BRIEF GUIDE TO ITALIAN INHERITANCE FOR FOREIGNERS

General overview of Italian Succession

What to know to deal with a cross-border succession for an Italian Inheritance
Brief guide to
Italian Inheritance for foreigners
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A Brief guide to
Italian Inheritance for foreigners

What to know to deal with a cross-border succession for an Italian Inheritance

Semel Heres: Italian Inheritance Professional Network

Semel Heres is an international professional network specialized in legal and tax matters related to cross-border inheritance involving Italian assets.

Its name comes from the Latin adage «Semel heres, semper heres» which was one of the succession law principles in ancient Rome. In current terms it means «once someone becomes heir, it is impossible to lose this status by renunciation». After many centuries, this principle still remains in force and represents one of the basics of Italian Succession Law.

At Semel Heres you find expert advice, sustained focus ad bespoke solutions from legal and tax professionals.

The Semel Heres professional network counts among its associates several legal and tax experts within depth knowledge of inheritance issues (general advisory, tax, inheritance planning, litigation).

We are able to provide a comprehensive range of services, including:

- General advisory on cross-border inheritance (Legal & Tax)
- Italian Wills (drafting and execution)
- Advisory on Statements of succession
- Assistance with Italian bank operations
- Inheritance planning
- Real Estate services
- Unclaimed property search
- Legally compliant translation of all Italian documents
- Litigation

We invite you to contact us if you have any enquiry.

Send us an e-mail: info@semelheres.com
Visit our website: www.semelheres.com

Because We Care!
Introduction
Unfortunately, succession is linked to a sad event that is often turned away from one's thoughts: death. The transfer of assets to the heirs requires the fulfillment of specific legal and tax tasks that vary from country to country. And when the inheritance is foreign there are additional complexities that need to be addressed.

Our main scope is to provide to the reader a general overview of the Italian succession procedure trying to answer the most common questions regarding this subject.

If you need further clarification or have specific questions, send us an email at info@semelheres.com or visit our website www.semelheres.com.

What is succession?
Succession is the procedure through which all deceased's legal relations are transferred to the heirs. Both assets (i.e. credits, immovable properties, bank accounts, company shares, etc.) and liabilities (i.e. debts, duties, etc.) of the deceased are involved in the succession.

There are two types of succession:
- Legitimate succession (or intestate succession)
- Testamentary succession

Testamentary succession is ruled by the dispositions contained in a Will unless it is compliant to law requirements. With it anyone disposes what will happen to the properties after his/her death. A Will is a the best way to make sure that the assets are transferred according to your wishes to family and friends.

Legitimate succession generally applies in absence of a Will. In this case the Italian law governs the transfer to the heirs. Dealing with this kind of inheritance can be a complicated and long lasting activity.
**Succession in Italy**

When dealing with a cross-border succession, the first issue to consider is the identification of the law applicable to succession. This identification is based on the type of assets. For non-property assets it will apply the law of the last domicile/citizenship of the deceased. While for property assets it will apply the law of the country where the property is located. So if the hereditary compendium includes properties located in more countries, the succession for each property will be regulated by the law of the location country.

For the Italian law, succession starts at the moment of death and it is closed when all assets, properties, rights, duties and pending payments have been transferred to the heirs.

At the end of the procedure, there will be the allocation (in case of a single heir) or the division (in case of multiple heirs) of the inherited assets.

The division can be carried out by a mutual agreement among the heirs or by effect of the judicial proceeding. It produces effects since the moment of the acceptance of the inheritance quota, or since the signature date of the division agreement. This kind of agreement must be in written form.

For the succession process it is necessary to perform some activities and submit several documents to the competent authorities (for example, Italian Revenue Agency, Cadastre, Banks, etc.). The whole process requires a lot of paper work and preliminary activities.

Preliminarily you need to verify the existence of a Will, of bank accounts and safety deposit boxes. After you need to make an inventory of the deceased’s assets.

Then you need to gather all the required documents to fill the Statement of Succession and submit it within one year after death.

Simplifying, the necessary documents are:

- Personal ID (ID Card or passport) and Tax Number of the deceased;
- Death certificate;
- Family certificate of the deceased;
- Affidavit form;
- Personal ID (ID Card or passport) and Tax Number of the applicant;
- Certificate of family situation of the deceased (Affidavit);
- Title of deeds of immovable properties (land and buildings).

