New Package to Attract HNWI
Italian new package to attract HNWI

- The Finance Bill for 2017 (Law no. 232 of 11 December 2016) provides for a tax package tailored to attract human capital, in order to enhance investments and stimulate growth.

- The package aims at putting Italy in a competitive position to attract people and organizations, especially on those areas where relocation needs have already emerged as a consequence of the Brexit and/or changes in foreign tax legislations (such as the UK deemed domicile rules).

- Regarding the tax package aimed at attracting new resident High Net Worth Individuals ("HNWIs"), Tax Authorities released:
  - on 8 March 2017 the implementing guidelines (the "Guidelines")
  - on 23 May 2017 a Circular Letter (the "Circular")
Italian new package to attract HNWI (follows)

• The measures include:
  – a 4-year tax exemption on 90% of the remuneration for professors and researchers
  – a 5-year tax exemption on 50% of the remuneration for managers and professionals
  – a €100,000 substitutive tax on all foreign source income of individuals who become Italian resident after a qualified period of residence outside of Italy. This substitutive tax is due on an annual basis for a maximum of 15 years

• The three measures are not cumulative

• The tax package is integrated by a fast-track visa procedure for investors and their relatives
The € 100,000 substitutive tax regime

• As a rule, Italian tax residents are subject to income tax on their worldwide income, to a 0.2% tax on the value of certain financial assets wherever located and to a 0.76% tax on the value of real properties situated in Italy and abroad.

• The new regime allows certain resident taxpayers to opt for the payment of an yearly substitutive tax of € 100,000 in lieu of:
  – income tax on non-Italian source items of income (under Italian laws income includes capital gains)
  – the 0.2% tax on the value of foreign financial assets
  – the 0.76% tax on the value of foreign real estate

• Income from foreign sources can be remitted into Italy without any additional taxation. Working activities in Italy are allowed.
The €100,000 substitutive tax regime (follows)

• The only exception is provided for capital gains on qualified shareholdings realized by the taxpayer in the first five-year period. These capital gains are not covered by the substitutive tax regime and are subject to the ordinary regime.

• Qualified shareholdings are those representing:
  – more than 20% of the voting rights or 25% of the capital of the relevant company
  – the thresholds are reduced to 2% and 5% per cent for listed companies

• Dividends from such shareholdings fall instead within the scope of the substitutive tax regime.
The €100,000 substitutive tax regime (follows)

<table>
<thead>
<tr>
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<th>With 0.2% wealth tax</th>
<th>Without 0.2% wealth tax</th>
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</thead>
<tbody>
<tr>
<td>A</td>
<td>Foreign financial assets</td>
<td>13,889,000</td>
</tr>
<tr>
<td>B</td>
<td>Return on financial investments</td>
<td>2%</td>
</tr>
<tr>
<td>C</td>
<td>Actual income (A x B)</td>
<td>277,780</td>
</tr>
<tr>
<td>D</td>
<td>Taxes due pursuant to ordinary rules</td>
<td></td>
</tr>
<tr>
<td>D1</td>
<td>income tax (C x 26%)</td>
<td>72,222</td>
</tr>
<tr>
<td>D2</td>
<td>wealth tax (A x 0.2%)</td>
<td>27,778</td>
</tr>
<tr>
<td>D3</td>
<td>total tax (D1 + D2)</td>
<td>100,000</td>
</tr>
<tr>
<td>E</td>
<td>Substitutive tax</td>
<td>100,000</td>
</tr>
</tbody>
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Exemption from gift and inheritance tax

- Italian inheritance and gift taxes apply at rates ranging between 4% and 8% on any assets, wherever situated, transferred by Italian resident persons as a gift or upon succession. The expectation is that these rates may sharply increase in the near future.

- The election for the substitutive tax regime allows a full exemption from gift and inheritance taxes on all foreign situs assets held by persons who have elected for the special regime (in the years when this regime is applicable).
Exemption from any reporting requirement

- Italian resident taxpayers are subject to reporting requirements with respect to any assets (both financial and not financial) held abroad. This causes a significant leakage of confidentiality, which may be avoided by transferring all foreign assets to Italian based financial intermediaries.

