

Cooperative compliance: The Italian framework

On May 26 2017 the Italian regime on cooperative compliance was further clarified by the Italian Revenue Agency (IRA or tax administration) by virtue of a new regulation (provvedimento). Antonella Della Rovere and Federico Vincenti of Valente Associati GEB Partners explain.

The Italian framework of cooperative compliance has been built since 2014, when it was envisaged by law as part of a set of measures to establish a fairer, more transparent and growth-oriented national tax system. One year later the Italian legislator introduced the regime with a twofold purpose:

(i) To promote enhanced cooperative relations between tax administrations and taxpayers on the basis of mutual trust; and

(ii) To prevent tax-related disputes or enhance their effective resolution.

The regime may apply only to taxpayers regarded as cooperative, i.e., committed to identify, assess, manage and monitor risks in relation to violation of tax rules, general principles or the spirit of the Italian tax system (tax risk). Condition precedent is that the respective taxpayers have efficient tax risk management systems in place.

Taxpayers fulfilling certain requirements and being admitted to the regime – following respective application – may enjoy a number of important advantages.

Briefly, they may, indicatively, benefit from:

- 1) *A priori* evaluation of tax-risk engendering situations jointly with tax administrations;
- 2) Abbreviated tax ruling procedures;
- 3) Reduced sanctions for materialisation of tax risks exhaustively communicated (i.e., final findings of tax law violations);
- 4) Public recording of their cooperative compliance; and
- 5) Relief from obligation to provide guarantees in relation to tax refunds.

Today, transfer pricing (TP) is a major source of tax risk for multinational companies worldwide: tax authorities target TP matters more and more aggressively; BEPS measures are transforming the TP framework creating fields of uncertainty. Thus, cooperative compliance seems to offer taxpayers the possibility to manage more effectively the rising risks in the area of TP and beyond. The advantages of cooperative compliance regarding prevention and resolution of disputes with tax authorities should also be duly taken into account.

The concept of cooperative compliance was primarily encountered by the OECD in 2008 in the context of its *Study Into the Role of Tax Intermediaries*. Seeking to understand the role of tax professionals, the OECD underlined that tax administrations should be open and receptive if they were to improve relations with taxpayers. The study concluded with recommending that tax administrations pursue cooperative relations with large taxpayers. The idea was further developed in OECD's 2013 report *Cooperative Compliance: A Framework*, built on the practical experience of several countries that had in the meantime introduced legislation to this effect. The 2013 report expanded the initial recommendation after affirming the relevance of cooperative tax relations to increase tax compliance.

In view of the above, the recent regulation enhances the Italian cooperative compliance framework by clarifying some practical aspects thereof. In particular, clarifications are made on three main areas: (i) obligations of tax administrations and taxpayers in the context of cooperative relations established under the regime, (ii) procedures taking place in the context of such relations, and (iii) reasons for disapplication of the regime with respect to specific taxpayer. It is also provided that competent authority at least for the first phase of application of the regime shall be the Cooperative Compliance Office of the IRA.

More specifically, the regulation begins with specifying and analysing the principles to underpin the behaviour of the parties to the cooperative tax relations established under the regime.

As regards IRA, its approach towards taxpayers should be oriented towards cooperation, fairness, transparency and legal certainty. Such principles imply that tax administration must seek to understand taxpayers' business motives, be impartial, open and responsive. It must also act with a view to enhancing certainty in tax matters, i.e., provide prompt answers to taxpayers' queries and ensure that the positions expressed are consistent and compatible with objective and reasonable criteria and the principle of proportionality. Such positions should also be regularly published to allow taxpayers to adopt their behaviour to IRA's reasonable expectations. Most importantly, the new regulation includes detailed provisions as regards taxpayers' right to privacy and data protection. Taxpayers' information obtained in relation to the regime (including application for admission) shall be treated as professional secrets and used only for the purpose of provision, irrespective of the taxpayers' final admission to/subsequent exclusion from the regime.

At the other end of the spectrum, taxpayers should be cooperative and transparent in their relations with tax administrations. Such principles should be reflected in taxpayers' corporate governance mechanisms as well as in the general corporate culture. In detail, taxpayers' eligibility to apply for the regime depends on the demonstration of an efficient tax risk management system. During the period of application of the regime to specific taxpayer, such system must remain in place, be regularly updated to take into account new risks and be amended in line with any indications of the IRA. Furthermore, cooperation and transparency demand that taxpayers supply exhaustive information on the tax risks identified as relevant to each tax year of application of the regime. Equally, they are expected to inform IRA in full detail on (i) any situations that might engender important tax risks and (ii) any transactions that could be perceived as constituting aggressive tax planning. Finally, cooperative taxpayers are expected to implement corporate governance strategies driven by the values of honesty, fairness and respect of tax laws. Such values should also be incorporated in writing, e.g. in ethical codes, codes of conduct, behavioural guidelines.

Following specification of the above obligations, the regulation details certain procedures taking place in the context of the regime, from admission to the closing of the tax year, and their interaction with other tax procedures. Major weight is attached to the establishment of constant dialogue between IRA and cooperative taxpayers. To this end, for each cooperative taxpayer a delegated team is formed by authorised representatives of both parties to the cooperative relation to lead the application of the regime. The regulation refers also to (i) an opening meeting, for the joint specification of materiality thresholds in relation to tax risks to be communicated by the taxpayer as well as to (ii) an annual closing meeting (at the end of each tax year) for the purpose of review. With respect to IRA's positions on the taxpayer's specific circumstances examined during application of the regime, they shall in principle be incorporated in writing in reasoned opinions or equivalent documents. Where however such circumstances relate to issues of strategic importance for the taxpayer a binding *Cooperative Compliance Agreement* should be concluded by both parties to the relation. In any case, it is specified that for questions within the scope of advance pricing agreements (APAs), the taxpayer may also activate the respective specific procedure.

Further on, it is clarified that admission to the regime is no panacea but any specific taxpayer might lose the benefits therefrom in certain cases. Specifically, IRA is entitled to revoke an established cooperative relation, where the taxpayer no more fulfills the requirements for admission or violates his obligations thereunder. It is worth noting that the regime is only in its first phase of application which shall last until the end of 2019; hence, in principle, it is only available to large taxpayers, i.e. enterprises with annual turnover equal to at least € 10 billion. It follows that during such first phase, taxpayers fulfilling this condition and admitted to the regime that subsequently fail to realise the above turnover for three consecutive tax years shall be excluded therefrom.

There is no question that cooperative compliance is the sole way forward to construct fair and efficient tax systems. The Italian regime seems very promising. Hopefully, Italian practice will prove up to it.



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