

STUDIO



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NEW RESIDENT REGIME

Tax planning opportunities

SPECIAL REGIMES IN ITALY

- New Res Regime (art. 24 *bis* Dpr 917/1986)
- Special regime for retired people (24 *ter* Dpr 917/1986)
- High skill professional regime (art. 16 D.lgs 147/2015)

I

NEW RES REGIME

INTRODUCTION

- Special regime addressed at at wealthy individuals who wish to become tax resident in Italy ("New Res")
- The regime provides, upon option, for a € 100,000 substitutive tax on all foreign source income
- The substitutive tax is due on an annual basis, for a maximum of 15 years and does not cover Italian source income
- No general disclosure of assets and income towards Italian Tax Authorities (very limited exception applies)
- No remittance taxation principle

WHO?

Eligible individuals:

Individuals who

- have not been resident for tax purposes in Italy for 9 out of 10 of the previous calendar years, whether or not Italian citizen
 - ✦ foreigners that have never been (or deemed) resident for tax purposes in Italy fall into the definition of the eligible ones
- actually transfer their residence in Italy for tax purposes

No conditions as for the activities to be carried out in Italy

Family members:

New Res might extend the regime to cover some or all family members

Additional tax of € 25,000 per year is due for each additional person

Broad definition of “family member”: not limited to spouse and children

RESIDENTS IN BLACK LISTED JURISDICTIONS

Individuals who transfer their residence for tax purposes in Italy from Black Listed Countries may opt for the “New Res” regime as well particularly advisable that these applicants file a ruling request to the Tax Authorities

Given the general “presumption of residence in Italy” for former Italian resident individuals that transferred their residence in a Black-Listed jurisdiction, it would be crucial that the Tax Authorities ascertain that the applicant has been effectively resident in the Black-Listed jurisdiction for at least 9 of the 10 previous years

The information included in the ruling request might be exchanged with Tax Authorities of the relevant Countries where the applicants had been resident in the previous FYs

WHAT? – COVERED ITEMS

- The Euro 100,000 substitutive tax covers foreign source income



- In general terms, an item of income is deemed to be originated abroad when
 - I. The asset generating the income is situated abroad, or
 - II. The business or the activity generating the income were conducted abroad or,
 - III. When the payor of the income is resident abroad for tax purposes
- Specific territoriality rules apply for each income type
- The identification of the source of the income is not linked to the criteria adopted in the State of the source
- The substitutive tax is not deductible from any other tax or contribution

WHAT? – EXCLUDED ITEMS

- Income not covered by the substitutive tax
 - ✦ Italian source income
 - ✦ Capital gains from disposal of qualified shareholdings realized in the first five-years period after transfer
 - ✦ Foreign income deriving from countries excluded from the regime (Cherry Picking mechanism)

Qualified shareholdings are those representing

- More than 20% of the voting rights, or

- More than 25% of corporate capital of a company

Thresholds are reduced to, respectively, 2% and 5% for public listed companies

- Those items of income are subjected to the ordinary Italian tax regime
- Please note that dividends from such qualified shareholdings fall within the scope of the substitute tax regime

HOW?

- Tax Authorities clarified that to access to the regime a ruling request is not mandatory (although advisable in most cases)
- Election to access to the regime is available either by
 - Exercising an explicit option in the income tax return for the FY in which the applicant transfer his/her residence in Italy (or in the following FY);or
 - Filing a specific ruling request to the Tax Authorities, who will, in response, attest the compliance of the applicant with the requirements set forth to access the regime
- In both cases, the applicant should attach a checklist drafted according to a specific form released by the Tax Authorities

HOW?

- The checklist includes 4 different sections (*i.e.* personal details, general information, proof of the absence of residence in Italy for tax purposes for 9 out of the 10 previous FY, election for family members)
- If the checklist is not attached to the ruling request or to the tax return in which the option is exercised, the request to access the regime shall be inadmissible
- No disclosure of asset held abroad is required upon election nor during the regime (very limited exception applies)
- Through the ruling request the taxpayer may ask clarifications also on the source of his income

HOW LONG?

- The option for the regime is automatically renewed each year, up to a maximum of 15 years
- Italian New Res is free to withdraw the option for the regime at any time (by notifying the tax department or by including a declaration in the tax return)
- If New Res ceases to benefit from the regime, family members that were included in the regime will cease to benefit from the regime as well
 - ✦ Despite this, those family members can exercise a new independent option to become a New Res, which they can extend to their family members, for the remaining time (up to 15 years from the original option)

WHEN?

- The individual might file the ruling request before transferring the residence in Italy
- The ruling request shall focus on proving that the applicant
 - ✦ is/will become an effective resident in Italy and
 - ✦ has not been resident in Italy for tax purposes for 9 out of 10 of the previous calendar years

To do so, the applicant shall attach a specific checklist provided by the Tax Authorities and prove that he/she had no “centre of vital interests” in Italy for 9 out of 10 preceding calendar years, for what concerns personal/emotional ties and economic interests

- The Tax Authorities shall issue a response to the ruling request within 120 days
 - ✦ Individuals may opt for the regime within the deadline to file the tax return even though the Tax Authorities have not responded the ruling request yet

WHEN?

