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INSIGHTS

BENEFICIAL OWNERSHIP REPORTING UPDATE IN B.V.I. – FROM FILING OBLIGATIONS TO ENFORCEMENT RISKS

CROSS-BORDER WEALTH PLANNING – FIVE QUESTIONS TO ANSWER WHEN PLANNING A MOVE TO ITALY

Q.S.B.S. STACKING: IS THE CLOCK TICKING?

AND MORE

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EDITORS' NOTE

In this month's edition of *Insights*, our articles address the following:

- **Beneficial Ownership Reporting Update in B.V.I. – From Filing Obligations to Enforcement Risks.** In the past year, the British Virgin Islands ("B.V.I.") beneficial ownership information ("B.O.I.") reporting regime moved from consultation and transition to implementation and enforcement in ways that may affect more than companies and their beneficial owners. Areas of the law that are potentially affected include (i) beneficial and legal ownership and title, (ii) proprietary rights, (iii) shareholder disputes, (iv) creditor rights and secured lending, (v) fiduciary obligations, (vi) registered agent duties, (vii) privacy, (viii) cross-border confidentiality, and (ix) potential public law challenges to administrative decision-making.that may affect more than companies and their beneficial owners. In his article, Joshua Mangeot, a leading advisor on the implementation of the B.V.I. economic substance and beneficial ownership reporting requirements, points out that these are areas of the law that areprovides an update on the B.V.I. position, focusing on points most likely to matter to international tax advisors, family offices, corporate and fiduciary service providers, trustees, private banks, fund managers, litigators, and end-clients using B.V.I. companies or limited partnerships in cross-border structures. It raises potential issues regarding (i) beneficial and legal ownership and title, (ii) proprietary rights, (iii) shareholder disputes, (iv) creditor rights and secured lending, (v) fiduciary obligations, (vi) registered agent duties, (vii) privacy, (viii) cross-border confidentiality, and (ix) potential public law challenges to administrative decision-making. Clearly, the adoption of the B.O.I. reporting regime can be viewed to be the equivalent of the proverbial camel's nose under the tent.

- **Cross-Border Wealth Planning – Five Questions to Answer When Planning a Move to Italy.** When individuals consider moving their tax residence to Italy, the first conversation almost always begins with a specific question. How will I be taxed in Italy? It is a question that comes most naturally to clients who have read about Italy's special regimes. But is it the only question that should be considered? In her article, Giada Mazzola, Senior Counsel at Caldara & Associati in Milan, cautions that an adviser who treats the first conversation as a tax-rate conversation will produce an answer that may be technically correct, but may be problematic for practical reasons related to the way the client chooses to live. A more useful approach is one that asks the five questions that all begin with the letter "W" – Who? What? When? Where? and Why? An adviser will be able to fashion a tax plan and a life plan that meets the needs of the client over the long haul only when those five questions are asked by the adviser and answered by the client (i) fully, (ii) completely, and (iii) honestly.

- **Q.S.B.S. Stacking: Is the Clock Ticking?** "Q.S.B.S." is a tax related acronym in the U.S. for Qualified Small Business Stock. When a start-up corporation meets certain conditions enumerated in Code §1202, noncorporate investors are offered the opportunity to derive tax-free capital gains by holding the investment for a period of time prior to a liquidity event. The greater of $10 million of gain or 10 times the taxpayer's basis in the Q.S.B.S. – referred to

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as “basis loading” – may be exempt from tax on exit. The tax benefit can be enhanced by creating multiple irrevocable nongrantor trusts, each formed for the benefit of a specific family member. Each trust is entitled to its own capital gain exemption, so long as the multiple trust rule of Code §643(f) is not triggered. Under that rule, multiple trusts having (i) the same grantor, (ii) substantially the same primary beneficiaries, and (iii) an income tax avoidance purpose are treated as a single trust. Among savvy investors, the tax plan is known as “stacking.” In her article, Galia Antebi reports that Treasury Assistant Secretary for Tax Policy Kenneth Kies recently signaled that Treasury does not like stacking. The bad news is that forthcoming Q.S.B.S. guidance is expected to limit taxpayers’ ability to multiply the benefit. The good news is that basis loading is not a target – at least for now.

- **I.R.S. Offers New Settlement For Easement Tax Shelters.** In May, the I.R.S. announced a settlement offer for partnerships involved in disputes concerning “syndicated conservation easements.” The dispute involves the value of charitable deductions claimed in regard to the grant of an easement that prevents the owner from developing land. An easement is a legal right that allows one party to use a specific portion of someone else’s property for a specific, limited purpose without actually owning the land. The grant purportedly becomes a tax shelter when (i) multiple unrelated investors (ii) pool their money in a partnership or syndicate (iii) that is formed to acquire various parcels of undeveloped land (iv) for the principal purpose of contributing development rights to a land trust, (v) that allows the investors to claim charitable contribution deductions at purportedly inflated values far in excess of the investment in the land. In their article, Stanley C. Ruchelman and Wooyoung Lee explain the history of this typically U.S. centric tax shelter to readers outside the U.S.

- **Updates & Other Tidbits.** This month, Nina Krauthamer and Wooyoung Lee look briefly at two recent developments in tax. The first addresses *pied-à-terre* homes in New York City. Following tax policies adopted by certain cities in Canada, a yearly property tax surcharge will be imposed on New York City homes worth $5 million or more when (i) the home is not used as a primary residence for the owner or for a family member or (ii) is not rented out on full-time basis to an individual who uses the unit as a primary residence. The second development is reported by an anonymous source in contact with an unnamed immigration lawyer. According to the source, the I.R.S. is considering a change to Form 1040 (*U.S. Individual Income Tax Return*) to add two check boxes to the form. One will be used to indicate whether the resident filer is or is not a U.S. citizen. The second will be used to identify whether a U.S. citizen filer holds citizenship in one or more other countries.

We hope you enjoy this issue.

- The Editors

BENEFICIAL OWNERSHIP REPORTING UPDATE IN B.V.I. – FROM FILING OBLIGATIONS TO ENFORCEMENT RISKS

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Tags
A.M.L./C.F.T.
Beneficial Ownership Register
B.O.I.
B.V.I.
Disclosure
Legitimate Interest
Restriction Notice
V.I.R.R.G.I.N.

Joshua Mangeot is an independent B.V.I. legal consultant. His practice includes advising H.N.W.I.'s and M.N.E.'s on a broad range of corporate, finance, transactional, regulatory, and tax matters. Josh is a leading advisor on the implementation of the B.V.I. economic substance and beneficial ownership reporting requirements.

INTRODUCTION

In a previous article for *Insights*,[1] the new British Virgin Islands ("B.V.I.") beneficial ownership information ("B.O.I.") reporting regime was considered in the context of wider transparency developments affecting offshore financial centers.

At that time, the Business Companies and Limited Partnerships (Beneficial Ownership) Regulations, 2024 (as subsequently amended, the "Regulations") recently came into force, and the B.V.I. consultation process regarding access to B.O.I. was ongoing. Moreover, the practical shape of the new regime was still being developed.

The B.V.I. now has moved from consultation and transition to implementation and enforcement. The regime is no longer merely a question of compliance and filing mechanics. It raises potential issues regarding

- beneficial and legal ownership and title,
- proprietary rights,
- shareholder disputes,
- creditor rights and secured lending,
- fiduciary obligations,
- registered agent duties,
- privacy,
- cross-border confidentiality, and
- potential public law challenges to administrative decision-making.

This article provides an update on the B.V.I. position, focusing on points most likely to matter to international tax advisors, family offices, corporate and fiduciary service providers, trustees, private banks, fund managers, litigators, and end-clients using B.V.I. companies or limited partnerships in cross-border structures. The focus is on companies incorporated under the B.V.I. Business Companies Act, Revised Edition 2020 (as amended, the "B.C. Act") as the most common B.V.I. vehicle. Similar, but not identical, principles apply to B.V.I. limited partnerships.

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[1] Joshua Mangeot, "B.V.I.: Beneficial Ownership Reporting and Consultation on Access to Beneficial Ownership Information," *Insights*, Volume 12, No. 1, p. 4 (2025).

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A key feature of the new regime is the commencement of "legitimate interest" access. As of April 1, 2026, persons able to demonstrate a qualifying legitimate interest may apply to the B.V.I. Registrar of Corporate Affairs (the "Registrar") for access to limited B.O.I. concerning individual U.B.O.'s with a 25% or greater ownership or control interest. This is not a public register. Access is controlled, purpose-based, and limited to prescribed information. U.B.O.'s may apply to restrict disclosure where statutory grounds exist, including serious risk of harm, minority or incapacity, special circumstances, national security, or public interest grounds. The practical significance is that privacy and transparency are no longer abstract policy issues. They now require entity-level and U.B.O.-level decisions, supported by evidence and made within relatively tight procedural timeframes.

The principal message is simple. The B.V.I. beneficial ownership regime should not be treated as an item of passive compliance filing. It is now an important part of the legal landscape for B.V.I. entities. Failure to identify and report B.O.I. correctly and within applicable deadlines may

- affect good standing status,
- trigger registered agent reporting and resignation obligations,
- expose directors and other persons to liability, or
- result in statutory restriction notices that immobilize rights attaching to shares or other interests

Individuals with legitimate concerns regarding access rights should ensure they understand the regime and their rights to object to data being disclosed by the Registrar.

This article is structured as follows:

- It summarizes the current B.V.I. reporting framework and the distinction between 10%+ B.O.I. reporting and 25%+ legitimate interest access, including discussion of the expanded exemption for companies held via regulated trustees.
- It considers the access regime and the grounds on which U.B.O.'s may object to disclosure.
- It examines the enforcement consequences of noncompliance, including "restriction notices" and their potential effect on proprietary, economic, and voting rights.
- It considers some practical points for directors and companies, registered agents, secured creditors, transactional counterparties, and persons involved in ownership disputes.
- It places these developments in the wider context of the B.V.I.'s relationship with the United Kingdom ("U.K.") and the continuing international debate over beneficial ownership transparency. Shareholders and other stakeholders should continue to monitor developments in this area.

SUMMARY OF THE B.V.I. REGIME

The Regulations establish a centralized beneficial ownership register maintained by the Registrar as a division of the B.V.I. Financial Services Commission ("F.S.C."). Subject to certain exemptions, the regime is relevant to B.V.I. companies and limited partnerships.

In practical terms, this regime replaces the previous reporting framework under the Beneficial Ownership Secure Search System Act, Revised Edition 2020. However, that Act remains in force at the time of writing, since it implements the B.V.I. economic substance reporting requirements. Legislative developments are anticipated.

