



## Highlights

### Last set of decrees implementing the 2014 Italian Tax Reform

- Reform of tax ruling procedures
- Review of tax litigation
- Review of the administrative penalty system
- Review of the criminal penalty system

Following the enactment of the last set of decrees, published in the Official Gazette on 7 October 2015, the 2014 tax reform has been completed. These decrees cover, inter alia, the reform of the tax ruling and tax litigation procedures and the review of the administrative and criminal tax penalty system.

### **1. Reform of tax ruling procedures**

Effective as of 1 January 2016, the entire system of the tax ruling procedures will be coordinated and simplified.

As the most important change, it will be provided that – for all types of ruling (whereas in the previous regime for most types of ruling no mandatory deadline was applicable) – the Revenue Agency has a limited time of 120 days to reply (except for rulings on interpretation of rules or characterisation of specific situations for which the time is 90 days). In case of no reply by such deadline, the ruling as proposed by the taxpayer will be deemed as implicitly accepted. Such time period may be interrupted in case of requests of additional documentation by the Revenue Agency (with an extension of 60 days from receipt of the documentation).

Furthermore, ruling applications will no longer be mandatory except for certain requests of waiver of specific anti-avoidance rules (such as NOL carry forward limitations for mergers). This is a significant change in comparison with the past where, for almost all cases (CFC rules, ACE), the filing of a ruling application was mandatory to have access to a specific regime.

In the future system, rulings will be grouped into the following categories:

a) on the correct interpretation of rules that are objectively uncertain and on the correct characterisation of certain situations for the purposes of specific rules;

b) on the existence of the conditions for application of special tax regimes and the validity of the elements of proof to support such conditions;

c) on the applicability of the general anti-abuse rule to a specific case;

d) on the possibility not to apply certain specific anti-abuse clauses contained in certain rules.

The above changes do not affect APAs (i.e. advance pricing agreements covering transfer pricing issues, permanent establishment cases, patent box or new investments) that are subject to a separate specific procedure.

## **2. Review of tax litigation**

Effective as of 1 January 2016, within the context of a thorough reform of tax litigation, new opportunities have been introduced to reach judicial settlements with the Revenue Agency even during the litigation process. In particular, it will be possible to reach a settlement in court also after the first hearing of the first-tier judgment (as it is in the current system). The benefits of settlements are going to be as follows:

- in case of withdrawal from litigation by the taxpayer following the partial cancellation of the claim by the Revenue Agency, penalties are reduced to 1/3 of the minimum on the outstanding amount;
- in case of settlement during the first-tier judgment, penalties are reduced to 40% of the minimum (on the settled amounts), whereas in the current system the reduction is to 40% of the charged penalties (i.e. also above minimum);
- in case of settlement during the second-tier judgment, penalties are reduced to 50% of the minimum (on the settled amounts).

In addition to the above, the decrees:

a) extend, as of 1 January 2016, the possibility by operation of law (it was previously possible to proceed in this way based on certain case law) to apply for a suspension of collection not only in first-tier judgment but also in the subsequent tiers of litigation;

b) provide, effective as of 1 June 2016, the possibility for taxpayers to enforce positive decisions on tax refunds (and thus obtain payment of refunds) even if the decisions are still subject to appeal and litigation is still ongoing. The refund could be subject to the filing of a guarantee.

In addition to the above, the decrees provide that tax courts will establish specialized chambers dedicated to the decision on particularly controversial significant tax matters, to increase specialisation of tax judges.

## **3. Review of the administrative penalty system**

The reform of the administrative penalty system will be effective as of 1 January 2017 (however, the draft Finance Bill for 2016 provides for an anticipation of the entry into force to 1 January 2016). Among the changes introduced, the decrees provide for a substantial reduction of the applicable penalties as follows:

a) penalties for incorrect tax return and for many VAT violations will decrease from 100%-200% to 90%-180% of the undeclared tax;

b) in case of filing of appropriate transfer pricing documentation the penalty protection regime applies for both penalties on any transfer pricing adjustments and withholding tax claims on any interest and royalties above arm's length value.

#### **4. Review of the criminal penalty system**

The entire set of rules governing criminal tax violations has been reviewed. Whereas fraudulent behaviours continue to be harshly punished (where fraud is specifically defined including mainly cases of simulation), an important smoothening of the possible criminal implications for cases of non-fraudulent tax violations has been provided. Among the most relevant changes (effective from 22 October 2015):

1. the two cumulative thresholds for the commission of a crime of incorrect tax return are increased from 2 mio/€ to 3 mio/€ (undeclared income) and from € 50,000 to € 150,000 (evaded tax);
2. no criminal relevance is given to (a) undeclared income deriving from improper classification or evaluation of items of income that are real and properly disclosed in the accounts, (b) wrong timing accrual, (c) non-deductibility of real costs because not related to the business activity of the taxpayer;
3. no crime is committed in case the undeclared income is shielded by current or carried forward tax losses;
4. for the crime of omitted tax return the relevant threshold is increased from € 30,000 to € 50,000 of evaded tax;
5. the crimes of untrue or omitted tax return are not punishable if the taxpayer has spontaneously cured the violation by amending the tax return or filing a late tax return before any kind of control by the Tax Authorities;
6. in case of settlement of the claims raised by the Revenue Agency the applicable criminal penalties are reduced down to a half.

The above changes complete the picture of limiting the applicability of criminal penalties to tax violations which had already been started with the exclusion of criminal relevance for tax abusive conducts that was introduced in August 2015.

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