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Voluntary Disclosure: Italy and the U.K. Compared



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Italian taxpayers have been given a second opportunity to update their tax affairs with the tax authorities through the voluntary disclosure program. This article looks at its provisions and how they compare to the U.K. Worldwide Disclosure Facility.

Italian taxpayers have been given a second opportunity to update their tax affairs with the tax authorities. The scope of the new procedure is the same as the first one: the taxpayer can regularize inaccurate or not-filed tax returns with reference to income tax, substitutive tax, corporate tax, regional tax and value added tax (“VAT”) (inheritance, gift and registration tax are not included in the program).

It must be noted that most of the interest shown for the voluntary disclosure program is due to the opportunity to regularize offshore financial assets held in countries which have signed information exchange agreements. This makes the Italian Voluntary Disclosure *bis* comparable to the U.K. Worldwide Disclosure Facility.

Timing

Although both programs opened in 2016 (on October 24 in Italy and on September 5 in the U.K.), the Italian program will close on July 31, 2017, whereas the

Worldwide Disclosure Facility will be available until September 30, 2018. More specifically, the first application for the Italian Voluntary Disclosure *bis* must be filed by July 31, 2017, but amendments could be filed up to September 30, 2017. By the same date a report explaining the amounts indicated in the application and the supporting documentation must be sent, via certified email.

Territories

The rules concerning the Italian Voluntary Disclosure *bis* classify foreign countries into three categories:

- 1) white list;
- 2) black list with agreement, i.e. black list countries which allow an effective exchange of information pursuant to an agreement compliant to Article 26 of the OECD Model Tax Convention, or a Tax Information Exchange Agreement (“TIEA”); the agreement must be effective as at October 24, 2016;
- 3) black list.

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In the first edition of the voluntary disclosure, black list countries with agreement were Switzerland, Monaco and Liechtenstein. With the second edition, only seven countries have been added: Cayman Islands, Hong Kong, Gibraltar, Guernsey, Isle of Man, Cook Islands and Jersey: not many, considering the upcoming Common Reporting Standard (“CRS”).

Indeed, it must be noted here that, although Italy refers only to bilateral conventions, according to the OECD International Framework for the CRS,

With over 100 jurisdictions having committed to exchanging information with each other under the CRS, exchange relationships between jurisdictions are typically based on the multilateral Convention on Mutual Administrative Assistance in Tax Matters, in which more than 100 jurisdictions are participating, and the CRS Multilateral Competent Authority Agreement, which is based on its Article 6. Jurisdictions may alternatively rely on a bilateral agreement, such as a double tax treaty or a tax information exchange agreement. In addition, certain CRS exchanges will take place on the basis of the relevant EU Directive, agreements between the EU and third Countries and bilateral agreements, such as the UK-CDOT agreements.

(OECD, ‘International framework for the CRS’ <<http://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs>> accessed February 15, 2017.)

Comparably, but with relevant differences, the U.K. rules regarding penalties for Income Tax and Capital Gains Tax for offshore matters divide territories into three categories:

- 1) Category 1: territories that have agreed to exchange information automatically;
- 2) Category 2: territories that will exchange information on request;
- 3) Category 3: territories that have not agreed to share information.

In the light of the CRS, the categorization made by the U.K. seems much more appropriate than the Italian one.

Self-assessment

The Italian Voluntary Disclosure *bis* introduced a few innovations compared to the first edition: the most notable is the introduction of the self-assessment.

In the first edition the taxpayer had to calculate the tax base, but tax, interest and penalties were calculated by the tax authorities.

The Voluntary Disclosure *bis* instead provides for the taxpayer to calculate and pay the tax, interest and penalties due. The tax authorities will then check the amounts declared and, should they find errors, they will increase the penalties (roughly by 3–20 percent).

By contrast, through the U.K. Worldwide Disclosure Facility, if the disclosure is correct and complete and the taxpayer fully co-operates by supplying any further information HM Revenue & Customs (“HMRC”) asks for to check the disclosure, the tax authorities will not seek to impose a higher penalty, except for the following cases:

- the taxpayer is already under enquiry by HMRC;
- the disclosure is connected to a previous inaccurate disclosure or settlement following an investigation; or

- the taxpayer doesn’t follow the existing legislation on calculating penalties.

(Cf. HMRC, “Worldwide Disclosure Facility: make a disclosure” <<https://www.gov.uk/guidance/worldwide-disclosure-facility-make-a-disclosure>> accessed February 15, 2017.)

