From Worldwide to Territorial Taxation: Is Italy Now an Attractive Destination for Migrating Individuals?

This article examines the Italian tax regimes offering favourable treatment to certain resident individuals. The recent introduction of these preferential regimes in a historical stronghold of worldwide taxation is a departure from the concept of unlimited tax liability, which results from other European states restricting their jurisdiction to tax.

1. Introduction

Almost 20 years have passed since Italy introduced a rebuttable legal presumption of tax residence for Italian nationals fictitiously transferring their fiscal residence to jurisdictions where the tax burden is low or non-existent.1 This constituted the most visible response to a series of cases involving prominent high-net-worth individuals (HNWIs) artificially transferring their residence to neighbouring city states, such as Monaco or San Marino, to avoid the high rates of Italian income tax.2 In a sense, the enactment of deemed residence rules3 represented the ultimate attempt by Italy to enforce its worldwide taxation system, which had been in place from the 1970s.4 Historically, residents in Italy have been taxed on their worldwide income at progressive rates,5 with a foreign tax credit to eliminate any double taxation on foreign-source income. Conversely, non-residents are liable to tax only on their Italian-source income.6 However, the special regimes recently approved indicate that the Italian lawmaker has quite considerably modified the previous policy by becoming more lenient when it comes to taxing Italian residents.7 Consequently, Italy has joined the increasing number of European states that have recently introduced favourable regimes into their domestic tax systems that are intended to encourage foreign individuals to move to and invest in their countries.8 This trend merely reflects, in tax matters, the increasing propensity of workers, especially highly skilled individuals, to move to Europe.9 Such a situation is driven by tax competition10 between European states in trying to attract quali-

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2. IT: Income Tax Consolidation Act (ITCA) ( Decreto del Presidente della Repubblica (Presidential Decree, DPR) 917 of 22 Dec. 1986), art. 2(2)-bis, National Legislation IBFD, which states that ‘until proved otherwise, Italian citizens, who are deleted from the resident population’s General Registers and are emigrated in States or territories other than the ones singled out by the decree of the Ministry of Finance to be published on the Official Bulletin, are considered as resident’. All translations from Italian into English are the author’s unofficial translations.
3. The blacklisted states are listed in IT: Decreto Ministro del Tesoro (Ministerial Decree, DM) of 4 May 1999.
5. A deemed residence provision specifically targeting foreign-dressed companies was introduced by arts. 73(5-bis) and 73(5-ter) of the ITCA in 2006.
6. IT: DPR 597 and IT: DPR 598 of 29 Sept. 1973. For an overview of the concept of residence for individuals under Italian tax law, see G. Marino, La residenza nel diritto tributario (CEDAM 1999); G. Melis, Trasferimento della residenza fiscale ed impostazione sui redditi (Giuffre Editore 2009); and S. Dorigo, Chapter 16 – Italy, in Residence of Individuals under Tax Treaties and EC Law (G. Maisto ed., IBFD 2010), Online Books IBFD.
7. Flat rates of tax only apply to defined passive income.
fied foreign individuals and to promote domestic investment. This in turn suggests that, ultimately, labour can currently be as mobile as capital.\textsuperscript{11}

Given this framework, this article intends to provide an overview of the Italian special regimes for certain categories of resident taxpayers and briefly compares these regimes with analogous regimes in other selected European countries. Special attention is devoted to recently enacted regimes for highly skilled inward expatriates (see sections 2. and 3.) and for HNWIs (see section 4.) taking up tax residence in Italy. Such regimes are complemented by other provisions that are narrower in scope and benefit other selected highly skilled workers and academics. The article then deals with the special treatment reserved for employment income derived by residents and by frontier workers from activities performed abroad (see section 5.). Section 6. concludes the article.

