

THE NEW ITALIAN NON-DOMICILED TAX REGIME

19 JANUARY 2017 • ARTICLE



Article 24 bis of the Italian Income Tax Code (1) was introduced by the 2017 Italian Budget Law (2) and marks the beginning of a favourable tax regime for new residents in Italy (the “Non-Dom Regime”). It is inspired by the British resident non-domiciled regime as well as by regimes in other EU countries, such as Portugal and Malta.

This measure is part of a set of rules aiming to attract foreign taxpayers to Italy. Other measures include a proposed simplified procedure to obtain an Italian visa for non-EU individuals who can make substantial investments in the country (e.g. start ups, R&D, etc.) and reduced rates of income tax for highly skilled Italian citizens moving back to Italy from abroad.

THE NEW TAX REGIME

The Non-Dom Regime aims to reduce the effect of the Italian worldwide tax principle for eligible new Italian tax residents by introducing a substitute flat tax on their foreign-sourced income for individual income tax purposes.

Eligible taxpayers can choose the country or countries where the foreign income has been realised subject to the Non-Dom Regime (the so-called “cherry picking” principle) (3). Any income generated in the countries excluded from the Non-Dom

Regime will be subjected to ordinary income tax and benefit from tax relief on taxes paid abroad (under ordinary limitations) and from relevant tax treaty protection (if any).

In addition, the new regime sets out (4) an exemption from certain report obligations (5) and wealth taxes (6).

Eligible taxpayers who opt for the Non-Dom Regime apply a substitute tax on foreign-sourced income amounting to a yearly lump sum payment of €100,000 (with an additional €25,000 for each family member to which the Non-Dom Regime may be extended). A tax credit is not available for taxes paid abroad on foreign-sourced income that is included in the Non-Dom Regime.

Notably, capital gain from the disposal of qualifying shareholding (7) is excluded from the Non-Dom Regime and ordinary taxation therefore applies, if the capital gain is realised in the first 5 years following the exercise of the option.

Finally, the regime provides for an exemption from donations and inheritance tax related to assets held outside of Italy

ELIGIBILITY CRITERIA

- New tax residents can exercise the option for the Non-Dom Regime if they:
- transfer their tax residence to Italy;
- have not been resident for tax purposes in Italy (8) for at least 9 out of the 10 tax periods preceding that in which the option is exercised;
obtain the approval of the Italian tax authorities following an advanced ruling procedure.

ADVANCE TAX RULING AND OPTION FOR THE REGIME

The option for the Non-Dom Regime is exercised within the term for the submission of the annual tax return for the tax period in which the eligible taxpayer becomes an Italian tax resident, subject to the previous approval by the Italian tax authorities.

To obtain this approval, the taxpayers have to apply for a tax ruling with the Italian tax authorities and show that the eligibility criteria are satisfied (9). The application can also include approval requests of the Non-Dom Regime for family members who meet the eligible criteria.

The tax authorities have 120 days to reply to a tax ruling request, but this may be extended by 60 days in certain circumstances. The timing of the application is therefore crucial to enable the taxpayer to properly exercise the option.

Please note that the applicative provisions, necessary to implement the tax regime, should be issued within 90 days from entering into force of the Italian Budget Law (10).

DURATION AND TIMEFRAME

The Non-Dom Regime applies for a 15-year period after the option has been exercised. However, the taxpayer can revoke the option at any time. In case the tax flat amount is not duly paid, the regime is repealed starting from the relevant tax period (i.e. the previous application of Non-Dom Regime is not effected). Revocation and disqualification preclude the exercise of a new option.

The Non-Dom Regime applies from the 2017 tax period (the relevant tax return will be submitted in 2018) (11).

OTHER CONSIDERATIONS

The option for the Italian Non-Dom Regime cannot be combined with other favourable regimes (12), such as the one provided for the repatriation of scientists and researchers and the detaxation of both employment and self-employment income for new residents in Italy.

3 The exclusion of a country can be effected during the regime (i.e. not only upon the exercise of the option). This may be useful, for instance, depending on the effective tax burden in the concrete case, if the taxpayer makes a taxable capital gain in a country which does not recognise treaty protection if these capital gains have not been subjected to ordinary taxation in Italy.

4 Article 1(153) Law no 232/2016.

5 Namely the so-called RW section of the Italian tax return, which addresses certain assets held by Italian taxpayers outside Italy.

6 In particular, the Imposta sul valore degli immobili situati all'estero (IVIE) and the Imposta sul valore delle attività finanziarie detenute all'estero (IVAFE). IVIE is the Italian stamp duty annually levied on foreign real estate properties. IVAFE is the Italian stamp duty annually levied on the financial assets located abroad.

7 I.e. higher than 20% of the voting rights or 25% of the company's capital; lower thresholds apply in case of listed shares.

8 Under Article 2 of the Italian Income Tax Code, individuals are considered to be Italian residents if, for the greater part of the tax year (e.g. more than 183 days): (i) they are registered with the Italian office of records of the resident population; (ii) their residence, within the meaning given to that term by the Italian Civil Code, is in Italy; or (iii) their domicile, within the meaning given to that term by the Italian Civil Code, is in Italy. It is not clear whether this condition is satisfied also in case of double residence where the individual is deemed to be resided in another State according to the applicable tax treaty (the so-called "treaty break rules").

9 The tax ruling procedure is set out by Article 11(1) letter b) of Law no. 212/2000. Please refer to the guidelines set out with the Italian revenue Agency provisions enacted on 4 January 2016.

10 Article 1(157) Law no. 232/2016.

11 Article 1(159) Law no. 232/2016.

12 Article 1(154) Law no. 232/2016.

KEY CONTACTS



EUGENIO TRANCHINO

PARTNER • ITALY

T: +39 02 721 7071

M: +39 338 2694 360

etranchino@wfw.com

DISCLAIMER

Watson Farley & Williams is a sector specialist international law firm with a focus on the energy, infrastructure and transport sectors. With offices in Athens, Bangkok, Dubai, Dusseldorf, Frankfurt, Hamburg, Hanoi, Hong Kong, London, Madrid, Milan, Munich, New York, Paris, Rome, Seoul, Singapore, Sydney and Tokyo our 700+ lawyers work as integrated teams to provide practical, commercially focussed advice to our clients around the world.

All references to 'Watson Farley & Williams', 'WFW' and 'the firm' in this document mean Watson Farley & Williams LLP and/or its affiliated entities. Any reference to a 'partner' means a member of Watson Farley & Williams LLP, or a member, partner, employee or consultant with equivalent standing and qualification in WFW Affiliated Entities. A list of members of Watson Farley & Williams LLP and their professional qualifications is open to inspection on request.

WATSON FARLEY & WILLIAMS

Watson Farley & Williams LLP is a limited liability partnership registered in England and Wales with registered number OC312252. It is authorised and regulated by the Solicitors Regulation Authority and its members are solicitors or registered foreign lawyers.

The information provided in this publication (the “Information”) is for general and illustrative purposes only and it is not intended to provide advice whether that advice is financial, legal, accounting, tax or any other type of advice, and should not be relied upon in that regard. While every reasonable effort is made to ensure that the Information provided is accurate at the time of publication, no representation or warranty, express or implied, is made as to the accuracy, timeliness, completeness, validity or currency of the Information and WFW assume no responsibility to you or any third party for the consequences of any errors or omissions. To the maximum extent permitted by law, WFW shall not be liable for indirect or consequential loss or damage, including without limitation any loss or damage whatsoever arising from any use of this publication or the Information.

This publication constitutes attorney advertising.