

Tax Authorities Accept Soccer Team's Hardship Compromise

by **Alessandro Adelchi Rossi**

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Tax Authorities Accept Soccer Team's Hardship Compromise

by Alessandro Adelchi Rossi

Italian tax authorities on March 29 applied the provisions of Law 178 of August 8, 2002, for the first time, entering into a hardship compromise agreement with Italian soccer giant S.S. Lazio for the team's unpaid tax liabilities.

Without guidance from tax authorities, Law 178 — which introduced the concept of the hardship compromise as a tax collection tool in cases when it is unlikely that a tax debt can be collected — had never before been applied. However, tax authorities on March 4 released Circular Letter 8/E on the criteria for applying the hardship compromise rules introduced by the law.

Following the release of Circular Letter 8/E, tax authorities entered into a hardship compromise whereby Lazio will pay €140 million in past-due taxes over a 23-year period. The agreement allowed Lazio, one of Italy's top league soccer teams, to narrowly avoid bankruptcy.

While the source of the government's authority to initiate a tax compromise is the statutory language of Law 178, the process by which tax authorities and a taxpayer enter a binding compromise agreement is governed by the principles of the Italian law of contracts, namely articles 1965 through 1976 of the Civil Code.

As the agreement with S.S. Lazio shows, the advantages of filing a hardship compromise offer can be substantial for debt-ridden taxpayers. Benefits to the taxpayer can include:

- payment of less than the full assessed amount;

- payments spread over several years;
- assurance regarding collection action (once a taxpayer enters into a hardship compromise with tax authorities, the taxpayer's dealings with the authorities are governed by the terms of the agreement. If the taxpayer fulfills its obligations under the agreement, it is assured of no unanticipated enforced collection); and
- finality (once a hardship compromise is in effect, the taxpayer's liability for the period covered by the agreement is fixed. As a general rule, tax authorities may not claim that the taxpayer owes any additional tax for that period).

Tax authorities may reopen a case in extraordinary circumstances arising from some improper action by the taxpayer (for example, when the taxpayer has provided false information or documents in connection with the agreement, or has concealed its assets or ability to pay).

As a further incentive, Law 178 provides that tax authorities may waive article 19 of Presidential Decree (DPR) 602/1973 requiring that the taxpayer post security (collateral) to ensure collection. There is no indication that tax authorities will consider the posting of security or other factors (for example, the cause of the tax delinquency, the length of noncompliance, efforts to resolve the noncompliance, and so on) in deciding whether to accept a taxpayer's request for a hardship compromise or in determining the length of the repayment term.

For all its advantages, the hardship compromise procedure is not without its drawbacks. To support a determination that economic hardship exists, the facts must show that the taxpayer is insolvent and that the insolvency, as defined in article 5 of Law 267/1942, must not be of a temporary nature. Also, the procedure is available only to taxpayers whose

assets are already subject to a tax lien, have been seized, and are about to be sold at an execution sale. ◆

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