Italy: The new cooperative compliance programme to prevent tax disputes

July 7, 2016

In brief
On April 14, 2016, the Italian Revenue Agency (IRA) issued a first set of guidelines (Guidelines) on the conditions and procedures to apply for the cooperative compliance programme, introduced in Italy with Law Decree no. 128/2015. The Guidelines also lay down provisions regarding the minimum mandatory requirements of the tax control framework for accessing the regime. Through the cooperative compliance programme, the IRA provides large business taxpayers a valuable instrument for the prevention of controversies in tax matters.

In detail
Scope of the regime
The cooperative compliance regime, initially launched in Italy in 2013 as a pilot project, was introduced by Law Decree no. 128/2015 with the purpose to promote new forms of communication and enhanced cooperation between the Tax Administration and taxpayers, as well as to prevent and resolve tax controversies.

The cooperative compliance regime purports (i) to grant large business taxpayers less invasive tax assessments, tax controversies and penalty treatment, on one side, and (ii) to offer the IRA an opportunity to get an insight into the taxpayers’ core business in order to focus tax audit/assessment activities towards less collaborative taxpayers, on the other side.

Minimum requirements for accessing the regime
Taxpayers who are willing to apply for the cooperative compliance regime must fulfil the following obligations:

- Implementation of an effective tax control framework for detecting, measuring, managing and controlling the tax risk, i.e. the risk to breach the tax provisions or the principles of the Italian legislation.
- To keep a cooperative and transparent approach with the Tax Administration, by keeping the latter informed on the tax risks and any operations that might amount to aggressive tax planning.
- To reply to the IRA’s requests in a timely manner.
- To promote a corporate culture based on honesty, fairness and tax compliance.

Moreover, for its effectiveness, the tax control framework should give evidence of the specific roles and responsibilities, and related risks, existing at all company levels.

Conditions for being admitted
The cooperative compliance regime is addressed to large business taxpayers, more precisely to:

a. resident and non-resident entities with a total turnover
or operating revenues exceeding €10 billion;

b. resident and non-resident entities with a total turnover or operating revenues equal to at least €1 billion which have applied for the pilot project on the Cooperative Compliance Programme pursuant to the public invitation of June 25, 2013; and

c. entities giving execution to the IRA’s opinion in reply to the advance ruling on the new investments, regardless of the amount of total turnover or revenues.

For purposes of verifying the dimensional requirements, reference should be made either to the highest value of the revenues, as indicated in the financial statement, or to the turnover indicated in the VAT tax return, referred to the three fiscal years prior the application.

In relation to non-resident entities, the above dimensional requirements refer to the Italian permanent establishment and should be assessed discretionally based on the last three income statements/balance sheets or on the last three VAT returns.

In addition to the above categories, taxpayers can be admitted to the cooperative compliance regime, i.e. (i) resident and non-resident entities, with an Italian permanent establishment, performing strategic direction functions in relation to the tax control framework, and (ii) taxpayers sub b) (referenced above), if the application for the pilot project has been filed by the enterprise performing strategic direction functions in relation to the tax control framework.

**Procedural aspects**

Eligible taxpayers interested in adhering to the cooperative compliance programme must file an application that includes the following information:

- Description of the core business.
- Tax strategy.
- Illustration of the tax control framework adopted and its implementation.
- Map of the enterprise processes.
- Map of the tax risks and associated control systems.

The IRA will verify the entry requirements in accordance to the specific business model of the enterprise, with a particular focus on the economic sector, risks, and main objectives of the enterprise.

**Tax consequences of the regime**

Once admitted to the cooperative compliance regime, taxpayers can enter into advance discussions with the IRA before filing the tax return, in order to prevent tax audits.

As a consequence of the cooperative compliance regime, taxpayers might apply for a fast track ruling with the IRA regarding the application of tax provisions to specific cases, involving any tax risk.

From a tax penalties standpoint, the advantages are a 50% reduction of tax penalties and, in any case, the application of tax penalties not exceeding the minimum provided. Moreover, the tax collection is suspended until the assessment procedure has been settled.

In cases of suspected criminal offence, the IRA, if requested, inform the Public Prosecutor about the existence of a tax control framework as well as about the managing and administrative roles and responsibilities within said framework.

**The takeaway**

The recent standard measures setting forth operating procedures in relation to the new form of enhanced cooperation in line with the 2013 OECD Framework are proving a remarkable step towards the prevention of tax disputes and fight against tax evasion. The regime is now exclusively limited to large taxpayers, but it is expected there may be an extension of its subjective scope also to small and medium enterprises, in order to ensure to different categories of taxpayers a more systematic, fair, and transparent dialogue with the Tax Administration.
Let’s talk
For a deeper discussion of how this issue might affect your business, please contact:

**Tax Controversy and Dispute Resolution**

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