CIRCULAR NO. 20/E

Courtesy translation

Rome, 4 November 2024

Subject: Guidelines to offices on residence for tax purposes of natural persons, companies and other entities following to the amendments made by Legislative Decree No. 209 of 27 December 2023

Summary

Introduction

Legislative Decree No. 209 of 27 December 2023 (hereafter, "Decree") has implemented some of the interventions provided for by Law no. 111, of 9 August 2023 ("Enabling Act"), which conferred to the Government the delegation to reform the national tax system, in order to make it more consistent and uniform with the principles provided by the European Union, the OECD and the International Conventions for the avoidance of double taxation signed by Italy.

Among the guidelines provided by the above-mentioned Enabling Act, it is included the reform of the provisions regarding the residence for tax purposes of natural persons, companies and other entities regulated, respectively, by Article 2 and Article 73 of the Italian Tax Consolidated Act, approved by Presidential Decree no. 917 of 22 December 1986 ("TUIR").

Specifically, Article 3, paragraph 1, letter c), of the Enabling Act devolved to the Government the reform of the "*discipline on residence for tax purposes of natural persons, companies and other entities as personal connection criterion to taxation, in order to make it consistent with the best international practices and with the Conventions for the avoidance of double taxations signed by Italy, as well as to coordinate it with the regulation concerning the permanent establishment and special regimes applicable to persons moving their residence to Italy, also considering the possibility of adapting it to the "working from home"*practices.

Along with purposes of harmonisation at international level, the amendments to legislation aim to ensure a greater legal certainty and to reduce litigations.

The introduced amendments have a great relevance, since they affect the establishment of residence for tax purposes in Italy, fundamental ground for the Italian tax law, which is based on the worldwide taxation principle.

Indeed, based on Article 3 of TUIR, Italian residents are taxed in our Country on all their income wherever produced (without prejudice to remedies to resolve double taxation), while non-residents are taxed in Italy only for the income produced in Italy, based on Article 23 of TUIR.

Specifically, for natural persons, Article 1 of the Decree has provided important changes, distinguishing the fiscal and civil law definition of domicile, introducing a new residence criterion consisting in the physical presence in Italy and conferring to the enrolment in the resident population registry the value of rebuttable presumption.

For companies and entities, in order to ensure legal certainty, Article 2 of the Decree has deleted the criterion of the main object and the criterion of place of administration has been developed in the new concepts of "place of effective management" and "place of principal ordinary management".

It is understood that, for natural persons, companies or entities, the establishment of residence for tax purposes requires a verification of factual elements that cannot be ascertained by filing an advance tax ruling. As clarified in the Circular no. 9/E of 1 April 2016, advance tax rulings concerning the assessment of the residence for tax purposes are not admissible.

By this Circular, guidelines are provided to the Offices, in order to guarantee the uniformity of their action, regarding the new rules introduced by the Decree.

Part I. The residence of natural persons

1. The residence for tax purposes of natural persons before the amendments introduced by the Decree

Paragraph 1 of Article 2 of TUIR establishes that, for the purposes of income tax, natural persons, resident and non-resident in the territory of the Italian State, are deemed to be taxable persons, while the following paragraph 2 provides for the definition of residence for tax purposes.

Before the amendments made by the Decree, Article 2, paragraph 2, ofTUIR, in the version applicable until 31 December 2023, considered resident in Italy natural persons who, for most of the tax period (namely, 183 days in a year, or 184 days in case of leap year):

- were enrolled in the resident population registry;

- had their domicile in the territory of the Italian State;
- had their residence in the territory of the Italian State.

The three conditions were alternative, so that also only one of them determined the establishment of the residence of a natural person in Italy.

It must be underlined that, although Article 2 of TUIR regulates the residence for tax purposes, the above-mentioned conditions of residence and domicile were defined by civil law as rendered by the civil code.

Specifically, the above cited provision of TUIR referred to Article 43 of the civil code, which defines the domicile as the place where a natural person has established the main centre of its businesses and interests and the residence as the place of habitual abode.

For a detailed examination of the definition of residence for tax purposes under the former Article 2, paragraph 2, of TUIR, clarifications have been recently rendered in the Circular No. 25/E of 18 August 2023.

The Decree has partially modified the former connecting criteria and introduced the criterion of the physical presence in the territory of the Italian State.

The regulatory development of Article 2, paragraph 2, of TUIR, is represented in the table below (in bold the changes introduced):

Former text	**Text in force**
For income tax purposes, persons who, for most of the tax period, are enrolled in the resident population registries or have their domicile or residence within the meaning of the civil code in the territory of the State are deemed to be resident.	For income tax purposes, persons who, for most of the tax period, **also considering fractions of a day**, **have their residence within the meaning of the civil code or their domicile in the territory of the State or are physically present therein** are deemed to be resident. **For the application of this provision**, **domicile is defined as the place where personal and family relationships of the person mainly develop**. **Unless otherwise proven**, **also persons enrolled for most of the**

	tax period in the resident population registries are presumed to be resident.

2. The new definition of residence for tax purposes of natural persons

2.1 The criteria of residence for tax purposes under the new Article 2, paragraph 2, of TUIR

Article 1 of the Decree has replaced paragraph 2 of Article 2 of TUIR, introducing a new definition of natural persons' residence for income tax purposes.

