CORPORATE TAX - ITALY

New tax regime for new residents

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Introduction

The Budget Law 2017 has introduced an innovative tax regime based on a substitute flat tax reserved for new eligible individuals who transfer their tax residency to Italy.

The new tax regime is based on the non-domiciled resident approach already adopted in the United Kingdom and other EU countries and aims to attract high-net-worth individuals and their relatives to Italy and increase foreign investments.

The new tax regime (see the new Article 24*bis* of the Income Tax Code) provides a substitute flat tax equal to €100,000 per year on non-Italian source income only, without considering income effectively earned abroad.

The option to participate in the new tax regime is exercised directly through the Italian individual tax return and is tacitly renewed annually.

Overview of regime

Subjective requirements

Eligible taxpayers are individuals (either Italian or foreign citizens) who:

- transfer their tax residency to Italy; and
- have been non-resident for tax purposes in Italy for at least nine out of the 10 tax periods preceding their participation in the regime.

Objective requirements

Substitute flat tax is equal to €100,000 per year and is applicable only on non-Italian source income and gains, which are not subject to any additional income tax in Italy, even if remitted in Italy.

Substitute flat tax must be paid in a lump sum within the provided deadline, which is generally the end of June of the following year.

The new tax regime is available also for each family member of eligible taxpayers who fulfil the same conditions. Substitute flat tax for each additional family member is €25,000 per year (eg, for two spouses, the overall annual substitute flat tax would be €125,000).

Italian source incomes are subject to ordinary taxation.

Duration

The new tax regime starts in 2017, even if eligible taxpayers moved their tax residence to Italy in 2016. The first option to take part in the regime will be through Italian tax returns for 2017 (online submission is generally due by September 30 2018).

The tax regime is valid for a maximum of 15 years. However, it is possible to revoke the option at any

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time.

Exclusions and exemptions
There are a number of exclusions and exemptions under the new tax regime:

- Capital gains from qualifying shareholdings(1) realised in the first five years of participating in the regime(2) are excluded from the regime.
- All Italian source incomes, which are generally subject to the ordinary income tax brackets (ie, up to 43% for income exceeding €75,000, plus local surcharges of approximately 3% to 4%) normally applicable to Italian-resident individuals or the flat rates provided by special domestic rules (eg, from 12.5% to 26% in relation to domestic financial investments), are excluded from the regime.
- Inheritance and gift tax is restricted only to assets and rights physically located in Italy. Foreign assets are not subject to inheritance and gift tax.
- Eligible taxpayers are exempted from reporting assets held abroad in the Italian tax return. This means that foreign assets, investments and real estate properties held abroad do not need to be declared.
- Eligible taxpayers are exempt from the payment of IVIE (ie, the tax on real estate property held abroad) and IVAFE (ie, the tax on financial activities or assets held abroad).

Limits
Eligible taxpayers who adopt the new tax regime and pay Italian taxes based on a lump sum substitute flat tax cannot claim a foreign tax credit for taxes paid abroad, in case double taxation arises.

Substitute flat tax can be applied exclusively to foreign income or gains realised in a specific country or countries (ie, the 'cherry-picking' option). In case the eligible individual does not include in the regime income earned in a specific country or countries, this income is subject to ordinary Italian taxation. If double taxation arises, a foreign tax credit for taxes paid abroad can be claimed.

Payment of the substitute flat tax in Italy does not exempt eligible taxpayers from paying tax (if any) in another country or countries from which the foreign income derives. Specific analysis must be conducted to define the taxation or exemption in all countries involved for each eligible taxpayer and family member, considering also international tax treaties to avoid double taxation.

The new tax regime cannot be combined with additional favourable regimes already in force in Italy.

Opportunity to apply for tax ruling from tax authority
Eligible taxpayers interested in the new tax regime can choose (under rules issued on March 8 2017 by the Revenue Agency) to apply for a tax ruling with the Tax Authority in order to obtain prior approval for the regime. Family members can also be included in the tax ruling.(3)

For further information on this topic please contact Franco Pozzi, Andrea Spinzi or Raffaella Di Foggia at Studio Legale Tributario Biscozzi Nobili by telephone (+39 02 763 6931) or email (franco.pozzi@slta.it, andrea.spinzi@slta.it or raffaella.difoggia@slta.it). The Studio Legale Tributario Biscozzi Nobili website can be accessed at www.slta.it.

Endnotes

(1) A disposal of a "qualified shareholding" generally arises if the shares sold in the past 12 months:

- represented more than 2% of the voting rights of a company listed on a stock exchange or more than 20% of the voting rights of other companies; or
- more than 5% of the share capital of a company with shares listed on a stock exchange or more than 25% of the share capital of other companies.

(2) This anti-abuse clause introduced by the law addresses the situation in which such assets are sold shortly after the option for the new tax regime is exercised. The capital gains at issue will be subject to ordinary domestic tax (ie, progressive tax of up to 43%, plus local surcharges, on 49.72% of the capital gain). Overall taxation will be approximately 23%.

(3) The tax ruling is an opportunity for eligible individuals and no longer an obligation, as confirmed by the Italian Tax Authority. The ruling procedure may last up to 120 days, plus an additional 60 days under certain conditions.
