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IL REGIME “RESIDENTI NEO DOMICILIATI” ITALIANO

Una nuova flat tax per i soggetti che trasferiscono la residenza in Italia

Legge di Bilancio 2017, Legge n° 232 dell’11 dicembre 2016

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THE ITALIAN «RESIDENTS NEO DOMICILED» REGIME

A new flat tax for HNWI

The 2017 Budget Law, by introducing Article 24-*bis* of the Italian Income Tax Code, provided - for the first time ever in Italy - a new tax regime for individuals so-called «Resident non domiciled»: the new legislation introduced a substitutive tax on all income produced abroad, instead of the ordinary income taxation; the aim of the bill is to enhance investments in Italy by attracting high-net-worth individuals.

The key issue is the derogation from the ordinary «worldwide income taxation» principle in favour of those who, after having lived abroad for many years, move their residence to Italy. Taxpayers eligible for such an option must not have been tax resident in Italy for nine of the ten previous tax years.

Since the flat tax represents a “substitutive tax” of the Personal Income Tax (so called "IRPEF"), no rule of ordinary taxation will be applied (i.e. no Italian tax credit is granted for any taxes paid abroad).

High-net-worth individuals transferring their tax residence to Italy are enabled to apply a substitute tax to their foreign income and gains, amounting to Euro 100,000 for each fiscal year, in lieu of the Italian Income Tax. Therefore, this taxation represents an alternative to the application of the ordinary taxation and the option is valid for a period of 15 years. The election for the regime may be extended to family members through the payment on their foreign income and gains of a substitute tax amounting to Euro 25,000 per member¹.

In addition, the taxpayers may opt not to apply the substitutive tax with respect to the foreign income sourced in a designated jurisdiction. In such a case, the ordinary Italian income tax liability arising on that income may be offset by the relevant foreign tax credit.

Those who elected for the new tax regime **are not subject** to the reporting obligation on foreign assets and income (they are not required to set up the RW model for monitoring activities held abroad). In case of election, the Italian inheritance, gift and estate taxes do not apply with respect to the assets held, and the rights existing, abroad, if the transfer takes place during the period of validity of the option. Assets located in Italy are subject to the ordinary inheritance and gift tax.

An exception driven by anti-avoidance purposes concerns the sale of qualified participations (i.e. a participation in the capital of a listed company higher than 2% or higher than 20% in case of non-listed company) occurring within the period of five years starting from the year in which the taxpayer qualifies as Italian tax resident.

¹ Spouse; sons and daughters and, in case of their death, their descendants; parents and in case of their death, their ascendants; son-in-law and daughter-in-law; father-in-law and mother-in-law; brothers and sisters.

In order to apply for the substitutive tax regime, the new residents, after moving their residence to Italy (according to Article 2, par. 2 of Italian Tax Code) should opt for the new regime:

- Through their Italian tax return related to the tax year in which they move to Italy;
- Eventually issuing a preliminary tax ruling request in order to obtain a confirmation by the Italian Tax Authority that each specific case fulfils the conditions required.

The eligible Taxpayer may file a specific ruling request with the ITA reporting the following:

1. his/her personal data including his/her Italian tax identification number;
2. that he/she has not been tax resident in Italy for nine of the ten previous fiscal years;
3. the jurisdiction(s) in which he/she has been tax resident in the fiscal year preceding that of the exercise of the option;
4. the jurisdiction(s) that he/she does not want to be covered by the Substitutive Tax ("Excluded Jurisdictions").
In such a case, income sourced in such jurisdictions would be ordinarily taxable in Italy and the taxpayer would be accorded the foreign tax credit. Over the course of the years, the taxpayer may enlarge the number of Excluded Jurisdictions.

