

NEW CRITERIA TO ESTABLISH THE TAX RESIDENCE OF NATURAL PERSONS FROM 2024

Individuals residing in Italy are subject to taxation for income wherever it is generated, including abroad.

Non-residents, on the other hand, are taxed in Italy only on income produced in the territory of the State.

Establishing the tax residence of a natural person therefore determines the taxation to which he or she is subject: as of 1 January 2024, his or her identification criteria have changed.

Criteria for identifying the tax residence of natural persons

For income tax purposes, from 2024 persons are considered residents who, for most of the tax period, also considering fractions of a day:

- a) have their **residence in the territory of the State pursuant to** Article 43, paragraph 2 of the Italian Civil Code ("residence is in the place where the person has his habitual residence");
- b) they are **domiciled in the territory of the State (domicile is to be understood as "the place where the person's personal and family relationships develop")**;
- c) are **present** in the territory of the State;
- d) are **registered in the registers** of the resident population, unless proven otherwise.

As of this year, the reference to physical presence has therefore been inserted (letter c) and the relevance of formal registration in the registry office (letter d), previously considered to prevail over the factual situation, has been decreased.

In order for a natural person to be considered fiscally resident in Italy, it is sufficient that one of the first three conditions is met. The last condition, civil registration, can be overcome by the proof of not having actually had residence, domicile or physical presence in Italy.

A person transferred abroad, who maintains his registration in the registry office and does not register with AIRE, can no longer be considered fiscally resident in Italy, if he proves that he has not had in Italy, for most of the tax period, his civil residence and domicile and that he has not been present in the national territory for most of the tax period.

The definition of domicile has been significantly modified, which must be understood as "the place where the person's personal and family relationships develop", whereas previously it was to be identified, pursuant to Article 43 paragraph 1 of the Italian Civil Code, in the place where the person "has established the principal place of business and interests".

Finally, it is necessary that at least one of the three conditions (residence, domicile, presence) exists for most of the tax period, i.e. for at least 183 or 184 days a year, even if not continuous.

Transfer of residence to tax havens

Italian citizens who have been removed from the resident population registry and transferred to countries with privileged taxation are considered resident in Italy, unless proven otherwise.

The law places the burden on the person who has moved abroad to prove his or her foreign residence, while the Tax Administration, in the event of verification, must prove the existence of the conditions of residence in Italy.

However, it is not necessary to have a prior adversarial hearing for the issuance of the tax act.

Proof of tax residence abroad

For the purpose of proving the actual transfer of tax residence abroad, the taxpayer may use the following elements:

- availability of a permanent home in the foreign country, suitable for personal and family housing needs;
- stipulation of lease or purchase contracts for residential properties suitable for personal and family housing needs;

- payment of fees for the provision of services (water, electricity, gas, telephone, etc.) in the foreign country;
- absence of real estate units kept available in Italy;
- carrying out an employment relationship of a continuous nature or economic activity in the foreign country;
- maintenance of the family abroad, with enrolment and actual attendance of the children in schools or training institutions in the foreign country;
- crediting in the foreign country of proceeds wherever obtained and movement of sums of money or other financial assets;
- possession abroad of assets, including movable property;
- registration on the electoral roll of the foreign country.

Double Taxation Treaties and the residence of natural persons

The application of the national criteria for the determination of tax residence may lead to phenomena of "double tax residence", to be resolved on the basis of the double taxation agreement stipulated between Italy and the foreign country concerned.

The OECD Model Double Taxation Convention, generally transposed into the Conventions stipulated by Italy, defines a resident as any person who, by virtue of the legislation in force, is subject to tax in the State, 'by reason of his domicile, residence, place of management, or any other criterion of a similar nature'.

The OECD rules to be applied to establish the residence in a State of a natural person, who is resident in two States at the same time, are as follows:

- 1) permanent dwelling (1st rule);
- 2) centre of vital interests (2nd rule);
- 3) place of habitual residence (3rd rule);
- 4) nationality (4th rule);
- 5) agreement between States (residual criterion).

These rules must be applied in the order indicated.

Double taxation treaties are binding sources for the contracting states and take precedence over national law.

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