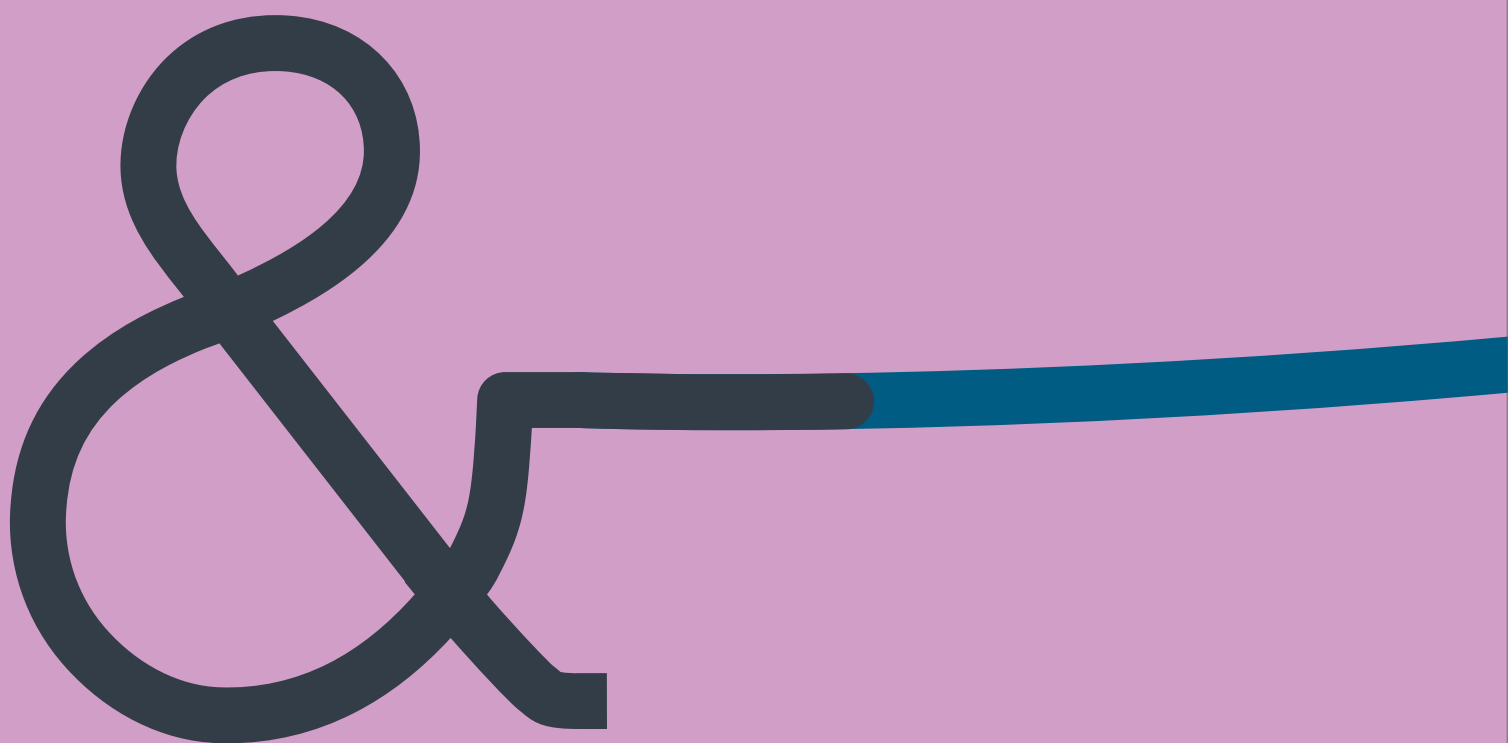


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Budget Law 2023 -
Law n. 197/2022

2 febbraio 2023



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Focus on Tax Controversy: how to close pending tax disputes with Italian Tax Authorities

I. Incentive for closing Tax Proceedings

The Government approved the Budget Law on 29 December 2022 (Law n. 197/2022), which includes several provisions to provide incentives to prevent the start or close of pending tax disputes. Such incentives are qualified as “Measures to support taxpayers”, since their scope is to reduce the pending liabilities of taxpayers vis-à-vis the tax authorities. The Law entered into force on 1 January 2023.

With Circular Letters n. 1 of 13 January 2023 and n. 2 of 27 January 2023, the Italian Revenue Agency provided instructions to taxpayers who wish to take advantage of the tax measures include in the Budget Law.

A summary is outlined below, considering that each case would require a specific analysis.

a Settlement of sums due following automatic controls of tax returns (art. 1, par. 153)

Sums due following automatic controls of the Italian Tax Authority (so-called “avvisi bonari” issued pursuant to art. 36-*bis*, Presidential Decree n. 600/1973 and art. 54-*bis*, Presidential Decree n. 633/1972) related to fiscal years 2019, 2020 and 2021, can be settled by paying **only the amount of taxes and interest** (and other ancillary sums), as well as penalties reduced from 10 to **3%**. The same benefits also apply to pending payment programs which entitle the taxpayer to pay taxes in installments. Amounts which have been already paid prior to the settlement date, however, cannot be refunded by the tax authorities.

b Formal Violations (art. 1, par. 166 ss.)