The Tax Due

The Italian and the U.K. programs do not make any discount for the tax due.

The rates applicable in Italy to financial incomes range from 12.5 percent to roughly 45 percent, depending on the type of income and the time when it was produced. If the total financial assets deposited abroad are worth less than 2 million euros, it is possible to opt for a simplified calculation of the financial income taxation. Basically, 5 percent per year of the financial assets held abroad will be considered as financial income taxed at a rate of 27 percent, plus interest and penalties. In any case, if additional cash has been deposited abroad during the years subject to disclosure, it will be taxed at the ordinary rates (roughly 45 percent if we look at the highest income tax band).

In particular, if a sum of money was transferred to a foreign bank account or deposited in cash and it is not possible to demonstrate that the sum was already taxed in Italy, the ordinary marginal rate applies. In this case, considering also interest and penalties, more than 60 percent of the capital deposited abroad could have to be transferred to the revenue authorities.

However, probably the worst situation is when the amount transferred abroad was undeclared by an Italian company and was deposited in a foreign bank account belonging to a member of that company. In this case, the company will have to pay 27.5 percent corporation tax, 3.9 percent regional tax, 22 percent VAT, plus interest and penalties. Furthermore, the member of the company will be deemed as receiving a dividend equal to the full amount deposited abroad. Qualified dividends are taxed for 49.72 percent of their amount at the income tax marginal rate (maximum 45 percent), plus interest and penalties. In this scenario, the whole amount deposited abroad could have to be transferred directly to the revenue authorities.

Interest and Penalties

Both the Italian and the U.K. programs charge interest on all unpaid tax liabilities included in the disclosure. Interest is charged on the full amount of tax owed in accordance to the applicable law. Interest runs from the date when the tax should have been paid until the date of payment. (Cf. HMRC, “Worldwide Disclosure Facility: make a disclosure” <<https://www.gov.uk/guidance/worldwide-disclosure-facility-make-a-disclosure>> accessed February 15, 2017.)

In Italy, the annual interest rate applicable to the voluntary disclosure is 3.5 percent. In the U.K., late payment interest rates range from 8.5 percent to 2.75 percent, depending on the year.

Calculating penalties may be complex in both countries. The applicable percentages depend on the off-

shore country where the assets were deposited and on whether there are inaccuracies or failure to submit a return.

Furthermore, in the U.K. the penalty rates depend also on whether the inaccuracy/failure to submit a return was careless or deliberate.

In Italy, penalties for tax return inaccuracies start from 133.33 percent for white list countries and from 200 percent for black list countries. The voluntary disclosure program reduces this penalty to 75 percent of the minimum and, in case of agreement with the determination of the Tax Office, it is granted a further reduction to one-sixth of the penalty. This means that tax return inaccuracy penalties range from 16.67 percent to 25 percent according to the country where the income was produced.

Besides penalties on undeclared taxes, Italy applies a penalty for undeclared foreign assets in the tax return (the RW sheet). This penalty is applied to the value of the undeclared foreign assets and starts from 3 percent for white list countries and from 6 percent for black list countries. The voluntary disclosure program reduces this penalty to 50 percent of the minimum, and agreeing with the determination of the Tax Office entails a further reduction to one-third of the penalty. This means that RW penalties range from 0.5 percent to 1 percent, according to the country where undeclared assets were located.

It must be noted that the 50 percent penalty reduction is allowed only if one of the following conditions is met:

- the assets are physically transferred to Italy or to another EU/SEE country;
- the assets are transferred to an Italian fiduciary (nominee) company;
- the taxpayer signs an authorization to the bank (which countersigns it) to provide information to the tax authorities on request (so-called waiver).

The tables which follow compare the penalties applicable to tax returns inaccuracies in case of disclosure of offshore assets. To simplify the representation, we are not considering the case of failure to file the tax return.

