

**Offsetting prohibited
if the taxpayer
has debts of over
Euro 1.500 entered
on the list of tax debts
(*ruolo*)
– Revenue Agency
Circular no. 13
of 11 March 2011**

Newsletter

**Legal-Tax
Company law and taxation**

***Special Edition
15 March 2011***

Offsetting prohibited if the taxpayer has debts of over Euro 1.500 entered on the list of tax debts (*ruolo*) – Revenue Agency Circular no. 13 of 11 March 2011

As previously mentioned in our NL 2/11, art. 31 of Legislative Decree n. 78/2010 introduced, with effect from 1 January 2011, a ban on the offsetting of tax credits if the taxpayer has debts of over Euro 1.500 entered on the list of tax debts and for which the due date has expired.

The same article 31 introduced the possibility, again with effect from 1 January 2011, to pay, even partially, the amounts entered on the list of tax debts by offsetting credits relating to these taxes.

A special Decree stating the relevant operating procedures was issued on 10 February 2011 [GU No 40 of February 18, 2011].

Therefore, from now on, before using available tax credits to offset tax liabilities, the taxpayer must first pay the overdue debts included on the list, also by offsetting them.

A specific new tax code has been created for this purpose.

Offsetting is prohibited only if the debts included on the list amount to more than € 1,500 and are overdue, regardless of the date of notification.

The ban on offsetting ceases to apply when such debts are paid.

Therefore, in view of the payments due by 16/4/2011, taxpayers should ensure that debts of over Euro 1.500 which are entered on the list of tax debts and for which the due date has expired are paid first, in order to avoid blocking the right to offset.

Debts and credits to which the ban on offsetting applies

"*Treasury credits*" for which there is a ban on offsetting and "*debts entered on the list of tax debts for treasury credits and related costs*" which prevent the payment of taxes via offsetting include:

- direct taxes (IRES, IRPEF, IRAP);
- regional and municipal surtaxes on direct taxes;
- source withholding tax applied by a withholding agent;
- value added tax and other indirect taxes (registration tax);
- penalties and interest, including interest on arrears;
- collection premiums and other expenses related to the list (notification fees and costs relating to enforcement procedures incurred by the collection agent).

The following are excluded from the ban on offsetting:

- local taxes (ICI, Tarsu, etc.);
- contributions and tax relief granted, for any reason, as a form of tax credit.

The ban on offsetting applies exclusively to 'horizontal' offsetting, i.e. the offsetting of different credits and debts (for example, offsetting of IRES credit with withholding tax).

It is still possible to perform 'vertical' offsetting, i.e. involving the same tax (for example, offsetting of IRES credit with IRES advance and balance payments).

Limit of Euro 1.500 and payment deadline

The demand for payment of debts entered on the list of tax debts is served via a payment notice. The taxpayer has 60 days from the date on which the payment notice is notified within which to make the payment, after which the tax debts are considered overdue.

Where a payment notice has been served less than 60 days previously, it is still possible to apply the offset.

In cases where more than one payment notice has been issued, with different deadlines, the taxpayer must check the total amount of overdue debts at the time the payment is made.

Where amounts entered on the list of tax debts are paid in instalments, if even only one instalment is not paid, the amount of the omitted payment is used for the purpose of calculating the Euro 1.500 limit. Moreover, where a taxpayer fails to pay more than one instalment and becomes ineligible for making instalment payments, the total remaining amount of the debt [previously divided into instalments] is relevant for the ban on offsetting.

Nature of debts entered on the list of tax debts

Temporary lists of tax debts, which are drawn up in cases where tax assessment notices have been challenged before a tax commission, do not in themselves preclude offsetting.

Nevertheless, if the legal proceedings find that the debts entered on the list of tax debts are effectively due, the Revenue Agency may then apply the penalty for violation of the ban on offsetting.

Similarly, the ban on offsetting does not apply in cases where the legal or administrative authorities have ordered a suspension of debts entered on the list of tax debts.

Use of tax credits to pay debts entered on the list of tax debts

Alongside the ban on offsetting, the authorities have introduced the possibility of using the offsetting facility to pay debts entered on the list of tax debts, whether overdue or not, via the F24 payment form.

The RUOL tax code has been created for this purpose.

Verification of the existence of overdue debts entered on the tax list

In addition to the debts indicated in payment notices, it is possible to verify the existence of any other debts entered on the list of tax debts by consulting the *Equitalia* (collection agent) statement available on the www.equitaliaonline.it website.

Penalties

In the event of a violation of the ban on offsetting, an

administrative penalty of 50% of the amount entered on the list of tax debts is applied, up to the total of the amount incorrectly offset.

Therefore, where amounts lower than 50% of the debts entered on the list of tax debts are offset, the penalty imposed will be equal to the amount incorrectly offset.

No penalties may be imposed for offsets of debts of over Euro 1.500 made prior to the date on which the Ministry of the Economy and Finance Decree was published (18 February 2011), in cases where following the offsetting sufficient credits remain to make the payment of the debts.

Legal-Tax Newsletter

Registration no. 343 of 17 July 2009

Court of Milan

Milan:

Via San Vito 7

20123 Milan

phone: 02 806731

fax: 02 89010836

Via Caldera 21

20153 Milan

phone: 02 409991

fax: 02 40914959

Other offices:

Ivrea

Pordenone

Rome

Turin

Venezia Mestre