- The election for the substitutive tax regime exempts from all such reporting requirements even if the relevant assets are held abroad without the involvement of any Italian based intermediary. Exception: qualified shareholding for the first five years.

- To a certain extent, information may automatically flow to the Italian tax authorities pursuant to the Common Reporting Standard (CRS).
15-year period

- The substitutive tax regime applies on an optional basis for a maximum period of 15 years

- It is revocable at any time by the taxpayer and in case of revocation, or early termination, the option cannot be exercised again

- The new regime ceases in any event if the taxpayer omits to pay fully or partly the flat substitutive tax. The Guidelines specify that the option is interrupted also in the case a taxpayer transfers his/her tax residence abroad

- The law does not state that any future changes in law will not affect those taxpayers who have already elected for the special regime
Persons eligible for the substitutive tax regime

- The election for the substitutive tax regime is allowed to any Italian resident person who has not been resident of Italy for at least 9 out of the last 10 calendar years.
- Eligible persons are both Italian and non-Italian citizens.
- As clarified in the Circular, persons who have maintained their registration in the list of Italian resident population are to be regarded as actual tax resident in Italy for the relevant years.
- The new tax regime applies to individuals that move their tax residence to Italy, starting from 2017 (based on the clarifications included in the Guidelines the regime should also be applicable to those individuals who moved their residence in 2016).
- The Italian tax residence must be effective.
The substitutive tax for each family member

- The election for the substitutive tax regime is personal and does not cover by itself taxes otherwise due by other family members.

- However, the same regime may be extended to some or all of the family members, upon the condition that also family members are “eligible persons” for the purpose of the substitutive tax regime.

- In such a case the amount of the tax is reduced to € 25,000 for each additional person.

- Family members are defined for this purpose very broadly and more precisely:
  - the spouse
  - children and descendants
  - brothers and sisters
  - parents and parents in law
  - sons and daughters in law
Timing for the election

• As clarified in the Guidelines, Taxpayers can opt for the new regime either in the tax return related to the year in which they have transferred the tax residence to Italy (for instance 2017) or in the tax return related to the following year (for instance 2018)

• This is a useful clarification, as the law seemed to indicate that the option had to be exercised in the tax return related to the year of the actual transfer (in the example, the tax return for 2017) or be lost forever. By moving their tax residence to Italy, HNWIs have now more chances to reorganize their wealth in a tax effective manner in the State of origin
Ruling procedure

- The law required taxpayers wishing to benefit from the new tax regime to submit a special ruling request to the Italian tax authorities. The purpose of this request was to avoid that taxpayers may benefit from the new regime although in substance they have met the Italian residence test in more than one out of the last ten years.

- The Guidelines clarify that the ruling is not mandatory and that taxpayers can provide the relevant information either in the ruling request or in the first tax return in which they elect for the option.
Ruling procedure (follows)

- The ruling procedure is not equivalent to an audit procedure. Indeed, the answer is based on information delivered by the taxpayer and should tax authorities determine in the future that the facts had been misrepresented or some relevant information were omitted, they may revert their conclusion.

- The ruling request can be filed even in those circumstances where the applicant has not yet transferred his/her residence to Italy and intends to wait for the tax authorities opinion prior to actually moving to Italy (as clarified in the Circular).

- In any event, the ruling request should not include any description of the taxpayer’s wealth (unless this is relevant for assessing whether he/she was resident in Italy in a given period).

- From the day of the submission of the ruling, tax authorities have 120 days to provide their answer. Taxpayers can however opt for the new regime even if tax authorities have not yet provided their answer.
Check list

• The Guidelines provide a check-list of twenty factual elements that must be disclosed and documented either (i) in the ruling request or (ii) in the tax return in order to reveal the existence of Italian connections that could undermine the (previous) status of qualified non-tax resident.

• Taxpayers should check the “YES” or “NO” boxes with respect to any of the above mentioned twenty items. A “YES” answer implies that the relevant connecting factor was present in at least two of the last ten years.

