Comploj Vieider Lorenzon
Lechner Zanellato

PDC Partner
Wirtschaftsprüfer und Steuerberater
Dottori Commercialisti

Senior partner
Dott. Lodovico Comploj
Dott. Emilio Lorenzon
Dott. Josef Vieider
Dott. Alessandro Zanellat
Dott. Martin Lechner

Wirtschaftsprüfer und Steuerberater / Dottori
Dott.ssa Elena Gattolin
Dott.ssa Sabrina Tabiador
Dott.ssa Monika Mattivi
Dott. Nicola Sartori
Dott. Thomas Pichler
Dott. Samuel Vittur
Dott. Christian Gentilini
Dott. Stefan Lanznaster
Dott.ssa Martina Santin
Dott.ssa Serena Giacomo
Dott. Lorenz Bonadio
Dott.ssa Giulia Fortin

Bilanzbuchhalter / Esper
Dott. Antonio Gocev

To all clients

Circular No. 07/2024

Bolzano, 12 January 2024

Subject: New developments in international tax law at the beginning of 2024

Shortly before the end of the year, Legislative Decree No. 209/2023 was also published in implementation of last year's tax reform under Law 111/2023. It brings fundamental changes in international tax law which, as a rule, have been effective since the beginning of 2024. Here are the first details:

Unlimited tax liability of companies in Italy (Art. 2 Legislative Decree 209/2023)

Until now, a corporation or an entity was regarded as resident in Italy if, for the greater part of the tax period, it had its registered office, its place of administration or its principal object or corporate purpose here. The registered office and the temporal component (greater part of the tax period) remain unchanged. The place of administration, however, is now replaced by the "place of effective management", and reference is no longer made to the place of the principal object or corporate purpose, but to the place where the ordinary business activity is mainly carried out. The explanatory report states that the fulfilment of even just one of the three requirements gives rise to tax residence and thus to unlimited tax liability in Italy.

Essentially, this is the statutory codification of criteria which have already been established in case law for some time. The new rules apply to the financial year beginning after 29

GGI A GLOBAL ALLIANCE OF INDEPENDENT PROFESSIONAL FIRMS

39100 Bozen, via F.Crispi / F.-Crispi-Straße 9
tel +39 0471 288333, fax +39 0471 272521
e-mail info@pdc-partner.it

20121 Milano / Mailand
Foro Buonaparte 70
tel +39 02 36687469

39036 Stern / La Villa di Badia
Str. Ninj 63
tel +39 0471 847360

December 2023, i.e. as a rule from 1 January 2024.

The decisive change is certainly the amendment to Art. 73 para. 3 of the Income Tax Code (TUIR) with regard to the place of effective management (place of effective management); this is deemed to be the place where the strategic decisions for the company are continuously taken. The place of ordinary business activity, by contrast, is deemed to be the place where management handles day-to-day business.

Recommendation: In order to counter, in particular, the presumption that foreign subsidiaries have their place of effective management in Italy, it can only be recommended that meetings of the administrative body be demonstrably held at the foreign registered office and that it be clearly recorded there in the minutes that the strategic decisions were taken on site (and not in Italy!). While audits in this area have been very rare in recent years, in view of the present changes an increased sensitivity on the part of the tax authorities must also be expected!

Finally, following an amendment to Art. 5 of the Income Tax Code (TUIR), the changes described also apply to partnerships.

Incidentally, the new wording also provides protection against the previous administrative practice: the control activity which a shareholder usually exercises over its foreign subsidiary is, as a rule, not harmful and may therefore not be relied on as an indication of unlimited tax liability in Italy, provided that the controlled company retains its autonomy in operational and strategic decisions.

Unlimited tax liability of individuals in Italy (Art. 2 Legislative Decree 209/2023)

The provisions of Art. 2 of the Income Tax Code (TUIR) on the tax residence of individuals are also amended: for individuals, primary reference is made to personal and family interests – and no longer, as previously, to economic interests. Registration in the register of the resident population now only constitutes an indication and a simple presumption which can be rebutted.

The effects are serious: under the previous administrative practice, an Italian taxpayer with a wife and children in Italy and an employment relationship abroad could claim with a fair degree of confidence not to be subject to unlimited tax liability in Italy, since the centre of his economic interests was abroad. Since 1 January 2024, such an argument will become difficult.