Formal violations committed as of 31 October 2022 can be settled by paying 200 euros. Formal violations are those which are not relevant for the purpose of income tax (“IRES” and “IRAP”) or VAT computation. The provision does not apply either to voluntary disclosure programs, or to disclose financial and property assets held abroad, or to violations challenged in tax assessments which have not been appealed (and, therefore, have become final) at the date of entering into force of the Budget Law. In case a tax report has been delivered by 30 October 2022, the statute of limitation to assess formal violation is extended by two years. In case a tax report has been served within 31 October 2022, with respect to formal violations, the deadline to issue a tax assessment is extended by two years.

c Special settlement procedure for substantial violations (art. 1, par. 174 ss.)

Violations committed and not yet challenged related to tax returns related to taxes managed by the Revenue Agency (income tax, VAT, indirect taxes), validly submitted, with respect to fiscal year pending as of 31 December 2021, as well as prior years may be settled by paying the tax, if due, and one eighteenth of the minimum penalties provided by the law, plus interest. The related payment can be made in eight quarterly installments starting from 31 March 2023.

d Incentives for tax settlement procedures (art. 1, par. 179 ss.)

With reference to all the taxes managed by the Revenue Agency (i.e. income taxes, VAT, indirect taxes), the tax settlement assessment procedures (“accertamento con adesione”) related to (i) tax audit reports delivered by 31 March 2023, as well as (ii) notices of assessment, adjustment and tax liquidation notices not appealed or for which it was still possible to appeal at the time of the entry into force of the 2023 Budget Law, and (iii) invitations to appear for the starting of a settlement procedure, served within 31 March 2023, may be settled by paying taxes, interest and penalties reduced to one eighteenth of the minimum provided by law. Taxes,

interest, and penalties can be paid in up to twenty quarterly installments. Offsetting with other taxes, pursuant to Article 17, Legislative Decree 241/1997, is not applicable.

The provision does not apply to either voluntary disclosure programs, or to disclose financial and property assets illegitimately held abroad.

e Settlement of notices of assessment (art. 1, par. 180)

Notices of assessment, as well as tax liquidation notices (i) not appealed or for which it was still possible to appeal at the time of the entry into force of the 2023 Budget Law (ii) or which have been served by the Revenue Agency within 31 March 2023, can be settled by fully accepting them, by paying the required taxes and penalties reduced to one eighteenth. The same provision also applies to notices aimed at cancelling tax credits not appealed or for which it was still possible to appeal at the time of the entry into force of the 2023 Budget Law.

f Incentivo alla definizione delle liti pendenti (art. 1, comma 186 ss.)

Disputes against the Revenue Agency and the Customs Authorities (*i.e.*, Tax Agencies) pending before the tax courts as well as before the Supreme Court (even in case of transfer of the case back from the Supreme Court to the second level tax court) at the date of approval of the 2023 Budget Law, *i.e.*, 1 January 2023, can be closed by paying an amount equal to the value of the controversy, being the value the amount of taxes due (*i.e.*, without including penalties and interest).

The controversy is considered “pending” before a tax court when the appeal brief regarding the first degree of judgment has been notified to the counterpart (*i.e.*, Tax Agency) within the date of entry into force of the Budget Law (*i.e.*, 1 January 2023).

In case the appeal is pending before the first level tax court, the controversy could be closed with the payment of 90% of its value.

In case the first level decision is not favourable for the Tax Agencies, the taxpayer is entitled to close the case by paying 40% of the value of the controversy; while in case the second level decision was not favourable for the Tax Agency, the taxpayer is entitled to settle the dispute by paying 15% of the value of the controversy. Specific rules are established in case of the decision is partially favourable for the Tax Agency.

In the case where the dispute is pending before the Supreme Court and the Tax Agencies have been unsuccessful in all previous levels of judgment, the taxpayer is entitled to settle the dispute by paying 5% of its value.

In case the litigation refers to assessment notices relating only to penalties, the dispute may be closed by paying 15% of penalty amount in case the Tax Agency is the losing party in the latest or unique decision issued during a non-precautionary proceeding, on the merit of the case or regarding the legitimacy of the appeal brief or by paying 40% in all other cases. The above-mentioned decision should have been filed at the date of entry into force of the 2023 Budget law.

The tax litigations falling within the scope of this provision, which term to appeal or to counter appeal before the Tax Courts and Supreme Court does expire between 1 January 2023 and 31 July 2023, are suspended for nine months.

Sums already paid to the Tax Agency pending the litigation proceeding cannot be asked for refund, but they can be used to reduce the final amounts due to close the tax litigation

State aid and import VAT do not fall within the scope of the provision.

The closing of the dispute is completed by submitting the relevant application and making payment by 30 June 2023.

