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CHARTERED ACCOUNTANTS

Italian res-non dom regime - Increase of the substitute tax for HNWI

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1. Foreword

During the last years, several jurisdictions have been amending or repealing their tax incentives aimed at attracting foreign individuals (e.g. the United Kingdom, which has almost entirely repealed its long-standing res non-dom regime).

Italy has taken a similar path and has decided to make some amendments to its own res non-dom regime (through the **Law Decree** no. 113 of 9 August 2024).

2. Res non-dom regime general features

The Italian legislator implemented, by means of Law no. 232 of the 11 December 2016, the **Italian res non-dom regime** through art. 24-*bis* of the Presidential Decree no. 917/86 (“**TUIR**”); the regime came into effect on the 1st January 2017.

The regime allows the new Italian residents to shelter foreign income through the payment of a flat tax. Income sourced in Italy, on the other hand, remain fully taxable according to the ordinary individual **income tax rates**.

2.1 Subjects in scope

No amendment has occurred with respect to this feature of the regime.

The regime applies to individuals regardless of their nationality. First and foremost, it is necessary for the interested individual to transfer his **tax residence** from a foreign country to Italy. Secondly, the interested taxpayer must demonstrate that, for at least 9 of the last 10 tax periods, he/she has been resident outside of Italy.

The regime may also apply to Italian citizens, should they too have proof that for at least 9 of the last 10 tax periods they have been resident elsewhere and, upon application, are transferring their residence back to Italy.

The benefits of this regime may also be extended to family members (spouse, offspring, parents, in-laws, siblings) of the applicant. The same rules on the transfer of residence to Italy that apply to the applicant, also apply in this scenario.

2.2 Substitute Tax

The regime allows for an annual **substitute tax for HNWIs** to be applied on foreign sourced income. However, the Law Decree mentioned under para. §1 above has doubled the amount of such tax which is now due for an amount equal to 200,000 EUR for each fiscal year in which the regime applies.

This raise in the flat tax, however, will only affect individuals who move their habitual abode to Italy after 10th August 2024. Accordingly, for individuals that were already benefitting from the regime before, the flat tax due will still be equal to 100,000 Euros for all the remaining years in which the election is still effective.

As already mentioned above, the payment of such flat tax covers all the foreign income derived by the relevant taxpayer but it does not cover Italian sourced income (e.g. business income derived from activities carried out in Italy): the latter income will still be subject to the full Italian taxation.

Where the scheme is extended to the family members, there is the obligation to pay a substitute tax of 25,000 EUR for each and every member who wants to benefit from such regime.

The flat tax must be paid through a single payment within the deadline for the payment of the Income Tax (currently set on the 30th June of each and every year with reference to the previous fiscal year).

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2.3 Basic functioning of the regime

In brief, the payment of the flat tax reported in § 2.2 above covers all the income derived in a given year that are considered to be sourced abroad.

In order to understand if an item of income is deemed to be sourced from abroad, the Italian regime requires to follow a specific approach. It is necessary to start the analysis from the Italian sourcing rule for foreigners which is laid down in art. 23 of the TUIR. This rule indicates conditions under which income derived by Italian non-residents is considered to be sourced in Italy for tax purposes. In order to understand which income is sourced abroad (and, accordingly, is covered by the flat tax), it is necessary to apply the same connecting criteria set out in Article 23 of the TUIR but with an opposite reading.

Accordingly, the regime covers, among the others, income from independent personal services generated from activities carried out abroad, income from business activities carried out abroad through a **permanent establishment**, income from employment activities carried out abroad, income from a property that the new resident owns abroad, interest from bank accounts paid by non-residents, as well as capital gains generated by the new resident following the sale of **portfolio participations** in foreign companies, or the sale of **crypto-asset** held through non resident providers.

An important exception is related to the sale of **non-portfolio participations** related to entities resident outside the Italian territory. Any capital gain related to such participation, even though considered to be sourced abroad, is not covered by the substitute flat tax if the relevant sale occurs within the first five years in which the relevant taxpayer has moved to Italy.

Some Italian case law affirms that income generated by the disposal of image rights, on the contrary, is an Italian sourced income to the extent that the activity related to that disposal is performed in Italy (e.g. the football matches played by Cristiano Ronaldo, involved in a litigation with the Italian Tax Authorities).