The new provision states that:

"*For income tax purposes, persons who, for most of the tax period, also considering fractions of a day, have their residence within the meaning of the civil code or their domicile in the territory of the State or are physically present therein are deemed to be resident. For the application of this provision, domicile is defined as the place where personal and family relationships of the person mainly develop. Unless otherwise proven, also persons enrolled for most of the tax period in the resident population registries are presumed to be resident".*

As already stated in Circular No. 25/E of 18 August 2023, the assessment of the conditions to establish residence, different from the formal enrolment in the resident population registry, requires a factual control to be carried out on a case-by-case basis, for a concrete evaluation of the elements which allow to verify the place of domicile or residence as well as, from 1st January 2024, the presence in the territory of the Italian State.

By way of example, natural persons are deemed to be resident in Italy for tax purposes if, for most of the tax period (namely 183 days in a year, or 184 days in case of leap year):

- have their residence, within the meaning of the civil code, in the territory of the Italian State;
- have their domicile, as defined in the same Article 2, paragraph 2 of TUIR, in the territory of the Italian State;

- are physically present in the territory of the Italian State, also considering fractions of a day,
- are enrolled in the resident population registries[1]; this condition, following the amendments made by the Decree, no longer has the character of an ”absolute presumption” but of a “rebuttable presumption” which admits contrary proof (on this point, see paragraph 2.1.4 below).

It is confirmed the approach already adopted in the former provision of TUIR, according to which the residence for tax purposes of natural persons is deemed to be in Italy at the alternative occurrence, for most of the tax period, of one of the four connecting criteria listed into the provision.

The Explanatory Report of the Decree also confirms, in continuity with the former version of Article 2, paragraph 2, of TUIR, that for the purposes of calculating most of the tax period, non-consecutive periods are also considered.

As a consequence, for Italian tax residence purposes, connecting criteria provided for by the provision are not required to be verified continuously and uninterruptedly, being sufficient that these criteria are fulfilled for 183 – or 184 in case of leap year – days during a calendar year.

[1] In January 2022 the Italian municipalities have completed the migration of their registry in the National Registry of the resident Population (ANPR). Furthermore, Article 13, paragraph 1 (a) and paragraph 2, of Presidential Decree No. 223 of 30 May 1989, provides that persons are obliged to declare the transfer of their residence from abroad or abroad within twenty days from the date in which the transfer has taken place. The following paragraph 3 provides that declarations must be signed in presence of the registry officer or transmitted to the competent Municipality. In addition, Article 6 of Law No. 470 of 27 October 1988, paragraphs 1 and 4, provides the obligation for Italian Citizens to declare the transfer of their residence from an Italian Municipality abroad to the consular office of the immigration district within 90 days, specifying the members of the family who have Italian citizenship to whom the declaration refers. The omission of the aforementioned fulfilments, after the amendment made by Article 1, paragraph 242, of Law No. 213 of 30 December 2023 (the 2024 Budget Law) to Article 11 of Law No. 1228 of 24 December 1954, is punished with an administrative sanction from 200 to 1000 Euros for every year in which it persists. Furthermore, please note that the following paragraph 243 of the 2024 Budget Law has inserted in Article 6 of Law No. 470 of 1988 the new paragraphs 9-*ter* and 9-*quater*, which provide, respectively, that public administrations which, in the performance of duties, acquire relevant elements that indicate a *de facto* residence abroad of the Italian citizen, communicate these elements to the Municipality of registry and to the consular office for the measures of competence (paragraph 9-*ter*), and that the Municipality communicate the registrations and the deletions carried out *ex officio* into the Registry of the Italian citizens resident abroad to the Revenue Agency for the fiscal inspections of competence (paragraph 9-*quater*).

For example, in 2024, which is a leap year, if a person, who was not previously resident in Italy, is present in the territory of our State for the following non-consecutive days:

- 11 to 31 January (21 days);
- 5 to 10 February (6 days);
- 1 to 30 April (30 days);
- 12 to 26 May (15 days);
- 1 June to 31 July (61 days);
- 1 to 31 October (31 days);
- 5 to 12 November (8 days);
- 27 November (1 day);
- 2 to 12 December (11 days),

he/she will meet the physical presence in Italy criterion for 184 days and therefore, for the tax period 2024, will be considered resident in Italy for tax purposes.

Furthermore, consider the case of a person already resident in Italy for tax purposes who, in 2024, habitually resides in our State until 29 February, on 1st March moves to another State where habitually resides until 29 August, and then on 30 August comes back to his habitual abode in Italy, where he/she stays until the end of the year.

Such a person, who has been maintaining his/her habitual abode in Italy for 184 days during the year – even if non-consecutive – will be deemed to be resident for tax purposes in Italy for the 2024 tax period.

In this respect, it should be noted that the amendment has not modified the connecting criteria consisting in the configuration of the "*residence within the meaning of the civil code*" in the territory of the State, in relation to which the clarifications already provided by the practice of this Agency (most recently with the above mentioned Circular No. 25/E of 18 August 2023) and by the jurisprudence of the Italian Supreme Court remain valid.

In this regard, the Italian Supreme Court in its Ordinance No. 3841 of 15 February 2021 specified that "*according to the provision of Article 43 of the Civil Code the notion of the residence of a natural person ... is determined by the habitual and voluntary abode in a certain place, characterised by the co-presence of the following two elements: the objective element, consisting in the permanence in that place for an appreciable prolonged period, even if not necessarily prevailing from a quantitative point of view; and the subjective element, represented by the intention to live there permanently, revealed by the habits of life and the maintenance of normal social, family and emotional relations"*.

