Executive summary
A High Court ruling has confirmed the position established in a 2016 ruling on social security contributions payable by assignees outbound from Italy to a country with which Italy has a social security agreement. The ruling confirms that social security contributions are calculated based on actual compensation, even though income tax is calculated on a notional amount.

Background
According to Italian rules, there is a unified tax and social security calculation basis; essentially social security contributions and income taxes should be calculated on the same amount of taxable income other than for a few exceptions.

A special tax regime for Italian residents working abroad exists, under which a notional amount of employment remuneration is used for the calculation of tax. Such a regime applies to employees who meet the following conditions:
► The individual is resident for tax purposes in Italy.
► The employment activity is rendered continuously and exclusively outside of Italy.
► The employee has a proper assignment contract.

Notional employment remuneration (determined each year by the Italian Ministry of Finance), is usually significantly lower than actual remuneration. The regime was introduced in 2001 and it has since been uncertain whether such notional remuneration always applies for social security purposes.

For the first time in 2016 the Italian High Court has ruled, for employees seconded to a country that entered into a social security agreement with Italy (this includes the EU), notional salary could not be used as the taxable base for social security calculation purposes.

High Court confirms the taxable base for social security contributions
The High Court has recently confirmed the approach previously taken with a new ruling issued on 30 May 2018, regarding the treatment of employees seconded to Turkey.

For employees assigned to a country that has entered into a social security agreement with Italy, it is not possible to use the notional salary as the taxable base for social security calculation purposes. In such cases social security contributions have to be calculated based on actual compensation, determine using normal employment income tax rules.

This second decision confirms the approach already taken in 2016 by the High Court, with respect to an employee seconded to US, which has been followed in practice by the Italian Social Security Authority.
Conversely, when an Italian employee is assigned to a country that does not have a social security agreement with Italy, the notional remuneration should be used.

As with the first ruling, the High Court based this decision on the following principles:
► To avoid discrimination against individuals moving abroad.
► To create more equality of treatment between workers who reside abroad continuously and those who live in Italy.
► To avoid a reduction in social security contributions paid to the Italian authorities and potential losses to the employee’s pension position.

Next steps
Even though the question remains debatable, this is a second decision of the Supreme Court along the same lines. It is worth noting that the Italian Social Security Authority are of the same opinion of the High Court.

Consequently, employers in Italy who have employees seconded to countries that have a social security agreement with Italy (including the EU), should review how they calculate social security contributions, on the basis of the guidelines provided by the High Court.

For their assignee population they should:
► Review and verify whether social security contributions have been calculated on actual or notional income to date.
► Review the impact of the High Court decision on existing policies.
► Consider alignment with the High Court’s position, which confirms the view of the social security authorities.
► Review current payroll withholding processes to ensure payments are correct.
► Consider whether to rectify social security charges paid in the past.

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