



**University
of Ferrara**

**Department
of Law**

INHERITANCE AND GIFT TAXATION: THE ALLOCATION OF THE POWER TO TAX

Italian legal framework and problems concerning the territoriality principle

by

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Lyon

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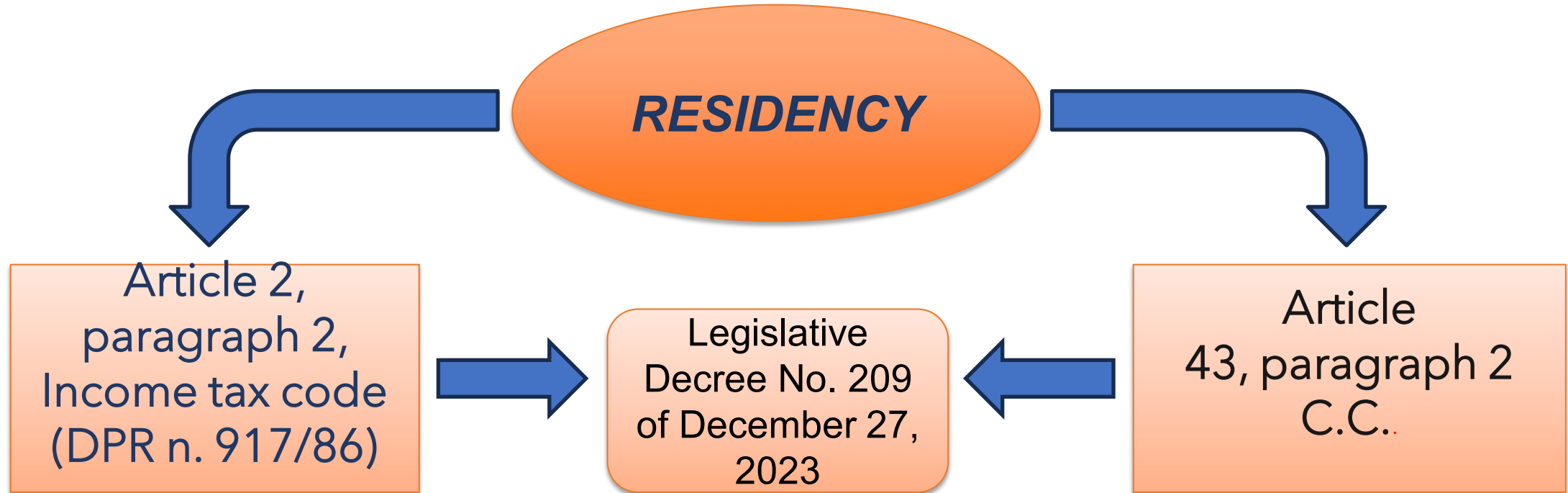
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The criteria for allocation of the power to tax inheritance and donations

Art. 2 Legislative Decree no. 346/1990

- ***Worldwide/Global criterion:*** If the testator/deceased, at the date of death, is tax resident in Italy, the inheritance tax is due with reference to all assets and rights, even if located abroad; if the donor is tax resident in Italy, the tax is due with reference to all assets transferred, even if located abroad
- ***Territorial criterion:*** If the testator/deceased, on the date of death, or the donor, on the date of gift, is not a tax resident of Italy, the inheritance or gift tax is applied only on property and rights existing in the territory of the State (Italy).

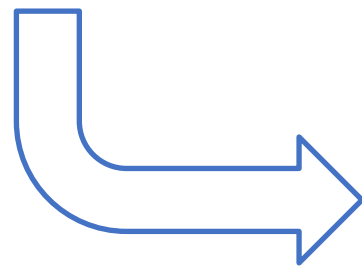
The troubled notion of Residency in the allocation of the power to tax



A brief view over the territorial principle in the Code général des impôts

Fundamental articles in order to understand the taxation dialogue between Italy and France:

- 1. Article 4A:** *"People whose tax domicile (defined by article 4B) is in France are liable for income tax on all their income. Those whose tax domicile is outside France are liable for income tax on their French-source income only."*
- 2. Article 4B:** *definition of domicile in order to understand who can be a taxpayer in France*



THIS FRAMEWORK SHOWS GREAT AFFINITIES BETWEEN THE FRENCH AND ITALIAN MODELS, DESPITE CURIOUS DIFFERENCES; THIS WILL BE DISCUSSED IN REGARD TO ART. 750 C.G.I.