As regards the stay, tax residence continues to be determined by calendar years, i.e. where the prescribed requirements are met for the greater part of the year. What is new, however, is that fractions of days, i.e. also days merely begun, must be taken into account when calculating the greater part of the year. Days therefore also count on which one stayed in

Italy for only a few hours or on which the prescribed requirements are met. It follows that in future fractions of days must also be taken into account when calculating the 183 days (184 in leap years).

It is important to note, however, that the reform does not provide for the possibility of splitting the tax period, as provided for in some double taxation treaties (DTTs) and in the OECD Model Convention. In Italy the rule is: either I am resident in Italy for a year because the pro rata requirements are met for 183 days, or I am not.

These requirements, which must be met for the greater part of the year, are now the following:

Residence – Although the reference to the Civil Code (Art. 43 (2) Civil Code) is deleted here, the definition is likely to remain unchanged. It is the place where a person, on the basis of the factual situation, has his habitual abode.

Domicile – A separate definition is now provided for the concept of domicile. Reference is no longer made to the place where, according to the Civil Code (Art. 43 (1) Civil Code), the centre of personal relations and economic interests is located; instead, the concept is narrowed down to personal and family relations.

Presence – This criterion has been newly introduced and concerns the physical presence of the taxpayer in the territory of the State. It is a residual criterion, since it corresponds to habitual abode, but without possession of a permanent home. This applies, for example, to a person who moves from hotel to hotel. This approach is also provided for in other countries, for example in Spain.

Conversely, registration in the register of resident persons for the greater part of the year still constitutes a requirement for tax residence, but it is now only a simple presumption. As a result, registration in the register of Italians residing abroad (AIRE) also loses importance. What counts, therefore, is rather the substance, i.e. the actual situation.

The new rules apply from 1 January 2024.

Home office

Contrary to general expectations, the decree contains no rules on the much-discussed subject of cross-border home office work: Italy evidently wishes to await a relevant guideline at OECD level. However, on 28 December 2023 Italy signed a framework agreement pursuant to Article 16 of EU Regulation 883/2004 on social security concerning cross-border teleworking, and this agreement provides a number of useful indications which should undoubtedly also be applicable for tax purposes.

<u>So if you engage in teleworking “across the border”, please get in touch with us.</u>

Administrative penalties relating to registered residence (Art. 1 para. 242 Budget Law)

In line with the reform of tax residence described above, there is also a provision in the most recent Budget Law: the administrative penalties for incorrect registration are increased to between 100 Euro and 500 Euro. In the case of failure to report a transfer of residence abroad, by contrast, administrative penalties of between 200 Euro and 1.000 Euro apply. In addition, an obligation is introduced for municipalities to report registrations and deregistrations of citizens resident abroad to the Italian Revenue Agency.

Simplification of controlled foreign company taxation (Art. 3 Legislative Decree 209/2023)

The so-called CFC rules are substantially simplified: what is at issue here is the taxation of foreign subsidiaries where certain negative conditions are met, in which case the profits generated must be taxed in the hands of the Italian shareholder on the transparency principle, irrespective of any actual distribution. The relevant conditions, which must be met together, are, in keywords: (1) the effective tax rate abroad is less than 15% (previously the restrictions applied where the foreign tax amounted to less than 50% of the tax which would have been due in Italy). The 50% rule will, however, continue to apply in future to those foreign controlled companies which are not subject to a statutory audit there;

(2) more than one third of the revenues derive from passive income. The taxpayer may, however, demonstrate in a ruling procedure that an effective activity is carried out on site using personnel as well as equipment and facilities. These provisions apply irrespective of whether the company's seat is located in a tax haven or in another country.

Where the foreign company has audited annual financial statements, it is finally possible to opt for a settlement tax of 15%.

The new rules apply to the financial year beginning after 29 December 2023.

