solely on the tax aspect is limiting and risky. It is also necessary to consider civil law aspects, such as prenuptial agreements, the protection of partnerships, and succession law. In a global context, where assets, citizenships, and family members are spread across multiple countries, a comprehensive and international approach to relocation is essential. In particular, succession law is a key element both for those moving to Italy and for those relocating abroad, as it is crucial to coordinate the laws of the different countries involved in order to avoid conflicts of law, ensure that testamentary wishes are respected, and preserve the stability of assets over time.

**66** International relocation requires an integrated analysis of tax, civil, and succession aspects in order to coordinate the regulations of different jurisdictions.

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## Expert's opinion

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When assets and interests are spread across multiple jurisdictions, estate planning cannot be fragmented: only an integrated approach combining civil, tax, and international law ensures the stability of testamentary intentions and protects family wealth over time

### **INTERNATIONAL SUCCESSION**

*With the contribution of Carlo Giuseppe Saronni*

## WHY SHOULD AN INDIVIDUAL MOVING TO ITALY BE CONCERNED ABOUT ITALIAN INHERITANCE LAW IF MOST OF THEIR WEALTH IS HELD ABROAD?

In international successions, the physical location of assets (whether they be property in London or bank accounts in Singapore) is only one piece of the puzzle; what matters is the person's usual residence. Regulation (EU) no. 650/2012 has, in fact, introduced the principle of unity of succession: the entire estate is governed by a single law which, generally speaking, is that of the State in which the deceased had their usual residence at the time of death. This means that if an individual chooses Italy as their usual residence, Italian law will also regulate foreign assets, regardless of the individual's nationality. However, the regulation offers a crucial alternative: the possibility of expressly choosing to apply to succession the law of the State of citizenship. Such a choice, if properly coordinated, allows for continuity with the legal system of origin, preventing the succession from falling under an unforeseen law and/or one that limits, even partially, the testator's wishes.

## WHAT IS THE GREATEST RISK INVOLVED IN SWITCHING FROM A COMMON LAW SYSTEM TO THE ITALIAN LEGAL SYSTEM?

The risk lies in the profound cultural and regulatory divide between the two systems. In common law systems, the principle of testamentary freedom prevails: the individual may dispose of their assets without being obliged to set aside shares for relatives. In contrast, Italy provides strong protection for close family members through "forced heirship".

Lacking coordination, an HNWI habitually resident in Italy but used to absolute freedom of disposition in their country of origin risks having their wishes curtailed or nullified by the claims of statutory heirs under Italian inheritance law. The real issue, therefore, is not the difference between the systems, but the lack of prior coordination between them. Without an integrated approach that harmonises foreign testamentary provisions with the constraints of Italian civil law, the global estate may be exposed to lengthy and costly litigation that could undermine the asset protection strategy previously put in place.

## DOES TAX RESIDENCE ALWAYS CORRESPOND TO THE LAW APPLICABLE TO SUCCESSION?

The answer is no, and this issue is one of the riskiest misconceptions for those moving to Italy. Tax law and inheritance law are based on different principles and criteria. Tax residence is based on factual elements and objective criteria that must be met for more than 183 days during the tax year; on the other hand, what matters for inheritance law is the place where the deceased had established their last domicile, i.e. the main centre of their interests, as set out in the Italian Civil Code. An individual may be tax resident in Italy for income tax purposes because the requirements set out in the Consolidated Income Tax Law ('TUIR') are met, but may be considered domiciled in a foreign country for the purposes of inheritance law. Whilst tax law is 'imposed' on the taxpayer with no possibility of derogation, inheritance law can be freely chosen, provided the citizenship requirements are met. This asymmetry requires a unified approach to prevent tax choices from conflicting with estate planning.

## HOW DO TRUSTS GOVERNED BY FOREIGN LAW RELATE TO ITALIAN INHERITANCE LAW?

A trust is an extraordinary yet ‘multifaceted’ instrument which, although governed by foreign law, must comply with Italian public policy. According to established case law, the transfer of assets into a trust for the benefit of beneficiaries constitutes a gift, which can be classified as an ‘indirect donation’. Consequently, these transfers must be taken into account for inheritance purposes to verify whether they have infringed the shares reserved for forced heirs. A trust established under foreign law, which provides for broad discretion in favour of third parties to the detriment of children, may be challenged in Italy if it exceeds the “disposable portion”. Coordination is therefore essential: the aim is not to dismantle the trust, but to ensure that its structure is compatible with the limits of Italian civil law, guaranteeing that the asset segregation effect withstands any challenge by the forced heirs.

