Italy: Tax dispute resolution mechanisms New mutual agreement procedures following the implementation of Council Directive (EU) 2017/1852

Tax & Legal Alert

29 June 2020

Offices

Milan
Via Vittor Pisani 31, 20124
T: +39 02 676441

Ancona
Via I° Maggio 150/a, 60131
T: +39 071 2916378

Bologna
Via Innocenzo Malvasia 6, 40131
T: +39 051 4392711

Florence
Viale Niccolò Machiavelli 29, 50125
T: +39 055 261961

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

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

Padua
Piazza Salvemini 2, 35131
T: +39 049 8239611

Perugia
Via Campo di Marte 19, 06124
T: +39 075 5734518

Pescara
P.zza Duca D'Aosta 31, 65121
T: +39 085 4210479

Rome
Via Adelaide Ristori 38, 00197
T: +39 06 809631

Turin
C.so Vittorio Emanuele II 48, 10123
T: +39 011 883166

Verona
Via Leone Pancaldo 68, 37138
T: +39 045 8114111

Introduction

On 10 June 2020, Legislative Decree no. 49/2020 (the 'Decree'), implementing Council Directive (EU) 2017/1852 on tax dispute resolution mechanisms in the European Union (the 'TDR Directive'), was published in the Italian Official Gazette.

The TDR Directive and the Decree are aimed at improving mechanisms for solving disputes arising from the interpretation and application of tax treaties, including those on the elimination of double taxation in connection with the adjustment of profits of associated enterprises[(1)].

This alert briefly summarizes the legal framework deriving from the Decree. It then focuses on two crucial aspects: the time frame of the new procedure and the interaction between the new procedure and domestic litigation.

Most relevant changes

The Decree will apply to any request for a mutual agreement procedure ('MAP') submitted from 1 July 2019 onwards, in relation to disputes about the tax treatment of income or capital earned in a fiscal year commencing on or after 1 January 2018.

The scope of the new MAP is much wider than that envisaged in the Arbitration Convention as it applies to all cases where double taxation arises from the violation of tax treaties between EU Member States. Therefore, whilst the Arbitration Convention only applies to transfer pricing issues, the new MAP should also cover permanent establishment assessments, disputes over withholding taxes applied in breach of treaties, etc.

If a MAP request is filed abroad and the case concerns Italy, a MAP request must also be filed in Italy at the same time (in Italian).

A mere possible violation of criminal law should not in itself prevent the opening of a MAP. However, the Italian competent authority may suspend the MAP until a criminal court takes a position on the case. If criminal penalties are ultimately imposed on the taxpayer, the MAP could be terminated.

The competent authorities can set up bilateral standing committees to speed up analysis of MAP cases.

(1) As the elimination of double taxation is already covered by Convention 90/436/EEC (the 'Arbitration Convention') and by bilateral tax treaties, the Decree provides the necessary coordination rules.

In one or more regulations, the Director of the Revenue Agency will provide further guidance on the practical aspects of the procedure.

The new procedure - time frame

a) Date of receipt of the measure (notice of assessment or any equivalent document) that leads to or could lead to the disputed tax treatment.

b) Three years from (a) to submit a MAP request to both (or more) competent authorities.

c) Two months from the submission of the MAP request for the Italian competent authorities to give confirmation of receipt of the request to the taxpayer and the other competent authorities involved.

d) Six months from (c)[(2)] for the Italian competent authorities to unilaterally resolve the tax dispute and close the case.

e) Six months from (c) for the Italian competent authorities to inform the taxpayer and the other competent authorities of the acceptance or rejection of the MAP request.

f) Two years from (e) – with a possible one-year extension on request by one of the competent authorities involved – to endeavor to resolve the tax dispute through a mutual agreement.

g) Thirty days from (f) for the Italian tax authorities to inform the taxpayer of the positive or (if no agreement) negative outcome of the negotiations.

Intervention of the advisory committee or alternative dispute resolution commission

h) If no agreement between the competent authorities, 50 days from (g) for the taxpayer to ask the competent authorities to involve a special committee in reviewing and resolving the case.

i) One hundred and twenty days for the competent authorities to involve the independent advisory committee or the alternative dispute resolution commission[(3)].

j) Six months from (h) for the advisory commission to agree to review the case, and 30 days more for its acceptance to be communicated to the competent authorities.

k) Sixty days from (j) for the competent authorities to reactivate the MAP.

l) Six months (with a possible three-month extension) from (k) for the committee/commission to issue its opinion on the disputed tax treatment.

m) Six months from (l) for the competent authorities to reach an agreement and resolve the case, even by disregarding the opinion of the advisory commission. However, the opinion is binding when the competent authorities do not reach a conclusion.

n) Thirty days from (m) for the competent authorities to inform the taxpayer of the outcome of the MAP and an additional 60 days for the taxpayer to accept the outcome of the MAP.

Interaction between the mutual agreement procedure and domestic tax court proceedings

A MAP request cannot be submitted if the disputed tax treatment has already been decided by a tax court.

Moreover, a MAP is immediately terminated if a decision issued by a tax court becomes definitive or the case is settled through a judicial compromise.

The submission of a MAP request does not prevent the taxpayer from filing an appeal against the notice of assessment (or equivalent measure) before the Italian tax courts; however, the appeal process itself may be suspended until the MAP ends. Implementation of the MAP agreement requires the taxpayer to abandon the local appeal within 60 days of notification of the outcome of the MAP.

It is also worth noting that local tax proceedings could interact with the MAP in different phases. For instance, the tax court could:

— rule on the legitimacy of the competent authorities' refusal to activate the MAP;

— force the competent authorities to set up the special advisory commission;

— force the Italian tax authorities to implement the MAP agreement.

(2) If necessary, this deadline can be postponed by a total of six months if additional clarifications are requested.

(3) The alternative dispute resolution commission may adopt any kind of procedures/techniques to solve the case (including final-offer arbitration), provided they are agreed by the competent authorities in charge of the case.

Contacts

KPMG in Italy, Tax & Legal

Lorenzo Bellavite
Associate Partner
International Tax
E: lbellavite@kpmg.it
T: +39 045 811 4111

Giorgio Dal Corso
Senior Manager
Tax Dispute Resolution and Controversy Services
E: gdalcorso@kpmg.it
T: +39 045 811 4325

kpmg.com/it

kpmg.com/it/socialmedia

kpmg.com/app

Download on the App Store

Tax & Legal Alert / KPMG in Italy / 29 June 2020