

Italy: The Tax Administration Issues Regulations on the New “Resident Non-Domiciled” Regime

March 13, 2017

On March 8, 2017, the Italian tax administration issued a much awaited decree (together with an ad hoc tax form and the related explanatory instructions), including initial important clarifications regarding the implementation of a new optional beneficial tax regime available to high net worth individuals transferring their tax residence to Italy.

As illustrated in our [alert memo](#) of January 16, 2017, this new optional regime was introduced with the Budget Law for 2017. Such regime enables individuals who become Italian tax resident and have not resided in Italy for at least 9 of the 10 years preceding the year in which the election is made (the “Grey Period”), to opt to be taxed in Italy on their foreign-source income (other than certain equity capital gains) and assets by paying a flat annual charge of € 100,000. The regime also contemplates an exemption from reporting obligations of foreign assets and access to the very favorable estate and gift tax (generally levied at a rate of 4%), due only on Italian assets. Accompanying relatives can enjoy the same regime; in that case, the flat annual charge would amount to €25,000. The election is valid for a period not exceeding 15 years and can be revoked at any time.

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The March 8 administrative regulations provide very useful indications to verify eligibility for the regime thanks to a check list detailing the information to be provided to the tax administration, possibly by filing a ruling request to obtain certainty regarding the application of the regime. The check list, which is quite comprehensive, coupled with the tax form instructions, enables to identify the key factual items that the tax administration will be scrutinizing to confirm that the taxpayer was not resident in Italy during the Grey Period, therefore being eligible for the regime. Such items include, for example, the tax residence of spouse, children and other relatives, the enrollment of Italian citizens in the register of the Italians resident abroad (the so-called *anagrafe degli Italiani residenti all'estero* or “AIRE”), the direct or indirect (*i.e.* via intermediaries) availability in Italy of assets (such as real estate, financial assets, cars, vessels) and income, and acting as a director of, or holding other corporate functions in an Italian company. In line with the spirit of the law, no foreign income or asset listing is included in the check list. Evidently, the analysis will vary depending on the specific facts and circumstances of each taxpayer.

Contrary to a first reading of the rule enacting this new regime, the decree does not contemplate the ruling proceeding to be compulsory. Hence, the comprehensive and detailed check list included in the decree and the examples provided in the tax form instructions, prove to be particularly useful to understand the tests that the tax administration would expect be met in plain vanilla fact patterns where a ruling proceeding may appear to be redundant, as well as in case a taxpayer would find it appropriate to file for a ruling (the issuance of which would require at least 120 days) to have absolute certainty regarding his complying with such tests.

The decree also makes it clear that a ruling request can be filed before a taxpayer transfers his tax residence to Italy while the election can be made even if the ruling request is still being processed, but no later than the deadline for filing the personal income tax return relating to the tax period following the one in which the tax residence transfer occurs. Moreover, it has been clarified that exclusion from the regime of the main electing taxpayer does not impair continued access of the accompanying relative for the remainder of the original 15-year period by paying a flat annual charge of € 100,000 (instead of € 25,000).

Other regulations are expected to be issued in the near future to address other material issues, such as availability of treaty benefits, access to the regime for Italian citizens that were not enrolled in the AIRE during the Grey Period, and the tax basis to be attributed for Italian tax purposes to assets held at the time of the tax residence transfer.

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