The basic reporting obligation is that relevant B.V.I. entities must identify, collect, maintain, and file adequate, accurate, and up-to-date B.O.I. with the Registrar through the B.V.I.'s electronic "V.I.R.R.G.I.N." platform. New entities must generally file within 30 days of incorporation, registration, or continuation into the B.V.I. Changes must be reported within 30 days from the date the entity first becomes aware of the change.

"The Regulations establish a centralized beneficial ownership register maintained by the Registrar as a division of the B.V.I. Financial Services Commission."

The B.V.I. regime is unusual in that the reporting threshold is 10%+, not the 25%+ threshold used in many international transparency regimes. This is consistent with the B.V.I.'s longstanding approach to anti-money-laundering and counter-terrorist, and proliferation financing ("A.M.L./C.F.T.") client due diligence requirements.

A "beneficial owner" is broadly a natural person who ultimately owns or controls 10% or more of the entity or otherwise exercises control over its management. The definition captures legal ownership, economic ownership, voting rights, and control. This is a noteworthy feature for international advisors and intermediaries accustomed to 25%+ reporting thresholds. An individual who is not reportable in other jurisdictions may be reportable in the B.V.I.

This does not mean that all 10%+ B.O.I. will be available to persons outside government or law enforcement agencies. There is a fundamental distinction between reporting obligations and access rights. The Regulations require reporting of 10%+ ultimate beneficial ownership to the Registrar. However, "legitimate interest" access is limited to certain B.O.I. concerning 25%+ U.B.O.'s, as discussed below. Other B.O.I. filed on 10%+ U.B.O.'s remains available to B.V.I. competent authorities and law enforcement agencies, and other persons with statutory access rights, but not via the general legitimate interest access regime.

EXEMPTION FROM FILING

Certain entities are exempt from the obligation to file full B.O.I., although they are required to notify the Registrar of their exempt status and provide certain prescribed information. Broadly, the exemptions are designed to avoid duplication where information is already available through regulated or equivalent systems.

Broadly, the exemptions include

- listed entities,
- certain regulated funds,

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- certain subsidiaries,
- entities held through qualifying regulated trustee,
- dissolved entities,
- government majority-owned entities, and
- entities subject to equivalent international disclosure and transparency rules.

The precise application of these exemptions is fact-sensitive and should be checked in each case.

Notably, the trustee-related exemption has been broadened in scope since the publication of the 2025 article. The original formulation focused on companies that issued shares held by a B.V.I. trustee licensed under the B.V.I. Banks and Trust Companies Act, Revised Edition 2020, provided that the relevant B.O.I. could be produced to the Registrar within 24 hours. The amended regime now broadly provides for exemption where the shares of a B.V.I. company are held by a trustee regulated outside the B.V.I. for A.M.L./C.F.T. purposes, provided the statutory conditions are met. In each case, the exemption is not automatic. Rather, the entity must

- be able to rely on the trustee's regulated status,
- ensure the trustee maintains adequate, accurate, and up-to-date B.O.I.,
- file the prescribed information confirming its exempted status with the Registrar, and
- ensure that B.O.I. information can be provided to the Registrar within the required timeframe.

If (i) any of those conditions cease to be satisfied or(ii) the structure or trustee's regulated status changes, the entity may lose the exemption and be required to file its B.O.I. directly.

Analysis and confirmation of available exemptions should be integrated into onboarding and periodic entity and group compliance reviews, particularly in the event of any changes to (i) the structure, (ii) upstream control, or (iii) ownership. It should not be assumed that a fund, listed group, trust structure, or subsidiary automatically qualifies. Many exemptions are subject to conditions, including whether relevant information is maintained by a regulated person and can be made available within prescribed timeframes.

The practical risks are not limited to incorrect filing and financial penalties. If a company is noncompliant, but has been operating under the assumption that it is exempt, broader issues may arise regarding compliance and regulatory diligence or in relation to transactions, as discussed below.

LEGITIMATE INTEREST ACCESS

Perhaps the most important development since the 2025 article is the implementation of "legitimate interest" access.

The B.V.I. Government published its final policy on rights of access to the beneficial ownership register on June 23, 2025, and access requests made from April 1, 2026. The Government's policy states that the framework grants access for purposes connected with preventing and combating money laundering, terrorist financing, and proliferation financing, while protecting personal data and privacy rights under the Virgin Islands Constitution Order 2007, human rights principles, and data protection laws.

The B.V.I.'s position is that its approach is consistent with international standards, including (i) requirements of the Financial Action Task Force ("F.A.T.F.") Recommendations, (ii) the approach broadly taken by the European Union, and (iii) the line of reasoning adopted by the European Court of Justice in the WM and Sovim SA v Luxembourg Business Registers decision (Joined Cases C 37/20 and C 601/20). The position adopted by the U.K. and its stated expectations in this regard appear to be inconsistent with the approach being taken internationally, as discussed below.

Accordingly, there is no general public right to inspect the B.V.I. beneficial ownership register. Access is limited and permitted only where the applicant can demonstrate a qualifying legitimate interest. Broadly, this means demonstrating

- a specific, lawful purpose connected with the investigation, prevention, or detection of money laundering, terrorist financing, or proliferation financing;
- a connection between the B.V.I. entity and a U.B.O. convicted of or facing ongoing criminal proceedings for such an offense; or
- the applicant being an "obliged entity" conducting customer due diligence or other obligations under the B.V.I.'s A.M.L./C.F.T. laws.

The information disclosed through this regime is limited. It concerns individual U.B.O.s with a 25%+ ownership or control interest and only the individual's (i) name, (ii) nationality, (iii) month and year of birth, and (iv) the nature and extent of the ownership or control interest.

The access regime is therefore a significant change, but it is not equivalent to a U.K.-style open public register. The B.V.I. has adopted a controlled access model, which is intended to align with developing international standards and the approach taken by other U.K. Crown Dependencies and Overseas Territories, while seeking to preserve data protection principles, constitutional rights to privacy and protection from disproportionate harm to U.B.O.'s and certain other individuals.

EXEMPTION FROM DISCLOSURE

U.B.O.'s may apply to limit disclosure of their B.O.I. under the legitimate interest access regime. This mechanism is separate from entity-level exemption from filing. An entity may be required to file B.O.I. even though a particular U.B.O. may have grounds to prevent disclosure of that information to a person making a legitimate interest access request.

Grounds for nondisclosure include

- serious risk of harm to the U.B.O. or an immediate family member;
- the information concerns a minor or person lacking legal capacity;

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- special circumstances such as (i) commercially sensitive information, (ii) proprietary business interests, (iii) confidentiality obligations, (iv) disproportionate public exposure, or (v) prejudice to ongoing or pending ownership proceedings;
- national security; or
- public interest.

Importantly, applications to object to access can be made in advance. A U.B.O. who waits until an access request is made and notification is received may have very little time to object. There is a tight five-day deadline to respond to an access request, which may not provide sufficient time for the U.B.O. to (i) gather evidence, (ii) coordinate with intermediaries, (iii) obtain legal advice, and (iv) prepare a proper objection. The truncated period to respond makes early review essential where B.V.I. entities are used and the information pertains to

- sensitive family matters,
- private wealth structures,
- investments,
- sanctions-adjacent structures,
- politically exposed persons,
- contentious structures, or
- commercially confidential structures.

For advisors and their clients, this may not be a simple matter. The same structure may involve (i) several B.V.I. entities, (ii) several registered agents, (iii) nominees, (iv) trustees, (v) protectors, (vi) investment managers, (vii) banks, and (viii) family office personnel. Unless all parties coordinate, an exemption application is at risk of being incomplete or internally inconsistent. This is especially true where one U.B.O. holds interests through several vehicles administered by different service providers.

FROM REPORTING TO ENFORCEMENT

The B.V.I. regime is also now fully in force following the expiry of various transitional periods.

Due to practical delays in expanding V.I.R.R.G.I.N. and for registered agents uploading filings, the F.S.C. allowed a temporary waiver of filing fees and financial penalties and a general suspension of enforcement action. That transitional grace period ended on March 31, 2026. Full enforcement is now in effect.

B.V.I. entities are frequently used in cross-border structures where the relevant (i) decision-makers, (ii) beneficial owners, (iii) banks, (iv) advisors, (v) intermediaries, (vi) documents and (vii) information are outside the B.V.I. A failure to obtain B.O.I. may not arise from deliberate concealment. It may arise from (a) unresponsive shareholders, (b) contested ownership, (c) death or incapacity, (d) sanctions restrictions, (e) confidentiality obligations, (e) trust disputes, (f) nominee arrangements, or

(g) failures in historic record-keeping. The Regulations nevertheless place the bulk of the compliance burden on the B.V.I. company and its registered agent.

Companies and registered agents should therefore ensure that they have adequate systems and controls in place to deal with the new requirements. In the case of registered agents and other intermediaries, terms and conditions of service should be reviewed and possibly amended to be fit-for-purpose under the new regime and to ensure that information can be made available. Companies should ensure that their constitutional documents and legal arrangements allow them to obtain the required B.O.I. or to deal with any shareholder who is recalcitrant or unable to provide the relevant information within the applicable deadlines.

"The notice may restrict rights or transactions related to a relevant 10%+ interest in shares, profits, capital, or voting rights."

The potential consequences of noncompliance are serious. They may include (A) financial penalties, (B) loss of good standing status, (C) investigation and F.S.C. enforcement action, (D) registered agent escalation and suspicious activity reporting, (E) resignation of the registered agent, (F) strike-off, (G) dissolution, and (H) personal liability for directors, officers, and other individuals in some circumstances.

RESTRICTION NOTICES

Another noteworthy aspect of the enforcement regime is the statutory "restriction notice." This warrants attention because it moves the regime beyond traditional compliance to interference with proprietary rights attaching to shares and other interests in B.V.I. companies.

Broadly, a restriction notice may be issued by the Registrar after a company fails to identify beneficial owners or report B.O.I. within a prescribed timeframe following the company serving notices on suspected beneficial owners or persons who may have relevant information. The notice may restrict rights or transactions related to a relevant 10%+ interest in shares, profits, capital, or voting rights.

For as long as a restriction notice remains in effect, and subject to an appeals mechanism in court, the relevant interest is broadly immobilized from a B.V.I. legal and economic perspective. Transfers or agreements to transfer the interest are void and rights are not exercisable. New rights may not be issued in respect of the interest. Payments due from the entity in respect of the interest may not be made, other than in the course of proceedings in liquidation. In substance, the mechanism may operate like an asset freeze over the affected 10%+ holding.

The B.V.I. law analysis is relatively clear where shares in a B.V.I. company comprise the relevant property. Under the B.C. Act, the *situs* of shares in a B.V.I. company is the B.V.I. The B.V.I. Registrar and B.V.I. courts therefore have a clear jurisdictional foundation for measures affecting rights attaching to those shares.