2. The New Regime for Inward Expatriates

2.1. In general

A special regime for highly skilled inward expatriates was introduced by article 16 of Decreto legislativo (Legislative Decree, DLgs) 147 of 14 September 2015 (“Internationalization Decree”), which contains new measures that are intended to promote the growth and internationalization of Italian enterprises. By opting for this special regime, individuals who transfer their tax residence to Italy are entitled to a partial exemption of Italian-source employment income from income tax. The exempted portion of the employment income, initially 30% of the gross salary, has recently been increased to 50% by Legge (Law) 232 of 11 December 2016 (the “Stability Law of 2017”).\textsuperscript{12}

2.2. Conditions to qualify for the regime

With regard to the personal scope, the regime is limited to individuals who hold “a management role” or meet “high qualification or specialization requirements”. These requirements have been further detailed by Decreto Ministeriale (Ministerial Decree, DM) of 26 May 2016 issued by the Ministry of Economy and Finance,\textsuperscript{13} which referred to the labour law categories set out in the DLgs 206 of 6 November 2007\textsuperscript{14} and 108 of 28 June 2012.\textsuperscript{15} In addition, in order to qualify for this special regime, the transferring individual cannot have been a resident in Italy for the five years preceding the transfer. The individual is also required to reside in Italy for a minimum of two years. If this condition is not fulfilled, the benefits are clawed back and the employment income is taxed under ordinary rules. In this event, the individual’s tax liability is also increased by interest and penalties.

With regard to the material scope of the regime, the exemption is limited to income from employment. In this respect, the working activity must be performed for an enterprise resident in Italy, following the conclusion of an employment contract with the same enterprise or a related company. Neither the text of article 16 of DLgs 147 nor the DM of 26 May 2016 specifically refers to the possibility that the employment contract is concluded with a permanent establishment (PE) of a foreign enterprise. However, there appears to be little or no reason to exclude the application of the regime in such circumstances.

The regime also requires the working activity to be mainly performed in Italy. However, the criterion for determining this is not defined. In the absence of a clear rule, it appears to be correct to refer to the physical presence of a worker within Italy. Nevertheless, it should be noted that a different solution has been implemented in France, where such a situation is determined in respect of the overall salary of the expatriate. In addition, even where such a requirement is determined, it may be doubted whether all of the employment income could benefit from the exemption or only that portion attributable to the working activity performed in Italy.

2.3. Comparative overview

A comparison of inward expatriate regimes in selected European states highlights remarkable differences but also common trends. In order to qualify for the benefits, individuals are generally required not to have been resident in the migration country for a certain number of the preceding years. In this respect, however, several differences can be noted. While in most countries, a five-year period of non-residence suffices to qualify (e.g. Finland, France, Ireland, Luxembourg, Portugal and Sweden), other countries require a longer period (e.g. 10 years in Austria, Denmark and Spain) or a shorter period (e.g. 16 out of the last 24 months in the Netherlands). Some regimes (e.g. those in Luxembourg and the Netherlands) include geographical restrictions, i.e. individuals that have been resident in other countries within 150 kilometres of the borders of the country in question cannot apply.

In addition, expatriates generally have a particularly high education, good research skills or undertake particularly valuable activities. However, the expressions used to define the categories of potential beneficiary denote different degrees of precision. In some regimes, for example those in Luxembourg and the Netherlands) include geographical restrictions, i.e. individuals that have been resident in other countries within 150 kilometres of the borders of the country in question cannot apply.

In this respect, the working activity must be performed for an enterprise resident in Italy, following the conclusion of an employment contract with the same enterprise or a related company. Neither the text of article 16 of DLgs 147 nor the DM of 26 May 2016 specifically refers to the possibility that the employment contract is concluded with a permanent establishment (PE) of a foreign enterprise. However, there appears to be little or no reason to exclude the application of the regime in such circumstances.

With regard to the types of employment, most of the regimes in respect of inward expatriates are confined to dependent employees. Only France and Portugal extend their regimes to cover self-employed individuals. Notably, only Portugal makes the benefits of the regime also available to incoming pensioners. Some regimes include minimum, for example those in Denmark, Finland, Ireland, Luxembourg and the Netherlands, or maximum, for example that in Spain, salary requirements.

\begin{footnotesize}
\begin{enumerate}
\item R.S. Avi-Yonah, Advanced Introduction to International Tax Law ch. 10 (Edward Elgar Publ. 2015).
\item IT: DM of 26 May 2016.
\item IT: DLgs 206 of 6 Nov. 2007.
\item IT: DLgs 108 of 28 June 2012.
\end{enumerate}
\end{footnotesize}
As for employers, both resident enterprises, whether controlled by a foreign entity or not, and the PEs of non-resident enterprises generally qualify. In this respect, the regimes in Austria, Belgium, Denmark, Luxembourg and Sweden specifically refer to PEs. Notably, the Luxembourg regime has additional conditions in respect of employers, such as a minimum number of employees, i.e. 20, and a maximum percentage for expatriates out of the total number of full-time employees, i.e. 30%.

