



THE TAX TREATMENT OF THE TRANSNATIONAL TFR



It is common ground that, in Italy, the taxation of the severance payment (i.e. TFR) follows the rules for the taxation of employment income provided for at international level by Article 15 of the OECD Model Convention against Double Taxation on Income.

The Italian Revenue Agency, in two recent advance tax rulings (no. 460 of October 9th 2020 and no. 343 of September 11th 2020), has expressed its opinion on the taxation of the TFR and the other indemnities related to the termination of the employment relationship, paid by Italian employers to employees not resident in Italy for tax purposes.

According to domestic legislation (Article 23, paragraph 2, letter -a- of the TUIR, i.e. the Italian Decree on taxation of income), the TFR and the other one-off indemnities and sums paid in connection with the termination of the employment relationship must be considered as sourced in Italy and, therefore, subject to taxation in Italy if paid by the Italian State, by persons resident in Italy or by Italian permanent establishments of non-resident persons.

However, the Italian taxation of the above mentioned emoluments may be overcome by the provisions of the International Convention against Double Taxation applicable from time to time.

In fact, although the OECD Model does not contain a specific provision on the tax treatment of the above mentioned severance indemnities, the Italian Revenue Agency has previously clarified (by Resolution no. 341/E of 2008 and Response no. 132 of 2018) that the TFR and the other emoluments paid to the employee in connection with the termination of the employment relationship, as an incentive to leave or other sums paid in the context of the relative settlement, shall be regarded as remuneration (in the case of TFR, as deferred remuneration).

Consequently, both the TFR and the other emoluments under reference fall within the scope of Article 15 of the OECD Model of the Convention against Double Taxation on Income, concerning the tax treatment applicable to employment income.

In the recent advance tax rulings hereby examined, the Italian Revenue Agency, with reference to a case where the Convention against Double Taxation between Italy and Switzerland applies, confirmed its opinion and stated that:



THE TAX TREATMENT OF THE TRANSNATIONAL TFR

- 1) the portion of severance payments relating to the period in which the employee was resident for tax purposes in Italy and the working activity was carried out in Italy shall be taxed only in Italy;
- 2) the portion of severance payments relating to the period in which the employee was resident for tax purposes in Italy and the working activity was carried out in Switzerland shall be taxed both in Italy and in Switzerland, provided that the working activity was carried out in Switzerland for a period exceeding 183 days during each tax year considered;
- 3) the portion of severance payments relating to the period in which the employee was resident for tax purposes in Switzerland and the working activity was carried out in Switzerland shall be taxed only in Switzerland.

Therefore, on the basis of the advance tax rulings of the Italian Revenue Agency provided to date, both the severance payment (i.e. TFR) and the other emoluments paid to the employee not resident in Italy for tax purposes in connection with the termination of the employment relationship must be subject to taxation in Italy on the basis of the conventional provisions governing the employment income.