



New Italian rules on tax amnesty for pending litigations and self-disclosure of potential undeclared permanent establishments

Highlights

- Tax Amnesty: Possibility to settle pending tax litigations with a forfeiture of 100% of penalties
- Disclosure of potential undeclared permanent establishments: application of 50% of minimum penalties and non-application of criminal penalties

Law Decree 24 April 2017, No. 50, converted into law on 21 June, some new tax measures were introduced aimed at stabilizing the State revenues. Among other things, the conversion law (Law 21 June 2017, No. 96) introduced (a) an optional tax amnesty provision covering pending litigations and (b) a new procedure that addresses the cases where non-Italian groups may apply with the Revenue Agency for an evaluation of the risk of existence, in the past, of a permanent establishment in Italy. Such latter provision, introduced primarily (but not exclusively) to address the position of digital economy operators, has been nicknamed "web tax".

Even if some decrees still have to be issued by the Revenue Agency to provide implementation rules, below are the main features of such procedures.

A. The Tax Amnesty Procedure for Pending Tax Litigations

1. The litigations that can be settled under the Tax Amnesty

Pursuant to the Tax Amnesty, taxpayers are allowed to settle any pending tax litigations against the Revenue Agency (at any stage of the proceeding), regardless of the outcome of intermediate decisions. The Tax Amnesty can be also applied with reference to pending tax litigations against local authorities (e.g. municipalities, Regions, etc.) if such authorities decide, within 31 August 2017, to make this procedure applicable to these kind of disputes. The tax litigations that can be settled are those for which the taxpayer served to the tax authority an appeal before the first tier-court within 24 April 2017.

In any event, no Tax Amnesty is available for those litigations which have been concluded due to the occurrence of a final judgement.

The procedure is not applicable to tax litigations regarding (i) the own resources of the European Union (provided by decisions No. 2007/436/CE and No. 2014/335/UE of Council of the European Union); (ii) import VAT; (iii) amounts due as a recovery of State aid.

2. The benefits available with the Tax Amnesty

By applying for the Tax Amnesty, taxpayers have to pay the amounts claimed in the appealed notice of assessment or other imposing deed (including interest for late payment calculated until the 60th day after the delivery of the imposing deed), with a full discharge

of penalties and default interest.

In case the litigation regards only default interest or penalties not connected to taxes, the settlement is reached by paying 40% of the claimed amounts.

Amounts already paid (e.g. under provisional collection) are not refundable even if higher than the total amount due under the Tax Amnesty.

3. The procedure

In order to have access to the Tax Amnesty the taxpayer has to file an application with the Revenue Agency within 30 September 2017. Tax litigations in principle eligible for the Tax Amnesty procedure are not automatically suspended but only upon request (in which case a suspension will be granted until 10 October 2017).

If the taxpayer has already applied for the previous (separate) tax amnesty relating to collection notices concerning the same claims, the new Tax Amnesty can be validly concluded only in connection with the previous one.

The payments due with the Tax Amnesty have to be made in one or in a maximum of three installments. The first (or single) installment has to be paid within 30 September 2017, the second one within 30 November 2017 and the third one within 30 June 2018.

The Revenue Agency may deny the settlement to the taxpayer by expressing such denial within 31 July 2018. The denial can be appealed.

B. Self-Disclosure of Foreign Groups with Potential Undeclared Permanent Establishments in Italy

1. The eligible entities

The entities that are eligible for the procedure are foreign companies belonging to multinational groups with a turnover exceeding 1 billion euro that sell goods or provide services in the Italian territory for more than 50 million euro through the support of one or more Italian resident related companies.

The 1 billion euro turnover is calculated by making reference to the highest total consolidated revenues from the sale of goods or provision of services in the last tax period or in the previous two. The 50 million euro sales in the Italian territory are calculated by making reference to the highest total revenues from sales in Italy made by the foreign entity or by any of its related companies in the last tax period or in the previous two.

2. The procedure

The procedure may be activated by a foreign entity by filing a specific application in case it sees a risk of potential existence of a permanent establishment ("**PE**") in Italy in the past open tax periods in connection with the support activities rendered by the related Italian service company.

The application is however not possible if it takes place after the existence of a PE has already been challenged, upon audit, by the Italian tax authorities (either against the non-resident company or against the Italian-entity that conducts the support activities).

The application is filed with the Revenue Agency - within the context of the cooperative compliance program - to request that the latter conducts an evaluation of whether the foreign entity's activities in Italy meet the requirements that give rise to a PE.

If the Revenue Agency concludes positively on the existence of a PE in Italy in the past tax periods, it will deliver to the foreign company a tax settlement invitation in order to define, in agreement between the parties, the income attributable to which the (hidden) permanent establishment related to the tax periods for which the deadline to file a tax return has elapsed.

If the settlement proposal is accepted, there will be a settlement agreement between the Revenue Agency and the foreign company.

It should be noted that the application provided by the above mentioned procedure is completely separate from the possibility to apply for a ruling to determine, for the future,

whether a PE exists or not in Italy. Such alternative procedure will remain applicable.

3. Effects of the settlement

If a settlement agreement is reached and the foreign company timely pays the amounts due under the settlement agreement, the following benefits will apply:

- administrative penalties are reduced to a half (on top of the reduction to one-third available in any case of settlement);
- there is no criminal pursuit against the violation for omitted income tax return;
- the foreign company can accede to the Italian cooperative compliance program, if all other conditions (except for the size) are met.

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