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To all
clients

Circular No. 05/2023

Bolzano, 6 January 2023

Subject: Budget Law 2023 – Tax settlement (pace fiscale)

A large part of this year's Finance Act (Law 197/2022) deals with changes relating to tax litigation and tax audits. Contrary to the announcements made during the election campaign last summer, no tax amnesty (keyword "condono") is granted. It must be acknowledged, however, that a coordinated set of rules makes it possible to file voluntary supplementary returns, to settle payment notices and assessment notices and, finally, to settle proceedings already pending, whereby above all the otherwise horrendous administrative penalties are reduced to a marginal amount. This gives taxpayers who, on account of unclear provisions or also for lack of financial means, were unable properly to meet their obligations in recent years the opportunity to put matters right with the tax authorities, in part also with the grant of generous instalment arrangements. All the provisions are contained in Art. 1 of the Budget Law, which is why only the paragraphs are cited in the legal references.

Settlement of payment notices (paras. 153 –

Payment notices arising from automated error checks on periodic returns or tax returns (so-called "avvisi bonari") for tax periods running as at 31 December 2019, 31 December 2020 or 31 December 2021 (i.e. as a rule the years 2019, 2020 and 2021), for which the 30-day payment deadline had not yet expired as at 1 January 2023, may be

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settled by payment of the taxes and interest, with the penalties being reduced to 3% (instead of the usual 10%, equal to 1/3 of 30%). The amount due may be paid by way of a single payment or in a maximum of 20 quarterly instalments. Payment must be made within 30 days, whereby in our view this deadline, wherever matters still need to be clarified through the submission of documents etc., only starts to run from the date on which clarification has been reached with the office as to the amount due. And where service is not effected on the taxpayer himself but on an intermediary, the deadline should be extended to a total of 90 days. As regards payment, payment in 20 quarterly instalments may also be requested.

Important. It is also possible to regularise on favourable terms earlier notices for which instalment payments are still ongoing. Specifically, pursuant to para. 155 the administrative penalty on the amounts still outstanding may be reduced from 10% to 3%. The recalculation may not, however, give rise to refunds.

<u>Note: should you have received such a payment notice concerning the years 2019-2021 in recent weeks, or should you receive one in the future, please inform us immediately so that the 30-day deadline for a possible favourable settlement is not missed.</u>

Special voluntary correction (paras. 174 – 178)

Tax returns up to and including the return for the tax period running as at 31 December 2021 may be corrected on favourable terms by way of a special voluntary correction (“ravvedimento operoso speciale”), by filing a supplementary return and paying the taxes together with interest and penalties by 31 March 2023, whereby the penalties are reduced to 1/18 (one eighteenth) of the minimum penalty. The amounts due may be paid by way of a single payment or in 8 quarterly instalments, whereby interest of 2% p.a. accrues.

Supplementary returns already filed in the past for the same tax periods remain unaffected and do not give rise to any refund of amounts already paid.

It is necessary that a valid tax return has been filed for the tax periods to be regularised; otherwise the conditions for a supplementary return are not met.

The voluntary correction is always admissible where no audit has yet taken place as at the date of the single payment or of the payment of the first instalment. Errors in the reporting of foreign assets (form RW) cannot be regularised.

The Italian Revenue Agency must issue the necessary implementing provisions.

<u>Note: the special voluntary correction offers a welcome settlement option wherever one is already aware of an error but has so far been unable to correct it on account of the horrendous administrative penalties. As soon as further details are available, we will inform you immediately.</u>

Special settlement assessment procedure (paras. 179 – 185)

Assessment notices, valuation notices and liquidation notices served by the Italian Revenue Agency for which the deadlines for an appeal had not yet expired as at 1 January 2023, and those still to be served by 31 March 2023, may be settled on favourable terms by way of a special settlement assessment procedure (“accertamento con adesione”), under which the administrative penalty is likewise reduced to 1/18 of the minimum penalty (instead of to 1/3 of the minimum penalty). In all other respects, the usual provisions on the settlement assessment procedure apply here, in particular the 90-day extension of the deadline for filing any appeal.

The application for this special settlement assessment procedure must be filed within the general deadline for an appeal (60 days). If an agreement is reached, the taxes, interest and reduced penalties must be paid within 20 days of the agreement; payment in up to 20 quarterly instalments with an interest surcharge at the statutory interest rate is also possible.

The settlement assessment procedure described here may also be applied for in respect of audit reports handed over by 31 March 2023.

Under the general principles, the settlement assessment procedure is not applicable where, in the course of the audit, an invitation to reach a settlement pursuant to Art. 5 of Legislative Decree 218/1997 has already been issued.

The Italian Revenue Agency must issue the necessary implementing provisions. It must be pointed out that the Italian Revenue Agency is not obliged to agree to any settlement assessment.

