International Background Paper

Wealth Tax Commission

Wealth tax: Italy

Authors
Alessia Paoletto
Mara Monte
Roberto Bonomi

LSE THE LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE

WARWICK THE UNIVERSITY OF WARWICK

UKRI Economic and Social Research Council

Atlantic Fellows FOR SOCIAL AND ECONOMIC EQUITY

CAGE

WEALTH TAX: ITALY

Alessia Paoletto, Withers LLP

Mara Monte, Withers LLP

Roberto Bonomi, Withers Studio Legale

Wealth Tax Commission Background Paper no. 136

Published by the Wealth Tax Commission

www.ukwealth.tax

Acknowledgements

The Wealth Tax Commission acknowledges funding from the Economic and Social Research Council (ESRC) through the CAGE at Warwick (ES/L011719/1) and a COVID-19 Rapid Response Grant (ES/V012657/1), and a grant from Atlantic Fellows for Social and Economic Equity's COVID-19 Rapid Response Fund.

1. Brief history of Italian wealth tax

Historically, a wealth tax in its true sense has never been introduced in Italy.

On the whole, Italians are known to save money and have preferred to invest long-term and in real estate. The introduction of a wealth tax could prove a politically contentious issue.

However, in the past, there have been measures akin to a wealth tax. An example of this was the 'forced' levy (*prelievo forzoso*) introduced by the Italian Government in 1992 during the government of Giuliano Amato, in order to decrease Italian public debt and meet the requirements of the Maastricht treaty. Article 7 of Decree no. 333 of 11 July 1992 required an extraordinary one-off tax equal to 0.6% to be levied on the value of Italian bank accounts, bank and postal deposits, savings accounts, certificates of deposit and interest-bearing securities as at 9 July 1992. The levy applied to all of the aforementioned assets held in Italy, irrespective of the tax residence of their holder. Furthermore, this provision was backdated by two days in order to capture possible withdrawals made in the days immediately before the Decree came into force.

The same Decree also introduced a tax on Italian real estate, illustrated below. Unlike the one-off forced levy, real estate taxes have remained within the Italian tax framework, and although the names and mechanics have changed to a certain extent, they have never completely disappeared. These latter taxes can therefore be regarded as most akin to a 'wealth tax' in Italy.

2. Current taxation

Apart from certain specific taxes, which share some of the characteristics which are typical of wealth taxes and can therefore be regarded as equivalent, Italy does not have a general wealth tax. The only taxes currently in force which may be considered akin to a wealth tax are (i) the wealth tax on real estate located abroad (*Imposta sugli immobili situati all'estero*, hereinafter 'IVIE') and (ii) the wealth tax on foreign financial investments (*Imposta sul valore delle attività detenute* all'*estero*, hereinafter 1VAFE'). Both these taxes are levied in relation to foreign assets held by Italian resident individuals. However, Italy also has taxes levied on Italian assets which may be considered quasi-wealth taxes, namely: (i) IMU and (ii) stamp duty (*imposta di bollo*). The rules and tax rates of *the imposta di bollo* and *IMU* are identical to those provided for IVIE and IVAFE.

2.1 Taxes on Italian real estate

Decree no. 333 of 11 July 1992 introduced in Italy a tax on Italian real estate, which subsequently became a permanent tax. Such tax was levied on the cadastral value of immovable properties held both by individuals and by entities and in respect of minor property rights[1]. Under its original version, tax on Italian real estate was applied at the following rates:

- 0.2%, in cases where the immovable property was the main abode of the holder; and
- 0.3%, in cases where the immovable property was not the main abode of the holder.

The taxable value was equal to the cadastral value of the property multiplied by a specific coefficient, which varied depending on the cadastral category of the property, reduced by 50 million lira (equal to 25,822 euros).

This tax was intended to be temporary, but subsequently became permanent by means of Law Decree no. 504 of 30 December 1992, which introduced the municipal tax on real estate, originally known as *Imposta Comunale sugli Immobili (*ICI) and replaced by *Imposta Municipale Unica (*IMU) in 2011.

The current characteristics of IMU are as follows:

- It is levied on gross not net values so in this respect is like Annual Tax on Enveloped Dwellings (ATED).
- The tax rate is equal to (i) 0.76%, for urban production buildings (*immobili ad uso produttivo*) and agricultural land; (ii) 0.1% for industrial buildings (*fabbricati rurali ad uso strumentale*); and (iii) 0.86% for all other buildings.
- Municipalities may increase or decrease the general tax rate set forth by the law (equal to 0.76% or 0.86%) between set ranges. Therefore, the final tax rate may differ across municipalities in Italy.
- The tax is levied both on individuals and entities and whether what they hold is a full proprietary right over the property (*proprietà piena*) or a minor property right (*usufrutto* or *diritto d'abitazione*).