Italy-France International Convention, 20 December 1990, Rome

Law No. 708 of December 14th, 1994 (ratifying the Convention in Italy)

“In the convention, as in the National Law, it is fundamental to consider the nature of the assets to determine the appropriate application of international tax rules”

Back to Italian Law: the presumption of assets localization in Italy

For a large list of assets, **Article 2, para. 3, Legislative Decree n. 346/1990** provides for a presumption “iuris et de iure” of location within the national territory, stipulating that these assets and rights are to be considered located within the Italy in the following cases:

1. **ASSETS AND RIGHTS REGISTERED IN PUBLIC REGISTERS**
2. **SHARES OF ITALIAN COMPANIES**
3. **BONDS AND OTHER SECURITIES, ISSUED BY THE STATE**
4. **SECURITIES RELATED TO ASSETS LOCATED IN ITALY**

ASSET	ITALIAN LAW	ITALY-FRANCE
REAL ESTATE ASSETS	TERRITORIALITY PRINCIPLE: TAXED IN ITALY IF LOCATED IN ITALY, NO MATTER THE RESIDENCE OF THE DECEASED/DONOR	TAXED IN THE STATE WHERE THE REAL ESTATE ASSET IS LOCATED
STATE SECURITIES	STATE THAT HAS ISSUED THE SECURITIES	STATE THAT HAS ISSUED THE SECURITIES
SHARES AND OTHER PARTICIPATIONS	STATE WHERE THE COMPANY IS MAINLY LOCATED	RESIDENCY OF THE COMPANY, IT DOESN'T MATTER THE REAL CENTRE OF ACTIVITY
RECEIVABLES	DEBTOR'S RESIDENCY STATE	DEBTOR DOMICILE
BANK ACCOUNTS	STATE OF RESIDENCY OF THE CREDIT INSTITUTE	STATE OF RESIDENCY OF THE CREDIT INSTITUTE

Article 5: the real estate assets

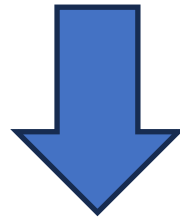
- **PARAGRAPH 1:** *Real estate, forming part of the inheritance or gift, which is located in the other state, as opposed to the state of domicile, is taxable in that other state.*
- **PARAGRAPH 3:** *as far as France is concerned, shares and units of companies engaged mainly in real estate business are also considered real estate.*

**A DIRECT LINK TO ARTICLE 750 C.G.I.
AND THE INTERESTING CASE OF S.C.I.**

The case of bank accounts, influence of the convention in the Revenue Agency's Ruling

CONVENTION:

Money transfers through banks are taxed according to where the issuing bank is located (as for shares and receivables ex Article 8)



RULING NO. 7/2024 REVENUE AGENCY:

Strict reading of the territoriality criterion: the asset must exist in the territory of the state at the time of the succession/donation

The relevance of the asset's typology and the nature of the tax law

**RULING NO. 310/2019
REVENUE AGENCY**



The exclusion of Italian taxation also entails the exclusion of other taxes, including the registration tax.

**ITALIAN SUPREME COURT
JUDGEMENT NO. 13579 OF
2007**



The important difference between direct and indirect interest results in an exclusion of Italian taxation.

CONCLUSIONS

The complexity of the types of assets in the modern world - just think of the immense increase in innovative financial securities over the past two decades - implies a massive consequence of adaptation in domestic and international tax law.

The importance of coordinating the principle of territoriality with a clear idea of the nature of assets is highly topical today, and treaties represent a starting point in this clarification process.

However, EU harmonization work is still needed in many areas, including the taxation of inheritance and gift facts.

Thank you!



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