

FLAT TAX: ITALY OPENS ITS DOORS TO THE RICH NOT RESIDENTS

The provision of Agenzia delle Entrate, 8th March 2017, operationalize the provision of Article 1, paragraph 152, of Law December 11, 2016, n. 232 (2017 Legge di Bilancio), which entered into Tuir the article 24-bis.

In essence, a special fiscal discipline (Flat Tax) is introduced as an alternative to the ordinary fiscal discipline in order to encourage investment, consumption and the rooting of families and high potential individuals in Italy by non-residents.

Flat Tax allows to pay the substitute tax on incomes of physical people in relation to foreign income.

The optional tax regime may be extended to one or more family members of the adhering party.

The substitute tax is equal to EUR 100.000 for each tax year covered by the option and EUR 25.000 for each relative.

This provision is inspired by similar rules already in force in other EU states (UK, Portugal, Ireland and Malta), but the Italian system presents new favorable aspects as it provides a total exemption from inheritance and donation.

Infact, the provision states that, for open successions and donations made in the tax period in which the option is valid, inheritance and donation tax are due only for existing goods and rights in the State at the time of succession or inheritance.

It is an innovative tax exemption on transfer of assets located abroad.

REQUIREMENTS TO ACCESS

The requirements to access are related, primarily, to the absence of residence in Italy for nine of the past ten years.

HOW EXERCISING OPTION

Taxpayers who have the requirements can join the new tax regime at the time of submission of the individual income tax return related to the tax period in which the fiscal residence was transferred in Italy or the following period.

It can also submit a specific prior request to the Agenzia delle Entrate. The request can be:

- hand delivered;
- sent by registered mail
- sent by certified mail.

For non-residents without domiciliary in Italy, the request can be sent by ordinary mail.

WHAT IN THE REQUEST

In the request the taxpayer must indicate:

- the personal data and, if already assigned, the tax code, in addition to its home address in Italy, if already resident;
- status of non-resident in Italy for nine of ten last years;
- the jurisdiction or jurisdictions in which whoever had the last fiscal residence;
- the states or overseas territories for which it doesn't want enjoy the Flat Tax.

The taxpayer must also complete a check list.

FLAT TAX EVEN FOR RELATIVES

The Flat Tax scheme can be extended to one or more family members in possession of the requirements, through a specific indication in the individual income tax return related to the tax period in which relatives moved the fiscal residence in Italy or in the following. In this case the replacement tax is equal to EUR 25.000 for each relative.

WHAT ARE THE TERMS FOR SUBMITTING THE REQUEST

The option must be exercised within the limits for submission of the individual income tax return.

The application may be filed even if they are not time-barred to transfer fiscal residence in Italy.

The option shall be automatically renewed from year to year, while the effects end, as well as following the will expressed by the taxpayer, fifteen years elapsed from the first tax period of validity.

HOW TO PAY THE TAX

The payment of the Flat Tax must be made in a lump sum for each fiscal year. The deadline of the payment correspond with the payment of individual income tax.

INDIVIDUALIZATION OF EXTERNAL REVENUES SUBJECT TO THE FLAT TAX

Circular 17/E/2017 of the Agenzia delle Entrate deals with the correct classification of personal income earned by interposers (a non-resident company, a trust, etc.).

In this regard, it is stated that, if the physical person has the "direct" possession:

- of Italian income tax, these ones will override the tax system ordinarily applicable to natural persons resident in Italy;
- of foreign source income, these ones will only discount the substitute tax referred to in Article 24-bis of the TUIR.

Similar considerations apply to income derived from ownership, by interposer, liquidity, property, immovable property or the exercise of other rights.

Thus, for example, if a physical person owns a foreign real estate agency located in Italy, the income derived from them will break the ordinary taxation rule applicable to physical people living within the country. Otherwise, if a physical person owns, through an interposer, a real estate located abroad, the income derived from them will only replace the substitute tax.

Another important aspect of the Circular 17/E/2017 relates to the correlation between the scheme and the discipline relating to income generated in the privileged taxed states or territories.

In particular, the profits and capital gains made from equity investments held in tax havens are subject to the full imposition of taxation, regardless of the nature of the participation or not; this imposition may be avoided by demonstrating the existence of the exemption referred to article 167 of the TUIR.

The same considerations also apply to CFC provisions.

IS IT A RIGHT RULE?

The 53rd article of the Italian Constitution says that "every person shall contribute to public expenditure related to their ability to pay. Italian tax system is based on criteria of progression". That means: the more you earn, the more taxes you pay.

The Flat Tax seems to show how the Italian State decides not to apply the principles of its tax system.

However, this behavior of the government can be explained looking at the international viewpoint: the United States will adopt an aggressive fiscal policy to attract investors and their assets, but also to bring the multinational corporations within the borders.

Britain will be just active in using fiscal leverage to become attractive after Brexit.

In Europe there are way more constraints than any other jurisdiction, but there are countries such as the Netherlands and Ireland that are substantially attractive.

In this scenario the Italian government has to decide whether to compete with other countries or not.

For any questions or for more information, contact us, our secretary will schedule a meeting.

Thanks for your attention.

Best regards,

(Dott. Pier Luigi Brogi)

