

Tax residence in Italy

Definition of tax residence

Article 2 of the Italian Tax Code provides that an individual is considered to be resident if “for the greater part of the tax period, he or she is registered with the register of the resident population (*anagrafe*) or has their domicile or residence, as defined in the Civil Code, in the territory of the Italian state”

This means that a person is tax resident if, for the greater part of any tax year, the individual;

- 1) is registered in register of the resident population maintained by the local municipality (“*comune*”); or
- 2) has his or her *domicilio* - their centre of vital interests; or
- 3) has their habitual place of abode;

in Italy.

Tax residence thus does not depend on age, gender, civil status, citizenship, ownership/rental of real estate or physical presence on Italian soil. Some of these may be factors in determining residence but on their own none of these elements automatically determine whether an individual is resident or not.

Civil Law Residence

The concept of tax residence, although linked, through the conditions mentioned above) is not the same as civil law residence. From the above rules it can be seen that being registered for more than a half a year will mean that you considered tax resident in Italy. However you can be considered tax resident even though you are not registered as resident if you have your “domicile” or habitual abode in Italy.

Italian law requires an individual to request registration for themselves, and for any minor child of which they are the parent or guardian, with the

Legislation

Law no 1228/1954

DPR no. 223/1989

Leg. Decree no. 30/2007 (activating EU directive 2004/38/CE

DL no 80/2011

Ministry of the Interior
Circular no.18/2009

Tax Code DPR
1986/917

Civil Code Art. 43

"*anagrafe*" of the Comune (Municipal Authority) where they have their habitual place of abode.

There are some advantages to getting registered as resident such as cheaper cost of residential utility services and reduced transfer tax on acquisition of real estate. It is also necessary to be resident in order to become the registered owner of a motor vehicle in Italy.

Income tax consequences of residence

Tax residence is important because an individual who is resident for tax purposes in Italy is generally liable to tax on their worldwide income. A non-resident will only pay tax on any Italian-source income.

The split year concept

By Resolution no. 471/2008 the Italy Tax Agency confirmed a fundamental principle that "... for the purposes of Italian law - and therefore also for the purposes of the interpretation of international double tax treaties where they refer to domestic provisions - it is not possible to consider an individual resident limited to a fraction of the tax year ... ". This means that an individual is either tax resident or not in any tax (i.e. calendar) year. This can cause problems (and opportunities) where an individual is moving to or from a regime that does permit individual to be resident for part or all of a year.

For example, a resident individual moving abroad from Italy in the second half of any year (on or after 2 July will be considered tax resident in Italy for the whole of that year. Thus income earned outside Italy in the second half of the year will be liable to tax in Italy (obviously with credit for the overseas tax). Each case will however need to be examined on an individual basis based on the facts and the terms of any Double Tax Treaties, as treaties can in some case impose a split year treatment.

The three conditions for determining residence

The first condition for residence is black and white - you are either registered or you are not. The second and third conditions mean that an individual can be resident in Italy, even though they are not registered with the *anagrafe*.

Registration with the *anagrafe*

If you are registered with the *anagrafe* for more than half the year then you will be tax resident. The only exception to this is if you are also resident for tax purposes in another country with which Italy has a double tax treaty and the

tie-breaker clause operates to make you resident in the other country. . Most of Italy's treaties contain "tie-breaker clauses" designed to stop people being resident in two countries at the same time.

If you do leave Italy to go and live abroad it is vital that you cancel your registration from the *anagrafe*. This is usually an easy procedure and can often be done simply by email (but check first with your local authority (*comune*)). You will need to give an address abroad. Italian citizens should get themselves registered in the "AIRE" - the register of Italian citizens resident abroad by contacting the local Italian embassy or consulate abroad.

