

# GMS Flash Alert

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## Italy – Care to Switch from Old Inpatriate Regime to New One?

With a newly-issued provision<sup>1</sup>, the Italian tax authority (*Agenzia delle Entrate*) has set out new rules giving employees who were previously using the old pre-31 December 2015 “inpatriate regime” the possibility of opting for the new regime. They can do this by submitting a **written request to their employer by 2 May 2017**.

For related coverage, see the following issues of *GMS Flash Alert*: [2016-017](#) (28 January 2016) and [2017-34](#) (22 February 2017).

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### WHY THIS MATTERS

At the moment, employees who returned to Italy by 31 December 2015, and who opted for the old regime (Law no. 238/2010<sup>2</sup>), are allowed to be taxed – until 31 December 2017 – on reduced employment taxable income equal to:

- 20 percent for women, and
- 30 percent for men.

Starting from 1 January 2018, the above employees would then start to be taxed in Italy on 100 percent of their Italian employment income.

The newly-issued provision allows an individual to retroactively opt out of the 20 percent/30 percent “old” regime for 2016 and instead benefit from the less favorable 70 percent (for 2016) and 50 percent (starting from 2017) “new” regime under Legislative Decree no. 147/2015<sup>3</sup> – but the benefit would endure over a longer period of time. Effectively, the individual would be “sacrificing” the tax advantage for 2016 and 2017, but would be able to benefit from the regime for a longer period of time.

While this may have a negative impact on the assignee’s tax liability (depending on the choices made), it would only be temporary (provided that he or she opts for the new regime). Using the new inpatriate regime can help an assignee (and his or her multinational employer) mitigate tax costs over a longer period of time.

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## Background and New Requirements

Article 16 of the Legislative Decree no. 147/2015 introduced a favorable tax regime for skilled employees coming to Italy for employment that allowed them to benefit from an abatement of 30 percent of taxable income, starting from the year in which the individuals became Italian tax residents and for the following four fiscal years (total of five).

According to Legislative Decree no. 147/2015, the regime was applicable to an individual under the following conditions:

- A) Not resident in Italy in the previous five fiscal years before the transfer:
  - a) Unless the individual was an EU citizen that:
    - I. lived continuously abroad during the last 24 months;
    - II. has decided to move to Italy after studying, working, or gaining post-graduate qualifications abroad.
- B) Remains resident in Italy for at least two fiscal years;
- C) The work activity has to be carried out for an Italian resident company and the employment relationship needs to be with an Italian resident company or a company that controls an Italian resident company or a company controlled by an Italian resident company directly or indirectly (parent companies);
- D) The work activity has to be carried out mainly in the Italian state;
- E) Has to perform managing or directing roles or must be a highly-qualified/specialized employee.

The Budget Law<sup>4</sup> has introduced the following two updates to the existing rules:

- 1 The increase of the tax abatement to 50 percent of taxable income – meaning that only 50 percent of the income produced by the individual from his or her employment activity will be subject to taxation in Italy.
- 2 The requirements foreseen for EU citizens – described under point A) sub a) – have now been extended to the citizens of countries with which Italy has in place a double taxation treaty or an information exchange agreement.

## How Employees Can Benefit

Where an employee decides to opt for the new regime by 2 May 2017:

- He/she can benefit from the new special regime from 1 January 2016 to 2020 – according to Article 16 of Legislative Decree no. 147/2015.
- In this case, for fiscal year 2016, employees who exercise the aforementioned option, in the 2016 tax return, will have to adjust their taxable income from 20 percent or 30 percent of gross income (taxable according to the old regime) to 70 percent of their employment income.
- Starting from fiscal year 2017, the relief allows for a reduction of taxable income to 50 percent. In the event that the employer cannot apply it through the payroll, the taxpayer can still benefit from it directly through the application in the 2017 tax return.

## Action Steps for Employees

Employees who want to claim the new regime will have to send a formal request to the employer by 2 May 2017, requesting the application of the new regime.

Moreover, they have to file the “Modello Redditi 2017” (previously called “Modello Unico”) and recalculate their taxable employment income on the basis of the new exemption (30 percent, instead of 80 percent or 70 percent previously claimed) **and pay the higher tax by 30 June 2017** (or later, by 31 July 2017) by increasing the amount of 0.40 percent for a delayed payment.

Employees who returned to Italy by 31 December 2015, and who have already opted and used the relief according to Law no. 238/2010, and then decide not to opt for the new inpatiate regime, may continue to use the old one until 31 December 2017.

This option for the application of the new regime is also permitted for those who returned to Italy before 31 December 2015, and have not asked for the application of the old regime yet. The condition is that they meet the requirements provided for by the previous regulation.

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## KPMG NOTE

The ability to opt for the new regime may be attractive for employees at all income levels. For example, an individual with EUR 500,000 of taxable income and subject to the 30-percent tax regime would receive a reduction in taxable income of EUR 700,000 for the two years 2016 and 2017. If instead he exercised the option for the new regime, he would receive a reduction in taxable income of EUR 1,150,000, but over five years instead. Therefore, the individual would receive more tax relief over a longer period.

However, for cash-flow purposes, he would have to repay the excess tax relief for 2016 in June 2017, and then not receive the last tranche of tax reduction until 2020. There is also an element of uncertainty, if the employee opts for the new regime and this is subsequently abolished by the Italian government – in such case, he would be giving up a guaranteed relief for 2016 and 2017, on the assumption that the new relief will last until 2020.

Certainly individuals who are using the old regime should consider their options very carefully, in terms of future income and intentions to reside in Italy, and should consult with their personal tax advisers accordingly.

There continues to be some doubt as to how long an individual who has opted for the new regime needs to stay in Italy before losing the relief. This may in fact be two years from the date the election was made.

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## FOOTNOTES:

1 *Provvedimento* of the *Agenzia delle Entrate* dated 31 March 2017 (Prot. 2017/64188).

2 Law. no. 238 - 30 December 2010 – *Italian Brain drain regime*. *Legge 30 dicembre 2010, n. 238, “Incentivi fiscali per il rientro dei lavoratori in Italia” (Gazzetta Ufficiale n.9 del 13-1-2011)*.

3 Legislative Decree n. 147 – 14 September 2015. *Decreto Legislativo 14 settembre 2015, n. 147, “Disposizioni recanti misure per la crescita e l'internazionalizzazione delle imprese,” (Gazzetta Ufficiale Serie Generale n.220 del 22-9-2015)*.

4 Law no. 232 - 11 December 2016. *Bilancio di previsione dello Stato per l'anno finanziario 2017 e bilancio pluriennale per il triennio 2017-2019. (Gazzetta Ufficiale Serie Generale n.297 del 21-12-2016 - Suppl. Ordinario n. 57)*.

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