However, in a cross-border context this mechanism raises broader queries. In many structures, the B.V.I. shares themselves are only one component of wider arrangements. There may be foreign law (i) security documents, (ii) options, (iii) derivatives, (iv)voting arrangements, (v) shareholder agreements, (vi) trust instruments, (vii) nominee declarations, (viii) custody arrangements, (ix) financing documents, or (x) insolvency proceedings involved. A restriction notice may directly affect the B.V.I. shares and the B.V.I. entity's obligations, while foreign law obligations between non-B.V.I. parties continue to exist. Such mismatches may create additional issues, such as (a) defaults, (b) valuation issues, (c) broken settlement mechanics,

(d) voting deadlock, (e) derivative claims, (f) fiduciary conflicts, or (g) enforcement complications.

The Regulations contain important protections for secured creditors and other third parties. A restriction notice should not generally affect or prejudice the right of a secured creditor to enforce security over the relevant interest. Neither should it take effect if the relevant interest is subject to a pre-existing security interest granted to a third party that is not affiliated with the entity. The Registrar must consider the effect of the notice on third-party rights when exercising powers of the office and must withdraw a notice where those rights are being unfairly affected.

Such protections are valuable and consistent with the B.V.I.'s creditor-friendly reputation. However, they may not eliminate risks entirely. In a financing or enforcement scenario, a lender or security agent may still face delay, uncertainty, and the need for court directions. Security documents should be reviewed to ensure that enforcement mechanics remain effective if rights attaching to the collateral are restricted. It may be appropriate for due diligence and transaction documents to include B.O.I.-specific provisions, including (A) representations, (B) undertakings, (C) information covenants, (D) events-of-default analysis, and (E) conditions precedent where appropriate as the various risks may not be obvious as part of the usual reliance on broad "compliance with laws" representations and warranties.

This is particularly relevant for acquisition and project finance, margin lending, private credit, and enforcement over shares in B.V.I. companies. A general representation that the company has complied with applicable laws should provide protection but may not be sufficient in all cases. Non-B.V.I. advisors may not appreciate that a B.O.I. reporting failure can lead to statutory restrictions affecting proprietary and economic rights in shares.

Fortunately, these provisions appear to have been intended to provide an "up-front" incentive to provide complete B.O.I. at the time of first registration in the BVI or by the end of the recently expired transitional period that followed commencement of the new regime in the case of pre-existing entities, rather than as a continuing obligation requirement under the new regime. The practical impact may therefore be limited provided that companies ensure they have arrangements in place to obtain B.O.I. on request. From an advisory and policy perspective, it is hoped that this mechanism is not adopted in other contexts in future

OWNERSHIP DISPUTES

The B.O.I. regime and obligations for companies may also interact with ownership and shareholder disputes or proceedings.

A B.V.I. company must maintain a register of members (*i.e.*, a share register) and file a copy with the Registrar. The register is not public unless the company elects otherwise, but it is accessible to the Registrar, government authorities, and law enforcement. Entry in the register of members is *prima facie* evidence of legal title to shares under the B.C. Act. It is therefore critical – particularly in disputes – to know where the original register is maintained and by whom.

However, the share register is not determinative of beneficial or economic ownership. A company must also collect and maintain accurate B.O.I. on its 10%+

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U.B.O.'s. Where ownership is indirect, contested, held through trusts, or mediated through nominees or intermediaries, identifying the correct U.B.O. may be complex.

The Regulations provide limited protection where there is a *bona fide* legal dispute regarding ownership of an interest that is being adjudicated by a court or tribunal and that is known to the Registrar. In such circumstances, no change should be recorded on the B.O.I. register in respect of that interest until the court or tribunal resolves the matter or orders the register to be updated. However, this protection is relatively narrow. If no proceedings have been commenced, or the Registrar has not been notified of the issue, the protection may not apply and not only the company but also the registered agent may be put in a difficult position, as discussed more fully below.

The B.C. Act and Regulations also provide routes to rectification of the register of members and the B.O.I. register, respectively. These are discretionary remedies requiring an application to the court. They may be unsuitable where the dispute involves complex equitable interests, competing trust claims, or issues requiring a full trial. Depending on the facts, other shareholder remedies may also be relevant to deal with the issue, including (i) compliance orders, (ii) derivative actions, (iii) personal or representative actions, (iv) unfair prejudice remedies, (v) court-convened meetings, or (vi) a just and equitable winding up.

For advisors, the key point is that B.O.I. noncompliance may be both a symptom and an accelerant of corporate disputes. A deadlocked board or recalcitrant shareholder may create a B.O.I. filing problem. That filing problem may then trigger registered agent escalation, regulatory notification, threat of resignation, or restriction notices. The compliance issue can quickly become a control issue.

THE ROLE OF THE REGISTERED AGENT

Registered agents ("R.A.'s") are central to this regime. Every B.V.I. company must have an R.A. in the B.V.I. R.A.'s are licensed and regulated by the F.S.C. and are subject to extensive obligations under the B.C. Act, the Regulations, B.V.I. financial services and A.M.L./C.F.T legislation ,and guidance issued by B.V.I. authorities.

The B.O.I. regime has been designed as far as possible to align with pre-existing A.M.L./C.F.T. requirements and information reported previously, to minimize disruption and duplicative or additional reporting.

B.O.I. filings are made by the R.A. through V.I.R.R.G.I.N. Where an R.A. receives relevant documents or information under the Regulations, it must generally file or provide them to the Registrar forthwith, meaning immediately. This is often done through automated or semi-automated electronic systems.

Importantly, if an R.A. knows or has reasonable grounds to suspect that a company for which it acts is in contravention of the Regulations, it must notify the Registrar. It cannot rely on the absence of clear client instructions as a reason not to notify. This is a mandatory obligation, and well-designed R.A. systems should allow comparison of B.O.I. against other information held by the R.A. before filings are made.

This has significant practical consequences. If B.O.I. provided by a company is inconsistent with the R.A.'s client due diligence records, appears incomplete, or conflicts with information already in the R.A.'s possession, the R.A. may have further

compliance and reporting obligations. Depending on the facts, the issue may also trigger suspicious activity reporting to the B.V.I. Financial Investigation Agency and obligations to terminate the business relationship under A.M.L./C.F.T. laws.

If an R.A. terminates its business relationship, it must resign as registered agent. That requires at least 60 days' notice of intention to resign. If the company cannot find a replacement R.A. – which may be difficult if B.O.I. cannot be obtained – the company may be struck off and dissolved.

In practice, therefore, the R.A.'s position may become significant and potentially a commercial lever to resolve any lingering B.O.I. reporting issues.

International advisors and clients using B.V.I. entities should not assume that R.A.'s are administrative filing agents only. They are regulated persons with their own compliance obligations and statutory and regulatory duties may override client preferences.

DIRECTORS' DUTIES

The B.O.I. obligations formally apply to the company but generally responsibility for day-to-day management and compliance with laws falls on the board of directors. Directors of B.V.I. companies must act in the best interests of the company, exercise powers for a proper purpose and in accordance with the B.C. Act and the company's memorandum and articles of association, and exercise reasonable care, skill, and diligence. Compliance with statutory filing and reporting obligations under the B.C. Act and Regulations is therefore part of the directors' duties.

If a company fails to maintain B.O.I., fails to investigate ownership, ignores notices, allows deadlines to pass, or permits inconsistent information to be filed, directors may face claims that they failed to act with reasonable care or failed to cause the company to comply with the B.C. Act and applicable law. In some circumstances, directors, officers, or other individuals may also incur personal liability for offences committed by the company. A defense may be available where the person took all reasonable steps or exercised all reasonable diligence, but that will depend on the evidence.

This underscores the practical importance of record-keeping and appropriate delegation and oversight. Directors should ensure that the company keeps contemporaneous records of all steps taken to (i) identify U.B.O.'s, (ii) obtain information, (iii) contact shareholders or intermediaries, (iv) instruct the R.A., (v) consider legal advice or professional assistance, (vi) apply for extensions, or (vii) notify the Registrar. In difficult cases or in case of F.S.C. investigation, the "paper trail" may become important.

CONFIDENTIALITY, PRIVILEGE, AND CROSS-BORDER STRUCTURES

The Regulations contain protections for legal professional privilege and for persons who may be prohibited by applicable law from disclosing information. Again, the protections are limited and may not deal fully with foreign law issues that may arise. They also do not relieve the B.V.I. entity of its obligation to maintain adequate,

accurate, and up-to-date B.O.I or protect the entity from penalties or other consequences where B.O.I. cannot be obtained.

This creates a familiar problem for persons accustomed to dealing with B.V.I. and other "offshore" entities. A person in the ownership or service-provider chain may be subject to foreign (i) confidentiality, (ii) bank secrecy, (iii) trust law, (iv) data protection, (v) sanctions, (vi) litigation, or (vii) privilege constraints. The B.V.I. company may nevertheless need the information to comply with B.V.I. law. If the person cannot disclose information, the company may be noncompliant. If the person discloses, the person may risk breaching another obligation.

Rather than waiting for issues to arise around the time of a filing deadline, B.V.I. structures and legal arrangements should include contractual mechanisms permitting B.O.I. disclosure to the company, the R.A., the Registrar, competent authorities, and other persons where required by law. Nominee, trustee, custodian, shareholder, subscription, and administration documents should be checked to ensure that they remain fit for purpose. New structures and documents should include such provisions from inception.

THE U.K. RELATIONSHIP AND WIDER POLITICAL CONTEXT

The B.V.I. beneficial ownership regime sits within a wider, evolving constitutional and political relationship between the B.V.I. and the U.K. The B.V.I. is a U.K. Overseas Territory, but it has its own constitution, elected government, legislature, courts, and financial services framework. Since David Cameron's government decided to introduce fully-public registers in the U.K. to be seen to be at the forefront of international standard-setting but out-of-phase with the international market position, beneficial ownership transparency has become one of the recurring pressure points in that relationship.

"The B.V.I. beneficial ownership regime sits within a wider, evolving constitutional and political relationship between the B.V.I. and the U.K."

The U.K. Parliament and Government have, for several years, pressed Overseas Territories to increase transparency in relation to beneficial ownership. The B.V.I. and other Overseas Territories have responded by adopting or developing controlled access models based on legitimate interest, rather than fully public registers. Debate continues. Civil society groups and some U.K. parliamentarians continue to argue for more public access, while the B.V.I. emphasizes constitutional rights, privacy, proportionality, and the risk of harm to legitimate users of B.V.I. entities and particularly point to the fact that fully-public registers are not the international standard or required by the European Union or the F.A.T.F. Since the 2025 article, the B.V.I. has also undertaken significant steps to enhance the effectiveness of its A.M.L./C.F.T. regime in parallel with the development of the B.O.I. reporting framework. The role of the R.A. in the B.V.I. system as an additional compliance and verification layer between entities and the central register should also be recognized – the U.K. system does not have that feature.

