

Tax Law in Malta and Italy: Current Issues

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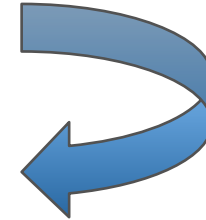
CAPITAL REPATRIATION IN ITALY

Attraction Systems and Foreign Dressed Companies

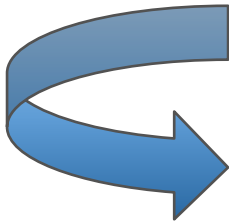
Abstract

Points under discussion:

- What is the definition of a «*Tax Haven*»?
- Is **Malta** still a «*Tax Haven*»?
- Does Italy have some ways to attract capital from foreign **individuals and legal entities**?



As a consequence:



- The Italian perspective on the *Foreign Dressed Companies* (so called «*esterovestite*»)
- An example of Italian attraction system such as the *Voluntary Disclosure*

Definition of a «*Tax Haven*»

Legal disciplines endorse a qualified definition of, as such it includes:

- 1) **Pure Tax Haven**: This includes countries where there are no taxes. This regime guarantees absolute **banking secrecy** even with other countries.



- 2) **No Taxation on Foreign Income**: External income is excluded from all taxation. Only internal income is taxed.

- 3) **Low Taxation**: A modest taxation is applied on any income.



- 4) **Special Taxation**: Concerns countries with tax regimes similar to those of countries considered «*normal*» but permits the establishment of «*flexible*» companies and/or entities with particularly favorable regimes.

Why is a «*Tax Haven*» dangerous?

They create **harmful tax competition**.

In the 1990s, the **OECD** coordinated international policies to combat tax competition, drawing up a list in which the countries offering **privileged tax treatment** and the type of **potentially harmful transactions** are listed.

This strategy has enabled individual countries to implement suitable anti-avoidance measures.

BLACK LIST





The attractive Taxation of Malta

Malta has an excellent attraction to italians as well

Resident non domiciled



These tax regimes allow exemption from taxation of foreign income to the extent that it is not transferred to the State

VAT



0% - e.g. food and pharmaceutical products
5% - e.g. hotel services, electricity supply
7% - accommodation services
18% - sale of goods and provision of services (ordinary rate)

Personal Income Tax



From 15% to 35% with a *no tax area* up to 9.000 € until 10.500 €
(it depends on the family unit)

Corporate Income Tax



35% with a Refund System of 2/3; 5/7; 6/7 in order to avoid Double Taxation

**Dividends, Interests,
Royalties, Capital gains**



No Taxation

CFC and TP



No Regulation

Wealth Tax



No Tax withheld to non-residents

Is Malta still a «*Tax Haven*»?

❖ Legislative changes

- Income Tax Act
- Income Tax Management Act

❖ Membership of the European Union in 2004

❖ Tax Reform in 2007

- introduction of participation exemption
- abolition of tax benefits for International Trading Companies (ITC) and International Holding Companies (IHC)

Not anymore



WHITE LIST
2010



❖ adoption of the euro in 2008

❖ DAC6 - 2019/2020

By adhering to the **international standard of tax information exchange**, this jurisdiction is no longer seen as a crossroads of tax evasion



The Attractive Regime of Italy

For individuals

- New Residents' Scheme
- Workers relocating to Italy tax relief scheme

For legal entities

- Workers relocating to Italy tax relief scheme
- Legislation that avoid *Foreign Dressed Companies*

For both

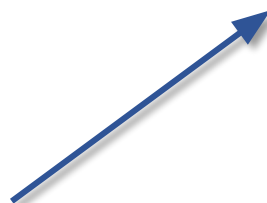
Voluntary Disclosure: an example of positive scheme

New Residents' Scheme

[art. 24-bis DPR n. 917/86 (TUIR)]



- ✓ **Transfer tax residence in Italy** [art. 2 paragraph 2, DPR n. 917/86]
- ✓ **Have never been resident in Italy** [according to the aforementioned Article 2, paragraph 2], **for a period of at least nine tax periods** during the ten preceding the beginning of the period of validity of the option



- **Flat Tax 100.000€** instead of ordinary Personal Income Tax (for income earned abroad)
- **25.000€** in the event of extension of the option to family members
- maximum length of **15 years**



Optional Choice



New Residents' Scheme

[art. 24-bis DPR n. 917/86 (TUIR)]

The Italian choice has been to **derogate** from the rule of taxation on a **worldwide basis** of the resident income [art. 3 DPR n. 917/86 (TUIR)].

The exception to this provision is a **flat-rate** territorial taxation for subjects who, with certain requirements, **impatriate or repatriate** to Italy.

Ratio



Being able to **attract** entrepreneurs or persons with **high income capacity** to Italy.

Encourage the transfer to Italy of so-called



*High Net Worth
Individuals*

Workers relocating to Italy tax relief scheme

Ratio:

The rule aimed at encouraging the **return home** of workers who live permanently abroad.

However, it aims to **attract foreign citizens** to move to Italy for work.