All of the income produced in Italy by the taxpayer is not covered by the substitute flat tax and is taxed according to the ordinary tax rules in force for residents (i.e. with a progressive tax rate system having 43% as the highest brackets of the Income Tax).

In calculating its domestic tax burden, taxpayers benefitting from the regime provided for by art. 24-*bis* of the TUIR may benefit from the deductions and allowances provided for by Italian law, on the conditions that they are functionally linked to the income, whether Italian or foreign, that is subject to ordinary taxation in Italy.

The regime also grants some other specific benefits, such as:

- it exonerates the taxpayer from reporting the assets held abroad (in the RW form of the Italian direct income tax return) and to pay some specific Italian estate taxes on foreign immovable properties and financial assets (**IVIE** and **IVAFE**);
- the Italian **CFC** regime does not apply with respect to the entities held abroad which fall under the scope of the regime;
- the Italian **inheritance and gift tax** is due only with respect to assets located in Italy.

Based on the interpretation of Italian Tax Authorities, the taxpayer who benefits from such regime is considered to be a resident also under tax treaty law, hence it is allowed to benefit from the Italian tax treaty network.

2.4 Ruling request

Ahead of benefitting from the beneficial tax regime, the interested taxpayer can apply for a tax ruling from the **Italian Tax Authorities**. This way the taxpayer can have certainty on the presence of the conditions that are required in order to benefit from the regime.

Another feature that has changed with respect to the rule at stake is the deadline that the Italian Tax Authorities have to reply to the ruling. Indeed, such deadline has been reduced from 120 to 90 days (in the context of the amendment to the Italian ruling rules in general).

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It is not possible to submit a request for a tax ruling once the taxpayer has already benefitted from the regime.

Where a tax ruling has been obtained, the tax return needs only to include minimal information. In the absence of a tax ruling, the taxpayer shall have to provide proof of all the elements necessary to enable the Tax Authorities to verify the requirements provided for by the law. Should during the assessment, the Tax Authorities consider that the requirements for the regime to apply are not met, then the option exercised by the taxpayer shall be considered invalid, with the consequences of tax recovery and penalties.

2.5 Duration

The substitute tax on foreign income shall commence in the first or second tax period that the taxpayer has moved his tax residence to Italy and shall cease to apply after 15 years. There is no possibility to renew the regime, thus, the foreign income would then become part of the total income of the (now) Italian resident taxpayer, and thus subject to the ordinary income tax rules.

The regime ceases to apply when the taxpayer fails to pay, in all or in part, the substitute tax at the relevant deadlines.

It should be noted that, at the end of the 15-year period, the benefits of the regime shall cease immediately for all the family members too, even where they started benefitting from the regime at a later date.

Since this regime is optional, the taxpayer may choose to revoke the regime at any time before the 15 years have expired.

Res non-dom regime

Main Features	
Eligible Taxpayers	Individuals who had their tax residence abroad for at least 9 out of the prior 10 fiscal years and some their family members
Benefits	• no taxation in Italy with respect to foreign sourced income; • no reporting duties with respect to assets held abroad (RW Form); • no wealth taxes on some assets held abroad; • Italian inheritance and gift taxes apply only with respect to assets held in Italy; • no CFC with respect to foreign entity falling within the scope of the regime.
Duration	15 years
Substitute Tax	200,000 EUR per year; 25,000 EUR for certain relatives

3. Convenience in applying the regime

Individuals interested in moving their tax residence to Italy have to understand if and to what extent the Italian res non-dom regime might actually be beneficial for them. This is true especially after the flat tax has been doubled.

In order to do so, it is important also to understand how and if the foreign State in which their income are sourced may tax such income.

Indeed, if the foreign States where the income are sourced are allowed, also taking into consideration the existing tax treaties with Italy, to tax such income then the benefits of the Italian res non-dom regime might be entirely or partially washed out.

3.1 Tax treaties sharing clauses

Below there is a table summarizing which are the most recurring ways in which Italy distributes and apportions taxing rights with its treaty partners.