Waiver of appeal against tax notices (paras. 180 - 185)

Assessment notices, valuation notices and liquidation notices which were served before 1 January 2023 but have not yet been challenged (whereby the relevant deadline must not have expired), or which are still to be served by 31 March 2023, may be settled on favourable terms by waiving an appeal and paying the taxes and interest, whereby the penalties are likewise reduced to 1/18 of the penalties imposed. The settlement consists in a full acceptance of the notices; accordingly, no negotiation is provided for here, nor is there any 90-day extension of the deadline as under the preceding point. Rather, the taxes, interest and penalties must be paid within the general 60-day appeal deadline. An application may, however, also be made for payment in 20 quarterly instalments applying the statutory interest rate.

Special

Notices for the recovery of tax credits claimed which were not due or which did not exist cannot, as is known, be the subject of a settlement or of a settlement assessment

settlement of notices for the recovery of tax credits (paras. 181 – 185)

procedure under the general principles. As a rule these concern erroneous offsets in form F24. Here too the notices concerned are those for which the deadlines for an appeal had not yet expired as at 1 January 2023, and those still to be served by 31 March 2023. These notices concerning tax credits wrongly offset may be settled on favourable terms. Depending on whether the credits were not due (because, for example, they were not yet available for offsetting at the time form F24 was submitted) or non-existent (e.g. the mistaken double offsetting of a VAT credit), the administrative penalty is reduced to 1.67% (=1/18 of 30%) or to between 5.56% and 11.11% (= 1/18 of 100% to 200%) of the penalties imposed. Payment must always be made within the 60-day appeal deadline; where applicable, payment in 20 quarterly instalments with the application of statutory interest may be requested.

Settlement of pending tax litigation (paras. 186-205)

Tax litigation pending as at 1 January 2023 against the Italian Revenue Agency or the Customs Agency may be settled on favourable terms by 30 June 2023. It is therefore a requirement, firstly, that an appeal had already been filed when the Finance Act entered into force and, secondly, that no final judgment has yet been handed down. Proceedings which do not concern the aforementioned agencies – for example those involving the NISF/INPS – are excluded from the settlement. But proceedings against the Italian Revenue Agency may likewise not be settled to the extent that the proceedings do not concern taxes but, for example, the recovery of State aid.

The cost of the settlement depends on the instance in which the proceedings are pending and on whether the taxpayer emerged as the winner or the loser in the last instance. The relevant date is in each case 1 January 2023. Reference is made in this respect to the so-called amount in dispute, and it should be clarified that as a rule the amount in dispute is the amount of the taxes claimed, without interest and penalties; only in cases where penalties alone are claimed does the amount in dispute consist of the total of the penalties imposed. And, importantly: unlike similar settlements in the past, this time there is no upper limit on the amount in dispute. Accordingly:

- To the extent that the proceedings are pending at first instance, i.e. no judgment has yet been handed down, a settlement is possible by payment of 90% of the amount in dispute.
- To the extent that the proceedings are pending at second instance and the taxpayer won at first instance, they may be settled by a payment of 40% of the amount in dispute; to the extent that the taxpayer lost at first instance, by contrast, 100% of the amount in dispute must still be paid for the settlement.
- Where, by contrast, a second-instance judgment favourable to the taxpayer already existed as at 1 January 2023, the settlement amounts – irrespective of the outcome at first

instance – to 15% of the amount in dispute. If the second-instance judgment was unfavourable, the settlement costs 100% of the amount in dispute.

- Where only a partial success was achieved, 40% or 15% of the amount in dispute must be paid on the annulled amount, depending on the instance, whereas 100% of the amount in dispute must be paid on the part upheld in favour of the tax office.
- To the extent that as at 1 January 2023 the proceedings were already pending before the Court of Cassation and the agency lost both at first and at second instance, a settlement may be effected against payment of 5% of the amount in dispute.
- And conversely: where proceedings are pending before the Court of Cassation but the taxpayer lost in both of the first two instances or in one of the first two instances (irrespective of whether at first or second instance!), 100% of the taxes must be paid for the settlement, with the penalties and interest being cancelled.

In order to settle the pending proceedings, a specific application must be filed by 30 June 2023 on a dedicated form to be laid down by the Italian Revenue Agency, and at the same time the settlement amount or the first of up to 20 possible quarterly instalments, with the application of statutory interest, must be paid.

Amounts already paid may be deducted, without this being permitted, however, to give rise to any entitlement to refunds.

For all proceedings which may be settled under these rules, the deadlines for appealing against judgments filed, as well as for any cross-appeals ("appello incidentale"), which expire in the period between 1 January 2023 and 31 July 2023, are suspended by 9 months.