Italy–Voluntary Disclosure (VD)–Inaccurate tax return	White list	Black list with agreement	Black list
Income Tax Penalty*	16.67%	16.67%	25.00%
RW Penalties**	0.5%	0.5%	1.0%

* Applicable to the tax due

** Applicable to the value of the offshore undeclared asset

U.K.–Unprompted disclosure–Inaccuracies	Category 1	Category 2	Category 3
Careless inaccuracy	0%–30%	0%–45%	0%–60%
Deliberate inaccuracy	20%–70%	30%–105%	40%–140%

HMRC points out that in specific circumstances it may not be appropriate to allow the full reductions for

disclosure. For example, if the taxpayer has taken a significant period to correct his noncompliance, or he could have previously made a disclosure through one of HMRC's offshore facilities, he cannot expect HMRC to agree a full reduction for disclosure. In such cases it is unlikely that HMRC will reduce his penalty by more than 10 percentage points above the minimum of the statutory range. For this purpose HMRC would normally consider a "significant period" to be over three years, or less where the overall disclosure covers a longer period. (Cf. HMRC, "Worldwide Disclosure Facility: make a disclosure" <<https://www.gov.uk/guidance/worldwide-disclosure-facility-make-a-disclosure>> accessed February 15, 2017.)

Number of Years to Disclose

Besides penalty reductions, the main advantages for joining the Italian Voluntary Disclosure *bis* are the protection from prosecution for certain tax crimes and the reduction of the number of years subject to assessment: basically, black list countries with effective information exchange agreements will be treated as white list countries.

With reference to assets held in non-collaborative (black list) countries the Italian taxpayer must look back up to 2004, whereas for assets held in collaborative countries (white list and black list with agreements) the assessment period is from 2009 to 2015. Under the first edition of the voluntary disclosure, taxpayers had to look back to the same years; therefore now, two years later, the applicant must regularize two more years, which is two years beyond the statutory limitation period applicable to ordinary assessments.

Assets held in black list countries with an effective information exchange agreement are subject to the reduced assessment period only in the following cases:

- the assets are transferred to an EU/SEE country;
- the assets are transferred to an Italian fiduciary company; or
- the taxpayer signs a "waiver."

In Italy the reason for the original error or failure to file is irrelevant.

On the contrary, according to the U.K. Worldwide Disclosure Facility, the number of years to disclose, up to 20 years, depends on the taxpayer's behavior. In particular, he needs to select one of the following options:

- he has failed to notify HMRC about a tax liability but this was not deliberate and he has a reasonable excuse;
- he has submitted an inaccurate return despite taking reasonable care;
- he has not filed a return but has a reasonable excuse;
- he has submitted an inaccurate return because he did not take sufficient care;
- he has failed to notify HMRC of a tax liability but this was not deliberate and he does not have a reasonable excuse;
- he has deliberately failed to notify HMRC of a tax liability;
- he has deliberately submitted an inaccurate tax return or deliberately withheld information by failing to submit a return.

(Cf. HMRC, “Worldwide Disclosure Facility: make a disclosure” <<https://www.gov.uk/guidance/worldwide-disclosure-facility-make-a-disclosure>> accessed February 15, 2017.)

Protection from Criminal Prosecution

The Italian Voluntary Disclosure grants protection from prosecution for specific tax crimes, such as, for instance, filing of an inaccurate tax return, failure to file a tax return, money laundering and self-money laundering related to tax issues. However, there is no protection for other tax crimes, such as issuing invoices for non-existent transactions, and for non-tax crimes.

By contrast, the U.K. Worldwide Disclosure Facility does not in principle grant protection from criminal prosecution. However, criminal investigation will be reserved for cases where HMRC needs to send a strong deterrent message or where the conduct involved is such that only a criminal sanction is appropriate. (Cf. HMRC, “Worldwide Disclosure Facility: make a disclosure” <<https://www.gov.uk/guidance/worldwide-disclosure-facility-make-a-disclosure>> accessed February 15, 2017.)

Conclusion

We have highlighted above the main features of the Italian voluntary disclosure program and of the U.K.

Worldwide Disclosure Facility. Both of them try to incentivize spontaneous compliance of taxpayers with offshore patrimonies in an international environment characterized by increased information exchange and by the end of bank secrecy. Besides tax rates, penalties and interest, we have noted differences in the number of years subject to disclosure and in the approach to criminal prosecution. In Italy, the number of years subject to disclosure varies only according to the country where the assets are located, whereas in the U.K. it depends on the taxpayer’s behavior. Lastly, it seems that the U.K. tries to enhance the awareness among taxpayers of the effects of the CRS, whereas Italy seems still focused on bilateral agreements and does not extend the full benefits of the voluntary disclosure (reduced penalties and number of years to disclose) to assets located in countries which will join the CRS (more than 100 countries). These benefits apply only to assets located in black list countries with bilateral agreements for effective information exchange (10 countries). This could be one of the reasons why the second edition of the Italian voluntary disclosure program is not having the same success as the first one.

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