



Italy - New international tax ruling implementing provisions

Tax Alert
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Legislative Decree no. 147/2015, aimed at encouraging the growth and internationalization of companies⁽¹⁾, repealed the provision⁽²⁾ containing rules on international tax rulings and moved the regime into a new law⁽³⁾.

The Italian Revenue Agency (the 'Agency') published **Statement of Practice no. 42295 (the 'Regulation')** on its website on 21 March 2016. The Regulation, in force since 21 March 2016, replaces the former one of 23 July 2004. However, the rules contained in the Regulation also apply to tax ruling procedures that were still ongoing as at 21 March 2016.

Subjective and objective scope of the procedure

Under the Regulation, like the previous one, companies with 'international business operations' can apply for an international tax ruling. These companies are:

- resident companies that satisfy transfer pricing requirements (i.e. that are owned by, own, or are subject to common control with respect to a non-resident company);
- resident companies that either hold stakes in the assets, funds, or capital of non-resident taxpayers, or have stakes in their assets, funds, or capital that are held by non-resident taxpayers;
- resident companies that have paid interest, dividends or royalties to non-residents or have been paid interest, dividends or royalties by non-residents;
- non-resident companies that operate in Italy through a permanent establishment, or residents of Italy that operate abroad through a permanent establishment.

⁽¹⁾ The Decree, which was enacted on 22 September 2015 via publication in Official Gazette no. 220, has been in force since 7 October 2015 (see our [Tax Alert of 23 September 2015](#)).

⁽²⁾ Article 8 of Law Decree no. 269/2003.

⁽³⁾ Article 31-ter of Presidential Decree no. 600/73 (the Tax Assessment Code).

Taxpayers can enter into an advance binding agreement with the Agency through an international tax ruling. This advance agreement:

- defines the transfer pricing methods to be used in calculating the arm's length value of transactions;
- clarifies how to apply the rules, including treaty rules, on the payment to (or receipt from) non-residents of dividends, interest, royalties or other income;
- clarifies how to apply the rules, including treaty rules, on the allocation of gains or losses to permanent establishments;
- clarifies whether a multinational company has a permanent establishment in Italy under Italian tax law⁽⁴⁾ and double tax treaties⁽⁵⁾.

The new provisions **have extended the scope** of the international tax ruling procedure, so that the procedure can be used for queries regarding the tax basis of assets and liabilities in a transfer of residence (to Italy or from Italy).

Application process

The Regulation clarifies that the tax ruling request must be submitted to the Agency, **either in Milan or Rome** (*Ufficio Accordi preventivi e controversie internazionali*), **regardless of where the applicant is domiciled for tax purposes** (under the former regulation, the taxpayer had to submit its request to the Agency in Milan or Rome, depending on its tax domicile).

The request may be filed either in person or via registered mail. An electronic copy of the request and enclosed documentation must be also filed. A future statement of practice will indicate further ways the request can be submitted (e.g. electronically via certified email or a specific electronic service provided by the Agency).

The request must contain:

- the applicant's general information (name of the company, registered office or tax domicile, tax code and VAT number and the national addressee for the procedure, different from the company, that should receive information regarding the procedure);
- the address of any permanent establishments of the non-resident applicant in Italy (unless the applicant is submitting the request to understand whether a permanent establishment exists);
- a clear statement of the aim of the ruling request and a brief description of the specific information requested for each issue (see below);

⁽⁴⁾ Article 162 of the Italian Income Tax Code.

⁽⁵⁾ The Regulation clarifies that the company can apply if it intends to carry out its activity in Italy, through a permanent establishment, by the fiscal year following that in which the tax ruling request was submitted.

- documented proof that the company is eligible for an international ruling (i.e. that it is a company with international business transactions as defined above).

The Regulation provides a list of information and documents that must be submitted for each specific issue addressed in the request, and the request must be signed by the legal representative of the applicant.

Within 30 days, the Agency informs the applicant of whether its request is admissible or not. If the application lacks any of the above information and the applicant does not provide the missing information within 30 days, the application is declared inadmissible.

The Regulation contains a significant change with respect to the former one: **it allows the applicant to request a meeting with representatives of the Agency, before submitting its request.** During the meeting, the applicant can request, on a no-name basis or through an intermediary, clarifications and/or recommendations with respect to the procedure it plans to apply for.

Implementation of the procedure

The Regulation describes the main steps of the procedure, as follows.

- If the request is admissible, the Agency invites the applicant to a meeting (with the applicant's legal representative or a professional) in order to verify that the information is complete, request other documentation, or define other aspects of the procedure. More than one meeting is possible, as long as the entire procedure is completed within 180 days of when the Agency receives the request.
- During the procedure, the Agency can visit, at a time agreed with the applicant, the premises or the applicant's permanent establishment, to verify the circumstances presented in the application. The Agency's activities must be described in a report (*processo verbale*), a copy of which must be given to the applicant.
- The Agency, if necessary, can set up international cooperation with the tax authorities of other countries; in these cases, the 180-day deadline for a ruling is suspended until information requested of the other tax authorities has been obtained.
- The procedure expires if the applicant does not provide, on time, the documents and/or clarifications required by the Agency, or if the Agency becomes aware of facts and circumstances that may undermine the transparency, trust and cooperation of the relationship between the two parties.

Outcome of the procedure and effects of the agreement

The procedure ends with the issuing of a ruling that is signed by the person in charge of the Agency and the applicant's legal representative. The agreement must address the issues in the request, is binding for both

parties, and **applies from the fiscal year in which it is signed and for the following four fiscal years.**

Under article 31-*ter* of Decree no. 600/73, the ruling can apply retroactively in two circumstances. If the ruling is based on an agreement reached with foreign tax authorities through a mutual agreement procedure under a double tax treaty, it is also binding retroactively, up to the tax year in which the ruling application was submitted. Similarly, if the same factual and legal circumstances on which the ruling is based were present in prior fiscal years, the applicant may roll back the terms of the ruling up to the tax year in which the ruling application was submitted, and amend its related tax returns, without penalties. The Regulation does not mention these retroactive effects and does not contain any clarifications on this issue.

Instead, if no agreement is reached, the Agency issues a report (*processo verbale*) to the applicant.

Monitoring, violation, and renewal of the agreement; amendments to the agreement

After the agreement has been signed, the company must submit, periodically or upon request, documents and information in order to allow the Agency to monitor that the company is complying with the terms and conditions of the agreement. The Agency can also access, at a time agreed with the company, the premises of the company. The Agency's activities must be described in a report, a copy of which is released to the legal representative of the company.

If the company violates the agreement in whole or in part – i.e. the Agency realizes, from documentation, information, visits to the company's premises or from other sources, that the company has acted inconsistently with the agreement or demonstrates a lack of cooperation or transparency – the Agency serves the company a notice inviting it to submit its defensive arguments (*memorie difensive*) within 30 days. If the company fails to submit its arguments on time or if the Agency believes that the company's arguments do not sufficiently disprove the accusations against it, the Agency notifies the company that the agreement is invalid.

The Regulation also contains rules on how the agreement can be amended if the circumstances on which the agreement was originally based change, and how the agreement can be renewed.

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