



MAZZESCHI

ITALIAN IMMIGRATION & CITIZENSHIP

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NEWS, UPDATES AND CURIOSITIES ON ITALIAN
IMMIGRATION AND CITIZENSHIP



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ELECTIVE
RESIDENCE VISA
AND TAKING
RESIDENCY IN
ITALY

The Italian Revenue Agency confirmed (in response to inquiry no. 119 of January 20, 2023) that taking a Residency in Italy is a requirement for those who have entered Italy with an Elective Residence Visa (hereinafter, ERV).

BACKGROUND OF THE INQUIRY

A British citizen, who holds an Elective Residence Visa sent an inquiry to the Revenue Agency, indicating that "He is a resident in Switzerland (where he habitually resides and where his main business and interests are located), and he owns two real estate properties in Italy where he goes to spend the holidays".

He also specified that he has never requested an Italian permit of stay once entering Italy nor he has registered his residence in Italy. Therefore, according to him, he is not taxable in Italy.

THE ITALIAN REVENUE AGENCY'S ANSWER TO THE INQUIRY FROM AN ITALIAN IMMIGRATION LAW POINT OF VIEW



First of all, the Italian Revenue Agency indicated that they are not the competent authorities to evaluate and assess the requirements once the foreigner enters Italy with an ERV.

However, it specifies that the simple fact of having an Elective Residence Visa does not automatically imply that the foreigner is taxable in Italy. On this point, it is highly important to note that the Italian Revenue Agency is talking about the holders of an Elective Residence VISA and not about the holders of a permit of stay for an Elective Residence Visa. The issue is a bit technical, yet there is a big difference between these two terms.

An Elective Residence Visa holder can just have obtained a visa, without having used it. (if one obtains a Visa, it does not mean that this person is obliged to enter the country, and therefore, this person just has a visa without making use of it)

A person who has obtained an Elective Residence Visa and entered Italy with this Visa is legally required to request a permit of stay (e.g. Police registration) within 8 days of his/her arrival.



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FURTHERMORE:



An important (precedent) condition for obtaining the ERV is the intention of living permanently in Italy. This is established in the Decree of the Ministry of Foreign Affairs n. 850 of 11 May 2011 and also in article 6 of the Legislative decree n. 286 of July 15, 1998, and in article 15 of the Presidential Decree n. 394 of August 31st, 1999. Accordingly, registering residency at the City Hall is a mandatory requirement

Besides, the Italian Revenue Agency explained that an Elective Residence Visa, as its name says, is for foreigners that voluntarily choose to live and reside (permanently) in Italy.



Generally speaking, this answer (response to inquiry no. 119) of the Italian Revenue Agency can be a little bit confusing, especially for those not familiar with the Italian Immigration system, yet, what it did was practically reconfirm that establishing residence in Italy is a requirement when a foreigner obtains an ERV and enters Italy.



WHY IS THE ISSUE OF
TAKING RESIDENCE
AN IMPORTANT
MATTER?



There are many reasons, yet mainly it is important because of the following reasons:



1

In Italy, as a general rule, foreign nationals living in Italy stably on a permit of stay (permesso di soggiorno) are also required to register as residents. (For example, the ministry of foreign affairs website also reports that (https://vistoperitalia.esteri.it/obblighimotivisoggiorno/it/D/5_0_D) non-EU nationals holding a valid residence permit are required to apply for residency registration at the town hall where they intend to reside (legislative decree 286/98 art. 6 c 7 and DPR 394/99 art. 15).

2

The individual should consider and take into account the tax implications of registering as a resident

3

In order to have some services (public or private), you need to demonstrate your residence.



FREQUENTLY ASKED QUESTIONS ON THE SCHENGEN VISA-FREE SYSTEM

HERE YOU CAN FIND 15 FREQUENTLY
ASKED QUESTIONS ON THE SCHENGEN
VISA-FREE, AND THEIR ANSWERS

1. IN WHICH COUNTRIES WILL THE VISA WAIVER APPLY?

The visa-free regime applies to stays in the territories of the EU Member States, except for the United Kingdom and Ireland.