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Income	Distributive Rules
Income from immovable properties	Taxable in both States
Employment income (private sector)	Taxable in both State (exception: only taxable in the residence State where certain conditions are met)
Pensions and employment income (public sector)	Only taxable in the State that pays the remunerations
Director fees	Taxable in both States
Interests	Taxable in both States but the source State get limited taxing rights
Dividends	
Royalties	Taxable in both States but the source State get limited taxing rights (some treaties provides for exclusive taxing rights of the residence State, es. Treaty with Ireland or Hungary)
Real estate capital gains	Taxable in both States
Financial instruments capital gains	Exclusive taxing rights of the residence State (some exceptions exist for capital gains in real estate companies)
Independent personal service	Exclusive taxing rights of the residence State, to the extent that there is no permanent establishment or fixed base in the other contracting State
Business income	
Artists and sportspersons	Taxable in both States
Other income	Exclusive taxing rights of the residence State

Based on the above, opting for the Italian res non-dom regime is beneficial only to the extent that the foreign sourced income derived by the applicant are taxable in Italy.

Below there are certain example further explaining such concepts.

3.2 Examples

Example no. 1

The individual, although resident in Italy, receives foreign employment income of 2 million euros subject to foreign taxation at a rate of 25 percent. The same person holds securities which are held in a foreign bank (5 million euros); on such amounts, an annual IVAFE of 10,000 euros would be due in Italy.

By applying for the Italian res non-dom regime in Italy, however, an exemption from IVAFE would apply and only the substitute tax of 100,000/200,000 euros on foreign income would come due.

Foreign sourced income	Ordinary Italian taxation (no res non-dom regime)	Res non-dom regime (old rules)	Res non-dom regime (new rules)
Employment income (2.000.000) Securities (5.000.000)	Foreign tax: 2.000.000 × 25% = 500.000	Foreign tax: 2.000.000 × 25% = 500.000	Foreign tax: 2.000.000 × 25% = 500.000
	Italian taxes: 910.000[1] – 500.000 = 410.000 (5.000.000 × 0,2%) = 10.000 (IVAFE)	Italian taxes: 100.000	Italian taxes: 200.000
Total	**920.000**	**600.000**	**700.000**

Where the taxpayer does not opt for the Italian res non-dom regime, such taxpayer would have to pay 410,000 euros to the Italian treasury (assuming that the foreign tax – 500,000 euros – is fully deducted from the Italian gross tax of 910,000 euros). In addition, 10,000 euros should be paid by the same taxpayer for IVAFE purposes on the securities held abroad.

[1] Personal income tax on 2 million Euros, plus additional local taxes of roughly 3%.

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If, on the contrary, the taxpayer opts for the Italian res non-dom regime it would have to pay 100,000/200,000 euros in Italy, for a total of 600,000/700,000 (depending on when he/she applied for the regime).

Based on the above, in the example at stake, the foreign taxpayer would find it beneficial to apply for the Italian res non-dom regime even after the flat tax has been doubled.

Example no. 2

In this second example, it is assumed that the same person in Example 1 derives foreign employment income of 900,000 euros, subject to foreign taxation at a 25% rate. The same person holds securities abroad for 1.2 million Euros, which would trigger an annual IVAFE due of 6,000 euros.

Should the taxpayer apply for the Italian res non-dom regime, however, no IVAFE would come due and such taxpayer would only have to pay the flat tax of 100,000/200,000 euros.

Foreign sourced income	Ordinary Italian taxation (no res non-dom regime)	Res non-dom regime (old rules)	Res non-dom regime (new rules)
Employment income (900.000) Securities (1.200.000)	Foreign tax: 900.000 × 25% = 225.000	Foreign tax: 900.000 × 25% = 225.000	Foreign tax: 900.000 × 25% = 225.000
	Italian taxes: 407.000[2] – 225.000 = 182.000 (1.200.000 × 0,2%) = 6.000 (IVAFE)	Italian taxes: 100.000	Italian taxes: 200.000
Total	**413.000**	**325.000**	**425.000**

In this example, applying for the Italian res non-dom regime would only be convenient if the person falls within the scope of the old regime (*i.e.* the 100,000 euros flat tax); if not, from a mere economic standpoint the regime would not be beneficial while it might be beneficial from other perspective (inheritance taxes, exemption from reporting duties of the foreign assets etc.).