This remains an area to monitor. Although constitutional reform and the longer-term political relationship between the B.V.I. and the U.K. are beyond the scope of this article, beneficial ownership transparency may remain part of that wider constitutional conversation, particularly where U.K. policy objectives intersect with B.V.I. autonomy and constitutional law, data protection privacy rights, and the jurisdiction's financial services model when viewed in the context of international market standards.

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PRACTICAL IMPLICATIONS FOR INTERNATIONAL ADVISORS

To summarize some key practical points:

- Beneficial ownership compliance should be part of any compliance, legal, and regulatory or tax diligence on any B.V.I. company or limited partnership. It is potentially relevant to all manner of structure and transaction, including (i) acquisitions, (ii) financings, (iii) restructurings, (iv) equity subscriptions, (v) family office reorganizations, (vi) trust planning, (vii) sanctions reviews, (viii) contentious matters, and (ix) insolvency proceedings.

- Advisors should consider legal ownership, beneficial ownership, economic ownership, voting control, and management control. The B.V.I. regime can capture control that is not obvious from the register of members.

- Advisors should not assume that a 25%+ threshold applies. For B.V.I. filing purposes, the relevant threshold is generally 10%+. The 25%+ threshold is relevant to legitimate interest access, not to the entity's underlying reporting obligations.

- Sensitive U.B.O.'s should consider whether an exemption from disclosure is appropriate before any access request is made. Waiting until notification may leave inadequate time to prepare a proper objection or result in a failure for the information to reach the U.B.O. where the holding is complex or involves intermediaries.

- R.A.'s should be regarded as regulated gatekeepers, not passive administrators. If B.O.I. is incomplete, inconsistent, or disputed, the R.A. may be required to notify the Registrar, consider regulatory reporting, suspend services, terminate the relationship, and resign.

- Depending on the circumstances, it may be appropriate for transaction documents and the company's constitutional documents to address B.O.I. compliance expressly. This may include (a) warranties, (b) covenants, (c) conditions precedent, (c) information undertakings, (e) events of default, (f) indemnities, and (g) closing deliverables or (h) the ability to deal with non-cooperative shareholders or other persons who fail to provide B.O.I. or related compliance information. Appropriate provisions may include suspension rights, redemption or transfer mechanisms, indemnities, information covenants, director removal rights, and dispute resolution procedures. Any such provisions must be carefully drafted to comply with B.V.I. law and the company's existing rights structure.

- If ownership is disputed, legal advice should be taken early. A purported "fix" to the register of members or B.O.I. register or a "fudged" filing made without proper authority and without a formal rectification order may create greater liability than the original filing problem.

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CONCLUSION

The B.V.I. beneficial ownership regime has evolved into a centralized reporting regime with significant consequences for noncompliance. Advisors and clients should be aware of several important new features, particularly legitimate interest- access rights enjoyed by certain third parties.

The system remains more balanced and nuanced than a public register. Access is controlled, legitimate interest must be demonstrated, and disclosure is limited. At the same time, the B.V.I. internal reporting threshold is robust, the Registrar's powers are significant, and R.A.'s have important legal and regulatory functions.

For legitimate users of B.V.I. entities, the regime is manageable. But compliance requires more than a one-time filing. B.O.I. should now be treated as core corporate information, like the register of members, constitutional documents, director records, and other items required to ensure continued good standing. In complex structures, the ability to identify and evidence beneficial ownership should be built into the structure from inception.

For international tax advisors, the B.V.I. development may be viewed as part of a broader trend towards transparency. Transparency regimes are increasingly linked to (i) A.M.L./C.F.T. effectiveness, (ii) tax cooperation, (iii) sanctions, (iv) cross-border enforcement, and (v) reputational risk. The B.V.I. remains a leading incorporation jurisdiction, and continues to develop its requirements in line with international standards and requirements.

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CROSS-BORDER WEALTH PLANNING – FIVE QUESTIONS TO ANSWER WHEN PLANNING A MOVE TO ITALY

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Tags
Cross-Border Move
International Estate Plan
Italy
Non-Dom Regime
Private Client
Relocation
Special Tax Regimes
Wealth Planning

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INTRODUCTION

A cross-border move for any individual with a meaningful balance sheet is a wealth planning engagement that unfolds in stages. The earliest stage is the pre-residence planning stage. It is where (i) the legal architecture of the move is determined, (ii) the choice between special regimes is made, and (iii) the factual record is laid down that will support the assessment in years to come. Later stages address (a) structuring pre-existing assets, (b) aligning existing estate and succession planning with Italian law, (c) adopting compliance procedures triggered by resident status, and (d) in some cases, planning for an eventual exit. Planning for the later stages typically occurs much before the residence stage is closed.

When individuals consider moving their tax residence to Italy, the first conversation almost always begins with a specific question. How will I be taxed in Italy? The question is reasonable, and it is rarely meant to be the only question. It is, however, the question that comes most naturally to clients who have read about Italy's special regimes and who already have a number in mind as to the level of tax that is acceptable.

In practice, the question is incomplete. Italian tax residence does not flow from a single criterion. It flows from a fact-based assessment that combines (w) civil residence – understood as the habitual abode (*dimora abituale*), (x) domicile, (y) physical presence, and (z) registration (*iscrizione anagrafica*) at the registry office (*ufficio anagrafe*) of the local town hall (*comune*). None of these elements can be evaluated in isolation. None of them can be evaluated in advance of a careful look at the client's life, family, and assets.

An adviser who treats the first conversation as a tax-rate conversation will produce an answer that may be technically correct but problematic for practical reasons. A more useful approach begins with a different question. What does the move look like from the perspective of the client's life, taken as a whole, over the period in which the transition will occur?

The discussion that follows organizes the opening of the residence stage around five questions and one key point. The structure is deliberately simple. The purpose is to map the factual landscape before any technical recommendation is offered, and to identify the decisions that will need to be made before the client's first Italian tax return is filed.

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THE FIVE-QUESTION APPROACH

The five-question approach – sometimes referred to as the 5 W's – is borrowed from journalism, where it has served for more than a century as the test of a complete story. A news reporter who writes an article without answering the five simple questions, each of which begins with the letter W – who? what? when? where? and why? – has written only a fragment of the full story, which often is misleading.

The journalistic approach is itself borrowed from classical rhetoric of the seven circumstances, codified in Quintilian's *Institutio Oratoria* in the first century, and more recently adopted by Rudyard Kipling in the poem that opens "The Elephant's Child," in the *Just So Stories*.[1]

> Six honest serving-men, named What and Why and When and How
> and Where and Who, taught the speaker all he knew.

The parallel between the reporter and the cross-border advisor is closer than it may appear at first sight. The reporter reconstructs a story that has already happened. The advisor reconstructs a story that has not yet taken shape. In both cases, the discipline lies in resisting the pull of a single variable. A reporter who leads with how the event happened, before establishing who was involved and where the event took place, produces a piece of writing that reads like a technical detail in search of its context. Similarly, an advisor who leads with how the client will be taxed, before establishing the purpose, the timing, the family situation, and the location the move produces advice that is in search of context.

There is one substantive difference between the journalistic mnemonic and the framework used here. Classical journalism treats the "how" aspect as the plus-one, the closing question that ties the other responses together. In the framework set out for a cross-border move, the "how" is the consequence of the other responses, refracted through the choice of regime. The regime is where the story acquires its tax shape, and it is the question that closes the assessment rather than the initial question in the planning process.

THE ITALIAN TAX RESIDENCE FRAMEWORK

The Italian rules on individual tax residence were rewritten at the end of 2023. The new wording of Article 2, paragraph 2, of the Italian Income Tax Code as reflected in Presidential Decree 22 December 1986, no. 917 ("T.U.I.R.") was replaced by Article 1 of Legislative Decree 27 December 2023, no. 209, applies starting from tax year 2024.

Under the new rules, an individual is considered to be an Italian tax resident in a given calendar year where, for the greater part of the tax period (more than 183 days, or 184 days in a leap year), any of the following four conditions is met:

- Civil residence under Article 43 of the Italian Civil Code is maintained in Italy, at the individual's place of habitual abode.
- Domicile is maintained in Italy, defined for tax purposes as the place where the individual's personal and family relationships primarily develop.

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[1] Kipling, Rudyard. *Just So Stories*. United Kingdom: Macmillan, 1902.

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- Physical presence is established in the Italian territory for the relevant period, a new statutory criterion that did not appear in the prior version of the law.
- *Anagrafe* enrollment has been entered in the register of an Italian municipality regarding its resident.

Three points deserve emphasis for non-Italian readers:

- The new definition of domicile shifts the analysis decisively toward personal and family ties, narrowing the broader notion that previously included business and economic interests.
- Physical presence is now an autonomous criterion, which means that days spent in Italy may, on their own, trigger residence if the threshold is met.
- *Anagrafe* enrollment now creates a rebuttable presumption of residence, not the absolute presumption that prevailed before the reform, although registration remains a strong factual indicator in the analysis.

The 2024 reform did not change the role of double tax treaties. Where the domestic rules of two countries treat the same individual as resident in each country, the tiebreaker rules of Article 4 of the O.E.C.D. Model Tax Convention, as incorporated into the relevant bilateral treaty, will allocate residence to a single jurisdiction for treaty purposes.

THE "WHY" QUESTION: THE PURPOSE DRIVING THE MOVE

The first question in any well-conducted initial assessment is to identify the reasons why the client wants to move to Italy. Although the question sounds soft, it drives almost every technical choice that follows.

- A retirement-driven relocation raises a set of considerations that has little overlap with an employment-driven relocation.
- A move connected to entrepreneurial activity, with a view to opening or relocating a business, points the analysis toward (i) permanent establishment exposure for the foreign company, (ii) treatment of stock options and carried interests, and (iii) the interaction between Italian tax residence and the corporate tax position of any non-Italian holding structure.
- A move tied to a family transition, such as a divorce, a remarriage, or the relocation of children for schooling, raises succession planning and matrimonial property regime questions that go well beyond income tax.

Asset management relocations form a distinct category. Clients with significant investment portfolios held offshore often arrive with structures that were built around a previous tax residence, and the question is whether those structures continue to make sense, or whether the Italian residence requires modification.

A further category that is more visible in recent years is the relocation driven by external events rather than by personal choice. The COVID-19 pandemic produced a wave of involuntary cross-border presence between 2020 and 2022, with individuals

stranded for months in countries other than their usual one. More recent geopolitical events have raised similar questions in a different posture.

