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Cabinet Approves Draft Tax Reform Bill

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COUNTRY DIGEST

Cabinet Approves Draft Tax Reform Bill

Italy's Council of Ministers (Cabinet) on April 17 approved the Draft Bill on the Italian Tax Reform, which aims to increase the certainty of the tax system, allowing it to grow more equitable and transparent, fostering economic growth. The reform is also intended to improve taxpayer relations with the tax authorities and aid the fight against tax evasion.

The government must adopt legislative decrees implementing the tax reform within nine months from the entry into force of the draft bill. The government said in an April 16 press release that the tax reform should not increase the tax burden. The revenue-neutral implementation of the reform should be achieved through a redistribution of system resources.

The draft bill is divided in three chapters:

- Chapter I, ''General provisions aimed at equity and at the system's rationale'';
- Chapter II, ''Countering of evasion and avoidance and revision of the relationship between Tax Authorities and taxpayers''; and
- Chapter III, ''Amendment of taxation in view of growth, internationalization of commercial enterprises and environmental safeguard.''

New Entrepreneurial Income Tax

The bill introduces a single tax to replace both the IRPEF (personal income tax) and the IRES (corporate income tax) for income produced through business activities or self-employment (article 12). The new tax on entrepreneurial income (IRI) provides for the deductibility from the tax base of sums received by entrepreneurs, professionals, shareholders, or associates as remuneration.

The purpose is to encourage capitalization of enterprises, providing a proportional rate that is lower on the taxable profits of the enterprise and taxing the income the entrepreneur receives by the company as remuneration. Minor taxpayers (that is, smaller businesses) would be able to pay a lump sum payment of one single tax instead of all the taxes due.

The bill authorizes the government to provide ''optional forms'' that would allow taxpayers to choose between IRPEF/IRES taxation and the new IRI tax.

Improving Internationalization

To advance the internationalization of economic entities operating in Italy, the government should introduce rules that reduce doubts about the determination of income. The draft bill provides for the introduction of income determination criteria that are clear and consistent with the rules governing the completion of financial statements.

Further, the tax regime for insolvency procedures should be extended to the institutions introduced by the bankruptcy reform.

The government has also been entrusted with revising regulations governing cross-border transactions, with special reference to:

- determination of tax residence;
- tax transparency regime of foreign controlled and associated companies;
- repatriation of dividends originating from states with privileged tax regimes;
- deductibility of costs regarding commercial transactions with entities located in states with privileged tax regimes;
- application of cross-border withholding tax;
- tax regimes of permanent establishments abroad and of those located in Italy of nonresident entities; and
- losses of group companies residing abroad.

The bill also foresees the revision of deductibility rules on amortizations, on general expenses, and on some particular cost categories, ''safeguarding and specifying the concept of tax relevance while restricting differentiations among economic sectors.''

Anti-Evasion and Antiavoidance

The Italian government will introduce new rules defining new assessment and identification criteria as well as tax evasion methods regarding the most important taxes. These will be determined and published on a yearly basis.

Further, regarding financial statement procedures, the bill requires the government to draw up on a yearly basis the following documents:

- A report on strategies pursued and on results achieved through anti-evasion measures.
- A report on tax expenses — that is, a document on the exemption, exclusion, or reduction of the tax base, or of the tax, to be compared with expenditure programs. The bill provides for the possibility of creating an independent commission, comprising specialists appointed by the Ministry of Economy and Finance and by other public administrations, for this purpose.

The government will also introduce rules aimed at eliminating or reducing unjustified tax expenses, or those that seem duplicative, while safeguarding fundamental rights pertaining to family, health, the economically or socially underprivileged, artistic and cultural heritage, and research and the environment.

