

# Foreign Employment Income in the Italian Tax Setting

**This article considers the development of the regimes that deal with the foreign employment income of Italians, with specific reference to the most recent regime and the various issues that have arisen as a result.**

## 1. Introduction

Few Italian regimes have had the same variation of rules as those governing the taxation of foreign employment income. Relatively recently, there have been at least three versions of these rules, the first being enacted in 1973, a second being adopted in 1986 and the final one being approved in 1997. In addition, disregarding the various changes, it is difficult to single out taxation topics in respect of which the case law of the tax courts and the rulings of the Italian tax authorities have played a more fundamental role than with regard to the taxation of foreign employment income.

The current regime is provided for by Art. 51, Para. 8-*bis* of the Income Consolidated Tax Act (ICTA), according to which such income is calculated on the basis of salaries annually set by a decree of Ministry of Labour and Social Security. The income so determined, instead of that actually received, is then included in the taxable basis of the employee.

## 2. Brief Historical Background: 1973 to 2000

In the European Union, the tax systems of most Member States grant employment income a more favourable tax regime than that for business or capital income. This is derived from the reference to the human element, which is present in respect of employment income, but which is only partially present (business income) or totally absent (capital income) in the other cases. Foreign employment income has also always benefited from even more favourable tax regimes, considering the difficulties encountered by expatriates working abroad, often far from their families and relatives. In addition, a favourable tax regime in respect of foreign employment income benefits national enterprises involved in the international market by reducing their production costs compared to foreign resident enterprises. Last, but not least, special tax regimes for foreign employment income are intended to relieve expatriates from administrative burdens, thereby allowing them to concentrate fully on their employment duties.

In respect of Italy, the first favourable regime for foreign employment income was contained in Art. 3, Para. 2 of Presidential Decree 597 of 1973 regarding the general discipline for personal income tax. This provided for the

exclusion from the taxable basis of foreign employment income received by emigrant Italian citizens who were still enrolled in the registry of resident individuals.<sup>1</sup> The exclusion primarily focused on the subjective status of the emigrant employee. The tax provision, however, did not define this concept and even the definition of emigrant citizen provided for by Royal Law-Decree 2205 of 13 November 1919 was not relevant, as its scope was limited to manual works and emigration intended to deal with relatives who had previously emigrated abroad. Initially, the scope of application of the regime was further reduced by the tax authorities, which denied its application to the employees of Italian companies, even if working abroad.<sup>2</sup> A radical change occurred in 1977, when the tax authorities clarified the requirements to be fulfilled for the application of the regime.<sup>3</sup> Under this clarification, the regime applied if: (1) the employment contract expressly provided for an employment to be exercised exclusively abroad; and (2) the employee was enrolled in a registry of employees working abroad.<sup>4</sup> In this regard, attention was transferred from the subjective status of the “emigrant” employee to more objective requirements, which could be easily verified on a case-by-case approach.<sup>5</sup>

The new approach of the tax authorities was also reflected in the regime provided for by Art. 3, Para. 3, lett. c) of the 1986 version of the ICTA, which excluded foreign employment income from the taxable basis for the purposes of personal income tax if: (1) the employment was exercised abroad in a continuous way; and (2) it constituted the sole object of the employment agreement. The definitive repeal of the requirement regarding the emigrant status of the employee confirmed the growing relevance of objective elements on a normative basis.

In the context of the wide-ranging 1997 tax reform, the legislator also modified the tax regime in respect of foreign employment income. Specifically, Art. 5, Para. 1, lett. a) of Legislative Decree 314 of 1997 repealed the regime in Art. 3, Para. 3, lett. c) of the ICTA and included foreign

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1. F. Rossi Ragazzi, “Lavoratori italiani all'estero, II) Diritto tributario e valutario”, *Enciclopedia giuridica* (1990), Vol. XX, p. 1 et seq.
2. Ruling No. 12/394 of 28 March 1975.
3. Circular No. 95/8/1053 of 18 October 1977.
4. The necessity to enrol in the specific registry was doubtful, as there was no binding provision requiring this. In this sense, see the Central Tax Court (*Commissione Tributaria Centrale*) Decisions No. 3558 of 18 April 1988 and No. 4934 of 3 July 1990. In this regard, see also G. Marongiu, “Sulla tassabilità dei redditi di lavoro dipendente prestato all'estero”, *Rivista di diritto tributario* II (1991), p. 880.
5. Ruling No. 8/1329 of 14 February 1988.

employment income in the taxable basis for personal income tax purposes. Consequently, the foreign employment income received by resident employees was taxed under the general worldwide principle. Due to the great relevance of the change for enterprises, the application of the new regime was postponed as from 2001 to allow companies time in which to comply with the new rules.

