Italian voluntary disclosure: act now before it is too late

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Following the example of other OECD countries, Italy introduced a Voluntary Disclosure Programme at the beginning of 2014.

The deadline for applying under the Voluntary Disclosure Programme is due to expire on 30 September and although the Italian Government is mulling over an extension, this cannot be guaranteed. Therefore, taxpayers should consider acting now.

The latest developments are set out in two Circular Letters, which clarify a number of practical issues.

POWERS OF ATTORNEY OVER BANK ACCOUNTS

With the second Circular Letter (published on 16 July 2015), the Italian Tax Authority clarified that anyone holding a power of attorney over a foreign bank account may apply independently under the Voluntary Disclosure Programme even if the proxy had never actually been used. Whilst any income tax violations would be attributed to the beneficial owner of the account, the proxy holder will be able to avoid any sanctions for failing to report the existence of the account under the Italian equivalent of the US Foreign Bank Account Reporting (FBAR), known as 'Section RW', whereby the account holder is only required to disclose a pro-rata share of the account. In other words, for tax reporting purposes, the account balance is attributed to the main account holder and any proxy holders.

The new guidelines also clarify that certain proxy holders (e.g. directors in respect of company accounts) are exempt from the Voluntary Disclosure procedure.

ADDITIONAL TAXES COVERED BY THE VOLUNTARY DISCLOSURE PROGRAMME

In addition, the second Circular Letter extended the ability to apply IVIE (immovable property tax) and IVAFE (foreign financial activities tax) violations – introduced in 2012 – to the procedure.

ASSETS HELD IN SAFES

The Letter mentions that any money held in a safe could be included in the regularisation procedure. The taxpayer would have to open the safe in the presence of a notary public and then deposit the cash into an authorised bank account.

VOLUNTARY DISCLOSURE VERSUS 'QUIET' DISCLOSURE

Lastly, the second Circular clarifies that taxpayers may choose whether to use the Voluntary Disclosure procedure or a different form of regularisation (so called “ravvedimento operoso”).

STATUTE OF LIMITATION

In a separate development, on 31 July, the Italian Government issued a new decree which gave a major boost to the Voluntary Disclosure Programme. In effect, in light of the decree, anyone who applies under the procedure would be safe from criminal charges.

OTHER ISSUES

Finally, the third Circular Letter (no. 30/E), released on 11th August, offers additional clarification by answering more questions posed by taxpayers and increased requests for the repatriation of assets and funds illicitly held abroad.

Firstly, Taxpayers with assets in blacklisted countries will continue to be monitored in relation to those assets in the years after their Voluntary Disclosure application.

Taxpayers must expressly declare any tax amnesties (*'scudo fiscale'*) directly or indirectly linked to their Voluntary Disclosure application.

In terms of physical repatriation of assets, the term shall run from the date of the submission of the application, and proof of the amount must be provided both before and after repatriation.

In the interests of transparency and non-discrimination, the same regulations applicable for liquid assets will also apply to securities. Taxpayers in blacklisted countries will therefore have to repatriate their assets through a fiduciary company, a so-called *'rimpatrio giuridico'*.

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