[1] Meaning other means of possession, such as the right to use the property and the usufruct.

- IMU is calculated by reference to the property's cadastral value. The cadastral value is predetermined, as a combination of the cadastral income as attributed to the relevant property at the Italian Land Registry (*Catasto*), multiplied by a set coefficient. The taxable base for IMU is equal to the cadastral value of the property, to be increased by 5% and multiplied for different coefficients, depending on which category the property falls within. For some kind of properties, such as those that have been declared of cultural interest or, upon specific conditions, those rented out to the owner's parents or children, the taxable base is reduced by 50%. Cadastral values are seldom revalued, and normally a revaluation happens if there are major changes to the property, for example a major refurbishment, or in cases where a whole area undergoes reclassification. Additionally, cadastral values are considerably lower than the corresponding market value of the property, often as low as a third of the market value (or even lower in certain areas);

- Real estate properties used as the main residence are exempt from IMU unless they are classified as luxury properties in the Italian Land Register in which case IMU applies at a standard rate of 0.5%, which can be increased up to 0.6% or completely eliminated by the relevant municipality. Furthermore, a deduction of 200 euros may be granted under specific circumstances.

- The total amount of IMU due is calculated in proportion to the number of months of possession and the percentage of ownership of the immovable property during the relevant year.

- Home owners who let their properties to tenants on a fixed term contract (Canone Concordato) with a minimum duration of three years plus a two-year automatic renewal, and who comply with the minimum and maximum rents set by local authorities, receive a 25% discount on IMU tax for the property being let.

- Agricultural land in mountainous areas land is exempt from IMU, whereas land in flat areas is only exempted from IMU if the owner is registered with the authorities as a professional farmer or agricultural smallholder.

2.2 Taxes on financial securities and bank accounts held in Italy

There are no specific taxes levied on the possession of financial securities and bank accounts held in Italy. However, communications, recordings and deeds issued to/by competent authorities are subject to *imposta di bollo*, introduced by Presidential Decree no. 642 of 26 October 1972.

Imposta di bollo has a wide scope of application, as it applies, in general, to all communications or deeds concerning competent authorities or financial intermediaries. *Imposta di bollo* can be applied on two different basis:

(1) For some specific deeds and recordings as foreseen by law, the tax is levied simply by reference to the mere existence of the deed or recording;

(2) Other acts are subject to taxation only when submitted for registration in the competent authority registers (so-called *caso d'uso*).

Specifically, *imposta di bollo* is levied on two main kinds of assets that represent an index of wealth of the taxpayer but in effect, as noted at Section 7 below, the tax on financial assets is very low:

- *Imposta di bollo* on bank communications, i.e. bank statements regarding bank or saving accounts in the name of the taxpayer. For such communications, an annual fixed amount equal to 34,20 euros (100,00 euros for legal entities) is charged. No *imposta di bollo* is applied on communications related to bank accounts whose annual average balance is lower than 5,000 euros.

- *Imposta di bollo* on communications related to the so-called 'financial products' (for the definition of 'financial products', please refer to Section 3 below), even if such products are in the form of certificates. On such communications from 2014, a tax equal to 0.2% is levied. In the case of legal entities, *Imposta di bollo* cannot exceed 14,000 euros.

The total amount of *imposta di bollo* is calculated in proportion to the number of days of possession and the percentage of ownership of the assets during the relevant year. It is perhaps most akin to UK stamp duty.

2.3 Taxes on foreign assets

In addition to the annual charge on Italian real estate and *imposta di bollo* as described above, the following taxes are currently in force, which could be regarded as wealth taxes, being levied on the ownership of assets: (i) tax on real estate located abroad (*Imposta sugli immobili situati all'estero*, '**IVIE**') and (ii) tax on foreign financial investments (*Imposta sul valore delle attività detenute* all'*estero*, '**IVAFE**').

Both taxes came into force pursuant to article 19 of Law Decree no. 201 of 6 December 2011 with effect from 1 January 2012. They were introduced in response to the economic crisis, as the government sought to shore up revenue and tackle tax evasion, specifically on foreign investments.

IVIE and IVAFE substantially mirror *imposta di bollo* and *IMU* respectively, the main difference being that they relate to foreign assets.

