

## Our experts' points of view

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12/04/2018

Concerned market: Italy



### The «Res Non Dom» scheme in Italy - it's time to take stock

#### Flat tax: the best scheme for new residents?

It is about a year and a half since the Italian Government, with Law no. 232 of 11 December 2016 (the "2017 Budget Law") and by means of Art. 24-bis of the Consolidated Law on Income Tax (the "TUIR"), introduced a new preferential tax scheme in our country for income earned abroad by all those persons, whether Italian citizens or not (known as "res non doms"), who intend to transfer their tax residence to Italy.

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This tax scheme is highly innovative for Italy but similar schemes are already well established in other European countries. Indeed, the rules in Italy were inspired by similar preferential schemes introduced, in recent years, in countries such as Belgium, France, Ireland, Spain, Portugal and the United Kingdom.

The objective is to attract rich foreigners who will boost the economy with investments, consumption and an injection of new capital. Italy is certainly not the first country to offer fiscal stimuli of this kind; Portugal, for example, has been very successful in attracting rich foreigners, offering them tax benefits in an attempt to bolster public finances.

In Italy also, this favourable scheme seems to have found support among the ranks of high net worth individuals from around the world. As reported by Fabrizio Pagani, former Head of the Technical Secretariat of the Minister of Economy and Finance in an interview with Bloomberg, about 150 high net worth individuals have already decided, in the first year alone, to become tax resident in Italy in order to take advantage of the incentives offered by the Italian tax authorities in the form of a substitute tax on income generated abroad. Most of these high net worth individuals come from the United Kingdom, Switzerland, Russia and the United States as well as from countries such as the Netherlands and Norway, and they work, not just in finance, but also in the art world: many of them are in fact collectors of works of art.

Let us start at the beginning and examine the features of this special tax scheme for new residents in Italy under Article 24-bis of the TUIR, by following the explanatory

interpretations provided by the *Agenzia delle Entrate* (the Italian Revenue Agency) in Circular no. 17/E of 23 May 2017.

#### The subjective preconditions for application of the scheme

In order to benefit from the preferential scheme, Italian or foreign individuals must not have been resident in Italy, as defined by Article 2, para. 2 of the TUIR, for at least nine of the ten tax years before the scheme option was introduced. The scheme also applies to Italian citizens who are, unless proven otherwise, presumed to be tax resident in Italy under the Ministerial Decree of 4 May 1999, having been removed from the registers of resident persons and transferred to countries with preferential taxation.

In order to facilitate the transfer of entire households and to enable a more widespread and easier use of the scheme, the government has agreed that the scheme may be extended from the principal taxpayer to the family members listed in Art. 433 of the Italian Civil Code (spouse, children or, if there are none, close relatives, including a person living in a declared civil union with the principal taxpayer). It is therefore necessary that family members transfer their tax residence to Italy and that they were not tax-exempt in Italy for at least nine of the ten tax periods prior to the validity period of the option.

#### The objective preconditions for application of the scheme

Article 24-bis of the TUIR provides that opting for the scheme makes it possible only to subject income, earned abroad and identified pursuant to Art. 165, para. 2, of the TUIR, to the substitute tax. According to this latter provision, therefore, income is considered to have been earned abroad on the basis of the same connection criteria listed in Art. 23 of the TUIR in order to identify the

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income earned in the territory of the State but applied in reverse. This means that, for example, the interest earned on current accounts at banks and paid to the new resident by foreign persons, or the capital gain made by the new resident on the sale of non-qualified investments in foreign companies traded on regulated markets, is to be considered as income earned abroad and, as such, likely to fall within the scope of Art. 24-bis of the TUIR.

Therefore, all income earned in Italy by new residents is excluded from the substitute tax and will therefore be taxed on the basis of the ordinary provisions in force for persons resident in Italy.

## The methods of access to the scheme

A person (foreign national or Italian citizen) who wishes to access the res non dom scheme will be able to do so by one of the following methods:

- By submitting a specific application directly to the Italian Revenue Agency, in order to obtain a preliminary opinion from it as to whether the conditions set by the law for access to the scheme have been met. Failure by the Revenue Agency to express an opinion within 120 days from receipt of the application constitutes tacit approval. The application may also be extended to cover one or more of the family members – as defined by Art. 433 of the Civil Code - of the person making the application and, in such case, the application must be signed both by the principal tax payer and by all the family members to whom the option is extended;
- Alternatively, this option may be exercised by indicating in the tax return for the tax year in respect of which the persons have transferred their tax residence to Italy, or in the tax return for the next following year. More specifically, the person making the tax return will be required to indicate the factors required for access to the scheme under Art. 24-bis of the TUIR, namely: non resident status in Italy for nine of the ten tax years prior to the start of the validity of the option; the jurisdiction or jurisdictions in which the taxpayer was last resident for tax purposes; any foreign countries or territories for which he/she intends to exercise the right not to avail him/herself of the application of the substitute tax (known as “cherry picking”). When choosing the countries to include or exclude from the scheme, it is also necessary to examine whether the entire Double Taxation Treaty does not apply, as well as the factors required in the checklist contained in the tax return.

