

# Tax news

May 2017

## Italian Tax Authority guidelines on fiscal incentives to attract human capital

On 23rd May 2017, the Italian Tax Authority issued the circular No.17/E explaining in detail the national measures adopted to support and stimulate the economic, scientific and cultural development of the Country, by introducing various fiscal incentive schemes for individuals who decide to transfer their tax residence in Italy.

The Tax Authority guidelines illustrate all the different benefits dedicated to those who decide to transfer their tax residence to Italy, specifying the requirements needed to be eligible for the incentives, how to exercise the option, as well as the effects, the characteristics and the mechanisms of the incentives currently in force in Italy to "attract human capital".

It is possible to subdivide the different tax regimes into two macro-categories.



The first one includes all the measures dedicated to individuals transferring their residence in Italy to work, with the aim of facilitating taxation of the income generated in the Country: Here are some examples, the regime applicable to "professors and researchers" (art. 44, Law Decree No. 78/2010), the one dedicated to

the so called "*impatriati*" (art.16, Legislative Decree No. 147/2015) i.e. workers meeting specific characteristics and the tax regime applicable to the so-called "*controesodati*", i.e. workers who were resident in Italy in the past and moved back by no later than 2015 (Law No. 238/2010).

The second macro-category includes the tax regime addressed to high net worth individuals, who transfer their residence in Italy regardless of the pursuit of a business activity, with the aim of facilitating taxation on the income generated abroad (art. 1, paragraph 152, Law No. 232/2016).

# Preventive agreement – Digital economy

The Italian Parliament is considering introducing a mechanism for a reinforced “preventive agreement” between digital companies and the Italian tax authorities.

This could be an optional agreement that follows in the footsteps of the cooperative compliance launched for companies with large turnover or those who enter agreements for new investments in Italy.

The amendment gives web multinationals the possibility to choose to collaborate and cooperate declaring, among other things, their permanent establishment in Italy, or to continue to hide their business in Italy.

The underlying idea is that of introducing an *ad hoc* institute of communication and reinforced cooperation for non-resident businesses owned by multinationals with consolidated revenues exceeding €50 billion and who carry out an economic activity that amounts to a permanent establishment in Italy.

The chance to access cooperative compliance applies, above all, to tax payers who make use of international fiscal planning based on three foundations:

- 1) The non-resident company of the multinational carries out transfer of goods and/or services to Italian clients;
- 2) The service provider of the same multinational, which provides services through a permanent establishment in Italy, enters contracts of support to sales (in other words, post-sales

assistance) with the distributor, against a remuneration, which is slightly higher compared to the costs sustained;

- 3) The service provider is in reality just a post-sales assistance service, but operates as a subject rooted in Italy, which also carries out additional functions.

Non-resident companies which have settled their tax debts for a permanent establishment in the past – and the most recent cases are Apple and Google – will be able to access the real cooperative compliance system introduced by the government.



To do so, the companies have to fill in an application, regardless of the volume of business or revenues of the permanent establishment. The only obligation is the presence of an internal system of measuring and managing fiscal risks.

The discussion on this matter has improved after the tax settlement with online retail giants Amazon and Google, as mentioned above.

Google closed one of its most significant tax disputes in Europe, after agreeing to pay €306m to the Italian authorities at the end of a long-running case.

The Italian Tax Authorities and Google have just signed a tax settlement to solve potential tax disputes concerning the fiscal investigations for the period between 2009 and 2013.

A process with Google will also start towards the adoption of advance tax rulings for the correct taxation in Italy of future activities conducted in the Country.

The agreement, that will also recognize the permanent establishment in Italy of Google, will allow the Tax Authority to collect web giant taxes more commonly in future years.

## The advance tax ruling at glance

This institute has been specifically and factually devised by countries of common law. The main aim is to give taxpayers the possibility to obtain a preventive and written opinion, in this case by the Italian Tax Authorities, providing the correct application of specific tax provisions. Particularly, qualifying persons are both resident and non-resident taxpayers entitled to forward the query to the Italian Revenue Agency. The query has to be submitted before the application of the tax provisions. As far as the benefits are concerned, once the ruling has been signed by both parties, the Italian Tax Authorities cannot issue any assessments or impose fines or penalties that would be in contrast with the opinion expressed in the advance ruling.

# Revaluation of business assets and participations – clarifications issued

On 27th April 2017, the Italian Tax Authority issued the Circular No. 14/E providing clarifications on the possibility to step up the value of business assets and participations. In particular, the Italian Tax Authorities provides a detailed description of the new measures, including specific clarifications with respect to qualifying taxpayers and assets.

## Who can revalue

Those who can benefit from the new business asset revaluation regime include resident joint-stock companies and commercial bodies (as long as they are not subject to IAS/IFRS), resident cooperatives and mutual insurance companies, European companies and cooperatives, resident s.a.s. limited partnerships and s.n.c. general partnership, and permanent establishments of non-resident companies.

## What can be revaluated

Business assets and shares can both be revaluated and, more in specific:

- Tangible and intangible assets, with the exclusion of those manufactured or exchanged by the company as part of its business activities;
- Shares constituting financial fixed assets, held in subsidiaries or associated companies pursuant to

article 2359 of the Italian Civil Code.

The above assets can be revaluated if they are recorded in the financial statements as at 31 December 2015.



## How revaluation works

Qualifying persons may elect to step up the value of both tangible and intangible business assets, except for immovable properties held by certain real estate companies, included in the balance sheet of the accounting period current on 31 December 2015, by paying a substitute tax at the rates of:

- 16% for depreciable/amortizable assets; and
- 12% for non-depreciable/amortizable assets.

## Capital gain and losses

In presence of a capital gain or losses, the carrying amounts become effective from the fourth fiscal year after the

revaluation. If, before the beginning of the fourth tax year, revaluated assets are transferred for a consideration, or earmarked for purposes unrelated to a company's business activities, the calculation of capital gains or losses must be based on the cost of the assets before their revaluation. In such cases, the new carrying amount of the assets may not be used as the starting point for measuring any capital gain or losses.

## Revaluation reserve

As a consequence, when the company records higher carrying amounts, may create an equity reserve which can be freely distributed following the payment of a 10% substitute tax. The increased value of the asset is recognized as of the third fiscal year following the exercise of the option, for income tax purposes, and as of the fourth fiscal year, for capital gain purposes.

## Transfers to shareholders

Qualifying companies and partnerships assigning or selling to their shareholders, before 30 September 2017, certain immovable properties or registered movable properties may opt for the application of a 8% substitute tax on the difference between the market value of the property and its tax basis. A 10.5% substitute tax applies for dormant companies.



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We will be pleased to discuss with you the particular application of the changes to your own circumstances. To this end please contact Alessandro Dragonetti or Gabriele Labombarda at their e-mail address below:  
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