STUDIO DE VECCHI
Commercialisti
Avvocati

Milan, 21st October 2014

Subject: **Italian Draft Law on Voluntary Disclosure and Money Laundering**

INTRODUCTION

On 10th October the Finance Commission of the Italian Chamber of Deputies approved the text for Voluntary Disclosure and Money Laundering. The Draft Law (DdL) was also voted on by the Chamber of Deputies at the end of last week, with subsequent passing to the Senate for the second reading and final approval.

VOLUNTARY DISCLOSURE

Those who may make use of it

Subjects with activities or assets abroad or in Italy that they have failed to declare, may rectify their position with the Inland Revenue Service ("IRS"), by paying the taxes due and reduced fines. Voluntary Disclosure **excludes punishment for the following tax crimes**:

- Fraudulent returns by using false invoices or other false documents.
- Misleading tax returns.
- Failure to submit a tax return.
- Failure to pay in retentions.
- Failure to pay VAT.

This exclusion of punishment also extends to collaborators in the crime.

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Penalties

The procedure results in issuing of **notification of an audit, following which the tax payer is to pay all taxes in a single instalment due and the penalties reduced by up to a half of the minimum** are applicable in the following cases:

- Capital is transferred to Italy or Member States of the EU (or EEA) that allow an effective exchange of information with Italy.
- The activities that emerge were or are in Italy or EU or EEA States that allow an effective exchange of information with Italy.
- The person responsible for the violation authorises the foreign financial broker that holds their assets to transmit the assets covered by the Voluntary Disclosure, and encloses a copy of such authorisation, countersigned by the broker, with their application.

In cases other than those indicated, the penalty is determined on the basis of the minimum applicable, less one quarter.

Applications to provide Voluntary Disclosure may not be made if they are submitted after the person responsible has become aware that auditing activities have begun. Voluntary Disclosure may be made **up to 30th September 2015, to cover violations committed up to 30th September 2014**.

In cases in which the mean assets not declared at the end of each tax period does not exceed € 2,000,000 if requested by the tax payer, instead of determining profitability analytically, the IRS must apply a profitability coefficient of 5% of the overall value of the assets not declared at the end of the year. A tax rate of 27% is to be applied to this forfeit revenue. The text does not seem to leave application of this regime up to the IRS's discretion: once the requirements have been checked, it is obliged to accept the application.

The availability of financial and fixed assets that emerge is taken, unless proven otherwise, to be broken down for each tax period, into equal amounts among all of those who, at the end of such periods, have the same available to them.

The minimum penalty is reduced to 3% (instead of 6%) of undeclared amounts, if investments or assets are held in tax haven States, who have signed agreements with Italy on the exchange of information.

The Voluntary Disclosure requires that the tax payer informs the administration of their asset and income situation related to assets illegally held abroad, in case of transmission of false deeds or documents, or untrue declarations or data, the tax payer will be punished by imprisonment from between one year six months and six years.

MONEY LAUNDERING

New features of the Italian Penal Code

One new feature of the Draft Law is **the addition to the penal ordinance of the crime of Money Laundering** (recycling money gained from illegal operations, carried out by the same person that obtained such money illegally). This provision will introduce a new imposition (648-ter).

648-bis (the current provision related to money laundering) should have the opening "reservation clause" removed ("excepting for cases of conspiracy to commit a crime". The rationale behind the current text is based on the thesis that whoever commits a crime cannot be punished for money laundering, because hiding gains from the crime is a natural consequence of the same, and so punishment of such hiding would mean double punishment for a single deed).

Sanctionary regime

The new penal provision in relation to the crime of Money Laundering,

would put forward two distinct types of crime:

- One caused by non-culpable crime, the maximum penalty for which is not less than 5 years, in which case the sanction envisaged is imprisonment from 2 to 8 years and a fine of € 5,000 to € 25.000.
- One caused by non-culpable crime with a maximum sentence of less than 5 years, in which case the sanction envisaged is imprisonment from 1 to 4 years.

Allocating such proceeds to personal use would be an unpunishable offence.

The text also provides for the sentence to be increased in case of deeds committed during the year related to banking, financial, or any other professional activity, whereas fully collaborative and loyal conduct on the part of the accused should result in a reduction of the sentence by up to half.

Company responsibility

A further amendment provides for extending Money Laundering to cover administrative responsibility for companies.

This means that, if a director has set up illegal funds abroad by over-invoicing or invoicing for non-existent operations, they shall answer personally for both tax fraud and the new money laundering crime, but responsibility extends to the company, which risks facing a penalty (up to an estimated amount of € 1,500,000) and suffering prohibitive sanctions for up to two years.

This amendment provides for inclusion of the crime of Money Laundering in Legislative Decree 231/2001 with the consequent obligation on companies to set up internal control structures (to avoid sanctions in the case in question, companies must demonstrate that they have adopted adequate prevention mechanisms).

Experts at Noda Studio (Studio De Vecchi in Milan, Studio STB in Venice, Studio Liberatori in Rome and Studio IFF in Brescia) are at your disposal to provide greater detail on this matter and to discuss possible application of the procedure.

If you have questions, contact your Andersen Tax engagement team or the Noda Studio author, Francesco Marconi, partner Noda Studio and Studio De Vecchi (t. +39 02 48100471; m. +39 348 6295108; f.marconi@studiodevecchi.com)

Noda Studio is an international tax consulting firm with offices in Milan, Rome, Venice and Brescia.