

Paradigm

INTERNATIONAL SOCIETY OF PRIMERUS LAW FIRMS

SPRING 2015

The Perfect Storm

Primerus Firms Do Big Things with Technology



Current Legal Topics:

North America

Europe, Middle East & Africa

Latin America & Caribbean

Asia Pacific



Voluntary Disclosure of Income for Tax Defaulters

The current international environment is strongly putting pressure on individuals and companies that hold financial businesses and properties undeclared to their own countries. In October 2014, at the Organisation for Economic Co-operation and Development (OECD) Global Forum on Transparency and Exchange of Information for Tax purposes in Berlin, 51 countries signed for the adoption of a new global standard that will allow an automatic exchange of information about taxpayers' positions starting in 2017.

This initiative is focused on the fight against tax havens, granting at the same time the possibility of recovering resources held abroad, thus not available for internal and legal investments. This aim is a main interest of Italy, since it is estimated that businesses in the amount of 150 billion euros are currently illegally held abroad by Italian taxpayers.

Italy, with this aim and on the basis of the legislative experience of other

countries (i.e., the United States, the United Kingdom, Germany and France), approved a Voluntary Disclosure procedure in December 2014.

As per other countries' similar laws, the Italian Voluntary Disclosure procedure will not allow any reduction on unpaid taxes, but will grant reduced administrative penalties and the exclusion from a quite extensive list of criminal liabilities. The Voluntary Disclosure will apply to undeclared financial activities and properties up to September 2014.

Together with the Voluntary Disclosure procedure and in order to increase its attractiveness, Italy is entering international agreements with main tax havens in order to grant a full exchange of tax and financial information with regard to the businesses held by Italian taxpayers in such tax havens. Furthermore, Italy has introduced the new crime of self-laundering. Pursuant to this new crime, individuals who use money or goods originating from an illegal activity that they contributed to

committing (such as tax crimes) shall be punishable with a fine and from two to eight years of imprisonment.

Voluntary Disclosure is possible for individuals, entities, partnerships and corporations, with tax residence in Italy. It is therefore available also for foreign corporations with a subsidiary or a branch in Italy in order to legalize the position of the Italian entity with regard to businesses illegally held abroad, but most of all, in order to free the managers (possibly foreigners) of criminal liability. In addition, according to the draft form prepared by the Italian Tax Authority, it seems that Voluntary Disclosure will also apply to undeclared businesses held in Italy and not only abroad.

It is mandatory that the taxpayer (or any jointly liable person) is not aware of any tax audit pending with regard to the assets subject to disclosure. Moreover the procedure can be implemented only once for each taxpayer.

The taxpayer will have to submit to the Italian Tax Authority all the



Francesco Luigi De Luca



Marco Salvatore

Francesco Luigi De Luca is a partner of the firm. He has broad experience in tax law, with a strong focus on tax litigation and cross-border tax issues. He has successfully assisted many Italian and international groups and corporations in their tax litigation and restructuring issues.

Marco Salvatore joined the firm as a partner in 2014. While practicing as a qualified chartered accountant, he mainly advised industrial and financial companies on corporate and tax matters. He actively dealt with purchase and transfer of shares, direct and indirect mergers, transfers and divisions of going concerns. He performed appraisals for several industrial and financial companies.

Studio Legale e Tributario F. De Luca
Piazza Borromeo
Milan, Italy 12-20123

+39 02 721 4921 Phone
+39 02 805 2565 Fax

deluca@deluca1974.it
m.salvatore@deluca1974.it
deluca1974.it

documentation and the information necessary for the determination of the undeclared income and activities (and this, for all the tax periods still auditable).

The Voluntary Disclosure procedure will reduce the administrative penalties to half of the minimum amount provided by law if the following conditions are fulfilled:

- The businesses are transferred to Italy or to any other country of the European Economic Area (i.e., any country of the E.U., plus Iceland, Lichtenstein and Norway);
- The transferred businesses are or were held in any country of European Economic Area;
- The taxpayer allows the foreign intermediary to transmit to the Italian Tax Authority all the information regarding the assets held abroad.

Should one of the above mentioned conditions not be met, the administrative penalties are reduced to three-quarters of the minimum amount provided by law. Further to the administrative penalties,

the taxpayer will have to pay the full amount of the unpaid taxes, which will be calculated by applying the ordinary rates on the undeclared income to be determined according to the usual methods of determination.

For assets amounting to less than an average of 2 million euros, with regard to the tax years to be covered by the Voluntary Procedure, the taxpayer may choose to determine the taxable income in a simplified way, as 5 percent of the overall amount of the assets and then applying a tax rate of 27 percent on this lump sum taxable income.

A main difference between Voluntary Disclosure and the previous three Italian tax amnesties is that Voluntary Disclosure provides for the full payment of the taxes due (and not of only a lump sum amount) and that the taxpayer will have to fully disclose all the relevant information and documentation. Should the disclosure be partial or untrue, the taxpayer can be charged with a crime punished with 18 months to six years of imprisonment.

Moreover, Voluntary Disclosure will not ensure the taxpayer any benefit of anonymity (as was granted by previous

Italian tax amnesties).

A further consequence of Voluntary Disclosure, however, is that the taxpayer (or the legal representative of the corporation) will be free of liability for a wide range of criminal offenses.

Namely, the taxpayer will no longer be punishable for the following crimes:

- Fraudulent and false income tax return filing;
- Omitted income tax return;
- Omitted VAT and withholding tax payments;
- Money-laundering;
- Self-laundering.

Ultimately, by Voluntary Disclosure, Italy aims to obtain the disclosure of € 30 billion (thus available for investments in Italy) and € 6.5 billion in cash by the end of 2015. Whether this is a realistic estimation or not will be judged by posterity. **P**

