TAVECCHIO CALDARA & ASSOCIATI

The Italian forfait tax regime

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Destination Italy: opportunities for companies and HNWI

October 23rd 2019, Gunster Law Firm, Miami

The forfait tax regime – General overview

- Last “res-non-dom” regime introduced in Europe
- Entered into force in 2017
- Mix of other European regimes’ best ideas
- 160 applications in 2017
- Expected 300 applications in 2018

The forfait tax regime – Main features (1/2)

- Election for a flat tax of 100k Euro per year on non-Italian source income
- No taxation on remittance
- No inheritance tax on non-Italian situs assets
- No wealth taxes
- No reporting obligations

The forfait tax regime – Main features (2/2)

- Applicable to individuals moving to Italy
  - Applicable also to Italian citizens

- Residence out of Italy for 9 out of 10 years preceding the transfer

- Up to 15 years

- Optional ruling

Income tax under the forfait tax regime

- Income still subject to ordinary domestic taxation:
  - Italian sourced income;
  - Capital gains on substantial shareholdings realized in the first 5 tax years(see next slide)

- Option to exclude income and gains sourced in one or more foreign States from the flat tax regime (“opt-out”)

Capital gains on substantial shareholdings

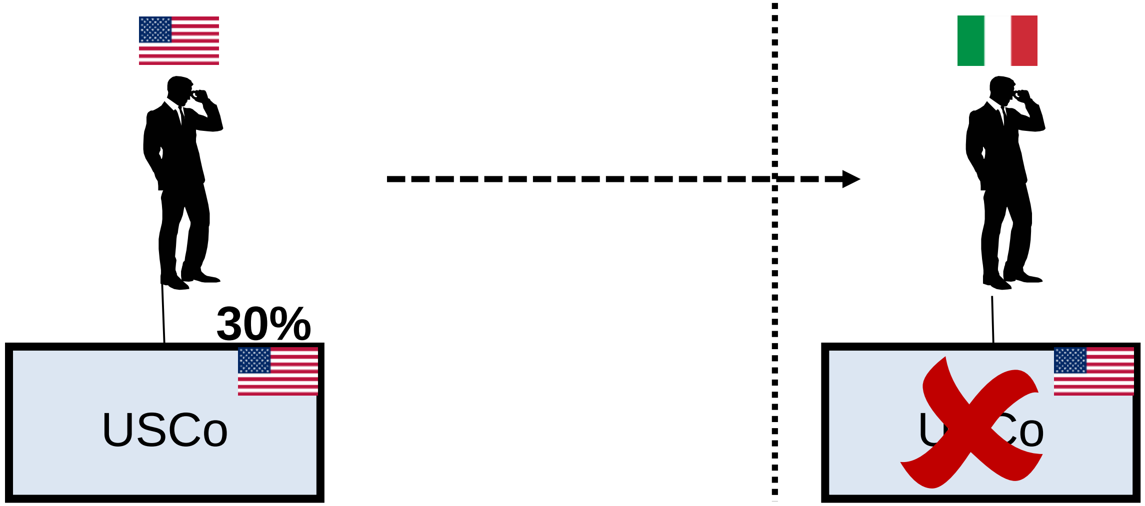
- Anti-avoidance provision: CGs on substantial shareholdings subject to ordinary taxation (in Italy) if realized in the first 5 years
  - 20% or 2% thresholds;
  - based on the specific circumstances, the anti-avoidance provision can be dis-applied

2019

US resident holding 30% of the shares of USCo

2020

The individual: 1) transfers his tax residence to Italy under the forfait tax regime; and 2) sells his shareholding, so realizing a 10 Mio$ CG



CG

subject to ordinary Italian taxation (26%)

Family members and the forfait tax regime

- The option can be extended to one or more qualifying family members
  - E.g. spouse and children
  - Annual fixed charge is 25k Euro (per family member)
  - Family members can move to Italy in any following tax year

Exchange of information

- Applicants shall specify in the election the jurisdiction(s) of their prior tax residence

- The Italian tax agency transmits such information to the foreign tax authorities

