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Newsalert

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New taxation regime for foreign pensioners moving to Italy

Introduction

Article 1 (273) and (274) of law no. 145 dated 30 December 2018 (the "**2019 Budget Law**") amends the Italian tax consolidation act introducing a new favorable tax regime for individuals holding foreign pensions and moving their tax residence to Southern Italy (the "**Inward Pensioners Regime**" or the "**Regime**").

The Inward Pensioners Regime shares its main *rationale* and features with the already existing regime for new resident individuals introduced in 2017 (the so called "**HNWI Regime**", for further details, see *Chiomenti*'s newsletter no. 2/2017), allowing to derogate to the ordinary Italian personal income tax regime ("**IRPEF**") and providing for the application of a flat tax at a 7 per cent rate on any foreign source income. Any domestic income will be ordinarily taxed.

Requirements

The new Inward Pensioners Regime is applicable upon option where an individual, irrespective of his age and citizenship, receives a foreign pension paid by a foreign entity and:

(i) moves his tax residence in an Italian municipality having a population not exceeding 20,000 inhabitants and located in one of Italian Southern Regions of Sicily, Calabria, Sardinia, Campania, Basilicata, Abruzzo, Molise and Puglia; and

(ii) has not been resident for tax purposes in Italy for at least five tax periods prior to the period in which the option becomes effective.

In addition, the plain wording of the applicable provisions states that the option is available insofar as Italy and the country of origin of the inward pensioner have an administrative cooperation agreement ("*accordo di cooperazione amministrativa*") in force.

These will certainly include the EU Member States pursuant to the Council Directive 2011/16/EU of 15 February 2011. Although not expressly clarified, jurisdictions participating to the convention on Mutual Administrative Assistance in Tax Matters (as amended by the 2010 protocol and entered into force on 1 June 2011) should also be included. It is worth noting that – different from other similar provisions previously enacted, that made reference to countries allowing for an effective exchange of information with Italy – the focus is now on administrative cooperation.

It will be interesting to see how the Italian tax authorities will implement this requirement.

Main features

The Inward Pensioners Regime provides for an exemption to the worldwide taxation principle that ordinarily applies to Italian tax residents.

Indeed, in case of option for the Regime, the 7 per cent rate flat tax encompasses any foreign source income, irrespective of the amount and country of origin, unless the applicant chooses to exclude one or more income-source countries from the scope of the application of the Inward Pensioners Regime, on a cherry-picking basis. In such a case, any income arising from an excluded State will be taxed pursuant to the ordinary IRPEF regime.

Furthermore, in case of option for the Regime, the domestic tax credit for taxes paid abroad does not apply (except for the States which, according to the cherry-picking criteria, have been excluded from the scope of application of the Regime).

In this respect, it is worth mentioning that under the current provisions set forth by Double Tax Treaties, in many cases private pensions paid by institutions or social security bodies in foreign countries to Italian tax residents are taxed only in Italy. This mechanism, for instance, applies to pensions paid by social security bodies of Germany, Spain and United Kingdom.

Accordingly, the inability of the taxpayer who has opted for the Inward Pensioners Regime to claim for the domestic tax credit for taxes paid abroad, will be irrelevant in many cases.

Along the lines of the mechanism provided for the HNWI Regime, under the Inward Pensioners Regime migrating taxpayers are exempt from wealth taxes (*i.e.*, tax on financial assets held abroad, "IVAFE", and tax on foreign immovable properties, "IVIE") and are not subject to tax monitoring rules concerning assets held abroad (the Italian "FBAR" rules).

On the other hand, three significant discrepancies with respect to the HNWI Regime (aside from the time windows of previous tax residence and duration) can be detected.

In fact, whilst capital gains deriving from the disposal of qualified shareholdings are (ordinarily) excluded from the scope of application of the HNWI Regime within the first five years of its application, no such anti avoidance provision is replicated for the Inward Pensioners Regime, so that such kind of income, if realized, is encompassed amongst the others subject to the 7 per cent flat tax umbrella.

Moreover, contrarily to the HNWI Regime, the Inward Pensioners Regime provides for no benefits with respect to inheritance and gift taxes on foreign assets, which are due according to the (currently very favorable – as ranging from 4 to 8 per cent with substantial exemptions and thresholds for close family members) ordinary Italian tax regime. Perhaps, including an exemption from inheritance and gift taxes similar to the one provided for the HNWI Regime also for the Inward Pensioners Regime would have rendered the latter even much appealing to individuals willing to transfer to Italy to enjoy their pensions and the last part of their life.

Finally, the Regime cannot be extended to the family members of the migrating individual.

Application for the Inward Pensioners Regime, duration and revocation

The option for the Inward Pensioners Regime has a six years validity, is exercised in the income tax return related to the tax period in which the tax residence is transferred to Italy and is revocable, but if revoked cannot be restored.

No indication as per the possibility to renew the option after the first six years of validity is provided by the law. Indeed, it shall be noted that, with respect to the HNWI Regime, Italian Tax authorities have confirmed that no renovation is allowed once the ordinary fifteen-year timeframe validity is expired, so it is reasonable to argue that the same principle will apply to the Inward Pensioners Regime.

The 7 per cent flat tax must be paid in a lump sum, for each tax period of validity of the Regime, within the deadline for paying the balance of IRPEF, which is currently June the 30th following a given tax period.

Entry into force

The new Inward Pensioners Regime is in force as of 1 January 2019, so the 2019 tax period is the first tax period in which the regime can be opted for.

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For any further clarification, please contact the Chiomenti Tax Department at the email address tax@chiomenti.net