With regard to the scope of the other residence criteria, the Legislator has made significant changes that it is appropriate to analyse.

It is worth noting that the following clarifications relate only to the Italian law and do not affect the application of any Convention for the avoidance of double taxation (in short, "Double Taxation Convention") concluded by our Country, as better explained in paragraph 3.

2.1.1 The criterion of tax residence based on domicile

The new Article 2, paragraph 2, of TUIR, in re-proposing the criterion of establishing residence based on the domicile in the territory of the State, provides a new and specific definition, according to which "*domicile is defined as the place where personal and family relationships of the person mainly develop*".

The Legislator's choice privileges personal and family relationships over the purely economic ones, also resolving, as of 2024, the uncertainties arisen over the years due to the reference, in the previous Article 2 of the TUIR, to the domicile within the meaning of the civil code.

As clarified in the Decree's Technical Report, "*the insertion in the TUIR of a specific definition of domicile has the scope of reducing the extensive tax litigation created in last years due to the reference contained in the Article 2 of TUIR to the domicile within the meaning of the Civil Code*".

The notion of “personal and family relationships” comprises both the typical relationships regulated by the current law (for example conjugal relationships or civil partnerships) and stable personal relationships expressing an attachment to the Italian territory (as for example, a stable couple living together).

Equally, taxpayer’s stable social relationships can be relevant to the extent to such relationships result from concrete elements as, for example, the annual membership of a cultural and sports club.In the Explanatory Report to the Decree, it is also clarified that with the amendment the Legislator has replaced “(...) *the civil law criterion of domicile with a criterion of a substantive nature, borrowed from international practice and conventions for the avoidance of double taxation, in which domicile is the place where the taxpayer's personal and family relationships are primarily developed* (...)”. Ultimately, based on the mention of the international praxis and the Double Tax Conventions, reference shall be made, for relevant parts, to the OECD Commentary to the Model Convention against double taxation (hereinafter also referred to as the “OECD Model”).

In order to assess the configuration of a person’s domicile in our State, it is therefore necessary to carry out a check that takes account of the above-mentioned circumstances, without neglecting, however, to consider also the conduct by which a person manifests with concrete actions an intention to maintain a close connection with Italian territory.

Consider, for example, the case of a person who enrollsin the Registry of the Italian citizens resident abroad (“AIRE”) and who starts working abroad but keeps, independently on the holding title, a house in Italy at his/her disposal, leaving active the relevant utilities, where he/she continues to return in the weekend and where he/she spends some periods when he/she does not work.

Such circumstances may be symptomatic of the maintenance of close connections with our State and, could give rise to the configuration of the domicile in our Country.

These are, of course, assessments to be carried out on a case-by-case basis, according to factual elements, taking into account the variety of cases that may

concretely occur and the multiplicity of elements that, in different situations, may be taken into consideration.

It should also be considered that the increasing cross-border mobility of natural persons may render the verification of the tax residence more complex, where the same criteria are verified in different States.

Take, for example, the case where, without integrating any further residence requirement under Article 2, paragraph 2, of TUIR, Tizio simultaneously maintains as owner an house in Italy and another house in State Beta. Tizio's children, born from a first marriage, live in the Italian house, while Tizio's new wife lives in the house in State Beta.

Tizio ordinarily works in Italy, frequently travels to various countries on business trips as well as to Beta during weekends and periods of abstention from work. During the year, Tizio stays on average 145 days in Italy, 120 days in State Beta and 100 days in other Countries.

In such a case, it is not immediate to identify the State where the personal and family relationships are concentrated, which could be equivalent in both countries (because Tizio has the children in Italy and the wife in State Beta).

In these circumstances, it is considered that a useful criterion can be found in the period of physical presence in the territory of the State. In the present case, therefore, Tizio would be resident in Italy.

As a consequence of the amendments made by the Decree, from tax year 2024, clarifications rendered with respect to the notion of domicile, in the aforementioned Circular No. 25/E of 2023, paragraph 1.1, are no more applicable; nevertheless, such clarifications remain valid for the previous tax years.

2.1.2 The new residence criterion based on physical presence in Italy

In addition to residence under the civil code, domicile and enrolment in the resident population registry, the Decree has added a new and autonomous criterion for establishing residence based on presence in Italy.

This is an objective criterion, which exclusively requires the physical presence of a person in the territory of the Italian State, regardless of the reasons for such presence and without the need for any of the other criteria set forth in Article 2, paragraph 2, of TUIR to be verified.

The circumstances in which this criterion may be applied are therefore varied.

Consider, for example, the natural person who spends most of the tax period in Italy, even if in a fractioned manner, on holiday, or for study purposes, or to visit friends or relatives.

Furthermore, it could be considered the case of those who come to work - whether as employees, self-employed or businesses - in the territory of our State, while maintaining their residence (also for registry purposes), family and any other emotional and personal ties abroad.

In such cases, as anticipated, for the purposes of establishing tax residence in Italy, it will no longer be necessary for the person to fulfil the requirement of residence under the civil code or domicile or enrolment in the resident population registry: with the amendments made by the Decree, in fact, the mere physical presence in the territory of the State for most of the tax period is considered a sufficient condition.

