



**University
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THE OECD MODEL
CONVENTION ON
INHERITANCE AND
GIFT:
the French-Italian
experiences with the
relevant case law

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1. Model Double Taxation Convention on Estates and Inheritances and on Gifts

How this Model was born

- OECD: international organization that works to create better policies.
 - Goals: to promote policies that support prosperity, equality, opportunity and well-being for the taxpayers.
- Adoption of the 1963 Income Tax Draft.
- Adoption of the 1966 Estate Tax Draft.
- Revision of the 1963 Income Tax Draft by the Fiscal Committee (before) and the Committee on Fiscal Affairs (after): adoption of *the 1977 Income Tax Model*.
- Revision of the 1966 Estate Tax Draft by the Committee on Fiscal Affairs: adoption of *the 1982 Estate Tax Model*, accompanied by a recast of the Commentaries.
 - Main feature of the new Model: taxes on gifts inter vivos are now included within the scope of the Convention

The Scope of this Model Convention

- Criteria of Most Member countries: death duties and taxes on gifts inter vivos on the value of all the property of a person's estate if the deceased was domiciled or living permanently within their territory at the time of the death.
- Criteria of other Member countries:
 - nationality of the deceased or donor;
 - domicile, residence or nationality of the heir, legatee, donee, etc.;
 - the fact that either the deceased or donor, or the heir, legatee or donee was, at some prior time, domiciled or resident in their country;

Why this Model was created and its importance

- The important thing: in the case of taxes on inheritances and on gifts secure fiscal situation of people in each Member country through the application of common solutions for eliminating double taxation.
- The result of the work of the Committee on Fiscal Affairs:
 - significant number of conventions concluded between member countries;
 - conventions follow the pattern and the main provisions of the Model Agreements;
- Model Conventions have facilitated bilateral negotiations between Member countries, achieving a desirable harmonization in bilateral conventions: benefit of both taxpayers and national administrations.
 - Commentaries have made easier the interpretation and application of bilateral conventions along common lines

Why this model has not been so successful

- One of the main factors that probably did not allow this model to achieve a triumphant outcome is the difference in the consideration of the taxable subject between the different countries→in the inheritance tax:
 - some countries consider the heirs/legatees as the taxable person;
 - while others consider the deceased as the taxable person;

2. General reflections on inheritances and gift taxation by OECD

The ideal purpose

- The potential of Inheritance taxation: raising revenue, addressing inequality and improving efficiency in OECD countries.
- The Covid-19 crisis has further exacerbated this process: current context of persistently high wealth inequality and unequal distributed wealth transfers.
- Need to design carefully inheritance, estate and gift taxes.

Problems associated with a higher inheritance tax

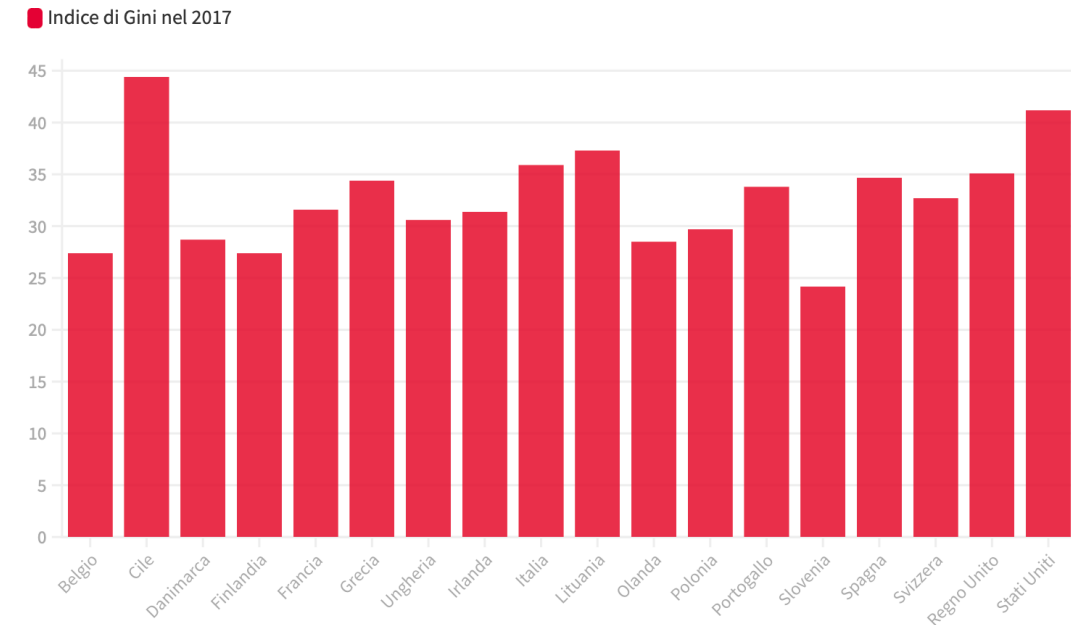
- This type of tax is very predictable: sooner or later donors and heirs will have to face this situation.
- People are involved to change their behavior and to plan a financial strategy.

