



No tax credit for crew members to non-resident persons operating ships in international traffic without a permanent establishment in Italy

On 2 March 2021, the Revenue Agency issued Ruling no. 15/E concerning the entitlement to the tax credit granted by Art. 4(1) of Law Decree no. 457 of 30 December 1997 ("**Decree 457/1997**") with respect to non-resident persons operating ships in international traffic without a permanent establishment in Italy.

Art. 4(1) of Decree 457/1997 establishes that resident and non-resident persons deriving income from the use of ships registered in the Italian International Ship Registry which is subject to income tax in Italy are entitled to benefit from a tax credit equal to the personal income taxes due on the income of employed and self-employed maritime crew members of such ships. The tax credit should be used to offset the amount of withholding taxes on employment and self-employment income paid to the said crew members.

In Ruling no. 15/E, the Revenue Agency took the view that a non-resident person deriving income from the operation of ships registered in the Italian International Ship Registry is entitled to the tax credit laid down by Art. 4(1) of Decree 457/1997 only if it has a permanent establishment in Italy. This is because only in the presence of such permanent establishment the business income of such person is subject to income tax in Italy.

It is worth noting that the above-mentioned legislation was revisited in 2017 (Art. 10(1) of Law no. 167 of 20 November 2017, "**Law 167/2017**") to extend the tax credit to business income subject to income tax in Italy derived from the operation of ships registered in the Ship Registry of any EU or EEA Member State and used exclusively in international traffic. The amendment of Law 167/2017 was implemented in order to settle an infringement procedure initiated by the European Commission (EU pilot procedure 7060/14/TAXU). In the context of such infringement procedure, the European Commission had taken the view that a discrimination on the basis of the country where the ship is registered infringes the freedom of establishment and the freedom to provide services but did not address whether a disparity of treatment based on the existence of a permanent establishment in Italy could be in breach of a fundamental freedom.

For further information: **Maisto e Associati**

Milan

Piazza F. Meda 5
20121
T: +39.02.776931

Rome

Piazza d'Aracoeli 1
00186
T: +39.06.45441410

London

2, Throgmorton Avenue
EC2N 2DG
T: +44.207.3740299

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