As with *imposta di bollo* and *IMU*, the tax rate of both the above charges is relatively low (0.2% for IVAFE and 0.76% for IVIE - see Section 4 below for more information). This low tax rate, combined with the low taxable values (especially when dealing with IVIE) and the availability of several exemptions, means that neither tax is particularly far-reaching. Both taxes have generally avoided scrutiny, coming as they did amongst wider debate and the introduction of rules on fiscal monitoring and reporting relating to foreign-held assets.

In the light of current circumstances and financial crisis caused by the COVID-19 pandemic, there are talks about the possible introduction of a wealth tax in Italy in order to reduce the public debt incurred as a result of the COVID-19 emergency. However, there is currently no draft legislation and it is unclear what form such a tax could take. The Italian Government may opt for the introduction of:

- A one off levy, which – similar to the one introduced for the tax year 1992 – would apply to selected Italian situs assets (either bank accounts or real estate), regardless of the residence of the owner; or

- An annual wealth tax, more similar to IVIE and IVAFE, which would only apply to Italian tax residents.

It should be noted that instead of and before introducing new wealth taxes, the Italian Government is currently trying to encourage new investment, especially in government bonds

to finance public projects. Some of the proposals currently under discussion (although again, no draft legislation is available yet) include an exemption from tax in respect of investment in Italian bonds (including capital gains tax upon disposal and withholding tax on the related coupon interest).

Furthermore, the Government is also considering the reintroduction of voluntary disclosure procedures (to regularise foreign assets currently undisclosed to the Italian tax authority) as well as specific procedures for the regularisation of earnings from undisclosed transactions.

3. What assets are taxed?

As seen, the Italian 'wealth' taxes, whether on domestic or foreign assets, are chargeable on two different kinds of assets: financial securities/assets and real estate.

We have discussed *imposta di bollo* above. IVAFE is levied on so-called financial products such as financial assets and securities as well as foreign bank or savings accounts held abroad. In general, IVAFE is applicable to the following assets when deposited abroad:

- Shareholdings in both resident and non-resident companies, bonds, government bonds, stocks or certificates, foreign currencies, bank accounts and deposits;
- Foreign financial contracts such as loans, share loans and insurance policies concluded with non-resident counterparts;
- Derivative contracts and other financial agreements concluded outside Italy;
- Foreign stock options and similar financial instruments; and
- Any other financial security which may generate capital income and any other foreign financial income.

As of 2014, IVAFE does not apply to precious metals and selected shareholdings in limited companies, as they do not fall within the definition of 'financial products' as provided for by Italian law. This amendment was introduced following the observations made by the European Commission claiming that the previous scope of application of IVAFE led to a disparity between the treatment of financial assets located in Italy and those held abroad. In fact, IVAFE was previously levied on financial activities in general as well as precious metals, while *imposta di bollo* applies only to communications related to financial products. As a result, precious metals and selected shareholdings in limited companies were subject to taxation only if held abroad.

The latest version of the law treats domestic and foreign financial assets in the same manner.

We have discussed IMU above. IVIE is levied on the value of the real estate located outside of Italy.

4. Defining the tax base

The rate of IVIE is equal to 0.76% and has remained unchanged since its introduction.

The rate of IVAFE was originally set at 0.1% and was later amended as follows:

- 0.1% for fiscal years 2011 and 2012;
- 0.15% for fiscal year 2013;
- 0.2% for fiscal years from 2014 onwards (still applicable today). This is in line with the *imposta di bollo*.

IVIE is charged (at 0.76%, subject only to limited exceptions as set out below) on the chargeable value of foreign real estate properties. Please refer to Section 6 for discussion of the valuation issues.

IVIE is not due if it falls within a *de minimis* amount, currently set at 200 euros. This means that IVIE is not due on foreign real estate properties whose chargeable value is lower than approximately 26,000 euros. If the foreign real estate property is co-owned by (or subject to other rights belonging to) more than one individual, each owner would be subject to IVIE on the value of his/her portion of ownership. Moreover, the total amount of IVIE is calculated in proportion to the number of months of possession of the immovable property during the year. In applying the *de minimis* exception, the value of the whole property is used to determine whether this is in point (rather than the value attributable to the individual share). The *de minimis* exemption does not apply in the context of fiscal monitoring and reporting obligations.

From 2016, IVIE is not due on foreign property owned by an Italian resident that is used as a main residence if it does not qualify as 'luxury property' from an Italian law perspective. If it does count as luxury property but still qualifies as a main residence, IVIE is applied at the lower rate of 0.4% and it is possible to deduct 200 euros from such tax.

