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# Italy Introduces a Voluntary Disclosure Procedure

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# PRACTITIONERS' CORNER

## Italy Introduces a Voluntary Disclosure Procedure

by Salvatore Mattia

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Voluntary disclosure represents an important opportunity for taxpayers to regularize their position with the Italian tax authorities. It is a program that complies with OECD guidelines and aims at future voluntary compliance within the broader picture in which the development of a new tax authority/taxpayer cooperation model is being devised.

On December 4, 2014, the Italian Senate granted its final approval to Bill No. 1642, setting forth provisions on the emergence and repatriation of capital held abroad, enhancement of the fight against tax evasion, and self-money-laundering provisions (the bill subsequently became Law No. 186 of December 15, 2014).

Voluntary disclosure is one of the measures contained in the bill and aims to counteract income tax dodging through the fictitious allocation abroad of a tax residence and the unlawful transfer and/or holding of foreign income-producing assets or activities. Regulatory proposals related to the emergence of capital intend to be consistent with the recent OECD guidelines.

The 2008 financial crisis exerted pressure on national budgets and tax systems. The international debate on the need for effective tax cooperation pointed out how countries are likely to become increasingly vulnerable to tax evasion and avoidance.

Tax havens that do not apply transparency and information exchange standards may facilitate (and even encourage) tax evasion and avoidance, with consequences that might undermine the tax sovereignty of other states. During the April 2009 G-20 meeting in London, heads of state and governments agreed to adopt measures against noncooperative jurisdictions, clearly stating their readiness to introduce and apply penalties in order to protect both public finances and financial systems. Since then, the process of states' adjustment to the OECD's principles of transparency and information exchange has become unstoppable to the extent that any progress achieved in abolishing past banking secrets is hardly comparable with results attained in the past decade.

In the last few years, the scales within the international taxation arena tipped from traditional prevention of double taxation to the fight against double nontaxation. The opening of national markets toward a global economy has led, on the one hand, to enormous benefits in terms of interchange, but, on the other, it has also heightened the need for enhanced cooperation among tax authorities.

Therefore, while voluntary disclosure represents an important opportunity for taxpayers wishing to regularize their own position with the Italian tax authorities, it realizes a program that complies with OECD guidelines and aims at future voluntary compliance within the broader picture in which a new tax authority/taxpayer cooperation model is being developed.

### Voluntary Disclosure Procedure

The law revolves around a taxpayer's spontaneous cooperation since the taxpayer may request that the tax authority regularize non-declared capital held abroad and remedy noncompliance with tax return obligations, even for a nonviolation of provisions on tax monitoring.

The procedure allows a taxpayer to regularize any assets illegally held abroad through a mechanism that provides for payment of the entire amount of tax



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avoided, but with significant penalty reductions in addition to no punishment for tax crimes (with some exceptions).

Voluntary disclosure will be effective until September 30, 2015, and covers violations committed up to September 30, 2014. A taxpayer will not be allowed to apply for the procedure if the request is submitted after having been formally notified regarding accesses, inspections, and assessments, or the activation of any administrative assessments, or of any criminal procedures in connection with violations of tax rules on the objective application of the voluntary disclosure procedure.

In order to qualify for the voluntary disclosure procedure, the violator must:

- willingly disclose to the tax authorities the total investments and financial assets or activities held or constituted abroad;
- provide any documents related to the above assets or activities along with information on the relevant income that was required to constitute or acquire the assets or activities, as well as any income deriving from the divestment or employment thereof; and
- provide documents and information for the determination of any higher taxable incomes, not linked to the assets or activities held or established abroad.

Any taxpayer wishing to enter the voluntary disclosure procedure must willingly disclose to the tax authorities a special report containing the total investments and/or financial assets or activities held abroad and provide all related documents and information required to determine the incomes employed to either acquire the above assets or activities. This includes income that was derived by the divestment or employment on whatever basis, regarding all tax periods for which, at the filing date of the request, the term for audit or challenge has not yet fallen due.

When the taxpayer files the application for the voluntary disclosure procedure, the tax authorities assess the amounts due and subsequently issue a summons to appear.

