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Draft legislative decree concerning reform of domestic provisions addressing international taxation issues

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Introduction

On 16 October 2023, the Italian Government released a draft legislative decree implementing Act No. 111 of 9 August 2023 (Delegation to the Government for Tax Reform) concerning the reform of the domestic provisions addressing international taxation issues.

The following article summarises some of the new provisions included in the draft decree.

Individual tax residence

Relevant changes are foreseen to article 2 of the Income Tax Consolidation Act identifying the criteria for determining the Individual's tax residence.

According to present Italian domestic provisions,⁽¹⁾ an individual is to be considered tax resident in Italy if, for a majority of the tax period (ie, for at least 183 days in the calendar year), they meet at least one of the following conditions:

- They are included in the registers of the Italian resident population.

- They have domicile in Italian territory within the meaning of the Civil Code (ie, the principal seat of its business and economic interests).
- They reside in Italian territory within the meaning of the Civil Code (ie, habitual abode) respectively, the principal seat of their business and interests and the place of their habitual abode.

Under the new criteria to define the tax residence, the following applies:

The registration in the resident population register for a majority of the tax period becomes a presumptive element, subject to proof to the contrary.

- A new criterion of establishment is the physical presence in the territory of the state for most of the tax year, without a direct connection with the existing criteria described above.
- The fractions of days will be considered in the domicile, residence or physical test; and
- The notion of domicile is no longer under the definition of the Civil Code, but it is deemed to be the place where the individuals have their main centre of personal and family relationships.

Company tax residence

Under the current regime,⁽²⁾ companies and entities are deemed to be resident in Italy for tax purposes, if their registered office (or legal seat), place of effective management or main business purpose is in Italy for the greater part of the fiscal year.

The registered office is the place shown in the articles of association. The main business purpose is the purpose indicated in the articles of association, if these are in the form of a notarial deed or private deed with notarised signatures. Otherwise, the main business purpose is determined by the actual activity of the company.

According to the new proposed provision, in addition to the place of legal office, the company's residence will depend on the "place of effective management". This is defined as the place where, in continuous and coordinated manner, the key (strategic) management and commercial decision of an entity's business are taken, or the "place of principal ordinary management", as the place where the day-to-day

management of the company is carried on. Under domestic provisions, the tax residence will no longer depend from the main business purpose carried on by the entity.

Controlled Foreign Companies

The draft of legislative decree provides for the amendment (for the purposes of simplification and coordination) the discipline of controlled foreign companies.

For the companies with audited and certified financial statements by authorised foreign professional operators, the application of the Italian Controlled Foreign Companies discipline⁽³⁾ will be triggered only when the effective taxation (is then calculated as the ratio between the effective tax due and the profit before taxes of the firm) is less than 15%.

Tax relief for companies relocating their economic activities to Italy

For the entities carrying on business activities and professional associations currently working abroad (in a foreign country not belonging to the European Union or the European Economic Area) and transferring their activities to Italy, a tax relief regime is foreseen.

The benefit consists of a reduction of 50% of the taxable income for the purpose of corporate income tax and regional tax on productive activities for the fiscal year of onshoring, and in the subsequent five years.

During this period, the relief will be recaptured should the above activities be transferred entirely or partially outside the European Union or the European Economic Area.

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Endnotes

(1) Article 2(2) of the Consolidated Income Tax Act (TUIR).

(2) Article 73(3) of the TUIR.

(3) Article 167 of the TUIR.