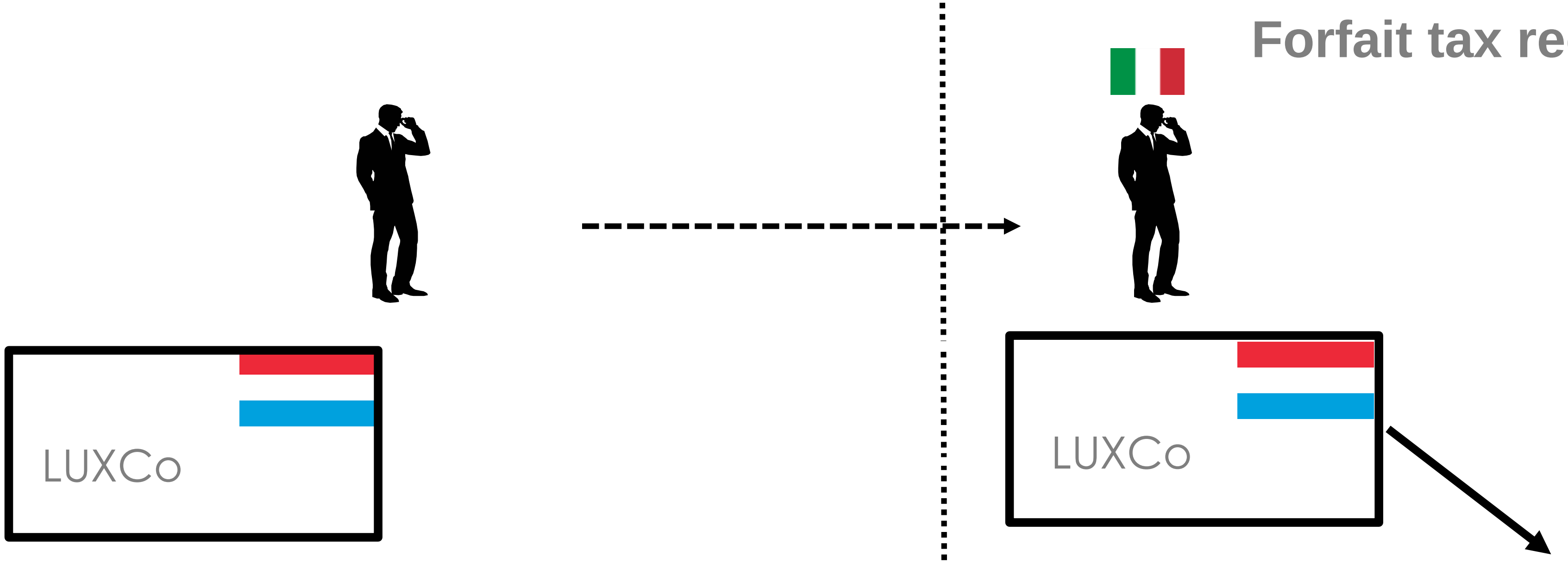
Operating company with 1 director

2019

Non-Italian resident who is the sole shareholder/ manager of a non-Italian company

2020

The individual moves to Italy and takes advantage of the forfait tax regime



The entity maintains its tax residence in Luxembourg

The forfait tax regime
Cross-border issues

Marco Cerrato

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European “res-non-dom” regimes aimed at attracting HNWIs

Country	Cons
UK	Taxation upon remittance Termination in case of acquisition of citizenship No EU rights post-Brexit
CH	Available only in certain Cantons No fixed tax (taxation based on expenses) Expensive (average 300/400k CHF) Mandatory ruling No employment in Switzerland Termination in case of acquisition of citizenship No EU rights
Portugal	Aimed at attracting pensioners (rather than HNWIs) Relatively complicated regime Many conditions to be fulfilled for the foreign income to be exempt Some items of income still subject to ordinary Portuguese taxation
Spain	Aimed at attracting employees (rather than HNWIs) Need of an employment contract in Spain Applicable up to 6 years Worldwide employment income subject to Spanish taxation (24%-45% rates)

DTCs and the forfait tax regime (in general)

- Are DTCs applicable notwithstanding the levy of a fixed charge on foreign income?
- Legal Background
  - DTCs apply to persons who are **"resident"** of the contracting States (Art. 1 OECD Model)
  - **Resident → liable to tax (Art. 4, para 1)**
    - This term does not include any person who is liable to tax in that State in respect only of income from sources in that State

DTCs and the forfait tax regime (in general)

- The Italian tax authorities have expressly taken the position that they **consider** OECD-patterned treaties **on income and capital** applicable **to individuals taking advantage of the regime**
  - The 100.000€ is a substitute tax on foreign income (world-wide taxation principle not derogated)
  - Art. 4(1) of the Model Convention is not intended to exclude (from the scope of the Convention) residents of Countries adopting a territorial taxation

Peculiarities: US-Italy income tax treaty

- Art. 1(2):

"Notwithstanding any provision of this Convention except paragraph 3 of this Article, a Contracting State may tax:

