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Italian tax regimes to attract individuals to Italy

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AGENDA:

1. THE ITALIAN LUMP SUM TAX REGIME FOR HNWIS MOVING TO ITALY
2. OTHER ITALIAN TAX REGIMES TO ATTRACT INDIVIDUALS TO ITALY

THE ITALIAN LUMP SUM TAX REGIME FOR HNWIS MOVING TO ITALY

THE ORDINARY ITALIAN TAX REGIME FOR INDIVIDUALS

- World wide tax liability on the basis of residence for the purposes of all taxes (income tax, wealth tax and inheritance and gift tax)
- Progressive income tax rates up to approx. 45 per cent
- Flat income tax rate of 26 per cent for most income and gains on financial assets (a few exclusions such as non-EU funds)
- Wealth tax on financial products (0.2 per cent per year) and real estate (0.76 per cent per year)
- Inheritance and gift tax at rates ranging from 4 per cent (spouse and direct descendants) to 8 per cent
- Reporting obligations (RW) on foreign-held assets

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THE LUMP SUM REGIME

Main features

- Optional regime for individuals (also Italian citizens) moving to Italy
- Annual substitute tax of 100k Euro on foreign-source income and gains (25k Euro for family members)
- No wealth taxes and inheritance and gift tax on foreign held/situs assets
- Effective for up to 15 years
- Possibility to obtain ruling

Conditions

- Non-residence for Italian tax purposes for at least 9 out of last 10 years
- Acquisition of Italian tax residence

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- Non-residence for Italian tax purposes for at least 9 out of last 10 years

- Acquisition of Italian tax residence
  - Registration in the list of resident population, or
  - Habitual abode in Italy, or
  - Centre of vital interests in Italy

INCOME TAX UNDER THE LUMP SUM TAX REGIME

- 100k Euro annual substitute tax on foreign-source income and gains
  - Irrespective of the amount and location of foreign income/gains
  - No taxation of remittances
  - No foreign tax credit

- Ordinary taxation of Italian-source income/gains

OTHER TAXES AND REPORTING UNDER THE LUMP SUM TAX REGIME

- ❖ No wealth taxes on foreign-held assets
- ❖ No inheritance and gift tax on foreign situs assets
- ❖ No reporting obligations (RW) on foreign-held assets

EXCLUSIONS

- Mandatory exclusion: gains on substantial foreign participations realized in the first 5 years of residence
  - 20% (2% for listed participations) threshold
  - Reporting obligations (RW) on substantial foreign participations during the 5-year period
  - Specific anti-avoidance rule, so that, depending on the specific facts and circumstances, it can be dis-applied through a mandatory ruling
- Optional exclusion for one or more foreign States
  - To reduce foreign tax and benefit from foreign tax credit

TIME LIMITATION

- The option for the lump sum tax regime is effective for up to 15 years
- The option is revocable
- If the option is revoked, it is no more available

FAMILY MEMBERS

- Lump sum tax regime can be extended to one or more qualifying family members
    - E.g. spouse and children
    - Family members are not required to move to Italy in the same year of the “main” beneficiary of the lump sum tax regime, since they can move in a subsequent year
    - Annual substitute tax is 25k Euro per family member benefitting from the lump sum tax regime

OPTIONAL RULING

- Ruling may be used to obtain confirmation of e.g.:
  - Eligibility to the lump sum tax regime
  - Foreign-source of the income/gains
  - Whether a foreign company or trust is to be disregarded (see below)
  - Disapplication of specific anti-avoidance rule for gains on substantial foreign participations realized in the first 5 years of residence (see above)
  - Application of the lump sum tax regime to the specific facts and circumstances

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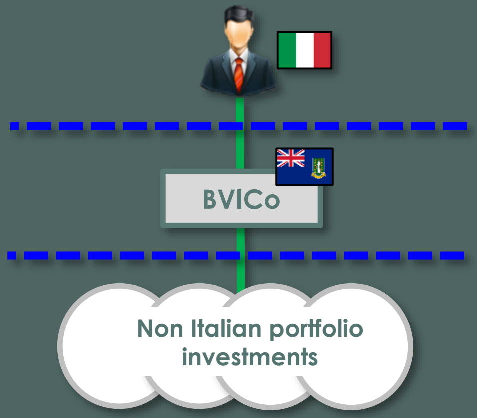
OPTIONAL RULING

- Timing: 120 + 60 days (if request of additional information/documents)
- Ruling can be obtained prior to the acquisition of Italian tax residence
- Ruling application filed with special tax office (for lump sum tax regime)

DISREGARDED COMPANIES AND LOOK-THROUGH APPROACH

Example



- The company is fully owned by an individual
- The shareholder is a director of the company together with directors employed by a corporate service provider
- The company is established in a tax-privileged jurisdiction
- The company does not carry on an effective business activity (personal holding company)

Possible benefits from disregarded nature of BVICo

- No issue of Italian tax residence (or existence of an Italian permanent establishment) of BVICo
- Lump sum tax regime applies to the foreign income and gains of BVICo (imputed to the individual)
- No reporting obbligations (RW) on substantial shareholding in BVICo
- May facilitate liquidation of BVICo

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TAX RESIDENCE OF OPERATING COMPANIES

The case

No attraction of tax residence of OPCo

- Circular letter No. 17/2017: "*the special subjective status of the individual that has opted for the lump sum tax regime makes irrelevant for tax purposes the attraction of the tax residence of any foreign entity to Italy, where such attraction would have been based only on the relationship with the individual benefitting from the lump sum tax regime*"

TRUSTS AND LUMP SUM TAXPAYERS

- The individual moving to Italy is the settlor and one of the beneficiaries of a trust holding foreign situs assets → request that the trust should be treated as disregarded towards the settlor ?