The EU Member States covered by the visa waiver are:

- the EU Member States which are part of the Schengen area: Austria, Belgium, the Czech Republic, Croatia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxemburg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden;
- the EU Member States which do not yet fully apply the Schengen acquis (those who are not yet part of the Schengen area without internal borders): Bulgaria, Cyprus, and Romania.

Note: Stays in these states are not calculated in the overall period of stay for the Schengen area. Instead, the 90-day limit is calculated individually for each of these states. For instance, after a 90-day stay in the Schengen area, the person can immediately travel to Bulgaria and stay for another 90 days there.

The visa waiver, in principle, also applies to the associated Schengen states: Iceland, Liechtenstein, Norway, and Switzerland.

2. DOES THE VISA WAIVER INCLUDE THE FRENCH AND NETHERLANDS OVERSEAS TERRITORIES?

As regards the France and the Netherlands, the visa-free travel shall apply only to the European territory of these Member States. The visa regime between the overseas territories of these Member States and the six countries remains subject to bilateral arrangements between the countries concerned or to national legislation.

The overseas territories of France are: Guadeloupe, Martinique, French Guiana, Reunion, French Polynesia, New Caledonia, Mayotte, Saint Pierre, and Miquelon, Wallis and Futuna, Saint Barthélemy, Saint Martin, Clipperton Island, and the French Southern and Antarctic Lands.



The overseas territories of the Netherlands are: Aruba and the Netherlands Antilles (consisting of Bonaire, Curacao, Saba, Saint Eustatius, and Saint Martin).

3. HOW LONG CAN I STAY WITHOUT A VISA IN THE SCHENGEN AREA?

You can stay 90 days in any 180-day period within the Schengen area. When applying this rule, the following aspects should be taken into account:

- The date of entry is considered as the first day of stay in the Schengen territory;
- The date of exit is considered as the last day of stay in the Schengen territory;
- The 180-day reference period is not fixed. It is a moving window, based on the approach of looking backward at each day of the stay (be it at the moment of entry or at the day of an actual check, such as inland police control or border check upon departure);
- Absence for an uninterrupted period of 90 days allows for a new stay for up to 90 days.

It should be noted that periods of the previous stay authorized under a residence permit or a long-stay visa are not taken into account in the calculation of the duration of visa-free stay. Residence permits and long-stay visas are subject to different rules and the above explanations and calculations do not apply to them.

4. CAN I ENTER THE SCHENGEN AREA MORE THAN ONE TIME DURING THAT PERIOD?

Yes, you can. However, you must carefully calculate your days of stay as the overall period of stay must not exceed the overall total of 90 (ninety) days of stay within any 180-days period (see above).



5. WHAT TRAVEL DOCUMENTS ARE NEEDED IN ORDER TO ENJOY VISA-FREE TRAVEL TO THE SCHENGEN AREA?

A passport issued within the previous 10 years and valid for at least three months after the intended date of departure from the Schengen area.

6. DOES THE VISA WAIVER GIVE YOU THE RIGHT TO ENTER THE TERRITORY OF THE SCHENGEN STATES?

The visa waiver does not give an unconditional right of entry and stay. The Member States have the right to refuse entry and stay in their territories if one or more of the entry conditions are not met.

For stays not exceeding 90 days in any 180-day period, the entry conditions for third-country nationals are the following:

- possession of a valid travel document (see question 4) or documents authorizing them to cross the border;
- justifying the purpose and conditions of the intended stay, having sufficient means of subsistence, both for the duration of the intended stay and for the return;
- not to be a person for whom an alert has been issued in the Schengen Information System (SIS) for the purposes of refusing entry;
- not to be considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States, in particular where no alert has been issued in Member States' national databases for the purposes of refusing entry on the same grounds.

