

Residency of Individuals and Entities Under Italian Tax Law

1.	Foreword	2
2.	Legal Entities' Residence	2
2.1	Companies	2
2.2	Other Entities	4
3.	Individuals' Residence	4
3.1	Main Criteria to Establish Residence	4
3.2	The Residence Presumption	6
4.	Glossary	7

1. Foreword

Italian tax law provides for sets of rules aimed at establishing the criteria to consider individuals or legal entities as tax resident in Italy. Both sets of rules contain several criteria which frequently make reference to civil law concepts.

In addition, Italian tax laws provide for rules aimed at tackling cases where both individuals and legal entities have fictitiously established their tax residency abroad.

Establishing whether a person should be considered tax resident in Italy or not is of the utmost importance as the tax treatment in Italy will change drastically based on the result of the analysis. Indeed, where a person is considered to be tax resident in Italy it will be subject to tax therein with respect to all its income wherever earned or derived from (so called, **worldwide taxation principle**). From this status, it will also follow that such person will be considered to be entitled to the benefits of all the double tax treaties concluded between Italy and other Countries as well as the right for such person – where certain conditions are met – to be granted a credit for taxes paid abroad.

On the contrary, where a person is not considered to be tax resident in Italy, such person will be subject to tax therein only with respect to income that are deemed to be sourced from the Italian territory (pursuant to the sourcing rule contained in Art. 23 of the Italian TUIR).

Finally, the criteria to establish the residence of both individuals and legal entities are connected to a temporal threshold. In other words, the relevant criteria must be met for most of the relevant fiscal year for a person to be considered resident in Italy and no split-year mechanism applies.

2. Legal Entities' Residence

The rules for establishing the Italian tax residence of legal entities are contained in Art. 73 of the Italian **TUIR**. Such provision contains criteria which applies to companies as well as other kind of legal entities (e.g. funds, trusts etc.) as well as some rebuttable legal presumptions that deem foreign established entities to be tax resident in Italy where certain circumstances occur.

2.1 Companies

Main Criteria

Under art. 73(3) a company is considered to be tax resident in Italy where one of the following conditions is met:

- the company's legal seat is located in Italy;
- the place of effective management of the company is located in Italy;
- the main object of the company's activity is located in Italy.

While the legal seat criteria is easy to be verified and it is more of a formal requirement (as the legal seat is reported in the article of association of the company and it is an information easily available), the other two requirements are substantive requirements which require both a juridical and fact based analysis.

With particular reference to the place of effective management, there is still a theoretical debate on whether such place should be identified where the most important and leading decisions for the activity of the relevant company are taken (usually, the place where the board of directors takes the most high-level decisions) or where such decisions are actually executed by the senior management. However, the majority of the scholars and case laws identify the place of effective management where the most high-level decision are taken.

Also the criteria related to the main object of the company's activity raises certain interpretative issues. Indeed, even though such place should be the one where the activities of the company are actually carried out, particular issues may arise when the relevant company carries out different activities in different Countries. Finally, throughout time and with respect to companies merely and passively holding assets, the Italian Tax Authorities have maintained that the place where the activity is mainly carried out should correspond to the one where the assets of the company are located.



Time Threshold

As already briefly highlighted, for a company to be considered to be resident in Italy for tax purposes, the relevant connecting criteria must be verified for the greater part of the relevant fiscal year (where the fiscal year of a company corresponds to the calendar year, such company must fulfil one of the connecting criteria for more than 183 days of the year).

Under Italian law, no split-year rule applies; as a consequence, a person is considered to be resident for the entire year or it is not considered to be resident at all. This could lead to double taxation events (where a company transfers its residence to Italy during the first part of a given fiscal year and the Country of departure applies the split-year) or double non-taxation (where a company moves to Italy in the second part of the fiscal year and the Country of departure does apply the split-year).

Rebuttable Presumptions of Residence

When certain requirements are met, Italian tax law presumes companies which are located and resident abroad to be resident in Italy.

