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Draft Budget Law 2022: incentive for closing Tax Proceedings

Focus on Tax Controversy

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Draft Budget Law 2022: incentive for closing Tax Proceedings

The Government released the 2023 Draft Budget Law on 29th November 2022 for the approval of the two Chambers of Parliament. It includes, among other tax measures, several provisions to provide incentives to prevent the start or close pending tax disputes. Such incentives are qualified as “Measures to support taxpayers” since their scope is to reduce the pending liabilities of taxpayers concerning the tax authorities.

A preliminary summary is outlined below, considering that possible changes may be brought during the Parliament approval which is planned to be made before 31 December 2022. Nevertheless, it will be important to verify whether the pending or potential controversies fall within the law to correctly manage the relationship with the tax authorities, possibly minimise the amount due and start evaluating the closing of the pending litigations.

Sums due following automatic controls of tax returns (art. 38)

With respect to the requests of payments of direct and indirect taxes deriving from automatic controls of the Revenue Agency related to fiscal years 2019, 2020 and 2021, the taxpayer will be entitled to pay **only the amount of taxes and interest** (and other ancillary sums), as well as **3% penalties**. The same benefits also apply to payments still pending and related to past partial scrapping programs.

Formal Violations (art. 39)

Formal violations committed as of 31 October 2022 could be regularized by paying 200 Euro. Formal violations are those which did not bring any damage to the Revenue Agency because not relevant for the purpose of computation of income taxes (IRES and IRAP) or VAT (VAT). The provision does not apply to voluntary disclosure programs which were finalized to regularize the declarations of funds illegitimately owned out of the Italian territory.

Special Voluntary Disclosure (art. 40)

With respect to all taxes managed by the Revenue Agency (*i.e.*, income tax, VAT, indirect taxes) and related to tax returns for fiscal years until 31 December 2021, violations committed and not already challenged could be regularised with the payment of one eighteenth of the minimum penalties provided by the law, plus interest. The relevant payment could be made in eight quarterly installments. The provision can't apply to regularise the declarations of funds illegitimately owned out of the Italian territory.

Incentives to settle tax assessment deeds (art. 41)

With respect to all taxes managed by the Revenue Agency (*i.e.*, income tax, VAT, indirect taxes), with respect to: **(i)** tax settlement proceedings related to tax reports notified within 31 March 2023, as well as **(ii)** tax assessments and tax liquidation deeds not appealed or for which an appeal could still be filed at the time of entering into effect of the Budget Law, and **(iii)** invitation to appear for starting a settlement procedure, the disputes could be closed by paying taxes, interest and penalties, the latter reduced to one eighteenth of the minimum provided by the law. Taxes, interest, and reduced penalties could be paid up to twenty quarterly installments.

Incentive to close tax controversies (art. 42)

Controversies against the Revenue Agency pending before the tax courts as well as before the Supreme Court (even in case of transfer of the case back from the Supreme Court to the second level tax court) at the date of

approval of the Budget Law could be closed by paying an amount equal to the value of the controversy, being the value the amount of taxes due (*i.e.*, without including penalties and interest).

In case the appeal is pending before the first level tax court, the controversy could be closed with the payment of 90% of its value.

In case the first level decision was not favourable for the Revenue Agency, the taxpayer is entitled to close the case by paying 40% of the value of the controversy. In case the second level decision was not favourable for the Revenue Agency, the taxpayer is entitled to close the case by paying 15% of the value of the controversy. Specific rules are established if the decision was partially favourable for the Revenue Agency.

In case controversies are pending before the Supreme Court and the Revenue Agency was losing party in all the preceding levels of the case, the taxpayer is entitled to close the case by paying 5% of its value.

Sums already paid to the Revenue Agency during the prior phases of the litigation cannot be asked for refund.

State Aids and VAT at importation are out of scope of the provision.

The requests to close the case could be filed within 30 June 2023.

Out-of- court settlement procedures (art. 43)

As an alternative to the incentive to close the tax controversies, the controversies pending before first and second level tax court at the time of entering into force of the Budget Law may be closed in the context of an out-of-court settlement procedure by 30 June 2023. Eligible controversies are those where the Revenue Agency is involved. State Aids and VAT at importation are out of scope of the provision.

In the case of an out-of-court settlement, the penalties will be reduced to 1/18th, whilst interest expenses and other related costs shall be still due.

Waiver of the tax disputes pending before the Supreme Court (art. 44)

Cases pending before the Supreme Court may be closed in the context of a special settlement agreement to be reached by 30 June 2023. In case a settlement is reached, the appellant will be required to waive the main or the cross-appeal by signing the agreement and paying the amounts due for taxes, minimum penalties reduced to 1/18th, interest and any other related cost. The payment of the full amounts due shall have to be performed within 20 days from the conclusion of the settlement agreement.

State Aids and VAT at importation are out of scope of the provision.

Sums already paid to the Revenue Agency during the prior phases of the litigation cannot be asked for refund.

Regularisation of missing installments payment related to acceptance of the claims, settlement procedure, compliant/mediation, and in-court/out-of-court settlement procedure (art. 45)

For disputes regarding taxes managed by the Revenue Agency, it shall be possible to regularise:

- 1 the omitted or insufficient payment of the installments following the first one in the context of settlement procedure, acceptance of the claims, compliant/mediation which are expired at the time of the entering into force of the Budget Law subject to the condition that no notice of payment or injunction have been already served;
- 2 the omitted or insufficient payment related to the in -court and out-of-court settlement procedure which are expired at the time of the entering into force of the Budget Law subject to the condition that no notice of payment or injunction have been already served.

The regularisation shall be performed for the entire amount by 31 March 2023 or it can be paid based on an installments plan, on quarterly basis starting from 31 March 2023.

Scrapping of notices of payments up to 1.000 Euro (art. 46)

All tax debts included in notices of payments and communicated to the Collector Agent between 1 January 2000 and 31 December 2015, where amounts (including tax, interest, penalties and collection fees) do not exceed 1.000 Euro are automatically entirely scrapped. Debts include not only income taxes, but also social security contributions or other fines.

Partial scrapping of notices of payments (art. 47)

Tax debts included in notices of payments and communicated the Collector Agent between 1 January 2000 and 30 June 2022, are partially scrapped. In particular, taxpayers could extinguish their debts vis-à-vis the Collector Agent by paying the relevant taxes, net of penalties, delay-interests and collection fees. Only expenses accrued for the enforcement procedure (if started) and notification expenses are due in addition to taxes.

The payment can be executed in full within 31 July 2023 or in a maximum of 18 instalments.

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