Comploj Vieider Lorenzon
Lechner Zanellato

PDC Partner
Wirtschaftsprüfer und Steuerberater
Dottori Commercialisti

Senior partner
Dott. Lodovico Comploj
Dott. Emilio Lorenzon
Dott. Josef Vieider
Dott. Alessandro Zanellat
Dott. Martin Lechner

Wirtschaftsprüfer und Steuerberater / Dottori
Dott.ssa Elena Gattolin
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Dott.ssa Monika Mattivi
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Dott.ssa Giulia Fortin

Bilanzbuchhalter / Esper
Dott. Antonio Gocev

To all
clients

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Subject: Two-year advance tax arrangement (concordato preventivo biennale) for 2024 and 2025 – a game of chance or tax planning?

Businesses and self-employed professionals who are subject to the so-called ISA reliability indices, that is, generally those with revenues of up to 5.164.569 euro, have the option, when filing their tax return by 31 October 2024, of submitting an application by which they essentially undertake to declare, for the years 2024 and 2025, a profit or surplus that is determined in advance on the basis of the aforementioned reliability indices. If the taxpayer then generates income in the two following years that exceeds this agreed benchmark income, the excess difference is tax-free. The other side of the coin: the taxes on the benchmark income must in principle also be paid where the actual income is far below it.

At first sight a risky lottery with the tax authorities. However, bearing in mind that the decision will only have to be taken by the end of October and that by then, at least for the year 2024, the result will in most cases be broadly foreseeable, we are faced with a challenging exercise in tax planning which, in extreme cases, can lead to enormous tax advantages. If, in a specific case, for example, the profit according to the 2023 benchmark figures amounts to around 200.000 euro in each of the next two years and the taxpayer is able to generate profits of one million in each year, then around 800.000 euro remains entirely tax-free in both years! Against this background, a critical examination is worthwhile at the very least.

GGi A GLOBAL ALLIANCE OF INDEPENDENT PROFESSIONAL FIRMS

39100 Bozen, via F.Crispi / F.-Crispi-Straße 9
tel +39 0471 288333, fax +39 0471 272521
e-mail info@pdc-partner.it

20121 Milano / Mailand
Foro Buonaparte 70
tel +39 02 36687469

39036 Stern / La Villa di Badia
Str. Ninz 63
tel +39 0471 847360

Legal basis

The so-called two-year advance tax arrangement was introduced by Legislative Decree No. 13 of 12 February 2024. In recent months a number of amendments have been made to this legislation, and further amendments are to be expected by the autumn. Implementing provisions and instructions have likewise been issued piecemeal, and numerous questions of detail are still open. Nevertheless, it is now possible to calculate fairly reliable scenarios for most cases, which should form the basis for a decision to accept or reject. The two-year advance tax arrangement applies for the purposes of IRPEF, IRES and IRAP, but not for VAT. The most important details are set out below:

Period

The wager on future income applies in principle to the two tax periods commencing after 31 December 2023, that is, in the case of a financial year coinciding with the calendar year, to the years 2024 and 2025. Important: the arrangement can only be accepted for both years. Acceptance for the year 2024 alone is not possible. An exception applies to taxpayers under the flat-rate scheme: here the arrangement is for the time being, and on a trial basis, limited to the year 2024.

In principle, an extension beyond the two-year period currently envisaged should be possible. Such an extension would, however, be the subject of a new agreement. Conversely, it is important to note that, at least under the law as it currently stands, the arrangement for the years 2024 and 2025 does not entail any immediate obligations for the following years as well.

Subjective scope of application:

The two-year advance tax arrangement may be claimed by businesses and self-employed professionals who are subject to the ISA reliability indices, irrespective of whether they are individuals, partnerships, corporations or other entities.

The relevant requirements must be met in the year 2023. Accordingly, all those who generated revenues of more than 5.164.569 euro in 2023 are excluded, as are those for whom the 2023 ISA indicators are not applicable, for example because the activity commenced in that year or because no ISA indicators at all are provided for the specific activity (e.g. holding companies). In addition, taxpayers who have overdue liabilities for taxes and social security contributions of more than 5.000 euro remain expressly excluded from the procedure, although this ground for exclusion never applies where a suspension or payment in instalments has been agreed with the office.

Also excluded are those who have failed to file a tax return in at least one of the last 3 years and those who have been convicted of tax offences in criminal proceedings in the last 3 years.
In the case of partnerships and “transparent” corporations, acceptance of the proposal also has binding effects for the individual shareholders. If the agreed amounts are not paid by the shareholder, the sums are collected through the collection agent.

