

Workers who move to Italy: latest clarifications from the Revenue Agency and changes to the tax rules

Family Office and Private Client

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This latest edition of Family Office and Private Client News takes a look at the contents of a recent circular which clarifies the tax rules for workers who move to Italy under the so-called '*impatriati*' regime. It also summarizes the changes made to that regime by the Italian Budget Law for 2021.

1. New circular and new tax rules

On 28 December 2020 the Revenue Agency issued Circular no. 33/E, to clarify the tax rules for workers who move to Italy under the '*impatriati*' regime introduced by article 16 of Legislative Decree no. 147/2015 ('Article 16').

The Italian Budget Law for 2021 (Law no. 178/2020) was published in the Official Gazette on 30 December 2020 and came into force on 1 January 2021. Article 1(50) of the Budget Law introduces changes to the '*impatriati*' regime.

2. Circular no. 33/E

2.1 Professional sports people

Professional sportspeople⁽¹⁾ who are eligible for the '*impatriati*' regime can claim a five-year tax break⁽²⁾. This means that 50 percent of their earnings (i.e. the income generated in a fiscal year from their sporting career in Italy) is exempt from taxation.

This optional tax break is subject⁽³⁾ to payment of a contribution, equal to 0.5 percent of the individual's tax base, to the youth sectors of Italian sports bodies. A special procedure will be implemented by a prime ministerial decree, not yet issued.

The Revenue Agency, in line with an opinion issued last year by the Ministry of Economy and Finance⁽⁴⁾, has stated that until this prime ministerial decree is issued, professional sportspeople cannot benefit from the 50 percent tax break. Therefore, any employers who have relied on the 50 percent tax break when calculating withholding tax on payments made to professional sportspeople must, jointly and severally with those employees, make up the missing payments. They also risk tax penalties.

(1) This means people who fall within the scope of Law no. 91/1981.

(2) Under Article 16 (5-*quater*).

(3) Under Article 16 (5-*quinquies*).

(4) Department of Finance, Official Register, Opinion no. 324497 of 9 October 2020.

2.2 Workers who relocated to Italy before 30 April 2019

The '*impatriati*' exemption must be applied at the same rate over the five fiscal years in question. Therefore, workers who relocated to Italy and became residents before 30 April 2019 cannot benefit from the 70 percent exemption; over the full five-year period they can only take the 50 percent exemption.

2.3 Workers who relocated to Italy between 30 April 2019 and 2 July 2019

Following changes made to the '*impatriati*' regime as part of the urgent measures introduced in 2019 by the Economic Growth Decree⁽⁵⁾, the percentage of a worker's income that can be exempted from taxation has risen from 50 to 70 percent (except in the case of professional sportspeople)⁽⁶⁾.

Originally⁽⁷⁾, these changes applied to people who became tax residents of Italy from fiscal year 2020, i.e. those who moved to Italy on or after 3 July 2019.

However, this Economic Growth Decree rule was modified later in 2019 by a decree law⁽⁸⁾. Therefore, under the rules currently in force, the changes made by the Economic Growth Decree (including the more generous exemption of 70 percent instead of 50 percent) apply also to those who have become residents of Italy since 30 April 2019.

Those who became residents of Italy between 30 April and 2 July 2019 can benefit⁽⁹⁾ from the changes introduced by the Economic Growth Decree until a special EUR3 million fund to counter the brain drain has been used up. The eligibility criteria for the fund have to be established by a special Ministry of Economy and Finance Decree, which has not yet been issued.

The Revenue Agency, in line with a previous opinion issued by the Ministry of Economy and Finance⁽¹⁰⁾, has stated that until this decree is issued, those who became tax residents of Italy between 30 April and 2 July 2019 can claim the lower 50 percent exemption.

2.4 Workers who set up a business in Italy

Following the changes made by the Economic Growth Decree, the '*impatriati*' regime also applies, subject to certain conditions, to those who set up a business in Italy.

Only the business income of the individual entrepreneur is eligible for the tax break. The relief is not available for (i) income generated by commercial partnerships and allocated to each partner on a look-through basis, (ii) business income generated by limited liability companies (Srls) whose members are all natural persons⁽¹¹⁾.

2.5 More than one job in Italy

The tax relief is also available if a worker holds more than one job at the time of relocation to Italy or undertakes additional work after the move. In the second case, however, there must be a connection between the transfer of residency to Italy and the start of the work that generates the income eligible for the tax relief⁽¹²⁾.

The Circular cites the example of someone who, after becoming a tax resident of Italy in 2020 and setting up as a self-employed worker in the same year, begins to earn business income as well, in 2023. The individual can (provided all the requirements are met) claim the tax relief up to 2024, for both the self-employment and the business income, if – with regard to the second source of earnings – there is a connection between the transfer of residency to Italy and the start-up of the business.