Disputes that can be closed taking advantage of the 2023 Budget Law are not automatically suspended and the taxpayer shall have to submit a specific request to the tax courts or the Supreme Court, indicating the intention to benefit from the favourable rules. In this case, the proceedings are suspended until 10 July 2023, and the taxpayer is required to file, by the same date, a copy of the application to close the tax dispute and the receipt of payment of the amounts due (or the first installment).

g In-court settlement procedures (art. 1, par. 206 ss.)

As an alternative to the incentive to close the tax controversies, the controversies pending before first and second level tax court at the time of entering into force of the 2023 Budget Law may be closed in the context of an in-court settlement procedure by next 30 June 2023, *i.e.*, negotiating a settlement before closing them. Eligible controversies are those where the Revenue Agency is involved. State Aids and VAT at importation are out of scope of the provision.

In case of in-court settlement, the penalties will be reduced to 1/18th, while interest expenses and other related costs shall be still due.

h Waiver of the tax disputes pending before the Supreme Court (art. 1, par. 213 ss.)

Cases where Revenue Agency is involved, pending before the Supreme Court may be closed in the context of a special settlement agreement to be reached within 30 June 2023. In case a settlement is reached, the appellant will be required to waive the main or the cross-appeal by signing the agreement and paying the amounts due for taxes, minimum penalties reduced to 1/18th interest and any other related cost. The payment of the full amounts due shall have to be performed within 20 days from the conclusion of the settlement agreement.

State Aids and VAT at importation are out of scope of the provision. Sums already paid to the Revenue Agency pending the litigation proceeding cannot be asked for refund.

i Regularisation for the omitted payment in case of acceptance of tax assessment notices settlement procedure, mediation, and in-court settlement procedure (art. 1, par. 219 ss.)

For disputes regarding taxes managed by the Revenue Agency, it's possible to regularise:

- i the omitted or insufficient payment of the installments following the first one in the context of settlement procedures or full acceptance of tax assessment, tax adjustments and liquidation notices, mediation was already expired at the time of the entering into force of the 2023 Budget Law subject to the condition that no notice of payment or injunction have been already served;
- ii the omitted or insufficient payment related to in-court settlement procedures which were already expired at the time of the entering into force of the 2023 Budget Law, subject to the condition that no notice of payment or injunction have been already served.

The settlement shall be performed for its entire amount by 31 March 2023 or can be paid in installments, on a quarterly basis, starting from 31 March 2023.

j Scrapping of notices of payments up to 1.000 Euro (art. 1, par. 222 ss.)

All tax debts included in notices of payments and communicated to the Collector Agent between 1 January 2000 and 31 December 2015, whose amounts (including tax, interest, penalties, and collection fees) do not exceed 1000 euros are automatically entirely scrapped. The above debts include not only income taxes, but also social security contributions or other fines.

k Partial scrapping of notices of payments (par. 231 ss)

Tax debts included in notices of payments and communicated the Collector Agent between 1 January 2000 and 30 June 2022, can be scrapped by paying the relevant taxes, net of penalties, interests, delay-interests and collection fees. Only expenses accrued for the enforcement procedure (if started) and notification expenses are due in addition to taxes.

The payment can be executed in full within 31 July 2023 or in a maximum of 18 installments.

II. Other relevant provisions for tax controversy purposes

Please find below a short outline of the most relevant tax provisions included in the 2023 Budget Law:

a New deductibility regime for "blacklist" costs (art. 1, par. 84)

Budget Law 2023 established that expenses and other negative components arising from transactions, actually carried out, with counterparties resident or located in countries or territories considered to be "non-cooperative"

for tax purposes, are deductible within the limits of their arm's length value, established in accordance with art. 9, Presidential Decree 917/1986 ("TUIR"). The restrictions do not apply if the taxpayer gives evidence of the economic interest and actual execution of the transactions carried out.

The measure has the purpose to reinstate, adapting it to the new regulatory framework in force, the restrictions on the deductibility of the so-called "black list costs", as amended by the Internationalisation Decree and the Stability Law for 2016, in line with the need to introduce defensive measures aimed at limiting tax avoidance for transactions put in place with non-cooperative parties for tax purposes.

b Penalties for non-existing V.A.T. transactions in reverse charge (art. 1 par. 152)

When the recipients of goods and services have deducted through the reverse charge mechanism, VAT related to non-existent transactions, for which it has been proved that the recipient was aware of such violation, the application of the penalty equal to 90 percent of the deducted VAT (as provided for in par. 6 of art. 6 of Legislative Decree 471/97) has been confirmed, in addition to the payment of the tax.

The scope of the provision is to provide an interpretation that, in line with the most recent case law on the matter (among others, Supreme Court, Judgment No. 22727 of July 20, 2022), provides that VAT is not neutral if the Tax Authority succeeds in proving that the transferee or principal was aware of the evasive or fraudulent intent of the reverse charge invoices, referable to taxable transactions found to be non-existent.

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