According to the explanatory report attached to Legislative Decree 314 of 1997, there were two main reasons justifying the new approach towards foreign employment income. First, the Italian government had to comply with the principles set out in delegation Law 662 of 1996 regarding the tax reform of employment income and, more specifically, with the provisions required to harmonize the rules regarding the determination of employment income for tax and social security purposes. As the social security rules did not provide for any exclusion in respect of foreign employment income, a change was, to a certain extent, required.<sup>6</sup> Second, according to the explanatory report, the tax exclusion regime for foreign employment income infringed the general principles of personal income tax and, more specifically, the principle of the taxation of the worldwide income of resident taxpayers.<sup>7</sup>

In light of the critical remarks made on the new approach,<sup>8</sup> the legislator adopted various remedies, as the ordinary taxation of foreign employment income would have raised double taxation issues that were unlikely to be resolved through the mechanisms provided for by tax treaties. Initially, a tax credit corresponding to the withholding taxes levied on the foreign employment income was granted to companies employing workers abroad.<sup>9</sup> However, this measure could be considered to be state aid, thereby infringing the relevant principles in the EC Treaty (now the Treaty on the Functioning of the European Union). As a result, the credit was repealed and the current regime in Art. 51, Para. 8-bis of the ICTA adopted.<sup>10</sup>

### 3. The Current Regime

#### 3.1. Requirements

Under the current rules, foreign employment income is included in the taxable basis for the purposes of personal income tax. In this regard, the tax regime of foreign employment income does not depart from the worldwide taxation principle, as the former exclusion regime has been definitively repealed.

However, where the relevant requirements are met, foreign employment income is not included in the taxable basis in respect of the actual amount received by the employee and, instead, is determined on the basis of a salary schedule adopted annually through a decree of the Ministry of Labour and Social Security.<sup>11</sup> This income calculation applies if: (1) the employment is exercised abroad in a continuous way; (2) it constitutes the sole object of the employment agreement; and (3) the employee spends more than 183 days in a 12-month period in the foreign country. Whilst requirement (3)

was first introduced in 2000,<sup>12</sup> requirements (1) and (2) had already been included in the 1986 regime. Accordingly, former clarifications regarding requirements (1) and (2) may be useful in interpreting the current regime.

The current regime certainly benefits employers, as they do not have to apply the rules regarding the analytical determination of the employment income. In this regard, the special rules for the calculation of the income can assist in meeting the principle of equality in taxation, as, otherwise, the taxation of the actual income would require the consideration of the cost of living in the foreign country, which might be higher than in Italy.<sup>13</sup> In most cases, the regime also benefits employees, who can include in their taxable basis an income lower or much lower than that actually received. However, should this not be the case, a conflict with the ability-to-pay principle could arise, as taxes would be levied on a (partially) fictitious income, and not on the income actually received by the employee.<sup>14</sup>

The continuity requirement is fulfilled where the employment is exercised without significant breaks. There should be sufficient evidence that the activities are performed abroad, and not just temporarily, but, rather, with a certain degree of permanence. In any case, occa-

6. It should be noted that the complete harmonization of social security and tax rules has not yet been achieved. The salaries determined for the purposes of Art. 51, Para. 8-bis of the ICTA are relevant for social security purposes only in certain cases. Specifically, according to the interpretation adopted by the Ministry of Labour and Social Security through Note No. 10291/P6li 158 of 19 January 2001, such salaries are not relevant where the employee exercises the employment in a foreign country with which Italy has concluded a social security agreement. See also Circular No. 86 of 10 April 2001 issued by the National Institute for Social Security.

7. The same explanatory report supported the repeal of the exclusion regime with the very large number of tax cases related to its application. Such an argument does not appear to be valid, as the current regime for foreign employment income is still based on the same requirements set out in the previous provision.

8. For instance, Circular No. 17 of 16 March 2001 issued by *Assonime* (one of the most representative associations of Italian share companies), which noted the obstacles created by the new regime to the competitiveness of Italian enterprises in the international context.