Produced in Italy

- ✓ Dependent personal services' Income
- ✓ Similar Income
- ✓ Self-employment income

- **Transfer tax residence in Italy** [art. 2 paragraph 2, DPR n. 917/86]
- Not been resident in Italy in the **two tax periods preceding the transfer**
- Undertakes to reside there for **at least two years**
- The work activity is **carried out mainly in Italy**

- Workers
- Graduates
- Students who have carried out study activities for the purpose of obtaining a degree or post-graduate qualification

- The **Tax Base** is 30% of the Income
- The percentage of taxation is **10%** for those who transfer their residence to **certain regions of Central and Southern Italy**
- Applies in the tax period in which the residence is transferred and in the **subsequent 5** (with the possibility of **extension in particular situations**)

Workers relocating to Italy tax relief scheme



✓ Corporate Income Tax

Produced in Italy

- **Transfer tax residence in Italy** [art. 2 paragraph 2, DPR n. 917/86]
- Not been resident in Italy in the **two tax periods preceding the transfer**
- Undertakes to reside there for **at least two years**
- The work activity is **carried out mainly in Italy**

- **Individual Entrepreneur** (according with the indications given by the Italian Tax Agency in Circular 33/2020)

- The **Tax Base** is 30% of the Income
- Applies in the tax period in which the residence is transferred and in the **subsequent 5** (with the possibility of **extension in particular situations**)

Foreign Dressed Companies

Fictitious localization abroad of a company's fiscal residence

Art. 73 TUIR: For the purposes of income tax, companies and entities are considered to be resident if they have their

Registered Office

- The place where the **management and administrative center of the company operates**.
- Where legal acts are carried out on its behalf, with the usual presence of the directors with power of representation.

Corporate Purpose

- The **essential activity** to directly achieve the primary purposes indicated by law, memorandum of association or articles of association.
- In the absence, "**the activity actually carried out**".



Administrative Headquarters

Place **designated or permanently used for the centralisation** - in internal and third-party relations - of the company's bodies and offices in order to **carry out the company's business and drive its activities**.

..in the territory of the State for most of the tax period

Aim of the FDC

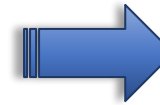
Fictitious localization abroad of a company's fiscal residence



Benefits from a more advantageous tax regime



- Avoid the most **onerous national regime**
- **Profits** are subject to lower taxation
- **Capital Gains** from the **sale of Shareholdings** are subject to lower taxation
- Reduce **indirect** Italian taxation on the conferral



The location of the subjective dimension is based on falsity and cannot be brought within the ambit of elusive cases, but represent cases of evasion.

Penalties for the FDC

Relative legal presumption:

- a. Demonstration of having maintained the **seat of administration abroad**;
- b. Registered office of the management of companies, which **hold controlling stakes**, are **controlled**, including indirectly;
- c. **Administered** by a board of directors, or other equivalent management body.



If the foreign legal entity **fail to provide** the relevant evidence to the contrary, the same



- Considered **resident** in the territory of the State;
- Subject to all the **obligations** provides for companies and entities resident in Italy.



Administrative level:

- Omitted establishment of obligatory **accounting records for VAT and income tax purposes**;
- Omitted request for assignment of the tax code number;
- Omitted presentation of the declaration of commencement of activity and of the place of **keeping and conservation** of books, registers, writings and mandatory documents;
- Omitted presentation of the annual income declaration for **IRES-VAT-IRAP** purposes;
- **failure to submit a tax declaration.**



Criminal level:

- Omitted declaration punishes with imprisonment from 2 to 6 years when the **evaded tax exceeds 50.000 Euros.**

Two Cases

Supreme Court, Section III, 17/01/14 n. 1811

Preventive seizure of a current account of a **Maltese company** operating in Italy, from Malta, through server.

1. **Excluded the existence of a stable organization in Italy**, because this does not have there a seat of direction, nor a branch being the game server, necessary to carry out the activity of the company, located abroad.
2. **Excluded headquarters in Italy**, because there would be carried out only the activity of online assistance to customers and not also the more complex activity of management of the computer platform necessary for the exercise of online games.



Convention to avoid Double Taxation (OECD)

«*Dual Residence*» phenomena and avoid double taxation, **art. 4 of the Convention** establishes that the legal entity must be considered resident ("only" in the English version) in the State in which the place of **effective management** of the entity is located.

Supreme Court, 15/03/2022 n. 8297

A company based in Luxembourg and the holding company for the group, has been served notice of an assessment for 2005 for IRES and VAT purposes. The tax notice was issued following an audit carried out by the tax police, which revealed that the company, which is formally based in Luxembourg, is in fact resident in Italy.

1. It is necessary to verify that the **essential purpose of the operation** is limited to obtaining the tax advantage, as it is not sufficient to apply a general predetermined criterion.
2. Referral to EU Court of Justice on the subject **of freedom of establishment**, a company set up in a member State in order to benefit from more advantageous tax regulations does not in itself constitute an abuse of this freedom.



Restriction on the freedom of establishment can only concern «**wholly artificial arrangements**, devoid of economic effectiveness and aimed at circumventing the normal taxation of profits generated by activities carried on in national territory».



Voluntary Disclosure

Ratio:

To bring back to Italy **large assets**;
To **recover tax revenues** evaded by taxpayers who have illegally taken these assets out of our country;
To provide for the **full payment of evaded taxes** on undeclared income.

- Individuals
- Legal entities
- Non-commercial entities
- Residents in Italy
- Trust

- i. Income and additional taxes;
- ii. Substitute taxes;
- iii. Regional tax on productive activities;
- iv. VAT;
- v. Withholding tax returns;
- vi. Capital illegally held abroad, not declared in the RW framework (Italian Tax Return).

Penalty Reduction, not Tax Amnesty

- I. **Reductions on administrative penalties** (the reduction depends on whether the capital is held: **White List** country or **Black List** country);
- II. **Exclusion from criminal liability** ex Legislative Decree n. 74/2000 (i.e. tax offences Article):
 - Money laundering offences;
 - The use of money and goods of illicit origin;
 - Self-laundering.

*Thank you
for your attention*



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