

Detailed Legal Opinion on Ministry of Economy Circular No. 20/E of November 4, 2024

Subject: Ministry of Economy Circular No. 20/E of November 4, 2024, provides operational instructions to tax authorities regarding the tax residence of individuals, companies, and entities, following the amendments introduced by Legislative Decree No. 209 of December 27, 2023.

The legislative changes aim to ensure greater legal certainty, reducing interpretative ambiguities and disputes. The specification of residence criteria, both for individuals and companies, allows for a clearer identification of tax residence.

Analysis of Legislative Changes

Residence of Individuals

- **Previous Definition:** Before the amendments, tax residence was determined by registration in the registry of the resident population, domicile, or residence in Italy for most of the tax period. These criteria were alternative, so satisfying one of them was sufficient to be considered a tax resident in Italy.
- **New Definition:** The new legislation introduces additional criteria and specifies that tax residence can also be determined solely by physical presence in Italy for most of the tax period. This criterion is added to those of domicile and civil residence.

Residence Criteria:

- **Physical Presence:** Physical presence in Italy for most of the tax period, considering fractions of a day even for non-continuous periods. Sufficient condition to determine residence.
- **Civil Residence:** Defined according to the civil code: habitual and voluntary residence in a specific place – prolonged stay and intention to live there permanently.
- **Domicile:** Now defined as the place where the person's personal and family relationships primarily develop. Personal relationships are prioritized over economic ones.

- **Registry Registration:** Continues to constitute a residence criterion but with a rebuttable presumption that admits contrary evidence.
- **Physical Presence and Remote Work:** Physical presence in Italy for most of the tax period determines tax residence, even for those working remotely. This criterion is particularly relevant for remote workers. The location of the employer is not relevant. Workers who perform their activities abroad but maintain residence, domicile, or are not deregistered from the registry in Italy for most of the tax period are considered tax residents in Italy.
- **Presumption of Residence:** Registry registration now constitutes a rebuttable presumption, which can be refuted with contrary evidence. This means that a taxpayer registered in the registry can prove not to be effectively resident in Italy if they can demonstrate that they did not have civil residence, domicile, or physical presence in Italy for most of the tax period.

Preferential Regimes

- **Benefits for New Residents:** The legislation provides specific preferential regimes for individuals who transfer their tax residence to Italy. These regimes require that beneficiaries have not been tax residents in Italy for a certain number of previous tax periods.
- **Substitute Tax Regime on Foreign Income:** For those who transfer their tax residence to Italy and opt for the substitute tax on income produced abroad.
- **Regime for Foreign Pensioners:** For holders of foreign-source pension income who transfer their tax residence to Southern Italy.
- **Regime for Repatriated Workers:** Benefits for workers who transfer their tax residence to Italy.

The residence requirement for various years must be determined according to the rules existing at the time. Therefore, the new rules will only apply to determine residence in the 2024 tax year.

Relations with Double Taxation Conventions

- **Prevalence of Conventional Law:** Double taxation conventions prevail over domestic law to resolve residence conflicts. This means that in case of conflict between the internal regulations of two States, both qualifying

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as residents for tax purposes in their respective States, the tie-breaker rules of international conventions apply to determine tax residence.

Residence of Companies and Entities

- **Previous Definition:** Companies were considered residents if they had their legal seat, administrative seat, or principal object in Italy.
- **New Definition:** The new legislation replaces the criterion of the administrative seat with those of the effective management seat and the principal ordinary management.
- **Legal Seat:** The place where the administrative organization of the company is located.
- **Effective Management Seat:** Defined as the place where strategic decisions concerning the company or entity are made. This criterion aims to identify the place where the entity's effective management takes place.
- **Principal Ordinary Management:** Refers to the place where the acts of ordinary management concerning the company or entity are carried out. This criterion focuses on the entity's daily and operational management.

It is sufficient for one of these three aspects to configure the residence of an entity in Italy.

- **Trusts:** Trusts and similar institutions established in States that do not allow adequate information exchange, where at least one of the settlors and at least one of the beneficiaries are tax residents in Italy, are considered tax residents in Italy, unless proven otherwise. The presumption of residence for trusts with settlors or beneficiaries resident in Italy is now relative, allowing contrary evidence. This means that a trust can prove not to be resident in Italy if it can demonstrate that its effective management takes place elsewhere.
- **Investment Entities:** The connection criterion remains unchanged from the previous legislation, according to which the tax residence of such entities is rooted in the State of their establishment.

Entry into Force and Relations with Previous Legislation

- **Application of New Rules:** The new provisions apply from January 1, 2024, for fiscal years coinciding with the calendar year. For companies with a

fiscal year not coinciding with the calendar year, the new rules apply from the tax period following the one in progress as of December 29, 2023.

Conclusions: Ministry of Economic Circular No. 20/E of November 4, 2024, represents a significant step towards the modernization and internationalization of the Italian tax system. The reform aligns with international best practices and double taxation conventions, facilitating international cooperation and harmonization of tax regulations. The introduction of the rebuttable presumption for registry registration and trust residence offers greater flexibility to taxpayers, who can demonstrate their actual tax situation with objective elements. The legislation takes into account new working methods, such as remote work, and establishes that physical presence in Italy for most of the tax period determines tax residence, regardless of the formal workplace. The new provisions offer greater clarity and legal certainty, aligning with international practices and reducing disputes.

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