## WHAT IS THE FIRST STEP TOWARDS EFFECTIVE INTERNATIONAL COORDINATION?

The first step for an individual with cross-border interests is to adopt a systematic approach. The complexity of assets spread across multiple jurisdictions requires a vision going beyond a fragmented approach, which can lead to inconsistencies and duplication. It is essential to rely on a professional structure that offers unified coordination and can integrate national and international inheritance law with tax planning, company law, and international compliance requirements. Only a prior assessment of the compatibility of each testamentary provision under the various legal systems concerned can ensure the long-term stability of the estate planning. The ultimate objective is not merely efficiency in the present, but the assurance of the protection and fulfilment of one’s wishes, the prevention of future conflicts, and the transfer to subsequent generations of a solid and sustainable estate.

# Focus on

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# CASE STUDY 1

## A US citizen who moved to Italy

### SCENARIO

A US citizen, originally from New York State, decides to move their usual residence to Tuscany. Their assets consist of financial investments in the US, shareholdings in Italian companies and real estate in both countries. In their will, drawn up pursuant to the formal requirements of the laws in force in New York State, they stipulates that the majority of their assets be transferred to a philanthropic trust, excluding their spouse and two children residing in Italy.



1

**The legal conflict**

Pursuant to Regulation (EU) no. 650/2012, unless otherwise specified, the succession of the US citizen would be governed by the law of their habitual residence (and, therefore, by Italian law). The same would hold true by applying the rules of private international law, as Italy's jurisdiction would apply both to movable property (law of domicile) and to immovable property (the place where it is situated).

2

**The risk**

The spouse and children could claim their "forced heirship", thereby undermining the deceased's wishes; company shareholdings in Italy, for example, would have to be sold off or split up to meet the forced heirship, thereby compromising corporate governance.

3

**The solution**

In order to avoid the aforementioned risk and ensure that the testator's wishes are upheld, the testator – relying on Article 22 of Regulation (EU) no. 650/2012 – may include in their will a clause choosing the law of the State of New York (even though it is enacted by a state other than an EU member state) to govern the entire succession, thereby rendering the Italian rules on the reserved share inapplicable (save for very rare exceptions relating to public policy). In this way, the wishes of the US citizen are fully safeguarded, together with their freedom to dispose of their estate as they see fit.



## CASE STUDY 2

# An Italian citizen who moved to United Arab Emirates

## SCENARIO

An Italian citizen, unmarried and without children, moves to the UAE, but is not of Muslim faith. They own property in both Italy and the UAE, as well as financial investments and shareholdings in companies in the UAE. Before moving to the UAE, they drew up a will in Italy covering their entire estate.



1

### **The legal conflict**

Unless the provisions of the Italian are aligned with the relevant legislation in the UAE, assets located in the UAE are subject to local inheritance law (Shari'a)

2

### **The risk**

Risk of assets being 'frozen' by the Shari'a Court pending the issue of a specific certificate of inheritance (the timeframe cannot be determined in advance) and risk that the deceased's testamentary wishes may be disregarded, resulting in the allocation of assets at the Court's discretion.

3

### **The solution**

Drafting of a will in the UAE, designating Italian law as the governing law for the deceased's estate and setting out the distribution of assets (movable and immovable property) located in the UAE.

# Glossary

## **REGULATION (EU) NO. 650/2012**

This is the key legislation governing international successions in most Member States, with the exception of Ireland and Denmark. It applies to any person residing in an EU Member State, regardless of their nationality.

## **USUAL RESIDENCE**

It serves as the primary connecting factor for determining the law applicable to succession. Unlike tax residence, it is not based on factual elements and objective criteria that must be met for a specific period of time (183 days), but rather identifies the actual centre of the individual's vital interests and substantial ties.

## **UNITY OF SUCCESSION**

Fundamental principle according to which the entire estate is governed by a single law, regardless of the nature or geographical location of the assets.

## **PROFESSIO IURIS (CHOICE OF LAW)**

The right granted to the testator to expressly state, in their will, that they wish to have their estate settled in accordance with the law of the State of which they are a national at the time of making the choice or at the time of death. It is the primary means of avoiding conflicts of law and jurisdiction.



## **FORCED HEIRSHIP**

A concept typical of civil law systems, which reserves a portion of the estate for certain relatives (spouse, children, ascendants, etc.). This protection applies regardless of the wishes expressed in the will and may limit the testator's freedom to dispose of their estate.

# Contacts

Our professionals are available to answer any questions or provide further clarification.



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