9. The tax credit was provided for by Art. 15 of the Legislative Decree 505 of 1999. In this regard, see V. Ficari, "Le modifiche al regime fiscale del lavoro dipendente prestato all'estero", *Bollettino tributario* (2000), p. 1063 et seq. and G. Tinelli, "La nuova disciplina fiscale del reddito di lavoro dipendente prodotto all'estero", *Rivista di diritto tributario* (2000), pp. 269-290.

10. Art. 36 of Law 342 of 2000, which repealed Art. 15 of Legislative Decree 505 of 1999 and introduced the current regime.

11. A different regime applies to frontier workers, i.e. employees who reside in Italy and who exercise their employment near the Italian borders. Under Art. 2 of Law 289 of 2002, such workers are taxed on the basis of the income actually received, but only for the portion of their income exceeding a threshold of EUR 8,000. According to Art. 38, Para. 13 of Law-Decree 78 of 2010, these employees are also not required, as ordinarily provided for by Art. 4 of Law-Decree 167 of 1990, to include in a tax return the declaration of assets and financial activities held in the foreign country where the employment is exercised.

12. Before the introduction of the 183-day requirement, the tax authorities had only once specified that the application of the foreign employment income regime was conditional on a 183-day period being spent abroad. See Ruling No. 5/1885 of 3 March 1995. However, such a position, even if intended to prevent the double non-taxation of the income, lacked legislative backing.

13. F. Crovato, *Il lavoro dipendente nel sistema delle imposte sui redditi* (Padua: CEDAM, 2001), p. 312.

14. On the link between the constitutional principle of ability-to-pay and the necessity to levy taxes only on income actually received, see L. Tosi, "Il requisito di effettività", in F. Moschetti (ed.), *La capacità contributiva* (Padua: CEDAM, 1993), p. 101 et seq.

sional travel back to Italy due, for instance, to family or health reasons are compatible with this requirement. The same also applies to seasonal working, where the activities are performed continuously, even if only in a given part of the year.<sup>15</sup>

As far as the employment agreement is concerned, the foreign employment must constitute its sole object. The regime does not apply where the employment agreement provides indeterminately for working activities to be exercised both in Italy and abroad. On the other hand, an agreement dealing only with the foreign employment, even if attached to a pre-existing agreement regarding activities exercised in Italy, should fulfil the requirement.<sup>16</sup> This condition only relates to the employment agreement and no relevance should be attached to the permanence of family or social relationships in Italy.<sup>17</sup>

The 183-day rule specifies the requirement regarding the continuity of foreign employment, even if the actual justification for such a rule lies in the prevention of double non-taxation as a result of the combined application of treaty rules and pre-existing domestic provisions. The domestic 183-day rule openly resembles that provided for in tax treaties, even if the tax authorities have provided for a different interpretation of the international provision compared to the domestic one. Specifically, whilst the domestic 183-day rule implies the relevance of the employment activity exercised abroad, including national holidays, days of rest and days of sickness wherever they are spent, even if in Italy,<sup>18</sup> the treaty 183-day rule must be interpreted according to the “days of physical presence” method, taking into account only the days of actual presence of the employee in the foreign country.<sup>19</sup> The 183-day period relevant for domestic purposes must also be calculated on the basis of a 12-month period, not necessarily coinciding with one taxable period, so that the requirement can be met taking into account two consecutive taxable periods.

Even if not expressly provided for by law, other conditions are often considered to be implicitly required for the application of the current regime. First, in some cases, the tax authorities continued to ask for the enrolment of the employee in the special registry of employees working abroad.<sup>20</sup> This requirement, initially set out in the exclusion regime of 1973, has been confirmed with regard to the current foreign employment income regime, notwithstanding that the law does not explicitly provide for this and that judgements of the tax courts have clearly taken a different position.<sup>21</sup>

Second, according to some scholars,<sup>22</sup> the Italian residence of the employee should be regarded as an implicit requirement for the application of the regime. This would result from the general rules applying to the taxation of non-residents. Specifically, under Art. 23, Para. 1, lett. c) of the ICTA, employment income received by non-residents is only taxed if the employment is exercised in Italy, so that non-resident taxpayers should never be subject to tax in respect of employment income deriving from working activities exercised outside Italy. In this sense, non-resident employees should not be

interested in the application of the current regime. Even if this is true in most cases, there could, however, be some hypothetical cases in which non-resident employees may also benefit from the application of the current regime. This could, for example, be the case for pensions, severance payments and other indemnities relating to the termination of the employment agreement that are received by a non-resident employee. Specifically, under Art. 23, Para. 2, lett. a) of the ICTA, such income is considered to have its source in Italy, subject to the sole condition that the paying company resides in Italy.<sup>23</sup> In the absence of a tax treaty or where the existing tax treaty does not attribute exclusive taxing power to the state of residence of the employee, the non-resident employee may claim the application of the special foreign employment income regime.<sup>24</sup>