- The individual moving to Italy is one of the beneficiaries of a trust settled by one of his/her late parents and holding foreign situs assets → request that the foreign tax residence of the trust should not be affected ?

- The individual moves to Italy and subsequently settles foreign situs assets into a trust → no gift tax on foreign situs assets

TAX TREATY PROTECTION ABROAD

- Italian tax authorities held the view that income tax treaties are applicable due to worldwide tax liability (unless specific treaty exclusions)

- In the event of demise, the heirs are entitled to revoke the option for lump sum tax regime for the year of demise. In such a case:
  - Italian inheritance tax on worldwide assets (only 4% for spouse and direct descendants)
  - Revoking the option may be helpful to obtain inheritance tax treaty protection in other jurisdictions

OTHER ITALIAN TAX REGIMES TO ATTRACT INDIVIDUALS TO ITALY

	Optional 100K Euro substitute tax regime for high net worth individuals moving to Italy	Optional 7% substitute tax regime for pensioners moving to Italy	Impatriate tax exemption regime for employees moving to Italy
Conditions	The individual must have been non-resident in at least 9 of the 10 tax years prior to the first year of application of the regime.	1. The individual must have been non-resident in the 5 tax years prior to the first year of Italian tax residence. 2. The individual must have pension income paid by an entity that is non-resident of Italy. 3. An agreement providing for administrative cooperation between Italy and the country of former residence must be in force. 4. The individual must transfer the tax residence to a municipality with no more than 20,000 residents in one of the following Italian Regions: Sicily, Sardinia, Calabria, Campania, Basilicata, Abruzzo, Molise and Puglia.	1. The individual must have been non-resident in the 2 tax years prior to the first year of Italian tax residence. 2. The Italian tax residence must be kept for at least 2 tax years. 3. The working activity must be carried out mainly in Italy. Please note that the regime may apply also to individuals moving to Italy to carry out self-employment or business activities, subject to the limits stemming from EU State aid legislation.

Duration	Up to 15 tax years (from either the first or the second year of Italian tax residence). The regime can be revoked; in such a case, however, it is no more available.	Up to 10 tax years (from the first year of Italian tax residence). The regime can be revoked; in such a case, however, it is no more available.	Five tax years (from the first year of Italian tax residence). However, the regime applies for an additional 5-year period in case of: - purchase of Italian residential real estate; or - at least one minor or dependent child.
Income tax	100k Euro substitute tax on income and gains from foreign (non-Italian) sources. Capital gains on foreign substantial shareholdings realized in the first 5 years of Italian tax residence do not benefit from the 100k Euro substitute tax and are thus subject to the ordinary tax regime. However, this carve out from the scope of the 100k Euro substitute tax may, depending on the specific facts and circumstances, be dis-applied through a ruling Ordinary income tax on income and gains from Italian sources.	7% substitute tax on income and gains from foreign (non-Italian) sources (not limited to pension income). Ordinary income tax on income and gains from Italian sources.	For 5 tax years: - 70% exemption on Italian-source employment income; or - 90% exemption on Italian-source employment income in case of transfer of tax residence to one of the following Italian Regions: Sicily, Sardinia, Calabria, Campania, Basilicata, Abruzzo, Molise and Puglia. For the additional 5-year period (if applicable): - 50% exemption on Italian-source employment income; or - 90% exemption on Italian-source employment income in case of at least three minor or dependent children.
Wealth taxes	Exemption from wealth taxes on foreign assets.	Exemption from wealth taxes on foreign assets.	No exemption.

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Inheritance and gift tax	Exemption from inheritance and gift tax on foreign assets	No exemption.	No exemption.
Reporting obligations on foreign assets	Exemption. Foreign substantial shareholdings held in the first 5 years of Italian tax residence do not benefit from the exemption. However, this carve out from the exemption may, depending on the specific facts and circumstances, be dis-applied through a ruling.	Exemption.	No exemption.
Family members	Possibility to extend the regime to one or more qualifying family members through payment of a reduced 25k Euro substitute tax for each of them.	No provision.	No provision.
Ruling procedure	Possibility to obtain confirmation on the eligibility for the regime through a specific ruling procedure.	No specific ruling procedure.	No specific ruling procedure.

NICOLA SACCARDO

Nicola Saccardo is a partner of Maisto e Associati. He is based in the London office.

He graduated from the Bocconi University in Milan and holds a Master of Laws (LL.M.) in International Taxation from the University of Leiden (The Netherlands). He is admitted to the Italian Bar (he is also qualified as Italian chartered accountant).

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He is author of many publications on Italian tax matters and is frequent speaker at conferences. He leads the EU tax law course at the LL.M. of the King's College in London.

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