## Effects of the scheme

Persons who intend to use of the new preferential scheme will be required to pay a substitute tax for IRPEF (Italian personal income tax) - by a single payment within the deadline set for the payment of the remaining balance of income tax - and calculated, on a flat rate basis, at the rate of EUR 100,000 for each tax year in which the option applies, regardless of the type and amount of income earned abroad. In the case of an extension of the preferential scheme to family members, the payment of the flat rate substitute tax on the foreign income earned by each of them will be EUR 25,000.

Once this option has been exercised, the person who makes use of the above substitute tax may make a specific declaration to the intermediaries (for example, an insurance company acting as a substitute tax) who are involved in the collection of the foreign income and who will have the right not to charge any tax.

This scheme is temporary and, in any event, its effects cease 15 years after the first tax year of the validity of the option (except in cases of cancellation by the person before the said expiry or termination of the scheme as provided for by Art. 24-bis of the TUIR) without the possibility of any renewal, with the consequence that foreign income will contribute to the formation of the total income of the resident person and will be subject to the ordinary IRPEF income tax.

## Advantages of the scheme

Following adoption of the res non dom scheme, the principal tax payer and his/her family members will have the following advantages:

- Exemption from the obligation to monitor tax on foreign activities and investments provided for in Article 4 of Legislative Decree no. 167 of 28 June 1990. While in relation to qualified shareholdings which may generate capital gains taxable in the ordinary manner if realised in the first five tax years of validity of the option, the newly resident must indicate the value of their foreign shareholding in the RW section of the Italian tax return;
- Exemption from payment of IVIE (tax on the value of buildings owned abroad) and IVAFE (tax on the value of financial instruments, current accounts and savings accounts);
- The exemption from inheritance tax on open bequests and gifts made during the validity of the optional scheme for assets outside Italy at that time. Furthermore, it should be noted that in relation to non-donor free transfers and restrictions on use (including, for example, the transfer of assets in trust), made by persons who are benefited from the scheme, the tax on gifts shall apply only to transfers of assets and rights existing in Italy.

## Comparative table of “Res non dom” schemes in different European countries \*

	Italy	Portugal	UK	Malta
Scheme in force	New residents scheme	Non Habitual Resident (NHR)	Resident non-Domiciles	Rules for High Net Worth Individuals
For whom?	Individuals	Individuals	Individuals	Individuals
Preconditions	Not tax resident for at least <b>9 of the previous 10 tax years</b>	Not being tax resident in the previous <b>5 years</b> which are cumulative with other requirements	Tax resident in the UK, but non-UK domiciled (available for <b>15 out of 20 years</b> )	Owner of real estate and not tax resident in the previous <b>5 years</b>
Taxation	Substitute tax of EUR 100,000 on income from abroad, excluding capital gains on qualified shareholdings	For a 10 year period, a NHR individual in Portugal may benefit from preferential taxes rates or full tax exemption on certain categories of Income.	Remittance Basis of Taxation available. Applies to assets taxed under Income and/or Capital Gains tax legislation.  Deemed-domicile status applies for all UK taxes after 15 years (out of 20) residence.	Income from abroad: taxed only when received or “remitted” to Malta.  Income from abroad received in Malta or received abroad: proportional rate of 15%.

\* Table provided only as an indication. For more information please refer to your tax advisor or our experts.

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All the preconditions are therefore in place so that the res non dom scheme can continue to develop fully in Italy as it has done in other European countries, providing a valid opportunity for the many high net worth individuals who decide to take advantage of the above-mentioned advantages offered by the legislation, managing to combine this scheme with other asset and succession planning tools (life insurance policies, trusts, family agreements, etc.). For example, a foreign party who is a unit-linked life policyholder in France and who wishes to join the res non dom scheme in Italy, as well as making the existing policy in Italy “portable”, is a case in point.

For further information and clarification please contact our team of experts who will be pleased to help you find asset planning solutions through the unit-linked policies offered by Bâloise Vie Luxembourg S.A.

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