### 3.2. Scope of application

As far as the scope of the application of the current regime is concerned, it definitely covers the salary received by the employee. The reference made by Art. 51, Para. 8-*bis* of the ICTA to the general category of employment income should cover, for instance, indemnities for travelling abroad and fringe benefits (including stock options), where a genuine link between the income and the work undertaken abroad can be demonstrated. If so, such amounts should not be autonomously taxed, but should be included in the special regime for foreign employment income.

The application to severance payments of the current regime is, however, much more doubtful. According to some scholars,<sup>25</sup> severance payments should be considered to be deferred salary, thereby being included in the employment income to be determined on the basis of the ministerial decree. Such a conclusion is also confirmed by the case law of the Italian Supreme Court (*Corte di Cassazione*), where the Court affirmed that a severance payment discharges a debt to the employee accrued during the whole employment period and, con-

15. Rulings No. 12/1042 of 16 August 1998 and No. 12/1197 of 30 July 1990. The last ruling concerned Italian resident workers involved in fishing expeditions abroad for a period of five months. In this case, the tax authorities recognized the application of the pre-existing exclusion regime, as the employment was exercised abroad continuously and without significant breaks, even if time-limited to part of the year. In this regard, see V. Ficari, “La tassazione dei redditi di lavoro dipendente prodotti all'estero da soggetti residenti: il caso dei lavoratori marittimi”, *Rivista di diritto tributario* II (1993), pp. 879-887.

16. Ruling No. 8/1171 of 17 July 1980.

17. Crovato, *supra* note 13, p. 294.

18. Circular No. 207/E of 16 November 2000.

19. Circular No. 201/E of 17 August 1996.

20. F. Petrucci, “Ruolo estero e regime di favore per i dipendenti”, *Corriere tributario* (2010), pp. 311-312.

21. See *supra* note 4.

22. P. Stizza, “Il quadro normativo relativo ai redditi di lavoro dipendente ‘transnazionale’”, in E. Della Valle, L. Perrone, C. Sacchetto and V. Uckmar (eds.), *La mobilità transnazionale del lavoratore dipendente. Profili tributari* (Padua: CEDAM, 2006), p. 468 et seq.

23. Crovato, *supra* note 13, p. 285 et seq.

24. The application of the special income determination regime to severance payments and other indemnities relating to the termination of the employment agreement is doubtful, but, whilst this is affirmed by scholars and jurisprudence, it is firmly denied by the tax authorities. On this, see 3.2.

25. Crovato, *supra* note 13, p. 302 et seq.

sequently, must be included in the foreign employment income subject to the various favourable regimes enacted over the decades.<sup>26</sup> According to the tax authorities, however, severance payments should not be included in the current regime, as this is limited to recurrent payments relating to employment exercised abroad.<sup>27</sup> Even if the first position appears to be more coherent, both with tax law and with labour law principles regarding severance payments, a conflict still arises.

As far as withholding tax on income is concerned, Art. 23, Para. 1-*bis* of Presidential Decree 600 of 1973 requires any subject who fulfils social security obligations with regard to foreign employment income to act as withholding agent for income tax purposes. This reference to social security obligations is intended to include non-resident subjects who do not have a permanent establishment (PE) in Italy amongst withholding agents. Provided that the social security provisions require non-resident employers to remit social security contributions through a representative appointed for this purpose,<sup>28</sup> Art. 23, Para. 1-*bis* of Presidential Decree 600 of 1973 also requires these employers to levy income withholding tax. However, as some scholars have pointed out,<sup>29</sup> such an obligation might raise constitutional issues. Provided that the withholding mechanism is constitutionally based on the possibility for the withholding agents to have the amounts due to the recipient at their disposal and to levy the withholding tax on these sums,<sup>30</sup> the representatives appointed for social security purposes may not have the salary due to the employee at their disposal, which is directly paid by the non-resident employer. Consequently, in such cases, Art. 23, Para. 1-*bis* of Presidential Decree 600 of 1973 may result in the obligation for the representative to remit the withholding tax “at his own expense”, without having the possibility to levy the tax on the income of the employee.