The new tax regime is matched by changes to Italian immigration Laws, on the premise that non-EU individuals invest in Italy. The 2017 Italian Budget Law introduced a special procedure for granting residence VISAS in favour of foreign investors faster than the ordinary terms of issuance. According to the new Article 26-bis of the Italian Code of Immigration (D.Lgs. no. 286/1998) a special 2-year residence permit can be granted if the non resident individual demonstrates the intention to invest (for at least 2 years) in Italy either:

- Euro 2 million in State bonds;
- Euro 1 million in the share capital of a company located and operating in Italy;
- Euro 500,000 in the share capital of an innovative Italian registered «start up»;
- Euro 1 million in donations to Italian entities for philanthropic, cultural or scientific purposes.

HOW WE CAN HELP

Studio Mazzucotelli has a smart organization who can advise international clients providing all services concerning:

- Analysis and proper management of possible double taxation issues;
- Evaluation of benefits deriving from the special regime and any strategic de-selection of jurisdiction (Cherry Picking);
- Professional assistance in the preliminary ruling procedure;
- Support in all other aspects related to the relocation coordinating sector experts (legal assistance, real estate, immigration etc).

REGULATORY SPECIFICATIONS

Art. 24-bis T.U.I.R. .:

1. The individuals who transfer their residence in Italy within the meaning of Article 2 (2), may opt for the “substitutive tax”, referred to in paragraph 2 of this Article, of foreign income identified in according to the criteria indicated in Article 165 (2) provided that they have not been fiscally resident in Italy, in according of Article 2 (2), for a period of at least nine tax periods during the ten years preceding the beginning of the validity period of the option. The “substitute tax” does not apply to the income referred to in Article 67 (1) (c), made in the first five tax periods of validity of the option, which remain subject to the ordinary taxation arrangements referred to in Article 68, paragraph 3.

2. As a result of the exercise of the option referred to in paragraph 1, related to foreign income mentioned in the paragraph (1), is due a “substitutive tax” of individuals’ tax income calculated on a flat-rate, irrespective of the amount of the income received, in the amount of Euro 100.000,00 for each tax period in which the aforesaid option is valid. This amount is reduced to € 25.000,00 for each tax period for each of the family members referred to in paragraph 6. The tax is paid in a single settlement by the due date for the payment of the balance of income taxes. For the assessment, collection, litigation and penalties apply, as compatible, the provisions for income tax on individuals. Tax is not deductible from any other tax or contribution.

3. The option referred to in paragraph (1) shall be exercised after obtaining a favourable reply to a specific request of clarification submitted to the Revenue Agency, accordance to Article 11 (1) (b) of Law 27 July 2000, n. 212, within the time limit for submitting the tax return **statement** related to the tax period in which the residence in Italy is transferred in accordance with paragraph 1 of this Article and shall be effective from that tax period. The individuals referred to in paragraph 1 indicate in the option the jurisdiction or jurisdictions in which they had the last tax residence before the exercise of the option's validity. The Revenue Agency shall provide this information, through appropriate administrative cooperation instruments, to the tax authorities of the jurisdictions designated as the place of last tax residence before the exercise of the option's validity.

4. The option referred to in paragraph 1 is revocable and, in any case, ceases to have effect after fifteen years from the first validity period of the option. The effects of the option cease in any case in the event of omission or partial payment, in whole or in part, of the “substitute tax” referred to in paragraph 2 in the extent and within the terms of the law. The effects produced during the previous tax periods are avoided. The revocation or the abolition of the regime preclude the exercise of a new option.

5. The individuals referred to in paragraph 1, for themselves or for one or more of the family members referred to in paragraph 6, may elect not to avail themselves of the substitution tax in reference of income generated in one or more States or foreign territories, giving a specific indication when exercising the option or with subsequent modification of the option. Only in that case, for the incomes generated in the aforementioned states or foreign territories, the ordinary regime applies and the tax credit for income produced abroad is recognised. For the purpose of identifying the State or foreign territory in which the income is generated, the same criteria as those referred to in Article 23 apply.