With regard to the benefits, the regimes surveyed entail either an exemption from the taxable base, for example those in France, Ireland, the Netherlands and Sweden, the use of flat rates, for example those in Denmark, Finland and Spain, the granting of specific allowances, for example those in Austria and Belgium, or a combination of these benefits, for example that in Portugal. The exemption in the computation of the taxable base can either be total or partial. The income exempted includes income from employment performed in the migrating country and/or abroad as all or part of foreign-source income. Specific allowances generally relate to expatriate-linked benefits, for example moving, travel and childcare expenses.

Most of the regimes incorporate some temporal limits. The most common time threshold is five years, for example those in Austria, Denmark, Ireland and Spain. However, longer periods are also specified (e.g. Portugal: ten years, the Netherlands: eight years and France: six years) as are shorter periods (e.g. Finland: four years and Sweden: three years).

Exclusions for specific categories can also be set out. For instance, in Portugal and Spain the benefits of the inward expatriate regime do not apply to professional athletes and sportspersons. Another category often carved out is nationals, for example in relation to the regimes in Finland, the Netherlands and Sweden.

Most of the regimes are permanent. A few regimes, however, are either set to expire, for example those in Finland and Ireland, or have been established by tax administration circulars and may therefore be repealed more easily, for example those in Austria, Belgium and Luxembourg.

In addition, none of the regimes surveyed includes the recapture of the benefits in the event of a subsequent failure to meet any of the requirements. Finally, it should be noted that, although in a strict sense they cannot be included among inward expatriate regimes, the remittance basis systems of taxation in Ireland, Malta and the United Kingdom share, at least in part, similar scopes and analogous features.

2.4. Interim conclusions

The introduction of a special regime for inward expatriates into Italian tax law reflects similar patterns followed by many European states. In particular, compared to other similar regimes, the Italian regime for inward expatriates is noteworthy for the extent of potential categories included, which are also broadly defined, and for the high percentage of taxable base exempted, i.e. 50%. In addition, requirements, such as previous non-residence, i.e. five years, a minimum permanent presence in the country, i.e. two years, and temporal limitation, i.e. five years, are in line with the regimes of most of the other countries. Although not explicitly stated in the law, it is the author's opinion that even the PEs of non-resident enterprises could be eligible employers under the regime.

3. Other Relevant Categories of Inward Expatriates

3.1. EU workers and students

The regime providing a partial exemption for the employment income of inward expatriates has been extended to EU citizens or citizens of states with which Italy has concluded a tax treaty or a tax information exchange agreement (TIEA) who have a university degree and have been continuously employed for the past 24 months or more outside Italy or who have continuously studied in a country other than Italy in the previous 24 months, thereby earning a university degree or a specialization post lauream. As a result, the previous regime, which provided for an exemption of up to 80% or 70% (depending on gender) regarding employment, self-employment and business income derived by persons meeting the same requirements but available only for EU citizens following a transfer of residence, has been repealed.18 The Law of Stability for 2017 has also clarified that the requirements for resident enterprises do not apply with regard to self-employed individuals.

3.2. Professors and researchers

The Law of Stability for 2017 also made permanent the fiscal incentive for incoming professors and researchers who have been working abroad for at least two years. These benefits, which are contained in article 44 of Decreto legge (Law Decree, D.L.) 78 of 2010,16 were set to expire on 31 December 2017. Consequently, an exemption of 90% from income tax and a total exemption from imposta regionale sulle attività produttive (regional tax on productive activities, IRAP) are still available for income derived by professors and researchers transferring their residence to Italy. These benefits apply in the tax year in which Italian tax residence is acquired and in the following three fiscal years. However, the material scope of the exemption is limited to income deriving from research activities.19 In addition, the regime for academic personnel and the more general one in respect of inward expatriates are alternatives. As a result, the benefits of the two regimes cannot be applied cumulatively.

