



Law Decree No. 119/2018, providing for favourable settlement procedures, particularly regarding tax claims and debts, converted into Law

On 17 December 2018, Law Decree No. 119, enacted by the Government on 23 October 2018, was converted into law by the Italian Parliament (conversion Law No. 136 of 17 December 2018). The Law Decree, as converted with amendments by the Parliament (hereinafter "Converted Law Decree"), contains, inter alia, provisions entailing the settlement of tax claims with certain reductions (under a sort of "tax amnesty" programme). A summary of the main measures is provided below.

1. Settlement of tax audit reports issued by the tax authorities following a tax audit

Under Article 1 of the Converted Law Decree, taxpayers may settle tax claims raised in tax audit reports (PVCs) issued within 24 October 2018 and that, by the same date, have been followed neither by a formal notice of assessment, nor by a formal invitation from the tax authorities to discuss the matter.

Article 1 applies in respect of income/corporate tax, withholding tax, regional tax on productive activities (IRAP), VAT, wealth tax on foreign-held real estate (IVIE), wealth tax on foreign-held financial assets (IVAFE) and social security contributions ("contributions"). The settlement shall concern the whole tax audit report; no cherry picking of the tax claims is allowed.

If taxpayers opt for this settlement they shall, by 31 May 2019, pay in full the taxes/contributions due (or the first of up to 20 quarterly instalments) without application of any penalties and interest (other than those due on the payment of the instalments), except for EU own resources (e.g. customs duties), for which interest on arrears shall be due. Tax losses cannot be used to offset the tax base resulting from the audit reports. Similarly, existing tax credits cannot be used to offset the taxes/contributions due.

For the tax years covered by the PVCs that are in principle eligible for the abovementioned settlement (up to 2015) the statute of limitations shall be postponed by 2 years. The wording of the law makes no distinction, with respect to such postponement, between cases where the taxpayer opts for the settlement and those where the taxpayer does not.

2. Settlement of notices of assessment, notices of adjustment and tax recovery acts

Under Article 2 of the Converted Law Decree, taxpayers may settle notices of assessment and tax recovery acts (other than those stemming from voluntary disclosure programmes) for which the deadline to appeal was not expired as of 24

October 2018 and for which, at the same date, the taxpayer had not already filed an appeal.

In order to settle, taxpayers must pay in full the relevant taxes (or the first of up to twenty quarterly instalments) by 23 November 2018, or the subsequent deadline for filing the appeal (the payment can be split into up to 20 quarterly instalments), but in such case no penalties and interest (other than those due on the payment of the instalments) shall be due, except for EU own resources (e.g. customs duties), for which interest on arrears shall be due. Tax credits cannot be used to offset the tax due.

On 9 November 2018, Italian tax authorities issued specific regulations for the application of Article 2 of the Decree.

3. Extinction of tax debts

Under Article 3 of the Converted Decree, taxpayers may extinguish the debts for taxes or contributions assigned for collection to the tax recovery agent from 1 January 2000 through 31 December 2017. In order to extinguish those debts, taxpayers shall file a specific application by 30 April 2019, followed by the payment in full of taxes, contributions, interest for late payment and collection fees by 31 July 2019. In the event that the debts are currently under litigation, taxpayers must undertake to waive such disputes. No penalties and interest on arrears shall be applied.

Taxpayers may opt for an instalment program of up to 18 instalments. In the event that the payment is deferred by instalments, a 2% interest rate applies.

This procedure does not apply to (i) amounts due for the recovery of State aids, (ii) penalties due as a result of criminal judgments and convictions and (iii) penalties other than those imposed for tax/contribution violations.

Specific rules are provided for (by Article 5) in respect of EU own resources, in particular for customs duties and VAT.

4. Settlement of pending litigations

Under Article 6 of the Converted Decree, tax disputes with the Italian Revenue Agency related to assessment deeds (or deeds imposing only penalties) and pending before Italian tax courts may be settled by paying only the taxes charged, without interest and penalties. The amounts to be paid depend on the outcome of decisions previously rendered by the Italian tax courts (if any):

- 5% of the taxes charged in the cases where the dispute was pending before the Supreme Court as of 19 December 2018 and the tax courts of first and second instance have both ruled in favor of the taxpayer;
- 15% of the taxes charged in the cases where the tax court of second instance has ruled in favour of the taxpayer by 24 October 2018;
- 40% of the taxes charged in the cases where the tax court of first instance has ruled in favour of the taxpayer by 24 October 2018;
- 90% of the taxes charged in the cases where the tax dispute is still pending before the tax court of first instance;
- 100% of the taxes charged in the cases where the last decision rendered by a tax court by 24 October 2018 has ruled in favour of the Italian Revenue Agency.

Where the above-mentioned decisions have ruled only partially in favour of the taxpayer, with reference to the part of the tax claim that has been upheld by the court of first/second instance 100% of the taxes charged have to be paid. In respect

of the part of the tax claim that has been rejected by the relevant court (in favour of the taxpayer) the above-mentioned reductions apply.

In the above cases, no penalties or interest are due.

With regard to disputes concerning only the application of penalties (not linked to the existence of an outstanding tax claim), the settlement is achieved by paying 40% of the penalty claim reduced to 15% where the last decision rendered, as at 24 October 2018, by a tax court is in favor of the taxpayer.

In order to settle the case, taxpayers shall submit a specific application and pay the amounts due (or the first instalment) by 31 May 2019 (the payment can be split into up to 20 quarterly instalments).

EU own resources and, particularly customs duties and VAT collected on imports, fall outside the scope of Article 6.

5. Criminal implications

The Converted Law Decree does not contain any provision as to the consequences of the above procedures for criminal tax purposes. This means that in case of a pending criminal proceeding associated to the tax proceeding whose debt is settled, the ordinary principles apply, whereby the payment of the tax debt shall be considered by the judge as an alleviating circumstance when the criminal penalty is determined.

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