As mentioned above, the current rate of IVAFE is 0.2% to be applied on the total value of the investments and financial products located abroad.

IVAFE on foreign-held bank and savings accounts are taxed at the fixed annual rate of 34.20 euros per account (100 euros if the taxpayer is a legal entity). Accounts whose annual average balance in the course of a tax year is lower than 5,000 euros are exempted.

Where the financial product is owned by more than one person, each owner would be subject to IVAFE on the value of his/her portion of ownership. Moreover, the total amount of IVAFE is calculated in proportion to the number of days of ownership of the financial asset during the year.

IVAFE and IVIE are also payable in relation to foreign financial products and real estate held through foreign structures (e.g. trusts) to the extent that they are disregarded for Italian tax purposes (i.e. taxed on the ultimate 'beneficial owners' – settlor/beneficiaries and shareholders on a look-through basis).

5. Territoriality

Imposta di bollo and IMU are levied on assets located in Italy, whether the holder is Italian resident or not.

Since their introduction in 2012, IVAFE and IVIE have applied to individuals that are Italian tax resident and taxable on a worldwide basis (to the extent that they hold foreign financial products and investments or foreign real estate properties). They apply from the first year in which an individual becomes Italian tax resident. Equally, they cease to apply immediately upon an individual ceasing to be an Italian tax resident.

It must be noted that whilst *imposta di bollo* and *IMU* are payable by individuals who are resident in Italy under the so-called 'Italian non-dom regime' (i.e. the special *Art.24bis* tax regime), IVAFE and IVIE are on the other hand shielded by the application of this special tax regime and the payment of the related annual flat tax. This is understandable, given that these taxes are, by definition, chargeable on foreign assets, which are specifically exempted by the *Art.24bis* tax regime. (This regime is similar to the Swiss forfait and allows exemption from tax on foreign assets, gains and income).[2]

With effect from tax year 2020, Italian resident non-commercial entities (such as holding companies, trusts and partnerships like entities) are also subject to IVIE and IVAFE on foreign assets. Following such amendment, financial assets and real estate owned by Italian resident trusts and partnerships are treated equally, regardless of whether such assets are located in Italy or abroad.

Italian resident companies (*società di capitali*) are not subject to IVIE and IVAFE as they are already subject to ordinary financial reporting obligations and specific tax rules for resident companies.

Furthermore, as mentioned in Section 4, if the relevant investments are held through look-through entities beneficially owned by an Italian resident individual, IVIE and IVAFE will be chargeable on the individual personally.

Non-Italian tax residents are not subject to IVIE and IVAFE, but they remain subject to *imposta di bollo* and *IMU* if they own financial investments or real estate properties in Italy. Thus, non-resident trusts are not subject to wealth tax except on financial investments or real estate properties in Italy (which, as explained, would be chargeable to *imposta di bollo* and IMU, respectively).

[2] Article 24-bis of Italy's Tax Code (TUIR) provides for an optional tax regime that allows new residents to discharge tax on their non-Italian income and gains by paying, once a year, a substitute €100,000 lump sum tax payable in June each year. Family members can also be covered by the scheme paying an additional 25,000 euros for each member. Unlike Switzerland the lump sum is fixed in amount and is not negotiated. The regime is available to individuals (irrespective of their nationality) who have not been Italian tax resident for at least 9 of the previous 10 tax years. Once granted, the regime can be enjoyed for 15 years, provided that it is claimed annually and that the substitute tax is paid on time. The taxpayer can opt out at any time, however it is not possible to then opt back in if the '9 of the last 10 years' requirement is, at that point, not satisfied.

6. Valuation issues

In determining value of financial assets subject to IVAFE, reference should be made to:

- The market value of the financial products at the end of each tax year or period of possession, if available; or
- The nominal value, when the investment is not negotiated on the stock exchange; or
- The redemption value, in case the nominal value is not identifiable; or
- The purchase price of the investment.

With regard to IVIE, a clarification must be made here. Generally speaking, when certain conditions are met, Italian tax payable by individuals on Italian real estate is levied taking into account not the market value of the real estate, but rather the 'cadastral value' (see Section 2.1 above).

The taxable base for the Italian tax IMU is such cadastral value. It is therefore understandable that a valuation issue arose upon the introduction of IVIE, as many countries do not have an equivalent 'cadastral value' for properties located in their territories.