Assessment of settlement under Law 130/2022

At this point it should be recalled that proceedings pending before the Court of Cassation with an amount in dispute of up to 100,000 euros may still be settled by 16 January 2023 pursuant to Law 130/2022. There too a settlement against payment of 5% of the amount in dispute is in principle possible, albeit with the stated upper limit of 100,000 euros. The settlement pursuant to Law 130/2022 is, however, always more favourable where the amount in dispute does not exceed 50,000 euros and the taxpayer won only once in the first two instances: here, under the old law, a settlement against payment of 20% (instead of 100% as above) of the amount in dispute would be possible.

Favourable judicial conciliation (paras. 206 -

As an alternative to the settlement described above, there is the option, for tax litigation pending at first or second instance as at 1 January 2023, of applying for a special favourable judicial conciliation, under which the penalties imposed are reduced to 1/18 of the minimum penalty. Interest, by contrast, is calculated at 3.5%.

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Proceedings pending before the Court of Cassation are excluded here. The procedure concerns only the Italian Revenue Agency, and only in the tax field (see above). For this purpose a specific application must be filed by 30 June 2023, and payment must be made within 20 days of the agreement being reached; alternatively, payment in 20 quarterly instalments with statutory interest is possible here too.

Waiver of the pursuit of proceedings before the Court of Cassation (paras. 213 – 2018)

Likewise as an alternative to the settlement, in the case of proceedings pending before the Court of Cassation as at 1 January 2023 it is possible, by 30 June 2023, to waive unilaterally the further pursuit of the proceedings against the Italian Revenue Agency, whereby taxes and interest must be paid in full while the penalties are reduced to 1/18. Payment must be made within 20 days of the agreement on the waiver being reached, which, according to the wording of the law, would however have to occur by 30 June 2023. Payment by instalments is not provided for here. The practical application of this procedure is likely to be very limited.

Regularisation of instalment payments (paras. 219 – 221)

Anyone in arrears in connection with instalment payments arising from tax litigation, tax settlements and tax conciliations of recent years may put this right and, by 31 March 2023, pay the tax debts due so far without interest and surcharges, or alternatively apply for payment by instalments (20 quarterly instalments with statutory interest). The regularisation not only waives default interest and surcharges for the late payment of instalments, but also removes the exclusion from the instalment arrangement resulting from the previous defaults.

Settlement of tax collection notices (paras. 231-252)

Tax collection claims handed over to the tax collection agent in the period between 1 January 2000 and 30 June 2022 may be settled on favourable terms by paying the tax due in full, while penalties and interest, including any default interest, are entirely waived. Payment may be made in a single instalment by 31 July 2023 or in 18 instalments, whereby interest of 2% p.a. is charged.

The measure is not limited to collection notices issued by the tax offices, but also applies, for example, to those of the NISF/INPS.

In order to benefit from the relief, an application for settlement must be filed by 30 April 2023 at the latest.

<u>Important: the requirement for the settlement is not necessarily the service of a tax collection notice, but the handing over of the claim to the tax collection agent. Accordingly, in cases of doubt it is advisable to enquire with the tax collection agent in good time as to whether any collection mandates are held there.</u>

Excluded from the relief are in particular claims for the recovery of State aid, claims of the Court of Auditors, administrative penalties (in particular traffic fines) and EU aid.

Scrapping (rottamazione) of tax collection notices (paras. 222-230)

Tax collection notices of up to 1,000 euros (including principal, interest, penalties and charges) which were handed over to the tax collection agent in the period from 1 December 2000 to 31 December 2015 are to be scrapped automatically as at 31 March 2023. Accordingly, the collection of these tax collection notices is suspended in the period from 1 January 2023 to 31 March 2023.

This applies not only to taxes but also to social security contributions. By way of a limitation, it must be pointed out that the creditor bodies may decide by 31 January 2023 not to take part in this measure.

As in the past, the following are excluded from the scrapping: claims for the recovery of State aid, claims of the Court of Auditors, EU aid, VAT on imports and traffic fines, save for the waiver of any interest.

Important: please note that the scrapping only concerns relatively old tax claims, i.e. those already handed over to the tax collection agent by 31.12.2015. For more recent collection notices, recourse must be had to the settlement described above, even for amounts below 1,000 euros.

Payment of payment notices “avvisi bonari” (para. 159)

Payment notices arising from automated checks on tax returns (so-called “avvisi bonari”) must in principle be paid within 30 days or, in the case of payment by instalments, in 8 quarterly instalments. Provision is now made for the possibility of also making payment in 20 quarterly instalments.

Deadline for service of tax collection notices extended (para. 159)

And after the carrot, the stick: the deadline for the service of tax collection notices following automated checks for the year 2019 is extended by one year, and they may now be served within the 4th (instead of the 3rd) year following submission of the tax return.

Finally, it must be borne in mind that the deadlines set out above for making use of the various settlement instruments are very short, especially considering that in some cases implementing provisions still have to be issued. Unless the deadlines are subsequently postponed, we ask you to contact us immediately should you wish to make use of the measures described.

We remain at your disposal for any further information and documentation you may require.

Yours sincerely

Josef Vieider