Having said that, it is noted that, since this is a purely factual circumstance, physical presence can be verified on the basis of elements attesting the material permanence in the territory of the State, even if not continuous, for a precise number of days or fractions of a day.

In the event that physical presence results from multiple factual elements, the taxpayer will be able to demonstrate, basing on documents with equal probatory force,

that he/she has actually spent in Italy periods which,cumulatively, do not make it possible to reach the minimum limit of permanence in our Country for the establishment of residence in Italy.

In this regard, it should be reaffirmed that, in relation to the criterion of physical presence, fractions of a day are also relevant for the purposes of counting permanence in the territory of the State.

The Explanatory Report specifies, in fact, that "*Proof of the absence of the criteria determining residence in the territory of the State may be provided by the taxpayer by demonstrating, respectively, that he/she does not have his/her residence or domicile in Italy and that he/she has not been physically present in the territory of the State. The proof that the residence criteria have not been met must refer to a total number of days exceeding most of the tax period, also* ***considering fractions of a day in the case of physical presence***" (emphasis added).

With regard to the method of calculation, in order to determine whether the prerequisite of most of the tax period is fulfilled, a punctual check must be made.

In particular, for the purposes of the overall calculation of physical presence in the territory of the State, the stay within the national borders for any fraction of a day is taken into account.

By way of example, let us assume the case of a taxpayer – not enrolled in the resident population registry and without residence and domicile in Italy – who arrives in Italy by a plane that lands at 11:00 p.m. on 1st of July 2024 (leap year) and remains uninterruptedly in the territory of the State until 1:00 a.m. on 31st of December 2024.

In the example, the days of 1st of July and 31st of December 2024 are also fully considered, despite the fact that the taxpayer spent only one hour in the State territory on each day. As a result, having met the requirement of physical presence for 184 days, the taxpayer is considered to be resident in Italy for tax purposes for 2024.

It is understood that, in order to exclude residence in Italy, particular situations are taken into account, in which the presence in the territory of the State is merely temporary or occasional, as may be the case, for example, in the event

of an air stopover in the national territory due to a connecting flight to a foreign Country.

2.1.3 Physical presence and working from home

In view of the increasing use of "working from home" practices, it is necessary to examine the effects of the physical presence criterion introduced by Article 1 of the Decree both in the case of workers who perform their activity remotely from Italy and in the case of workers who perform it from abroad.

With respect to the first category, the new condition of the physical presence in Italy for most of the tax period is added to the traditional residence criteria (as modified by the above-mentioned amendments about the domicile).

In this regard, the examples provided in the paragraph 1.2 of the above-mentioned Circular No. 25/E of 2023, must be coordinated with the new criterion of the physical presence.

In the latter Circular, the tax residence in our State of the person working from home was anchored to the configuration in Italy, for most of the tax period, of at least one of the connecting criteria provided for by the former Article 2, paragraph 2, of TUIR (residence and domicile under the civil code, enrolment in the resident population registry). The same approach is consistent with the praxis of this Agency referred to the criteria in force previously than the issuing of the Decree and mentioned above.

According to the new rules, the worker's stay in Italy for 183 (or 184, in case of leap year) days determines, itself, the residence in our Country for tax purposes.

It should be noted that, in the event that the worker from home has established his/her residence for tax purposes in the territory of the State, he/she will have to subject to taxation in Italy all his/her income, wherever produced, and not only income deriving from his/her work activity (see Article 3, paragraph 1, of TUIR). This is without prejudice to the possible application of provisions contained in the Double Taxation Conventions entered into by Italy which provide for a different

allocation of the taxing rights between our Country and the other contracting State with respect to the specific income produced by the taxpayer.

With respect to the second category (i.e. smart workers from abroad), it is understood that natural persons shall be resident in Italy for tax purposes while working remotely from a foreign country, where they are physically present for 183 days a year (184 if a leap year), in case they meet for most of the tax period at least one of the other three connecting criteria identified by the new Article 2, paragraph 2, of TUIR, *i.e*. they maintain their residence under the civil code or domicile in Italy, or are enrolled in the resident population registry (for more details on this last criterion, please refer to the following paragraph).

2.1.4 Reshaping the effectiveness of the presumption of residence based on enrolment in the resident population registry

Enrolment in the resident population registry continues to be one of the alternative criteria for establishing residence for tax purposes in Italy, although its presumptive value is mitigated in favour of a substantive approach.

In fact, under the former provision of Article 2, paragraph 2, of TUIR, the enrolment in the resident population registry determined an irrebuttable presumption (without prejudice to the application of any international agreements) which, taking into account the alternativity of the connecting criteria, could not be rebutted by contesting the absence of habitual abode or domicile in the territory of the State.

Due to the prevalence of international treaty law over domestic law, the formal data of the enrolment in the resident population registry could, however, be overcome by applying the so-called tie-breaker rules dictated by any Double Taxation Convention in force between Italy and the Country concerned (see paragraph 3).

As a result of the amendments introduced by the Decree, the new provision gives this criterion the effectiveness of a rebuttable presumption, allowing the

taxpayer to prove that the results of the registrydo not correspond to a factual situation.

Consequently, persons enrolled in the resident population registry for most of the tax period continue to be considered resident for tax purposes in Italy, unless they are able to prove that their enrolment in the resident population registry does not correspond to an actual residence in Italy.

