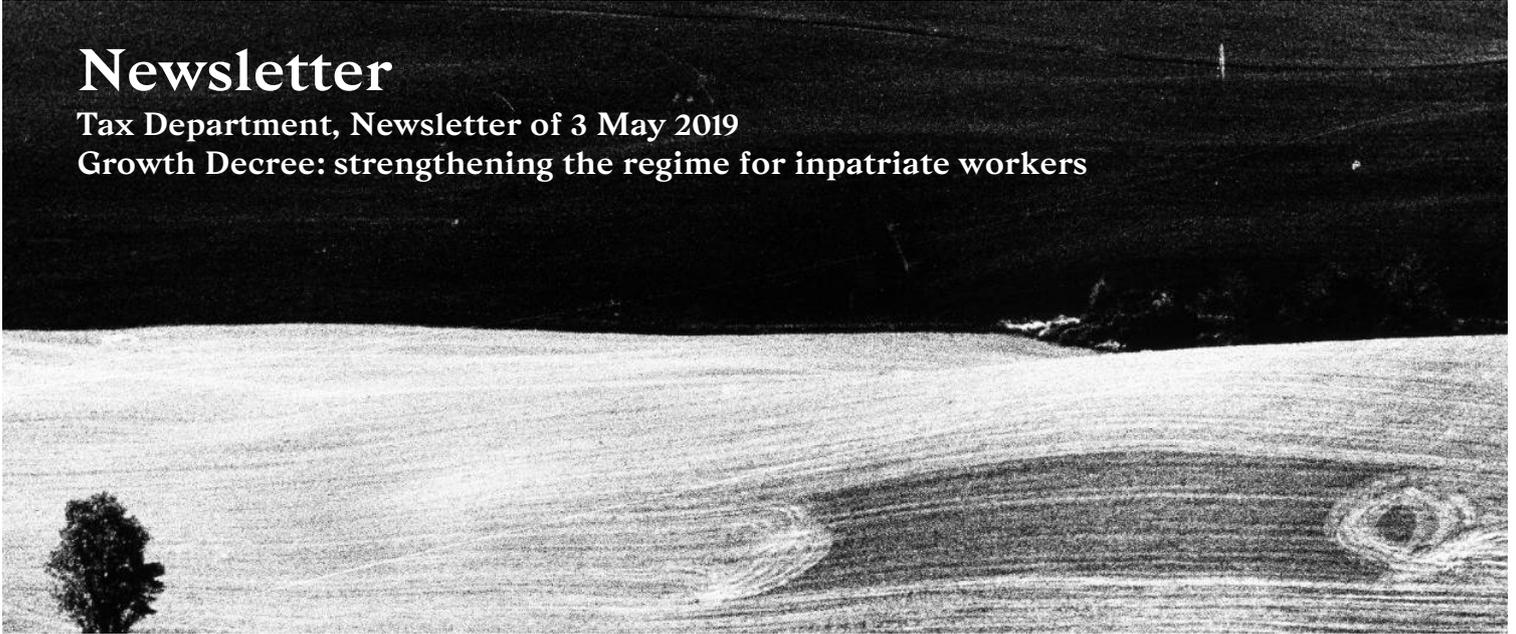


Newsletter

Tax Department, Newsletter of 3 May 2019

Growth Decree: strengthening the regime for inpatriate workers



I. Introduction: Article 5 of the Growth Decree

Law Decree No. 34 of 30 April 2019 introducing relevant provisions aimed at enhancing the economic growth of Italy (hereinafter, “**Growth Decree**”) entered into force on 1 May 2019 (the Growth Decree shall be converted into law by 60 days).

Article 5 of the Growth Decree introduces significant changes – broadening its scope of the application and enhancing the benefits – to the Italian tax regime of inpatriate workers (hereinafter, the “**Regime**”) set forth by Article 16, paragraph 1, of Legislative Decree No. 147 of 14 September 2015 (hereinafter, “**Decree 147**”) who transfer their tax residence to Italy pursuant to Article 2 of Presidential Decree No. 917 of 22 December 1986 (hereinafter, “**ITCA**”).

This measure is designed to make a relocation to Italy more attractive for individuals residing abroad and is added to other beneficial tax regimes set forth under Italian tax law, namely the regime for individuals holding a bachelor’s degree, the regime for high net worth individuals, as well as the tax regime for pensioners.

Article 5 of the Growth Decree also introduces new measures aimed at (i) further encouraging professors and researchers who transfer their residence to Italy to benefit from the tax regime provided for by Article 44 of Legislative Decree No. 78 of 31 May 2010 (the “**Decree 78**”) and (ii) annulling the deeds of assessment served by the Italian tax authorities to Italian citizens who unlawfully benefited from the regimes set forth by Article 16 of Decree 147 and Article 44 of Decree 78 failing to enroll in the register of Italian citizens residing abroad (hereinafter, “**AIRE**”).

II. The new Regime for inpatriate workers under Article 16(1) of Decree 147

On the basis of the amendments introduced by the Growth Decree to Article 16, paragraph 1, of Decree 147, non-Italian tax resident individuals – irrespective of their citizenship and State of residence – who transfer their tax residence to Italy pursuant to Article 2 of the ITCA¹ as of tax period 2020² are subject to Italian personal income tax (hereinafter, “IRPEF”), for five tax periods³, on a portion equal to 30% of their income from employment, income assimilated to employment income, self-employment and business income.

Moreover, the IRPEF taxable basis is further reduced to 10% if the workers transfer their residence to certain Italian Regions, namely Abruzzo, Molise, Campania, Puglia, Basilicata, Calabria, Sardinia and Sicily⁴.

