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Italy continues reforms by revising its international tax principles

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A recent legislative decree sets out highly significant updates to Italy's international taxation rules. Federico Vincenti and Alessandro Valente of Crowe Valente/Valente Associati GEB Partners provide a guide to the key changes

On December 28, 2023, Legislative Decree No. 209/2023 regarding the Italian reform of international taxation (the Decree) was published in Official Gazette No. 301.

The Decree was issued by the government and is part of a broader and more general framework of reform of the Italian tax system announced over the past year.

The main changes are related to the following issues.

Tax residence

The Decree revises the criteria for determining the tax residence of individuals and companies.

The most significant impact is expected for individuals, as personal and family ties will take precedence over economic interests, and mere physical presence in Italian territory will be considered a factor in determining Italy's taxing power.

Companies are currently considered residents if, for the majority of the tax period, they have their legal seat, effective management seat, or ordinary management primarily located in Italy. The Decree clarifies that "the effective management seat is understood as the continuous and coordinated assumption of strategic decisions concerning the company or entity as a whole. Ordinary management refers to the continuous and coordinated performance of acts related to the ongoing management of the company or entity as a whole."

Controlled foreign companies regime

The Decree introduces a simplification regarding foreign-controlled companies, with the aim of aligning the taxation of such entities with the global minimum taxation regime.

Based on the new rules, the controlled foreign companies regime applies if non-resident controlled entities are subject to an effective tax rate lower than 15%, provided that the financial statements of non-resident controlled entities are audited and certified by authorised professionals in the foreign country of location. Alternatively, and if there are audited and certified financial statements of foreign-controlled companies, the controlling entities can pay a substitute tax equal to 15% of the net accounting profit for the fiscal year.

In the case of foreign-controlled entities without audited and certified financial statements, the controlling entities must verify that non-resident controlled entities are subject to an effective tax rate lower than half of what they would be subject to if resident in Italy.

Reshoring in Italy

The Decree introduces a new facilitated regime for economic activities ‘transferred’ to Italy (so-called reshoring), providing for a 50% tax exemption on income derived from carrying out business and associated professional activities that were previously conducted in a non-EU country and ‘relocated’ to Italy.

The above-mentioned benefit ceases if, within the five tax periods (or ten for large enterprises) following the expiry of the facilitated regime, the beneficiary transfers, even partially, the activities subject to the previous transfer outside the territory of the state. In this case, the tax authorities reclaim, with interest, the taxes not paid during the facilitated regime that has lapsed.

Global minimum tax

The possibilities of eroding the tax base and transferring profits are reduced through effective minimum taxation, ensuring that major multinational groups of companies pay a minimum corporate tax rate in implementation of Directive (EU) 2022/2523, which was adopted unanimously by the member states.

The Decree introduces the global minimum tax in Italy.

The global minimum tax is based on a three-tier level of taxation:

- A national minimum tax, which countries have the option to introduce based on the directive. This tax applies to multinational or national group companies and jointly controlled entities located in the territory of Italy subject to an effective tax rate lower than the minimum tax rate of 15%.
- An additional minimum tax (AMT) to which the controlling parent company of a multinational or national group located in the territory of Italy is subject if, in a given fiscal year, it is subject to an effective taxation lower than 15% or has held, at any time during the fiscal year, direct or indirect interests in low-tax companies located in another country or stateless entities.
- A supplementary minimum tax to which all companies located in the territory of Italy, excluding investment entities, are jointly and severally subject if the controlling parent company is located in a third country that does not apply an equivalent additional minimum tax or is an excluded entity.

The regulations incorporate all the provisions concerning the calculation of relevant income and effective taxation to be taken into account to assess the conditions for the application of the tax and to determine its rate.

Italy has chosen to introduce a national minimum tax, which is the only tax prudently recognised for revenue effects.

The AMT will only be due from the Italian controlling entity if foreign jurisdictions where controlled companies are located do not introduce an equivalent national minimum tax.

Similarly, the supplementary minimum tax would be applicable and therefore generate revenue only under the dual condition that the country where multinational group companies are located does not introduce a qualified national minimum tax (qualified domestic minimum top-up tax) and that the country of the parent company does not apply the AMT.

Inpatriate workers tax regime

The Decree replaces the old beneficial tax regime for inpatriate workers with a new inpatriate tax regime from the 2024 tax period, reducing the scope and benefits.

The regime provides for a tax exemption of 50% on income from dependent employment and similar sources, as well as income from self-employment generated in Italy by workers who transfer their tax residence to the territory of the state starting from the 2024 tax period, within the limit of €600,000, subject to certain conditions, including the high qualification of the repatriated workers.

The benefit applies in the tax period in which the transfer of tax residence to the territory of the state occurs and in the four subsequent tax periods. It is limited to Italian citizens registered in the Registry of Italians Residing Abroad and, if not named in that registry, to those who have had residence in another state under a double taxation agreement for the three-year period of stay abroad.

Workers must not have been tax residents in Italy in the three tax periods preceding the aforementioned transfer, but they must commit to being tax residents in the territory of the state for at least five years.

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