Benvenuto in Italia!

International Tax | Personal tax



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Giulia Cipollini and *Giorgio Vaselli* look at the new Italian rules for high net worth non-doms

Key Points

What is the issue?

Italy has introduced a new resident non-dom tax regime, competing directly for international high net worth individuals with the UK's non-dom scheme.

What does it mean to me?

The Italian scheme shelters non-doms from Italian tax on foreign income, providing exemptions on succession and gift tax, property taxes on foreign assets and from the ordinary Italian reporting regime. All Italian resident non-doms pay an annual €100,000 flat tax.

What can I take away?

This new non-dom regime offers an attractive wealth planning opportunity for the internationally wealthy, and should be considered as an alternative to other non-dom schemes that are available across Europe and beyond.

Italy opens its doors to international high net worth individuals

As 2017 dawned, Italy made a big play to attract international high net worth individuals into moving their residency to the country by introducing a non-dom regime through a package of new tax and immigration rules. This development comes as the UK takes active steps to narrow the benefits and applicability of its own long-term remittance based non-dom regime, with the final changes coming into effect in April 2017.

The Italian ‘resident non-dom’ regime

The Italian scheme is open to all non-Italian residents who, subject to the tax authority’s approval, will benefit from a favourable new income tax regime. The key benefits for individuals who are prepared to become resident in Italy is: (i) a material reduction in Italian tax on all income sourced abroad; and (ii) simplification of a great deal of tax liabilities (including payment of property taxes) relating to financial and non-financial assets held abroad.

The Italian measure adds to the choice of tax regimes available in other EU and non-EU jurisdictions to individuals without a fixed domicile (such as the non-dom systems in the UK/Ireland/Malta, Swiss ‘forfeit’ rules, the Spanish Beckham Law, etc).

Offering a range of incentives

The potential benefits of this regime are not limited to income tax, but also offer exemptions from:

- obligations to disclose foreign assets to the Italian tax authorities;
- Italian property tax on real estate and financial assets held abroad; and
- Italian gift and succession taxes (excluding the taxpayer's family members) on assets located abroad at the time of demise of the individual.

Indeed, the non-dom scheme offers a unique mix of incentives that could allow high net worth individuals to use Italy as a base for restructuring their personal and family wealth planning. The Italian gift and succession tax regime is currently one of the most attractive in Europe (featuring very low rates ranging from 4–8% and exemptions for certain business assets) and also successfully covers trust structures, which are eligible to tax treaties for the avoidance of double taxation.

Although the regime incentivises non-doms to keep their assets abroad, it should be noted that foreign income can be remitted to Italy without triggering any taxation (and this remittance basis measure is clearly another swipe at the UK's non-dom regime).

However, CRS and FATCA reporting duties on assets would still apply, meaning that intermediaries may still report the existence and value of foreign assets to the Italian tax authorities.

Personal income tax

For income tax purposes, while individuals who are fiscally resident in Italy are generally subject to income tax on any income sourced in Italy or abroad, resident non-doms will be taxed as follows:

- any income sourced from foreign jurisdictions (as determined in a preliminary tax ruling), falls outside the scope of Italian income tax (i.e. will not contribute to determine the individual's overall taxable basis), provided that an annual substitutive tax of €100,000 is paid in one lump sum. The scheme can be extended to family members (including adopted children), provided that an additional €25,000 substitutive tax is paid annually per family member.

- any Italian-sourced income will still be identified and taxed pursuant to the ordinary rules (and therefore would be part of the determination of the overall income taxed at the ordinary proportional and progressive rates ranging from 23% to 43%, plus local surcharges).

Depending on the nature of the assets held in Italy and abroad, an Italian non-dom may be fully exempted from any Italian income tax reporting duties: (i) income sourced abroad and subject to the annual €100,000 substitutive tax would not have to be included in the annual income tax return; and (ii) income sourced in Italy that is subject to final withholding taxes, or substitutive taxes applied by Italian-resident intermediaries or fiduciaries (such as taxes imposed on certain dividends or proceeds from bonds or investment funds) need not be declared.

Double taxation and credits

By contrast, non-doms will not be able to claim foreign tax credit relief on any foreign income covered by the substitutive tax. Consideration of tax credits will require a case-by-case preliminary analysis because, as described below, non-doms are allowed to select which foreign jurisdictions are included in the protected tax regime and which are subject to the ordinary rules.