Download the complete [CHECKLIST](#) on our website.

As well as having two types of succession, there are also two different procedures.

**Legitimate succession or intestate succession**

In absence of a Will, Italian law defines which relatives have right to succeed and what will be their quota of the inheritance. If one person dies with no relatives up to 6th degree of kinship, the inheritance is assigned to the State.

**Who can become heir**

According to legitimate succession, to become heir it is necessary to have regard to the degree of kinship with the deceased. The closer it is, the greater is the possibility to access an inheritance quota. The further away it is, the more these possibilities decrease.

There can be two different kinds of kinship:

**Direct kinship**, when family members descend directly from one another; (i.e. grandfather → father → children → grandchildren)

**Collateral kinship**, when family members - despite having a common ascendant - do not descend directly from one another (i.e. siblings).

In the next page below, are shown the degrees of kinship with the deceased that give succession rights.
Two other potential heirs are not indicated:
- the spouse (who has no kinship with the deceased but affinity);
- the State (that inherit if there are no other heirs).

To comply with all the bureaucratic, legal and tax fulfillments, it is highly recommended the assistance of a legal advisor who can easily interface with the competent authorities and prepare all the necessary documents and paperwork.
The summary below shows how the inheritance is regulated by the law in absence of a Will and what is the quota due to any type of heir in the most common situations.

<table>
<thead>
<tr>
<th>EXISTING RELATIVES OF THE DECEASED</th>
<th>INHERITANCE QUOTAS BY LAW</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Spouse</td>
</tr>
<tr>
<td>Only Spouse</td>
<td>100%</td>
</tr>
<tr>
<td>Only one Child*</td>
<td></td>
</tr>
<tr>
<td>Only Children*</td>
<td></td>
</tr>
<tr>
<td>Only Parents</td>
<td></td>
</tr>
<tr>
<td>Only Siblings</td>
<td></td>
</tr>
<tr>
<td>Only one Child* / Parents</td>
<td></td>
</tr>
<tr>
<td>More Children* / Parents</td>
<td></td>
</tr>
<tr>
<td>More Children* / Siblings</td>
<td></td>
</tr>
<tr>
<td>More Children* / Parents / Siblings</td>
<td></td>
</tr>
<tr>
<td>Spouse / Only one Child*</td>
<td>1/2</td>
</tr>
<tr>
<td>Spouse / More Children*</td>
<td>1/3</td>
</tr>
<tr>
<td>Spouse / Parents</td>
<td>2/3</td>
</tr>
<tr>
<td>Spouse / Siblings</td>
<td>2/3</td>
</tr>
<tr>
<td>Spouse / Parents / Siblings</td>
<td>2/3</td>
</tr>
<tr>
<td>Parents / Siblings</td>
<td>1/3</td>
</tr>
<tr>
<td>No relatives within 6th degree of kinship</td>
<td></td>
</tr>
</tbody>
</table>

* (and descendants)

*Img. Legitimate or Intestate Succession*

**Testamentary succession**

Testamentary succession consists in the assignment of the testator’s assets according with the wishes expressed in an Italian Will. The Will is a legal document drafted and signed by the testator through which he/she disposes of his/her hereditary assets after the death.

Italian inheritance law is based on the principle that close family members of the deceased deserve special protection. For this reason, the law introduces some limits to testator’s powers to ensure that some
relatives are not excluded from inheritance. The testator is obliged to respect some quota that has to be reserved to closer relatives.

Some foreign legal provisions, especially those of common law tradition, do not apply such limits. A foreign Will that is not respecting the quota imposed by the Italia law can be a great problem for the heirs. The foreign Will must be authenticated by an Italian notary before executing the probate. The notary shall not publish or legalize the documents drafted in a foreign language unless duly translated into Italian by a qualified interpreter.

To avoid problems and extra costs is possible to draft an Italian Will that, being checked by a lawyer, will comply with requirements and limits imposed by the Italian law.

After the death, the Italian authorities will publish and register the Italian Will with no extra costs. The testator will save significant difficulties to the heirs when they will transfer the ownership of the Italian properties.

In cases of non-Italian citizens, the situation could also enforce different legal provisions. In such situation only a lawyer specialized in cross border inheritance can provide assistance to avoid complications in the drafting of the Italian Will.

