

Newsletter

March 2017

RESIDENT NON-DOM – NEW RULES FOR HNWI

On 8 March 2017 the Commissioner of the Italian Revenue Agency (*Agenzia delle Entrate*, “**IRA**”) issued rules (*Provvedimento*, the “**Rules**”) including specific implementing provisions for individuals that migrate their tax residency from abroad to Italy (the “**Regime**”). The Regime is inspired by the British *resident non-dom* legislation as well as by similar regulations already approved in other EU Countries (such as Portugal, Spain, Malta, etc.).

1) **Background: eligible persons and key implications of the Regime**

It should be reminded that the legal framework of the Regime has been introduced in December 2016 with approval by the Italian Parliament of 2017 Budget Law (“**Budget Law**”) through the insertion of Article 24-*bis* in the Italian Income Tax Code (“**IITC**”). The Regime, which is part of a broader set of rules aimed at enhancing foreign investments in Italy, clearly intends to attract the High-Net-Worth Individuals (“**HNWI**”).

Pursuant to the aforementioned provisions, HNWI (regardless of their nationality or domicile) transferring their tax residency to Italy are now allowed to opt (“**Option**”) for their non-Italian sourced income to be taxed in Italy through a yearly substitutive tax at a flat amount of 100,000 Euros. This favorable taxation on personal income provided for by the Regime represents an interesting alternative to the ordinary IRPEF brackets (up to 43%, plus local surcharges) normally applicable to Italian resident individuals, who are subject to income taxation in Italy on a worldwide basis (*i.e.* on their overall income, regardless of the country where it is sourced).

The election is quite flexible, since it allows the HNWI to carve out certain countries from it, so that income sourced therein would be subject to ordinary Italian income taxation; this would enable the HNWI to optimize his/her tax burden, potentially claiming reduced withholding taxes in foreign jurisdictions (with the right to a corresponding tax credit in Italy, if applicable), considering the nature of his/her investments as well as the results thereof.

Income having an Italian source would fall outside of the Regime and be subject to ordinary income taxes (either at progressive rates or at the flat rates provided by special domestic rules, *e.g.* in relation to domestic financial investments).

The Regime is available only for “newly resident” HNWI, who have not been resident in Italy for at least 9 years out of the 10 years prior to their transfer, and may be extended to the family members of these individuals (in which case the flat amount of the substitutive tax would be equal to 25,000 Euros per each additional member) provided that they also fulfil the same conditions.

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2) Election for the Regime: the Ruling Request

Based on the interpretation of the Budget Law initially proposed by scholars and tax practitioners, it seemed quite clear that, in order to benefit from the Regime, all applicants should have to submit a preliminary ruling request (“**Ruling**”) to IRA in order to prove that the eligibility requirements are met.

However, based on the wording adopted by IRA in the Rules, it seems that such advanced Ruling should be considered as optional and not mandatory, so that the Option can be deemed as validly exercised simply by making the relevant election for the Regime in the annual income tax return for the tax period during which the residence has been transferred to Italy (or alternatively the subsequent one). In this specific regard, it could be worth waiting for further clarifications and operational guidelines (already announced and expected to be published by IRA in the coming weeks), In any event, it is strongly recommended to carefully evaluate the submission of a Ruling request, considering the novelty of the Regime, the sensitivity of the matter as well as the level of certainty that this procedure would grant to HNWI taxpayers.

The Ruling procedure - which may last up to 120 days (plus additional 60 days under certain conditions) - is aimed at obtaining an official reply by IRA on the existence of the requirements provided by law as well as an advance assessment on the appropriateness of the probatory elements legally required for the adoption of the Regime. The HNWI applicant, inter alia, has to indicate the following:

- a) her/his personal details (including the fiscal code and the residence);
- b) her/his status of non-Italian resident for at least 9 out of the previous 10 years;
- c) the tax jurisdiction in which she/he had the residence before the transfer;
- d) the foreign Countries/territories for which she/he intends not to benefit from the Regime.

In addition, the applicant has also to fulfill a specific checklist contained in the request form and enclose the supporting documentation (if any necessary). In particular, such checklist includes several matters (*e.g.* presence of family ties with Italy, ownership of assets) aimed at establishing whether the applicant can be truly deemed as resident outside of Italy.

The Ruling could also be an opportunity to present and discuss more in detail with the authorities complex situations/structures of the relevant taxpayers and clarify with IRA the exact impact of the Regime in respect of the specific applicants.

3) Other practical issues and termination of the Regime

Once exercised, the Option is valid for a maximum period of 15 years and it is automatically renewed on a yearly basis, unless terminated by the taxpayers or in case one of the termination events provided by law occurs, as indicated below.

Moreover, the Regime also has a remarkable impact on succession and gift tax (the application of which is restricted to assets physically located in the Italian territory during the validity of the Option) and provides significant exemptions from property taxes on foreign assets (*i.e.* IVIE and IVAFE) as well as, more importantly, from the ordinary monitoring burdens on foreign investments (*i.e.* RW form) provided by domestic legislation.

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The first tax year of possible application of the Regime at hand is 2017 (for which the relevant tax return will be submitted in 2018), even if the applicants have moved their tax residence to Italy during 2016. The substitute tax has to be paid in a lump sum within the deadline provided for the annual balance payment of IRPEF.

The Regime ceases to apply in the two following cases:

- a) omitted or partial payment of the substitute tax;
- b) transfer of the tax residence to another Country/territory.

Obviously, the HNWI taxpayer may always revoke the Option (as well as her/his family's members).

Both the termination and withdrawal of the Regime preclude the exercise of a new Option. However, in case of Regime's termination/withdrawal for the individual who initially exercised the Option, her/his family's members (to which the Regime has been extended) can exercise an autonomous Option with reference to the residual tax periods (up to a maximum of 15 tax years).

Legance's tax team has gained considerable experience in assisting non-Italian resident HNWI in handling their tax position and relationships with IRA, both in pre-litigation stage and in litigation, including as concerns the negotiation of rulings. Legance's tax department is available to support clients in analyzing their situation and to provide advice about the potential application of the new rules.

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