

GMS Flash Alert



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Italy - Clarifications on COVID-19 Emergency and Tax Residence

The Italian tax authorities have so far not issued any guidance in respect of the effects on Italian tax residence for individuals who are not resident in Italy but who are forced to spend time in Italy because of the COVID-19 emergency – especially individuals who may have involuntarily exceeded 183 days in Italy during the fiscal year.

However, the government has recently responded to a parliamentary question on this specific matter.¹

WHY THIS MATTERS

COVID-19 continues to severely limit the movement of people across borders, with many employees temporarily displaced and working remotely for an extended period in Italy and elsewhere, generally in countries that are not the country of work, but others “stuck” in the country of work, unable to return to their home country.

This situation can raise residency and taxation issues, as well as withholding, payroll, and reporting obligations.

In Italy, with no guidance, it has been difficult for employers and their displaced employees to plan and to get clarity on their tax status. With the new tax year, organisations should consult with their professional tax advisers to review the tax position of their displaced employees in Italy, and seek to understand any resulting employer obligations.

Background

Italy has three tests for tax residence² and it is sufficient that only one of those is met for an individual to be regarded as tax resident in the fiscal year.

An individual will be regarded as tax resident in Italy where for the greater part of the year (i.e., 183 days or more):

- he/she is registered on the registry office's (*anagrafe*) system tied to the resident population, or
- he/she is domiciled in Italy, or
- he/she has his/her habitual residence in Italy.

The *anagrafe* registration is a formal qualification and may not be conclusive for residence purposes if one of the other tests is met. Furthermore, the tax residence position may depend on whether an individual is considered tax resident in another jurisdiction, considering the "tie-breaker" provision of the relevant double taxation treaty. Although Italy does not operate a pure "183-day" count for residence purposes, the number of days may be relevant for determining treaty residence and for treaty exemption.

Up until now there has been no confirmation from the Tax Agency on how it would treat days spent in Italy because of the COVID-19 emergency. Although, Italy has signed interpretation agreements clarifying the position of cross-border workers in Austria, France, and Switzerland. It is therefore welcome that the government has now responded to a parliamentary question on the matter.

Response to Parliamentary Question on Counting Days of Presence in Italy and Tax Residence

The Italian Ministry of Finance published a response to a parliamentary question regarding the impact of the COVID-19 emergency on tax residence in Italy. The members of parliament drew attention to the OECD document published on 3 April 2020³ and asked the administration what initiatives would be taken to guarantee that Italian citizens registered in the *Anagrafe degli Italiani residenti all'estero* (AIRE) would not have their status as non-tax resident in Italy compromised as a result of spending unforeseen time in Italy arising from travel restrictions related to the containment of COVID-19.

The parliamentary reply on behalf of the government confirmed that Italy had participated in the OECD working party and had expressed a favourable opinion to the OECD Secretariat on the guidelines issued on 3 April 2020, and that they were disposed, as far as possible, to "neutralise" the effects of the COVID-19 emergency. As a result, where an individual who was not tax resident in Italy was "constrained" to pass a period of time in Italy as a result of the extraordinary circumstances of the pandemic, independently of the "individual's free will," it should be taken into consideration especially for the purposes of deciding on habitual residence for tax treaty purposes.

No Automatic Definition of Residence

In the preamble to this reply, the Tax Agency made clear that there was no automatic definition of residence in Italy for either Italians or foreign nationals constrained from departing Italy because of the COVID-19 emergency, but that the Tax Agency would also consider the habitual nature of presence, the frequency and regularity of stays; in other words, considering all the facts and circumstances.

The reply pointed out this had already been taken into consideration in specific interpretation agreements relating to the position of trans-frontier workers under the specific Italian double taxation treaties with Austria, France, and Switzerland, in circumstances where individuals who normally crossed the frontier on a daily/weekly basis for work purposes were no longer able to work in their normal country of employment.

KPMG NOTE

Although not in any way binding, the response to the parliamentary question suggests that the Italian Tax Agency will take into consideration periods of “enforced or non-voluntary presence” in Italy as a result of the COVID-19 emergency.

The Tax Agency also confirmed its availability to engage in “Mutual Agreement” discussions with foreign tax authorities in order to resolve conflict of residence issues arising from the COVID-19 emergency.

It is hoped that more guidance might follow.

FOOTNOTES:

1 See (in Italian) the “Notizie sui lavori” webpage on the Chamber of Deputies (*Camera di deputati*) website at: https://www.camera.it/leg18/1230?shadow_montecitorio_chiosco=38685 .

2 Article 2 (2) Italian Tax Code . DPR 22 dicembre 1986 n917.

3 See: <https://www.oecd.org/coronavirus/policy-responses/oecd-secretariat-analysis-of-tax-treaties-and-the-impact-of-the-covid-19-crisis-947dcb01/> . For related coverage, see GMS [Flash Alert 2020-157](#) (7 April 2020).

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