Check our website [SECTION](#) for more information.

**Reserved quota and Available quota**

According to Italian law it is not possible to exclude any family members from the inheritance. In fact, the law recognizes them a quota (reserved quota) that cannot be disposed in any other way, while the testator can dispose of the residual portion freely without any limit (available quota).

The persons who have right to the reserved quota of inheritance are:
- The Spouse;
- The Children (legitimate, natural and adoptive);
- The Parents (only in absence of children).

The portion of this quota vary in accordance to the number and category of forced heirs. The summary below shows how the reserved quota and the available quota are distributed to the heir when only one category of heirs exists.

<table>
<thead>
<tr>
<th>Heir</th>
<th>Reserved quota</th>
<th>Available quota</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Spouse</td>
<td>1/2</td>
<td>1/2*</td>
</tr>
<tr>
<td>One Child</td>
<td>1/2</td>
<td>1/2</td>
</tr>
<tr>
<td>More Children</td>
<td>2/3</td>
<td>1/3</td>
</tr>
</tbody>
</table>
* Together with half of the estate, the Spouse always has the right to reside in the home used as family home and to use the furniture that accompanies it, regardless of whether the house was owned by the deceased or shared between the spouses.

The summary below, on the contrary, shows how the reserved quota and the available quota are distributed in most common situations.

<table>
<thead>
<tr>
<th>EXISTING RELATIVES OF THE DECEASED</th>
<th>INHERITANCE QUOTAS BY LAW</th>
<th>AVAILABLE QUOTA</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Spouse</td>
<td>Only One Child</td>
</tr>
<tr>
<td>Only Spouse</td>
<td>1/2</td>
<td></td>
</tr>
<tr>
<td>Only one Child*</td>
<td>1/2</td>
<td></td>
</tr>
<tr>
<td>Only Children*</td>
<td></td>
<td>2/3</td>
</tr>
<tr>
<td>Only Parents</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Only Siblings</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Only one Child* / Parents</td>
<td></td>
<td></td>
</tr>
<tr>
<td>More Children* / Parents</td>
<td></td>
<td></td>
</tr>
<tr>
<td>More Children* / Siblings</td>
<td></td>
<td></td>
</tr>
<tr>
<td>More Children* / Parents / Siblings</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spouse / Only one Child*</td>
<td>1/3</td>
<td></td>
</tr>
<tr>
<td>Spouse / More Children*</td>
<td></td>
<td>1/3</td>
</tr>
<tr>
<td>Spouse / Parents</td>
<td>1/2</td>
<td></td>
</tr>
<tr>
<td>Spouse / Siblings</td>
<td></td>
<td>1/2</td>
</tr>
<tr>
<td>Spouse / Parents / Siblings</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parents / Siblings</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No relatives within 6th degree of kindship</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* (and descendants)

*Img. Testamentary Succession*

In both legitimate succession and the testamentary succession, a Statement of Succession must be submitted within one year after death.

In case of non-Italian citizens, the situation could also enforce different legal provisions, and only a lawyer specialized in cross border inheritance issues can provide assistance to avoid annoying problems.

An Italian Will can speed up the procedures to be carried out with Italian banks. Bank accounts and bank deposits of the deceased will be frozen following the account holder’s death. The procedure to unfreeze them and obtain funds can be long and difficult.
There are significant advantages to draft an Italian Will:
- reduction of the risk of conflict among heirs (inheritance lawsuits are very long)
- better understanding for Italian authorities on wishes regarding transfer of deceased’s estate
- possible reduction of inheritance taxes for heirs

A lawyer specialized in cross border inheritance issues can help you to draft a Will that complies with the specific requirements of Italian law. This ensures that Italian assets are transferred according to the testator’s wishes without violating Italian succession provisions and limits.

**Acceptance and Renunciation of inheritance**

The first thing one wonders is if acceptance of inheritance is mandatory. The answer to this question is: “No!” Every person who can potentially inherit\(^1\) always has the possibility to renounce the rights to inherit. In fact, this person, until he/she accepts the succession, is not yet an heir. Actually, he/she becomes heir only with the acceptance of the succession and this status is not revocable anymore\(^2\).

