

GMS Flash Alert

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Italy – Long-Awaited Circular Clarifies Inpatriate/Expatriate Tax Regimes

Agenzia delle Entrate, Italy's tax agency, has finally issued its long-awaited Circular clarifying its position regarding the various inpatriate/expatriate tax reliefs that have applied in Italy since 2015.¹ The 102-page Circular clarifies a number of issues which have been uncertain for the past 18 months, for example:

- it states that the incentives can only apply starting from the year in which the individual is tax resident in Italy;
- it makes it clear that in order to apply, the individual must qualify as "tax resident" in Italy;
- it makes explicit that an individual who has never cancelled (or been removed) from the *Anagrafe* (population register) cannot benefit from the regime;
- it makes it clear that the relief can also apply to "inbound seconded" employees as long as they qualify as tax resident in Italy, meeting certain conditions;
- it makes it explicit that the relief does not apply to individuals who are returning to Italy after a period where they have been seconded abroad, since they kept their Italian employment relationship.

The Circular also contains further details on the so-called "non-domicile" regime for "Ultra High Net Worth" individuals.

In this *GMS Flash Alert* we summarize the most significant clarifications regarding the inpatriate regime for employment income.

WHY THIS MATTERS

Employers, their employees going on assignment to Italy and their global mobility program managers, as well as tax service providers, should familiarize themselves with the new policies and clarifications communicated in the Circular. The Circular could impact who is entitled to claim the inpatriate/expatriate tax reliefs, and some employees may find themselves no longer eligible (which could raise international assignment-related costs) and/or non-compliant. But the

Circular, in spite of changes to the inpatriate/expatriate tax regime that may appear disadvantageous, may also provide opportunities for planning.

An example of a noteworthy clarification is that the incentives do not apply to individuals who are not resident in the year of arrival. Therefore, employers may now wish to consider this when looking at the timing of assignments.

Tax Residence

The first part of the Circular sets out the considerations on tax residence and the applicability of the various reliefs. The general principle is that relief should only apply to individuals who are not only becoming resident in Italy but also commencing a “genuine and substantial” relationship with Italy. Depending on the relief applicable, there are also minimum requirements for non-residence prior to transferring. The Circular makes clear that in order to apply, the individual must qualify as tax resident in Italy.

The Circular makes it explicit that an individual who has never cancelled from the *Anagrafe* (population register) of the resident population cannot benefit from the regime. The Circular also makes it clear that the relief can apply to individuals who are transferring to Italy from “black-list countries” (as defined by the *Agenzia delle Entrate*), if they can prove that they were genuinely resident in such country.

The incentives can only apply starting from the year in which the individual is tax resident in Italy. Therefore, by definition, an individual arriving with his/her family after 2 July in the year, cannot be regarded as fiscally resident in Italy for that year and therefore the incentive cannot apply. For example, where an individual who would otherwise qualify for the relief arrives in Italy on 3 July 2017, the tax incentive can only apply from 1 January 2018.

KPMG NOTE

The clarification on the year of arrival issue is welcomed. Although it was always believed to be the case, it is good to see confirmation that the incentives do not apply to individuals who are not resident in the year of arrival. Employers should now consider this when looking at the timing of assignments. For assignments with a flexible start date, alternative calculations may be required based on:

a) full-year tax residence, with the incentive applying to employment income and a foreign tax credit on non-Italian income; or

b) taxation as a non-tax resident.

Inpatriate Regime

Introduced by legislative decree in 2015, the inpatriate regime applied for fiscal year 2016, providing for a reduction by 30 percent of the employment income subject to taxation. (For prior coverage, see GMS [Flash Alert 2017-074](#), 21 April 2017 and GMS [Flash Alert 2016-017](#), 28 January 2016.) From 1 January 2017, the relief was extended to 50 percent and applied also to self-employed income. This regime applied only to individuals becoming resident in the fiscal year.

The Circular makes clear that the rationale behind the regime is to attract to Italy those who will bring the benefit of their experiences abroad to help with the cultural, economic, and technological development of Italy. As such, the Circular

indicates that the relief can also apply to “inbound seconded” employees as long as they qualify as tax resident in Italy, meeting the conditions provided for by Italian tax law (e.g., centre of vital interests). In all cases, for the regime to apply:

- a) the individual must work for an Italian employer or with a company controlling or controlled by the Italian resident employer;
- b) the individual must undertake his working activity primarily in Italy.

The Circular makes it explicit that this relief does not apply to individuals who are returning to Italy after a period where they have been seconded abroad, since they ended up keeping their Italian employment relationship. There are two routes for entry to the relief. The most common is likely to be for individuals who meet the following conditions:

- They are in possession of a university-level degree;
- They have continuously followed a course of study or employment outside Italy for at least 24 months;
- They are citizens of the EU or a state with which Italy has a double taxation treaty or an agreement for information exchange;
- They will be employed or self-employed.

The Circular clarifies that this applies either to an Italian university-level degree or to a degree obtained abroad. Importantly, degrees earned outside Italy are not automatically recognized and must be certified with a “declaration of value” by the competent Italian Consulate in the country issuing the degree. The declaration attests (in the Italian language) that it is in fact a university-level degree.