• The fact that a taxpayer has one or more Italian connections does not automatically attract his/her tax residence to Italy, but all factual elements should be considered in the overall assessment. In this respect, the taxpayer can provide additional details and explanations regarding specific factual elements that could be misinterpreted.
Treaty benefits

• It is questionable whether individuals opting for the new regime may benefit from treaty provisions

• Treaty provisions apply to persons who are considered resident in one contracting State pursuant to the treaty. Art. 4 of the OECD Model Treaty specifies that the term resident of a contracting State “shall not, however, include any person who is only subject to tax in such a Contracting State with respect to income derived from sources in that State or with respect to property situated in that State”

• In principle, the substitutive regime does not fully exclude from taxation foreign income as such taxation is absorbed by the € 100,000 tax. However, the other contracting States may argue that the substitutive tax is not an actual income tax falling within the scope of the treaty and deny the treaty benefits
Treaty benefits (follows)

- The Circular clarifies that the natural persons who enjoy from the substitutive tax regime are to be regarded as Italian tax residents for the purpose of any income tax treaty entered into by Italy that follows the OECD Model Treaty. Italy will thus release a certificate of residence for treaty purposes and this may have a significant impact on the recognition of treaty protection in most of the Contracting States

- The interpretative position may put an end to the uncertainties as to eligibility for the treaty protection of non-Italian resident persons who are subject in their State of residence to tax regimes that are comparable to the Italian substitutive tax
Treaty benefits (follows)

• Taxpayers opting for the substitutive tax regime may apply for the ordinary tax regime with respect to items of income arising from one or more specified States.

• This may allow taxpayers to benefit from treaty provisions with respect to the related items of income.

• The Circular clarifies that the exclusion of specified States from the substitutive tax regime also applies for inheritance and gift tax purposes.
Foreign vehicles not to be regarded as managed in Italy

- Based on the Circular “*the special subjective status of the natural person who has opted for the special substitutive tax regime makes irrelevant for tax purposes the attraction to Italy of the tax residence of any foreign entity, where such attraction would have been based only on the relationship with the person benefiting from the substitutive tax regime*”

- Such clarification does not cover situations where the foreign entities are managed not only by the new resident individuals, but also by other persons who do not enjoy from the substitutive tax regime

- The Circular clarifies that the new residents can include in the ruling request a description of the foreign entities that they intend to manage in Italy as well as the entities or arrangement that should be disregarded for Italian tax purposes
Fast track VISA

• As a rule, non-EU citizens who intend to stay in Italy for a period longer than three months have to apply for a visa according to ordinary rules

• The most relevant types of VISAs are:
  
  – elective residence VISA, that allows to reside in Italy without carrying out a working activity in the Italian territory (Elective VISA). The Elective VISA does not exceed 12 months, is renewable several times without limits and is not subject to any annual immigration quotas

  – employment and self-employment VISAs that permit to carry out in the Italian territory a working activity (Employment VISA and Self-employment VISA). Such VISAs do not exceed the duration of the employment agreement and are subject to annual immigration quotas set forth each year by the Italian Government
Fast track VISA (follows)

- For any type of VISAs, the applicants need:
  - to submit the application to the Italian Embassy or Consulate in the Country of origin in order to obtain an entry permit ("visto d'ingresso"). In the application, full personal details will be indicated, as well as those of any accompanying family members, the place of destination, the reasons of the permit request, the availability of sufficient means of subsistence, the housing conditions
  - within 8 working days since the entrance day in the Italian territory, to submit the application for the staying permit ("permesso di soggiorno") to the Immigration Office
Fast track VISA (follows)

- The Finance Bill for 2017 has introduced a special “investor visa” that:
  - lasts for a two-year period and can be renewed for other three years
  - is not subject to the respect of any annual immigration quotas, even if the individual moving to Italy aims to carry out an employment activity
  - requires a preliminary filing to a special ministerial committee that simplifies the release of the entry permit by the Italian Embassy/Consulate in the Country of origin
Fast track VISA (follows)