The treatment of these cases under Italian rules turns on a fundamental distinction. Under domestic Italian law, the criteria of Article 2, paragraph 2, T.U.I.R. are applied irrespective of the reasons for the individual's presence in Italy. The Italian Tax Authorities confirmed this approach in a series of rulings issued during and after the pandemic, including Response no. 458 of 7 July 2021, Response no. 50 of 17 January 2023, and Response no. 99 of 19 January 2023, declining to disapply the residence rules even where the presence in Italy was directly caused by emergency restrictions. The O.E.C.D. guidance on the impact of the pandemic on the application of tax treaties, first issued on 3 April 2020 and updated on 21 January 2021, recommended that days of presence attributable to extraordinary circumstances should not, on their own, displace the prior residence position. That guidance was accepted by Italy only at the treaty level, and only through the administrative agreements concluded with Austria, France, and Switzerland in respect of cross-border workers.

The treaty level offers a different perspective. Where a domestic law conflict of residence arises, the tiebreaker rules of Article 4 of the relevant double tax treaty apply, and the analysis of the habitual abode criterion under paragraph 19 of the Commentary to the O.E.C.D. Model Convention requires consideration of the frequency, duration, and regularity of stays over a period long enough to exclude transitory situations. The treaty analysis can therefore lead to a different outcome from the domestic law analysis, particularly where the presence in Italy is the result of extraordinary circumstances rather than a deliberate centering of life.

The practical lesson for advisors is that presence in Italy which begins as a temporary safe haven measure may, over time, acquire the characteristics of habitual abode, with consequences that need to be assessed prospectively rather than reconstructed on a retroactive basis. The Italian residence analysis under domestic law remains comparatively rigid in the face of force majeure, while the treaty analysis allows a more fact sensitive correction. The two perspectives need to be considered together at the planning stage, not at the moment tax is assessed.

Understanding the purpose of the move also affects the conversation about timing, family arrangements, and special regimes. A retiree relocating to a small town in southern Italy is in a very different position from a founder relocating to Milan after a liquidity event. The factual assessment, the choice of regime, the immigration steps, and the family conversations are all different.

A practitioner who skips this question and moves directly to technical analysis tends to recommend regimes that are technically available but not necessarily aligned with the client's situation. The cost of that mistake is rarely fiscal. It tends to be a planning structure that does not survive its first encounter with reality.

THE "WHEN" QUESTION: TIMING BEYOND THE 183-DAY RULE

The second question is identifying when the move actually takes place. Most clients arrive at the first meeting having read about the 183-day rule, and many expect that the analysis ends there. It does not.

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The Italian tax year follows the calendar year for individuals. The 183-day threshold is measured against the calendar year, with the practical consequence that the timing of departure from the previous country and arrival in Italy materially affects the year in which Italian residence begins. An arrival in late summer of year one may, depending on facts, result in nonresidence for year one and full residence for year two. In comparison, an arrival in early spring will typically result in full residence for year one.

Departure-side considerations deserve equal attention. Many countries apply some form of exit charge, deemed disposal of unrealized gains, or trailing tax obligation to individuals who cease to be tax resident. The makeup and timing of these rules vary materially from one jurisdiction to the next. Consequently, a coordinated analysis with advisors in the country of departure is necessary before the date of departure is fixed. The exercise often reveals that the optimal Italian arrival date depends on a foreign timeline that is not visible from the Italian side, and confirms that planning must begin well before the move itself.

Italian-side registrations also deserve careful sequencing. The deregistration from the Italian Registry of Italians Resident Abroad ("A.I.R.E.") and the enrollment in the Italian *Anagrafe* should be coordinated with the substantive move, not handled as administrative afterthoughts. A registration that occurs significantly before or after the substantive move can produce mismatches that the tax authorities will be entitled to question.

Immigration timing introduces a parallel schedule. The issuance of a visa, its conversion into a residence permit, and tax-driven elections all run on calendars of their own. The role of the practitioner is to make sure that the tax, immigration, and registration timelines align.

THE "WHO" QUESTION: THE FAMILY DIMENSION

The third question is the identification of the family members who are moving with the client. Few questions reshape the analysis more decisively, and few questions are more frequently underestimated.

Italian tax residence is assessed on an individual basis. One spouse may become an Italian tax resident while the other does not. Children may have their own residence status. In practice, the location of family members is one of the strongest factual indicators of the individual's domicile. The new definition of domicile under Article 2, paragraph 2, T.U.I.R. emphasizes the place where personal and family relationships primarily develop. It places the family dimension at the center of the assessment.

The presence of a spouse in Italy, the schooling of minor children in Italian institutions, the location of the family home, and the rhythm of weekends, holidays, and family routines are all relevant. Where these elements point to Italy, residence will be difficult to avoid, regardless of how carefully the 183-day count is managed. Where they point to another country, the residence analysis will need to take that fact into account, in conjunction with the tiebreaker rules of the applicable treaty.

The family dimension extends well beyond income tax. Matrimonial property regimes may be affected by a change of habitual residence. Succession planning is directly implicated, since Regulation (E.U.) No 650/2012 of the European Parliament and of

the Council of 4 July 2012, commonly referred to as the "E.U. Succession Regulation," ties the applicable law of succession to the habitual residence of the deceased at the time of death, subject to a limited election in favor of the law of nationality. The interaction between Italian forced heirship rules and the planning instruments commonly used in the client's country of origin, such as revocable trusts, transfer-on-death designations, joint tenancy with right of survivorship, and prenuptial agreements, will need to be reviewed.

The family conversation should happen at the beginning of the planning process, not at the end. The decisions are personal, and they need to be made by the people who will live with them.

"The family conversation should happen at the beginning of the planning process, not at the end. The decisions are personal, and they need to be made by the people who will live with them.`"

THE "WHAT" QUESTION: THE SUBSTANCE OF ITALIAN TAX RESIDENCE

The fourth question is what Italian tax residence actually means once it is acquired. Clients often arrive with a general understanding of how residence will affect their taxation, and a similar level of familiarity with the special regimes frequently anchored to a headline figure rather than to the underlying conditions. The intermediate layer, namely the ordinary regime that applies in the absence of an election, is rarely the focus of pre-arrival conversations and deserves attention from the outset.

The ordinary consequence of Italian tax residence is taxation on worldwide income. The Italian personal income tax ("I.R.P.E.F.") is progressive, with rates currently ranging from 23% on the lowest bracket to 43% on income above the top threshold. Regional and municipal surtaxes must also be taken into account. The progressive scale, however, is only the starting point. What actually applies to a given client depends on the composition of the client's wealth and on how each item of income or gain is treated under Italian rules.

In principle, foreign income is taxable in Italy. Double taxation is ameliorated through foreign tax credits and treaty relief. Income from foreign trusts, foreign partnerships, and controlled foreign corporations is subject to specific anti-deferral rules that should be reviewed before residence is acquired.

The reporting obligations are extensive. The foreign asset monitoring regime under Article 4 of Decree-Law 28 June 1990, no. 167, converted into Law 4 August 1990, no. 227, requires Italian tax residents to disclose foreign assets and certain foreign financial relationships in the dedicated section of their annual tax return (commonly referred to as "*Quadro RW*"). The Italian wealth tax on foreign immovable property ("I.V.I.E.") and on foreign financial assets ("I.V.A.F.E."), introduced by Article 19 of Decree-Law 6 December 2011, no. 201, converted with amendments by Law 22 December 2011, no. 214, applies in parallel to the income tax.

Italian gift and inheritance tax should also be discussed at the outset. The Italian regime is comparatively favorable, with substantial allowances and modest rates by international standards. The territorial scope of the tax extends to worldwide assets where the donor or decedent is an Italian resident.

THE "WHERE" QUESTION: THE PLACE OF LIFE AND ITS CONSEQUENCES

The fifth question relates to the place where the client will actually live. The question may sound logistical. It is, in fact, a question with legal and factual consequences.

The choice of location affects the factual analysis of residence. A client who declares Italian residence but (i) spends most of the year in another country, (ii) maintains only formalistic links to a town in Italy that has no schools, (iii) is not part of a professional network, and (iv) maintains few or no family ties to Italy will struggle to defend an assessment by tax authorities that is focused on the substance of life. By contrast, a client who genuinely centers life on Milan, Rome, Florence, or a smaller town with verifiable ties will be in a much stronger position.

The choice of location also intersects with one of the special regimes. The favorable regime for foreign pensioners under Article 24-ter, paragraph 1, T.U.I.R. is geographically limited, requiring relocation to a municipality of certain southern Italian regions. Article 26 of Law no. 34 of 2026 raised the eligible population threshold from 20,000 to 30,000 inhabitants, with effect from tax year 2026. The amendment also allows a transfer from a municipality below 20,000 inhabitants to a municipality between 20,000 and 30,000 inhabitants to qualify under the regime. A retiree who falls in love with Florence or Milan will not qualify for the foreign pensioner regime no matter how matter how many other favorable elements are in the retiree's profile.

Real estate decisions are typically part of the location conversation. The purchase of a primary residence may have favorable consequences for property tax (".I.M.U." and for registration tax, but it also creates a visible factual link that may be relevant for the residence analysis. The rental of a long-term property in a particular city often plays the same evidentiary role.

The choice of location should be discussed within the family. Schooling, healthcare, transportation, professional ecosystem, and proximity to the client's commercial activities are factors that affect whether the location remains comfortable in year three and in year five, and not merely in year one. A move that the client regrets within twelve months will impose costs that exceed any tax saving.

WHICH SPECIAL REGIME, IF ANY, FITS

The plus-one question is which special regime, if any, fits the client's circumstances. Italian law currently offers three principal regimes for individuals transferring tax residence to Italy. Each regime has its own conditions, its own scope, and its own duration. None is automatic, and all of them must be elected.

New Residents Regime

The first regime is the new residents regime under Article 24-*bis* T.U.I.R., originally introduced by Article 1, paragraphs 152 to 159, of Law 11 December 2016, no. 232 (the 2017 Italian Budget Law). The regime allows individuals who become Italian tax resident after at least nine years of nonresidence in the previous ten to elect a flat substitute tax on foreign-source income. The substitute tax was originally set at €100,000 per year. It was raised to €200,000 by Decree-Law 9 August 2024, no. 113, converted into Law 7 October 2024, no. 143. It was further raised to €300,000

per year for new opters by the 2026 Italian Budget Law. Family members who join the election are subject to an additional substitute tax now of €50,000 each.