The Regime applies as long as the following conditions are met:

- (a) the workers have not been resident in Italy in the two tax periods preceding the transfer and undertake not to transfer their tax residence abroad before the expiry of two years after their relocation to Italy; in case an outbound transfer occurs within this 2-year period, the tax benefits would be clawed-back and penalties and interest would apply; and
- (b) the working activity is performed in Italy for a period exceeding 183 days in the course of the year⁵.

The amendments simplify the requirements to have access to the Regime by reducing the necessary tax periods of foreign residence (from 5 to 2 tax periods)

¹ Pursuant to Article 2 of the ITCA, individuals who, for the greater part of a given tax period, are enrolled in the national registry of the resident population (ANPR), have their residence or domicile in Italy pursuant to Article 43 of the Italian Civil Code, are considered as Italian tax resident. For instance, individuals who are enrolled in the ANPR as from 4 July 2020 (2020 is a leap year) are not considered to be Italian tax resident in 2020 and, therefore, cannot benefit from the Regime as from tax period 2020 (but instead from 2021), unless they have actually transferred their domicile or residence pursuant to Article 43 of the Italian Civil Code before 4 July 2020.

² The amendments introduced by the Growth Decree do not seem to apply to workers who have acquired the Italian tax residence as from tax period 2019. Accordingly, the regime of inpatriate workers as it was before the changes (IRPEF taxable basis equal to 50% of income from employment or self-employment for 5 tax periods) will apply to such workers.

³ The Regime is applied in compliance with the conditions and limits established by the European rules on *de minimis* aid, according to which the total amount of aid granted by a Member State to an enterprise may not exceed Euro 200,000 over three financial years (different limits apply in certain cases). The term “enterprise” covers any entity engaged in an economic activity consisting in offering goods or services on a given market, regardless of its juridical *status*.

⁴ In order to benefit from the further reduction of the portion of taxable income, it seems that the mere enrollment in the ANPR of a Municipality included in the mentioned Regions suffices.

⁵ The computation of the 183 days (184 in leap years) includes not only working days but also bank holidays, weekly resting days and other non-working days spent in Italy.

and make it more attractive by reducing to 30% the relevant IRPEF taxable basis (previously set at 50%) and broadening the items of income to which the Regime is applicable (before the amendments, the Regime was applicable only to employment and self-employment income).

Article 16 of Decree 147, as amended, does not require that inpatriate workers perform their duties for an Italian resident company⁶ nor that they are hired as executives or have high qualification and specialization skills.

In addition, with respect to Italian nationals, the tax relief is applicable regardless of whether they have been enrolled in the AIRE in the 2 tax periods prior to their transfer to Italy, as long as they qualify as tax resident of a foreign State on the basis of the relevant Double Taxation Treaty entered into by Italy.

III. Additional benefits for inpatriate workers

The duration of the Regime can also be extended in certain cases.

In particular, in the scenarios where the individuals moving to Italy (i) purchase, also in co-ownership⁷ with their spouses, civil-partner or children, an Italian situs residential property after the transfer to Italy or in the preceding 12 months, or (ii) have at least one minor or dependent child, the Regime applies for 5 additional tax periods, in which the IRPEF taxable basis is equal to 50% (instead of 30% applicable in the first 5 tax periods of validity).

On the basis of the wording of Article 5 of the Growth Decree, the extensions to the duration of the Regime provided for in the cases referred to in points (i) and (ii) above do not appear to be cumulative.

In case the individual has at least three minor or dependent children, the IRPEF taxable basis is further reduced to 10% for the additional 5-year period.

⁶ Therefore, income from employment deriving from employment relationships with public administrations and other non-commercial entities can also be included in the scope of the Regime.

⁷ Inpatriate workers who already own an Italian residential property before moving to Italy seem to be not eligible for this additional benefit.

IV. Further amendments introduced by Article 5 of the Growth Decree

Article 5 of the Growth Decree has also strengthened the favorable tax regime for professors and researchers who, after having carried out a teaching or researching activity abroad, wish to continue such activities in Italy transferring their tax residence therein.

Indeed, despite the portion of taxable income (equal to 10%) for such individuals has not been affected by the new provision, the duration of the tax benefits has been extended from 4 to 6 tax periods. In certain cases, moreover, a further extension up to a total of 13 tax periods can be granted.

Furthermore, Article 5 of the Growth Decree introduces an amnesty for Italian nationals in-patriate workers and professors/researchers who had transferred their residence to Italy in 2019 benefitting from the regimes provided for by Article 16 of Decree 147 and Article 44 of Decree 78. Indeed, the amendments allow to nullify the tax assessments (not yet defined) served to such individuals and aimed at recovering the tax benefits enjoyed by the workers who could not benefit from the regimes as not fulfilling the enrolment in the AIRE condition. Such amnesty applies as long as the individual qualifies as tax resident of the foreign state according to the provisions set forth by the relevant Double Taxation Treaty entered into by Italy.

In the event of proceedings currently pending before the Tax Courts, it may be advisable to submit a request for withdrawal of the deeds of assessment (*istanza di autotutela*) so that the Italian tax authorities can verify the effective foreign tax residence according to the applicable Double Taxation Treaty.

Finally, it should be noted that Article 5 of the Growth Decree aligns the tax treatment provided under Article 16, paragraph 2, of Decree 147 for workers holding a bachelor's degree who move to Italy from 2020, to that provided for by the Regime.

For any clarification, please contact the Tax Department at tax@chiomenti.net
