

Tax treatment of Islamic finance instruments: The Italian draft law

IFN Correspondent Reports Stefano Loconte 28/02/2020 0

One of the most important steps that Italy has taken to open the doors to Islamic finance is represented by the draft law set out in 2017, the purpose of which is to regulate the tax treatment of some Islamic financial contracts, namely [Murabahah](#), [Ijarah](#) and [Istisnah](#).

The bill was drawn up by the VI Finance Committee of the Chamber of Deputies of the Italian parliament, chaired by Maurizio Bernardo. Moreover, the working group was supported by tax experts coordinated by me.

Tax treatment is one of the biggest obstacles to the full implementation of Islamic financial contracts and instruments in countries in which conventional finance principles are applied (eg Italy). The problem is due to the duplication of the structure that Islamic contracts endure when they are transposed in non-Islamic legislation, which also causes the duplication of the taxes imposed on the operation.

As an example, [Murabahah](#) reveals two underlying transactions: one sale contract between the bank and the supplier, and a sale with reserved domain agreement between the bank and the client. The draft law, using the ‘substance over form’ principle, aims to consider two contracts as one single transaction, when it is proved that a deep connection between them, as referring to the scope, exists.

Not only that, the legislative project also envisages the possible issuance of [Sukuk](#), both by the Italian government and by public or private institutions. It is worth noting that even though [Sukuk](#) are defined by **AAOIFI** as “certificates of equal value representing undivided shares in the ownership of tangible assets, usufructs and services or (in the ownership of) the assets of particular projects or special investment activity”, their standardization and eligibility to be purchased in the capital market ensure their assimilation to transferable securities as defined by Article 1, paragraph 1 bis of the Consolidated Law on Finance.

At the same time, just for tax purposes, the draft law compared [Sukuk](#) with Italian bonds, in order to apply the same tax treatment (ie the ordinary taxation as defined by Article 26 of Presidential Decree No 917 of the 22nd December 1986), upon the condition that their issuance complies with the requirements set forth by Articles 94 and 98 bis of Legislative Decree No 58 of the 24th February 1998 in relation to the offering to the public of financial instruments and financial products.

Be that as it may, the problem related to [Sukuk](#) is still the duplication of the procedures needed to issue the certificates and the consequent tax treatment. Once again, the proposed legislation shall design one single financing operation subject, according to Article 5, paragraph 2, to the same tax regulation provided for securitization transactions.

The draft law has not been discussed in parliament due to political developments. In March 2018, the same legislative proposal was represented by another member of parliament, Silvia Fregolent, but still the discussion of the draft law has not started yet.

Stefano Loconte is the managing partner at Loconte & Partners. He can be contacted at stefano.loconte@studioloconte.it.

Share this:



Volume17.Issue09

About Us

[The Company](#)
[Contact Us](#)
[In the Press](#)
[Events Diary](#)
[Feedback Enquiry](#)
[Career](#)
[IFN Correspondents](#)

Advertise

[Advertise with us](#)
[Article Contribution](#)
[Media Partners](#)

Products

[Newsletter](#)
[Awards & Polls](#)
[Reprints](#)
[IFN Research](#)

Subscribe

[Client List](#)
[Payment Mode](#)
[Sample Issue](#)
[Subscribe Now](#)

Data Partners

[Dealogic](#)
[Ideal Ratings](#)
[Eurekahedge](#)