



**University  
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# INHERITANCE AND GIFT TAXATION: THE ALLOCATION OF THE POWER TO TAX

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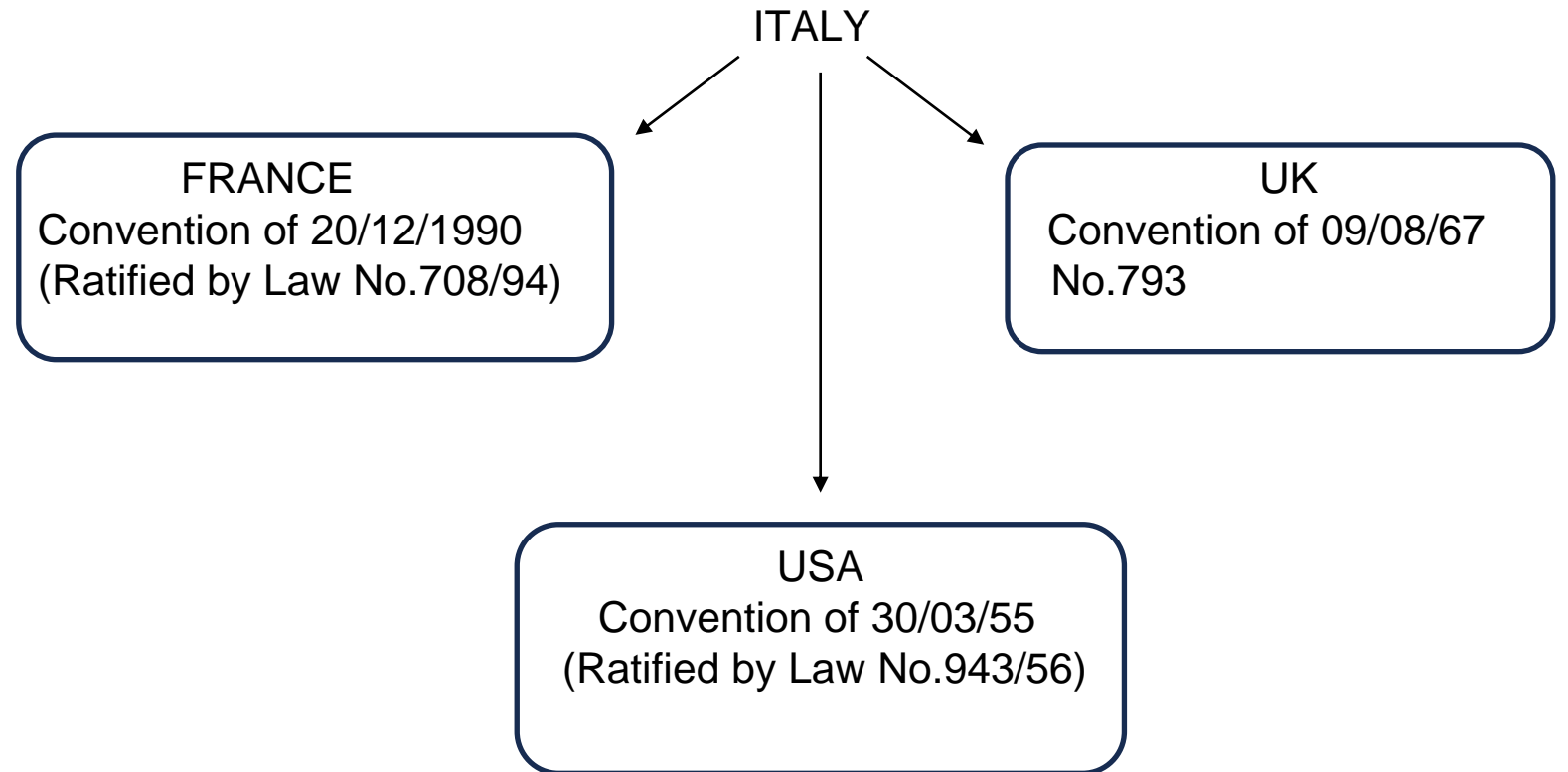
# INHERITANCE AND GIFT TAXATION

These are taxes that affect the value of transfers of assets both upon death (successions/inheritance) and during lifetime (gifts).

International inheritance and gifts entail an analysis of the rules of the involved states, often conflicting, thus requiring determination of the applicable law for the case at stake.



Italy has entered several bilateral agreements on succession matters according to the OECD convention model in order to eliminate the double taxation.



# TAXATION PRINCIPLES: THE CREDIT METHOD

- **With France:** The state deducts from its tax the tax paid in another state on taxable assets, but the deduction amount cannot exceed the proportionate part of the tax of the first state.
- **With UK:** In determining the amount of the taxable base, the deductions allowed by the laws in force in the state where the tax is applied are granted.
- **With USA:** When the deceased lived elsewhere, the tax exempts a portion of assets comparable to what would be taxed if they were local, ignoring assets outside the state. If the deceased lived in-state, the tax deducts the tax paid to the other state, limited to the portion attributable to in-state assets.

|  | ITALY                                     | FRANCE  | UNITED KINGDOM  | UNITED STATES   |
|--|---|---|---|---|
| <b>REAL ESTATE</b>                     | Absolute presumption of location          | Taxable in the state where they are located                             | Taxable in the state where they are located                                     | Taxable in the state where they are located                                     |
| <b>MOVABLE PROPERTY</b>                | Only if existing in the state             | Taxable where they have a fixed establishment                           | The location where they are situated at the time of death or at the destination | The location where they are situated at the time of death or at the destination |
| <b>SHARES AND OTHER PARTICIPATIONS</b> | State where the company is mainly located | Residency of the company, it doesn't matter the real centre of activity | Existing where the company is established                                       | Existing where the company is established                                       |

|                      | ITALY   | FRANCE  | UNITED KINGDOM  | UNITED STATES   |
|----------------------|---|---|---|---|
| <b>RECEIVABLES</b>   | Taxable only if the debtor is a resident of the state   | Taxable in the state they are in                        | Taxable in the state where the debtor was residing at the time of death | Taxable in the state where the debtor was residing at the time of death |
| <b>BANK ACCOUNTS</b> | Taxable only in the location where the account was held | Taxable only in the location where the account was held | Taxable only in the location where the account was held                 | Taxable only in the location where the account was held                 |

# EXAMPLE

**CASE:** a father is tax resident in Italy and leaves as inheritance to his newborn son, also resident in Italy, a property located in the United Kingdom.

How should the two states proceed?



# ITALIAN SUPREME COURT JUDGEMENT NO. 2867/2021

Succession concerning a British citizen deceased in Italy, but with real estate properties both in Italy and in the United Kingdom

**Question:** Which law applies to the succession?

# ITALIAN SUPREME COURT JUDGEMENTS NO. 6955/1994 AND 8346/2006

On the presumption of existence of money, jewelry and furniture for the deceased person not resident in Italy.

The Italian Law provides for an increase in the taxable base of 10% of the "net" inheritance by way of the presumed existence in the estate of money, jewelry and furniture.

**Question:** does the 10% increase also apply to the taxable base of the non-resident person in Italy for single assets (e.g. real estate assets in Italy) existing in Italy and subject to inheritance tax in Italy?

*Thank You!*



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