In particular, a foreign located company is presumed to be resident in Italy where it controls an Italian company and, alternatively:

- it's - in its turn – controlled, directly or indirectly, by an Italian person;
- it has a board of directors mainly composed by Italian persons.

According to the Italian Tax Authorities (Circular Letter no. 28 of 4.8.2006), the first mentioned presumption (*i.e.* the one applying where a foreign company controls an Italian company and it is, in its turn, controlled by an Italian person), due to the circumstance that the control by an Italian person over the foreign entity may also occur indirectly, it may also be applied in the presence of chains of foreign companies. For instance, where a foreign company (sub-holding) controls an Italian company and it's entirely controlled by another for entities (top holding) which is ultimately controlled by an Italian individual, the first foreign sub-holding will be deemed to be Italian resident (as it controls an Italian company and it is indirectly controlled by an Italian individual). As consequence of the application of the presumption, also the top holding will fall within the scope of presumption, as it is controlled by an Italian individual and now controls a (presumed) Italian resident company (sub-holding).

The control requirement provided for by the presumption just analyzed needs be met at the end of the relevant fiscal year. On the contrary, the presumption based on the circumstance that the board of directors is mainly composed by Italian resident persons needs to be verified throughout the relevant fiscal year. Only if such requirement is met for most of such fiscal year the second presumption may actually apply.

As already highlighted, both these presumptions qualify as rebuttable presumptions and they can be overruled by the taxpayer. Over the years, the Italian Tax Authorities have issued guidance (see Internal note prot. 2010/39678 of 19.3.2010 and Internal note prot. 2010/157346 of 20.12.2010) on how the taxpayers may overrule such presumptions and prove that the foreign company is actually managed/resident abroad (e.g. proofs that board's meetings have been held abroad and that the directors have taken their main decisions therein, proofs that the company actually has an autonomous organization abroad in terms of administrative, financial and accounting activities, etc.).

Finally, Art. 73(5-*quarter*) provides for another rebuttable presumption according to which companies:

- whose assets are mainly quotas of real estate funds; and
- are directly or indirectly (or even through interposed persons or fiduciary companies) controlled by Italian persons;
- are considered to be tax resident in Italy. In this case, the main tie with the Italian territory is given by the assets the foreign entity has invested in.



2.2 Other Entities

Art. 73 of the TUIR also sets forth the rules to establish the residence of legal entities other than companies. In particular, investment funds are considered to be resident in Italy if they are legally established therein. Where a fund is considered to be tax resident in Italy, it still benefits from a subjective exemption from income taxation and its income are usually not subject to any domestic withholding (limited exceptions apply to this rule). The Italian Tax Authorities have upheld that the circumstance that such funds are considered liable to tax – even if no taxation actually occurs – makes them eligible to benefit from the Italian tax treaty network (Circular letter no. 11 of 19.7.2012).

A peculiar discipline is also provided for by trusts. This kind of entities are, in principle, subject to the same three criteria to establish the tax residence of companies (see § 2.1 above). However, the Italian Tax Authorities (Circular letter n. 48 of 6.8.2007) have claimed that, given the features of trusts, the main criteria that can be applied to establish their residence are:

- the place of effective management. Such criteria may be used where trusts carry out an activity with an autonomous organization. In cases where no relevant organization is found to exist, sometimes the relevant trust has to be considered tax resident in the Country of residence of the trustee (see [Circular letter](#) no. 34 of 20.10.2022);
- the place where the main activity is located, where – for instance – the trust mainly passively holds assets. In these cases, where the assets of the trusts are immovable properties, then they must be considered resident where such assets are mainly located. Where the trust holds movable properties, then reference must be made to the place where the activity of the trust is actually carried out (see Circular letter no. 34 of 20.10.2022).

Finally, Art. 73(3) of the TUIR also contains some presumptions related to the residence of trusts. Such kind on entities are presumed to be tax resident in Italy where they are located in a black-listed Country and, alternatively:

- at least one of the settlors and one of the beneficiaries are tax resident in Italy;
- after they are established, a person considered to be tax resident in Italy contributes immovable properties (or other rights on immovable properties) in such trusts.