6. At the request of the individual exercising the option referred to in paragraph 1, the option provided for therein may be extended throughout the period of the option to one or more of the family members referred to in Article 433 of the Civil Code, provided that they meet the conditions set out in paragraph 1. In such a case, the individual that exercised the option shall indicate the jurisdiction or jurisdictions in which the family members to whom the scheme was extended had their last residence before the validity of the ' option. The extension of the option may be revoked in relation to one or more families referred to in the previous period. The withdrawal from the option or the decay from the regime of the subject that exercises the option also extend to the family members. Decommissioning by one or more family members for the omission or partial payment of the replacement tax referred to does, not result in the termination of the regime for individuals referred to in paragraph 1.

Art. 2 T.U.I.R. :

1. Taxpayers are individuals, resident and non-resident in the territory of the State.

2. For income tax purposes, people who are registered, for the most part of the tax period, as residents in the statutes of the resident population or who have domicile or residence in the territory of the State in accordance with the Civil Code are considered residents.

2 bis. Additionally are considered residents who are resident and are transferred to States or territories other than those identified by a decree of the Minister of Economy and Finance, to be published in the Official Gazette, unless proven otherwise.

Art. 26-bis T.U.I. :

1. Entry into Italy of non-EU foreign workers who intend to pursue a non-occasional self-employed activity in the territory of the State may be granted provided that the exercise of such activities is not reserved by law to citizens Italians, or citizens of one of the Member States of the European Union.

2. In any case, the foreign individuals who intends to pursue an industrial, professional, craft or commercial activity in Italy, or to set up capital companies or partnership or access to a corporate officers, must also demonstrate that he has adequate resources for the exercise of his activity which he intends to undertake in Italy; to be in possession of the requirements of Italian law for the exercise of the single activity, including, where required, the requirements for

registration in albi and registers; to possess a certificate from the competent authority, no earlier than three months, stating that there are no grounds for obtaining the authorization or license foreseen for the exercise of the activity the foreigner intends to carry out.

3. A worker who is not a member of the European Union must, however, demonstrate that he has a suitable accommodation arrangement and annual income from legal sources, which is above the minimum level laid down by the Law on Exemption from Participation in Health Expenditure.

4. Are applicable the most favourable provisions laid down in international agreements in force in Italy.

5. The diplomatic or consular representation shall ensure that the requirements set out in this Article have been met and that the Ministry of Foreign Affairs, the Ministry of the Interior and the Ministry possibly in charge of the activity that the foreigner intends to carry out in Italy, releases the entry visa for self-employment, with the express indication of the activity to which the visa refers, within the numerical limits established pursuant to Article 3 (4) and Article 21. The diplomatic or consular representation shall issue, also to the foreigner the certifying existence of the requirements of this article for the purposes of the fulfilment of the requirements of Article 5, paragraph 3-quater, for the granting of a residence permit for self-employed work.

6. The procedures referred to in paragraph 5 shall be carried out in accordance with the implementing rules.

7. The entry visa for self-employed work must be issued or denied within one hundred and twenty days from the date of submission of the application and the relative documentation and must be used within 120 days of the date of issue.

7-bis. The condemning by an irrevocable measure for any of the offenses provided for in Title III, Chapter III, Section II of Law No 22 of 19 April 1941, 633, and subsequent amendments relating to the protection of copyright, and Articles 473 and 474 of the Criminal Code imply the revocation of the residence permit issued to the alien and the expulsion of the same with accompanying the border by means of the public force.

SOURCES

- "Res Non Dom" Italian: Law of 11 December 2016, "Budget Law 2017", No. 232, paragraphs 152 to 155 and paragraphs 157 to 158;
- "Res Non Dom" Italian: Revenue Agency Decision No. 47060 of March 8, 2017;
- "Res Non Dom" Italian: Circular of the Revenue Agency n ° 17 / E of 23 May 2017;
- Foreign Investors: Law 11 December 2016, "Budget Law 2017", No. 232, paragraphs 148 to 150 and paragraph 156.

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