



**University
of Ferrara**

**Department
of Law**

THE OECD MODEL
CONVENTION ON
INHERITANCE AND
GIFTS
INHERITANCE
TAXATION IN OECD
COUNTRIES AND THE
GERMAN/ITALIAN
EXPERIENCE

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The OECD Model Convention on Inheritance and Gifts

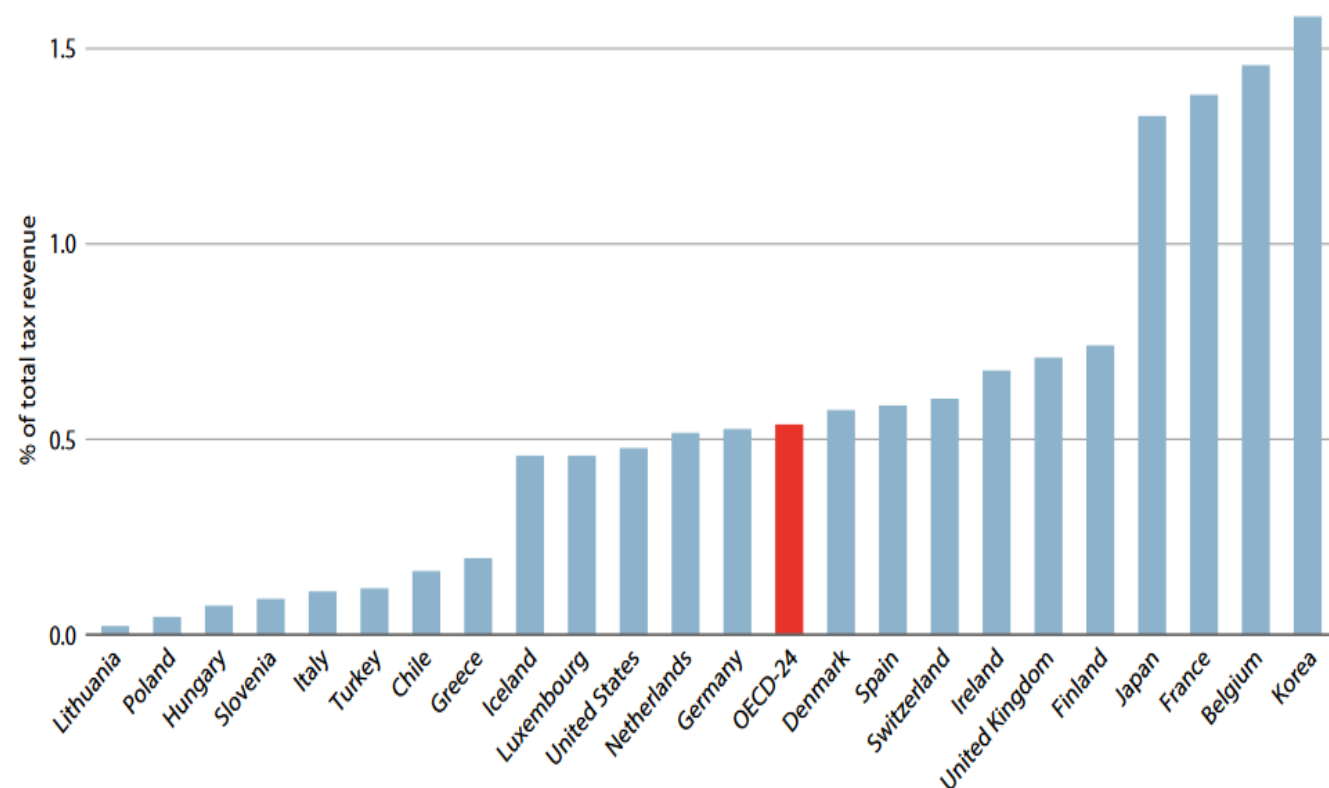
- ❖ On 28th June 1966 → The council of the Organization for Economic Co-operation and Development adopted a Recommendation concerning a Draft Convention for the avoidance of Double Taxation on Estates and Inheritances.
- ❖ The Committee on Fiscal Affairs then started a revision → OECD report with the new Model Double Convention on Estates and Inheritance and on Gifts → The 1966 Estate Tax Draft.
- ❖ The conclusions of the report contain recommendations of the Committee on Fiscal Affairs in order that the implementation of the new Model Convention may result in further progress towards harmonization of bilateral conventions and elimination of double taxation → The Council of the OECD has endorsed these views and adopted a Recommendation on 3rd June 1982.

The scope...

- Most Member countries impose taxes on inheritance and gifts on the base of the domicile of the deceased.
- Others impose a comprehensive tax liability on one or more other criteria:
 - Nationality of the deceased or donor;
 - Domicile, residence or nationality of the heir, legatee, donee, etc.; or
 - The fact that either the deceased or donor, or the heir, legatee or donee was, at some point in time, domiciled or resident in their country.