2.6 Dependant children

The tax relief can be claimed for a further five-year period⁽¹³⁾ by, inter alia, workers who have at least one child who is a minor or a dependant, including any child living with them prior to adoption.

Whether the child was born before or after the move to Italy is irrelevant, provided it qualifies as such a minor or dependant (even prior to adoption) before the end of the first five-year period in which the parent claims the tax relief.

Moreover, the five-year extension is available even if the child is not resident in Italy when the worker moves there, provided the child's tax residency is transferred to Italy before the end of the first five-year period in which the parent claims the tax relief.

The fact that, after the move to Italy, a child comes of age (or is no longer a dependant) does not mean that the worker loses the right to the tax relief for the further five-year period.

2.7 Purchase of residential property in Italy

The tax relief can also be claimed for a further five-year period⁽¹⁴⁾ by, inter alia, workers who become, after their move to Italy or in the 12 months beforehand⁽¹⁵⁾, the owners of at least one residential property in Italy.

(5) Decree Law no. 34/2019.

(6) 90 percent in certain cases. See Section 8 below.

(7) Under article 5(2) of the Growth Decree.

(8) More precisely, by article 13-ter of Decree Law no. 124/2019.

(9) Under article 13-ter (2) of Decree Law no. 124/2019.

(10) See footnote 1.

(11) The type of Srl regulated by article 116 of the Italian Income Tax Code.

(12) With regard to the connection between the transfer of residency to Italy and the work undertaken there, Circular no. 33/E refers to section 3.1 of Part II of Circular no. 17/E of 23 May 2017.

(13) Under Article 16(3-bis).

(14) Under Article 16(3-bis).

(15) With regard to the wording '12 months beforehand', the Revenue Agency has clarified that this means the period running from any day of the year until the previous day of the following year.

The Revenue Agency has clarified, inter alia, that:

- if the residential property is purchased after the move to Italy, the purchase must take place in (and not after) the first five years in which the tax relief is claimed, and the worker must remain the owner over the whole period⁽¹⁶⁾;
- the fact that the individual already owns another residential property in Italy does not exclude them from the tax relief extension;
- the requirement to purchase at least one residential property in Italy is not met if only the bare ownership or usufruct is purchased;
- the requirement to purchase at least one residential property in Italy is only met if the purchase is made for a consideration.

2.8 Transfer of residence to central or southern Italy

As a result of changes made by the Economic Growth Decree, 90 percent of earnings are exempt from tax if a worker moves to one of the following regions: Abruzzo, Molise, Campania, Puglia, Basilicata, Calabria, Sardinia and Sicily⁽¹⁷⁾.

The Revenue Agency has specified that:

- in order to determine the residence of the worker, reference must be made to the concept of residence as defined in the Italian Civil Code, which is the place of habitual abode, i.e. the place where the individual normally lives;
- an habitual abode can exist even if the individual works outside the municipality of residence, provided the person still has a home there, returns when possible, and can show that it is their intended family and social base (center of vital interests);
- in order to claim the 90 percent exemption, the taxpayer must be resident in one of the above regions from the fiscal year of their arrival from abroad, and must remain there for the entire period in which the tax relief is taken.

2.9 Enrolment in the Register of Italians Resident Abroad (AIRE)

Although the law⁽¹⁸⁾ only mentions Italian nationals who return to Italy *after* 2019, it does in fact apply also to Italian nationals who transferred their residence to Italy *in* 2019.

Returning Italian nationals who were not enrolled in AIRE while they were away can claim the '*impatriati*' tax relief provided that, within the meaning of a convention against double taxation, they were residents of another country in the two fiscal years before their return.

Moreover, although there is no rule that expressly says so, the '*impatriati*' regime can also be claimed by foreign nationals who did not remove themselves from the Italian Register of the Resident Population while they were away; however, they must be able to show that, within the meaning of a convention against double taxation, they were actually resident abroad in the fiscal years in which, according to this register, they were resident in Italy.

2.10 How to apply the '*impatriati*' regime

The exemption can be applied by the employer, in the case of employees, or by the customer, in the case of self-employed workers.

Alternatively, both employees and self-employed workers can claim the relief through their income tax return, provided they file it within the ordinary deadline or no more than 90 days late.

After that, it is no longer possible to declare lower income under this regime. Since the '*impatriati*' regime is an optional one, after the extra 90-day window closes it is not possible to submit a supplementary tax return that is 'to the taxpayer's advantage'.

In such cases, it is still possible for the taxpayer to claim the exemption for the remaining years of the five-year period.