Example no. 3

Similar considerations as above apply where the taxpayer only derives income from pension which are only taxable in Italy.

Foreign sourced income	Ordinary Italian taxation (no res non-dom regime)	Res non-dom regime (old rules)	Res non-dom regime (new rules)
Private pension (2.000.000) Securities (5.000.000)	Foreign taxes: 0	Foreign taxes: 0	Foreign taxes: 0
	Italian taxes: 910.000[3] – 500.000 = 410.000 (5.000.000 × 0,2%) = 10.000 (IVAFE)	Italian taxes: 100.000	Italian taxes: 200.000
Total	**920.000**	**100.000**	**200.000**

When foreign income is not taxed abroad, the Italian res non-dom regime might prove to be very beneficial.

[2] Personal income tax on 900.000,00 million Euros, plus additional local taxes of roughly 3%.

[3] Personal income tax on 2 million Euros, plus additional local taxes of roughly 3%.

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4. Glossary

Controlled foreign companies

Controlled entities that mainly generate passive income and whose effective taxation is:

- lower than 15%, if the financial statements are subject to audit and certification;
- lower than 50% of the one they would have registered if resident in Italy, if the financial statements are not audited.

Crypto-assets

Crypto - assets are a digital representation that can be stored, transferred or traded only and exclusively by means of block-chain technology, including but not limited to digital coins and digital tokens.

Gift tax

Tax applied as a consequence of gratuitous transfers. The applicable rates vary depending on the level of kinship of the donor with the beneficiary and the taxable income varies depending on the types of assets which are donated.

Income Tax rates

Italian Income Tax (IRPEF) has the following rates and brackets:

- 23% (0 to 28.000 EUR);
- 35% (28.001 to 50.000 EUR);
- 43% (over 50.000 EUR).

Inheritance tax

Tax levied upon death or creation of liens on the estate of the de cuius. The applicable rates vary depending on the level of kinship of the deceased with the beneficiary and the taxable income varies depending on the types of assets which are part of the estate.

Italian res non-dom regime

Favorable regime provided for by Italian tax law according to which individuals transferring their tax residence to Italy are subject to a 200,000 euros flat tax per fiscal year which shelters all their foreign-sourced income. Italian sourced income, on the contrary, are ordinarily taxable in the hands of the taxpayers benefiting form such regime.

Italian Tax Authorities (“Agenzia delle Entrate”)

Agency, under control of the Ministry of Finance, which performs all the functions and tasks assigned by the law in the field of tax revenue and tax duties.

IVAFE

Property tax of 0.2% (or 0.4% for assets held in black-listed Countries) applied to the value of financial products held abroad (art. 19(18) of the DL 201/2011).

IVIE

Tax of 1.06% due on the value of properties located abroad, for any use intended, by residents (art. 19(13) of the DL 201/2011).

Law Decree

Decree issued by the Italian Government, without get-ting any prior approval from the Parliament, to tackle particular emergency situations. It enters into force immediately after its publication; however, after that, the Law Decree needs to be approved by the Parliament (which may also reject or make some amendments to it).

Non-portfolio participations

Shareholdings other than portfolio participations (art. 67(1)(c) of the TUIR).

Permanent establishment

In international tax law, it defines the threshold for a presence of foreign enterprise to be taxable in another State. The domestic definition is provided under art. 162 of the TUIR. This definition is substantially consistent with art. 5 of the OECD Model Tax Convention.

Portfolio participations

Shareholdings that grant up to the 20% of the voting rights, or up to the 25% of the share capital (2% or 5%, if listed in a stock exchange) (art. 67(1)(c-*bis*) of the TUIR).

Substitute Tax for HNWI

Annual flat tax of 100,000 EUR (200,000 EUR, as of 11 August 2024) for high net-worth individuals who transfer their tax residence to Italy (art. 24-*bis* of the TUIR).

Tax residence (individuals)

According to Art. 2(2) of the TUIR, individuals are deemed to be resident in Italy for tax purposes if, for most of tax period, alternatively: have their domicile in Italy; have their residence in Italy (art. 43(2) of the c.c.); are physically present in Italy.

TUIR (“Testo Unico delle imposte sui redditi”)

Italian Income Tax Code, enacted through Presidential Decree no. 917/86.

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