3.3. Comparative overview

It appears that there are only few regimes in place in Europe specifically designed for selected categories of inward expatriates, with the notable exceptions of the Irish, Maltese and Swedish regimes. These regimes cannot be applied cumulatively.

16. IT: Law 238 of 30 Dec. 2010
17. IT: Decreto legge (Law Decree, D.L.) 78 of 2010, National Legislation IBFD
18. Specific incentives for incoming researchers had initially been enacted by IT: D.L 269 of 30 Sept. 2003, art. 3.
inward expatriates. Notable examples are those regimes that benefit pensioners, a category which is specifically included in the regimes applying in Malta and Portugal.

3.4. Interim conclusions

The Italian inward expatriate regime, which is intended for self-employed workers, sole entrepreneurs and academic personnel, reveals unique features compared to the analogous regimes in other European countries. In this regard, only regimes applying in Malta and Portugal to a specific category of individuals, i.e. pensioners, are beneficial in such a selective way.

4. The New Regime for HNWIs

4.1. In general

Perhaps the most prominent example of the change in Italian tax law towards a territorial system can be seen in the new regime for HNWIs introduced by the Stability Law for 2017. Under this new article 24-bis of the ITCA offers non-resident individuals transferring their tax residence to Italy the ability to opt for a special regime in respect of taxation of their foreign-source income. The option, which is exercised by filing a ruling request to the tax administration for prior approval and is available for a maximum of 15 years, enables transferring individuals to pay, in lieu of ordinary taxation, a lump-sum substitute tax of EUR 100,000 a year on all of their foreign-source income. Italian-source income remains subject to ordinary progressive tax rates.

4.2. Conditions for benefiting from the regime

Qualifying individuals should not have been Italian tax resident for at least nine out of the ten years preceding the first year of effect of the option. In this respect, Italian nationality is irrelevant. The potential audience for the measure is therefore wide. The regime can equally benefit individuals working in the sports arena, the arts, fashion and other high-income sectors.

With regard to its main features, the regime includes an exemption from statutory Italian income tax rates in respect of all foreign-source income. In this respect, the only income to be excluded from the regime is capital gains that are derived from foreign substantial shareholding if realized in the first five years following the making on an election. With regard to foreign-source income as defined, a taxpayer must pay a substitute tax of EUR 100,000 a year. As stated in section 4.1., the option is available for a maximum of 15 years.

Nevertheless, not all categories of foreign-source income necessarily fall within the scope of the regime. A taxpayer may decide to carve-out income arising from one or more foreign countries that is therefore subject to ordinary Italian taxation. This gives the individual the possibility to benefit from the Italian foreign tax credits in respect of the taxes levied in the excluded state(s). In addition, by carving out income derived by one or more countries, individuals may also offset against their ordinary income foreign capital losses that would otherwise be irrelevant for the purposes of determining income subject to ordinary taxation.

A taxpayer can decide to revoke the option at any time. In addition, if the substitute tax is not paid in a timely manner, the option is forfeited. There is no claw-back of the tax benefits of previous years in such circumstances. However, no second option is permitted in the case of the revocation or forfeit of the original option.

Notably, the regime can be extended to relatives. In this event, the amount of the substitute tax is increased by EUR 25,000 a year for each additional relative included in the regime.

Interestingly, the regime also applies for inheritance and gift taxes purposes. Under the regime, foreign assets are exempt from both taxes. In addition, an exemption is granted to applicants from Italian wealth taxes on the value of foreign real estate and financial assets held abroad (IVIE and IVAFE) as well as from foreign asset reporting obligations (quadro RW).

4.3. Comparative overview

HNWI regimes are spreading rapidly in Europe. Notably, in addition to the long-standing UK remittance basis system, beneficial regimes tailored to HNWIs have been introduced into the tax laws of Belgium, Ireland, Malta, Portugal and Switzerland.
In general, these regimes set very broad qualification requirements for individuals. In this regard, the most important limitation relates to prior residence. Switzerland requires a 10-year period of non-residence, Portugal has a 5-year look-back, while the Maltese and UK systems are less restrictive in this regard.

