The intensification of criminal tax enforcement: a comparison between France and Italy

Introduction

Tax fraud is a major issue for governments, causing billions of euros in revenue losses each year. In France alone, tax fraud is estimated to cost the state between €80 billion and €100 billion annually. Italy faces similar challenges, particularly due to a large informal economy and organized crime activities.

To combat this issue, governments have been under increasing pressure from international organizations such as the OECD and the European Union. The result is a growing trend towards stricter tax enforcement, with heavier penalties and lower thresholds for prosecution.

This presentation will focus on the key developments in France and Italy regarding criminal tax enforcement. It will analyze how mandatory tax fraud referrals, international cooperation, and harsher penalties have transformed the fight against tax fraud.

i. Stronger criminal tax enforcement through mandatory reporting

1. France: automatic reporting for tax adjustments over €100,000

Historically, France had a unique system known as the 'Bercy Lock' (Verrou de Bercy), which gave the tax administration exclusive control over which tax fraud cases were referred to the public prosecutor. This created concerns over potential conflicts of interest and lack of transparency.

Since 2018, tax fraud cases involving more than €100,000 in unpaid taxes, when associated with aggravating circumstances, must be automatically reported to the prosecutor. The goal is to ensure that serious tax fraud is systematically prosecuted.

One of the most notable cases in recent years is the UBS case. In 2019, the Swiss bank UBS was fined €3.7 billion for illegal solicitation of French clients and aggravated tax fraud. This case exemplifies the increased judicialization of tax fraud matters in France.

To further strengthen enforcement, France created a specialized Tax Police Unit (SEJF - Service d’Enquêtes Judiciaires des Finances). This unit investigates complex tax fraud schemes, including VAT fraud and international tax evasion.

2. Italy: a stricter system with lower thresholds

Italy has long struggled with tax evasion, due in part to its extensive underground economy and the influence of organized crime. Unlike France, where tax authorities previously had discretion, Italy has a stricter system of mandatory reporting to judicial authorities.

Tax fraud cases exceeding specific thresholds are automatically referred for criminal prosecution. These include:

• Underreporting of taxable income: €100,000

• Issuing fake invoices: €100,000

• Failure to file a tax return: €50,000

A well-known case is the Dolce & Gabbana tax fraud scandal, where the famous fashion designers were initially sentenced to prison for allegedly evading €200 million in taxes through offshore entities.

II. Strengthened international cooperation against tax fraud

1. The automatic exchange of information (AEOI)

Both France and Italy participate in the OECD's Automatic Exchange of Information (AEOI) framework. This system facilitates the exchange of financial account data between countries, preventing individuals and corporations from hiding assets abroad.

For example, France and Italy have benefited from data leaks such as the HSBC Swiss Leaks, which exposed thousands of undeclared offshore accounts. Such international cooperation has led to numerous tax fraud investigations.

2. European measures to combat cross-border fraud

The European Union has reinforced anti-tax fraud measures through various directives:

• DAC6: Requires intermediaries (lawyers, tax advisors, banks) to report aggressive tax planning schemes.

• Eurofisc: A European network that helps combat VAT fraud, particularly missing trader (carousel) fraud.

One of the largest European tax fraud scandals was the CumEx Files scandal, involving fraudulent dividend arbitrage schemes that cost EU countries over €55 billion. This case illustrated the need for stronger cross-border cooperation.

III. Harsher penalties and prosecution of corporate executives

1. Increased prison sentences and fines

In both France and Italy, the penalties for tax fraud have become increasingly severe. Criminal tax fraud in France can result in up to 5 years in prison and a fine of €3 million. In cases involving organized fraud, the sentence can increase to 10 years.

Italy has even stricter penalties for serious tax fraud, with sentences reaching 8 years for fraudulent VAT schemes.

2. Criminal Liability of Business Leaders

Company executives can now be held personally liable for tax fraud committed by their businesses. This has led to high-profile cases where CEOs and financial officers have faced criminal charges.

Examples include:

• **France**: The Patrick Balkany case – A former mayor sentenced to prison for tax fraud and money laundering.

Patrick Balkany, former mayor of Levallois-Perret, was convicted in 2019 for tax fraud and money laundering. Along with his wife, Isabelle Balkany, he hid several luxury properties abroad, including a villa in Saint-Martin and a residence in Marrakech, using offshore companies.

The case exposed a complex financial scheme designed to evade taxes in France, with the fraud estimated at several million euros.

Concerning Penalties :

- Patrick Balkany: 4 years in prison + 10-year ban on holding public office
- Isabelle Balkany: 3 years in prison

This is a landmark case in France, as it marked the first time a high-profile politician was sentenced to prison time for tax fraud.

• **Italy**: The Dolce & Gabbana case – The famous fashion designers faced prosecution for allegedly concealing taxable income.

Fashion designers Domenico Dolce and Stefano Gabbana were prosecuted for tax evasion. They sold their brand to a shell company in Luxembourg to shift their revenues to a country with lower taxes.

This scheme allegedly helped them avoid paying over €200 million in taxes in Italy.

Concerning Penalties:

- In 2013, they were sentenced to 1 year and 8 months in prison
- In 2014, Italy's Supreme Court overturned the conviction due to lack of evidence

This case highlights the issue of aggressive tax optimization, raising the debate between legal tax planning and illegal tax fraud.

These cases show that tax fraud is no longer going unpunished. Governments are strengthening their enforcement, with prison sentences and severe financial penalties.

Conclusion: A Global Shift Toward Stronger Tax Enforcement

The fight against tax fraud has entered a new era, with France and Italy strengthening their enforcement mechanisms. Tax fraud is now treated as a serious economic crime, with severe penalties and greater international cooperation.

For businesses, this means a greater need for tax compliance to avoid criminal risks. Fiscal lawyers and compliance officers play a crucial role in ensuring that companies follow the law.

Looking forward, we can expect even stronger measures, as governments continue to crack down on tax fraud at both national and international levels.