Varying criteria have therefore been introduced for establishing the chargeable value of foreign real estate properties for IVIE purposes, depending on whether such properties are located in EU/EEA countries or in other jurisdictions:

- For property located in EU/EEA countries, the tax basis is equal to the value recorded in the local land registry, if available. If more than one value is reported with reference to the same property, the value used as the taxable base for wealth (or similar) taxes in that country should be used. These values are normally lower than the corresponding market value, and depend on the valuation rules that apply in each EU/EEA country.
- With regard to the UK, where such a value does not exist, the Italian tax authority has confirmed that the chargeable value for IVIE purposes shall be the average value of the council tax band within which the property in question falls. Those who are familiar with council tax bands will know that these values bear no resemblance whatsoever to the actual value of a property, which per se affects substantially the notion of real estate 'wealth' that an individual possesses. Only if this information is unavailable in the foreign country, reference should be made to the purchase price or to market value.
- For property located in non-EU/EEA countries, the chargeable value is determined by reference to the purchase price or construction cost. In the absence of such parameters, market value will be used. It remains to be seen of course whether there will be a transition to this method of calculation for UK properties in the wake of Brexit[3].

Properties inherited or received by way of succession or lifetime gift are valued by reference to the value indicated on the inheritance tax return or other legal document by which the transfer

[3] With response to ruling no. 156 of 2020, the Italian Tax Authority has specifically indicated that, in case of a hard Brexit after the current transitional period (expiring on 31 December 2020), the UK will be treated as a non-EU/EEA country. In such scenario, the chargeable value for IVIE purposes in respect of UK real estate properties will be determined by reference to the purchase price/construction cost of the immovable properties or, absent such information, by reference to their market value.

is perfected. Typically, this will also be calculated by reference to the cadastral value. Again, if this is unobtainable, reference should be made to the purchase price or construction cost of the property borne by the deceased or donor.

The value determined using the criteria described above (e.g. market value for financial products) should be reviewed every year, as taxpayers are required to report the value of each asset (in euros) in their Italian tax return (specifically, in their RW form, where foreign assets must be reported). IVAFE and IVIE are calculated on the value of the foreign financial activities and real estate as at 31 December of every year. In order to convert the value of such assets into euros, reference shall be made to the official exchange rates provided by the Italian tax authority. By way of example, in case of a financial portfolio held with a foreign intermediary, the Italian taxpayer is required to declare the related market value as of 31 December of each year, converting such value into euros, using the exchange rates provided for by the Italian tax authority. Similarly, in the case of a real estate property in the UK, the Italian taxpayer must declare every year the value used for the purposes of calculating UK council tax, converted into euros using the exchange rates provided for by the Italian tax authority.

As a final important comment please note that, unlike other jurisdictions, for the purposes of calculating Italian wealth taxes it is not possible to deduct debt against the value of the property. Therefore it is in effect a tax on gross values perhaps more akin to ATED in the UK.

7. Liquidity concerns

No particular concerns have ever arisen in relation to IVIE and IVAFE in light of the fact that:

- The applicable tax rates (0.76% and 0.2%, respectively) are rather low;
- IVAFE applies to liquid assets (namely financial securities); and
- IVIE is usually calculated on the basis of a chargeable value that is significantly lower than the market value of the foreign real estate.

Starting from tax year 2020, IVAFE paid by legal entities cannot exceed 14,000 euros per year. No maximum cap is provided for IVAFE and IVIE paid by individuals.

In order to avoid double taxation, it is possible to deduct the amount of the wealth tax paid in the jurisdiction where the property is located. However, the tax credit cannot exceed the amount of IVIE due in Italy.

The Italian tax authority has issued specific guidance containing a list of foreign wealth and property taxes that can be deducted in Italy for the purposes of assessing IVIE. In this respect, and by way of example, no credit is granted in Italy for the amount of council tax paid in the UK in relation to the same property.

Similar rules also apply in relation to IVAFE. It is possible to obtain a credit for wealth taxes paid in the jurisdiction where the financial securities are deposited. If there is a double tax treaty between Italy and the state where the financial activities are located which also addresses wealth taxes, and the treaty states that investments are subject to wealth tax in the state in which the taxpayer is resident, then no tax credit should be granted for wealth tax paid abroad.

Below are some examples of how IVIE and IVAFE apply:

i. Individual owns two houses each worth (a) 500,000 euros, (b) 1 million euros, (c) 2 million euros, (d) 10 million euros, (e) 20 million euros: in any of these cases, the individual will pay 0,76% on the value of the houses for each fiscal year. Thus, the total amount of IVIE due is as follows:

    a. 800 euros per property;
    b. 7,600 euros per property;
    c. 15,200 euros per property;
    d. 76,000 euros per property;
    e. 152,000 euros per property.

