

Tax Breaks for Workers Moving to Italy: New Official Guidelines Released

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On December 28, 2020, the Italian tax authorities released some much-awaited guidelines on the special tax rules applicable to workers moving to Italy and becoming Italian tax residents.

Such rules were recently simplified and improved, consistently with the rationale underlying other measures enacted in the past few years to attract qualified workers, retirees and high-net worth individuals of all nationalities.

Under these rules, any employed or self-employed worker who is a E.U. citizen or a citizen of a country with which Italy has a tax or information exchange treaty in force and transfers his/her tax residence to Italy, can access the special tax regime if he/she (i) has not been resident in Italy in the 2 preceding tax years, (ii) maintains an Italian tax residence for no less than 2 tax years following the move, and (iii) will work mostly in Italy (i.e. for more than 183 days in each tax period). Athletes, artists or performers, as well as entrepreneurs meeting these conditions and starting a new business in Italy, are also eligible.

Such individuals currently enjoy a 70% personal income tax exemption on any employment, self-employment or business income earned during the five-year period including the year of the transfer and the following four. The exemption is increased to 90% if the individual moves to certain southern regions. There is no cap to the income amount eligible for the exemption.

In addition, the tax breaks are extended for an additional 5-year period if (x) the individual has at least one minor or dependent child, or (y) he/she (or his/her partner or child) purchases a house in Italy in the year preceding the move or thereafter. During such additional 5-year period, the exemption threshold is set at 50% but, if the eligible individual has at least 3 minor or dependent children, it is increased to 90%.

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The new guidelines clarify some outstanding issues, such as:

- **Professional Athletes:** these rules were recently extended to professional athletes, including soccer players, for whom, however, the application of the tax breaks require the payment of a 0.5% fee (destined to fund youth sport sectors), the specific application of which is to be determined by an implementing decree, to be yet issued. That notwithstanding, several Italian teams, including major soccer teams, started applying this provision when enrolling new players from abroad. The guidelines, however, confirm that professional athletes are entitled to benefit from the special tax regime subject to the approval of such decree;
- **Foreign Employers are O.K. but Beware of Personal Permanent Establishment Risk:** the guidelines clarify that, subject to all the relevant conditions being met, individuals who transfer to Italy as employees of an employer based abroad, or whose principals (in the case of self-employees or entrepreneurs) are foreign, can access the special tax regime. However, the tax authorities warn that the transferred worker could be treated as a personal permanent establishment in Italy of the non-resident employer under domestic or treaty rules;
- **Certain Royalties May Benefit from the Special Tax Regime:** the guidelines confirm that income derived directly by the author or inventor from the use of intellectual works, industrial patents and processes, formulas or information relating to experience acquired in the industrial, commercial or scientific field, including copyrights, may benefit from the special tax regime (subject to all applicable conditions being met);
- **The Special Tax Regime Would Not Affect the Application of the 10% Additional Tax in the Financial Sector:** as of 2010, a 10% additional tax applies on the portion of any variable compensation paid to certain executives in the financial services sector that exceeds the fixed component of the executives' remuneration. The guidelines clarify that the special tax regime does not affect the application of such additional tax. Hence, for example, in the case of equity awards delivered after an executive transferred to Italy and enjoys the special tax regime, the portion of the awards' value exceeding such executive's base compensation would still be fully subject to the 10% additional tax even if he/she were able to benefit from the 70% or 90% tax breaks on his/her employment income;
- **Variable Compensation Accrued Prior to the Employee's Transfer to Italy:** the tax authorities have confirmed that the tax breaks should only apply with respect to income deriving from employment activities performed in Italy, following the transfer to Italy of the relevant employee. Hence, in the case of equity awards fully accrued outside Italy (i.e. in relation to employment activities performed outside Italy) but delivered after the employee transferred to Italy, the special tax regime would not apply and the awards' value would be fully subject to tax in Italy;
- **Strict Rules for Seconded:** the guidelines confirm that executives seconded abroad could benefit from the special tax regime upon returning to Italy, subject, however, to very strict conditions. In particular, the tax authorities take the view that the tax breaks could only apply if the services performed by the worker upon his/her return to Italy are different from the ones performed abroad and are based on a new employment contract and a different position;
- **Proving Residence based on Tax Treaties' Rules:** for purposes of the special tax regime, tax residence is determined based on Italian statutory rules, pursuant to which an individual is deemed to be an Italian tax resident if - among other things - he/she is enrolled in the registry of the Italian resident population for the most part of a tax year. However, the new guidelines confirm that the tax breaks would also apply to individuals who remained enrolled in such registry but could provide evidence, pursuant to an applicable tax treaty, to have resided outside Italy for the required 2 years prior to the move back to Italy.

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