

Italy amends regulation of advance rulings

Federico Vincenti and Alessandro Valente of Crowe Valente / Valente Associati GEB Partners outline the principal changes to advance tax rulings, as set out in the Italian budget law for 2021.

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The 2021 Budget Law introduced significant innovations regarding advance rulings (including advance pricing agreements) provided for by Italian legislation (Article 31-ter of D.P.R. No.600/1973).

Through the instrument of advance rulings, companies with international business activities can enter into agreements with the Italian tax authorities, in relation to the following instances:



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- a) Prior definition of the transfer pricing methods applicable in inter-company transactions;
- b) Exit or entry values in the event of transfer of residence;
- c) Attribution of profits and losses to the permanent establishment in another country of a company resident in Italy or to the permanent establishment in Italy of a non-resident entity;
- d) Prior assessment of the existence or otherwise of the requirements for a permanent establishment situated in Italy; and
- e) Application to a concrete case of rules, also of conventional origin, concerning the payment or receipt of dividends, interest and royalties and other income components to or from non-resident parties.

These advance rulings bind the taxpayer and the tax authorities for the tax period during which they are stipulated and for the four subsequent tax periods, unless there are changes in the factual or legal circumstances relevant to the agreements signed and resulting from them.

The first innovation introduced by the Budget Law 2021 concerns the possibility for taxpayers to opt for the so-called 'roll-back', i.e. the possibility of retroactively extending the effects of an advance ruling to previous years.

The previous regulations provided, with reference to unilateral advance rulings, for the right to retroactively extend the effects of the agreement, also to tax periods prior to the one in which it was signed, but not beyond the tax period in which the application to open the procedure was submitted.

As of January 1 2021, the effects of unilateral prior agreements may be extended to all prior tax periods for which the assessment periods have not yet expired, if:

- The same factual and legal circumstances underlying the agreement apply; and
- Audits or other assessment activities of which the taxpayer has formal knowledge have not been initiated.

From January 1 2021, roll-back is also possible in the case of bilateral and multilateral advance rulings. In such cases, in order to be able to apply the roll-back to previous tax periods:

- The taxpayer must have made an explicit request in the application to open the procedure;
- The other foreign tax authorities involved agree to extend the agreement to previous years;
- The same factual and legal circumstances underlying the agreement apply; and
- No audits or other assessment activities have been initiated of which the taxpayer has formal knowledge.

The application of roll-back is an option granted to the taxpayer which can be exercised:

- By means of voluntary repayment;
- Through a possible supplementary declaration; and
- Without the application of administrative sanctions.

A further innovation introduced by the Budget Law 2021 provides that admission to the advance ruling procedure is subject to the payment of a fee (as already provided for in other countries) that varies according to the total turnover of the group:

- €10,000 (approximately \$12,060) in case of total group turnover of less than €100 million;
- €30,000 in the event of total group turnover of between €100 million and €750 million;
- €50,000 in the event of total group turnover exceeding €750 million; and
- In the event of a request to renew the agreement, the fees indicated are reduced by half.

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