    Note that as with the UK ATED any debt on the property is ignored. However, the difference from ATED is that IVIE does not operate by reference to bands with an overall tax cap for property above a certain value, but is levied at a low rate on the entire value.

ii. As above but the individual is married and assets split between the two of them: each spouse will pay 0.76% on their percentage of ownership of the houses (i.e. 50% each). Thus, the amount of IVIE due from each individual will be as follows:

a. 1,900 euros per property;

b. 3,800 euros per property;

c. 7,600 euros per property;

d. 38,000 euros per property;

e. 76,000 euros per property;

iii. Individual owns private trading company shares of (a) 500,000 euros, (b) 1 million euros, (c) 2 million euros, (d) 10 million euros, (e) 20 million euros: in any of these cases, the individual will pay 0.2% on the nominal value of the shares in the trading company (if the company is tax resident in a *white list* jurisdiction). Thus, assuming that the aforementioned value is the nominal value of the shares (i.e. not their market value) the amount of IVAFE due is as follows:

a. 1,000 euros

b. 2,000 euros

c. 4,000 euros

d. 20,000 euros

e. 40,000 euros

By contrast, should the company be tax resident in a black list jurisdiction, the individual will have to pay 0.2% on the market value of the assets held by the company.

iv. As in iii above but the company is an investment company: same as above (point iii).

v. As in iv above but the assets are quoted shares and securities owned by the individual directly: IVAFE would apply in the measure of 0.2% on the market value of the quoted shares as of 31 December of each year.

8. Relationship with other taxes

Italy has inheritance and gift tax ('**IGT**'), which applies to transfers of assets and rights by way of succession or lifetime gift (Legislative Decree 31 October 1990, no. 346) (Inheritance and Gift Tax Act). IGT applies to all assets and rights (on a worldwide basis), where the deceased or donor was tax resident in Italy at the time of death or gift. By contrast, if the deceased was tax resident outside Italy at the time of death or gift, only assets and rights situated in Italy will be subject to IGT[4].

IGT rates are fairly low, especially when comparing with its European counterparts (ranging between 4% and 8% depending on the relationship between the recipient and the transferor) and apply to transfers of value in excess of generous tax free allowances (*franchigie*) which are available to each recipient (as opposed for example to the UK nil rate band which applies to the deceased's estate). IGT is therefore not perceived as a major concern for the vast majority of Italian families.

IGT does not interfere with the application of wealth taxes, as IGT concerns the transfer of assets, while IVIE and IVAFE seek to tax the ownership of certain foreign assets in the hands of Italian resident individuals and non-commercial entities (such as trusts and partnerships). Therefore, an IGT charge triggered on a specific asset does not prevent or exempt the application of IVIE and IVAFE in respect of the same asset.

As mentioned at Section 6 above, IGT and IVIE only overlap when valuing assets which have passed by succession or donation. As stand-alone taxes, they are not deductible against other taxes on the same assets.

[4] No IGT is payable by individuals who are resident in Italy under the Art.24bis Regime, in relation to their foreign assets.

9. IVIE and IVAFE reporting and collection

If foreign assets are directly held by the taxpayer (rather than via an Italian resident intermediary), IVIE and IVAFE are self-assessed by the taxpayer in their income tax return, by completing the special section of the income tax return dealing with foreign assets called the 'RW form'. In the case of foreign assets owned through an Italian resident financial intermediary (e.g. fiduciary company), no reporting obligations apply in the hands of the Italian resident beneficiary since all tax fulfilments are carried out by the resident intermediary.

The length of the RW form depends on the number of reportable assets held abroad by the Italian resident taxpayer. The form is composed of lines (*Righi*), one for each asset to be reported. In turn, the lines are divided into columns to be filled in with information on the specific asset. Completing the RW form can be quite a complex and time consuming exercise, especially in the case of foreign assets held through foreign structures (for example, where the analysis of foreign trusts is necessary).

IVIE and IVAFE are levied at national level and on an annual basis. The payment of IVIE and IVAFE follows the rules laid down for Italian personal income tax ('IRPEF'), including those concerning the procedure of payment of the two annual advance payments (generally due, respectively, by 30 June and 30 November of the relevant year) and the balance payment (due in June of the following year). IVIE and IVAFE are paid through the same payment forms used for other taxes (s.c. F24 form), indicating their respective tax code (*codice tributo*).

There is no *de minimis* threshold for reporting. However, in practice, deposits and bank accounts held abroad where their balance remains below the value of 15,000 euros throughout the tax year are out of scope of any formal audit. Specific rules apply for the calculation of the 15,000 euro threshold. If reporting obligations apply, the taxpayer has to complete the RW form and file it with the Italian tax authority, even if no tax is payable. In such a case, the taxpayer should expressly indicate that no tax is due by checking a specific box.

