

# Introduction to Italian tax law

- **Taxes levied in Italy**
- Constitutional principles concerning tax law
- Tax administration
- Tax rulings

# Taxes levied in Italy

- Complex system with a variety of taxes applied
- Before 1994 more than 100 different kind of taxes
  - Tax on refrigerators
  - Tax on graduations
  - Tax on weights and measures
- After 1994 trend aimed at: (i) decreasing the number of taxes; and (ii) simplifying the application and collection of taxes

# Direct taxes

- Individual income tax (IRPEF)
- Corporate income tax (IRES)
- Regional Income Tax on business activities (IRAP)
- Regional, Provincial and Municipality surtaxes
- Municipal tax on real estates (IMU)
- Substitute taxes
  - Applied on certain passive income, on revaluation of certain assets, etc.

# Indirect taxes

- VAT
  - Shaped on European Directive
- Registration tax
- Stamp duty
- Excises
  - Tobacco products, alcoholic products, oil products, etc.
- Tax on games (lotto and lotteries)
- Other indirect taxes
  - Annual contribution for TV possession, tax on insurance policies, etc.

# Inheritance and gift taxes

- **Rates for transfers to:**

- The spouse and of direct descendants or ascendants are subject to tax at a rate of 4% on the value of the inheritance or the gift exceeding EUR 1 million;
- Brothers and sisters are subject to tax at a rate of 6% on the value of the inheritance or the gift exceeding EUR 100,000;
- All other relatives up to the fourth degree, or relatives-in-law up to the third degree: 6% on the entire value of the inheritance or the gift;
- Others: 8%

# Inheritance and gift taxes (cont.)

- Territoriality principle
  - Worldwide taxation for resident deceased persons or donors
  - Italian situs assets in case of non-residents deceased persons or donors (some exceptions for gifts tax)
- Tax due by heirs or beneficiaries

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# The “reservation of law” principle

## Article 23 Italian Constitution

*“No obligations of a personal or a financial nature may be imposed on any person except by law”*



# The “reservation of law” principle

- “Absolute” vs. “Relative” reservation of law principle
- Meaning of the word “law”
  - Ordinary Law
  - Law Decree
  - Legislative Decree
  - Regulations (Government and Ministries)

# The “reservation of law” principle and local authorities

- Limited taxation powers of local authorities
- Article 117 Italian Constitution

*“The State has exclusive legislative powers in the following subject matters:*

*e) (...) state taxation and accounting systems; (...)*

*Concurring legislation applies to the following subject matters:*

- *harmonization of public accounts and co-ordination of public finance and the taxation system; (...)*

*In the subject matters covered by concurring legislation, legislative powers are vested in the Regions, except for the determination of the fundamental principles, which are laid down in State legislation.*

*The Regions have legislative powers in all subject matters that are not expressly covered by State legislation.”*

# The “ability to pay” principle

## Article 53 Italian Constitution

*“Every person shall contribute to public expenditure in accordance with his/her tax-payer capacity*

*The taxation system shall be based on criteria of progression”*

# The “ability to pay” principle

- The “ability to pay” principle as a specification of the equality and solidarity principles
- Indicators of the “ability to pay”
  - Non exhaustive list: income, consumption, estates, increase in value of estates, etc.
- Progressivity to be satisfied by the tax system as a whole, and not by each tax

# Relationship between domestic and international tax law (*deferment*)

- Constitutional principles dealing with relationship between domestic and international law
  - Generally recognized rules of international law
  - International organizations (particularly, EU)
  - Bilateral and multilateral treaties

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# The Tax administration

- The “Ministry of Economy and Finance” (Ministero dell’Economia e delle Finanze)
  - Took the duties of the Ministry of Finance and of the Ministry of Treasury in the year 1999
- The “Tax Policy Department” (Dipartimento per le politiche fiscali)
  - Is the Office within the Ministry in charge to Tax Legislation and supervise tax administration
  - No relationships with Taxpayers
- The Four “Agencies”
  - Tax Agency (Agenzia delle entrate). In 2012 it incorporated the Territory Agency;
  - Custom, and State property Agencies
    - *Agencies are public bodies with legal personality* 15

# The Italian Taxpayer Chart

## Law July 27, 2000, no. 212

- Application of the “*bona fide*” principle in the tax law field
  - Taxpayers and tax authorities must cooperate
  - Taxpayer shall not suffer tax penalties if:
    - it follows the instruction of the tax authorities
    - the meaning and the scope of application of the law is objectively uncertain
    - the violation is merely formal (meaning of “formal violation”)



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# Tax rulings

- Under Article 11, L. no. 212/2000, a taxpayer may submit a tax ruling request concerning:
  - 1) The application of statutory provisions or objectively unclear interpretations of the tax legislation (“interpello ordinario”);
  - 2) The valuation and the fulfilment of the requirements necessary to qualify for specific tax regimes (interpello probatorio);
  - 3) the application of the abuse of law legislation to actual cases (interpello anti-abuso);
  - 4) The non-application of specific anti-avoidance rules (interpello disapplicativo);

# Tax rulings

Moreover, an international ruling procedure is available to resident and non-resident enterprises involved in international transactions, with regard to:

- Transfer pricing (including advance pricing agreements, APAs) and assessment of asset values in the case of inbound or outbound transfer of residence for tax purposes;
- Domestic and tax treaty rules concerning the attribution of profits and losses to Italian or foreign PEs;
- The presence of an Italian PE; and
- Domestic and tax treaty rules applicable to cross-border dividends, interest, royalties and other income.

Duration of the agreement: 5 years

# Tax rulings

Since 2016 introduced a **tax ruling on new investments** for those enterprises which intent to make new investments in the Italian territory for a value above € 30 million which involve a substantial and long-lasting impact on employment

## **Object of ruling:**

- Tax treatment of the investment plan and of any related extraordinary transaction;
- Preliminary assessment on the abuse of law or on the tax avoidance;
- The existence of the conditions for the disapplication of the anti-avoidance rules and the admission to other regimes

The Italian Revenue Agency will have to give a written and justified answer within 120 days