

UPDATE ON THE NEW ITALIAN NON-DOM TAX REGIME

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On 8 March 2017, the Italian Revenue released the rules implementing the so-called Non-Dom Tax Regime (the “Non-Dom Rules”), which was laid down in the 2017 Italian Budget.

BACKGROUND AND THE NON-DOM RULES

The 2017 Budget laid down a tax regime aiming to reduce the effect of the Italian worldwide tax principle for eligible new Italian tax resident individuals by introducing a flat substitute tax on their foreign income. In addition, this tax regime exempts eligible individuals from certain report obligations and wealth taxes as well as from donations and inheritance tax related to assets held outside Italy (please see our Briefing of January 2017).

The Non-Dom Rules address, among other things, the advanced tax ruling that apply to the regime as well as filing and tax payment terms. The Italian Tax Authorities are expected to release official guidelines and interpretation of the rules.

1. Ruling procedures

The individual may ask the Tax Authority to check in advance that the eligibility requirements are satisfied pursuant to a tax ruling. Notably, the Non-Dom Rules state that the advanced tax ruling is optional and therefore is not required in order to benefit from the new tax regime. In particular, the tax ruling will address the fact that the individual has not been a resident for tax purposes in Italy for at least nine out of the 10 tax periods preceding that in which the option is exercised (the “Tested Period”). The individual can apply for the tax ruling before moving his tax residence to Italy. The Non-Dom Rules list the information that the individual has to provide for the purposes of the ruling. This includes, among other things, his personal and economic relations with the Italian territory during the Tested Period; but full disclosure in respect of the assets held outside Italy does not seem to be required. If the eligible individual has had certain relations with the Italian territory during the Tested Period, evidence should be provided of the fact that he was nevertheless resident in another country (and not in Italy) for tax purposes.

In addition, the eligible taxpayer must indicate the foreign country or countries whose sourced income will not be covered by the Non-Dom Regime but subject to ordinary taxation in Italy.

If the tax ruling procedure is not applied, this information must be delivered to the Tax Administration on the exercise of the option. Finally, this information has to be provided also for family members joining the Non-Dom Regime.

2. Filing procedures

The option for the Non-Dom Regime is exercised with the submission of the tax return referring to: (i) the fiscal year during which the individual has moved his tax residence to Italy; or (ii) the fiscal year following that when the individual has moved his tax residence to Italy.

Therefore, according to the filing procedure set out by the Non-Dom Rules, since in order to be eligible for the Non-Dom Regime an individual must not have been a tax resident in Italy for at least nine years out of the 10 years of the Tested Period, an individual who has moved his tax residence to Italy in 2016 can exercise the option for the Non-Dom Regime starting from the 2017 tax period, provided that he was not tax resident in Italy during the nine years preceding 2016.

The option must be exercised within the tax return submission deadline, even when the taxpayer has applied for the advanced ruling and is still awaiting a response.

3. Payment procedures

The lump sum tax (i.e. € 100,000 plus € 25,000 for each family member joining the Non-Dom Regime) must be paid within the deadline for the balance tax payment (generally in June of the following year). The tax codes that are used to pay will be released with a separate provision in the following months.

CONCLUSIONS

The clarifications set out by the Non-Dom Rules are welcome, particularly those in respect of the fact that the tax authority will check whether the conditions to apply for the Non-Dom Regime are met. In this respect, there is a potential grey area where the individual has had a certain amount of personal or economic relations with Italy during the Tested Period or has previously moved his tax resident out of Italy to certain black-listed countries. A case-by-case analysis will be necessary.

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