NEWSLETTER NO. 1 - 2024

DECREE ON INTERNATIONAL TAX LAW

The Legislative Decree no. 209 as of 27 December 2023 for the implementation of the tax reform in relation to the international tax law (the so-called "Decree on international tax law", Italian "Decreto sulla fiscalità internazionale") was published in the Italian Official Gazette. The decree has been in force since 29 December 2023.

The Decree provides for the introduction of the following tax-related news.

RESIDENCE OF NATURAL PERSONS

As of 1 January 2024, natural persons can be considered to be resident in Italy if they have for most of the tax period (including half days) on the Italian territory either

- the residence pursuant to the Italian Civil Code;
- the domicile, no longer pursuant to the Italian Civil Code but to be considered as the *"place of the person's primary personal and family relationships"*;
- or the presence.

Finally, a presumption of residence is introduced for persons, who are registered in the register of the resident population for most of the tax period.

RESIDENCE OF LEGAL PERSONS

As of 2024 (tax period subsequent to the one ongoing on 29 December 2023), legal persons can be considered to be resident in Italy if they have for most of the tax period on the Italian territory either :

- their registered office;
- their place of effective direction or the *"continuous and coordinated taking of strategic decisions in relation to the company or the entity as a whole"*;
- the main ordinary management or the *"continuous and coordinated performance of the ongoing management acts in relation to the company or the entity as a whole"*.

The previous requirements regarding the "seat of the administration" and the "main object" are no more relevant for residence purposes.

SIMPLIFICATION OF THE PROVISIONS FOR CONTROLLED FOREIGN COMPANIES

As of 2024 (tax period subsequent to the one ongoing on 29 December 2023), the following requirements must be met for the application of the so-called CFC-scheme (*Controlled foreign companies*) pursuant to section 167 of the Italian Tax Code (TUIR):

- the non-resident controlled subjects are subject to effective taxation of less than 15% (new requirement);
- more than a third of their income must consist of so-called passive income.

The effective foreign taxation of the controlled company is determined in a simplified manner with reference to the foreign entity's balance sheet data by comparing the current, deferred and prepaid taxes to the income before taxes (so-called accounting tax rate). Within the scope of this calculation, the Qualified Domestic Minimum Top-Up Tax (QDMTT), which has eventually been paid by the foreign entity in the country of residence must be taken into account.

The amendments apply in cases where the foreign entity's financial statements are subject to audit, the results of which are used by the Italian shareholder's auditor for the purpose of expressing an opinion on the annual or consolidated financial statements. For the determination of the effective foreign taxation, the subjects with "non audited" financial statements and an effective foreign taxation of less than 15% must, however, apply the requirements and criteria in force up to 2023.

Further, an optional regulation of substitute taxation of 15% was introduced (as an alternative to the ordinary transparency taxation of CFC), which is to be calculated on its balance sheet profit without taking into account taxes, asset write-downs and provisions for risks.

Said option has a duration of three fiscal years and may be tacitly renewed for other three fiscal years, if the financial statements of the non-resident controlled companies are subject to audit.

NEW SCHEME FOR WORKERS RELOCATING TO ITALY

Individuals who become resident for tax purposes in Italy as of the 2024 tax period may benefit from the income tax (IRPEF) de-taxation reduced to 50% of employment and similar income, as well as self-employment income generated in Italy up to the limit of Euro 600,000.00, if the following conditions are met:

- the workers have not been tax resident in Italy during the three tax periods preceding said transfer and undertake to stay resident in Italy for at least four years;
- during most part of the tax year the work activities are carried out on Italian territory;
- the worker must be highly qualified or specialised.

There are stricter constraints related to the previous period of residence abroad if the work activity in Italy is carried out in continuity with the activity carried out abroad:

- six tax periods, if the worker has not previously been employed in Italy by the same subject or a subject of the same group;
- seven tax periods, if prior to his transfer abroad, the worker has been employed in Italy by the same subject or a subject of the same group.

Compared to the previous scheme, there is no extension of the tax relief in specific family or financial situations, and there is no longer an increase in the tax relief (90% de-taxation) for relocating workers who move to southern regions of Italy.

The tax relief applies in the tax period of the transfer of the tax residence to Italy as well as in the subsequent four tax periods.

Finally, the preceding scheme for workers relocating to Italy pursuant to section 16 of Italian Legislative Decree no. 147/2015 was repealed as of 1 January 2024. The afore-mentioned provisions continue to be applicable for subjects, who have transferred their place of residence to Italy by 31 December 2023.

RELOCATION OF ECONOMIC ACTIVITIES TO ITALY (SO-CALLED "RESHORING")

As from 2024 (tax period subsequent to the one ongoing on 29 December 2023), the relocation to Italy of business activities or self-employment activities (in the form of a partnership), carried out in a non-EU or non-EEA country, benefits tax-wise from a 50% reduction of the taxable income for income tax purposes and of the value of net production for IRAP purposes for the year of relocation and for the following five years.

Activities carried out on Italian territory during the 24 months preceding their relocation are excluded from the tax relief.