The government must also reform the antiavoidance provisions set forth by Italian laws in order to introduce a general definition of abuse of law that may be applied to all taxes (article 6).[1]

This reform must be based on the following principles:

- a definition of abusive behavior that covers the intentional distorted use of legal instruments to achieve tax savings, even if that behavior may not conflict with some specific provision;
- the guarantee of taxpayers' freedom of choice between the various operations with a different tax burden;
- the exclusion of criminal relevance of ''elusive behavior'' — that is, behavior that could fall within the definition of the general antiabuse provision;
- a shift of the burden on the tax authorities to prove the existence of any abusive schemes so that the burden is instead on the taxpayer to prove the existence of sound nontax (that is, economic) reasons to justify operations;
- the establishment of specific procedural rules to guarantee an effectual debate between the tax authorities and taxpayers; and
- the stipulation that in case of a taxpayer's appeal, penalties and interest due may be collected upon the provincial tax court's issuance of its decision.

Taxpayer Relations

To improve relations between tax authorities and taxpayers, the government will introduce rules providing control and tax risk management systems for larger corporations (article 7). Enterprises implementing these systems may benefit from a number of incentives in terms of penalty reductions, lesser requirements, and lesser assessments.

The tax reform also includes an overhaul of the criminal penalty system, according to predetermination and proportionality criteria connected to the seriousness of behaviors (article 9). In particular, the tax reform must provide for:

- identification of tax crimes for fraudulent or simulating behaviors or behaviors with the purpose of creating and using false documents;
- exclusion of criminal relevance for elusive behaviors;
- revision of rules on discrepant tax return and of the penalty system, to connect penalties to the actual seriousness of behaviors; and
- reduction of penalties for less serious cases, or the application in such cases of administrative rather than criminal penalties.

Enhanced Information Acquisition

The draft bill also provides for enhanced information acquisition and control activities by the tax authorities (article 10). The aim is to support the tax authorities' use of targeted controls by means of databases and by cooperating with other public authorities.

The bill also calls for enhancement and rationalization of traceability of payments, providing for payment methods subject to traceability and increased use of e-invoicing.

Tax Litigation

The bill also calls for reform of the tax litigation rules to bolster protection of taxpayer's legal rights and to further empower the collection authority of local revenue offices.

For this purpose, the following has been considered:

- the introduction of measures providing for the prompt definition of tax controversies, with preliminary court procedures for minor litigation cases;
- the extension of court settlement during the appeal phase;
- a territorial redistribution of tax courts to ensure their improved efficiency; and

[1]The government's objective is to introduce a general definition of abuse of law that is consistent with the position of the Joint Sections of the Italian Supreme Court.

- amendment of collection rules for the revenue of local revenue offices to guarantee the assurance, efficiency, and effectiveness of their collection powers.

Indirect Taxes

The tax reform also contains provisions to amend indirect taxes (VAT, registration tax, stamp duties, mortgage and cadastral taxes, and taxes on government grants, insurance, and entertainment), establishing streamlined procedures for compliance with relevant requirements and a rationalization of tax rates.

Regarding VAT, the government would introduce rules to implement the VAT regime provided in article 11 of the EU VAT directive (Directive 2006/112/EC).

The bill would also introduce rules on environmental taxation (article 15). In particular, in line with the policies and measures adopted by the EU for sustainable development and the green economy, the government would introduce new tax measures designed to preserve the environment (incentives and green taxes).

The bill provides that provisions regulating excise taxes on energy products would also be overhauled in relation to the carbon contents, as foreseen by the European Council's directive proposal on the taxation of energy products and electric power.

The revenue derived from the carbon tax would be earmarked primarily for revising the renewable sources financing system.

The entry into force of the environmental tax provisions would be coordinated with the date of implementation — in member states — of the harmonized regulation that was set forth on this issue at the EU level.

Cadastral Amendments

The draft bill contains cadastral amendments regarding real property (article 2), which will be implemented by municipalities and the revenue office of the competent territory, to ensure that each building unit is assigned the relevant income value.

This reform would be based on the following principles:

- cooperation with the municipalities where the buildings are located;
- redetermination of the definitions for the designated ''ordinary'' and ''special'' use of those buildings;
- definition of territorial contexts of the real estate market;
- determination of the ordinary average assets value and of the average income according to specific parameters; and
- effective cooperation between the competent territorial revenue offices and the municipalities.

Reduced tax rates are provided to prevent the revised income values from causing a greater tax burden. ◆

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