The acceptance can be expressed or tacit. The expressed acceptance of inheritance takes place when the heir declares his/her willingness to accept the status of heir, by means of a notarial or a private deed. Tacit acceptance takes place when someone acts in such a way that his/her acceptance to inherit assets can be implied (i.e. selling a flat that is part of the inheritance). In any case, acceptance shall be manifested within 10 years from the opening of the succession process.

In addition, for each heir it is possible an acceptance of the inheritance under benefit of inventory. In this way, the heir has right to accept or renounce an inheritance by taking into account whether or not debts on the assets exceed the value of the property. So the heir is in the position to discharge himself/herself from paying the debts by renouncing an inheritance in favor of creditors and legatees.

Generally successors decide to renounce to inheritance when the deceased’s debts exceed the value of the assets. In fact, upon opening of a succession, it is necessary to pay the debts and to distribute any liabilities before dividing the assets.

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\(^1\) The status of heir is acquired with the acceptance of succession. Until this moment, who is potentially eligible to become heir is referred as “called to inherit”.

\(^2\) This principle, that represents one of the basics of Italian Succession law, is expressed with the Latin brochard «Semel heres, semper heres». Literally translated it means «once someone becomes heir, it is no longer possible to lose this status by renunciation». 

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**Brief guide to Italian inheritance for foreigners**

Drafted in collaboration with Studio Legale Rosso - Italian lawyers
The debts not yet paid before the death are automatically transferred to all heirs, both to those who simply accepted the inheritance and to those who accepted it under benefit of inventory. Only those who have not accepted the inheritance remain excluded from the payment of creditors and all the expenses consequent to the succession (including taxes).

In case of renunciation to inheritance, the successor needs to give public notice of it in front of a notary or a public officer. The act of renunciation of an inheritance cannot be made in a private document. The renouncement is revocable until the moment that next successor appointed accepts the inheritance.

It is always recommended to ask for the advice of professionals who can provide - based on the circumstances or on the inventory - useful information about debts and charges on the inherited assets and the duties of the heir in order to help you making the correct decision on how to proceed.

**Statement of Succession**

In both legitimate succession or testamentary succession, within one year after the death\(^3\), it is necessary to submit a form listing of all the deceased’s assets to the Italian Tax Authority. Based on the Statement of Succession, the heirs will be requested to pay the taxes related to the inheritance.

It is necessary to find a series of data and documents to fill in the form properly. Most of the time the following can be sufficient:

- personal data of deceased;
- personal data of the heir/s;
- detailed description of the inheritance assets;
- receipt of payment of taxes (cadastral taxes and fees);
- deceased’s death certificate;
- family certificate of deceased;
- family certificate of the heir/s;
- original or legalized copy of the Will (if present).

Download the complete **CHECKLIST** on our website.

Next step, after submission of Statement of Succession, is to apply to request the cadastral change of the owner name of the properties. This procedure takes about 30 days. With the change of the owner name in the registry the Italian Tax

\(^3\) The heirs are exempted from submission when the value of the assets does not exceed 100,000.00 euros and it does not include immovable properties (e.g. land, buildings, etc.) or real estate rights (i.e. property right, usufruct right, emphyteusis, etc.).
Administration is informed that the assets have been transferred at a certain date from the deceased to the heir/s.

**Italian inheritance tax**

The tax matter is quite complicated. Each country has its own tax system. Italy signed several agreements with foreign countries in order to prevent double taxation. To avoid any kind of problem, it is strongly recommended to rely on the advice of lawyers who are experts in cross-border succession and in international tax matters.

Generally speaking, two cases can occur:
- if the deceased was resident in Italy, Italian Inheritance Tax will be applied to all the assets worldwide belonging to the deceased\(^4\);
- if the deceased was not-resident in Italy, the Italian Inheritance Tax is calculated on the assets located in Italy.

The inheritance tax has to be paid by the heirs who inherit an estate on the basis of the statement of succession presented to the Revenue Agency. The rates adopted in Italy might be lower than other countries. The law in fact provides a system of exceptions through which the heirs (based on the degree of kinship) are excluded from the payment of the tax.

The tax affects hereditary patrimony, understood as the difference between assets and liabilities.

The taxable assets are the following:
- Immovable properties of any kind (houses, shops, instrumental buildings) agricultural or building land;
- Movable properties: including boats, jewelry, works of art, bank accounts, bank deposits, money, investments such as shares, bonds, funds, etc.

