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US residents receiving payments from the SEPP program are eligible for the special tax regime for pensioners provided by art 24ter of the Italian Income Tax Consolidation Act.

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The Italian Tax Authority issued ruling n. 616 of September 20th, 2021, regarding the possibility to benefit from the option for the substitute tax on the individual income for foreign pensioners who move their tax residence to Southern Italy, by an individual who would receive payments from the "*Substantial Equal Periodic Payments*" program.

The case submitted to the Financial Administration is as follows: the taxpayer, who has been tax resident in the United States for eleven years, intends to reallocate in a town of Southern Italy. Although the taxpayer hasn't reached his retirement age yet, he is entitled to receive retirement income from the "*Substantial Equal Periodic Payments*" (SEPP) program.

This program is part of the US pension scheme and allows an individual to receive monthly or annual payments from their "Individual Retirement Account" before he reaches the age of fifty-nine years and six months, without being subjected to tax-penalty for five years. The payments coming from the SEPP program would be subject to the option for the substitute tax on the individual income for foreign pensioners, provided by Article 24ter of the Italian Income Tax Consolidation Act (ITCA) and wonders if such sums can be counted among "pensions of all kinds and

equivalent checks" referred to in art. 49, co. 2., lett. a) ITCA.

Having thus declined the case, the Tax authority first examines the requirements of art. 24ter ITCA to access the tax regime:

- Transfer of tax residence in Italy to one of the southern towns of less than 20,000 inhabitants or to one of the towns affected by 2016-2017 earthquakes with a population of less than 3,000 inhabitants;
- Effective transfer of residency in Italy;
- Not having been tax resident in Italy in the five tax periods prior to the one in which the option is exercised ();
- Having had the last tax residence in a country with which Italy has entered into an administrative cooperation tax agreement.
- Receiving foreign retirement income pursuant to art. 49, paragraph 2, lett. a) ITCA.

Considering this last point, the Financial Administration clarifies that this notion of retirement income includes all those emoluments received after the termination of an employment which generically find their cause in a work relationship... (and) also all those one-off indemnities (e.g., the capitalization of pensions) paid for the annual contribution and the payment of which may be independent of the termination of a work collaboration".



Considering the regulatory requirements under Article 24ter in the present case, the Tax Authority endorsed the application of lighter regime. More in depth, payments received within the SEPP program are therefore considered part of the possible foreign pensions provided for in art. 49, paragraph 2, lett. a) ITCA, considering that they are referred to pension benefits of a supplementary pension account although they are related to a period prior to the retirement age.

The social security purpose of the sums received from the SEPP program is therefore enhanced, recognizing that they are aimed "at guaranteeing the employee a supplementary pension in the form of annuity and / or capital of the compulsory pension, even if before reaching retirement age".

Even if it is not addressed immediately in the ruling, there is a further significant issue to consider. The payment of emoluments qualifying as pensions – in accordance with art. 49, paragraph 2, lett. A) ITCA - before the retirement age, is implicitly admitting that the individual has the possibility to continue working abroad until the actual retirement age is reached.

Although the option requires the effective transfer of residence in Italy (and not just the registration in the tax registry), the taxpayer may find himself working abroad for some periods of the year. For this reason, in Circular no. 21 / E of 17th of July 2020 regarding the special tax regime provided by art. 24ter, the Tax Administration clarified that "the option for the regime allows the taxpayer to subject to substitute tax the income of any category produced abroad, calculated on a flat-rate basis, with a rate of 7% for each tax period of validity of the option, ". Therefore, there are no

doubts about the possibility of facilitating any earned income received by the subject exercising the option even if they benefit from favourable tax regimes abroad, not requiring that the income is taxed at source to benefit from the special tax regime.

On the other hand, an issue could be determining the percentage of foreign sourced income, especially if we were to consider income from employment. Art. 24ter claims that foreign income must be "identified according to the criteria referred to in Article 165, paragraph 2", which provides for an interpretation of art. 23 ITCA. Therefore, regarding employment income and similar, all those that have not been sourced in the territory of the state will be considered to be foreign. This step is also explained by Circular 21 / E of 17 July 2020, which states that "an income is to be considered as produced in the territory of the State when it is possible to establish a connection with a productive source located in Italy, based on specific parameters that the internal legislator has typified ". If the income were considered of Italian source, it would ordinarily be subject to taxation, with a progressive rate.

The Tax Administration has shown an open approach, respectful of the spirit of the favourable regime, focusing on substance rather than looking at the formal aspects of the emoluments received from the SEPP program. Such approach appears to be consistent with recent Tax Rulings (i.e., ruling n. 462/2021), expressing a general positive attitude towards neo-resident favourable tax regimes and should be therefore welcomed. Therefore, rely on the discipline of the emoluments that the taxpayer will receive but rather looking at the substance.



This intervention shows greater openness towards the special regimes envisaged for non-residents (moreover in continuity with various arrests of practice, including the recent Tax-ruling Response no. 462/2021) and for this reason it should be strongly accepted, in a prospect of increasing attraction of foreign subjects who want to move to Italy.

This purpose also comes up from the ruling letter, stating that the purpose of this regime is "to attract in the towns, inter alia, the subjects belonging to the territory of the South who are holders of capital and financial resources that can be invested in our country".