Determination of the minimum income

For the purposes of the two-year advance tax arrangement, the Italian Revenue Agency makes appropriate software available to the businesses and self-employed professionals referred to above. Using this software, various items of information on expenses, operating resources, orders, etc. for the year 2023 must be reported, and this data is supplemented with additional information from the tax records. On the basis of this data, the software then produces a corresponding proposed agreement with a benchmark income for the years 2024 and 2025, which must then be further adjusted for inflation. To this effect, the 2023 benchmark income is expected to be increased by 0,6% for 2024 and by 1,1% for 2025.
Under no circumstances may the result be less than 2.000 euro.
In the case of self-employed professionals, this benchmark income according to the ISA studies will, in the years 2024 and 2025, be further adjusted analytically for IRPEF purposes in each year by the capital gains and losses of the respective year, and income from interests in partnerships and professional associations will also be taxable in addition.
In the case of businesses, by contrast, the benchmark income according to the ISA studies is adjusted analytically in the years 2024 and 2025 for IRPEF and IRES purposes in each year by capital gains and losses, income from participations and, furthermore, by extraordinary expenses and income, and loss carry-forwards from previous years may also be offset analytically.
Essentially, the position is that in determining the benchmark income on the basis of the 2023 data, capital gains and the like are excluded in order to arrive at an adjusted benchmark income from ordinary activities, and conversely, in the following years, this benchmark income must again be adjusted for such items. In extreme cases this prevents a taxpayer from also excluding capital gains (for example from the sale of a company building) from taxation by accepting the benchmark income, or conversely from being unable to claim a capital loss from such a sale.
The IRAP taxable base is likewise determined on the basis of the ISA indicators, although here capital gains and losses as well as extraordinary expenses and income remain excluded.

As shown at the outset, the benchmark income must be taxed in the years 2024 and 2025 even

where the actual income is lower. An exception applies only where revenues fall by more than 50% as a result of unforeseeable circumstances; in this case an application may be made for release from the arrangement. Specific reductions are also permitted should extraordinary interruptions of business operations occur.
Incidentally, specific tax incentives also remain unaffected, for example tax credits for investments or energy-efficiency refurbishments; should the determination of the actual profit or surplus, after deduction of these tax reliefs, produce a lower result, that result may in principle be declared. In plain terms: the tax reliefs referred to are not lost as a result of the arrangement!

The benchmark income also applies in principle for social security contribution purposes (artisans' and traders' insurance scheme); by way of derogation from this rule, however, taxpayers may also pay contributions on the higher actual income in order to protect their pension entitlements.

Further advantages of the arrangement

Apart from the tax advantages outlined above (with the risk of lower income), the tax authorities are also offering the following incentives in the event that the two-year advance tax arrangement is accepted:

- tax offsets of up to 70.000 euro per year for VAT and up to 50.000 euro per year for income taxes may be made without the usual compliance certification;
- VAT refunds of up to 70.000 euro per year may be claimed without providing guarantees;
- the provisions on shell companies are suspended;
- tax assessments based on standard indicators are suspended.
- In addition, tax audits are rigorously restricted.

Accounting and tax returns

Acceptance of the arrangement has no effect whatsoever on the obligations relating to accounting and the filing of tax returns. The accounts must nevertheless continue to be kept in accordance with the general provisions, not least because the arrangement described has no effect whatsoever on VAT.

Practical handling

In recent weeks the Italian Revenue Agency has made available the software required to determine the benchmark income for the years 2024 and 2025 on the basis of the 2023 ISA

indicators.
By 31 October 2024, when filing the tax return, a decision must be taken as to whether or not the benchmark income calculated as described above on the basis of the ISA indicators is to be accepted for the years 2024 and 2025.

Considerations
The greatest advantage of the two-year advance tax arrangement accrues to those taxpayers who, in the years 2024 and 2025, generate a higher effective income than that agreed in advance with the tax authorities. We will inform you in the coming weeks of the results proposed by the Agency's software, and comprehensive tax planning will then be necessary in order to weigh up the pros and cons of the arrangement.

Planned amendments
The first simulation calculations using the software referred to show that taxpayers who already declared an ISA income for 2023 that essentially corresponds to the benchmark figures will also have relatively little additional income to declare for the following years. The higher the reliability and the corresponding ISA score, the smaller the additions; and conversely, where ISA scores are low, the adjustments required for the arrangement may be very high. In order to make the two-year advance tax arrangement attractive for the latter as well, the competent finance committee has proposed that, instead of progressive IRPEF or IRES taxation, a single or flat tax should be provided for these increases, graduated on a regressive basis by reference to the ISA index as follows:

- for an index of eight or more, a tax rate of ten per cent is envisaged,
- for an index of between six and eight, a rate of twelve per cent, and
- for an index of less than six, a rate of 15 per cent.

We will keep you informed of further developments; the planned amendments will, however, certainly be decisive for the acceptance or rejection of the two-year advance tax arrangement only in individual cases.

We remain at your disposal for any further information.

Yours sincerely
Josef Vieider