2.11 Taxpayers returning to Italy after a foreign posting

The '*impatriati*' regime does not consider the case of taxpayers who return to Italy after a foreign posting.

The Italian Revenue Agency, citing Resolution no. 76/E of 5 October 2018, has basically reiterated that if the return of such workers is not prompted by the natural expiry of the foreign posting but by other factors that are relevant for the purposes of '*impatriati*' tax relief, they can claim the tax exemption (always provided they meet the necessary requirements).

2.12 Non-resident employers

The current rules (unlike previous ones) do not require the individual to work for an Italy-based business under an employment contract with that company or with its direct or indirect parent, subsidiary or sister companies. Therefore, provided they satisfy all the necessary requirements, individuals can claim the tax relief if they move to Italy to work for a foreign employer or, in the case of those who are self-employed or run a business, to work for foreign (non-resident) customers.

(16) The signing of an agreement to sell/purchase (prior to execution of the actual deed of sale/purchase) does not satisfy this requirement.

(17) The 90 percent exemption does not apply to 'professional sportspeople' (these people fall within the scope of Law no. 91/1981). In their case, the tax relief always consists in an exemption of 50 percent of their income from taxation.

(18) The first sentence of Article 16 (5-*ter*).

2.13 Variable earnings collected in the fiscal year in which the worker becomes a tax resident of Italy but attributable to fiscal years in which the individual was resident abroad

Such income is not eligible for relief under the 'impatriati' regime; it does not matter where the individual has worked in the fiscal years prior to their relocation to Italy.

2.14 Bonus accruing in the last year of the 'impatriati' regime but collected in a future year

Since bonuses fall within the category of income earned by an employee⁽¹⁹⁾, they are taxed on a cash basis.

Therefore, if bonuses are collected in a fiscal year in which the worker is no longer covered by the 'impatriati' regime, they are included in the individual's overall income in accordance with the ordinary rules and are not eligible for the tax relief.

3. Recent changes introduced by the 2021 Budget Law

The 'impatriati' regime, which is normally applicable for five financial years, can be extended by a further five years subject to certain conditions. Under the pre-existing rules, this extension is possible for workers who satisfy **one** of the following requirements and whose new residency in Italy dates from **30 April 2019 or after**.

- The worker supports at least one child (minor or dependant), including any child in their care prior to adoption.
- The worker purchases at least one residential property in Italy, after their move there or in the 12 months beforehand (the property can be purchased directly by the worker, or by their spouse, live-in partner or children, even jointly).

In such cases, the taxable income in the second five-year period is 50 percent (rather than 30 percent).

In the case of a worker supporting at least three children (minors or dependants), including any child in their care prior to adoption, only 10 percent of the worker's income is taxable in the second five-year period, i.e. 90 percent exemption.

Following the changes introduced by the 2021 Budget Law, the possibility of extending the 'impatriati' regime for a further five-year period has been extended (on the same terms outlined above - minor/dependant or purchase of residential property) to include workers who became residents of Italy **before 30 April 2019** and satisfy **both** of the following requirements as well.

- They must be enrolled in AIRE (the register of the Italian resident population) or be nationals of EU Member States.
- They must have been using the 'impatriati' regime on 31 December 2019.

To benefit from the five-year extension, the 2021 Budget Law requires workers who became residents of Italy **before 30 April 2019** to pay one of the following.

- **Ten percent** of the employment or self-employment income qualifying for the exemption and earned in Italy in the financial year prior to that in which the worker opts for the extension, if the individual, when exercising the option, has **at least one child who is a minor** (even a child in their care prior to adoption) **or** has become the **owner of at least one residential property in Italy**, after moving to Italy or in the 12 months beforehand, or becomes such an owner within 18 months of exercising the option (the property can be purchased directly by the worker, or by the spouse, live-in partner or children, even jointly). If this payment is not made, the worker must return the additional tax relief but will not suffer any sanctions.
- **Five percent** of the employment or self-employment income qualifying for the exemption and earned in Italy in the financial year prior to that in which the worker opts for the extension, if the individual, when exercising the option, has **at least three children who are minors** (even if in their care prior to adoption) **and** becomes or has become the **owner of at least one residential property in Italy**, after moving to Italy or in the 12 months beforehand, or becomes such an owner within 18 months of exercising the option (the property can be purchased directly by the worker, or by the spouse, live-in partner or children, even jointly). If this payment is not made, the worker must return the additional tax relief but will not suffer any sanctions.

How this election can be made will be defined in an Italian Revenue Agency statement of practice to be issued within 60 days of the entry into force of the new rules.

(19) As classified in article 49 of the Italian Income Tax Code.

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