INHERITANCE TAXATION IN OECD COUNTRIES

- Across the OECD, 24 countries tax end-of-life bequests → there are two different approaches:
 - donor-based estate taxes;
 - recipient-based inheritance taxes.
- Revenues from inheritance, estate, and gift taxes form a very small portion of total tax revenues across OECD countries: 0.5 % in most countries; more than 1% only in 4 countries (Belgium, France, Japan, and Korea).
- Low tax revenues are partly due to narrow tax bases → due to tax exemptions and preferential tax treatment applying to certain assets.



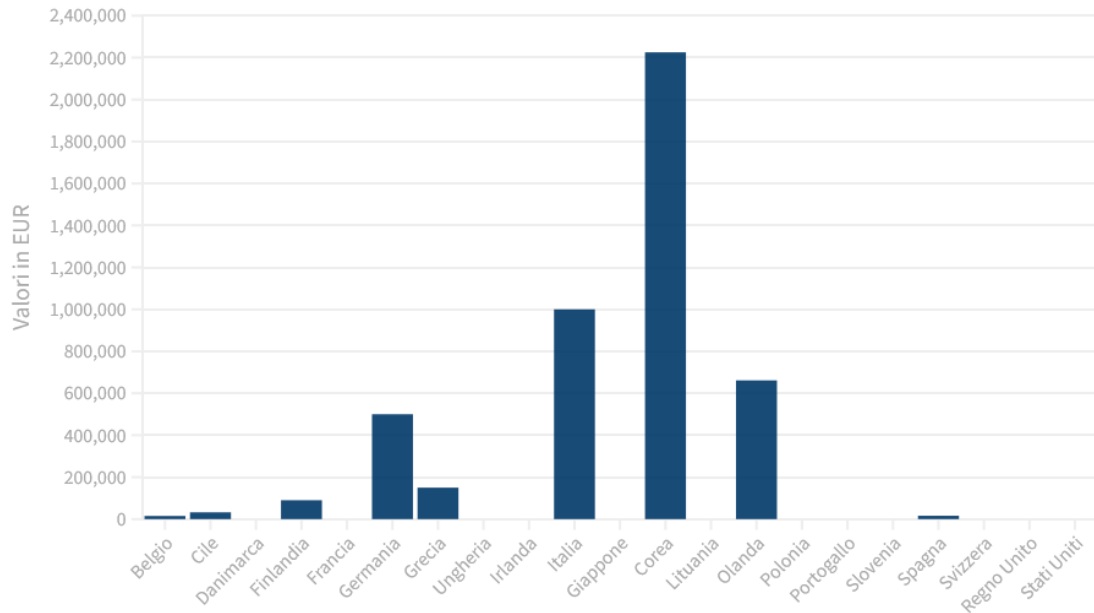
Note: Data are for 2018 for Greece and Japan. Data for the OECD average refer to the 24 countries with these taxes. Portugal is not shown as inheritance tax revenues are not recorded in the tax revenue category that is the source for this figure.

Source: OECD (2020), *Revenue Statistics 2020*, OECD Publishing, Paris, <https://doi.org/10.1787/8625f8e5-en>.

Franchigia e esenzione per il coniuge dalla tassa di successione nei diversi Stati Ocse



■ Franchigia/Esenzione per coniuge



Source: [Rapporto Ocse sulle tasse di successione](#) • I punti pari a zero indicano una esenzione totale dal pagamento, i punti diversi da zero indicano invece una franchigia

Comparison between countries → 2 criteria:

1. Thresholds and exemptions → higher for close relatives, particularly for the donor's spouse and children. Spouses are exempt in 13 countries, and children in 6. Where they are not exempt, they benefit from the highest tax exemption thresholds.

