



**Ready, steady, go.  
Labour reform in sport gets going.**

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## LAW

### **Tax residence and remote working (“smart working”): update from the Italian revenue service.**

#### **TAX RESIDENCE AND REMOTE WORKING**

In Circular no. 25/E of 18 August 2023, the Italian Revenue Service (Agenzia delle Entrate) provided clarifications about the tax profile of remote working (often called “smart working”). These clarifications provide a useful summary of the changes that the concept of the “fiscal territoriality of work” has undergone in recent years because, following their spread due to the pandemic measures, “agile” or “flexible” modes of working have become, or are in the process of becoming, normal modes of work in certain sectors. It follows that it is important to properly analyse the tax profiles associated with this “labour mobility”.

Despite significant organisational changes involving businesses, professionals and the public sector, no changes have been made to domestic legislation affecting the rules for determining tax residence.

As a result, the criteria for determining the tax residence of individuals remain what is set out in Article 2 of the Consolidated Law on Income Tax (TUIR), namely that “for the purposes of income tax, persons shall be deemed to be resident if, for the greater part of the taxable period, they are enrolled in the registers of the resident population or have their domicile or residence, as defined in the Civil Code, in the territory of the State”.

Through this clarification, the Revenue Service has made it clear that the manner in which the work is carried out does not affect the criteria for determining tax residence. By way of example, let us look at a foreign national, not enrolled in any resident population register, who works from Italy on a ‘smart working’ basis for a foreign employer, in a house located in Italy, together with his spouse and children. In our example, even if the formal requirement of enrolment at the registry offices of the resident population is not met, it is clear that the foreigner has the basis of his personal and affective (family) relations permanently in the country for the majority of the tax year, thus making his tax residence in Italy. On the other side, let us take the example of an Italian citizen who has moved

## TAX RESIDENCE AND REMOTE WORKING

abroad, where she works remotely, and who has remained registered in an Italian population register for most of the tax period. In this second example, even if the employee has transferred her domicile and habitual residence abroad, she is still considered to be resident in Italy because of the registration requirement, so she must declare all her income for tax purposes in Italy, subject to the provisions of agreements on double taxation.

In line with previous reasoning, a non-resident who provides services in Italy for an Italian employer from his country of residence would not have to pay tax on such income in Italy. In this case, the employee continues to reside abroad, regardless of the employer being in Italy.

## TAX RELIEF FOR TOURISM

### **Extraordinary tax relief for tourism.**

Decree Law 48/2023 introduced special tax relief for employees in the tourism, hotel and spa industries. Under this relief, 15 per cent of gross wages paid in connection with night work and overtime on public holidays during the period from 1 June 2023 to 21 September 2023 is not subject to tax.

This applies to employees whose employee income did not exceed €40,000 in 2022. In order to calculate whether this threshold is exceeded, all employee income must be taken into account, including income from other employers and income from activities not in the tourism, accommodation and spa industries.

The Italian Revenue Service (Agenzia delle Entrate) has also said the application must be made directly by the employee, by filling in a self-declaration of income. These documents should be retained by the employer as evidence in the event of an audit or control.

Tax relief not yet recognised on an employee's payslip may be recovered retrospectively as part of the year-end adjustments.

However, unambiguous criteria for identifying employers in the tourism, hospitality and wellness industries – presumably based on the ATECO code of the activities covered by the above provision – have not yet been clarified in a specific communication from the Revenue Service.

## TAXATION OF TIPS

### **Taxation of tips - clarification from the Italian revenue service.**

The Italian Revenue Service (Agenzia delle Entrate) has issued a clarification on the preferential taxation of tips received by employees in the hotel/tourism and restaurant industries.

As a reminder, this preferential tax treatment, introduced by the 2023 Budget Law, provides for the introduction of a substitute tax of 5 per cent on the amounts received as bonuses, up to a limit of 25 per cent of the employee's income received during the year, provided that the following conditions are met:

- The staff member has received no more than €50,000 in income from employment.
- The employee does not submit an explicit written waiver to the employer, opting for normal taxation.

On this basis, the Revenue Service has clarified that the €50,000 limit must refer to the tax period preceding that in which the tips were received, and that income from employment in activities other than tourism, hotels and restaurants must also be included in the calculation.

Conversely, the Revenue Service has clarified that the 25 per cent limit applies only to income received during the year for services provided in the hotel/tourism and restaurant industries. If this limit is exceeded, only the excess is subject to ordinary taxation.

## VULNERABLE WORKERS

### **Extension of remote working for vulnerable workers.**

Decree Law 132/2023 extended the right for vulnerable workers (both public and private) to work remotely until 31 December 2023.

It has been confirmed that if the work performed by the vulnerable employee cannot be performed remotely, he or she must be transferred to another role in the same category or classification, as defined in the applicable collective agreements, without loss of pay.

As a reminder, 31 December 2023 is also the deadline for the right to remote working for parents with children under 14.

## RETIREMENT POSTPONEMENT INCENTIVE

### Retirement postponement incentive.

A few days ago, the Italian Social Security Institute (INPS) finally provided key clarifications regarding the incentive – provided for in the 2023 Budget Law – for employees who meet the minimum requirements to qualify for a flexible early retirement pension (called Quota 103) but postpone their retirement.

Employees who, having accrued the right to a flexible early retirement pension, choose to continue working, may opt out of the contribution payments that they would otherwise have to make as Invalidity, Old Age, Survivors (IVS) contributions.

This incentive can be used by employees who meet all of the following:

- At the time of exercising this right to opt-out of such contributions, they are enrolled in the general compulsory insurance or in substitute and exclusive forms of this.
- They meet the requirements for access to the flexible early retirement scheme provided for in Article 14.1 of Decree Law 4/2019.
- They do not receive a direct pension (excluding the standard disability allowance).
- They do not meet the age requirement for an old-age pension.

The effects of the employee opting-out are the following:

- The employer does not have to pay in the IVS contribution payable by the employee in question. The employer is still obliged to make the IVS contribution payable by the employer.
- Sums corresponding to the portion of IVS payable by the employee – which the employer would have had to pay to INPS had the opt-out option not been used – are paid directly to the employee as part of his or her salary. Any amounts paid in this sense are included in the calculation of the tax base, but not in the contribution base.

An employee wishing to take advantage of the deferred retirement incentive must notify INPS in advance, which will check the required conditions are met. INPS shall then notify the employee and the employer of the acceptance of the application within thirty days of its submission of the application by the employee or of receipt of any necessary supporting documents.

## COLLECTIVE LABOUR AGREEMENT RENEWALS

### PRIVATE SECULAR SCHOOLS

### CCNL Aninsei private secular schools.

#### Base pay.

From 1 September 2023, base pay will increase on average by €25.00, calculated based on level 6. This change means gross monthly pay for level 6 will be €1,489.64.

Increases may be absorbed, up to this amount, by salary increases granted by companies, except for those granted with an explicit non-absorption clause.

### EXECUTIVES IN SERVICE AND TRADE SECTOR

### Executives in service and trade sector .

The renewed collective agreement for executives in the commerce sector stipulates that managers in force on 12 April 2023 will receive a “one-off” payment of €2,000.00 gross as salary arrears, divided into three tranches payable by the following deadlines:

- €700.00, which was paid with May 2023 pay
- €700.00 with September 2023 pay
- €600.00 with November 2023 pay.

The amount due will be pro-rated in proportion to the months of seniority accrued during the period from 1 January 2022 to 31 December 2022 and will not affect the calculation of severance pay or any contractual elements.



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