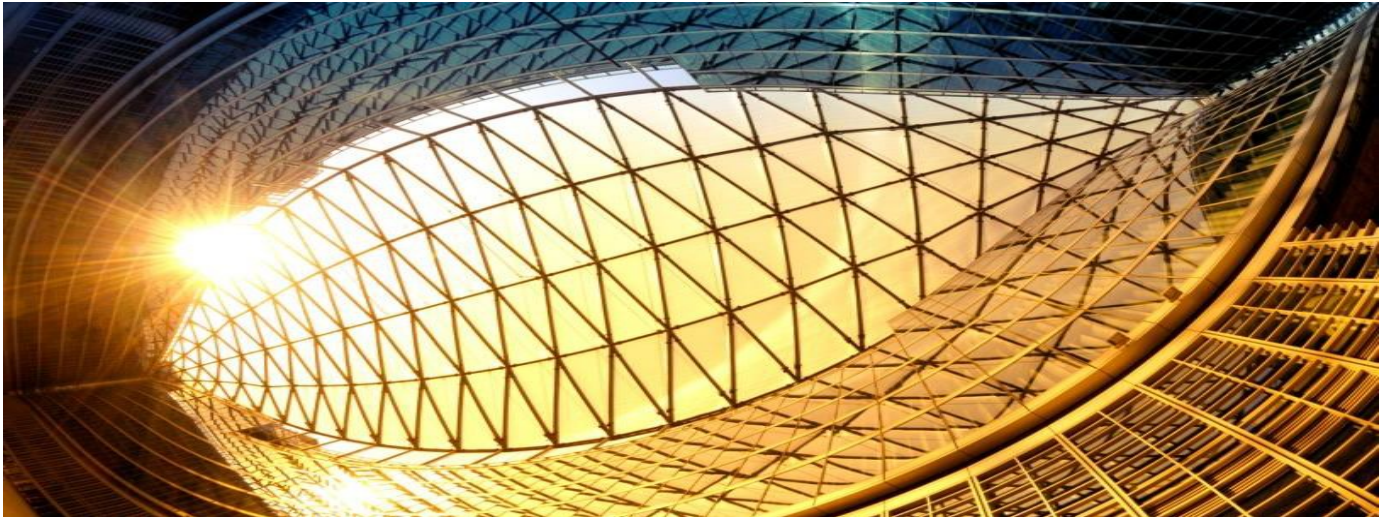


10 September 2015

Italy – Delegation Law for the reform of the Italian Tax System: Implementing decree on ‘certainty of law rules’



Offices

Milan

Via Vittor Pisani 27, 20124
T: +39 02 676441 - F: +39 02 67644758

Ancona

Via I° Maggio 150/a, 60131
T: +39 071 2916378 - F: +39 071 2916221

Bologna

Via Andrea Costa 160, 40134
T: +39 051 4392711 - F: +39 051 4392799

Florence

Viale Niccolò Machiavelli 29, 50125
T: +39 055 261961 - F: +39 055 2619666

Genoa

P.zza della Vittoria 15/12, 16121
T: +39 010 5702225 - F: +39 010 584670

Naples

Via F. Caracciolo 17, 80122
T: +39 081 662617 - F: +39 081 2488373

Padua

Piazza Salvemini 2, 35131
T: +39 049 8239611 - F: +39 049 8239666

Perugia

Via Campo di Marte 19, 06124
T: +39 075 5734518 - F: +39 075 5723783

Pescara

P.zza Duca D'Aosta 34, 65121
T: +39 085 4210479 - F: +39 085 4220295

Rome

Piazza delle Muse 8, 00197
T: +39 06 809631 - F: +39 06 8077459

Turin

C.so Vittorio Emanuele II 48, 10123
T: +39 011 883166 - F: +39 011 8395865

Verona

Via Leone Pancaldo 68, 37138
T: +39 045 8114111 - F: +39 045 8114390

Delegation Law n. 23 of 11 March 2014 contains measures aimed at reforming the Italian Tax System, and delegates the Government to issue implementing decrees.

Legislative decree n. 128 of 5 August 2015, implementing art. 5, 6 and 8 par. 2 of Law n. 23/2014, and aimed at increasing legal certainty in dealings between the tax authority and taxpayers, was published in the Official Gazette n. 190 of 18 August. It is in force since 2 September, though some provisions apply from 1 October 2015. The decree contains measures on the following topics: i) abuse of law and tax avoidance, ii) statute of limitation for tax assessments and iii) tax cooperation compliance regime. We briefly summarize below the main provisions contained in the decree.

Abuse of law and tax avoidance (art. 1)

The concepts of ‘abuse of law’ and ‘tax avoidance’ are unified and a new definition of ‘abuse of law’ is introduced in Law n. 212/2000 (*Statuto del contribuente*), with art. 10-*bis*. In the past, abuse of law had only been defined by jurisprudence. The former income tax wide-scope anti-avoidance provision (art. 37-*bis* of decree n. 600/73 or ‘tax assessment code’) is repealed.