THRESHOLDS FOR SPOUSES

ITALY

Threshold = 1 million €
for both children and
spouses

FRANCE

Threshold = no exemption
threshold

GERMANY

Thresholds = 500.000€

THRESHOLDS FOR DESCENDANTS

ITALY
Thresholds = 1 million€

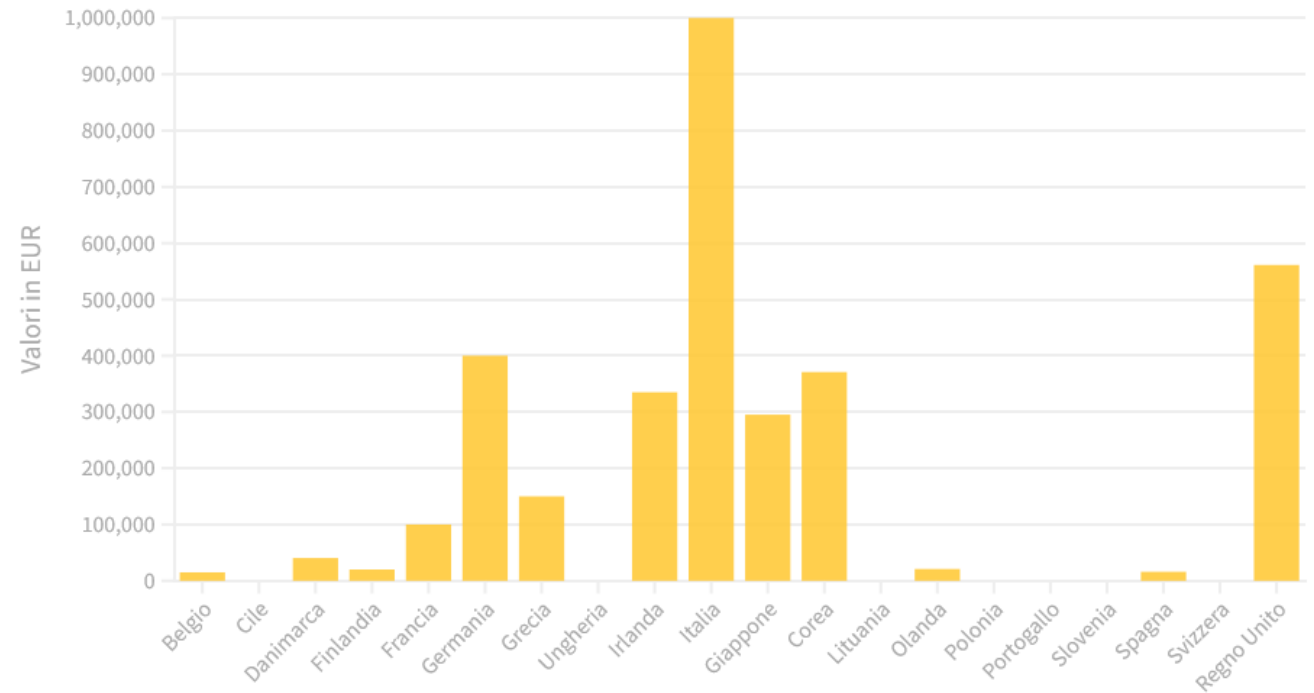
FRANCE
Threshold = 100.000€

GERMANY
Thresholds = 400.000€

Franchigia ed esenzione per i figli dall'imposta di successione nei diversi Paesi Ocse*



■ Franchigia/Esenzione per figli



Source: [Rapporto Ocse sulle imposte di successione](#) • I punti pari a 0 indicano una esenzione totale dal pagamento, i punti diversi da zero indicano invece la franchigia. *Gli Stati Uniti presentano una franchigia pari a 10.138.329€; il dato non è stato incluso in quanto eccessivamente grande rispetto agli altri numeri