Note though that Circular No. 304/E/1/2/705 of 2 December 1997 provides that "the deletion from the register of the resident population and registration with the AIRE is not a decisive factor in excluding residence". So simply cancelling your registration with the local authority will not mean that you cease to be resident. The authorities will be entitled to ask for proof that your *domicilio* centre of vital interests and habitual abode have also changed.

The second condition – "Domicilio"

"*Domicilio*" means the place where a person has their principal place of business and his/her family or social interests;

This is a question of fact and elements include:

- availability of a permanent home in Italy;
- location of members of family;
- location of bank accounts where salary/other income is received;
- possession of assets, including real estate;
- participation at business meetings;
- holding of corporate offices;
- hotel/accommodation, subsistence and travel expenses;
- membership of clubs or other organisations;
- manner of organization of their business activities – e.g. via companies or other entities.

The Italian Tax Agency have stated that they in determining the tax residence of any individual, they will look for any concrete evidence showing the presence of family or affective ties in Italy, and the economic interests that the individual has in Italy.

Most of the guidelines produced by the Tax Agency and the courts are targeted at the perceived threat to the Revenue represented by high net worth individuals seeking moving their residence away from Italy to low tax jurisdictions. Specific rules exist to combat Italian citizens moving their residence to listed tax haven regimes. In the midst of this, it is often difficult however to extrapolate principle for foreigners coming to live in Italy.

The third condition “Habitual Abode”

The concept of habitual abode means a permanent presence in a certain place, with the intent of staying there. It is characterized by two elements:

- the objective element of permanent place of abode – i.e. a place to live and sleep to ;
- the subjective element of the will to stay.

The Tax Agency is empowered to carry out any necessary investigation on the residence status of an individual including cross-checks with the foreign authorities, where there are arrangements in place for the mutual sharing of information, bank records and in more serious cases, access to information such as mobile phone records .

Continuous Presence

There is no need for the time in Italy to be continuous. A Supreme Court judgment (no. 5292/1985) has held that even with periods of absence from Italy, even for a long period and regardless of the reason, a person can continue to remain resident. This reinforces the concept that tax residence is different from mere physical presence on Italian soil.

Double Tax Treaties

For many individuals moving cross-border the different definition of tax residence between states means that there is a risk of double taxation, but also opportunities to avoid taxation altogether. Many countries accept a split year approach to residence, while others (such as the UK) have a multi-year test to determine residence. A few countries (including the U.S.) apply taxation of a world-wide basis depending on citizenship, rather than residence. It is therefore necessary to turn to the relevant double tax treaty. Most of Italy's treaties contain a more or less standard “Tie Breaker” clause which operate to determine which country you are resident in, if you are

resident in both, and how various types of income should be taxed in cross border situations.

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“Tie Breaker” clause

Extract from UK/Italy double tax treaty - Fiscal domicile Art. 4

(1) For the purposes of this Convention, the term "resident of a Contracting State" means

any person who, under the laws of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that Contracting State only if he derives income from sources therein.

(2) Where by reason of the provisions of paragraph (1) of this Article an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

(a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);

(b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has no permanent home available to him in either Contracting State, he shall be deemed to be a resident of the State in which he has an habitual abode;

(c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;

(d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

Codice Civile Libro Primo Delle persone e della famiglia**Titolo III Del domicilio e della residenza****Art. 43. Domicilio e residenza.**

Il domicilio di una persona è nel luogo in cui essa ha stabilito la sede principale dei suoi affari e interessi.

La residenza è nel luogo in cui la persona ha la dimora abituale.

Italian Tax Code D.P.R. n. 917/86

Art 2. Ai fini delle imposte sui redditi si considerano residenti le persone che per la maggior parte del periodo di imposta sono iscritte nelle anagrafi della popolazione residente o hanno nel territorio dello Stato il domicilio o la residenza ai sensi del codice civile.

Art 2. All individuals who for the greater part of the tax period are registered in the register of the resident population or who have their domicile or residence within the meaning of the Civil Code shall be considered resident for income tax purposes.