As for the 24 months of work or study, the Circular clarifies that this does not necessarily have to be immediately before returning to Italy, but must have been for a continuous period of 24 months.

The type of work pursued in Italy need not be linked to the course of study and can be either in the public, private, or non-profit sectors.

The other requirement is to be a citizen of an EU country or a country with which Italy has a double taxation treaty or an agreement for information exchange. Even if an individual has been resident previously in a country with which Italy has a double taxation treaty, his or her citizenship counts.

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 by applying it in the 2017 tax return.

Where an individual does not qualify for the 30-percent (for 2016) or 50-percent (for 2017) relief under the above routes, there is still the possibility to qualify for these reliefs where all the following conditions are met:

- 1) Non-residence in Italy for five complete tax years prior to transferring to Italy;
- 2) The individual must be in a senior executive role or highly qualified or specialized.

In order to qualify under 1), it is necessary to look at each tax year separately; the relief applies where a working activity is undertaken in Italy for 183 days or more in the year. Periods of holidays and weekends can count towards the 183 days, though not any days of business travel abroad.

KPMG NOTE

The reference to seconded employees who are not registered with the *Anagrafe* is slightly confusing, since there is, in any case, a legal requirement for anybody planning to live in Italy for more than three months to register. This point may be important where an individual is tax resident as a habitual resident but delays registering with the *Anagrafe*.

The Circular makes explicit what was previously implicit: the regime for 2016 applied only to EU citizens, and from 1 January 2017 it applies to non-EU citizens that are citizens of countries with which Italy has concluded a double taxation treaty or agreement for information exchange. Therefore, prior to 31 December 2016, a Japanese or U.S. citizen could not use the 30-percent relief with the conditions of staying abroad for less than two years and with a degree, but could benefit from the regime meeting the conditions of residing outside of Italy for more than five years.

In terms of the citizenship requirement, Italy has a wide network of double taxation treaties and exchange of information agreements; therefore a large number of individuals should qualify. However, citizens of several African, Asian, and Latin American countries would not qualify due to the absence of such agreements.

A comprehensive list of Italian double taxation treaties is available at: <http://www.finanze.gov.it/opencms/it/fiscalita-comunitaria-e-internazionale/convenzioni-e-accordi/convenzioni-per-evitare-le-doppie-imposizioni/index.html>.

That said, citizens of countries without a double taxation treaty could still qualify under the rather more onerous conditions which provide for five years of non-residence and a higher level of specialist qualification or management role.

Where an individual is relying on qualifying as tax resident in Italy under Article 2 1) of the Italian Tax Code, he will need to be particularly careful regarding the number of days spent outside Italy in a fiscal year. Therefore, where an individual is tax resident but working outside Italy, he should take particular care to keep a travel diary with a view to proving that he actually spent 183 days or more in Italy.

Taxable Income

The income subject to relief is any income derived from employment or assimilated with employment income, as well as any income paid in substitution of such income. As noted above, relief now also applies to professional and self-employed income. The incentive/relief is applied before any other deductions allowed according to Italian tax law.

Most importantly, the relief applies only to income that is considered “sourced” in Italy and not in respect of any income that is produced outside of Italy. The Circular contains a detailed exposition on the application to stock options and stock awards derived outside Italy. The Circular makes it clear that when considering options/stock awards it is necessary to consider as being sourced abroad any period related to services performed outside Italy during the grant-to-vesting period.

For these purposes, occasional overseas work-days or business trips count as Italian-source income provided the employee is still working the greater part of the year in Italy.

KPMG NOTE

It is logical that in accordance with OECD principles where equity or bonus awards are partly vested outside Italy, they are not regarded as Italian-source income. It is satisfying to see the *Agenzia delle Entrate* quoting the OECD Commentary and correctly applying the rules in this regard.

Implementation

The Circular sets out in detail how the 50-percent relief can be applied on a practical basis either directly by the withholding agent (*sostituta d'imposta*) or through the individual's tax return. For the regime to be operated through payroll, the employee needs to make a written request to his employer setting out:

- Name;
- Fiscal code;
- Indication of date of re-entry or hiring in Italy;
- Confirmation of residence in Italy;
- A declaration that the qualifications for the relief are met;
- A pledge to inform the tax agency immediately regarding any changes in circumstances.

The relief can then operate in the company's payroll following application. Alternatively, once again, the relief can be claimed through the tax return.

KPMG NOTE

The procedure for applying the relief through payroll is straightforward and may be done as noted above by a letter from the employee covering the above points; there is currently no form to complete. Although employers are taking this self-certification as valid, they may wish to (but are not required to) verify the information by requesting some back-up information including:

- a copy of a passport to prove citizenship;
 - declaration of value (issued by the competent Italian Consulate) for any degree certificate;
 - certification of registration with the *Anagrafe*.
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FOOTNOTE:

1 Circolare N 17/E, *Agenzia delle Entrate*, Roma, 23 Maggio 2017.

Contact us

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