

Italian International Tax Reform: tax residence and inbound workers regime

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1. Foreword

On the 28 December 2023 a new Legislative Decree (Legislative Decree no. 209 of 27 December 2023) was published in the Italian Official Journal which is aimed at reforming certain aspects of the Italian international tax law framework to align its rules with the best international practices.

The decree touches upon several key rules of Italian international tax law, such as the criteria to establish tax residence, certain simplifications to the controlled foreign company regime and tax incentives for the reshoring of business activities.

2. Tax residence of individuals

The decree amends both the criteria to establish tax residence for individuals and legal entities.

2.1 Previous rules on tax residence of individuals

Based on the previous reading of the law (art. 2 of the TUIR), an individual was considered to be tax resident in Italy if, alternatively;

- was enrolled in the Italian Register of the resident population (**AIRE**);
- had his/her **domicile** in Italy, being the centre of its vital interest, as defined by Art. 43 of the Italian Civil Code;
- had his/her **residence** in Italy, being the habitual abode as defined by the same Art. 43 of the Italian Civil Code,

for the greater part of any relevant fiscal year. As under Italian law, the fiscal year for individuals equates to the calendar year, an individual was considered to be tax resident in Italy if he/she met one of the three criteria above for at least 183 days in a given calendar year (184 days in case of a leap year).

There is no split-year provision under Italian tax law. Accordingly, this specific rule may only apply where a specific **tax treaty** provides for it (e.g the Italy-Switzerland tax treaty).

2.2 Amendments to the previous criteria

The Legislative Decree provides for certain amendments to the criteria just briefly described.

In particular, as of 2024 individuals shall be considered as tax resident in Italy if, for the greater part of the fiscal year, including fractions of a day, they alternatively;

- have their domicile in Italy, being the place where the individuals' personal and family relations are primarily located;
- have their residence in Italy, being the habitual abode;
- are physically present in Italy.

The new rule goes further into setting a rebuttable presumption of residence where an individual has been enrolled Italian Register of the resident population for the greater part of the fiscal year.

2.3 Main differences between the new rule and the previous one

The main differences between the old and the new version are as follows:

- the term "domicile" has been defined as the place in which the personal ties can be found and no relevance is given to the definition contained in the Italian Civil Code nor to the business relationship of the relevant individual;
- express relevance has been given to the fraction of days in order to assess whether or not an individual has been present in Italy for the greater part of the fiscal year;
- the enrolment in the Italian Register of the resident population in Italy has become a factor that triggers a **rebuttable presumption** of residence and not an autonomous criteria;
- the mere physical presence of an individual in the Italian territory for the greater part of the fiscal year shall cause him/her to become Italian resident for tax purposes.

3. Tax residence of legal entities

TAX RESIDENCE FOR INDIVIDUALS	
Previous rules	New rules
<p>An individual is considered to be resident in Italy if he/she:</p> <ul style="list-style-type: none"> • is registered in the relevant local registry; • has his/her domicile in Italy as defined in the Italian civil code; • has his/her residence in Italy, as defined in the Italian civil code, <p>for the greater part of the tax year.</p>	<p>An individual is considered to be resident in Italy if he/she:</p> <ul style="list-style-type: none"> • is physically present in Italy; • has his/her domicile in Italy, defined where the family and personal relationships are located; • has his/her residence in Italy, as defined in the Italian civil code, <p>for the greater part of the tax year.</p>

The Legislative Decree also provides for certain amendments related to the criteria to establish tax residence of legal entities.

3.1 Previous rules on tax residence of legal entities

Art. 73 of the TUIR stated that companies were considered to be tax resident in Italy if, for the greater part of the fiscal year, alternatively;

- their legal seat was located in Italy;
- they were administered in Italy;
- the main object of their activities was located in Italy.

The same set of rules just described in connection with companies applied with respect to trusts, even if art. 73 provides for certain specific presumptions aimed at attracting the residence of foreign trusts set-up in black-listed jurisdictions where certain conditions are met.

Finally, CIVs were considered to be resident in Italy if they were set-up therein.

3.2 Amendments to the previous criteria

The Legislative Decree provides for three alternative criteria that, where met, cause an entity to be considered resident in Italy for tax purposes as of 2024.

These criteria are:

- having their legal seats in Italy;
- having their place of effective management in Italy;
- having the main ordinary management of the entity carried out in Italy.

The place of effective management is to be found where the main and most high-level strategic decisions concerning the company or entity as a whole are taken.

On the other hand, the main ordinary management is defined as the day-to-day management of the entity.

No amendments are provided for with respect to the tax residence of trusts and CIVs.