#### 4. International Aspects

The current regime for foreign employment income must be examined within the more general context of international relationships, taking into account the relevant provisions stated in the tax treaties concluded to prevent juridical double taxation. As far as foreign employment income is concerned, it should be noted that, from 2001, both the worldwide and the source principles are applicable in Italy as a consequence of the repeal of the pre-existing income exclusion regime.

The tax treaties concluded by Italy provide for a regime of employment income largely based on Art. 15 of the OECD Model Tax Convention (“the OECD Model”). Specifically, according to Art. 15(1) of the OECD Model, employment income is taxed only in the state of residence of the employee, unless the employment is exercised abroad. Where this is the case, employment income may be taxed both in the source state and in the residence state. Even in case of employment exercised abroad, Art. 15(2) of the OECD Model attributes exclusive taxing power to the residence state where: (1) the employee is present in the source state for a period not

exceeding in the aggregate 183 days in a 12-month period; (2) the remuneration is paid by (or on behalf of) an employer who is not a resident of the source state; and (3) the remuneration is not borne by a PE of the employer’s company located in the source state. The last provision is intended to encourage the free movement of highly qualified employees, even if cases of abuse through the practice referred to as the “international hiring-out of labour” have occurred, especially in recent years.

With regard to the taxation of the income received by an Italian resident employee working abroad, the employee is taxed only in Italy if all three requirements set out in Art. 15(2) of the OECD Model are fulfilled. In such a case, however, the employee cannot normally benefit from the special regime provided by Art. 51, Para. 8-*bis* of the ICTA, as the 183-day domestic requirement is not fulfilled.<sup>31</sup> Consequently, the income is determined on the basis of the amounts actually received and taxed according to rules ordinarily applicable. On the other hand, if the requirements of Art. 15(2) of the OECD Model are not met, the income of the employee is taxed both in the source state and in Italy, and the special regime of Art. 51, Para. 8-*bis* of the ICTA could apply. According to treaty provisions and Art. 165 of the ICTA, the double taxation of the income is thereby eliminated through the tax credit granted by Italy for taxes paid abroad. In this respect, it should be noted that, under Art. 165(10) of the ICTA,<sup>32</sup> the amount of taxes paid abroad

26. Supreme Court Decisions (even if related to the pre-existing exclusion regime) No. 1138 of 19 January 2009; No. 11175 of 26 May 2005; No. 251 of 12 January 2004; and No. 12201 of 14 August 2002. A different view was expressed in Decision No. 519 of 21 January 1999. See N. Saccardo, “Considerazioni a margine di una recente sentenza della Corte di Cassazione in tema di trattamento di fine rapporto”, *Rivista di diritto tributario* IV (2003), pp. 14-24.

27. Circular No. 95 of 18 October 1977; Ruling No. 12/1197 of 30 July 1990; and, more recently, Circular No. 326 of 23 December 1997.

28. More specifically, Art. 1, Para. 2, lett. d) of Law-Decree 317 of 31 July 1987 includes foreign employers amongst the subjects required to comply with the social security provisions regarding Italian resident employees working in countries located outside of the European Union that have not concluded social security agreements with Italy.

29. Crovato, *supra* note 13, p. 318 and P.L. Cardella, “Il punto sulla disciplina dei redditi di lavoro dipendente prestato all'estero”, *Rassegna tributaria* (2003), p. 894 et seq.

30. F. Moschetti, “Capacità contributiva”, in *Enciclopedia giuridica* (1988), Vol. V, p. 14 and P. Russo, *Manuale di diritto tributario. Parte generale* (Milan: Giuffrè, 2002), p. 171.

31. There could be the case in which, due to different criteria of calculation of the 183-day period adopted at domestic and treaty level, the employee is physically present in the foreign country for less than 183 days, but, nonetheless, meets the domestic requirement, having spent more than 183 days in the foreign country. In such a case, the income is not taxed in the source state, which lacks the appropriate taxing power under a tax treaty, and is determined and taxed in Italy according to the special regime in Art. 51, Para. 8-*bis* of the ICTA. Such a scheme may be even more easily implemented taking into account that most of the tax treaties concluded by Italy do not provide, currently, for the specification stated by the present version of Art. 15(2)(a) of the OECD Model, according to which the 183-day period must be calculated “in any twelve month period commencing or ending in the fiscal year concerned”. On the other hand, most of the tax treaties concluded by Italy according to the pre-1992 version of Art. 15(2)(a) of the OECD Model, provide for the calculation of the 183-day period “in the fiscal year concerned”. As the domestic 183-day requirement can also be met taking into account two consecutive taxable periods, it could be quite easy to meet the requirements stated both at domestic and treaty level. See Stizza, *supra* note 22, pp. 491-494.

