

The voluntary disclosure bis

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A second round, commonly called *voluntary disclosure bis*, was opened by Article 7 of Decree-Law No. 193 of 22 October 2016, converted by Law No. 225 of 1 December 2016. Applications could be filed between 7 February and 31 July 2017 for violations committed until 30 September 2016, with documents and payment due by 30 September 2017.¹ The main novelty was self-assessment: the taxpayer calculated and paid the taxes himself, with penalties for underpayment. The second round also covered domestic cash and valuables held in safe deposit boxes, subject to a declaration that they did not derive from offences other than tax offences. Taxpayers who had already used the first round, or who had been notified of an assessment, were excluded.² The second round attracted fewer applications than the first, because the clients of Swiss banks who had been willing to regularize had largely done so in 2015.³

The timing of the second round was again linked to Switzerland. On 2 March 2017 the Swiss Federal Tax Administration and the Italian Ministry of Economy and Finance concluded a mutual agreement on group requests under the new Article 27 of the convention. The Italian press drew the obvious conclusion: clients who had neither regularized nor received an assessment could be identified through the banks' exit letters.⁴ The voluntary disclosure bis was offered to them as a last opportunity before the group requests and the automatic exchange of information.

1 The offence of self-laundering

The same Law No. 186 of 2014 that created the voluntary disclosure introduced into the Italian Criminal Code a new Article 648-ter.1 on self-laundering (*autoriciclaggio*). The provision punishes a person who, having committed or participated in a crime, employs, substitutes or transfers the money, goods or other benefits deriving from it into economic, financial, entrepreneurial or speculative activities in a manner that concretely

obstructs the identification of their criminal origin.⁵ In its current version the penalty is imprisonment of two to eight years and a fine of EUR 5,000 to 25,000. It falls to one to four years and EUR 2,500 to 12,500 where the money derives from a contravention punishable by arrest above certain limits, and it is reduced where the predicate crime carries a maximum sentence of less than five years. Conduct by which the proceeds are destined to mere personal use or enjoyment is not punishable.⁶

For Italian holders of undeclared Swiss assets the new offence changed the risk calculation in two ways. Before 2015 an evader who reinvested the proceeds of his own tax crime committed no laundering offence, because Italian law exempted the author of the predicate offence. After 1 January 2015 the reinvestment of evaded tax in financial assets in a manner that concealed its origin could itself be a separate crime, with a longer limitation period and with the possibility of confiscation. The legislator used the threat of self-laundering as an incentive by granting immunity from it, for conduct until 30 September 2015, to those who used the voluntary disclosure.⁷ Italian commentators have since debated how far the mere holding of an undeclared account in Switzerland, without further transactions, can constitute self-laundering. The prevailing view requires a new act of employment or transfer after the entry into force, but the uncertainty itself reinforced the pressure to regularize.

Essentials. The voluntary disclosure of Law No. 186 of 2014 required full disclosure, payment of the tax due and a waiver authorizing the foreign bank to release the account data. In return it reduced penalties and granted immunity for the principal tax offences and for laundering and self-laundering connected with them. Swiss assets qualified for the favourable treatment because Switzerland signed the Protocol of 23 February 2015 before the deadline of 2 March 2015. The same law created the offence of self-laundering in Article 648ter.1 of the Criminal Code, which applies to reinvestment of the proceeds of one's own tax crimes.

2 Notes

1. "Voluntary disclosure 2017: domanda, modello e calcolo imposte", Money.it, <https://www.money.it/voluntary-disclosure-bis-2017-domanda-calcolo-imposte>. Decree-Law No. 193 of 22 October 2016, "Disposizioni urgenti in materia fiscale e per il finanziamento di esigenze indifferibili", Gazzetta Ufficiale No. 249 of 24 October 2016, was converted by Law No. 225 of 1 December 2016, Gazzetta Ufficiale No. 282 of 2 December 2016,

https://www.gazzettaufficiale.it/gazzetta/serie_generale/caricaDettaglio?dataPubblicazioneGazzetta=2016-12-02&numeroGazzetta=282. ↩

2. Money.it (above). ↩
3. Press reports of 2017 and 2018 indicated a much smaller number of applications than in 2015. ↩
4. "Fisco: nuove indagini sui conti correnti italiani in Svizzera", Diritto.it, 16 March 2017, <https://www.diritto.it/?p=52091>; Samuele Vorpe, "Roma chiede i dati", Corriere del Ticino, 7 August 2019, <https://author.weblaw.ch/magnoliaAuthor/dam/novita-fiscali/2019/Luglio-Agosto/vorpe-roma-chiede-i-dati.pdf>. ↩
5. Art. 648-ter.1 of the Italian Criminal Code, text and commentary in Brocardi.it, <https://www.brocardi.it/codice-penale/libro-secondo/titolo-xiii/cap-o-ii/art648ter1.html>. ↩
6. Art. 648-ter.1 (above), whose second paragraph now provides imprisonment from one to four years and a fine of EUR 2,500 to 12,500 where the money derives from a contravention punished by arrest above one year at most or six months at least, and whose third paragraph reduces the penalty for proceeds of offences punished by less than five years at most. Brocardi notes the amendment by Legislative Decree No. 195 of 8 November 2021, entitled "Attuazione della direttiva (UE) 2018/1673 del Parlamento europeo e del Consiglio, del 23 ottobre 2018, sulla lotta al riciclaggio mediante diritto penale", Gazzetta Ufficiale No. 285 of 30 November 2021, https://www.gazzettaufficiale.it/gazzetta/serie_generale/caricaDettaglio?dataPubblicazioneGazzetta=2021-11-30&numeroGazzetta=285. ↩
7. Art. 5-quinquies para. 3 DL 167/1990 as inserted by Law No. 186/2014, limiting the immunity for self-laundering to conduct committed until 30 September 2015. ↩

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