

NEWS FROM ITALY – RECENT UPDATES TO INBOUND WORKERS REGIME AND REGISTER OF BENEFICIAL OWNERS

Authors

Andrea Tavecchio
Alessandro Carovigno

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Andrea Tavecchio is the Founder and Senior Partner of Tavecchio & Associati, Tax Advisers, Milan, Italy. His practice focuses on the field of wealth planning. He regularly assists private clients in estate, tax, and succession planning, advising on cross-border issues. He is an advisor on tax and governance matters for several Italian and international Family Offices and Trustees. He is a chartered accountant and member of S.T.E.P.

Alessandro Carovigno is a chartered accountant at Tavecchio & Associati, Tax Advisers, Milan, Italy. His practice mainly focuses on personal and estate planning, taxation of trusts and high net worth individuals. Alessandro supports both domestic and international clients in wealth planning and relocation matters.

INTRODUCTION

Over the last decade, Italy introduced tax reliefs aimed at attracting inbound investment and to spur an increase in the number of individuals coming to Italy to work or simply to live in Italy.

Flat Tax Regime

The most well-known tax relief is the Flat Tax Regime, which imposes a lump-sum tax of €100,000 per year on all foreign source income of a participating individual. The relief is available to individuals who establish residence in Italy after having been resident abroad for at least nine out of the previous ten tax years. In general, the nationality of the individual is irrelevant. Once an individual qualifies for the relief, the benefit of lump sum taxation can be extended to family members. Each family member that applies pays a lump-sum tax of only €25,000.

Participants in the Flat Tax Regime benefit from several additional provisions of Italian law:

- They do not report foreign assets other than qualified shareholdings in foreign companies, which must be reported only in the first five years.
- They are exempt from the payment of wealth taxes on real estate properties and financial assets held abroad.¹
- They are exempt from inheritance and gift tax on foreign situs assets.

Other Regimes

A lesser known tax relief is the Inbound Workers Regime. It allows for a 70% tax exemption on income derived from working activity performed in Italy. In some instances, the exemption is 90%.

Finally, Italian law provides a third form of tax relief for arriving retirees. Under the Pensioners Regime, a foreign retiree who establishes residence in Italy's southern region pays a substitute tax of 7% on all non-Italian source pension income. To qualify for the regime, the following conditions must be met:

- The individual must receive a "pension income" paid by a non-Italian entity.
- The individual must not have been a resident of Italy for the five years prior to the period in which the benefit is first claimed.

¹ I.V.I.E. is the wealth tax applicable to real estate. I.V.A.F.E. is the wealth tax applicable to financial assets.

- During that five-year period, the individual must have resided in one or more countries having in effect an administrative cooperation agreement with Italy.
- Residence must be established in a municipality in a southern region that has a population of up to 20,000 inhabitants. Such regions include Sicily, Calabria, Sardinia, Campania, Molise, Puglia, Abruzzo, and Basilicata.

2023 ITALIAN TAX REFORM

In its session of October 16, 2023, the Italian Government approved a draft legislative decree on international taxation. The decree is now under discussion by the relevant parliamentary committees. In particular, the draft legislative decree addresses the tax regime for inbound workers. The proposed modifications do not impact the Flat Tax Regime or the Pensioners Regime.

Inbound Workers Regime – Current Provisions

As mentioned above, the Inbound Workers Regime currently provides a tax exemption of 70% of employment income, including salary and benefits, and business and self-employment income derived from personal services performed in Italy. The tax exemption is 90% when the taxpayer relocates to one of the Southern Regions previously mentioned. As a consequence, the taxable 30% or 10% share of Italian employment income is liable to ordinary personal income tax, with brackets ranging up to 43%, plus local surcharges of approximately 2%. In relation to income from self-employment and business income, the Inbound Workers Regime is subject to State Aid *de minimis* rules, which cap the tax relief €200,000 over a three-year period.