In that case, a taxpayer may accept the summons to appear and pay the sums due or may initiate a debate procedure with the tax authority and pay the amount established in the deed that will be drawn up for the taxpayer's acceptance of the settlement proposal. The voluntary disclosure procedure will be considered final once the taxpayer has paid the full amount of taxes due.

If the taxpayer does not pay the taxes due, the tax authorities may issue a new tax assessment notice to the taxpayer and a new deed of impugnment with a restatement of penalties.

## Voluntary Disclosure Effects

Access to the voluntary disclosure procedure has effects on the level of both criminal and administrative tax penalties.

For any taxpayer wishing to follow the voluntary disclosure procedure, punishability is excluded for:

- all tax return offenses (including returns with discrepancies, omitted tax returns, fraudulent returns containing fictitious invoices, and fraudulent returns by any other means);
- crimes related to omitted payment of certified withholdings as well as omitted VAT payment; and
- behaviors adopted in connection with money laundering crimes and employment of money, assets, or benefits derived from illegal sources and perpetrated in connection with the tax crimes noted above.

The law introduces into the criminal code the crime of self-money-laundering, which punishes any party employing or investing proceeds in economic or financial activities or assets that are derived from other unlawful activities carried out by the same party attempting to conceal the source from which these are generated. The penalty is calibrated on the basis of the seriousness of the alleged offense.

Punishment for the crime of self-money-laundering ranges from two to eight years of imprisonment, if the crime that produced the proceeds is punishable with a term that is longer than five years. If the crime is punishable with a prison term of up to five years, the self-money-laundering penalty may be reduced to a term that ranges between one and four years. Furthermore, the crime of self-money-laundering is not identified when money, assets, or other benefits are intended for personal use or enjoyment.

The law also clarifies the effects produced by voluntary disclosure regarding administrative tax penalties, which would allow the application of a lesser punishment than the statutory minimum penalty on the following conditions:

- if assets are transferred to Italy or to EU member states or to European Economic Area states that allow an effective exchange of information with Italy;
- if assets transferred to Italy or to the above states were or are being held therein; or
- if the perpetrator of the violations authorizes the financial broker holding assets to transmit to the Italian tax authorities all data pertaining to the assets subject to voluntary disclosure and annexes a copy of the authorization to the voluntary disclosure request application.

In other cases, the penalty is determined based on the minimum statutory punishment, reduced by one-fourth.

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On March 13, 2015, the Italian Revenue Office published Circular No. 10/E, which defines the initial operating conditions necessary to proceed to the voluntary disclosure.

## Proposals by Chartered Accountants

The National Council of Chartered Accountants (Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili, or CNDCEC) expressed reservations and doubts regarding the introduction of the new legal provision.

The CNDCEC believes the procedure is burdensome, because it involves costs that might discourage taxpayers from adhering to it. The complexity of the transaction causes uncertainty over the related costs, which are connected to a number of variables such as the country in which the investment was made, the kind of investment and taxpayer's behavior, the structure of the relevant assets, and the kind of evasion engaged in.

The heaviest burden is triggered, as a rule, when assets are identified in a country on Italy's blacklist.

Given the complexity of the regularization process, the CNDCEC further suggests that a prior debate should take place at the taxpayer's request. The debate would facilitate the procedure's favorable result through a taxpayer's participation, starting from the tax authority's initial assessment phase of any documents and information provided for regularization purposes.

Furthermore, the CNDCEC requested the minister of economy and finance to intervene with a regulatory provision that would exempt professionals from reporting obligations connected to money laundering, when consulting activities for taxpayers that might be interested in voluntary disclosure were involved.

Note that the Ministry of Economy and Finance released a circular on January 9 that states that professionals have a reporting obligation connected to anti-money-laundering in transactions related to the voluntary disclosure procedure.

The ministry believes that the procedure has no effect on the application of anti-money-laundering norms (Legislative Decree No. 231/2007), or on obligations related to active cooperation, because these contribute to the prevention of illegally sourced capital.

Other obligations remain, including the proper verification of clients, identification of the ultimate owner, application of measures regarding high money-laundering or terrorist-financing risks, and registering and reporting possible suspicious transactions. ◆

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