Criteria to establish residence of legal entities

LEGAL ENTITY	CRITERIA
Companies	Legal seat / Place of effective management / Main business activity
Trusts	Place of effective management/Main business activity
Funds	Place of establishment

3. Individuals' Residence

The rules to establish the Italian residence for individuals are set forth by Art. 2 of the TUIR. In particular, such article provides for three alternative main criteria. As already highlighted with respect to legal entities, one of the criteria is of a formal nature while the other two are of a substantive nature. Art. 2 also provides for a rebuttable presumption pursuant to which an individual who transferred his tax residence to a black-listed jurisdiction, by de-registering from the Italian registry of the resident population, is still presumed to be tax resident in Italy.

3.1 Main Criteria to Establish Residence

Article 2(2) of the TUIR provides that an individual has to be considered tax resident in Italy where one of the three following alternative criteria is met;

- the relevant individual is enrolled with the Italian registry of the resident population (so called "[anagrafe](#)");



- the relevant individual has his domicile in Italy;
- the relevant individual has his residence in Italy.

The Registry of the Italian Resident population

Usually, an individual needs to be enrolled in such registry where he/she has an habitual abode or the domicile in an Italian municipality.

This criterion is of mere formal nature. Indeed, for this requirement to be met an individual only needs to be enrolled in the relevant registry regardless to his actual presence in Italy or to any other tie to such place. Where, for instance, an individual registered with the *anagrafe* moves abroad but forgets to de-register from such *anagrafe* he/she would still be considered to be tax resident in Italy under domestic law (see Supreme Court decision no. 16634 of 25.6.2018; Supreme Court decision no. 21970 of 28.10.2015; Supreme Court decision no. 677 of 16.1.2015). In order to avoid a similar outcome, Italian citizens moving abroad need to de-register from the *anagrafe* and enrol with the registry of the Italian population resident abroad (so called, [AIRE](#)).

Domicile

The term “[domicile](#)” is defined by making reference to the Italian civil code definition. Under Art. 43 of Italian civil code, the domicile is the place where a given person has established his/her centre of business and personal interest. In order to assess where an individual has his/her domicile, a complex fact-based analysis needs to be carried out. The Italian Supreme Court (among the others, Supreme Court decision no. 2936 of 5.5.1980) maintained that by carrying out such analysis one needs to balance all the different kind of interests that an individual might have (economic, personal as well as family interest). Being the different kind of interests involved in the assessment of a very different nature, ascertain the place where the domicile is located might be quite a complex exercise. According to the predominant case laws interpretation (Supreme Court decision no. 9723 of 13.5.2015; Supreme Court decision no. 20285 of 4.9.2013), where in doubt with respect to balancing the different kind of interest, priority needs to be assigned to the place where the individual’s personal interests are located.

Residence

Also the term “[residence](#)” is defined by referring back to the Italian civil code definition. Under Art. 43 of Italian civil code, the term residence identifies the place where a person has his/her habitual abode. To assess the residence, a twofold analysis needs to be carried out. Indeed, even if the objective data of the recurrent physical presence is relevant, one should also make reference to the subjective intentions of a given individual, namely to the willingness of such individual to habitually reside in a certain place. However, in carrying out this analysis, prevalence has to be assigned to the objective element related to the actual physical presence.

Time Threshold

As already described with respect to legal entities, even to establish the tax residence of an individual, one of the three relevant criteria needs to be met for the greater part of the fiscal year. As, under Italian tax law, fiscal years for individuals always coincide with calendar years, for an individual to be considered tax resident in Italy he/she needs to meet one of the relevant criteria for more than 183 days in a calendar year (184 days for leap years).

The time threshold is met even where the relevant 183+ days are not consecutive.