(a) its residents (as determined under Article 4 (Resident); and

(b) ***its citizens*** *by reason of citizenship,*

as if there were no convention *between the Government of the United States of America and the Government of the Italian Republic for the avoidance of double taxation with respect to taxes on income and the prevention of fraud or fiscal evasion".*

Peculiarities: US-Italy inheritance tax treaty

- Art. V:

*"The **Contracting State imposing tax** in the case of a **deceased person, who**, at the time of his death, was domiciled in such State or **was a national thereof**, shall allow against its tax [...] a credit for the amount of the tax imposed by the other Contracting State with respect to property situated in such other Contracting State [...]".*

Common issues

- The US retains the power to **tax US citizens even after their transfer to Italy** (though allowing foreign tax credits)
  - Is the Italian flat 100k substitute tax creditable in the US?
    - As far as the UK res-non-dom regime is concerned, the IRS has taken the position that UK taxes paid by US citizens benefitting from the regime are creditable in the US

→ **The forfait tax regime does not lead to significant tax savings in case of US citizens**

Forfait tax regime could still be an option for: (1/2)

- US citizens and long-term residents willing to **relinquish/end** their **citizenship/residence**
  - Long-term residents are defined as individuals who were lawful permanent residents of the US (green card holders) in at least **8 of the prior 15 taxable years**
  - Issue: **expatriation tax** provisions (mark-to-market regime)

- US residents who are **not US citizens** nor **long-term residents**
  - Income tax benefits and estate/gift taxes opportunities
    - E.g. transfers of non-US situs assets to future generations

Forfait tax regime still a good option for: (2/2)

- US citizens **wishing/required to move to Italy** → Why opting for the forfait tax regime?
  - no Italian reporting obligations & wealth taxes on foreign assets;
  - no Italian inheritance/gift taxes on non-Italian situs assets;
  - no double taxation on specific items of income (otherwise taxed both in Italy and the US irrespective of the income tax treaty - e.g. dividends)

Tavecchio Caldara & Associati

The new tax regime for pensioners
General overview

Andrea Tavecchio

Main features (1/3)

- New regime for individuals moving to Municipalities of southern Italy (having less than 20k inhabitants)
  - Applicable also to Italian citizens
  - Entry into force in 2019

- Conditions:
  - Residence out of Italy for 5 years preceding the transfer;
  - The individual must have foreign-source pension income;
  - An agreement providing for administrative cooperation between Italy and the State of former tax residence must be in force

Main features (2/3)

- Election for a 7% substitute tax on all non Italian-source income
  - No tax credit for taxes paid abroad (except for States excluded – cherry picking)
- No wealth taxes
- No reporting obligations
- Up to 10 years
- Italian sourced income still subject to ordinary domestic taxation

Main features (3/3)

- Capital gains deriving from the disposal of qualified shareholdings are covered by the 7% substitute tax

- No benefits with respect to inheritance and gift taxes on foreign assets, which are due according to the ordinary Italian tax regime

- No extension to family members

ANDREA TAVECCHIO

Andrea Tavecchio is an Italian Chartered Accountant based in Milan where is the Founding Partner of Tavecchio Caldara & Associati, top ranked by Chambers and Partners HNWI.

He specializes in private clients, family business, estate planning and trusts.

He is a Trust and Estate Practitioner (TEP).

He has been appointed to various expert committees reporting to the Ministry for Economic Development (from 2011 up to 2013) and the Prime Minister’s office on economic and fiscal matters (2015-2016).

MARCO CERRATO

Marco Cerrato is an Italian tax lawyer based in Milan where is partner of Maisto e Associati since 2003.
He is specialized in domestic, European and international tax and he is active on transfers of residency, cross border tax issues, taxation of trusts, estate tax planning and tax regularization procedures.
Marco is author of a number of publications that cover several tax areas including taxation of trust, taxation of philanthropic, cultural and charitable transfers, voluntary disclosure and taxation of financial instruments.
He obtained an LL.M. in Tax at the London School of Economics and a PhD in Tax at the University of Pavia. Since 2002 he is professor of tax law at the Law faculty of the University LIUC of Castellanza. He is frequent speaker at congresses.
Marco is one of the six members of the scientific committee of STEP Italy (The Society of Trust and Estate Practitioners) and is consistently ranked among the main Italian tax lawyers by Italian and foreign legal directories (Chambers, International Tax Review, TopLegal, etc.).
In 2015 and 2016 he was member of the Committee of Experts on Tax and Economic Policy of the Italian Prime Minister.

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