

## Curtis Italy – Tax Update – 2017

### Italy introduces a preferential tax regime to attract high-net-worth individuals

With the Italian Budget Law for 2017 (Law n. 232 of 11 December 2016), a new preferential tax regime aimed at attracting high-net-worth individuals to Italy has been enacted. In essence, this “new residents regime” allows individuals who transfer their tax residence to Italy to opt for an annual flat tax of Euros 100,000 (for each fiscal year) on their non-Italian source income and/or gains.

The Italian Tax Agency has also recently released guidelines concerning the operation of this regime, notably the exercise of the option, its modification and revocation, as well as the payment of the flat tax.

#### I. Who Can Benefit from the “New Residents Regime”?

The option is reserved to **individuals transferring their tax residence to Italy, irrespective of their nationality or domicile** (*i.e.*, it is available for both non-Italian and Italian nationals). Juridical persons cannot benefit from this favorable regime.

Individuals wishing to benefit from the “new residents regime” must have been **non-tax resident in Italy for at least 9 out of the 10 fiscal years preceding the beginning of the validity of the option**.

Another interesting aspect of this new provision is the **possibility for the individual electing for the “new residents regime” to extend its application to family members**. In this respect, it is important to highlight that:

- the range of family members to whom the application of the tax regime can be extended encompasses spouses, sons and daughters, including sons-in-law and daughters-in-law (in absence of sons and daughters, the regime may be extended to close descendants), parents, including parents in-law (in absence of parents, the regime may be extended to close ascendants), brothers and sisters; and
- in order to benefit from this tax regime, these family members must transfer their tax residence to Italy and must have been non-tax resident in Italy for at least 9 out of the 10 fiscal years preceding the beginning of the validity of the option.

## II. Benefits of the “New Residents Regime”

### *Type of Income and Gains Concerned and Amount of the Flat Tax*

The “new residents regime” enables opting for, in lieu of the ordinary Italian income tax, **a flat tax amounting to € 100,000 for each fiscal year applicable to any income and/or gains of non-Italian source** of the newly resident individual, regardless of the effective amount of such income and/or gains.

The **only exception is represented by capital gains deriving from the assignment of “qualified participations”** which, during the first five fiscal years when the option is applied, will still be subject to taxation in accordance with the ordinary Italian income tax rules. For these purposes, according to Italian law, “qualified participations” shall mean the shares or any other participation in the share capital or in the net worth of a company when such participation represents:

- in case of securities traded on regulated markets, (i) an interest to which more than 2% of the voting rights is attached; or (ii) an interest of more than 5% of the share capital, regardless of the voting rights attached to it; or
- in the other cases, (i) an interest to which more than 20% of the voting rights is attached; or (ii) an interest of more than 25% of the share capital, regardless of the voting rights attached to it.

It is worth noting that the “new residents regime” only covers non-Italian source income; therefore any potential Italian source income obtained by the newly resident individual will be taxed in accordance with the tax regime ordinarily applicable to Italian tax residents.

**No tax credit is available for the taxes paid abroad** in relation to the non-Italian source income and/or gains to which the individual has elected to apply the flat tax in Italy. The individual, however, may decide to exclude from the basis of the flat tax certain non-Italian source income and/or gains arising in one or more countries. This election may be made upon opting for the flat tax, or at any time during the maximum 15-year term of the regime. Excluded foreign income will remain subject to ordinary Italian income tax rules and may therefore benefit from the applicable tax credit.

### *Taxation of Family Members to Whom the Regime Has Been Extended*

Family members to whom the regime has been extended shall be liable for an **annual flat tax of Euros 25,000**, instead of Euros 100,000, on their non-Italian source income and/or gains.

### *Deadline for the Payment of the Flat Tax*

The payment must be made at one time for each eligible fiscal year covered by the flat tax within the deadline ordinarily applicable for the payment of the income tax balance.

### *Duration and Withdrawal*

The option for the “new resident regime” is **automatically renewed each year, up to a maximum of 15 years**. Nonetheless, the individual who has opted for this regime is **free to withdraw the option** within the deadline for the filing of the tax return concerning any fiscal years following the fiscal year when the option has been exercised. This withdrawal can be effected by notifying the Central Tax Assessment Department (*Direzione Centrale Accertamento*) or by including a specific declaration in the tax return. The withdrawal can also be exercised only with reference to one or more family members to whom the individual concerned had extended the benefits of the regime.

**The “new residents regime” option terminates in case of (i) non-payment or partial payment** of the flat tax within the deadline; or **(ii) transfer of the tax residence** to another State or territory.

In the event an individual ceases to benefit from the “new residents regime,” family members that were included in the regime will cease to benefit from it as well. Despite this, these family members can exercise a new (independent) option to become a “new resident” for the remaining time (up to 15 years from the date when the “original” option came into effect), and they can, in turn, extend the option to their family members.

## **III. How to Apply for the “New Residents Regime”**

Individuals who meets the necessary requirements (see Section I) can exercise the option for the “new residents regime” with the Italian Tax Agency within the deadline for the filing of the tax return of the fiscal year when they transfer their tax residence to Italy or of the following

fiscal year (e.g., for fiscal year 2017, by 30 September 2018). The Italian Tax Agency will then have 120 days to approve or deny the request and, if no answer is provided within this period, the request is deemed to have been approved.

The individual, before exercising the option, can file a query for an advance ruling with the Italian Revenue Agency (*Agenzia delle Entrate*) in order to obtain an assessment on the existence of the eligibility requirements.

#### IV. Final Considerations

It is advisable, for individuals wishing to exercise the option for the “new residents regime,” to undertake a preliminary financial, tax and legal analysis before proceeding, in light of their assets and estate.

It would also be worth examining which jurisdictions should be potentially excluded from the regime and the family members to whom it would be convenient to extend the benefits of this new regime.

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