7. WHAT DOCUMENTS DO I NEED TO SHOW TO THE IMMIGRATION OFFICER AT THE PORT OF ENTRY?

You need to show your passport. In addition, you might be asked to also show documents proving your purpose and conditions of stay (for example tickets for further journeys and return tickets; reservation of accommodation; invitation letter in case of visits, conferences or events; school enrolment certificate in case of study etc.) as well as evidence of sufficient means of subsistence (see below).

8. HOW MUCH MONEY DO I NEED TO HAVE WITH ME IN ORDER TO TRAVEL TO THE SCHENGEN AREA?

According to Article 5(3) of the Schengen Border Code: "means of subsistence shall be assessed in accordance with the duration and the purpose of the stay and by reference to average prices in the Member State(s) concerned for board and lodging in budget accommodation, multiplied by the number of days stayed."



In order to assess the means of subsistence, the reference amounts set by each Schengen State must be taken into account.

The verification of sufficient means of subsistence may be based on cash, travelers' cheques and credit cards in the third-country national's possession. Declarations of sponsorships, where such declarations are provided for by national legislation and letters of guarantee/invitation from hosts, as defined by national legislation, in case the third-country national is staying with a host, may also constitute evidence of sufficient means of subsistence.

The validity of a credit card can be verified by contacting the issuing company or by using other facilities available at the border crossing point (e.g. exchange offices). Invitation from hosts can be verified by contacting the host directly or by verifying the host's good faith through the national contact points of the Member States in which the host resides.

9. IS TRAVEL MEDICAL INSURANCE ALWAYS NECESSARY IN ORDER TO TRAVEL IN THE SCHENGEN AREA?

Travel medical insurance is not mandatory for visa-free third country nationals. Nonetheless, it is recommended to get one in case of travel to the Schengen countries.



10. FOR WHICH PURPOSES CAN I TRAVEL WITHOUT A VISA TO THE SCHENGEN AREA?

You can come as a tourist, to visit friends or family, to attend cultural or sports events or exchanges, business meetings, for journalistic or media purposes, medical treatment, for short-term studies or training and any similar activities.

However, the visa waiver does not apply to persons traveling for the purpose of carrying out a paid activity in the Member States, i.e. for those who come to work in the EU (see question below).

11. DO I NEED A VISA TO WORK IN THE SCHENGEN AREA FOR LESS THAN 90 DAYS?

Yes, most of the Member States require a visa and a work permit if you intend to work there, even if it is for less than 90 days. Please contact the Embassy/Consulate of the Member State where you intend to work to inquire whether a special type of visa and work permit is needed.

12. IF I PLAN TO VISIT A FRIEND OR RELATIVE LIVING IN THE SCHENGEN AREA WILL I NEED TO PROVIDE ANY SPECIFIC INFORMATION ON THIS PERSON AT THE BORDER?

You can be asked to provide information on this person. It is recommended to have at least the address and contact number.



13. WILL I NEED TO APPLY FOR A VISA AND/OR STUDY PERMIT IF I PLAN TO TRAVEL TO THE SCHENGEN AREA FOR SHORT-TERM STUDIES?

You will need to apply for a study permit only in case you intend to undertake studies exceeding 90 days of stay in the Schengen area within a period of 180 days. For longer studies, you have to apply for a study permit and the rules vary from country to country. Therefore it is recommended to consult the Embassy/Consulate of the country in which you intend to study.

14. ONCE THE VISA-FREE TRAVEL APPLIES, CAN I TRAVEL FROM ONE SCHENGEN COUNTRY INTO ANOTHER COUNTRY?

There are no border controls between countries in the Schengen area. Border controls are carried out between the Schengen countries and Bulgaria, Cyprus and Romania (the EU Member States which do not yet fully apply the Schengen acquis). Controls are also carried out between Schengen countries and Ireland (which does not belong to the Schengen Area).

Non-EU citizens are obliged to fulfill all entry conditions (see question 5) and might be required to demonstrate that at possible ad-hoc controls in the Schengen area.

15. IF I STAY BEYOND 90 DAYS (WITHOUT A RESIDENCE PERMIT OR A LONGTERM VISA) OR WORK IN THE SCHENGEN AREA (WITHOUT A WORKING PERMIT), WHAT CAN HAPPEN?

