

Criminal tax advice for companies operating in Italy

Why criminal tax advice?

Companies approaching Italian jurisdiction to carry on their business are generally required to fulfil a number of tax obligations.

Moreover, tax audits and inspections performed by the Italian tax authorities nowadays largely target non-resident enterprises and cross-border tax issues, in the everlasting fight against harmful tax practices and aggressive tax planning.

On the other hand, a breach of tax law could expose companies to criminal prosecution in a wide range of cases and circumstances pursuant to Italian law, thus requiring highly specialised advice in criminal tax matters, aimed at

- (i) assessing criminal exposure risks,
- (ii) preventing those risks, and
- (iii) assisting the companies in contacts with Italian Tax Authorities during tax audits and criminal investigations.

Different scenarios and criminal risks



Hidden Permanent Establishment

From a tax perspective, Permanent Establishment (PE) is a linking rule between non-resident companies and tax jurisdiction, entailing the obligation for the non-resident to (i) tax locally sourced income and (ii) file the relevant tax return.

If the non-resident performs (part of) its business in Italy through a fixed place of business or agents but without disclosing a PE, the directors of the company may incur in criminal prosecution (omitted tax return).



Disguised Foreign Tax Residence

Disguised Foreign Tax Residence may be a consequence to a substance-over-form check on formally foreign-resident companies acting nonetheless as a company effectively managed in Italy. If the foreign-resident status of a company is challenged, the directors of the company may incur in criminal prosecution (omitted tax return).



Intragroup Transfer Pricing Estimations

Italian Tax Authorities often approach transfer pricing policies of multinational enterprises. As a consequence, contested transfer pricing estimations are a hot topic in tax audits and tax assessment in Italy.

However, estimations might not automatically lead to criminal prosecution: for instance, the drafting of transfer pricing local files or a limited spread between adjustment and tax return may exclude criminal relevance (conversely falling into untrue tax return).



Involvement of Counterparties in VAT Frauds or Tax Evasion

Theoretically, criminal liability lies with directors of companies in serious breach of tax law.

However, when an international fraud (fraudulent tax return / false invoicing) or evasion (untrue tax return) is discovered, preliminary criminal investigation may address also contractual counterparties of the directly involved / first discovered liable companies, in order to assess the existence of accomplices.



Tax Debts vs. Estate Planning

The fulfillment of tax debts is guaranteed through the enforcement of tax collection procedures.

In order to avoid the structuring and planning of estate in intentional circumvention of existing tax debts, Italian criminal case-law has widened the scope of criminal prosecution (fraudulent circumvention of tax payments), covering an increasing number of cases.



Tax Payments vs. Crisis

Due to the financial crisis of 2008, many companies had to choose between the payment of taxes (especially VAT) and the preservation of business and employment contracts.

However, a careful evaluation in light of a risk of criminal prosecution (omitted tax payments) is needed. Similar issues may occur, led by COVID-19, which could also entail further specific risks of criminal prosecution (concerned with accounting, specific State aids etc.).

Our advice



Risk assessment

We can perform our risk assessment before any contact with the Italian Tax Authorities or assist you during a tax audit or tax inspection in order to foresee possible criminal ramification of the same audit.



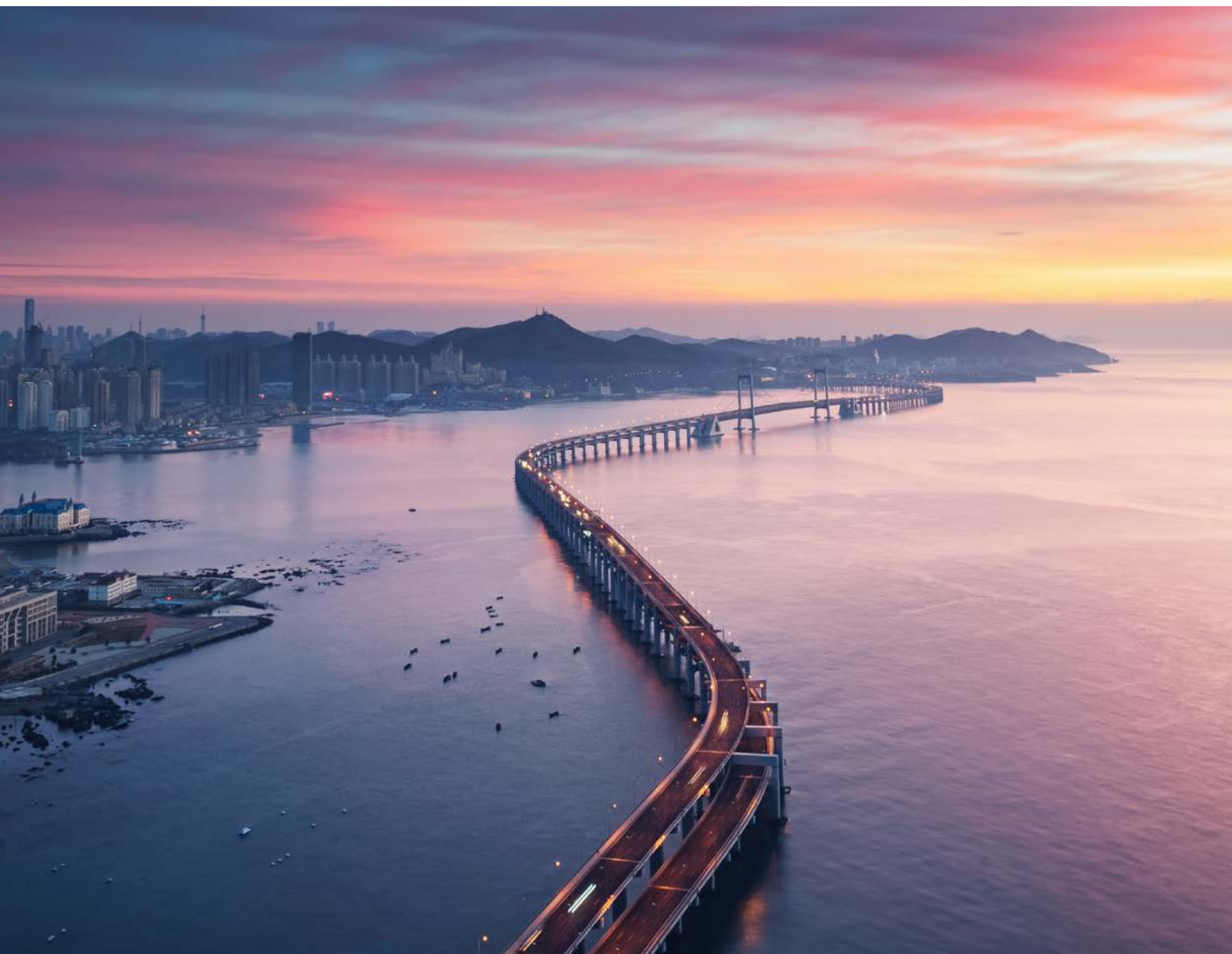
Prevention

We can provide you a coordinated strategy, involving different specialists targeting prevention models, Know-Your-Counterparty strategies and corporate processes addressing risks within specific functions.



Assistance before Italian authorities

A team involving different specialists, with a focus on tax and criminal law, can provide you with assistance from the very early stage of tax audit and tax inspections, manage contacts with the tax auditors and with the Public Prosecutor office over preliminary investigations in criminal proceedings.



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