New art. 10-*bis* has a general scope (there is no longer an exhaustive list of transactions subject to the anti-avoidance test), and is applicable to all taxes (income and indirect taxes, except for custom duties). Under the new definition, abuse of law is characterized by the contemporary presence of the following elements:

- a) absence of economic substance (transactions are deemed to be lacking economic substance where they consist of facts, acts and contracts, also interconnected, which cannot generate significant effects other than tax advantages)
- b) realization of an undue tax saving (i.e. a tax benefit, even if not immediate, obtained in contrast with the purpose of tax provisions or the principles of the tax system)
- c) tax saving being the essential effect of the transaction.

Transactions that are justified by non-marginal sound non-tax reasons, including those with reorganization or management purposes, aimed at improving the structure or the functionality of the business or the professional activity of the taxpayer, cannot be considered abusive.

The taxpayer remains free to choose amongst different optional regimes provided by the law and amongst transactions leading to a different tax burden.

Transactions deemed to be abusive cannot be opposed to tax authorities, who deny effects and apply taxes based on abused principles, crediting taxes already paid.

The taxpayer may submit an advance ruling request, under the procedure set forth by art. 11 of Law n. 212/2000 ('standard' ruling), to ascertain whether transactions that he intends to set up (or that he has already completed) qualify as 'abuse of law'. The request must be submitted before the deadline for filing the tax return or completing the tax obligations connected with the transaction the request refers to.

Abuse of law is a 'residual' anti-avoidance provision: a transaction can be assessed under the abuse of law provision only where it cannot be assessed pursuant to a different specific anti-avoidance measure.

The assessment of abuse of law is subject to a specific procedure: the assessment notice, which must be appropriately motivated, can only follow a clarification request sent to the taxpayer, being null otherwise. The taxpayer has at least 60 days to answer. Italian tax authorities have the burden to prove that the transaction is abusive as per aforementioned requisites under letters a) to c). The taxpayer claiming defense based on non-marginal sound non-tax reasons must demonstrate their existence.

Transactions that fall in the definition of 'abuse of law' will not be subject to criminal penalties but to administrative sanctions only.

The new abuse of law rules will become effective starting from 1 October and apply to transactions completed before that date, if not already challenged by the tax authorities by way of a formal assessment notice.

Statute of limitation for tax assessment (art. 2)

Under current tax provisions on income tax and VAT assessment, in presence of a violation that may imply a complaint for a tax crime, ordinary statute of limitation doubles. The decree amends this law provision by clarifying that such extension occurs only if: a) Italian tax administration (including tax police or *Guardia di Finanza*) submits a formal criminal complaint to the court, and b) the submission of such complaint occurs within the standard deadline of assessment (in general, end of the 4th year following that of the tax return assessed or end of the 5th year, in case of failure to submit the tax return).

Tax cooperation compliance regime (artt. 3 - 7)

The decree introduces a new tax compliance regime (*Regime di adempimento collaborativo*), aiming at increasing communication and cooperation between tax authorities and taxpayers, available to companies of a relevant size. The first application will be in fact available only to taxpayers with a turnover or income of at least 10 billion euro. It is a voluntary regime that is available only to taxpayers that have in place an efficient system for detecting, measuring, managing and controlling tax risks. This regime allows a continuous exchange of information and aims at preventing tax litigations. The regime has, amongst others, the following effects:

- 1) It allows the taxpayer to reach with Italian tax authorities a common evaluation of potential tax risks before the deadline for the submission of tax returns.
- 2) It provides a 'fast' advance ruling request, to which the tax authorities must reply within 45 days.
- 3) Administrative sanctions can be reduced by 50 per cent and collection of these sanctions remains suspended until the final assessment.
- 4) In case of complaint for a tax crime, Italian tax authorities will inform the public prosecutor that the taxpayer adhered to this cooperation regime.

The taxpayer may apply by electronically submitting a specific request. Following the tax authorities' confirmation, communicated within 120 days from the request's submission, the program applies starting from the tax year in which the request has been submitted. A forthcoming ministerial decree will contain implementing measures.

Contact us

Studio Associato - Consulenza legale e tributaria

Eugenio Graziani

KPMG, Tax & Legal

T: +39 045 811 4111

E: egraziani@kpmg.it

Paola Sella

KPMG, Tax & Legal

T: +39 045 811 4111

E: psella@kpmg.it

kpmg.com/it

TAX ALERT / KPMG in Italy / 10 September 2015

© 2015 Studio Associato - Consulenza legale e tributaria, an Italian professional partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

The KPMG name, logo and "cutting through complexity" are registered trademarks or trademarks of KPMG International Cooperative ("KPMG International").

Studio Associato - Consulenza legale e tributaria is a leading Italian law firm and a member firm of KPMG International for tax and legal services.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.