2. RATES:

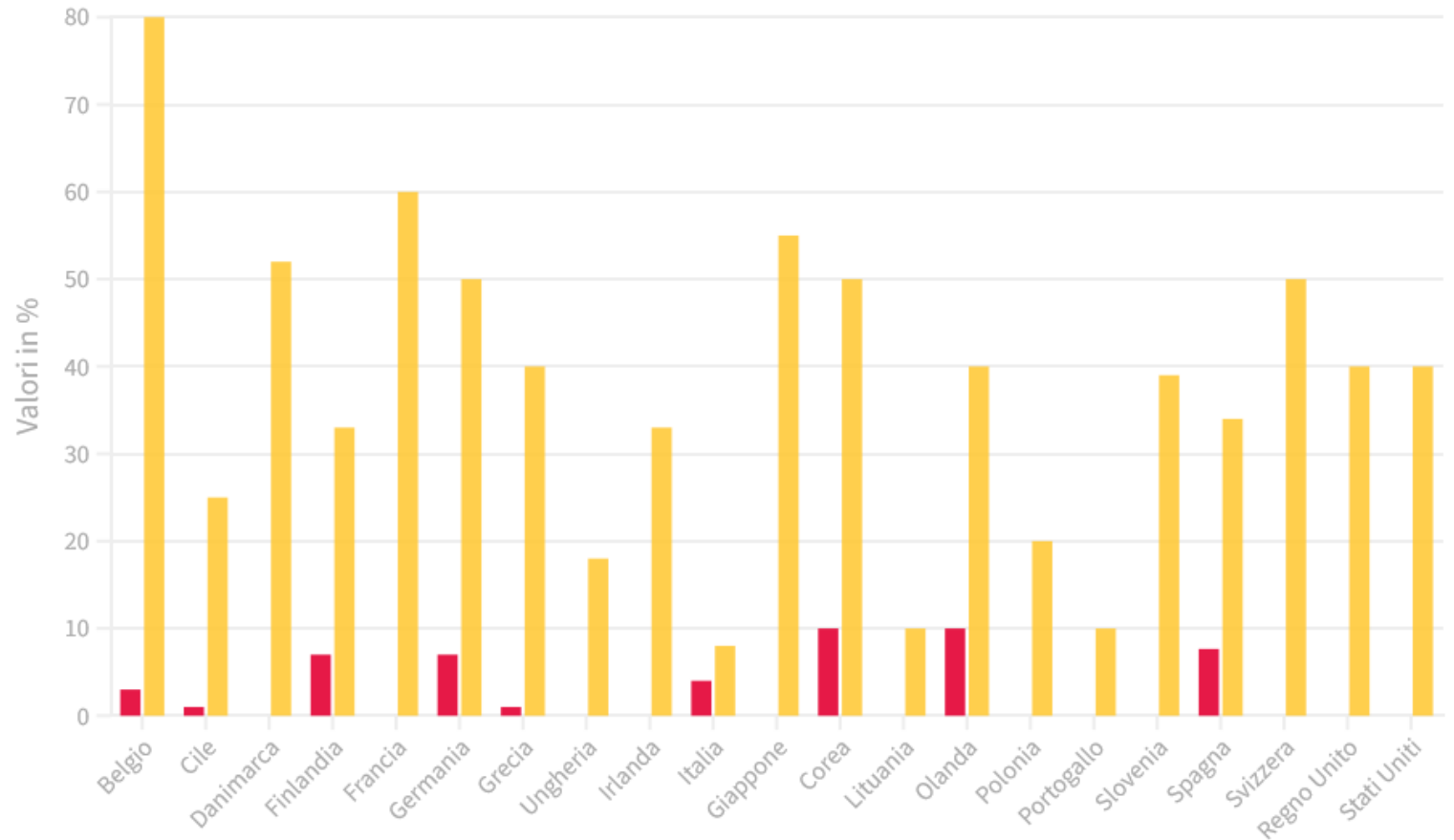
ITALY = from 4% to 8%

FRANCE = maximum 60%

GERMANY = from 7% to 50%

- ☐ Italy's inheritance tax system is competitive due to higher income taxes (45%).

Aliquota minore Aliquota maggiore



Source: [Worldwide Estate and Inheritance Tax Guide 2020 \(EY\)](#)

German / Italian experience - Supreme Tax Court, judgment of 17th November 2021 (II R 39/19)

- Foreword: when we talk about inheritance transactions with cross-border implications, a distinction must be made between inheritance law and inheritance tax law
→ Inheritance transactions subject to foreign inheritance law may also be subject to inheritance tax in Germany.
- Such a case was decided by the Supreme Tax Court in a situation where the beneficiary was resident in Germany whilst her deceased father was an Italian citizen and resident there.
- **German Civil Law** → the heir assumes the legal status of the deceased immediately after his death (Sec. 1922 (1) German Civil Code).
- **Italian Civil Law** → the status as heir becomes effective only upon acceptance of the inheritance.



The case

- The Plaintiff (P) is an Italian citizen. Her father, also Italian citizen, **died in August 2015** with last residence in Italy and estate there.
- The P had her habitual residence in Germany at the time of death.
- P gave up residence in Germany at the beginning of July 2016. Then declared her **acceptance of the inheritance in Italy in July 2016**.
- The German tax office was of the opinion that the inheritance **tax was already due at the time of her father's death** and not at the time of acceptance of the inheritance.
- **The Tax Court of Hesse** had ruled that the inheritance of the P from her father was subject to German inheritance tax under the German Inheritance Tax Act.
- P had her habitual residence in Germany + The tax arose at the time of her father's death.
- **Supreme Tax Court** confirms obligation to pay inheritance tax in Germany → **Sec. 9 IGTA**
- Had the Supreme Court confirmed the comparability of German and Italian inheritance law, the transaction would have been tax-exempt in Germany.

A FEW CONSIDERATIONS...

- Applicable succession law → **EU Regulation 650/2012**
- No convention stipulated between Germany and Italy, application of domestic inheritance tax law rules by both countries.
- Problem of double taxation.
- How can it be solved?
 - **Art. 26, paragraph 1 letter b) of the Law Decree n. 346/1990** → according to which from the amount of the inheritance tax must be deducted *«the taxes paid to a foreign State, depending on the succession itself and in relation to the assets existing in that State, up to the amount of the part of the inheritance tax proportional to the value of the assets themselves, without prejudice to the application of international treaties or agreements»*.

Thank You!



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