With regards to reporting, and options for amending or correcting returns, it is possible to rectify any irregularity concerning the RW form, including its omission, provided that the income tax return is submitted on time, or with a delay not exceeding 90 days (for the year 2019, the Italian tax return - and thus the RW form - must be submitted by 30 November 2020 via electronic filing). When the tax return is omitted or filed later than 90 days after its due deadline), the taxpayer may not regularise the position without incurring penalties.

Additionally, taxpayers are allowed to regularise their position, provided that the violation has not already been discovered and in any case no access, inspection, verification or other administrative activities of which the taxpayer has had formal knowledge have commenced. The voluntary correction of tax return procedures (the so-called *ravvedimento operoso*) enables taxpayers to rectify their omissions or irregularities in the filing of the tax returns or in the payment of taxes. The procedure results in a reduction of the applicable penalties and it is permitted until specific deadlines provided for by the law, as better described below.

Penalties for wrong or missed reporting in relation to the RW form are quite high. If reporting obligation in relation to foreign assets apply, irrespective of whether tax may be due on such assets or not, irregularities in filing the RW form result in administrative penalties ranging from 3% to 15% of the undeclared amounts (6% to 30% in cases where the assets are held in a 'black list' country). Through the *ravvedimento operoso*, these penalties may be reduced to:

- One ninth of the minimum penalty if the regularisation takes place within 90 days of the deadline for submitting the tax return (in this case, the applicable penalty would be equal to one ninth of 258 euros, that is 28.7 euros);

- One eighth of the minimum penalty (3% or 6%) if the regularisation takes place within the deadline for the submission of the tax return relating to the year in which the violation was committed;

- One seventh of the minimum penalty (3% or 6%) if the regularisation takes place within the deadline for the submission of the tax return relating to the year following the one in which the violation was committed;

- One sixth of the minimum penalty (3% or 6%) if the regularisation takes place after the deadline for submitting the tax return for the year following the one in which the violation was committed.

If IVIE and IVAFE are due, in addition to the administrative penalties mentioned above, failure to report the respective amounts in the tax return may result in the application of penalties ranging from 90% to 180% of the tax due (unfaithful tax return, *dichiarazione infedele*). These penalties may be reduced by the same rates as illustrated above (from one ninth to one sixth of the minimum penalty) depending on when the regularisation occurs. However, if IVIE or IVAFE have been assessed and indicated correctly in the tax return but the due tax payment (whether down payment or balance) is not made, this may result in a penalty of 30% of the unpaid amount, which can be reduced to 15% if the delay does not exceed 90 days. Also these penalties may be reduced by the same rates which apply across all penalties when the correction is made through the *ravvedimento operoso* procedure (i.e. from one ninth to one sixth of the minimum penalty).

The payment of legal interest is added to the penalties described above. The amount of legal interest is established annually by ministerial decree. Legal interest accrues on a daily basis and applies to the amount due for tax, excluding penalties.

If, by contrast, tax has been overpaid, a taxpayer may alternatively:

- ask for a refund;

- offset the credit with other taxes due;

- carry forward the tax credit.

10. Enquiries, audit, enforcement, appeals

The Italian tax authority has the power, during the period up to 31 December of the fifth year following the year in which the tax return has been filed, to audit the taxpayer's return. In case of an omitted tax return, or filing of an incorrect tax return resulting in an understatement of tax, the Italian tax authority can assess during the period up to 31 December of the seventh year following the year when the tax return should have been filed. However, with specific regard to violations concerning the tax monitoring obligations relating to assets and investments held abroad (RW form), the statute of limitations is doubled if the irregularities relate to investments and assets held in so-called tax havens (identified through Ministerial Decrees of 4 May 1999 and 21 November 2001).

The Italian tax authority verifies the fulfilment of tax obligations and whether a tax return is correct through the following main procedure:

- an initial check, carried out automatically on all tax returns, before the submission of the tax return regarding the subsequent fiscal year, to correct material mistakes resulting from the tax return (e.g. omitted, partial or late payments);

- a second 'formal' check, carried out on samples of tax returns by the end of the second year following the year in which the tax return was submitted, to control that information reported in the tax return is correct (in this case, the taxpayer is required to provide the necessary supporting documentation);

- a third phase ('substantive audit') is intended to rectify the individual incomes declared and to identify subjects who, although being obliged to submit the tax return, have not done so. This audit is based on all information and documents available to the tax authority or acquired through access, inspections and verifications.

