

## Transferring tax residency to Italy

Italy

10.01.2018

An important consideration in transferring tax residency to Italy is determining the tax value of assets and liabilities. The current Italian legislation provides for different rules depending on two key factors: (1) whether or not the non-resident will continue pre-existing entrepreneurial activities (effectively, whether the assets and liabilities are related to a trade or business, or personal in nature), and (2) the non-resident's country of origin.

If the non-resident transferring its tax residence to Italy carries on pre-existing entrepreneurial activities, the value of the assets and liabilities (related to such entrepreneurial activity) is determined on the basis of their fair market value on the date of transfer if the transfer occurs from:

- i. an EU member State,
- ii. a non-EU member State which allows an "adequate" exchange of information with Italy, or
- iii. a non-EU member State which does not allow an "adequate" exchange of information with Italy, provided that an advanced ruling on valuation is obtained from the Italian Tax Authorities.

This rule applies to both tangible and intangible assets, including those not recorded in the financial statements (i.e. goodwill and know how).

When the fair market value of assets exceeds the book value, the market value is recognized for tax amortization purposes, therefore allowing the deduction of higher costs.

Therefore, it is advisable to secure an independent valuation of the assets and liabilities pertaining to pre-existing entrepreneurial activities in order to determine the "entry" value of those assets and liabilities.

If the non-resident performing entrepreneurial activities transfers his residence from a non-EU State which does not allow an adequate exchange of information with Italy and unless an advance ruling is obtained from the Italian Tax Authorities, the following rule is applicable:

- a. the value of the assets is determined as the lesser of the purchase cost, the book value or the fair market value; and,
- b. the value of the liabilities is determined as the greater of the purchase cost, the book value and the fair market value.

Since it is not mandatory to obtain an advanced ruling, non-residents can effectively decide to apply the alternative rule described above. Such alternative rule is also applicable in those situations where the agreement with the Italian Tax Authorities is not reached. However, to mitigate the risk of a challenge by the Italian Tax Authorities, it may be advisable to secure an advanced ruling.

The ruling request can also be filed by non-residents:

- a. in the event of transfer from EU member States or any other State that allows an adequate exchange of information with Italy, when there are uncertainties regarding the determination of the fair market value; or
- b. to verify whether the losses produced abroad by non-residents can be carried forward and used to offset post-residency income realized in Italy.

A pre-filing meeting can be scheduled with the Italian Tax Authorities to clarify their position on certain specific matters. Discussions during the pre-filing meeting are confidential and non-binding.

If the assets and liabilities are not related to entrepreneurial activities, the value of the assets and liabilities for Italian tax purposes is based on the value reported to or acknowledged by the foreign tax authority (e.g., the taxable base subject to any exit taxation).

### KEY CONTACTS



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