A non-EU national who stays in the Schengen area beyond 90 days (without a residence permit or long-stay visa) is illegally present, which can result in a re-entry ban to the Schengen area. Working in the Schengen area without a work permit is also illegal (even if less than 90 days) and can likewise result in a re-entry ban to the Schengen area. Depending on the Member State administrative penalties may also apply.

ALL YOU
NEED TO
KNOW
ABOUT AIRE

THE REGISTRY
OFFICE FOR
ITALIAN CITIZENS
RESIDING
ABROAD



Do you know what AIRE means in Italy? If you are an Italian citizen or you are trying to get your Italian citizenship, you need to know about AIRE, the Registry Office for Italian Citizens Residing Abroad.

Q

WHAT IS
AIRE?

A

AIRE is an acronym for the Registry Office for Italian Citizens Residing Abroad, a system that contains data and information on Italian citizens residing abroad for a period longer than 12 months.

Q WHAT ARE THE COMPETENT INSTITUTIONS FOR AIRE REGISTRATION?

A The Italian municipalities are the competent bodies for the registration of Italian citizens resident both abroad and in Italy.

Q WHAT ARE THE BENEFITS FOR AIRE-REGISTERED CITIZENS?

A The Italian citizen enrolled in the AIRE can benefit from the services generally carried out by the Italian municipalities (issuance of identity card and passport, provision of any subsidies, assistance in repatriation, request for certificates, etc.) in the competent consular office and can also exercise the right to vote abroad.

Q WHO MUST REGISTER AIRE?

A

- a) Italian citizens who intend to move their residence abroad for a period longer than 12 months;
- b) Italian citizens born abroad and residing from birth outside the Italian territory; and
- c) those who acquire Italian citizenship abroad and have then transcribed the birth certificate and/or the decree granting citizenship in the State Civil registers of the Italian Municipality.



HOW TO
APPLY FOR
AIRE?



The request must be submitted to the Consular Office with jurisdiction over the new foreign residence within 90 days from the expatriation. Registration can be requested by mail or by going personally to the Consular Office.



IS IT
NECESSARY
TO UPDATE
THE AIRE
POSITION?



Yes. To benefit from the consular services, any change concerning residence (address) or marital status must be communicated to the competent consular offices. Updates must also cover cohabiting family members with Italian citizenship.



HOW TO APPLY
FOR REGISTRY
OFFICE
CERTIFICATES
ONCE JOINED
THE AIRE?



Italian citizens enrolled in the AIRE can apply for certificates concerning residence and family status exclusively at the registry office of the Italian municipality where AIRE is registered. The certificates of existence in life, death, and birth can be issued both by the municipality and by the competent consular office.

Q

HOW TO APPLY
FOR ITALIAN
CITIZENSHIP
CERTIFICATES IF
AIRE IS
REGISTERED?

A

Certificates of Italian citizenship are issued abroad by the consular authority. The Italian municipality can only issue a certificate attesting to the possession of Italian citizenship until the moment of the citizen's transfer abroad. For Italian citizens born and residing abroad, however, the only body that can issue citizenship certification is the consular office territorially competent.

Q

WHAT TO DO IN
THE EVENT OF
REPATRIATION?

A

Citizens who intend to repatriate or citizens residing abroad from birth who intend to move to Italy, must report to the registry office of the Italian Municipality where they intend to establish residence and declare what will be the new address.



LOSS OF ITALIAN CITIZENSHIP FOR FAILURE TO TAKE THE OATH OF CITIZENSHIP WITHIN 6 MONTHS:

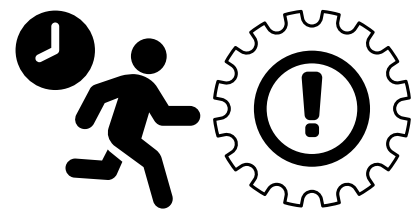
WHAT REMEDIES ARE THERE?



