



Highlights

- Applicability of voluntary disclosure programme as of 1 January 2015
- Ordinary taxation of disclosed income, but significant reductions of penalties and removal of criminal charges
- Luxembourg removed from black-list

APPROVAL OF LAW ON VOLUNTARY DISCLOSURE

The Italian Parliament has approved law No. 186/2014 introducing a voluntary disclosure (“VD”) programme that entered into force as from 1 January 2015.

The VD programme, which will be initiated upon application by taxpayers to be filed by 30 September 2015, offers two possibilities:

- VD relating to unreported foreign assets held by Italian resident private individuals and certain other private entities; and
- VD for any other violations committed by any taxpayers (including Italian and foreign corporations).

The purpose of the VD programme is to obtain full taxation of any income that has not been taxed in any year open to assessment but with a significant discount on administrative penalties and full protection for most tax related criminal penalties, including for money laundering connected to tax crimes.

The VD programme has been introduced in conjunction with the introduction of the new crime for “self-money laundering”, i.e. the use, transfer or replacement in economic activities of funds deriving from the commission of a crime in order to jeopardize the identification of their criminal source. The application for the VD programme will exempt from the commission of such a crime, which is punishable up to eight years imprisonment.

Further details on the application of the VD will be given by the Italian Revenue Agency with regulations to be issued not later than 31 January 2015. Furthermore, countries will

have until 1 March 2015 to negotiate treaties granting effective exchange of information (with some retrospective elements) in order to ensure the top-tier level of penalty reduction.

Given the introduction the new crime of “self money laundering” and the recent developments in terms of bank secrecy and exchange of information in most countries, the VD program is likely going to be the only feasible route to regularize past violations without incurring significant criminal consequences.

The VD programme will not be accessible to those who already have formal knowledge of an investigation or audit in respect of the assets/income to be disclosed.

1. VD to cure the failure to report foreign assets

A first side of the VD programme will applies to any Italian-resident individuals and certain other non-commercial entities (including trusts) that have held assets in any of the tax periods open to assessment and who have not properly disclosed such assets in their tax return. It covers violations committed until 30 September 2014.

The VD programme has the following features:

- a) Years covered: 2009/2010-2013 or 2004/2006-2013 depending on whether the statute of limitations can be doubled and on whether or not the tax return has been filed.
- b) Obligation to disclose all assets and information (no partial VD admitted).
- c) Discussion with tax offices of the overall position will follow from the filing of the application.
- d) Application of full taxes arising from the foreign-held assets (if assets are worth less than EUR 2 million, a simplified regime can be elected with a 27% tax on a yearly presumed yield of 5% of the year-end value of the assets).
- e) Administrative penalties on income evasion are reduced by 87.5% or 75% of their minimum amount depending on how the procedure is applied.
- f) Administrative penalties on failure to report the assets can be reduced by 83.3% or 75% depending on where the assets were held (where the highest reduction will apply for assets held in States with an effective exchange of information i.e. non “black listed” States).
- g) Criminal penalties are not applicable if the integrated violation amounts to a crime for omitted, irregular or false tax returns or omitted payment of taxes.
- h) To obtain the benefits of the VD, the taxpayer has to pay the full amounts upfront in one instalment or three monthly instalments. No set-off is admitted with tax credits (if any).

2. VD for other taxpayers (corporations, etc.)

The VD programme will also apply to any taxpayer (corporate, individual, resident, not resident) who have committed any tax violations in any of the tax periods open to assessment (e.g. transfer pricing adjustments, unreported revenues, hidden permanent establishments in Italy or fictitious foreign tax residency). The VD will also cure withholding tax violations and VAT violations.

Such VD programme will have the following features:

- a) Years covered: 2009/2010-2013 or 2004/2006-2013 depending on whether the statute of limitations can be doubled and on whether or not the tax return has been filed.
- b) Discussion with tax offices of the overall position will follow from the filing of the application.
- c) Application of full taxes due on any disclosed income.
- d) Administrative penalties on income evasion are reduced by 87.5% or 75% of their minimum amount depending on how the procedure is applied.
- e) Criminal penalties are not applicable if the integrated violation amounts to a crime for omitted, irregular or false tax returns or omitted payment of taxes.
- a) To obtain the benefits of the VD, the taxpayer has to pay the full amounts upfront in one instalment or three monthly instalments. No set-off is admitted with tax credits (if any).

Luxembourg excluded from blacklist

By a decree signed on 16 December 2014 the Ministry of Finance has deleted Luxembourg from the “blacklist” of countries for which CFC rules can apply even if the company does not realize passive income.

The list previously included Luxembourg 1929 holding companies and any other entities eligible for the benefit of a similar tax regime under a ruling with the local tax authorities. Apart from CFC rules, such exclusion from the “blacklist” might also have an impact on the VD programme since some of the detrimental consequences of ownership of assets in “blacklisted” States would no longer apply.

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