Tax relief granted by the Inbound Worker Regime is available under existing law where the following requirements are met:

- The individual transfers tax residence to Italy.²
- The individual has not been resident in Italy during the two tax periods preceding a transfer of tax residence to Italy.
- The worker commits to maintain Italian tax residence for a minimum period of two years.
- The taxpayer performs the working activity mainly in Italy.

The tax benefit is available for up to five consecutive years. If certain additional requirements are met and tax residence in Italy is maintained for an additional five-year period, scaled back benefits are allowed for the additional five tax years. The additional scaled back benefits are available if, and only if, the individual remains tax resident in Italy for the full additional period of five years.

If the individual meets the additional residence requirement and the other conditions regarding dependent children or full ownership of a residence, the following percentages of income will be subject to personal income tax³ in years six through ten:

² Article 2, par. 2 of the Italian Income Tax Code ("I.T.C.).

³ I.R.P.E.F.



- 50%, if the worker has a minor or dependent child, including if in pre-adoptive care
- 50%, if the worker acquires full ownership of at least one residential real estate unit in Italy following their transfer to Italy or in the twelve-month period prior to the transfer to Italy
- 10%, if the worker has at least three minor or dependent children, including children in pre-adoptive care

Inbound Workers Regime – Proposed Amendments

The proposal provides for a 50% reduction in taxable income on an amount of income not exceeding €600,000 if the following conditions are met:

- The worker establishes a tax residence in Italy, as under existing law.
- The benefit is limited to employment income, income that is assimilated to employment, and self-employment income. Business income other than self-employment income is excluded.⁴
- The individual has not been resident in Italy during the three tax periods preceding a transfer of tax residence to Italy.
- The individual commits to remain tax resident in Italy for at least five years. If the five-year residence requirement is not met, the tax authorities will take steps to recover the tax benefit in full. Penalties and late payment interest will also be applied.
- More than 50% of the workdays each year must take place in Italy.
- The reduction in tax does not apply to days worked outside Italy.
- The employee cannot work in Italy for the same company that employed the individual prior to the move to Italy or for a company in Italy that is a member of the same group of companies as the prior employer. The workers must meet the requirements of high qualification or specialization.
- In case of self-employment income, the state aids *de minimis* rules remain applicable. The relief is capped at €200,000 over a three-year period after arrival in Italy.
- The duration of the tax benefit is limited to five years, with no extensions.

The new regime applies to individuals taking Italian tax residence beginning with tax year 2024. However, a grandfathering rule likely will apply the more favorable existing relief for individuals who became Italian residents by enrolling in the Register of the Resident Population in Italy (*Anagrafe della Popolazione Residente*) not later than December 31, 2023.

⁴ Pursuant to Italian law, self-employment and business income are two different kinds of income. Each case usually requires a specific analysis. Generally speaking, self-employment income is made from arts and professions, while business income is made from commercial activities.

ITALIAN REGISTER OF BENEFICIAL OWNERS: TRUSTS

The Register of Beneficial Owners (the “Register”) of enterprises with legal personality, private legal entities, trusts, and similar legal arrangements has become operational at the Italian Chamber of Commerce.

The Register is held by the local Chamber of Commerce and consists of two sections. The ordinary section holds the data of the Ultimate Beneficial Owners of companies with legal personality and private legal entities. Companies with legal personality include limited liability companies, joint-stock companies, limited partnerships limited by shares, and cooperative companies. Private legal entities include foundations and recognized associations. The special section contains the data of the Ultimate Beneficial Owners (“U.B.O.’s”) of trusts and similar legal arrangements.

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U.B.O.’s of Trusts and Similar Entities

Pursuant to Italian Anti-Money Laundering (“A.M.L.”) Rules, the U.B.O. is the individual or individuals in whose interest a professional service is rendered, or a business relationship is held. In the specific case of a trust, the U.B.O.’s are the Settlor during his lifetime; the trustee; the protector, if any; the beneficiaries or the living individuals who are included among the beneficiaries; other individuals holding the power to control the trust as well as any other person who ultimately, directly or indirectly, controls the assets transferred to the trust.