Change to the taxation of transfers of residence to Italy (Art. 5 Legislative Decree 209/2023)

We already informed you about this point in advance by Circular No. 42/2023, so that measures could still be taken before the end of the year if necessary: the previously extremely favourable provisions on the taxation of persons transferring their residence to Italy are restricted from 1 January 2024, both in their scope of application and in their extent. However, anyone who transferred his residence to Italy by the end of 2023 can still claim the old reliefs. Here are the new rules that have been implemented:

- First of all, the subjective scope of application is restricted: the reliefs only apply to inbound taxpayers who previously stayed abroad for at least three years; up to the end of 2023, as is known, 2 years were sufficient. Special requirements apply where the transfer of residence takes place within a group of affiliated companies. Here, additional, restrictive conditions are provided for: the stay abroad must have lasted at least six years if the employee was not previously employed in Italy within the same group of companies; the stay abroad must have lasted at least seven years if the person concerned was already previously employed in Italy within the same group.

- Anyone wishing to claim the reliefs must undertake to remain in Italy for at least four years (previously 2 years).
- Since 1 January, the benefit only applies to highly qualified persons; in essence, this is a return to the legal situation as it already applied up to 2019: completion of a bachelor's degree of at least three years or an equivalent course of study for professions listed in the Istat classification CP 2011 under major groups 1 (legislators, senior managers, entrepreneurs), 2 (professions in the humanities and natural sciences, professions with a high degree of specialisation) and 3 (technical professions). For the regulated professions, possession of the requirements for admission to the exercise of the profession concerned.
- Types of income benefiting in Italy: until now, employment income and income treated as such, income from self-employment and income from sole proprietorships were eligible. For taxpayers transferring their residence from 1 January 2024, income from sole proprietorships is excluded, and self-employment income is limited to income from a professional self-employed activity; it follows that, for example, income from the assignment of copyrights is no longer eligible.
- The extent of the benefit is then also reduced: for returnees from 01.01.2024, the tax relief is reduced from the previous 70% (only 30% of the income is taxable) to 50%; however, where there is at least one minor child, the taxable base can still be reduced to 40%.
- Whereas there was previously no income ceiling, a threshold of 600.000 Euro is provided for taxpayers transferring their residence from 1 January 2024; the excess amount must be taxed in full.
- Until now, the reliefs could be claimed for a period of 5 years, with the possibility of applying for an extension by a further 5 years. Now the relief applies for the year of the transfer of residence and the 4 following years, and no further extension is provided for, with one exception, however: persons who transfer their registered residence to Italy in 2024 but already purchased a dwelling here in 2023 (!) may apply for an additional extension of up to 3 years.
- For self-employed professionals, the existing de minimis restrictions remain unchanged, since for them the tax saving is treated as equivalent to State aid. It follows that: in this case the tax saving resulting from the reliefs for the taxation of transfers of residence to Italy may not exceed the threshold of 300.000 Euro over a 3-year period.

In summary, since 1 January 2024 there are thus 3 different taxation regimes running in parallel for taxpayers who have transferred their residence to Italy:
- taxation for those who transferred their residence by 29 April 2019 (and who must apply for the extension by June 2024 at the latest);
- taxation for those who transferred their residence between 30 April 2019 and 31 December 2023, and
- those transferring their residence from 1 January 2024.

<u>Important: Employers who take on employees from 1 January 2024 who wish to claim the above-mentioned reliefs would be well advised to have the fulfilment of the new requirements confirmed by the employee as precisely as possible!</u>

Transfer of business activities to Italy (Art. 6 Legislative Decree 209/2023)

Anyone who “transfers” to Italy a self-employed or business activity previously carried out outside the EU or the EEA can count here on a tax burden reduced by 50% for the year of the transfer and the 5 following years. The benefit concerns, among other things, transfers of Swiss companies to Italy.
Incidentally, the relief is revoked if the relocated company again transfers its seat abroad within 5 years (10 years for large companies) after the expiry of the benefit. In practice, the company will therefore have to remain in Italy for 10 to 15 years. Whether the relief really is an advantage in the individual case must also be examined against the rules on the transfer of residence abroad in the other country concerned.
Incidentally, the benefit still requires the approval of the EU Commission; subject to this, the new rules apply to the tax period beginning after 29 December 2023.

Minimum taxation of groups 15% (Art. 8 – 60 Legislative Decree 209/2023)

In implementation of the EU reform package Pillar 2, which provides for a minimum taxation of 15% on the profits of large multinational groups or companies with total revenues of at least 750 million Euro, Italy is also introducing such a tax. The aim of this directive is to curb the race to the bottom in corporate tax rates.

We remain at your disposal for any further information.

Yours sincerely
Josef Vieider