As under Italian law, no split-year rule applies even with respect to individuals, the same issues already highlighted for companies may arise for them; indeed, double taxation may arise where an individual transfers its residence to Italy during the first part of a fiscal year and the Country of departure applies the split-year. On the contrary double non-taxation may arise where an individual relocates to Italy in the second part of the fiscal year and the Country of departure does apply the split-year.

In order to avoid such outcomes, in some of the double tax treaties concluded by Italy, a specific split-year rule is provided for (e.g. the [tax treaty](#) with Germany and Switzerland).



3.2 The Residence Presumption

Art. 2(2-*bis*) contains a specific **rebuttable presumption** of residence applying to certain specific fact patterns in order to tackle fictitious changes of residence.

This provision applies where:

- an Italian citizen;
- has de-registered from the *anagrafe*; and
- has enrolled with the registry of the Italian population resident abroad (so called, AIRE); and
- has transferred his/her residency in a black-listed Country (as listed in the Ministry of Finance Decree dated 4.5.99).

When all these conditions are met, the relevant individual is still considered to be tax resident in Italy. However, the (presumed) taxpayer may overrule the presumption by providing evidence that he/she has actually moved his/her residence in the relevant black-listed Country.

The relevant provision is silent with respect to the kind of evidence that the individual needs to provide the Tax Authorities with in order to overrule the presumption. Nonetheless, the Ministry of Finance (with the dated Circular letter no. 140 of 24.6.99) has provided some guidance on the matter. In particular, the above-mentioned **statement of practice** identifies some means of proof, such as, among the others:

- the existence and availability of an habitual abode of the former Italian resident in the black-listed Country and the absence of such an abode or real estate properties available in Italy;
- local utility bills;
- the circumstances that the individual habitually carries out a job activity in the black-listed Country;
- the absence of significant ties with Italy.

Criteria to establish residence of individuals

CRITERIA	DESCRIPTION
Enrolment in the <i>anagrafe</i>	Formal criteria. It is merely based on the enrolment on the relevant register. No other analysis is needed
Domicile	Substantive criteria. It indicates the place where an individual has the centre of its interest. Where necessary, preference should be given to the personal interest over business interest
Residence	Substantive criteria. It indicates the place where an individual is habitually physically present (objective criteria) and where such individual actually plans on living (subjective criteria)



4. Glossary

Anagrafe

The Italian registry where all the individuals residing or having their domicile in an Italian municipality must be registered.

A.I.R.E. (*anagrafe degli italiani residenti all'estero*)

The Italian register where all the Italian citizen living abroad must be registered.

Circular letter

Extensive statements of practice through which the Italian Tax Authorities interprets, in general terms, pieces of legislations. Differently from rulings, in the circular letters the Italian Tax Authorities do not usually address specific cases raised by a given taxpayer.

Domicile

Under Italian civil law, it indicates the place where an individual has his/her main centre of business and personal interest.

Italian Tax Authorities (“Agenzia delle Entrate”)

Agency, under control of the Ministry of Finance, which performs all the functions and tasks assigned by the law in the field of tax revenue and tax duties.

Rebuttable presumption

Indicates a legal presumption that is considered to be true unless proven otherwise by the relevant agent.

Residence

Under Italian civil law, indicates the place where an individual has his/her habitual abode.

Split-year

A Country applies a split-year mechanism when treats a person as resident from the exact moment when its relevant tie with the Country start to exist and as non-resident from the exact moment when its ties cease to exist, regardless to when this happens throughout the fiscal year.

Statement of practice

Various kinds of non-legally binding documents (either public or not published, such as rulings, circular letters etc.) through which the Italian Tax Authorities interpret tax laws.

Tax treaty

International Convention concluded between two States for the avoidance of double taxation and double non-taxation in economic transactions involving them.

TUIR (“Testo Unico delle imposte sui redditi”)

Italian Income Tax Code, enacted through Presidential Decree no. 917/86.

Worldwide taxation principle

Principle according to which when a person is considered to be resident in a Country, then such Country has the right to tax such person on the income whenever derived.

