

## THE NEW TAX REGULATIONS FOR NEW RESIDENTS IN ITALY

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### 1. FOREWORD

SUBSTITUTE LUMP-SUM TAX ON THE INCOMES YIELDED ABROAD BY INDIVIDUAL PERSONS NEWLY RESIDENT IN ITALY, AS PROVIDED FOR BY PARAGRAPH 24-BIS OF THE CONSOLIDATED ACT ON INCOME TAX, AS PER PRESIDENTIAL DECREE NO. 917, 1986, SPECIFIED BY LAW NO. 232 DATED DECEMBER 11, 2016, PUBLISHED ON THE *GAZZETTA UFFICIALE* (OFFICIAL GAZETTE) ON DECEMBER 21, 2016 (CLAUSES FROM 152 TO 154 AND FROM 157 TO 159 OF LAW NO. 232 DATED DECEMBER 11, 2016).

This briefing aims at giving a preliminary survey of the main new set of rules in the fiscal field concerning the substitute lump-sum tax on incomes yielded abroad by individual persons newly resident in Italy (hereinafter the “**Option**”), as per Presidential Decree no. 917, 1986, the Consolidated Act on Income Tax, (hereinafter “**TUIR**”), specified by Law no. 232 dated December 11, 2016, published on the *Gazzetta Ufficiale* (Official Gazette) on December 21, 2016 (hereinafter “**Stability Act**”) (clauses from 152 to 154 and from 157 to 159 of the Stability Act).

It must previously be pointed out that, with reference to income yielded abroad, in absence of a specific convention against double taxation, the income is deemed to be yielded abroad on the basis of reciprocal criteria in regard to the ones provided for by paragraph 23 of TUIR, specifying the incomes yielded within a single country with reference to the different typologies.

## 2. TAX ON THE INCOMES YIELDED ABROAD BY INDIVIDUAL PERSONS MOVING THEIR FISCAL DOMICILE TO ITALY

THE ABOVE MENTIONED NORM REFERS TO THE INDIVIDUAL PERSONS MOVING THEIR FISCAL DOMICILE TO ITALY, IN COMPLIANCE WITH WHAT PROVIDED FOR BY PARAGRAPH 2, CLAUSE 2, OF TUIR. THESE PERSONS MUST NOT HAVE BEEN RESIDING IN ITALY FOR AT LEAST NINE OVER THE TEN TAX PERIODS PRECEDING THE BEGINNING OF THE PERIOD OF VALIDITY OF THE OPTION IN HAND.

CLAUSE 2 OF THE NEW PARAGRAPH 24-BIS OF TUIR ASSESSES AT € 100,000 FOR EACH TAX PERIOD FOR WHICH THE ABOVE MENTIONED OPTION IS VALID THE AMOUNT OF THE SUBSTITUTE TAX, RECKONED ON A LUMP-SUM BASIS, INDEPENDENTLY FROM THE AMOUNT OF THE COLLECTED INCOMES

As regards the substitute tax on incomes yielded abroad, clause 152 of the Stability Act, introducing paragraph 24-bis of TUIR, provides for the individual persons moving their fiscal domicile to Italy the possibility to opt for a substitute lump-sum tax on the incomes yielded abroad, in specific situations.

The above mentioned norm refers to the individual persons moving their fiscal domicile to Italy, in compliance with what provided for by paragraph 2, clause 2, of TUIR. These persons must not have been residing in Italy for at least nine over the ten tax periods preceding the beginning of the period of validity of the Option in hand. The substitute tax is targeted at the incomes yielded abroad, singled out according to paragraph 165, clause 2, of TUIR, norm which refers to the principles of paragraph 23 of the previously mentioned TUIR.

Apropos of this, it is right to point out that the substitute tax is not imposed on the capital gains obtained through transfer for a valuable consideration of qualified interests as per paragraph 67, clause 1, letter c), of TUIR, during the first five tax periods of validity of the Option. The capital gains are however subject to the ordinary tax regulations as per paragraph 68, clause 3, of TUIR and they make part of the income, net of pertinent capital losses, to the extent of 49.72%, according to what regulated by D.M. (Ministerial Decree) April 2, 2008.

Clause 2 of the new paragraph 24-bis of TUIR assesses at € 100,000 for each tax period for which the above mentioned Option is valid the amount of the substitute tax, reckoned on a lump-sum basis, independently from the amount of the collected incomes.

The related provisions state that the amount is reduced to € 25,000 for each tax period for each member of the family for whom the taxable person can ask to extend the enforcement of the substitute tax.

The tax must be paid outright within the date established for the full payment of income taxes. As for the related assessment, collection, litigation and penalties, the regulations concerning the income tax for individual persons are applied, as they are compatible.

The tax in question is not deductible from any other tax or contribution.

Clause 3 of paragraph 24-bis of TUIR regulates the procedure to exercise the Option. This can be taken up after getting a favourable answer to the specific petition of probative request, to be sent to the Agenzia delle Entrate (Income Revenue Authority), according to paragraph 11, clause 1, letter b) of Act no. 212 of 2000 (hereinafter the “**Statute of Taxpayers**”).

