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NEW FLAT-TAX REGIME FOR HIGH NET WORTH TAX RESIDENT INDIVIDUALS (HNWI), BY FRANCESCO SALTARELLI AND SERENA CIVARDI (DELOITTE, STUDIO TRIBUTARIO E SOCIETARIO)

1. Introduction

The article 24-bis of the Italian tax code introduced by the 2017 Italian Government Budget Law marks the beginning of a favorable tax regime in Italy for new resident individuals. Indeed, it introduced a flat-tax regime which mirrors the British resident non-domiciled regime and others tax regimes foreseen in other countries within the European Union, such as Malta, Portugal and Spain.

The flat-tax regime targets High-Net-Worth Individuals (HNWI) interested in transferring their fiscal residency to Italy by providing a simple and competitive tax regime to their non-Italian incomes and capital gains realized abroad. In addition to the direct increase of the tax revenue of the Italian tax authorities, the tax regime aims to generate a domino effect by attracting consumption and investments from these individuals.

Considering that other EU member States introduced comparable tax regimes in their home regulations, the Italian flat-tax regime should comply with the principles and the EU regulations despite pressure and political remarks have already been released by other member States. Indeed, the Italian flat-tax regime may constitute a suitable exit for those HNWI who will be affected by the restrictions introduced to the UK non-dom regime.

In parallel, an accelerated immigration procedure has been introduced for HNWI transferring to Italy who would need to obtain immigration clearance, such as a visa or a work permit.

On March 8, 2017, the Italian tax authorities have released the implementing decree concerning the practical application of the special regime, by introducing a checklist and the related procedure to be used for the purpose of determining whether the new flat-tax regime applies to the taxpayers or if the taxpayer does not meet the qualifying conditions.

An official Circular Note by the Italian tax authorities, as per the Italian usual practice, is expected to be released shortly.

Briefly, the flat-tax regime for individuals moving to Italy introduces the following special effects:

- Exemption from the Italian taxes on foreign sourced income
- Exemption from Italian inheritance tax on foreign assets
- Exemption from real estate property tax on foreign assets (i.e. IVIE – IVAFE)

- Exclusion from the foreign assets reporting obligations (RW form);
- Payment of a fixed annual tax of Euro 100.000 which substitutes the ordinary tax liability on the above points.

2. Main features, eligibility and provisions governing the “New Flat tax Regime”

Main features of the regime - The New Flat tax regime in force starting from 2017 tax year will introduce a flat tax equal to €100.000 per year for the individuals transferring the tax residency to Italy regardless of the amount of foreign income realized. The special regime can be extended to relatives by paying an additional €25.000 for each applying family member.

The flat tax substitutes the ordinary taxation on the incomes produced outside of Italy, but keeps the tax treatment of Italian-sourced income unchanged, as such incomes will remain subject to ordinary taxes.

Therefore, no Italian statutory progressive taxation on foreign sourced income will be levied, to the extent that the Euro 100.000 flat tax is paid and irrespective of the actual amount of such foreign income and of any remittance to Italy.

The taxpayer may decide not to apply for the exemption on the income deriving from one or more specific countries. In this case, the individuals are subject to ordinary Italian taxes for the income produced in the foreign country and they are entitled to claim a foreign tax credit for the taxes paid abroad to mitigate double taxation, as per general tax rules.

On the contrary, any Italian sourced income would be subject to standard income taxation.

The exemption does not include capital gains realized from the sale of qualified participations¹ in the first five years of the option regime. Such capital gains are therefore subject to the ordinary tax treatment. After the first five years, also such capital gains would benefit of the exemption.

Qualifying individuals can benefit from the regime for up to 15 years and such length of duration of the Italian regime make it more appealing.

Eligibility – Eligible taxpayers opting for the special regime are individuals – and their family members – who transfer their residency to Italy according to the Italian tax law and who were not resident in Italy for tax purposes for at least 9 years of the past 10 years preceding the application.

¹ Participations are considered qualified if that give the taxpayer more than 20 percent of the total voting rights (2 percent if listed on a public stock market) or more than 25 percent of the equity of the company (5 percent if listed).

Application for the option – The application for the regime must be exercised by the deadline for the submission of the tax return related to the fiscal year following the year in which the individual transfers his residency.

The individuals interested to adhere to such regime may also file a tax ruling to the Italian tax authorities, which will assess the tax position and will confirm the existence of the requirements for the special regime.

Despite the law states that the tax ruling is mandatory (and therefore the application can be made only after a positive response by the tax authorities), the implementing decree of last March 8th recognized this as optional.

Unless specific considerations will be reported in the upcoming Circular Note, a case-by-case analysis on the opportunity to lodge the tax ruling (and the related checklist) has to be taken into consideration.

In the ruling it is necessary to report the last country (or countries) in which the applicant was resident before moving to Italy. The Italian tax authorities will share the relevant information to the tax authorities of the last jurisdiction of residence.

A number of specific and detailed criteria are considered in the checklist in order to double-check whether the applicant did or did not actually meet the conditions to have his tax residency in Italy in the preceding 10 years (the presence of familiar or personal ties in Italy, business links to Italy, having Italian-related income).

Termination of the regime – The eligibility can be revoked at any time and it will terminate in any case after 15 years from the first year of validity.

Moreover, the special tax regime does not apply in case of omitted or partial payment without prejudice of the previous tax years. Therefore, the regime is revocable, and foresees that the taxpayer pays the €100.000 flat tax within the ordinary deadline for the tax payment; if the flat tax is not entirely paid, the option for the tax regime is considered forfeited and the regime cannot be exercised any longer.

The option automatically renews yearly unless revoked or if the taxpayer decedes from the tax regime (e.g. omitted payment of the flat tax, transfer of the tax residency abroad).

After ordinary termination or revocation, it is not possible to apply again for the special tax regime. Similar provisions are foreseen for applying family members.

3. Conclusions

The new flat-tax regime represents a good option to be taken into account by High Net Worth individuals.

The application for this regime needs an accurate and deep tax and legal analysis in order to implement a suitable wealth and income planning, also to evaluate the implications of the impact of the preceding domestic law and jurisdiction and the Double Tax Treaties involved in the transfer to Italy.

As an accurate evaluation of all of the relevant aspects of an applicant's position (and family members) and the related procedures of collection/filing the documentation may require significant efforts and time, it is advisable that the potential applicants starts the consultation with their tax and legal advisors at the earliest.