With specific reference to RW form reporting obligation and payment of IVIE/IVAFE, any control usually starts through summons or questionnaires from the revenue agency through which the taxpayers are required to provide more information and the supporting documents regarding the content of the RW form.

Moreover, the Italian tax authority can request financial information from banks concerning the personal accounts of the taxpayer.

Italy entered into several agreements for the exchange of information: Double Taxation Treaties; Tax Information Exchange Agreements (TIEAs); EU Directive 2011/16 on administrative cooperation in the field of taxation (and following amendments: from 2014/107/EU, so-called DAC 2, through 2018/822/EU, so-called DAC 6), Multilateral Competent Authority Agreement for the Common Reporting Standard ('CRS MCAA'); and FATCA (Foreign Account Tax Compliance Act). The Italian tax authority may cross-check the information received from a foreign jurisdiction pursuant to an agreement for the exchange of tax information with the data declared in the tax return (for example, in the RW form) in order to assess the compliance of the taxpayer. Lately we have seen an increasing number of enquiries from the Italian tax authority which have been triggered by CRS reports.

In the case of an enquiry, the main defence mechanisms available to the taxpayer are:

- Submitting a request to withdraw an unlawful request by the tax authority (*autotutela*) (an unlawful request may be withdrawn at the taxpayer's request or autonomously by the tax authority);

- Filing a settlement proposal (*accertamento con adesione*) with the competent tax office: The tax settlement procedure allows the taxpayer to settle a notice of assessment before filing a tax appeal. The tax settlement procedure may be activated either by the taxpayer or by the tax authority and results in a reduction of penalties of up to one-third. If an agreement is not reached, the taxpayer may file an appeal before the tax court;

- Lodging a claim and starting a tax dispute before a tax court: the Provincial Tax Courts (*Commissioni Tributarie Provinciali*) are competent for the first instance, while the Regional Tax Courts (*Commissioni Tributarie Regionali*) are competent for the second instance. The Supreme Court (*Corte di Cassazione*) is the court of last resort. In addition, Italian legislation allows the tax authority and the taxpayer in a tax court case to settle the dispute by a negotiated settlement. In the settlement procedure, both the taxpayer and the tax authorities may take the initiative of proposing an agreement to settle the pending dispute before the tax court.

As mentioned, IVIE and IVAFE are levied annually and are reportable as part of the individual's income tax return. The main penalties for violations of the obligation of filing a correct tax return are:

- Penalties for failure to file a tax return: if a taxpayer is required to file an income tax return and fails to do so, the penalty may range from 120% to 240% of the amount of unpaid tax (in any case, a minimum penalty of 250 euros is applicable);

- Penalties for failure to file a correct tax return: the penalty may range from 90% to 180% of the additional tax liability assessed (the penalty applies even if undue deductions or tax credits are exposed in the tax return). This penalty range applies also to errors in the assessment of IVIE and IVAFE, as discussed in Section 9 above; and

- Penalties for failure to pay taxes on time: if a taxpayer is required to pay an amount shown on his or her tax return but fails to pay such amount within the applicable deadline, a penalty equal to 30% of the amount of unpaid tax applies. This penalty range applies also to late payments of IVIE and IVAFE, as discussed in Section 9 above.

If the violations provided for in the first two bullet points above concern income produced abroad, the applicable penalties are increased by a third. This increase does not apply for IVIE and IVAFE, since they are taxes on assets and not on income.

As said above (see Section 9), failure to file the RW form results in administrative penalties ranging from 3% to 15% of the undeclared amounts (6% to 30% in case the assets are held in a 'black list' country). These are in addition to the penalties levied for failure to pay the tax where IVIE or IVAFE is in fact chargeable.

The sum imposed as a penalty does not bear interest.

11. Other

As previously mentioned, up until tax year 2020, IVIE and IVAFE only applied to Italian resident individuals.

Until that point, it was possible to mitigate the application of these taxes by setting up Italian resident non-commercial entities, such as companies, trusts, foundations, or Italian partnerships (*società semplici* or other types of *società di persone*) that, in turn, held foreign financial activities or foreign real estate property.

However, the law was recently amended to address this loophole so that IVIE and IVAFE now apply to Italian resident non-commercial entities and partnerships.

For the sake of completeness, it should be noted that Italy has a general anti-abuse provision under article 10-bis of law no. 212 of 2000, which treats an economic operation which is formally legal but whose sole purpose is tax avoidance as an abuse of tax law.