

TRUST & ESTATE PLANNING

The Trust Instrument and the New Res-Non-Dom Italian Regime

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We would like to say a few words about two of the biggest revolutionary fiscal developments Italy is experiencing: the new Italian 'res-non-dom' regime and the less new (but currently in the status of being reformed) trust instrument.

Let's begin with the Italian 'res-non-dom' regime, which has been introduced by the Law no. 232/2016 (the so called 'Budget Law') through the addition of Article 24-bis in the Italian Income Tax Code (IITC). The latter provided for the first time ever in Italy a particular tax regime, whose key issue is the derogation from the ordinary 'worldwide income taxation' principle in favour of those who, after having lived abroad for at least 9 out of the 10 previous years, move their tax residence to Italy.

The new legislation is tailored to foreign High Net Worth Individuals who become Italian tax residents pursuant to Article 2, paragraph 2 of the IITC, which requires at least one out the following three conditions to be met: i) registration with the Municipal register of resident population for more than half of the tax year (when fulfilled, this condition is sufficient to irrefutably qualify the taxpayer as Italian resident); ii) placement in Italy of the habitual abode ('residence'); iii) placement in Italy of the main centre of business and interests ('domicile').

Bearing in mind the concept of tax



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residence for individuals in Italy, all those who decide to 'fiscally' move to our country can opt for this new regime under which all foreign-source income generated during the validity of the option is subject to an overall flat tax of EUR 100,000 per year.

The special regime can be also extended to one or more qualifying related persons (registered partner, children, parents, etc.) who will be subject to an overall flat tax of EUR 25,000 per year per person.

The option shall be expressed either in the Italian tax return or by filing a preliminary ruling compliance request to the Revenue Service and it can last for a maximum of 15 years, being immediately terminated if the tax fee is not fully paid by 16 June (ordinary tax payment deadline) or in case the tax-



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payer decides to terminate it at any time.

A very unique aspect is the possibility to exclude some countries from the regime (so called 'cherry picking'), meaning that all the income produced there will be subject to ordinary Italian taxation and may recover the foreign tax credit if provided by the double taxation agreement. Indeed, the flat tax we are discussing represents a 'substitutive tax' of the Personal Income Tax (the so called 'Irpef'), which, by its very nature, is excluded from the application of the ordinary taxation rules such as the Italian tax credit, that is normally granted for any taxes paid abroad.

Please bear in mind that in order to avoid any fiscal hindrance, this choice shall be carefully evaluated.

As we have already explained, the

flat tax will substitute the Irpef, but this is not all. As a matter of fact, the new taxpayer opting for the special regime will be exempted even from the inheritance and gift taxes (which will therefore be due only on the Italian assets) and from any tax monitoring obligation (no filing of the 'RW-Form' is required) and wealth tax payments (Ivite and Ivafe taxes).

All the above mentioned aspects outline the Resident non-domiciled Italian regime, which shows how the Italian jurisdiction is growing in line with all the European countries that, during the past few years, have already recorded successful experiences through the introduction of similar tax opportunities. Let's consider the UK res-non-dom regime as well as the Maltese or the Portuguese ones.

Considering all that we have analysed, it becomes clear that this new legislation provides good wealth planning opportunities which also involve the trust instrument we will now turn to.

Indeed, the Circular letter no. 17/E issued by the Italian Tax Revenue on 23 May faced the correct approach to the interposition in the income's possession, which occurs mainly in case of non-resident companies or trusts' settlement.

It has been clarified that, in line with the provisions set forth in Article 24-bis of the IITC, if the individual has the direct possession of the income (both Italian or foreign source) no problems arise. A different situation occurs when the possession is indirect, meaning

that the assets are held by an intermediary (direct possession), but the real beneficiary of the legal effects is the individual tax payer.

In the latter case, pursuant to the aforementioned Circular letter, the same considerations performed for the direct possession apply. Therefore if the individual has the indirect possession (through another subject which acts as an intermediary such as the trust instrument) of an Italian-source income he/she will be taxed on the Italian ordinary base provided for individuals; while, in case of foreign-source income, it will be subject only to the flat tax described above.

This exact scheme applies also with respect to the tax monitoring and wealth tax payment exemption in all those situations in which the assets are formally held by juridical entities (such as trusts) that act like mere intermediaries, because the real availability of them shall be attributed to the individual Italian tax resident.

Moreover, with respect to the inheritance and gift tax, foreign assets are excluded from their application if the transfer takes place – as a consequence of death or donation – during the validity of the option. As a consequence, the inheritance and gift taxes will be due only when Italian assets are transferred.

In the end, the real innovative issue lies in the fact that the introduction of the new 'res-non-dom' regime offers, for the very first time ever, the possibility to become an Italian tax payer who is not only exempted from the inheritance and gift tax due on the assets held abroad, but also granting this exemption to the heirs which are not Italian residents.

Let's try to make this concept clearer. Imagine a French tax resident whose heirs (i.e. wife and sons) are French tax residents. He has never been an Italian tax resident and decides to move to Italy pursuant to the requirements set forth in Article 2, par. 2 of the IITC as described above, becoming in this way a new Italian tax payer. Furthermore he decides to opt for the special tax regime introduced by Article 24-bis

of the IITC without any cherry-picking.

It is worth specifying that our man held assets in France and other foreign countries but no assets are held in Italy nor does any Italian-source income exist. Therefore, during the validity of the option, he will be taxed on all his foreign-source income, being subject only to the overall substitutive tax of EUR 100,000 per year, which covers the Personal Income Tax, the inheritance and gift taxes and also the potential wealth taxes (Ivite and Ivafe).

In this framework, when the new Italian taxpayer dies, the event is not subject to any inheritance tax due to the fact that during the validity of the option for the special regime only the assets held in Italy are subject to inheritance taxation. But on the other hand, his heirs will be taxed pursuant to French jurisdiction rules.

Here comes the surprise: If the new Italian taxpayer constitutes – during the period of validity of the option – an Italian resident trust (no matter the regulative law) transferring to the trustee all the assets held abroad, no inheritance and gift tax is due, as analysed before. Once he dies, his heirs will be involved in no taxation, since the assets at that time held by the trustee on behalf of the trust won't be passed through inheritance. As a matter of fact, they are truly held by the trust, not being the property of the settlor anymore.

Finally, even if what is considered above is only a study case, it represents a possible application of the Italian 'res-non-dom' regime, highlighting once again the trust instrument and how it could be a great opportunity to perform perfect wealth and tax planning, offering the chance to consider Italy as a good country to move the resident to for fiscal purposes.

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