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The old and new rules concerning the tax regime of the "impatriate workers"

The term "impatriate workers" usually refers to individuals who, after a period living abroad, decide to return to Italy for working.

Over the years, the Italian legislator, in order to encourage the return, has approved several tax facilitations. In particular, until the end of 2023, the tax benefit for impatriate workers was layed down by Article 16, Legislative Decree No. 147/2015, recently replaced by Article 5, Legislative Decree No. 209/2023.

Despite the mentioned abrogation, the legislator has maintained the application of the previous regime to those who have transferred their registered residence to Italy by the date of the 31st of December 2023, with the possibility to apply both the previous and the current rules from now on[1].

This makes it useful to delve into both versions of the so-called "impatriate workers" regime, as both may regulate the tax treatment of these individuals.

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The analysis of the "impatriate regime" must start from the version provided by Article 16, Legislative Decree No. 147/2015.

This article establishes a favourable treatment for employment and assimilated income, self-employment income and business income[2], as long as:

a) the worker has not been tax resident in Italy in the two tax periods preceding the transfer and commits to remain in Italy for at least two years (under penalty of forfeiture);

[1]Indeed, depending on the date of return, the worker will be able to benefit from the favourable regime either in its pre-reform formulation or in its post-reform formulation.
[2]But only for those operating under the form of the so called "ditta individuale" (see Italian Tax Authority Act No. 33/E of 2020).

b) the worker transfers his fiscal residence in Italy;
c) the working activity is mainly carried out in Italy;
d) the incomes derive from Italy.

If the above-mentioned requirements are satisfied, the taxpayer's income is 70% tax-free[3]. This means that, on an annual income of 100, the taxable amount, on which taxes will be calculated, is 30.

This tax benefit lasts for five years, starting from the year in which the person becomes tax resident in Italy. The length of the regime may be extended, if certain (alternative) conditions are observed, consisting of:

I) having at least one minor child or dependent child, also in pre-adoptive foster care, whether born before the transfer to Italy or after, on condition that this requirement is satisfied by the end of the first five-year period of benefit;
II) the purchase of a residential real estate in Italy by the worker or by his/her spouse, cohabiting partner or children, even in co-ownership. The purchase must be made in the twelve months preceding the transfer to Italy or subsequently[4].

If one of the two above-mentioned hypotheses occurs, the taxpayer can enjoy the favourable regime for further five tax periods, with taxable income taxed at 50%[5]. Therefore, in the additional five-year period of tax relief, on an income of 100, the taxable amount, on which the taxes will be calculated, is 50.

To summarise, the rules applicable to those who have transferred their registered residence to Italy by the 31st of December 2023 imply a possible length of the tax relief regime of 10 years, with the percentage of tax exemption decreasing over time.

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[3] This percentage rises to 90% if the worker transfers his tax residence to Abruzzo, Molise, Campania, Apulia, Basilicata, Calabria, Sardinia or Sicily.
[4] In this regard, the Italian Tax Authoriry act No. 33/E of 2020 specified that the acquisition of the property, if made after the return, may take place within (and no later than) the first five tax periods of use of the regime and must remain in place for the entire facilitated period.
[5] The percentage rises to 90% if the individual has at least three minor or dependent children.

Quite different are the rules introduced by Article 5 of Legislative Decree No. 209/2023, which will regulate the taxation of workers returning to Italy after the 31st of December 2023.

In particular, Article 5 quoted above establishes that employment and assimilated income and self-employed income deriving from the exercise of arts and professions may benefit from the favourable regime if:

1) the worker has not been a tax resident in Italy during the three tax periods preceding the transfer to Italy[6], and commits to reside for tax purposes in Italy for a period of at least four years (under penalty of forfeiture);
2) the working activity is mainly carried out in Italy;
3) the incomes derive from Italy;
4) the person has high qualification or specialisation requirements[7];
5) the worker transfers his fiscal residence to Italy.

Under these conditions, the worker's income (up to the annual limit of € 600.000,00) is included in the taxable amount for only 50% (resulting in a 50% tax exemption). It is possible to benefit from a greater detaxation of the income produced (to the extent of 60%[8]) in case of:

- moving to Italy with a minor child or
- birth of a child or adoption of a minor during the period of enjoyment of the "impatriate workers" regime[9],

as long as, in both the above cases, the child resides in Italy during the period of enjoyment of the favourable regime.

[6] For intra-group returns, which are those returns concerning people who worked abroad for companies which are part of the same group of enterprises for which the individual works in Italy, the minimum foreign residence requirement is raised to:
a) six tax periods, if prior to the transfer abroad the employee was not working for the same employer or for another entity of the group;
b) seven tax periods otherwise.

[7] These requirements are set in the Legislative Decree No. 108/2012 and in the Legislative Decree No. 206/2007.

[8] Therefore, on an income of 100, only 40 would be included in the taxable amount.

[9] In this hypothesis, the 60 per cent tax exemption is applied from the tax period in which the legal condition is met until the end of the remaining duration of the scheme.

As may be noticed, the new legislation entails a significant reduction in the extent of the benefit, that also meets a limit beyond which income is taxed according to the ordinary rules.

Furthermore, it has been modified the temporal extension of the "impatriate workers" regime, now equal to five non-extendable years. Nevertheless, in favour of those who transfer their registered residence to Italy during the 2024, Article 5 (quoted above) establishes that the examined benefit is applicable for three more tax periods if the impatriate worker has become the owner of a residential real estate used as a main residence in Italy within the 31st of December 2023 and, in any case, in the twelve months preceding the transfer.

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Comparing the two tax provisions, it's easy to highlight a restriction of both the requirements and the extent of the examined benefit.

In spite of this, the convenience of this tax regime cannot be denied, as it continues to guarantee significant tax advantages both for those who have already returned to Italy during 2023, and for those who will do it during the next and the following years.

In any case, it is appropriate for taxpayers to pay attention to the condition for access to the tax benefit, to understand which case may apply and which version of the benefit they can enjoy.

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