The election lasts up to fifteen tax years, applies to foreign-source income, only. It may be revoked at any time. Italian source income remains subject to ordinary I.R.P.E.F. Foreign-source capital gains on qualified participations realized in the first five years of the election are in principle excluded from the regime. Foreign assets covered by the regime are exempt from the *Quadro RW* reporting obligation, from IV.I.E., and from I.V.A.F.E. The same assets are also exempt from Italian gift and inheritance tax on transfers made by the participant during the election period.

Inbound Workers Regime

The second regime is the inbound workers regime under Article 5 of Legislative Decree 27 December 2023, no. 209. The new regime, applicable to transfers of residence from tax year 2024, replaces the previous regime under Article 16 of Legislative Decree 14 September 2015, no. 147, subject to grandfathering for individuals who validly exercised the option under the prior regime.

Under the new regime, qualifying employment and self-employment income produced in Italy is taxed on 50% of the income amount. The taxable amount can be reduced to 40% in specified cases, such as where the inbound worker has a dependent minor child. The benefit applies to €600,000 of eligible income per year. The benefit applies for five tax years. Eligibility requires (i) three years of prior tax nonresidence in Italy (extended to six or seven years where the worker returns to the same employer or to a member of the same group), (ii) a commitment to maintain Italian tax residence for at least four years, (iii) performance of work activity primarily in Italy, and (iv) possession of high qualification or specialization requirements as defined by the implementing rules.

Foreign Pensioners Regime

The third regime is the foreign pensioners regime under Article 24-ter T.U.I.R., introduced by Law 30 December 2018, no. 145 (the 2019 Italian Budget Law).

The regime allows individuals receiving foreign pension income who become Italian tax resident after at least five years of nonresidence to elect a flat substitute tax of 7% on all foreign-source income for ten tax years. The election requires relocation to a municipality of certain southern Italian regions, namely (i) Abruzzo, (ii) Molise, (iii) Campania, (iv) Puglia, (v) Basilicata, (vi) Calabria, (vii) Sardinia, and (vii) Sicily, provided that the eligible population threshold is limited to municipalities of up to 30,000 inhabitants, as of tax year 2026. Foreign assets covered by the regime are exempt from the *Quadro RW* reporting obligation, from I.V.I.E., and from I.V.A.F.E., but are subject to Italian inheritance and gift tax.

Eligibility, scope, timing, and compatibility with the underlying facts must all be assessed before the election is made. A regime that is technically available will produce poor outcomes where the underlying facts are not aligned with relevant requirements. The choice between the new residents regime and the inbound workers regime, for example, is rarely a simple comparison of tax rates. It depends on the composition of the client's income, on the duration of the planned stay, on the family situation, and on the location chosen for the move.

THE FIRST STAGE, AND WHAT COMES NEXT

The opening conversation of a cross-border wealth planning engagement is sometimes described as a preliminary step, a screening before the real work begins. That characterization understates its importance.

The decisions made in the first conversation often determine the planning trajectory for years to come. The (i) choice of regime, (ii) timing of the move, (iii) family arrangements, (iv) location of life, and (v) structure of pre-existing assets are interdependent factors that must be considered separately and together. A choice made in isolation, even a technically defensible one, can foreclose options that would have been preferable in light of the full picture.

The legal framework that surrounds the move is technical, and it has become more so since the 2024 reform of the residence rules and the recent changes to the special regimes. The decisions, however, remain personal. They involve (a) where life will be lived, (b) with whom, (c) around which family obligations, and (d) with what relationship to the country of origin. The role of the practitioner is to make the legal framework legible to the client, and to listen carefully to the parts of the picture that are not legal at all.

For advisors working with clients on cross-border relocations, the value of the first conversation lies in the questions, not the answers. A well-structured first assessment identifies the questions that need to be answered, the trade-offs that need to be made, and the sequence in which the decisions need to be taken. The answers will come, and they will come in the right order.

The opening stage is also where the practitioner's role as a coordinator becomes most visible. A move to Italy rarely involves a single advisor. The client typically arrives with a wealth manager, a banker, an accountant in the country of departure, and sometimes a family office or a trust company that has supported the family for years. Decisions taken in isolation by any of these advisors can compromise the planning that the others have built.

The role of the Italian counsel is to connect the dots between the legal architecture of the move and the work of the other professionals around the client, to make the Italian framework legible to the foreign advisors and the foreign positions legible to the Italian framework. The client is part of that dialogue, not its subject. The first stage is where the team is built and where the dialogue that will run through the later stages is established.

What follows the residence stage is its own subject. The structuring of pre-existing assets, the alignment of estate and succession arrangements with Italian forced heirship rules and with the E.U. Succession Regulation, the design of philanthropic vehicles, the integration of trusts and corporate structures inherited from the previous jurisdiction, and the planning for an eventual exit from Italy are substantial engagements in their own right. Each builds on what the residence stage has established. Each will be the subject of a future conversation, and of a future stage of the same engagement.

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CONCLUSION

Kipling's six honest serving-men were not, in the end, a journalistic device. They restated, in plain verse, the same intuition that Quintilian set out in his *Institutio Oratoria* eighteen centuries earlier.

A situation that has not been examined through a structured set of questions has not yet been understood, and a situation that has not been understood should not yet be acted upon. The first conversation about a cross-border move should focus on the 5-W's. The questions are old, the answers are new each time, and the order in which they are asked and answered separates a story that holds together from a story that falls apart.

"The questions are old, the answers are new each time, and the order in which they are asked and answered separates a story that holds together from a story that falls apart."

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Q.S.B.S. STACKING: IS THE CLOCK TICKING?

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Tags
Code §1202
Stacking
Q.S.B.S.

At a Washington tax conference on May 20, Treasury Assistant Secretary for Tax Policy Kenneth Kies reportedly signaled that anti-stacking regulations targeting Code §1202 qualified small business stock ("Q.S.B.S.") are likely forthcoming.

For years, when advisors discussed Q.S.B.S. stacking with clients, there tended to be two reactions. One was that the Code quite clearly permits it and that, as long as trusts are sufficiently separated so that no two trusts can be viewed as one, taxpayers should be able to create as many separate taxpayers as possible. The other was that the result feels too good to be true, and when something feels too good to be true, one should worry.

The statutory argument is real. Code §1202(h) expressly contemplates that Q.S.B.S. may be transferred by gift without losing its character. And yet, when planning becomes highly mechanical and highly marketed, one starts to wonder when Treasury and the I.R.S. will decide that enough is enough. The author's view is closer to the second camp, particularly after reading "Silicon Valley's Ultimate Tax Break," the December 2021 New York Times article that brought Q.S.B.S. stacking into the public eye. At that time, the government's response was viewed to be imminent. It took several years, but the response may now be here.

BACKGROUND

Code §1202 was originally designed to incentivize long-term, risky investments in emerging businesses by allowing non-corporate taxpayers to exclude a significant portion of their capital gain on exit. Historically, the exclusion was capped at the greater of $10,000,000 or 10 times the taxpayer's basis in the Q.S.B.S.

THE RISE OF STACKING

High-net-worth technology founders and venture investors discovered a way to multiply the exclusion. Rather than accepting a single baseline exclusion on a company exit, more aggressive planning used two principal mechanisms:

- **Family Member Gifting:** Shares are transferred to adult children, siblings, or other family members, with each separate taxpayer potentially claiming a separate Q.S.B.S. exclusion.
- **Irrevocable Non-Grantor Trusts:** Founders carve up pre-exit shares and gift them to multiple trusts. If each trust is respected as a separate taxpayer, each trust may claim its own separate exclusion amount.

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Code §1202(h) is what made the technique attractive. It provides, in substance, that where Q.S.B.S. is transferred by gift, the transferee is treated as having acquired the stock in the same manner as the transferor and as having held the stock during the transferor's holding period.

Then came the One Big Beautiful Bill Act ("O.B.B.B."). Congress revisited Code §1202, made the benefit more generous for stock acquired after July 4, 2025, increased the dollar cap, introduced partial exclusions for shorter holding periods, and increased the gross-asset threshold. But Congress did not change the gift rule. For those of us who were uneasy blessing stacking too strongly, that omission mattered. Congress had a chance to say no. It did not.

"That sets up the interesting question: can Treasury do by regulation what Congress did not do by statute?"

THE END?

Now the conversation appears to be shifting again. *Tax Notes* reported that Kies warned that Treasury does not like stacking and that forthcoming Q.S.B.S. guidance is expected to limit taxpayers' ability to multiply the benefit. Similar comments reportedly were made earlier in May by another Treasury attorney-adviser.

The government is not starting with an empty toolbox. In trust-based stacking cases, Code §643(f) may do some of the work. That provision allows the I.R.S. to treat multiple trusts as one trust where the trusts have substantially the same grantor and substantially the same primary beneficiaries, and a principal purpose of the arrangement is income tax avoidance. Thus, if a founder creates multiple non-grantor trusts for substantially the same family class, funds each trust with Q.S.B.S., and each trust claims a separate Code §1202 exclusion, the I.R.S. may argue that the trusts should be collapsed into one taxpayer for this purpose. But Code §643(f) also illustrates the limits of the government's position. It is a trust aggregation rule, not a general anti-stacking rule. It does not reach a simple gift to a child or other individual donee. Nor does it easily reach trusts with separate beneficiaries, different dispositive terms, and meaningful estate planning purposes. As a result, it may be useful in the most aggressive cases, but it does not eliminate stacking if that is Treasury's objective.

That sets up the interesting question: can Treasury do by regulation what Congress did not do by statute? Treasury may try to target extreme cases through trust aggregation, assignment-of-income, substance-over-form, anti-abuse, or similar principles. A broad rule that simply denies separate exclusions following gifts, however, would have to contend with the text of Code §1202(h).

It also does not appear, at least for now, that "basis loading" is the target. Very briefly, some founders seek to maximize the exclusion not by multiplying taxpayers, but by using the 10-times-basis limitation instead of the now-$15,000,000 baseline cap. In some cases, this planning is pursued by starting in L.L.C. form incorporating the business early enough for the resulting C corporation stock to satisfy the applicable Q.S.B.S. holding-period requirements. This is not an exit-eve technique, and valuation at the time of incorporation may be critical. If done properly, that can produce a much larger exclusion than the baseline cap and, in some cases, a larger result than trust stacking. If Treasury limits stacking, basis-focused planning may become the next frontier.

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TAKEAWAY

For now, stacking is not dead. But it has moved from a planning technique with obvious textual support to one under visible regulatory scrutiny. Existing plans should be reviewed for purpose, timing, donee independence, economics, and documentation. New plans should be designed with the expectation that forthcoming guidance may try to separate routine gift and succession planning from transactions that appear to exist only to multiply the Q.S.B.S. exclusion.

