Economic crisis and Italian tax law: it's time for some changes

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1. The economic crisis due to Covid 19 has raised for enterprises and firms new downsides (lack of liquid assets in the short/ medium term; the risk to pay taxes without takings for the taxed subjects based on the competence principle) and needs (for instance, not discouraging the investments with tax depreciation rules different from the accounting ones ; make green oriented investments allowing innovation and development of an new offer of services and goods).
2. The tax legislator should adjust to the new reality rules already established, introduce new rules; the Revenue Agency should change its approach and be utterly involved in vouching for the effectiveness of tax collection; lastly, it should be taken into account to pay taxes throughout goods in kind (real estates) by the mechanism of the datio in solutum, without application of taxes on the income and on the added value.

We could come up with different changes.

3. Regarding income taxes:

3.1 the deductibility of credit losses (art.101 Tuir) should be promoted even with a critical condition of the debtor liquidity (different from insolvency) over the deadline of 6/9 months from the payment request or after the opening of a bankruptcy procedure and of debt restructuring; the limit for the " automatic" deductibility should be lifted up for small claims;

3.2 for bad debt towards third parties we have to spring the limit up to 0,5% of the nominal value and purchase value in addition to the maximum limit of 5% of the book value (art. 106 Tuir);

3.3 for the depreciation charge of instrumental goods (art.102 Tuir) there are some unjustified limitations (art. 103 Tuir) as for 50% for intellectual property and the percentage of 1/18 of the cost for trademarks and the start-up at 1/16; one should implement the civil criteria and spread more the limit for the full deduction of the cost in only one year

3.4 compatibly with the Atad Community directive the limit for the deductibility of 30% of interest expense (art. 96 Tuir) might be raised up;

3.5 in regard with transfer pricing one should adapt the benchmarks and comparables;

3.6 for what concerns the carry-over of tax loss one might cancel the quantitative and time limits (art. 101 Tuir) and renovate the vitality indexs in merger operations through incorporation of companies with losses (art. 172 Tuir);

3.7 help the green oriented investors and the eco-oriented enterprises.

4. In order to avoid the asymmetry between the Irpef and Ires rates introduce once again a renewed Iri (art.55 bis Tuir) with simplifications.

5. Among the general principles of business income the Ias adopter - Oic adopter regime should be adapted to micro enterprises, including the faculty of non-accounting deduction in the tax return and an express formulation of the principle of inherence.

6. The counterproductive effects of the principle of competence should request a semplification of special regimes providing one flat rate scheme of 40.000 euros per year and one semplified regime based on the cash taxation principle of 1 million euros per year.

7. The importance of agriculture requests an extension of the limits that define agricultural business activity for tax matters (art. 32 Tuir) so to subject the incomes of traditional agricutural activity to a lighter taxation, also with the concern of other connected activities.

8. The consequences of the crisis should put aside the tax regime of the so called shell companies and should promote capitalization (included the waiver of credits and dividends) with a fiscal regim as the Ace one that will incentivize venture capital; in this perspective, for a short period and within fixed deadlines, it might be foreseen the non-taxation of interest income paid to the shareholder.

9. With regard to the value added tax the variaton notes (art. 26 DPR 633) their rules should weave into objective critical situations of the debtor, as for the credit loss, and into the impossibility or improbability of payment of the consideration already invoiced; more time should be given for the relevance of the agreement in respect of the present 1 year term.

10. For what the tax ascertain is concerned, one should align the result of the presumptive assessment tools, fancy more deeply the market logic with the general antiavoidance rule (art. 10 bis 1.212/2020) and extend the obligation of a prearranged contradictory.

11. The liquidity crisis should be seen as not punishable as major force (art. 6 D.Lgs. n. 472/1997) at least for late payments when the taxpayer can prove a temporary liquidity crisis especially in presence of one or few clients, better if public.

12. The aforementioned crisis should prefer to public disbursements the transformation, for a short time, of tax privileges into postponement for both the submissions and the penalties; the insolvency procedures and debt restructuring should ensure a major responsibility of the Revenue Agency for tax transactions and refund of taxes.

13. The interventions carried out to date and the recent so called Colao project are not satisfactory at the moment.

The above mentioned project does not make the compensation of tax credits fully effective, does not resolve the disadvantageous taxation from rents not actually received despite a tenant eviction

procedure; disincentives the use of bankruptcy proceedings; provides for the regularization of real estate values repatriated from abroad with a sort of voluntary disclosure ignoring that the crisis will give rise to the re-shoring of enterprises now abroad; turism among the most weakened economic sectors does not have any concrete proposals.

The knots to untie to give momentum to the Italian country by the tax leverage are various.

They can be analysed by three ways.

Firstly, there is the choice do be taken between flat tax and progressiveness; the system apparently based on the progressive taxation ex art. 53 co. 2° Cost., is contaminated with many specific flat-rate substitution regimes with confusing legislation.

A well set reform should turn to the reinforcement of the flat tax (narrowed to flat-rate so-called regime for operators of economic activity with revenues not exceeding 65.000 euros) that is to say rethink a system in compliance with the rules laid down art. 53 co.2 Cost.

Secondly, for the production activities as the Irap tax has lost it’s effectiveness and having been switched to an additional amount of the IRES by virtue of a series of exceptions, it is necessary to evaluate its repeal, particularly as healthcare expenditure will be financed by the MES.

Last but not least, tax system should be free from irrefutable penalties between global and local activity: e.g. the need to expand the PEX regime to the unreasonable faciltation of expatriates as a consequence of the so called Decreto Cura Italia at the expense of the young people located in Italy.