To the latter end, it is considered that the taxpayer must be able to prove, on the basis of objectively verifiable elements, that, for most of the tax period, none of the alternative criteria – other than the registry criterion – provided for by Article 2, paragraph 2, of TUIR has been met, namely that he/she has had in Italy, for most of the tax period, neither his/her civil residence nor his (her domicile and that he/she has not been physically present in the territory of the State.

2.2 The rebuttable legal presumption of residence in Italy for Italian citizens moving to States or territories with a privileged tax regime

The Decree has not amended paragraph 2-*bis* of Article 2 of TUIR.

Also following the reform, therefore, the rebuttable legal presumption of tax residence in Italy continues to apply to Italian citizens who have been "*cancelled from the registries of the resident population*" and transferred to States or territories with a privileged tax regime, identified in the Decree of the Minister of Finance of 4 May 1999.

The list of countries affected by the presumption has been recently updated by the Decree of the Minister of Economy and Finance of 20 July 2023, which implemented the provisions of Article 12 of Law No. 83 of 13 June 2023, deleting Switzerland from the list with effect from the 1st of January 2024.

Italian citizens who find themselves in the conditions set forth in the aforementioned paragraph 2-*bis* are, therefore, presumed to be resident in Italy for tax purposes, unless they are able to provide proof to the contrary.

With regard to the burden of the proof, it should be recalled that, as clarified by Circular No. 140 of 24 June 1999 "*only the full demonstration, by the taxpayer,*

of the loss of any significant connection with the Italian State and the parallel counter-evidence of a real and lasting location in the Country with a privileged tax regime, regardless of the discharge in the same Country of tax obligations, certify the loss of tax residence in Italy and the consequent legitimacy of the non-resident position".

2.3 Entry into force of the new rules and interaction with the previous regulation

By express provision of Article 7, paragraph 1, of the Decree, the new rules "*shall apply as of the 1st of January 2024*"[2].

Therefore, the new definition introduced in Article 2, paragraph 2, of TUIR, applies to the establishment of Italian tax residence starting from the 2024 tax period.

For tax periods up to and including 2023, the rules set forth in the previous Article 2, paragraph 2, of TUIR remain applicable, including the clarifications provided by the praxis of this Agency.

This implies, for example, that until the 31st of December 2023, for persons who have maintained their enrolment in the resident population registry for most of the tax period, the irrebuttable presumption of residence continues to operate, with the temperaments described above concerning the application of the tie-breaker rules provided for by the international Conventions (on the point, see the following paragraph 3).

Similarly, those who in the past were considered resident having met, for most of the tax period, the criterion of domicile under the civil code, maintain their residence in Italy until the 2023 tax period and must verify, only as from the 1st of January 2024, whether they meet the new criterion of domicile (or other criterion under the current wording of Article 2, paragraph 2, of TUIR).

[2] In this sense, see also the recent judgment of the Supreme Court No. 19843 of 18 July 2024.

2.4 Tax regimes for natural persons transferring their residence to Italy for tax purposes. The requirement of not having been resident in Italy in previous tax periods

Italian tax system provides for specific tax regimes for natural persons who transfer their residence to Italy for tax purposes.

For example:

- the regime set forth in Article 24-*bis* of TUIR, which regulates the "*Option for the substitute tax on income earned abroad by natural persons who transfer their residence to Italy for tax purposes*";
- the scheme set forth in Article 24-*ter* of TUIR, which governs the "*Option for substitute tax on income earned abroad by natural persons who transfer their residence to the Mezzogiorno Area for tax purposes*"; and
- the scheme referred to in Article 5 of the Decree, which provides for the "*New preferential regime in favour of "impatriati workers*".

These regimes, although differing in discipline and potential beneficiaries, have in common the requirement that the relevant recipients must not have previously been resident in Italy for tax purposes for a certain number of tax periods.

In this respect, it should be noted that, as clarified in paragraph 2.3 above, the new rules on the residence of natural persons introduced by the Decree will apply starting from the 2024 tax period.

Accordingly, the requirement of non-residence for tax purposes in Italy, which is a prerequisite for access to the three regimes mentioned above, has to be assessed in light of the new Article 2, paragraph 2, of TUIR, only for the 2024 and subsequent tax periods.

For the tax periods up to and including 2023, reference must instead be made to the criteria for establishing residence under the former Article 2, paragraph 2, of TUIR, including the presumption of enrolment in the resident population registry, which was valid for establishing residence in Italy for tax purposes.

This criterion, having the character of an irrebuttable presumption for the purposes of the regimes referred to in Articles 24-*bis* and 24-*ter* of TUIR, is, however, tempered with respect to the "new *impatriati*" regime referred to in Article 5 of the Decree, by the provision contained in paragraph 6 of the same provision. Indeed, according to the cited paragraph 6, the taxpayer who intends to benefit of the regime may demonstrate that he/she was not tax resident in Italy during the monitored periods by proving that he/she was "(...) *resident in another State within the meaning of a Double Taxation Convention*".

For Italian citizens who returned to Italy as of 2020, a similar provision is established in paragraph 5-*ter* of Article 16 of Legislative Decree No. 147 of 14 September 2015, which governs the special regime for *impatriati* workers. According to paragraph 9, second sentence, of Article 5 of the Decree, this regime *"(...) continues [...] to apply with respect to natural persons who have transferred their registered residence to Italy by 31 December 2023 (...).*"

These natural persons are also eligible for the special regime of *impatriati* workers, provided that they were residents of another Country under a Double Taxation Convention for the periods required by the aforementioned Article 16.