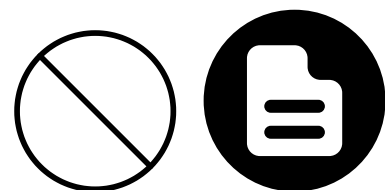
Once the decree granting Italian citizenship has been received, the applicant has 6 months to take an oath of allegiance to the Italian Republic in front of a Town Hall officer or Consular officer, pronouncing the phrase: "Giuro di essere fedele alla Repubblica e di osservare la Costituzione e le leggi dello Stato".



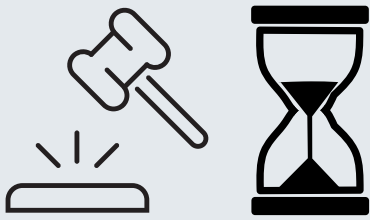
The day after the oath, the applicant is effectively an Italian citizen and can apply for an Italian identity card and a passport.



In the event that the oath is not taken within the legally established terms, the Ministry of the Interior issues a declaration of forfeiture for failure to take the oath.



In this case, the decree granting Italian citizenship becomes ineffective and the applicant would have to file a new application and valid documentation. Furthermore, the applicant will be required to wait again up to three years to hopefully have a new decree granting citizenship.



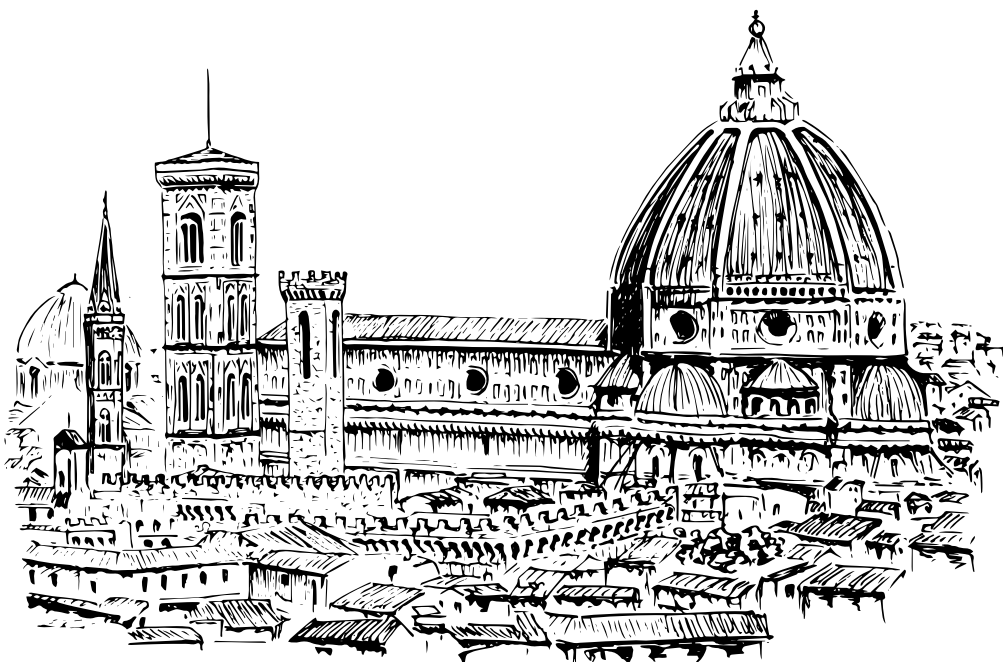
However, in a recent judgment, the Court of Rome recognized the right to take a “late” oath, being the deadline already expired, after verifying that the failure to take the oath was not attributable to the applicant’s inertia but due to force majeure.



Talking about the specific case, the applicant was a Bangladeshi citizen who had travelled to Bangladesh to assist his elderly mother and who had been unable to return to Italy to take the oath due to the travel restrictions present during the pandemic (Covid-19).



The applicant had, indeed, sent numerous communications to the Municipality and to the Ministry of the Interior, without receiving any response, demonstrating his impossibility to attend the appointment set for the oath and requesting that it be postponed.



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