The tax relief ceases to apply in the event of a subsequent transfer of the activity to a non-European country within five tax periods (increased to ten for big companies) following the expiry of the tax relief scheme. The loss of the tax relief results in the recovery of the ordinary tax and interest (without application of any penalties).

IMPLEMENTATION OF THE GLOBAL MINIMUM TAX

The EU Directive no. 2022/2523 on the Global Minimum Tax was implemented by the introduction of a Top-Up-Tax (TUT), which applies in the event that the effective tax rate (ETR) within a jurisdiction in which the group operates is inferior to 15%.

Subjects concerned and exclusions

The new regulation applies on a jurisdiction basis (i.e. at the level of each single country and not the individual entities of the group) and applies to multinational or national groups with annual revenues resulting from the parent company's consolidated financial statements of not less than Euro 750 million in two of the four financial years preceding the financial year of reference.

However, there is an exclusion (the so-called *de minimis test*) provided for jurisdictions in which the multinational company generates a loss or turnover of less than Euro 10 million and profits of less than Euro 1 million.

Further, the following entities are excluded from the scope of application of these provisions:

- state entities;
- international organisations;
- non-profit organisations;
- pension funds;
- investment funds or real estate investment vehicles, which are controlling parent companies.

Calculation of the ETR and the Top-Up-Tax

The Effective Tax Rate that a group generates in each financial year in the individual jurisdictions is determined by the following ratio:

- The numerator indicates the so-called Covered Taxes, which are calculated on the basis of the total taxes in the financial statements, adequately adjusted (e.g. taxes on dividends and capital gains/losses from investments).
- The denominator indicates the so-called GloBe Income or Loss, which is calculated on the basis of the pre-tax balance sheet result, determined in accordance with the accounting principles applied by the parent company for the purposes of the consolidated financial statements, before the consolidation adjustments.

If the effective tax rate of the respective jurisdiction is below 15%, the percentage of the additional tax that must be applied in the respective jurisdiction is calculated from the difference to the minimum tax rate of 15%.

Once this difference has been determined, the supplementary tax is only applied on the so-called excess profits, i.e. to the total income reduced by an amount equal to 5% of the personnel expenses and the value of the tangible assets (Substance-Based Income Exclusion - SBIE). For the year 2024, the percentage of 5% has increased to 9.8% for the personnel expenses and to 8% for the value of the tangible assets. These percentages will decrease annually until they reach 5% in 2033 and the subsequent years.

Allocation of tax

If due, the tax is collected as follows:

- the minimum Top-Up-Tax is payable by the parent company resident in Italy for low-tax subsidiaries located in Italy or abroad (IIR - Income Inclusion Rule);
- the minimum supplementary tax is payable by the group companies located in Italy (UTPR - Under Taxed Profit Rule) if the equivalent minimum Top-Up-Tax has not been applied in part or in full in other countries (e.g. the parent company is resident in a jurisdiction that does not provide for the application of the global minimum tax);
- the national minimum tax is payable by low-tax group companies located in Italy (QDMTT - Qualified Domestic Minimum Top-Up Tax), which prevails over the previous two.

With reference to companies located in Italy, the introduction of the national minimum tax in Italy allows the multinational group to exercise the so-called "safe harbour"-option, which means that the Top-Up-Tax payable by the (Italian or foreign) group is set to zero in relation to the companies located in Italy that have paid the national minimum tax.

Obligations

Obligations within the 15th month following the last day of the fiscal year under review:

- obligation to submit a relevant communication with the information on the group and the necessary information for the calculation of the ETR, the Top-Up-Tax and the allocation thereof for each individual country;
- obligation to submit an annual tax return for the supplementary taxation due as minimum Top-Up-Tax, minimum supplementary tax and national minimum tax.

For the first fiscal year of application of the new regulation (transitional fiscal year), the deadline for the submission is postponed to the subsequent 18th month. This means that subjects, whose fiscal year corresponds to the calendar year must therefore fulfil the obligations for the 2024 tax period by 30 June 2026.

The tax is payable in two instalments:

- the first instalment in the amount of 90% is to be paid within the 11th month following the last day of the fiscal year for which the tax is due,
- the balance is to be paid within the last day of the month following the month of submission of the declaration.

PROVISIONS ON THE DOCUMENTATION OF HYBRID MISMATCHES

It is provided that the penalties for false declaration (from 90% to 180% of the higher tax or the lower tax credit disputed) will not be applied for those taxpayers, who decide to prepare a set of documents with a certified date suitable to allow compliance with the provisions on hybrid mismatches pursuant to Legislative Decree no. 142/2018 and who promptly notify the Italian tax authority in this regard.

The contents and the form of the set of documents is to be defined by a decree to be issued by the Italian Ministry of Economy and Finance (MEF).

The penalty protection shall be extended to prior tax periods for which the taxpayer decides to prepare the same set of documents with a certified date within the deadline for filing the tax return for the tax period ongoing on the date of entry into force of such legislative decree or, if later, within the sixth month following the date of approval of the MEF decree.

The extension of the penalty protection does only apply if the violation of the provisions on hybrid mismatches has not already been objected to or if no access, inspections, audits or other findings of which taxpayers or jointly and severally liable parties are aware of have yet taken place.