3. Interaction with Double Taxation Conventions

The new domestic legislation must be aligned with the residence provisions contained in the Double Taxation Conventions that Italy signed with foreign Countries. The supremacy of treaty law over domestic law is well-established and explicitly acknowledged in the tax sector by Article 169 of TUIR and Article 75 of Presidential Decree No. 600 of 29 September 1973.

These latter rules provide, respectively, that the domestic law is applied in derogation from international agreements only where more favorable to the taxpayer and that the international agreements prevail over internal law.

Moreover, the supremacy of international law on national legislation has been affirmed by the Italian case law (see the judgments of the Court of Cassation

19 January 2009, n. 1138 and 15 July 2016, n. 14476 and the Constitutional Court's judgments of 26 November 2009, n. 311, and 24 October 2007 n. 348 and n. 349).

As concerns natural persons, reference should be made particularly to Article 4 of the OECD Model, which is largely mirrored in the treaties Italy has signed.

Paragraph 1 of Article 4 defines the tax residence for treaty purposes by referring to the definition adopted in domestic laws of the contracting States.

In cases where domestic laws of the contracting States conflict – each treating the natural person as a tax resident – the subsequent paragraph 2 applies, resolving the issue through specific "tie-breaker rules" which give the attachment to one State a preference over the attachment to the other State.

The tie-breaker rules prioritize factors such as permanent home, followed hierarchically by the centre of vital interests, habitual abode and the taxpayer's nationality.

In particular, according to the conventional rules, the criterion of permanent home prevails and is followed, in respect of an hierarchically ordered sequence, by the centre of vital interests, the habitual abode and the nationality of the taxpayer.

The new provisions introduced by the Decree may create new cases of conflict of residence that may need to be resolved through the mentioned tie-breaker rules.

One example involves employees living in a State bordering Italy, who cross the border daily to work in Italy.

Based on the new criterion of physical presence, which counts fractions of a day, such natural persons could be deemed residents for tax purposes in Italy if they are present in the Country on most days of the year (even if only for fractions of days). Under Article 2, paragraph 2, of TUIR, this presence could establish their tax residence in Italy.

In such cases, it is important to clarify that if these workers also qualify as tax residents in their home country under its domestic laws, the conflict of

residence may be resolved by applying the tie-breaker rules in the Double Taxation Convention with Italy.

This applies even when the treaty does not explicitly regulate the taxation of so-called frontier workers, as, for example, in the case of the treaty between Italy and Slovenia.

In fact, if a person who is a tax resident in Slovenia is considered resident also in Italy due to a daily work here, the conflict of residence can be resolved by applying the tie-breaker rules set forth in Article 4 of the Double Taxation Convention between Italy and Slovenia, signed in Ljubljana on 11 September 2001.

Tie-breaker rules can also resolve conflicts of residence arising from the legal rebuttable presumption according to which natural persons listed in the resident population registry, for most of the tax year, are Italian residents. This holds true when such natural persons are simultaneously considered tax residents under the domestic laws of Italy, due to the enrolment in the resident population registry, and of a State with which our Country has a Double Taxation Treaty.

The precedence of treaty rules over the formal enrolment in the resident population registry was already recognized under the previous formulation of Article 2, paragraph 2, of TUIR, despite the fact that registry enrolment was considered as an irrebuttable presumption of residence.

This principle has been confirmed in advanced tax rulings No. 50/2023, No. 73/2023, and No. 79/2023, which, like the jurisprudence of the Supreme Court, emphasize the primacy of substantive criteria under Double Taxation Conventions over formalistic requirements (see Supreme Court judgements No. 26638 of 10 November 2017, and No. 20285 of 23 May 2013).

It should also be noted that the Treaties that Italy has in force with Germany, Switzerland and Panama provide for a splitting of the tax period for the purposes of attribution of residence (so-called “split year clause”).

The cited Conventions, in line with the recommendations made in paragraph 10 of the Commentary on Article 4 of the OECD Model, contain a provision which

explicitly establishes the splitting of the tax year, in order to solve conflicts of residence, in case of a transfer of domicile from one State to another during the year.

More particularly, in accordance with the provisions of the mentioned Treaties, the natural person who has permanently transferred his/her domicile from one contracting State to another ceases to be a tax resident in the first contracting State since the day following that of the transfer.

It is recalled, finally, that the Commentary to the OECD Model includes the splitting of the tax period for the purposes of article 4, paragraph 2, of the Model Convention as a further case of "tie breaker rule", i.e. as a rule to settle conflicts of dual residence (cf. Resolution 3 December 2008, n. 471/E).

Part II. The residence of companies and entities

1. The residence for tax purposes of companies and entities under previous legislation

Article 73, paragraph 3, of TUIR, before the amendments introduced by the Decree, considered companies and entities as tax residents in Italy if, for most of the tax period, they located either their registered office, place of administration, or main business activity within the Country.

These were three alternative criteria, meaning that the presence of just one was sufficient to establish the tax residence of the company or entity in Italy.