3.3 Main differences between the new and the previous rule

The Legislative Decree, while maintaining the criteria related to the legal seat, modifies the other two criteria. In particular, the main differences between the previous and new rule are summarized below:

TAX RESIDENCE FOR ENTITIES	
Previous rules	New rules
<p>An entity is considered to be tax resident in Italy if it is administered from Italy for the greater part of the fiscal</p>	<p>An entity is considered to be tax resident in Italy if it has its place of effective management (i.e. the place where</p>

year.	the main strategic decision for the business are taken) in Italy for the greater part of the fiscal year.
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TAX RESIDENCE FOR ENTITIES	
Previous rules	New rules
An entity is considered to be tax resident in Italy if it has the main object of its activity in Italy for the greater part of the fiscal year.	An entity is considered to be tax resident in Italy if the ordinary management activities are carried out in Italy for the greater part of the fiscal year.

4. Inbound workers regime amendments

The decree also provides for certain amendments to the Italian [inbound workers regime](#).

4.1 New restrictive requirements

From 2024, the newly enacted regime provides for a new and more restrictive set of rules in order to benefit from the Italian inbound workers regime.

In particular, the inbound workers regime shall apply:

- if the workers have not been tax residents in Italy during the three fiscal years preceding their transfer to Italy. Previously the law provided for a two-year threshold;
- the workers commit to remain tax resident in Italy for at least four years. The previous version of the law provided for a two-year threshold;
- if the worker carries out his/her activity in favor of the same person he/she was working for before moving to Italy, his/her previous stay outside of Italy needs to be equal to six years at least (or seven if the worker was employed in Italy by such employer). The previous reading of the law did not have such requirement;
- the work is mostly performed in Italy. This requirement was already present in the previous provision;
- the workers meet the certain requirements of high qualification or specialization. This requirement was not present in the previous reading of the law;
- the income exemption is equal to 50% (that can be raised to 60% where certain conditions are met). The previous exemption was equal to 70% (and could have been raised to 90% where certain conditions were met).

4.2 Income and time threshold

The amendments to the inbound workers regime provide for quantitative limit to the benefit. Indeed, the new regime should apply only for annual income up to 600,000 euros while the previous provision of law did not set any income limit.

In addition, the new regime should only last for five years and it will be possible to extend it only for the inbound workers that have transferred their residence to Italy in 2024 and have acquired a real estate property in Italy during 2023.

Even if not strictly concerning international tax law, the Italian Government has made others amendments to Italian tax laws with the Legislative Decree no. 216/2023.

Certain amendments are briefly summarized below.

5.1 Amendment to the personal income tax brackets

With respect to personal income taxes, Italian tax law provides for a progressive tax rate system. As of 2023, the brackets where as follows:

- up to EUR 15,000: 23%;
- from EUR 15,001 to EUR 28,000: 25%;

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- from EUR 28,001 to EUR 50,000: 35%;
- above EUR 50,001: 43%.

As of 2024, the new brackets are going to be as follows:

- up to EUR 28,000: 23%;
- from EUR 28,001 to EUR 50,000: 35%;
- above EUR 50,001: 43%.

5.2 Notional interest deduction to be repealed

As of 2011, Italian tax law provided for a notional interest deduction, the so-called **ACE (“Aiuto alla crescita economica”)**. In a nutshell, ACE granted certain entities with a notional interest deduction (the relevant rates have changed throughout the fiscal years) calculated on the retained earnings and capital contribution.

This measure is repealed as of 2024.

6. Glossary

ACE (“Aiuto alla crescita economica”)

Notional interest deduction (the relevant rates have changed throughout the fiscal years) calculated on the retained earnings and capital contribution.

AIRE

Register for Italian citizens living abroad. Enrollment is mandatory if the person resides in the other State for more than of 12 months.

CIVs

Acronym for collective investment vehicles. It identifies entities – either regulated or unregulated – having some common features. Generally, they are widely held vehicles – that might also be established in a corporate form in some jurisdictions – that independently manage a pool of assets for the benefit of the investors in the vehicle (quota-holders or fund-holders).

Domicile

Under Italian civil law, it indicates the place where an individual has his/her main centre of business and personal interest.

Inbound workers (“impatriates”) regime

Tax relief system available to individuals who were previously (at least 3 years) resident for tax purposes in other countries and that transfer their residence to Italy. Under this regime, income from employment and from independent personal services are exempted from taxation for the 50% of their amount.

Rebuttable presumption

Indicates a legal presumption that is considered to be true unless proven otherwise by the relevant agent.

Residence

Under Italian civil law, indicates the place where an individual has his/her habitual abode.

Tax treaty

International Convention concluded between two States for the avoidance of double taxation and double non-taxation in economic transactions involving them.