Different types of benefits may be granted. A first beneficial treatment concerns domestic income, which may be taxed at concessionary flat rates of tax (e.g. 15% in Malta and 20% in Portugal). However, most of the benefits relate to foreign-source income. In particular, such income may either be exempt, for example in Portugal, or exempt if not remitted, for example in Ireland, Malta and the United Kingdom. Alternatively, a substitute tax computed on the basis of lump-sum criteria, i.e., assumed annual living expenses to the end of the current tax period, may be levied instead of ordinary progressive rates, for example in Switzerland. However, the individual in question may be required to pay a minimum amount of tax. For instance, in Switzerland the worldwide annual living expenses for the lump-sum tax base has a minimum pre-determined threshold, i.e. the lump-sum is set at least seven times the rental value of the individual’s own property, and the minimum tax base should be at least equivalent to CHF 400,000.

Another crucial aspect with regard to tax planning is a taxpayer’s ability to decide what income should fall within the scope of the beneficial regime. Under remittance basis systems, i.e., those in Ireland, Malta and the United Kingdom, this possibility is built-in because the individual in question may decide to exclude income from the regime simply by remitting that income in the residence country. In contrast, Portugal permits individuals to opt for the credit method regarding taxes paid abroad.

Another important feature to carefully consider relates to time limits. In this respect, Malta has no time limit. Under the UK system, an individual should not indicate an intention to reside indefinitely and is deemed domiciled if resident for 17 out of 20 consecutive years. Portugal applies a 10-year limit.

A difficult matter that is common to HNWI regimes is whether an individual benefiting from such regimes can be considered to also be a resident for treaty purposes. Generally, the answer to this question is positive. As a matter of fact, a taxpayer opting for the regime remains liable and subject to that country’s income tax on overall income, including foreign income, even though income tax is levied only on domestic-source income, while foreign-source income is either exempt or taxed at concessionary rates.\(^*\)

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Model Conventions for the Avoidance of Double Taxation on Income and Capital with Particular Reference to German Treaty Practice, 4th edn., 34 (E. Reimer & A. Rust eds., Wolters Kluwer 2015). The same conclusion is reached by several authors in respect of similar regimes, such as the Swiss “lump-sum taxation” regime and the “remittance basis” regime in the United Kingdom, which is referred to as “residents non-domiciled regime”. However, it should be noted that some of the tax treaties that Italy has concluded, as well as some treaties concluded by Switzerland, include provisions that restrict access to treaty benefits where foreign income is subject to special tax regimes in the residence state. Notably, *Convention between the Swiss Confederation and the Italian Republic for the Avoidance of Double Taxation and the Regulation of Certain Other Questions relating to Taxes on Income and Capital* art. 4(5b) (9 Mar. 1976) (as amended through 2015), Treaties IBFD provides that, if an individual is not subject to ordinary tax in the contracting state of which he is a resident under domestic law on all income derived from the other contracting state, that individual should not be considered to be a treaty resident of the first state. Other tax treaties that Italy has concluded and which include similar provisions are those with *Convention between Ireland and Italy for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income Protocol*, art. 1 (11 June 1971), Treaties IBFD, *Agreement between the Government of the Republic of Italy and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* art. 21 (28 Jan. 1984), Treaties IBFD and *Agreement between the Government of the Republic of Malta and the Government of the Republic of Italy for the Avoidance of Double Taxation with respect to Taxes on Income and the Prevention of Fiscal Evasion* art. 2(5) (16 July 1981) (as amended through 2009), Treaties IBFD.
at least nine out of the preceding ten years is in line with the regimes of other countries, for example those in Portugal and Switzerland.

5. Income from Dependent Employment Exercised Abroad

5.1. In general

Until 2000, income from dependent employment performed abroad by residents was completely disregarded for Italian income tax purposes.\(^{33}\) From 2000 onwards, income derived by dependent employees from an activity permanently performed abroad for at least 183 days in a fiscal year has been taxed on the basis of a lump-sum remuneration determined annually by a decree of the Ministries of Labour and Social Security.\(^{33}\) With regard to certain particularly high-paying positions, or even in the case of significant fringe benefits, this treatment is advantageous to those residents.