The regulatory evolution of Article 73, paragraph 3, of TUIR is summarized in the following table (in bold the amendments to the law):

Former text	**Text in force**
For income tax purposes, companies and entities that, for most of the tax period, have their registered office, place of	For income tax purposes, companies and entities that, for most of the tax period, have their registered office, **place of effective**

administration, or principal business activity in the territory of the State are deemed to be resident. Collective investment undertakings established in Italy are also deemed to be residents, as are trusts and similar institutions established in jurisdictions other than those specified by the Decree of the Minister of Economy and Finance issued under Article 168-*bis*, provided that at least one settlor and one beneficiary are tax residents in Italy, unless proven otherwise. Trusts established in a jurisdiction other than those specified by the Decree of the Minister of Economy and Finance issued under Article 168-*bis* are also deemed to be residents in Italy if, after their establishment, an Italian resident makes a contribution to the trust that results in the transfer of ownership of real estate, the establishment or transfer of real property rights (including shares), or imposes destination constraints on these assets.	**management, or principal ordinary management in the territory of the State are deemed to be resident. The "place of effective management" refers to the ongoing and coordinated decision-making process regarding the overall strategic direction of the company or entity. "Ordinary management" refers to the continuous and coordinated execution of day-to-day management activities concerning the entire company or entity.** **Collective investment undertakings are deemed to be residents if they are established in Italy.** Trusts and **similar institutions established in jurisdictions not listed in the Decree of the Minister of Economy and Finance issued pursuant to Article 11, paragraph 4 (c), of Legislative Decree No. 239 of 1 April 1996**, are **also deemed to be residents in Italy, provided that at least one settlor and one beneficiary are tax residents in Italy, unless proven otherwise.** **Trusts established in jurisdictions not listed in the Decree of the Minister of Economy and Finance**

	issued pursuant to Article 11, paragraph 4 (c), of Legislative Decree No. 239 of 1 April 1996, are further deemed to be residents, unless proven otherwise, if, after their establishment, an Italian resident makes a contribution to the trust that results in the transfer of ownership of real estate, the establishment or transfer of real property rights (including shares), or imposes destination constraints on these assets.

2. The new definition of residence for tax purposes of companies and entities

Article 2 of the Decree revises the definition of residence for companies and entities for income tax purposes by amending Article 73, paragraph 3 and Article 5, paragraph 3, letter d), of TUIR.

For limited companies and entities other than companies, the new Article 73, paragraph 3, of TUIR states: "*For income tax purposes, companies and entities that, for most of the tax period, have their registered office, place of effective management, or principal ordinary management in the territory of the State are deemed to be resident*".

The same changes apply to partnerships and similar entities. According to Article 5, paragraph 3, letter d) of TUIR, as amended by Article 2, paragraph 2 of the Decree, "*partnerships and associations that, for most of the tax period, have their registered office, place of effective management, or principal ordinary management in the territory of the State are deemed to be resident*".

This amendment removes references to *(i)* the place of administration, now defined as the place of effective management and principal ordinary management, consistently with international standards (as it will be clarified further), and *(ii)* the main object, which has historically been a source of disputes and ambiguity, as noted in the Explanatory Report to the Decree.

The concept of "*exclusive or main object*" remains relevant for distinguishing between commercial entities, as outlined in letter b) of Article 73, paragraph 1 of TUIR, and non-commercial entities, as outlined in letter c), and is thus retained in paragraphs 4 and 5 of the same Article 73.

The formal criterion of having a registered office in Italy remains unchanged, consistent with the previous legislation.

Similarly, the rule that the fulfillment of any one of the three criteria is sufficient to establish residence in Italy remains unchanged, as does the requirement that residence must be maintained for most of the tax period.

Regarding collective investment undertakings, the connection criterion remains the same as in the previous legislation, where tax residence is determined by the location of establishment.

No significant changes have been made to the rules governing the residence of trusts and similar institutions. The criteria for determining their residence remain the same as under the previous legislation.

Specifically, trusts and similar institutions, established in States that do not allow an adequate exchange of information, continue to be considered as tax residents in Italy, where at least one of the settlors and one of the beneficiaries are residents in the territory of the State.

The legal reference to the list of States with which information is exchanged is updated by reference to Article 11, paragraph 4, letter c) of the Legislative Decree No. 239 of 1 April 1996, implemented by Decree of the Ministry of Finance of 4 September 1996.

The determination of the residence of trusts is also subject to an amendment as regards the burden of the proof.

According to the new Article 73, paragraph 3, of TUIR "*Trusts established in jurisdictions not listed in the Decree of the Minister of Economy and Finance issued pursuant to Article 11, paragraph 4 (c), of Legislative Decree No. 239 of 1 April 1996, are further deemed to be residents,* ***unless proven otherwise****, if, after their establishment, an Italian resident makes a contribution to the trust that results in the transfer of ownership of real estate, the establishment or transfer of real property rights (including shares), or imposes destination constraints on these assets*" (emphasis added).

In the new wording of the provision, the presumption that the trust is resident in the Italian territory is, therefore, changed from irrebuttable to rebuttable, allowing the taxpayer to provide evidence of another tax residence of the trust.

Article 73, paragraph 5-*bis*, of TUIR, concerning the presumption of residence in Italy of companies and entities controlled or administered by persons residing in the territory of the State, has been amended only in order to coordinate the provision with the introduction of the new criteria of the place of effective management and principal ordinary management.

2.1 The place of effective management

The Decree identifies the notion of place of effective management as one of the criteria for establishing the connection with Italian territory.