32. As authentically interpreted by Art. 36, Para. 30 of Law-Decree 223 of 4 July 2006.

that are relevant for the tax credit must be reduced proportionally to the part of the income actually taxed in Italy on the basis of the current special tax regime.

With regard to the taxation of the income received by a non-resident employee working in Italy, taxes may be levied in Italy provided that at least one of the requirements set out in Art. 15(2) of the OECD Model is not fulfilled. Otherwise, exclusive taxing power is attributed to the state of residence of the employee. Where Italy is allowed to levy taxes on a treaty basis, the employee cannot normally benefit from the special regime provided for by Art. 51, Para. 8-*bis* of the ICTA, as the employment is exercised in Italy and not abroad. However, as noted in 3.1., there could be cases in which the current special regime may apply also to non-resident employees.

As far as the international aspects of the taxation of foreign employment income are concerned, it is interesting to examine the recent case law of the Supreme Court regarding the relationship between treaty rules, on the one hand, and domestic tax provisions, on the other. According to a consolidated interpretation, the provisions stated in tax treaties can be regarded as distributive rules, being limited to attributing the taxing power on single items of income to one or both of the contracting states. Consequently, it is accepted that “tax treaties do not impose tax”.<sup>33</sup> A state, even if so entitled on the basis of the treaty provisions, can levy taxes only if there is a domestic “taxing” rule. In some recent judgements regarding the taxation of employment foreign income,<sup>34</sup> the Supreme Court appears to have revised this interpretation, in concluding that Italy could levy taxes even on the sole basis of the treaty provisions, irrespective of the exemption regime provided for at domestic level. All these judgements of the Supreme Court are related to reimbursement claims filed by non-resident Italian citizens employed in the Italian railway company and exercising their employment in Switzerland. Under Art. 19 of the Italy–Switzerland tax treaty, which concerns the taxation of government service and other relevant cases, the exclusive taxing power on this remuneration is attributed to the state in which the paying entity is located, provided that the entity and the recipient employee have the same nationality. As the cases at hand involved Italian citizens employed in the Italian railway

company, the exclusive taxing power was attributed to Italy. At a domestic level, however, non-resident employees could be taxed in Italy only in respect of income deriving from an employment exercised in Italy and, even if resident, could benefit from the exclusion regime provided for foreign employment income at that time. Surprisingly, the Supreme Court held that Italy could levy taxes on this income on the sole basis of Art. 19 of the Italy–Switzerland tax treaty, irrespective of the domestic tax scenario and of the principle “*de non aggravation*” of a taxpayer’s tax burden as a result of the application of treaty provisions.<sup>35</sup>

## 5. Conclusions

After decades in which foreign employment income had been granted an exclusion regime, as from 2001 such income has been included in the taxable basis for personal income tax purposes. However, in order to take into consideration the particular conditions in which such income arises, the legislator has adopted special rules regarding its determination.

Even after a number of modifications to the provisions, some critical aspects still remain, especially with regard to the potential infringement of the ability-to-pay principle and to the (so far incomplete) harmonization of tax and social security rules regarding foreign employment income. In this regard, the recent Law proposal C 2857, which is intended to modify Art. 51, Para. 8-*bis* of the ICTA, thereby providing employees with the option to include the amount of income actually received in the taxable basis, is welcome, as it represents a solution to one of these critical issues.

33. B.J. Arnold, “The Relationship Between Tax Treaties and the Income Tax Act: Cherry Picking”, *Canadian Tax Journal* (1995), p. 869.

34. See, inter alia, Supreme Court Decisions No. 29455, No. 29456, No. 29457, No. 29458, No. 29459, No. 29460 and No. 29461 of 17 December 2008.

35. For a comment on this position of the Supreme Court, see A. Persiani, “La tassazione del reddito di lavoro dipendente prestato all'estero tra taxing rules di fonte convenzionale e norme interne di esenzione”, *Diritto e pratica tributaria internazionale* (2009), pp. 1681-1696.