If the settlor, the trustee, or other persons who have the control over the Trust are companies or similar entities, the listed U.B.O.’s of the trust are the same persons who are U.B.O.’s of such entities.

Persons Obligated to Communicate the Relevant Data

In the case of a trust or an equivalent arrangement, the trustee is the person responsible for providing information on all U.B.O.’s to the Register of Enterprises at the Italian Chamber of Commerce. A self-declaration is all that is required when the trust is set up or is resident in Italy and the trust carries out activities that have legal effect in Italy or leads to consequences for Italian tax purposes, such as when the trust derives income from Italy, owns assets in Italy, or is liable to Italian taxation for any reason.

Pursuant to current Italian Tax Law and clarifications provided by the Italian Tax Authority, a trust is deemed to be a tax resident in Italy if any of the following conditions is met for the greater part of the year, meaning 183 days:

- The trustee is an Italian resident individual or company.
- The trustee’s employees, offices, or operating structure is located in Italy.
- The main purpose of the trust is carried out in Italy.

It is worth noting that the draft legislative decree on international taxation revises the criteria used to determine residence for corporate entities and trusts. In particular, two of the current criteria – seat of administration and main purpose – will be repealed and replaced with the following criteria:

- The place of effective management, which is defined as the place of the continuous and coordinated taking of strategic decisions concerning the company or entity as a whole.
- The place of routine management, which means the place of continuous and coordinated performance of day-to-day management acts concerning the company or entity as a whole.

These new criteria could also affect the tax residence of trusts and thus the reporting obligations to the Register.

Relevant Information to be Filed

The following information must be filed:

- The identity of the U.B.O., including (i) name, (ii) surname, (iii) place and date of birth, (iv) places of residence and domicile, if different from the registered residence, (v) details of the identification document, and (vi) the Italian tax identification number, if any.
- Information regarding the trust, including its (i) the tax identification number, (ii) name, (iii) the date, place, and details of the deed of trust.

Access to the U.B.O. Register

Access to the data held by the special section of the U.B.O. Register is restricted to the following:

- Public entities (including tax and judicial authorities)
- Entities and individuals obliged to carry out A.M.L. procedures, due to their particular activity; examples include banks, public notaries, chartered accountants, lawyers, and other professionals who are required by law to identify the beneficial owner before starting their professional or commercial relationship
- Other persons demonstrating a legitimate interest at protecting or defending their legal position, in case a discrepancy between beneficial ownership and legal title arises

Access to the information contained in the U.B.O. Register may be denied if the beneficial owner is exposed to a disproportionate risk of fraud, harm, kidnapping, blackmail, extortion, harassment, violence, or intimidation, or if he or she is a minor or incapacitated person (so-called “counter-interested parties”). In this case, relevant information in order to determine such exceptional circumstances must be communicated to the U.B.O. Register.

Access to the U.B.O. Register used to be open to the public pursuant to E.U. A.M.L. rules. However, by issuing its ruling of November 22, 2022, the Court of Justice of the European Union limited the access to data on beneficial ownership of companies and private legal entities to those individuals who have a relevant and actual legitimate interest.

Access by parties that carry out A.M.L. procedures must apply for accreditation to the relevant Chamber of Commerce office in order to have access to the data on beneficial ownership. Other entities and individuals wishing to access information

must submit a request explaining the reason justifying the request for access to the information. The final decision is made by the relevant Chamber of Commerce office.

Deadlines

The deadline for the filing of the relevant data to the U.B.O. Register is December 11, 2023. The filing must be made by the (i) directors of companies; (ii) the founder, if alive, or legal representative for private legal entities; and (iii) the trustees for trusts and similar legal arrangements.

For companies, private legal entities, trusts, and similar legal arrangements set up after October 9, 2023, the first filing is made within 30 days of formation.

Any changes in data and information regarding the beneficial owner must be filed within 30 days following the relevant deed.

Penalties

A failure to file data of the U.B.O. triggers the imposition of administrative penalties ranging from €103 to €1,032. In addition, a person who intentionally provides false statements is subject to criminal punishment.



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