A New Res will be considered an ordinary tax resident: he/she should spend at least 183 days in Italy in a calendar year

A careful tax planning should be required

- ✦ to avoid any risk of assessments by the Tax Authorities of the “Country of origin” (i.e. the State from which New Res transfer their tax residence), claiming a fictitious transfer of residence in Italy
- ✦ with respect to sources and nature of items of income (ruling advisable)
- ✦ Personal permanent establishment risk to be evaluated as well

II

TAX PLANNING

CHERRY PICKING

- Upon election for the regime, the individual might select the foreign Countries, where the items of income have been produced, to include in the substitute tax regime (this the so-called “cherry picking” principle)
- The substitutive tax is in fact an “umbrella tax” that covers for the taxation of all item of income produced in the Countries included in the option
- The Countries and the related income produced therein not included in the option will be subject to the ordinary Italian tax rules
 - In this case the taxpayer can benefit from a tax credit on taxes levied abroad
- Conversely, this benefit is denied for the income included in the substitute tax regime

CHERRY PICKING

- The explanatory note clarified that the list of the foreign Countries excluded from the regime could be extended during the regime
 - Countries "excluded" through the cherry picking in one year cannot be "added back". The income deriving from such country will be permanently excluded from the substitutive regime
 - Family members can benefit from the "cherry picking" as well
- No reporting obligation should be required with respect to assets held in the excluded Countries
- Foreign source income subject to ordinary taxation in Italy shall benefit – if subject to tax in the source State – from a tax credit (art. 165 TUIR)

WHICH COUNTRIES TO EXCLUDE?

- The cherry picking principle allows taxpayers to plan in advance which Countries to exclude. Careful planning should include valuations concerning
 - Whether Double Taxation Treaties and related benefits apply
 - Whether the taxpayer may benefit from the Italian tax credit for foreign taxes
 - How relevant are losses incurred in the foreign State
 - Whether the shares/participation in a foreign company or entity are held directly or through other interposed entities, so as to exactly determine which Countries should be "excluded" from the substitutive tax
- New Res might be subject to double taxation phenomena in case the foreign source income is subject to tax in the Country of the source and no tax credit is recognized in that foreign State (e.g. the so called preventive 35% tax applied in Switzerland)

MAIN BENEFITS (1 / 3)

- Substitutive Tax: the new regime allows certain resident taxpayers to opt for a yearly one-shot payment of € 100,000, which is an “umbrella tax”, in lieu of:
 - ✦ Income tax on non-Italian source items of income (under Italian laws income includes capital gains)
 - ✦ The 0.2% tax on the value of foreign financial assets
 - ✦ The 0.76% tax on the value of foreign real estate

MAIN BENEFITS (2/3)

- Inheritance and Gift taxes

As a general rule, Italian succession duties applies in fact at a rate ranging from 4 to 8% on assets, wherever located, received by Italian tax residents upon death or as a donation, with allowances ranging up to € 1 MLN

- ✦ The election for the substitutive tax regime allows an exemption from succession duties



No Inheritance and donation taxes on all assets located abroad held by New Res who opted for this regime (as long as the 15-years period after election is not expired yet)

- ✦ In case cherry picking is applied to a country, no succession duties exemption applies with reference to assets located in such country.

MAIN BENEFITS (3/3)

- Reporting Requirements Exemption

Italian resident taxpayers are subject to reporting requirements with respect to any assets (both financial and not financial) held abroad

- The election for the substitutive tax regime exempts from all such reporting requirements even if the relevant assets are held abroad without the involvement of any Italian based intermediary
 - ✦ No reporting obligation with respect to assets and income in “excluded” Countries due to cherry picking
 - ✦ Reporting obligations are applicable to qualified shareholding for the first 5 years following the transfer
- The applicant would be guaranteed full confidentiality vis-à-vis the Italian Tax Authorities in relation to their non-Italian wealth
- To a certain extent, information may automatically flow to the Italian Tax Authorities pursuant to the Common Reporting Standard (CRS), but taxpayers may keep financial assets in jurisdictions that have not adopted the standard

TAX PLANNING

Foreign source income

No tax credit for tax paid abroad or from any tax treaty benefit → no deduction of taxes levied abroad from the € 100.000

If a new res wishes to benefit from tax credit for foreign income and/or from tax treaty benefits, he/she shall exclude the Country in which foreign income source are taxed from the regime, by "cherry picking" in the option or ruling request

In this case, the new res will pay ordinary taxes in Italy on such foreign items of income held in the excluded Country, as well as foreign taxes on that items of income – but, he/she will benefit from tax credit for such taxes paid abroad

Employment income

Since new res spend most of their time in Italy



the employment activities will be mainly performed in Italy



thus the employment income should be considered Italian source and subject to tax in Italy

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