The increase in inequality: numerical data

We can analyze some reports:

- “Inheritance Taxation in OECD Countries” (2021):
 - in 27 out of 36 countries (now 38) the richest 10% of the population owned half of the national family wealth, while 1% owned on average 18% of the same.
- Oxfam (2020):
 - the world's richest 1% have more than twice as much wealth as 6.9 billion people;
 - taxing an additional 0.5% of the wealth of the richest 1% over the next 10 years is equal to investments needed to create 117 million jobs in education, health and elderly care and other sectors, and to close care deficits;
- A study by two economists from the Bank of Italy, Guglielmo Barone and Sauro Mocetti (2011):
 - in Florence the richest families have been the same for 600 years. This inevitably denotes a great administrative and financial capacity of privileged families, but at the same time underlines how complicated it is in Italy to build great wealth outside of hereditary and family dynamics.

- The Gini index (indicator of concentration of wealth)
 - increasing in recent years → wealth is concentrating in the hands of a few;
 - crossing the data on the size of the inheritance tax rates of the various countries with the related Gini index:
 - Belgium, which has the highest rate, has a very low Gini index;
 - Italy has one of the highest Gini indexes, even though it has some of the lowest rates among all the countries considered.



- Economists' studies in the "Inheritance Taxation in OECD Countries":
 - transfers of wealth from one generation to another give a competitive advantage to heirs against which the rest of the population cannot compete;
 - focus on meritocratic: taxing transfers in order to level out the population's wealth inequalities;
 - it is preferable to impose high taxation on intergenerational transfers in order to reduce taxes on personal income, as the latter is achieved mainly through one's own efforts;
 - optimal inheritance tax rate: between 50% and 60%;

3. The relevant case law

A cross-border succession case between Italy and France

- Response to question no.206 by Agenzia delle Entrate (2020).

It can be summarized as follow:

- I. Ms.Tizia, resident in France, points out that on date x, her spouse, of whom she is heir together with her only daughter, died in France, where she resided.
- II. The appellant (Ms.Tizia) owns, under the community of property regime with the deceased:
 - a property located in France;
 - a residential property in Italy, given on loan for use to her daughter, who has lived there for over 20 years;
- III. The notary set up the succession according to what was established in a donation contract between spouses, stipulated in France on date Y: the deceased would have donated to the appellant (in the event that she survived him) all of the assets in his possession on the date of his death.
- IV. On date Z, the daughter expressed her consent to the execution of the aforementioned provisions of generosity of her father, who died, in favor of her mother Tizia, renouncing her inheritance reserve.
- V. The appellant requests:
 - confirmation of the applicability of French legislation to the case in question;
 - how to donate the entire ownership share of the property to the deceased's wife;



We can analyze the succession from two profiles:

1. Civil point of view: Agenzia delle Entrate confirms that succession is governed by French law, according to EU provisions.
 - Art.21 of the EU Regulation no.650/2012: "*the law applicable to the entire succession is that of the State in which the deceased had his habitual residence at the time of death.*"
2. Fiscal point of view: Agenzia delle Entrate refers to the Convention for the avoidance of double taxation regarding inheritance and gift between Italy and France (ratified with law no.708 of 14 december 1994).
 - Article 5 of the Convention: "*immovable property which forms part of the inheritance or donation of a person domiciled in a State and is located in the other State is taxable in that other State.*" → the property is therefore taxable in Italy.
 - Italian legislation, according to art.2 of Legislative Decree 346/90 ("TUS"): "*If on the date of opening of the succession or on that of the donation the deceased or the donor was not resident in the State, the tax is due limited to the assets and rights existing there.*" → it can be applied art.2 paragraph 48 of Legislative Decree 262/2006: in case of transfer to the spouse application of inheritance tax at a rate of 4% above the exemption of €1 million.



Thank You!



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