Companies and shareholdings of companies are also taxed (exceptions are also provided in this case).

\(^4\) The Italian tax system adopts the "worldwide taxation principle" for natural persons. This principle is linked to the concept of tax residency. In the case of double residence, the OECD Model against double taxation "Double taxation prevention treaty" must be used and its criteria, the so-called "tie-breaker rules", must be followed. Having a tax residence in Italy makes income taxable wherever it is produced.
There are different rates that apply to each heir according to the degree of kinship to the deceased. It is possible to summarize the different rates as follows:

- 4% to be paid for transfers to the surviving spouse and children (exemption up to 1.000.000.000 euros for each beneficiary);
- 6% to be paid for transfers to siblings of the deceased (exemption up to 100.000.000 euros for each beneficiary);
- 6% to be paid for transfers to relatives within the fourth degree of relationship (no exemption available in this case);
- 6% to be paid for transfers to relatives on the spouse side up to the third degree (no exemption available in this case);
- 8% to be paid for transfers to any other (no exemption available in this case).

Both rates and exemptions according to the current Italian inheritance tax regime are calculated over the whole net value of the assets included in the deceased’s inheritance.

<table>
<thead>
<tr>
<th>Degree of kinship</th>
<th>Level of Exemption</th>
<th>Applicable tax rate over the exemption</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spouse and children</td>
<td>Up to 1.000.000 euro</td>
<td>4%</td>
</tr>
<tr>
<td>Siblings</td>
<td>Up to 100.000 euro</td>
<td>6%</td>
</tr>
<tr>
<td>Family members up to the fourth degree of kinship</td>
<td>No exemption</td>
<td>6%</td>
</tr>
<tr>
<td>Direct relatives and collateral relatives on the spouse side up to the third degree of kinship</td>
<td>No exemption</td>
<td>6%</td>
</tr>
<tr>
<td>Others</td>
<td>No exemption</td>
<td>8%</td>
</tr>
</tbody>
</table>

Whenever in the inheritance are included immovable properties, an additional payment of a 3% (or a fixed rate of 168,00 euros in limited cases) registration tax is required.

**European Succession Law**

In the last few years, the European Parliament issued the EU Succession Regulation (EU 650/2012), known as Bussels IV, with the aim of harmonizing the succession laws across the UE member states. According to this Regulation, for individuals who hold assets in UE member states who have signed up the Regulation the general rule is that the succession of those assets on death will be governed by the law of the country in which the deceased habitually used to reside. Alternatively, such an individual may choose, in his/her will, to apply the law of nationality to the

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5 The new rules do not apply in UK, Ireland and Denmark.
succession and administration of their estates.

Whatever law will be chosen, it will govern the succession as a whole. The habitual residence should be interpreted as a close and stable connection with the State concerned, with an overall evaluation of the circumstances of deceased’s life during the years preceding the death and at the time of it, taking account for example the duration and regularity of the deceased’s presence in the State concerned, the grounds for that presence.

In addition, the Regulation introduced the European Certificate of Succession that has been thought to make easier for heirs to call upon their rights in another member state, or even for an executor of the will to exercise his powers in another member state.

It will be possible to use the new Certificate to demonstrate:
- the status and the rights of each heir mentioned in the Certificate and his/her correspondent quota of assets;
- the attribution of a specific property part of the estate to the heir/s mentioned in the Certificate;
- the authority of the person mentioned in the Certificate to execute the will and administer the estate.

The rules introduced with regulation apply to death that occur after August 17th, 2015.

Conclusions

In light of all the information provided, it is evident that the Italian succession procedure implies complex bureaucratic fulfillments and paperwork to be submitted to the Italian authorities. Any mistake or delay can create slow down the procedure or, in worst case, block it. To be sure to comply with all legal obligations and not run into annoying problems, it is worth seeking the advice and support of experts in this sector who will simplify the processes that must be undertaken following the death of anyone owning assets in Italy.

In case of succession concerning foreign (not-Italian) citizens, the matter becomes even more complicated due to the conflicts among national and foreign legislation. Italian inheritance law, in fact, differs substantially from the laws in force in common law jurisdictions. You may encounter difficulties in communication with competent authorities and comprehension of legal and tax fulfillments to carry on. Finally yet importantly, for some activities your physical presence in Italy might be mandatory unless you appoint a delegated professional.
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