For example, while certain types of financial income sourced abroad should not be affected (as they are ordinarily subject to final substitutive taxes or withholding taxes in Italy), income from self-employed activities carried out abroad or royalties sourced abroad generally benefit from foreign tax credits.

The regime, applied on the basis of the taxpayer’s choice of applicable jurisdictions, may not be used for more than 15 calendar years, but may be terminated at any time before this. The regime will be revoked if non-doms fail to pay the €100,000 substitutive tax and €25,000 per family member. The wording of the draft provision suggests that any tax violations/assessments relating to income sourced in Italy will not result in the status being revoked. Tax violations/assessments relating to foreign income earned in the year preceding the non-dom taking on this status would not, in principle, have a negative impact on status either.

Further requirements

All applicants for non-dom status should file a preliminary ruling request to, amongst other things, disclose their last tax residence. Approval from the tax office may take up to 120 days. The regime is reserved for individuals who:

- become Italian tax-resident pursuant to the domestic rules (i.e. they have been in Italy for more than 183 days in a calendar year, and meet at least one of the following conditions: (i) domicile; (ii) residence (both defined in the Italian civil code); or (iii) enrolment with the registry of Italian population; and
- have been non-Italian resident for income tax purposes for 9 out of 10 years preceding their relocation to Italy.

Since foreign nationality is not a requirement, Italians who are currently living abroad may also become resident non-doms. However this measure cannot be enjoyed together with other tax incentives applicable to the repatriation of ‘foreign brains’.

Planning to capitalise on the non-dom scheme

Due to the regime’s freedom to select which jurisdictions to subject to ordinary income tax rules, its greatest benefits will mainly depend on proper preliminary planning. Moreover, although we are still awaiting further implementing regulations, which should be issued by the end of March 2017, the provisions in force are already relatively clear and provide potential candidates who are considering applying for early adoption of the tax regime with sufficient reassurance to adopt it.

In order to facilitate movement of HNWIs to Italy, the government has amended the existing immigration rules and introduced a new Investment Visa specifically for foreign investors. This Visa will be made available to applicants who are willing to:

- invest at least €2 million in Italian bonds, held for a minimum of two years;
- invest at least €1 million in securities of a company based and operating in Italy, or €500,000 if the company is an innovative start-up, held for a minimum of two years;
- make a philanthropic donation of at least €1 million to an Italian project working in the culture, education, immigration or scientific research sectors.

Investment Visa holders will obtain a two-year residence permit. Extensions may be granted for periods of three years, subject to verification that the investments or the

donations have been made within three months of the entry in Italy and that the relevant amounts are still invested in the financial instruments listed above.

Entitlement to tax treaties

The success of this regime for international asset planning is dependent on the question of whether resident non-doms are able to apply double taxation treaties. This requires a twofold analysis:

- on one side, although an Italian non-dom may keep their domicile abroad, this could trigger issues of double tax residence that would substantially limit the overall tax benefits of the Italian incentives (especially if the foreign state of tax residence taxes income on a worldwide basis); and
- on the other side, the vast majority of tax treaties signed by Italy (based on the OECD model convention) contain a subject to tax clause according to which an individual is not entitled to the benefits of a treaty if he is only taxed on incomes sourced within his/her state of residence (i.e. if they are not subject to tax on a worldwide basis). A narrow interpretation of this provision would prevent Italian non-doms from applying tax treaties (because they are only subject to a forfeit tax on foreign incomes).

Our view is that an Italian non-dom should be treated as a person subject to income tax in Italy and entitled to Italy’s tax treaties because:

- non-doms remain liable to Italian taxation on income sourced abroad and are accordingly subject to Italian tax (i.e. the fixed €100,000 tax) that substitutes for the ordinary income tax;
- final substitutive taxes (or withholding taxes) on foreign-sourced income are commonly applied within the Italian tax system (e.g. for certain dividends or capital gains on foreign shares, proceeds from foreign securities or foreign investment funds, etc.) and in all such cases Italian-resident taxpayers are always entitled to claim the benefits of Italian tax treaties in order to reduce foreign taxation.