### 3. DEADLINE OF PRESENTATION AND EFFECTS OF THE OPTION

THE OPTION AT HAND MUST BE EXERCISED WITHIN THE DEADLINE FOR THE PRESENTATION OF THE TAX RETURN REFERRING TO THE TAX TIME WHEN MOVING ONE’S RESIDENCE TO ITALY AND IT STOPS BEING EFFECTIVE AFTER FIFTEEN YEARS FROM THE FIRST VALID TAX PERIOD.

According to the new regulations, the Option at hand must be exercised within the deadline for the presentation of the tax return referring to the tax period when moving one’s residence to Italy and it is effective as from that tax period.

In the Option the jurisdiction or jurisdictions of the last fiscal domicile must be reported before exercising the validity of the Option.

The *Agenzia delle Entrate* (Income Revenue Authority) forwards such information, through proper administrative cooperation’s procedures, to the fiscal authorities of the jurisdictions reported as the place of last fiscal domicile before exercising the validity of the Option.

According to clause 4 of paragraph 24-bis of TUIR, the Option is revocable; however it stops being effective after fifteen years from the first valid tax period.

The effects of the Option are over in any case if there is omitted or partial payment, totally or partially, of the substitute tax, according to the terms of the present law in force, except for the effects consequential to the previous tax periods. The revocation or the loss of this system bars the exercise of a new Option.

#### 4. EXCLUSIONS AND CUMULATION PROHIBITION

Clause 5 of paragraph 24-bis of TUIR allows the individual person and his/her family members to choose not to make use of the application of the substitute tax with reference to the incomes yielded in one or more foreign countries or territories, specifically indicating it at the moment of exercising the Option, or else with a subsequent amendment of it.

Just in that instance for the incomes yielded in the above mentioned, clearly specified foreign countries or territories the ordinary tax regulations are applied and the tax credit for incomes yielded abroad is pertaining.

Furthermore, it must be specified that the tax regulations provided for by the Option which can be chosen as regards the substitute lump-sum tax on the incomes yielded abroad by individual persons newly resident in Italy cannot be drawn concurrently with the tax relief provided for by the return of “bright brains” or by the tax relief for the repatriation of employees from abroad.

Finally, it must be pointed out that the individual persons choosing the Option are exonerated from fiscal monitoring (RW), from the obligation of tax payment on holdings abroad (IVIE) and on financial investments abroad (IVAFE).

#### 5. REGULATIONS FOR FAMILY MEMBERS

According to paragraph 24-bis, clause 6, of TUIR, the beneficiary of the Option can ask that it is extended, for the whole period of its validity, to one or more family members of his/hers as specified in paragraph 433 of the Civil Code: it is about the subjects bound to pay for alimony on the instances established in the Civil Code, that is the spouse, the children including the adopted ones (if there are no children, the next-of-kin descendants), the parents (if there are no parents, the next-of-kin ancestors) and the adopters, the sons-in-law and the daughters-in-law, the fathers-in-law and mothers-in-law, the brothers and sisters and stepbrothers and stepsisters.

THE BENEFICIARY OF THE OPTION CAN ASK THAT IT IS EXTENDED, FOR THE WHOLE PERIOD OF ITS VALIDITY, TO ONE OR MORE FAMILY MEMBERS OF HIS AS SPECIFIED IN PARAGRAPH 433 OF THE CIVIL CODE: IT IS ABOUT THE SUBJECTS BOUND TO PAY FOR ALIMONY ON THE INSTANCES ESTABLISHED IN THE CIVIL CODE, THAT IS THE SPOUSE, THE CHILDREN INCLUDING THE ADOPTED ONES (IF THERE ARE NO CHILDREN, THE NEXT-OF-KIN DESCENDANTS), THE PARENTS (IF THERE ARE NO PARENTS, THE NEXT-OF-KIN ANCESTORS) AND THE ADOPTERS, THE SONS-IN-LAW AND THE DAUGHTERS-IN-LAW, THE FATHERS-IN-LAW AND MOTHERS-IN-LAW, THE BROTHERS AND SISTERS AND STEPBROTHERS AND STEPSISTERS

In order to benefit from the substitute tax the family members must have moved their fiscal domicile to Italy, but they must not have been fiscally resident in the country for a time at least equal to nine tax periods during the ten ones preceding the beginning of the validity period of the Option, according to paragraph 24-bis of TUIR.

In such case, the subject exercising the Option specifies the jurisdiction or jurisdictions where the family members to which the system is to be extended had their last residence before exercising the validity of the Option. The extension of the Option can be withdrawn with reference to one or more family members. The withdrawal of the Option or the forfeiture of the system by the subject exercising the Option are extended to the family members too.

## 6. CONTACTS

If you would like to know more about some aspects of the topics in the present Briefing, please do not hesitate to get in touch with either one of the contacts mentioned below or your usual contact at CM&P *Studio Legale Associato*.



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