The lesson is familiar. Sometimes the Code appears to provide a clean answer, but policy pressure builds later. With Q.S.B.S. stacking, the 2025 legislation seemed to validate the statutory reading by silence. Treasury now appears ready to test how much silence is enough.

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I.R.S. OFFERS NEW SETTLEMENT FOR EASEMENT TAX SHELTERS

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Tags
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Listed Transactions

INTRODUCTION

In May, the I.R.S. announced a settlement offer for partnerships involved in disputes concerning "syndicated conservation easements." The key features of the offer include a 10% penalty for gross valuation misstatement, instead of a 40% penalty, and no upfront payment required.

The dispute involves the value of charitable deductions claimed in regard to the grant of an easement that prevents the owner from developing land. An easement is a legal right that allows one party to use a specific portion of someone else's property for a specific, limited purpose without actually owning the land.

The basic premise of the charitable deduction is that a landowner voluntarily surrenders development rights in a certain parcel of land to a governmental unit or a qualified charitable organization in order to permanently preserve the natural quality of the undeveloped land. In return, the landowner claims a Federal income tax deduction equal to the reduction in value of the property. It purportedly becomes a tax shelter when (i) multiple unrelated investors (ii) pool their money in a partnership or syndicate (iii) that is formed to acquire various parcels of undeveloped land (iv) for the principal purpose of contributing development rights to a land trust, (v) that allows the investors to claim charitable contribution deductions at purportedly inflated values far in excess of the investment in the land.

This article explains the history of this typically U.S. centric tax shelter to readers outside the U.S.

BACKGROUND

Within certain limits, charitable contributions made by U.S. taxpayers yield deductions for the donor. Gifts of partial interests in property are generally not deductible.[1] However, there are several exceptions, including the exception for "qualified conservation contributions."[2]

A qualified conservation contribution requires a contribution (i) of a "qualified property interest" (ii) to a "qualified organization" (iii) that is made "exclusively for conservation purposes."[3]

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1 Code §170(f)(3).

2 Code §170(f)(3)(B)(iii).

3 Code §170(h)(1).

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A qualified real property interest is any of the following:[4]

- The donor's interest in the real property, other than "qualified mineral interests" (interests in and mining rights to underground oil, gas, or other minerals)
- A remainder interest
- A restriction granted in perpetuity on the use of the property

A qualified organization includes governmental units, government-funded charitable organizations, and certain Code §501(c)(3) organizations (generally those that are publicly supported).[5]

A contribution is for conservation purposes if one or more of the following purposes apply to the easement:[6]

- The preservation of land for outdoor recreation by or the education of the general public
- The protection of a natural habitat of fish, wildlife, or plants
- The preservation of open space, including farmland and forests, for the scenic enjoyment of the general public or for a government conservation benefit
- The preservation of an historically important land area or certified historic structure (defined as either (i) being listed in the National Register or (ii) is a building located in and designated as being of historic significance to a registered historic district)

With respect to conservation purposes involving the exterior of a building in a registered historic district, additional requirements are imposed.[7] The donor and, as applicable, the donee must generally agree to preserve the entire exterior and provide supporting documentation, including an appraisal and photographic evidence.

A contribution is made exclusively for conservation purposes only if that conservation purpose is protected in perpetuity.[8] This requirement is generally not met if the donor retains a qualified mineral interest from which minerals may be extracted or removed.[9]

HISTORY OF SYNDICATED CONSERVATION EASEMENTS

General

A syndicated conservation easement ("S.C.E.") is a tax shelter that relies on aggressively high valuations of land. The I.R.S. became concerned about promoters

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4 Code §170(h)(2).

5 Code §170(h)(3).

6 Code §170(h)(4).

7 Code §170(h)(4)(B).

8 Code §170(h)(5)(A).

9 Code §170(h)(5)(B).

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offering investments purportedly yielding charitable deductions in excess of amounts invested, often 2.5 times the investment.[10] In a report issued in2020, the Senate Finance Committee estimated the average investor receives $4 of tax deductions for every dollar paid to a promoter, which translates to $2 saved for each dollar invested.[11] The investment takes the form of a partnership that owned or acquired land rights, which it donates to generate charitable deductions under the rules outlined above. Since the donor is a flow-through entity, deductions flow up to the investors.

While the I.R.S. previously expressed general concerns about abuses of conservation donations,[12] the seminal case was *Kiva Dunes Conservation, LLC v. Commr*.[13] There, the taxpayer was the owner of a golf course. It claimed a $30 million deduction for placing a perpetual conservation easement on the golf course. The taxpayer prevailed, with the Tax Court allowing $29 million of the claimed deduction. The taxpayer's facts were more favorable than in many later cases. The taxpayer owned the property for more than a decade, supporting a valuation in excess of the original purchase price. The taxpayer based its valuation on the highest and best use of the property – beachfront residences – which the court found credible and with which the I.R.S. agreed. The main conflict was the valuation of the property, but the taxpayer used a local expert with deep knowledge of the area, while the I.R.S.'s appraiser appeared to be unfamiliar with the area and made several errors.

"The taxpayer's success triggered the marketing of conservation easement schemes, most of them based on more aggressive valuations than the Kiva Dunes easement."

Notice 2017-10

The taxpayer's success triggered the marketing of conservation easement schemes, most of them based on more aggressive valuations than the *Kiva Dunes* easement. In response, the I.R.S. upped the stakes in 2017 when it identified an investment in an S.C.E. as a "listed transaction" where the investment opportunity offers deductions that are at least 2.5 times the amount of the initial investment. Listed transactions are specific transactions that the I.R.S. determines to be tax-avoidance schemes. Participation in a listed transaction must be disclosed on Form 8886 (Reportable Transaction Disclosure Statement). Significant penalties are imposed for the failure to file Form 8886. Under Section 6707A, a penalty equal to 75% of the improper reduction in tax can be imposed.

However, Notice 2017-10 encountered procedural problems and was found to be invalid under the Administrative Procedure Act ("A.P.A."). In *Green Valley Invs., LLC v. Commr*.,[14] four partnerships were involved. Each granted a conservation easement to Triangle Land Conservancy and each partnership claimed a deduction of between $22 million and $23 million. The I.R.S. disallowed the deductions and imposed 75% penalties on the improper reduction in tax triggered by the failure to file Form 8886. The taxpayers successfully argued that Notice 2017-10 was invalid because the I.R.S. failed to follow all three steps required for issuing what is known as a "legislative rule." A rule is a legislative rule when it is issued under a statute delegating broad authority to the administrative agency – here, the I.R.S. – to issue rules addressing a specific matter. For legislative rules to be valid, the A.P.A. requires that a three-step administrative process must be followed by an administrative agency

10 Notice 2017-10.

11 S. Rep. 116-44.

12 Notice 2004-41.

13 T.C. Memo. 2009-145.

14 159 T.C. 80 (2022).

such as the I.R.S.:

- The public must be notified.
- The public must be allowed to comment and participate in hearings.
- The final rule must include a general statement of its basis and purpose.

The Tax Court found that Notice 2017-10 was a legislative rule. Consequently, the Notice was invalidly issued because the public was neither notified of the rule nor allowed to submit comments and participate in hearings prior to its issuance.

The I.R.S. unsuccessfully argued that the notice was an interpretive rule. In support of that position, it argued that Congress effective set the policy when adding Code §6707A, which provides for a specific penalty imposed when Form 8886 is not timely filed. Because Congress did not expressly disagree with the I.R.S. approach under Code §6707A, the I.R.S. argued that inaction was the equivalent of approval. Second, the I.R.S. argued that the 2020 Senate Finance Committee report previously mentioned criticized the rise of S.C.E.'s. According to the I.R.S., such criticism justified bypassing the notice-and-comment requirements of the A.P.A. Neither argument was found to be credible and the Tax Court invalidated Notice 2017-10.[15] The I.R.S. suffered similar setbacks in *Mann Construction Services, Inc. v. United States*[16] and *Green Rock LLC v. I.R.S.*[17]

CURRENT LAW

Statute and Regulations

Although the I.R.S. initially indicated it would continue to enforce Notice 2017-10, it later backtracked and announced it would follow the Tax Court's decision.[18] Instead, Congress amended Code §170 and the I.R.S. issued regulations to replace Notice 2017-10, effective beginning in 2023.

Under new Code §170(h)(7), a charitable contribution by partnerships and other flow-through entities is automatically disqualified from being a qualified conservation contribution if the amount of the contribution is more than 2.5 times all the partners' outside bases allocable to the real estate from which the contribution is derived.

There are three exceptions to the above rule:

- **Three-Year Exception.**[19] A contribution is not an S.C.E. and can qualify as a conservation contribution if the contribution is made at least three years after the latest of

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15 Although this invalidated the imposition of the penalty for listed transactions, the Tax Court in a follow-up opinion agreed that the deductions had been overvalued by $20 million and upheld other penalties related to the contributions (T.C. Memo. 2025-15).

16 27 F.4th 1138 (2022).

17 104 F.4th 220 (2024).

18 A.O.D. 2024-01.

19 Code §170(h)(7)(C).

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- the last date on which the partnership acquired any portion of the real estate,
- the last date on which any partner acquired an interest in the partnership, and
- if a partnership interest is held through other flow-through entities, then either (i) the last date in which the upper-tier partnership acquired any interest in the contributing partnership or any other upper-tier partnership and (ii) the last date any partner acquired an interest in the upper-tier partnership.

- **Family-Partnership Exception.**[20] A contribution is not an S.C.E. if 90% of the contributing partnership's interests are held by an individual and members of the individual's family. Family members include the spouse, children and other descendants, siblings, parents and ancestors, nieces and nephews, aunts and uncles, in-laws, and others who are members of the individual's household. Family members also include estates of such individuals and trusts where all the beneficiaries are such individuals.[21]

- **Exception For Certified Historic Structures.**[22] A contribution is not an S.C.E. if its conservation purpose is the preservation of a certified historic structure.

The I.R.S. also issued Treas. Reg. §1.6011-9, which replaces Notice 2017-10 as the vehicle by which S.C.E.'s are identified as listed transactions and must therefore be disclosed. As with Notice 2017-10 and the amendments to Code §170, the main trigger is the offer of a deduction amounting to 2.5 or more times the value of the investment. The regulation also contains anti-abuse rules aimed at partnerships that use a series of transactions to avoid the 2.5 rule.[23]

Settlement Offers

The latest settlement is the fourth general settlement that the I.R.S. has offered in this area. Each partnership that is issued an offer letter by the I.R.S. has 90 days to accept. The offer involves the following:

- The charitable contribution deduction will be disallowed.
- In place of the charitable contribution deduction, the I.R.S. will allow an "other deduction," generally equal to the partnership's costs of participating in the S.C.E. scheme.
- A gross valuation misstatement penalty will apply at 10% of the amount of the misstatement. If a partnership agrees to the settlement within 45 days after the close of the 90-day period, this rate increases to 20%.