However, this treatment does not apply where the individual has been physically present in the employment state for at least 183 days in any 12-month period commencing or ending in the fiscal year concerned and a tax treaty following the OECD Model\(^{34}\) has been concluded by Italy with the employment state. According to the treaty provision in question, this event, the employment state is fully entitled to tax the salary, and Italy must provide a credit for the taxes paid abroad.

5.2. Frontier workers

Income derived by an Italian resident from employment exercised abroad on a continuous basis in frontier zones and neighbouring areas is not necessarily included in Italian taxable income up to a maximum of EUR 7,500.\(^{35}\) Employment income derived by frontier workers is subject to specific provisions included in some tax treaties. In particular, both the Austria-Italy Income and Capital Tax Treaty (1981)\(^{36}\) and the France-Italy Income and Capital Tax Treaty (1989)\(^{37}\) assign taxing rights over the employment income of frontier workers exclusively to the residence state. The Italy-Switzerland Income and Capital Tax Treaty (1976), which has recently been updated but is not yet in force, instead provides for the shared taxing rights over the employment income of frontier workers.\(^{38}\)

In either case, therefore, EUR 7,500 of the gross salary of an Italian frontier worker is untaxed.

5.3. Comparative overview

Some European tax regimes grant an exemption for employment income earned by their residents in foreign countries, for example those in Denmark, France, Luxembourg, the Netherlands and Spain. In particular, in the French tax system, the remuneration paid in consideration of activities performed outside France is exempt from French income tax, provided that the income in question is subject to a tax in the other country which is at least equal to two thirds of the tax that would have been paid in France on the same income. Nevertheless, the exempt income is taken into account for the purposes of progression in the French tax system.

The Dutch regime is stricter. Specifically, the Netherlands exempts 30% of the salary received by residents, but only in respect of work performed in certain listed countries in Europe, Africa, Asia and Latin America. With regard to frontier workers, no special exemption is generally conceded. In this respect, the Netherlands provides compensation payments for its residents employed in Belgium and Germany if the social security contributions in those countries exceed the corresponding amount that would have been due under Dutch law.

5.4. Interim conclusions

A comparison between selected regimes in certain European countries suggests that the exemption granted in respect of employment income earned abroad by residents and frontier workers relates more to the necessity to provide adequate relief for extra expenses incurred and taxes paid by those categories of workers rather than to the will of the residence state to limit its fiscal jurisdiction. Apparently, even the Italian regime does not deviate from that underlying logic.

6. Conclusions

The recent introduction of preferential regimes for both inward expatriates and HNWIs in the Italian tax system is the most visible effect of European countries competing to attract individuals and investments into their territories. The pursuit of such objectives, however, results in countries progressively restricting their jurisdiction to tax. Remarkably, there appears to be a tendency among countries to abandon the worldwide tax principle and embrace a territorial system. A comparison between selected European states highlights the fact that, to compete with each other, countries are now more frequently willing to give up their taxing rights over income arising outside their territory or even to tax certain items of income sourced in their territory at concessionary rates. The circumstance that such a policy has recently been adopted even by Italy is quite striking. From the 1970s, Italy has taxed its residents on a worldwide basis, with no or few

32. Art. 3(5)(c) ITCA, as repealed by IT: D.Lgs 314 of 2 Sept. 1997 art. 5(1)(a) (n. 1).
34. Most recently, OECD Model Tax Convention on Income and on Capital Exported / Printed on 6 Jan. 2020 by danny@dannydarussalam.com.
exceptions. In addition, recently Italy has even tried
to further increase its jurisdiction to tax by enacting
reserved resident provisions, for both individuals
and companies, and has adopted controlled foreign
company (CFC) rules.
Consequently, the partial exemption granted
in respect of the employment income of inward
expatriates and, above all, the exclusion from Italian
taxable income of the foreign-source income of
transferred HNWIs in exchange for a lump-sum
payment of a substitute tax appears to suggest a
reversal of this trend, which may even signal a return
to the territorial tax system in force before the fiscal
reforms of the 1970s. Only time will tell if such a
policy has really come to stay.

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