

TAX BRIEFING
NEW TAX SETTLEMENT PROCEDURES
IN ITALY
FEBRUARY 2019

- FAVOURABLE SETTLEMENT PROCEDURES FOR AUDIT REPORTS, NOTICES OF PAYMENT AND PENDING TAX LITIGATIONS HAVE BEEN INTRODUCED BY LAW DECREE NO. 119/2018.



Introduction

New provisions aimed at settling various outstanding tax liabilities and disputes have been introduced in Italy by Law Decree n. 119, issued on 23 October 2018 (the "Decree"). The Decree, among other things, creates the possibility of settling: (i) audit reports, (ii) notices of payment and (iii) pending tax litigation.

Settlement of tax audit reports

Art. 1 of the Decree allows the settlement of audit reports which were served to taxpayers on or before 24 October 2018. Taxpayers who intend to settle these audit reports must:

- file an integrative tax return (*dichiarazione integrativa*) to consider higher taxes challenged in the audit report for a specific fiscal year¹; and
- pay higher taxes resulting from the integrative tax return.

The filing of the integrative tax return and payment of higher taxes² must be completed by 31 May 2019.

"ART. 1 HAS ENABLED THE SETTLEMENT OF AUDIT REPORTS WHICH HAVE BEEN SERVED ON TAXPAYERS ON OR BEFORE 24 OCTOBER 2018."

¹ The settlement procedure is also applicable to taxpayers who have not filed tax returns (which will, in any event, be considered as not filed for assessment purposes).

² As an alternative, higher taxes can be paid within a maximum of 20 instalments. In this case, settlement procedure is implemented by payment of the first instalment.

“ART. 3: ALL TAX DEBTS ENTRUSTED TO THE ITALIAN TAX COLLECTOR FROM 1ST JANUARY 2000 TO 31 DECEMBER 2017 CAN BE SETTLED BY PAYING THE AMOUNT OF TAXES DUE, PLUS THE COLLECTING FEE AND RELEVANT INTEREST.”

Taxpayers joining this settlement option will be excused from paying the relevant penalties and late interest that would otherwise have been due. Where the audit report refers to several fiscal years, the taxpayer can settle only for one specific year³.

This settlement option is applicable to fiscal years specified in the audit report as still auditable as of 31 December 2018⁴.

In order to pay the relevant due taxes, the taxpayers are not allowed to offset tax credits and fiscal losses.

In addition, taxpayers are entitled to the benefit of this agreement if, after 24 October 2018, they have been subject to audit activities, including:

- notice of assessment⁵;
- invitation to appear; and/or
- tax questionnaire.

Conversely, taxpayers who have received the above before 24 October 2018 are not entitled to benefit from this provision.

Ordinary terms of assessment for the fiscal year ending 31 December 2015 which is considered in audit reports and served by 24 October 2018 are extended for two years⁶.

This regime is also applicable to audit reports relating to VAT on imports under certain conditions and carrying out specific functions.

Settlement of notices of payments

According to art. 3 of the Decree, all tax debts entrusted to the Italian Tax Collector from 1 January 2000 to 31 December 2017 can be settled by paying the amount of tax due, plus the collecting fee and relevant interest.

In case of settlement, applicable penalties and late interest will be no longer due.

The Italian Tax Collector provides relevant data to identify pending charges potentially under the scope of the settlement⁷.

Taxpayers who intend to settle must:

- file a relevant application⁸ with the Italian Tax Collector by 30 April 2019⁹;
- pay taxes due plus the collecting fee and relevant interest by 31 July 2019¹⁰; and
- undertake to discontinue any tax litigation in progress regarding the same debts.

³ The Italian tax Authority clarified that all taxes challenged for a certain fiscal year must be settled with no possibility of “cherry picking” (Provvedimento del Direttore dell’Agenzia delle Entrate Prot. N. 17776/2019).

⁴ 2013 was the last fiscal year open to assessment as at 31st December 2018.

⁵ A settlement of assessment (“*accertamento con adesione*”) in progress would not exclude the procedure at issue.

⁶ In the event that the settlement procedure in issue has not been carried out.

⁷ Relevant form is available at the following web address: <https://www.entraterriscossione.it/RDC/richiestaPDA.action>

⁸ Relevant form is available at the following web address: <https://servizi.agenziaentraterriscossione.gov.it/DefinizioneAgevolata/defAge3.do>

⁹ The application has to be filed by certified e-mail or filed by hand with a Tax Collector Office.

¹⁰ As an alternative, taxes due can be paid within a maximum of 18 instalments. In particular, 2% rate for late interests will apply.

“ART.6: IT IS POSSIBLE TO SETTLE ONGOING TAX LITIGATION WITH THE ITALIAN TAX AUTHORITIES BY PAYING A SUM BASED ON THE STATUS OF THE PROCEDURE.”

The Italian Tax Collector will inform taxpayers by 30 June 2019 of all relevant information regarding amounts to be paid and relevant due-dates.

It is not possible to offset any available tax credits for the payment of the amounts due for the settlement.

Settlement of pending tax litigation

Pursuant to art. 6 of the Decree, it is possible to settle ongoing tax litigation with the Italian Tax Authorities by paying a sum based on the status of the procedure.

In case of settlement, applicable penalties and late interests will be no longer due.

Taxpayers who intend to settle a specific tax litigation must:

- file a relevant application for giving up the litigation¹¹; and
- pay the amount due according to the status of the litigation as per the following table.

| Reference date to be considered | Status of the tax litigation | Amount of claimed taxes to be paid |
|---------------------------------|---|------------------------------------|
| 24/10/2018 | Appeal served to counterpart and not yet filed with the first degree Tax Court. Or First degree decision issued against the taxpayer. | 100% of claimed taxes |
| 24/10/2018 | Appeal filed with the first degree Tax Court before the relevant decision is issued. | 90% of claimed taxes |
| 24/10/2018 | First degree decision issued in favour of the taxpayer | 40% of claimed taxes |
| 24/10/2018 | Second degree decision issued in favour of the taxpayer | 15% of claimed taxes |
| 19/12/2018 | First and second degree decisions issued in favour of the taxpayer and litigation pending before the Supreme Court (third and last degree) | 5% of claimed taxes |

Filing of the mentioned application and payment of the amount due have to be carried out by 31 May 2019.

¹¹ Relevant form is available at the following web address:

https://www.agenziaentrate.gov.it/wps/file/Nsilib/Nsi/Normativa+e+Prassi/Provvedimenti/2017/Luglio+2017+Provvedimenti/Provvedimento+controversie+tributarie/DCT_modello.pdf

This regime is also applicable to tax litigation cases in which the appeal in first degree was served to the counterpart by 24 October 2018¹².

Conclusions

The introduction of favourable tax settlement procedures aims to reduce costs and length of cases. It may be worthwhile for Italian taxpayers to consider starting a settlement procedure as they will be excused from paying the relevant penalties and late interest.

¹²The litigation has to be still in progress at the date on which the settlement application is filed.

FOR MORE INFORMATION

Should you like to discuss any of the matters raised in this briefing, please speak with a member of our team below or your regular contact at Watson Farley & Williams.



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