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[20] Code §170(h)(7)(D).

[21] Treas. Reg. §170A-14(n)(3)(iii)(D).

[22] Code §170(h)(7)(E).

[23] Treas. Reg. §1.6011-9(d).

- Interest will accrue.
- The partnership will not be required to make an upfront payment.

Partnerships that are in the advanced stages of litigation are not eligible for this offer. This includes partnerships where

- the case has been tried and is awaiting the issuance of a decision;
- the case is on appeal to a circuit court;
- the case has been settled;
- the parties have agreed to be bound to another case and that test case has been tried and is awaiting a final decision;
- the case has a trial that will begin by June 12, 2026; and
- the case has been designated a test case, unless all cases bound to the test case will settle under this offer.

"If the settlement offer is not accepted after the expiration of the 45-day period . . . the taxpayer is exposed to the hazards of litigation."

If the settlement offer is not accepted after the expiration of the 45-day period (*i.e.*, 135 days after the offer is made), the taxpayer is exposed to the hazards of litigation. The I.R.S. believes that taxpayers' chances in court are weak. It has estimated that on average, the Tax Court has allowed only 6% of the claimed deduction and imposed a 40% gross valuation misstatement penalty.[24]

This offer is more taxpayer-friendly than previous offers. The I.R.S. noted that the previous offers required upfront payments as part of the deal. This likely deterred taxpayers from accepting the deal, despite the limited prospects for success in the court proceedings.

- In 2020, the I.R.S. made its first settlement offer, available to partnerships with cases already docketed in the Tax Court.[25] Under the offer, the deduction was disallowed, and the partnership had to pay the full amount of tax, penalties, and interest before settling. Partners were permitted to deduct the cost of acquiring partnership interests and could pay a reduced 10-20% penalty. The exact rate was determined by the size of the partner's deduction compared to its investment.
- In June 2024, the I.R.S. announced a new offer.[26] Notably, this new offer reduced the penalty to a flat 10% for settling partners but still required upfront payment.
- Later in 2024, the I.R.S. began sending partnerships with cases not yet docketed in the Tax Court settlement offers.[27]

Some cases that are frequently highlighted by the I.R.S. as warnings to taxpayers include the following:

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[24] "Conservation Easements." Internal Revenue Service, May 6, 2026.

[25] IR-2020-130.

[26] IR-2024-174.

[27] AP-08-0924-0018.

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- ***Capitol Places II Owner LLC v. Commr.***[28] A partnership claimed a $24 million deduction for a façade easement on a building in an historic district in Columbia, South Carolina. The partnership claimed that the contribution was a qualified conservation contribution because the building was a certified historic structure. However, the Tax Court found that the building was not recorded in the National Register and not certified as being of historic significance to the district.[29] The court also rejected the alternative argument that it protected an historically important land area, as a single building did not constitute a land area.

- ***Corning Place Ohio, LLC v. Commr.***[30] After redeveloping a building it purchased for $6 million into an apartment complex, a partnership contributed a façade easement and claimed a $23 million deduction. The easement restricted the partnership's right to increase the building's height, and the valuation was derived from the lost opportunity to add 34 floors to the 11-story building. Both the Tax Court and Sixth Circuit found this development to be highly improbable, and for that reason the valuation was unsupported. The partnership's feasibility study used soil samples from a different site and was labelled as not for use for "actual construction." Conversations indicated that the partnership never seriously entertained initiating such a development. In addition, the partnership received other tax credits for historic preservation, which would have been violated by the development. The partnership's deduction was reduced to $900,000, and the 40% gross valuation misstatement penalty was imposed.

Penalties

The I.R.S. has indicated that it will pursue numerous penalties against partnerships and partners who do not accept or are ineligible for the settlement offer. These include the following:

- **Gross valuation misstatement penalty.** Imposed where a valuation is overstated by at least 200%; the penalty is 40% of the underpayment.[31] Subsection (b)(10) was added to Code §6662, which imposes the penalty, to specifically include S.C.E. penalties.

- **Penalties on promoters of abusive tax shelters, applicable to promoters of S.C.E.'s.** The penalty is $1,000 for each offense but increases to 50% of the promoter's income if the activity involves a false or fraudulent statement.[32]

- **Penalties for aiding and abetting understatement of tax liability, applicable in relevant part to appraisers, lawyers, and accountants.** $1,000 in cases involving individual taxpayers and $10,000 for corporate taxpayers.[33]

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28 Docket No. 16536-23 (2025).

29 These are the two alternative definitions of a "certified historic structure," as outlined earlier.

30 Docket No. 12428-20 (Tax Court 2024); Docket No. 25-1093 (6th Cir. 2025).

31 Code §6662(h)(1). If the underpayment does not relate to a gross valuation, *i.e.*, does not breach the 200% threshold, the penalty is 20%.

32 Code §6700.

33 Code §6701.

- **Penalties for understatement of taxpayer's liability by tax return preparer.** Imposed on a tax return preparer who understates tax liability due to an unreasonable position or due to wilful and reckless conduct.[34] For unreasonable positions, the penalty is the greater of $1,000 or 50% of the return preparer's income. For wilful or reckless positions, the penalty is the great of $5,000 or 75% of income.
- **Fraud penalty**. 75% of the underpayment.[35]
- **Criminal penalties.**

CONCLUSION

Taxpayers have not had much success validating deductions for S.C.E. contributions in court, but the lack of uptake for the I.R.S.'s previous offers indicates that not all taxpayers are willing to throw in the towel. The payment of a 40% penalty several years down the road may be viewed as more attractive than a payment at the time of settlement. However, a reduction in the penalty to 10% which can be paid over a period of time may attract the attention of investors and promoters in S.C.E. schemes.

[34] Code §6694.

[35] Code §6663.

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Tags
Dual Citizen
New York
Noncitizen Tax Resident
Pied-à-Terre Tax

NEW YORK TO TAX *PIED-À-TERRE* HOMES

New York will impose a yearly property tax surcharge on New York City homes worth $5 million or more. An exemption will apply if (i) the home is used as a primary residence for the owner or for a family member of the owner or (ii) the home is rented out on full-time basis to an individual who uses the unit as a primary residence. The law is scheduled to sunset in 2031, but is likely to be extended.

An introduction to Part HH of the Budget Bill states:

> Legislative findings. The residents of New York City and many who do business here contribute daily to the health and vibrancy of the city through their economic activity and the taxes they pay. However, many of the city's most valuable homes are held as second homes, allowing the owners of those homes to reap considerable benefits from the city's broader economy, from city services, and from a vibrant real estate market. The legislature finds that it is prudent to impose a surcharge on the owners of these second homes to maintain important city services. The legislature further finds that this surcharge should be applied to second homes with values of $5 million or more when measured by the sales of comparable properties. Recognizing that many second homes in New York city have not historically been valued using comparable sales methods, the legislature finds that it is appropriate, for the initial phase of the surcharge, to impose the surcharge on such properties using current valuation methods and corresponding surcharge rates the legislature deems appropriate for this transitional period.

For the first two years, the new tax would target cooperative and condominium units with a property assessment value of $1.0 million or more, at a rate of between 4% and 6.5%. The property assessment value is significantly below fair market value for various local reasons.

After the transition period, the tax would be based on the estimated sales values at the following rates:

- **Value of $5 million - $15 million:** 0.8%
- **Value of $15 million - $25 million:** 1.1%
- **Value of $25 million or more:** 1.3%

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A primary residence is defined as the use of a residential property or a residential cooperative dwelling unit (otherwise subject to the new surcharge) as a primary residence by

1. one or more of the owners or tenant-stockholders in a cooperative corporation, or an immediate family member of one or more of such owners, provided such owners are natural persons; or

2. one or more lessees, and any sub-lessees to which a lessee has sublet the property or residential cooperative dwelling unit, provided any such lessee or sublessee is a natural person occupying such covered property or residential cooperative dwelling unit pursuant to a *bona fide* lease agreement negotiated in an arms-length transaction with a term of not less than one year.

An "immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild.

Where the property is held in trust, a beneficial owner or owners of such trust will be considered to be the owner, provided that such beneficial owner or owners are the sole beneficiaries of such trust. Where the property is held by a partnership, corporation, or limited liability company, the (i) partner or partners, (ii) shareholder or shareholders or (iii) member or members of such partnership, corporation, or limited liability company are treated as owners provided that such partner or partners, shareholder or shareholders, or member or members hold a majority interest in such partnership, corporation or limited liability company.

An initial determination of primary residence and notice to the owner is to be made by the department of finance by August 30,2026, with opportunity by the owner to prove that the real estate was a primary residence.

I.R.S. MULLS REQUIRING TAXPAYERS TO IDENTIFY CITIZENSHIP STATUS

According to anonymous sources in contact with an unnamed immigration lawyer, the I.R.S. is considering a change to Form 1040 (U.S. Individual Income Tax Return) to add a check-box that will be used to indicate whether the resident filer is not a U.S. citizen or has dual citizenship.

A noncitizen who holds a green card or is otherwise considered to be a U.S. tax resident under the substantial presence test is usually subject to the same tax obligations as a U.S. citizen, except to the extent a dual resident elects to apply a treaty tiebreaker test. There are some areas of U.S. tax law that treat U.S. citizens differently from tax residents who are not citizens. For example, U.S. citizens and long-term residents under the green card test are subject to exit tax. In comparison, residents under the substantial presence test are never subject to exit tax.

In another related development, the I.R.S. is considering changing how individual taxpayer identification numbers ("I.T.I.N.'s") are coded. An I.T.I.N. is a U.S. tax I.D. number used by an individual who needs a U.S. tax I.D. but is not eligible to hold a Social Security Number. An example is an individual who is neither a citizen of the U.S. nor a tax resident of the U.S. who must file a U.S. nonresident tax return to obtain a refund of withholding tax.

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Ruchelman P.L.L.C. is a boutique law firm based in New York City. It was founded in 1989 by an alumnus of a legacy firm that is now Deloitte's.

Our firm provides a wide range of tax planning and commercial legal services to clients across the Americas, Asia, Europe, and the Middle East. Clients include global investors, multinational corporations expanding into the U.S., and U.S. businesses with international operations. Our core practice focuses on cross-border transactions.

About Insights

Insights, the tax journal of Ruchelman P.L.L.C., provides in-depth reporting on the evolving landscape of U.S. and international taxation. It offers complex analysis of current issues, legislative updates, and practical introductions to the tax law from leading tax professionals in their respective countries.

Special features include an annual examination of the use of holding companies in European tax planning and a look at the year in review.

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