The Explanatory Report clarifies that the criterion of the place of effective management, read together with that of the place of principal ordinary management (on which reference is made to the following paragraph) "*also marks the repealing of the reference to the place of administration, which has caused significant difficulties in interpretation and application*".

Article 2 of the Decree, indeed, amending paragraph 3 of Article 73 of TUIR, specifies that: "*The "place of effective management" refers to the ongoing and coordinated decision-making process regarding the overall strategic direction of the company or entity*".

In this respect, the Explanatory Report clarifies that "*For the purposes of effective management, nor decisions taken by the partners, other than those with management content, as nor supervisory and monitoring activities by partners are relevant*".

Therefore, the decisions taken by the partners do not affect the determination of the place of effective management location, except for those with a managerial content.

The reform operated by the Decree aims to define a criterion of substantial connection between the entity and the State of residence.

The principle of prevalence of substance over form permits, on one hand, to avoid making the connection criterion meaningless and, on the other hand, in a perspective of alignment with the legislations of the other States, to prevent possible conflicts of residence, as a result of the mismatch between the criteria adopted by the domestic laws to establish residence in the respective national territory.

The Explanatory Report clarifies that the criterion under consideration, like that of the place of principal ordinary management (on which, see the following paragraph), expresses "*the rationale of the new legislation, highlighting the importance of factual aspects in relation to personal connection with income taxation and implementing an approach that extends it and strengthens legal certainty*".

The Explanatory Report also notes that the *"place of effective management" is still maintained as a residence criterion in the Conventions signed by Italy*", which are currently consistent with the OECD Model, as adopted until 2014.

Besides, as regards the material determination of the place of effective management, due to the technological development, it is possible that the place where the business is carried out and the place where strategic decisions are taken do not coincide.

In this regard, since there are no consolidated practices at international level, a case-by-case analysis of the concrete cases that may be realised is needed.

2.2 The place of principal ordinary management

The second criterion of new introduction refers to the location of principal ordinary management. This criterion has an autonomous relevance and is alternative to the criterion of the place of effective management.According to the Explanatory Report to the Decree, in fact, the place of the principal ordinary management represents an effective connection of the company or the entity with the territory. The intention is, therefore, once again to ensure greater legal certainty.

According to Article 2 of the Decree, which amended paragraph 3 of Article 73 of TUIR, the principal ordinary management is intended as "*the continuous and coordinated execution of day-to-day management activities concerning the entire company or entity*".

This legislative choice is also consistent with the clarifications provided by paragraph 24.1 of the Commentary on Article 4 of the OECD Model, according to which the place where the day-to-day management of the business takes place is mentioned as a criterion to solve the conflict of residence in favour of a contracting State.

This criterion shall be, therefore, associated with the place where the normal functioning of the company and the activities relating to its ordinary administration take place.

On this point, it is worth noting that the factors determining the ordinary management can vary depending on the business structure, the distinctive activity and the organization of the company or entity. It is, therefore, not possible to elaborate in abstract an exhaustive list of activities which are expression of the ordinary management.

The law specifies that management shall concern the undertaking as a whole, in order to distinguish the legal person's country of residence from the place where the permanent establishment is located.

Article 2 of the Decree, in fact, introduced the clarification that the ordinary management shall be “principal”, in order to distinguish it, as clarified in the Explanatory Report, from the permanent establishment.

The specification of the characteristics of the management to determine the tax residence in Italy does not preclude the possibility that the company has establishments located abroad, as long as the ordinary management activity is carried out mainly in Italian territory.

2.3 Entry into force of the new rules and interaction with the previous regulation

The new rules are effective from the tax period following that in force on the 29th of December 2023 (see Article 7, paragraph 2, and 63 of the Decree). Therefore, the new law applies from the 1st of January 2024 for companies and entities whose financial year coincides with the calendar year.

For companies or entities with a financial year not corresponding to the calendar year, the new determination of residence is effective from the year following the current financial year on the 29th of December 2023, while the previous discipline continues to operate in the current tax year until the end of the financial year.

Suppose, for example, that a company has set in its statute a financial year that starts on the 1st of April 2023 and ends on the 31st of March 2024. The new determination of the tax residence of this company applies from the 1st of April 2024, with the beginning of the new financial year.

3. Interaction with Double Taxation Conventions

The reform aims to achieve greater consistency with the international system, through the definition of rules more closely aligned with the economic substance. However, double residence may occur (resulting in double taxation), where the foreign State adopts different criteria for the establishment of residence in its own territory.

In such cases, as mentioned above, the Conventions concluded by Italy contain a conflict resolution rule, that allocates the tax residence in the contracting State in which the place of effective management is set.

However, it should be noted that in certain international treaties concluded by Italy (see the Conventions in force with Canada and Chile), a version coherent with the current paragraph 3 of Article 4 of the OECD Model has been adopted. These Conventions provide that where, under national law, a person other than a natural person is resident in both contracting States, the competent authorities of the contracting States shall do their best to solve the conflict by mutual agreement, with regard, in particular, to the place of its effective management, the place where it has been established or otherwise created and any other relevant elements. In the absence of such an agreement, that person shall not be entitled to claim any tax relief or exemption under the Convention.

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The Regional Directorates will ensure full compliance by the Provincial Directorates and subordinate Offices with the principles set out and the guidelines provided with this circular letter.

IL DIRETTORE DELL'AGENZIA

Ernesto Maria Ruffini

digitally signed