- The investor visa is granted for those persons (and their relatives) who make:
  a. an investment in Italian public bonds of at least 2 €/mio and such investment is held for at least two years
  b. an investment of at least 1 €/mio in the equity of companies established and operating in Italy and the investment is held for at least two years; or
  c. a contribution of at least 1 €/mio to a charity engaged in certain public interest projects

- The Ministerial Decree of 21 July 2017 (published on 4 September 2017) defines the content of the preliminary filing to obtain the investor visa. In particular, the investor is required to attach the documents attesting that: (i) he/she is the holder and beneficial owner of the amounts to be invested; (ii) the amounts are available and transferable in Italy; (iii) the source of the money; (iv) a self-certification attesting the lawful origin of the money
Fast track VISA (follows)

- The Finance Bill for 2017 provided also for a fast track procedure applicable to those individuals that moving their residence to Italy, decide to opt for the € 100,000 substitutive tax regime

- The Ministerial Decree of 30 June 2017 established that Italian Embassy/Consulate in the Country of origin are required to receive the applicants without appointment (or, at the choice of applicants, with an appointment set within three working days) and to give priority to such applications

- The fast track procedure applies for any type of VISA
Italian citizenship

- The Italian citizenship is acquired by individuals:
  - having at least one Italian citizen parent (*jure sanguinis*)
  - born in the Italian territory if both parents are unknown or stateless, or if the parents cannot transfer their citizenship to the children according to the law of the Country of origin (*jure soli*)
  - married with an Italian citizen for at least three years or married with an Italian citizen and resident in the Italian territory for at least two years after the marriage (terms reduced by half in the presence of children born or adopted by the spouses)
Italian citizenship (follows)

- The Italian citizenship may also be requested by:
  - a citizen of a EU Member State after at least a 4-year period of residence in the Italian territory
  - a non-EU citizen after at least a 10-year period of residence in the Italian territory.

- In such cases, the EU/non-EU citizen needs to submit a special application which must be evaluated by the Ministry of Interior
Check list
Check list

1. Spouses and civil partners and/or children resident or domiciled in Italy or with main abode in Italy. For this purpose, the answer is YES if the test has been met for at least 90 days during any tax year. Judicially separated (and divorced) spouses are not considered for this purpose

2. Family members, other than spouses and civil partners and/or children (e.g. parents, parents in law, brothers, sisters, children-in-law), resident or domiciled in Italy or with main abode in Italy. Also for this purpose relevance is made to a period of at least 90 days during any tax year

3. Stable connections of personal, social, cultural, leisure or political nature with persons resident in Italy

4. Directorships and other appointments (memberships of board of directors or board of auditors, etc.) in Italian resident entities
Check list (follows)

5. Minor children or financially dependent children attending schools or universities in Italy
6. Effective use of a residential property situated in Italy for more than 90 days during any year
7. Registered movable properties at disposal in Italy (e.g. cars, motorcycles, boats, etc.)
8. Italian immovable properties at disposal (other than those under 6 above)
9. Ownership of qualified shareholdings in Italian resident entities or in foreign entities with a permanent establishment in Italy (qualified shareholdings are those representing more than 20% of the voting rights or 25% of the capital of the relevant company. The thresholds are reduced to 2% and 5% per cent for listed companies)
10. Accounts and other relationships with Italian financial intermediaries;
11. Income from real estates located in Italy
12. Income from capital sourced in Italy (other than interest on bank accounts and deposits that is not regarded as Italian source income by operation of law)

13. Employment income sourced in Italy

14. Self-employment income sourced in Italy

15. Business income sourced in Italy

16. Other income, including capital gains from qualified shareholdings, deriving from assets located in Italy or activities performed in Italy

17. Income from Italian partnerships or other transparent entities

18. Pensions sourced in Italy

19. Any employment-assimilated income sourced in Italy (such as, for instance, scholarships, director and auditor’s fees, annuities and other periodical allowances not related to investments or job activities)

20. Royalties sourced in Italy