

NO NEED TO SUM THE DONATIONS RECEIVED AND THE ASSETS OF AN ESTATE FOR TAX PURPOSES

With rulings No. 22738/2020 and No. 25909/2020, the Italian Supreme Court confirmed the case-law trend that has taken root in recent years, according to which - for purposes of determining the tax burden - there is no need to sum donations received from the deceased person during his lifetime and the assets received after his death. Each set of assets - the donations on the one hand and the assets of the estate on the other hand - will be subject to a separate taxation. Another implication of this interpretation is that Italian Tax Authorities should not consider donations as able to reduce the franchise provided for inheritance tax, which will remain unaffected until the opening of the succession.

The specific decision issued in the case at hand concerned a dispute in which the Italian Revenue Agency had challenged the decision of the Veneto Regional Tax Commission, which had deemed irrelevant some donations (made between 2001 and 2006, a period of time in which, however, inheritances and donations were not subject to taxation, pursuant to Law no. 383/2001).

Before this new interpretation was upheld by Italian lower Courts and finally also by the Italian Supreme Court, the value of the donations which a person benefited from and the assets of the estate received from the deceased person had to be summed together to determine the tax rate applicable to the succession. This method made sense in a system of progressive tax rates, such as the one shaped by Legislative Decree no. 346/1990. The Italian Revenue Agency wanted to avoid that, through a series of donations, it could be possible to decrease the value of the inheritance and therefore reduce the applicable tax rate.

Conversely, Law No. 342/2000 created a system in which rates were fixed and based on the degree of kinship (and applied exclusively on the share of goods to be inherited), thus eliminating the reason for summing together the donations received and the assets of an estate. This same conclusion applies also to the current inheritances and donations tax system introduced by Law Decree no. 286/2006 too, which is also based on fixed rates.

The Supreme Court reached also another conclusion stating that, donations made between 2001 and 2006 (a period of time in which no taxation of inheritance was provided for), shall not be subject to any taxation in the context of new inheritances.