

# Mutual agreement procedure rules transposed into Italian law

Federico Vincenti and Carola Valente of Crowe Valente/Valente Associati GEB Partners discuss how tax dispute settlements in Italy are set to evolve.

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August 28 2020

With Legislative Decree No. 49/2020 published on June 10 2020, the Italian legislator approved the decree implementing EU Directive 2017/1852 on the resolution of disputes in EU tax matters.

By means of this legislative decree, the rules relating to mutual agreement procedures have been transposed into Italian law related to:

- The international conventions to avoid double taxation stipulated with EU member states; and
- The convention 90/436/EEC of July 23 1990 on the elimination of double taxation in connection with transfer pricing.

The objective pursued by the Italian legislator, in accordance with the provisions of European legislation, is to guarantee businesses and citizens a more rapid and effective resolution of disputes between member states arising from the interpretation and application of agreements and conventions providing for the elimination of double taxation.

The new provisions introduce elements of novelty and innovation with respect to previous legislation and the best practices and guidance of Italian tax authorities (i.e., Circular of the Revenue Agency 21/E of June 5 2012).

The obligation of the interested parties is to submit an application concerning a disputed issue within three years:

- From the date of the notice of assessment or any equivalent document that results or could result in a disputed tax treatment; or
- From the time when the measure has been taken or occurs which has given rise or is likely to give rise to the matter in dispute; or
- Starting from the notification of the relevant assessment's notice in cases where the application request has been submitted following the delivery of the statement of findings.

The previous legislation was not always clear regarding the relationship between litigation and mutual agreement procedures, which had been partly (but not entirely) clarified by the publication of the Revenue Agency's Circular No 21/E of June 5 2012.

The new rules allow the taxpayer to choose whether or not to enter into litigation. The submission of the application, in fact, does not prevent the taxpayer from using the means of appeal provided by national law.

If a case is pending before the competent tax commission, it is possible to request a stay of proceedings. Consequently, the possibility to submit an application is precluded only if the disputed issue has been raised:

- A judgment delivered by the competent judicial authority; or
- A conciliation between the parties.

The application must be submitted to the Revenue Agency and to the competent authority of the other member states of interest and must contain various general information (i.e. data necessary to identify the parties involved, the tax periods involved, etc.) as well as the facts and circumstances of the case under dispute.

The decision by the Revenue Agency to grant or reject the application must be taken within six months of receipt of the application. The application may be rejected in those cases where:

- The information required by the legislation has not been included in the application or the additional information requested has not been sent;
- There is no controversial issue;
- The application has not been submitted within the three-year period;
- A judgment has been delivered by the competent judicial authority.

If the application is granted, the competent authorities of the member states concerned shall endeavour to resolve the matter in dispute within two years of the date of the last notification of the decision granting the application.

In the event of failure to reach an agreement between the competent authorities of the member states, Legislative Decree No. 49/2020 allows the person concerned to submit a request for the establishment of an advisory commission or, alternatively, an alternative dispute resolution commission.

This innovative provision is an expression of the legislator's desire not to limit the mutual agreement procedure to mere negotiation between states. The presence of a third and impartial body, in fact, makes it possible to establish a real form of international arbitration between tax administrations.

The competent authorities concerned agree on the resolution of the disputed issue within six months from the notification of the opinion of the advisory commission or the alternative dispute resolution commission.

The rules contained in Legislative Decree No. 49/2020 apply, retroactively, to applications filed as of July 1 2019 and relating to disputed issues concerning the 2018 tax period.

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