



La dolce visa

ANDREA TAVECCHIO AND RICCARDO BARONE EXPLAIN THE NEW ITALIAN VISA FOR INVESTORS AND THE SPECIAL TAX REGIME FOR NEW RESIDENTS

ON 7 DECEMBER 2016, the Italian Parliament approved the *2017 Budget Law*, which entered into force on 1 January 2017. Article 1, paragraph 148 introduced a special two-year 'visa for investors' regime, which aims to attract foreign investors and high-net-worth individuals to Italy.

SIMILAR SCHEMES

Before the regime's introduction, there was no similar scheme, as there is in jurisdictions such as Canada, Germany, the UK and the US. However, it was, and is, possible to obtain a residency permit either by purchasing property or by investment. More specifically, before the *2017 Budget Law*, two types of visa had been available to investors – the elective residence visa and the self-employment visa.

Any foreign individual with sufficient wealth to stay in Italy without the need to work can apply for the elective residence visa. In contrast, the self-employment visa's most important requirement is a certificate from the local Italian Chamber of Commerce.

The newly introduced investor visa is for foreign investors who intend to:

- invest at least EUR2 million in bonds issued by the Italian government, and maintain that investment for at least two years; or
- invest at least EUR1 million in an Italian company, or EUR500,000 in an 'innovative start-up' Italian company, registered in the special section of the Italian Chamber of Commerce, and to maintain that investment for at least two years; or
- make a philanthropic donation of at least EUR1 million in support of an Italian project of public interest in the field of culture, education, immigration or scientific research.

To request and obtain the investment visa, foreign investors will have to:

➡ KEY POINTS

WHAT IS THE ISSUE?

International tax competition is increasing rapidly. The Italian visa for investors and the special tax regime for new residents, among other schemes, aim to attract people and investments to Italy.

WHAT DOES IT MEAN FOR ME?

These regimes represent a big change from the past. Italy is now thinking with an international perspective, aligning itself to the global consolidated schemes.

WHAT CAN I TAKE AWAY?

A better understanding of the Italian rules from an international perspective, a key tool for family offices and advisors involved in international high-net-worth individuals' tax planning.

- demonstrate their beneficial ownership of the above sums, which must be readily available and transferable to Italy;
- submit a written statement whereby they commit to make such an investment or donation within three months of entering Italy; and
- demonstrate they will continue to have additional income of an amount higher than the minimum level for an exemption from healthcare contributions, equal to EUR8,500.

The exact application procedure for the investor visa is yet to be determined. The Italian Ministry of Economic Development, Ministry of Internal Affairs, and Ministry of Foreign Affairs and International Cooperation will issue a joint decree setting out the procedure and appointing the authority responsible for processing the application and issuing the clearance to authorise the consulate to release the visa. However, it is likely that the individual will be expected to submit the required documentation

through an as-yet-undetermined web platform.

The appointed authority will operate in connection with the Financial Intelligence Unit to ascertain the lawful source of funds.

PROOF OF FUNDS

Furthermore, to allow the designated authority to ascertain that the requirements to obtain the visa have been met, foreign investors will have to:

- present a copy of their passport or travel document with an expiry date that exceeds the required visa by a minimum of three months;
- prove they possess the amount to be invested or donated;
- give a self-certification of the legitimacy of the source of funds; and
- provide a clear and detailed description of the investment and its intended beneficiary.

If approved, the designated authority will send clearance to the relevant diplomatic or consular representative, who will issue the investor visa.

The investor visa will grant the right to a two-year residence permit, which can be extended for an additional three-year period. As per the current law, after legally staying in Italy for five years, and provided the eligibility requirements are met, a foreign national can apply for permanent residency. Family members will also be allowed to join the foreign investor in Italy and receive a stay permit for family reasons.

The visa is revocable if a donation is not made within three months of the date of entering Italy, or if an investment is disposed of before the two-year expiry date of the visa.

Finally, it should be noted that specific criminal penalties are to be applied in the case of providing false documents or untrue certification regarding the lawful source of funds.





'New residents can opt out with regards to income and gains realised in one or more foreign countries'

SPECIAL TAX REGIME FOR ITALIAN 'NEW RESIDENTS'

The *2017 Budget Law* also introduced an optional special tax regime for natural persons who transfer their tax residence to Italy.¹

EFFECTS OF THE REGIME

Starting from the 2017 fiscal year, the opt-in regime provides for a lump-sum substitutive tax of EUR100,000 per year on non-Italian sourced income as an alternative to ordinary taxation. The regime can be extended to family members by paying an additional EUR25,000 per year, per relative. Furthermore, the remittance of foreign assets is not subject to additional taxation.

On the contrary, all Italian-source income and gains are subject to ordinary taxation, as well as capital gains on foreign substantial participations earned in the first five years; this is to be considered as an anti-abuse rule.²

New residents can opt out of this special regime with regards to income and gains realised in one or more foreign countries. Any income generated in the countries excluded from the regime will be subject to ordinary income tax and, in this case, benefit from tax relief on taxes paid abroad, and from relevant tax-treaty provisions.

In addition, election for the regime grants exemption from the following:

- **reporting obligations in relation to foreign assets (section RW of the Italian tax return);**
- **the payment of wealth taxes on real-estate properties and financial assets held abroad (respectively, IVIE³ and IVAFE⁴); and**

- **inheritance and gift tax on rights and assets held abroad.**

The regime can be renewed annually, up to a maximum of 15 years.

WHO CAN APPLY?

The special regime is reserved for individuals who:

- **transfer their residence to Italy; and**
- **have had 'tax non-resident' status in Italy for at least nine fiscal years out of the ten preceding years.**

The regime is also available from 2017 to those who transferred their tax residence to Italy in 2016.

PROCEDURE AND TIME FRAME

The regime must be opted for in the personal income tax return related to either the tax period in which the individual transferred their residence to Italy, or the following tax year.

A 'new resident' individual can file a ruling request before the acquisition of Italian tax residence in order to obtain prior approval for the application of the regime from the Italian tax authority. The tax authority has published a checklist (to be attached to the ruling request) to identify factual circumstances that may indicate the absence of tax residence in Italy in nine of the ten years preceding the selection of the regime.

The election into the regime is automatically renewed each year, unless an early withdrawal or reason for loss of entitlement occurs.



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DOUBLE-TAX TREATIES RELIEF

If the regime is opted into, one feature to take into account is the applicability of double-tax treaties with respect to:

- **income and capital, and**
- **inheritance and gifts.**

The applicability of double-tax treaties should be verified on a case-by-case basis. Generally, for the purpose of the OECD's *Model Tax Convention on Income and on Capital*, the term 'resident of a contracting state' means any person who, under the law of that state, is liable to taxation therein by reason of their domicile, residence, place of management or any other similar criterion.

Given that the 'new resident' is subject to tax on both foreign and Italian income, the individual should be considered 'resident' under the Convention's provisions. Nevertheless, some treaties contain a specific 'subject to tax' condition that must be met for someone to be considered a 'resident of a contracting state'.

For example, the double-tax treaty between Switzerland and Italy establishes that an individual will be deemed not to be resident in either country if they are not subject under the tax law of one state to the taxes generally levied on all the income from the other contracting state.

¹ Article 24-bis of the Italian *Income Tax Code*

² This provision has been introduced to avoid people opting for the regime only to realise capital gains on substantial shareholdings

³ Tax on immovable properties held abroad

⁴ Tax on financial products held abroad