

FRAUD AND ASSET TRACING ITALY

Here we take a look at the issues surrounding fraud and asset recovery by speaking exclusively to Carlo Zaccagnini, Attorney at Law from Studio Legale Zaccagnini in Rome, Italy. Carlo has represented individuals and corporations, including major defense contractors and corporations, in connection with criminal investigations or prosecutions across the country. The firm was founded in 2001 and maintains a substantial white collar crime practice covering Ponzi schemes, Carousel frauds, international V.A.T. frauds, money laundering, international corruption, financial crimes, bank offences and bankruptcy frauds. The firm is also experienced in the European Arrest Warrant (E.A.W.) procedure and in precautionary measures to be enforced abroad.

How much has the Italian fraud and asset tracing landscape changed in the time you have been practicing law?

Talking about "fraud and asset tracing" means, with focus on Italy, mainly scrutinizing Italian legislation regarding confiscation; my Country is a nation in which lives a criminological mixture of an endemic level of corruption (Transparency International Report of 2010 on Corruption Perceptions Index puts Italy amongst most corrupted countries together with Romania, Bulgaria and Greece) an alarming tax evasion attitude and a persistent presence of criminal organizations; therefore these legislative measures ought to be extremely effective and aggressive as they are, actually, showing themselves to be. Probably due to this general framework, Italy pioneered modern confiscation policies since the 1980s onwards; with law 646 of 1982 confiscation outside criminal proceedings being introduced; this act provided significant amendments to Law n. 575 of 1965 (also known as "Antimafia Law"); specifically, under section 2 bis and 2 ter of the Law, financial measures were introduced as the "preventative confiscation" to be enforced not only towards a suspect considered dangerous, but also against his or her family members, relatives, and other individuals cohabiting during the last five years with him/her.

Some years afterward, Section 12 sexies of Law n. 356 of 1992 introduced the so-called "extended confiscation" within criminal proceedings; this measure applies to those suspected of belonging to a criminal organization and operates - from a trial perspective - a sort of inversion of the burden of proof; as a matter of fact this form of seizure requests the defendant to demonstrate and give evidence on the licit and lawful origin of his/her assets. Failing to provide that proof generally results in confiscation of the assets owned or controlled - directly or indirectly - by the suspected.

More recently, it was also crucial and relevant the issuing of Legislative Decree n. 159 of 2011 where also appears concept of "pericolosità sociale" (literally : the capability for and individual to be harmful and dangerous for society); the Decree links, to the occurrence of this juridical definition, the possibility

for the Public Prosecutor (Pubblico Ministero or Procuratore Aggiunto) to issue the request of an order of forfeiting and confiscation of assets towards individuals and corporations.

It should also be reported that, since 2005, is possible to issue in Italy preventative seizure and confiscation order in compliance with international resolutions towards subjects pointed out by the United Nations Sanctions Committee or any other international organization capable to freeze economic assets in case they could be exploited as support for terrorist organization like, nowadays, ISIS.

Have things changed for the better in your opinion?

It would be hard to deny a consistent improvement brought by the above scrutinized provisions of law against the attempt of the criminal economy to infiltrate the legal economic tissue; over the last decades, if we just look at the numbers of highly valuable assets as bank accounts, bonds, shares and stock of capital companies, luxury cars, boats and planes, real estate assets as flat, apartments and land units. All these improvements are perceivable and constantly updated by the National Enforcement Agency for the Confiscated and Seized Asset (www.beniconfiscatisequestrati.it).

In relation to the tracing of assets, could you report a recent case study in Italy?

One could consider the recent international investigation called "Minotauro" undertaken by the Public Prosecutor of Turin against Neapolitan criminal organization "Ndrangheta. The Prosecutor request and obtained by the Court a seizure order for a total amount of assets estimated around € 115 million. The tracing of the assets was carried out in an undisclosed and undercover way; nevertheless, the Law Enforcement Agencies operating in Italy against tax offences and corporate crime the "Guardia di Finanza" had quick access and disclosure to several data bases including Italian bank account Register, land and property public Register, Revenues and tax Register, car Register. Also in this investigation, confiscated assets included real estate, flats, cars,

bank accounts financial activities and companies: the financial position of more than 600 persons had to be scrutinized, including of course suspects and members of their families. As a result of this forensic and accountant investigation deep discrepancies were pointed out by a software called Molecola capable to fish all relevant information from the above referred databases, to process data and to check whether the condition of the disproportion between declared incomes and effective richness was met.

Also in this case the counting concept of "sperequazione" (disproportion) among the lawful, traceable and licit incomes and properties owned by the suspected by one hand, and the unknown origin of other assets and properties in the effective disposal of the indicted, played a major role in the detection of the ill-gotten gains, being the fruit of tax fraud, smuggling or other serious economic crimes. Namely those assets that exceed the official and declared income of the perpetrator are susceptible to be frozen by the Public Prosecutor. During these financial investigations It is also feasible to seize assets belonging third parties ("dummy " or "figureheads"; "prestanome" in Italian) when the Prosecutor will close the proof on the appurtenance to the perpetrator.

From the defendant's attorney's perspective it should be reported that more than one author doubts that the prevention proceedings ensure those rights and guarantees provided in favor of suspected provided for by the Italian Constitution and the European Convention on Human Rights. **LM**



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