



Italian Revenue Agency provides guidance on the new definition of tax residence for income tax purposes

In Circular Letter no. 20/E of 4 November 2024, the Italian Revenue Agency provides its interpretation of the new definition of tax residence for individuals (as well as companies and other entities) for income tax purposes. These rules came into effect on 1 January 2024.

Under Article 2 of the Italian Income Tax Code, as revised in late 2023, an individual is considered tax resident in Italy if any one of the following tests is met for most of the taxable year (which, for individuals, is the calendar year):

1. **residence pursuant to the Civil Code:** defined as the individual's habitual abode;
2. **domicile:** defined as "the place where the personal and family relations of the individual are principally developed";
3. **physical presence:** actual physical presence in Italy including fractions of days.

Additionally, the definition of tax residence includes a **deemed residence test** – which may be rebutted by the taxpayer – if the individual is listed in the Register of the Resident Population. Registration is mandatory for those who have their habitual abode in Italy.

The new definition clarifies the meaning of tax residence based on "domicile", a term that under the old definition generically referred to the civil law domicile ("main center of interests") and that Italian case law variably associated with economic, family, or personal interests. According to the Circular Letter, the new concept of "domicile" now referring to "personal and family relations" includes both family relationships and personal relationships.

The revised definition also introduces a residence test based on actual physical presence, which is an objective criterion that disregards the reasons for being in Italy. The criterion is met if the individual spends more than **183 days** (or **184 days** in leap years) in Italy, with fractions of days counted as whole days.

Furthermore, being listed in the Register of the Resident Population is now considered a rebuttable presumption of tax residence, whereas previously it was conclusive.

The Circular Letter also addresses considerations for remote or frontier workers, and the application of treaty tie-breaker rules.

The Circular Letter provides several examples to illustrate the above tests:

Example 1: Habitual Abode (Civil Law Residence) Test

An individual:

- resides habitually in Italy from **1 January 2024 to 29 February 2024**;
- moves abroad between **1 March and 29 August 2024**; and
- returns to Italy from **30 August to 31 December 2024**.

Despite the interruption during the taxable year, the individual is considered an Italian tax resident because they maintained a habitual abode in Italy for **184 days**, constituting most of the calendar year.

Example 2: Domicile Residence Test

An individual:

- has homes in both Italy and another country ("the other State");
- has a son from a first marriage living in the Italian home;
- has a wife from a second marriage living in the home in the other State;
- works primarily in Italy;
- travels frequently outside Italy;
- spends weekends and holidays in the other State with his spouse; and
- spends **145 days in Italy, 120 days in the other State, and 100 days in third countries**.

The Italian Revenue Agency notes the difficulty in determining the individual's domicile due to split family and personal interests between Italy (child) and the other State (spouse). However, it deems the criterion of the **prevalence of days spent** reasonable. Under these circumstances, the individual is considered to have an Italian domicile and thus to satisfy the tax residence requirement.

A summary of the Circular Letter's guidance on the tax residence of **companies and other entities** will be provided in a forthcoming tax alert.

For further information: **Maisto e Associati**

Milan

Piazza F. Meda 5
20121
T: +39.02.776931
milano@maisto.it

Rome

Piazza d'Aracoeli 1
00186
T: +39.06.45441410
roma@maisto.it

London

53/54 Grosvenor Street
W1K 3HU
T: +44.207.3740299
london@maisto.it

This newsletter is intended to provide a first point of reference for current developments in Italian law. It should not be relied on as a substitute for professional advice. If further information or advice is required please refer to your Maisto e Associati contact or info@maisto.it.

Copyright © 2024 Maisto e Associati

