

Italy's Pilot Program for a Collaborative Compliance Regime for Large Taxpayers

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Reprinted from *Tax Notes Int'l*, September 23, 2013, p. 1215

PRACTITIONERS' CORNER

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On June 25, 2013, the website of the Italian Revenue Office published a consultation notice targeting large taxpayers interested in participating in a pilot program that will lead to the establishment of a new regime of tax authority-taxpayer relations. The program is inspired by the OECD studies in cooperative compliance, which outline more advanced and transparent forms of cooperation between tax authorities and taxpayers.

I. Introduction

To improve relations between tax authorities and large taxpayers, on June 25, 2013, the Italian Revenue Office on its website publicly invited all large taxpayers to express their interest in participating in a pilot program intended to spearhead the implementation of a new “cooperative compliance regime.” The purpose of this program is to develop a reference model for new and more advanced relations and communications between tax authorities and taxpayers, based on criteria of cooperation, transparency, and mutual confidence. Such a result can be more effectively achieved through collaborative activities and concrete communication involving taxpayers directly, in order to collect information and opinions useful to the definition of the new regime.

This project fits into the framework of the cooperative compliance program outlined at the international level by the OECD in the document “Co-operative Compliance: A Framework — from Enhanced Relationship to Co-operative Compliance” (2013).

II. Current Tutoring Activities

The pilot program is the evolution of current tutoring activities for large taxpayers, which are regulated by article 27, paragraphs 9-12 of Decree-Law No. 185/2008, modified by article 1 of Law No. 2/2009.

Tutoring is a tool that, taking into account the specificity and complexity of the taxation of particularly large businesses, permits the diversification of auditing activities based on the results of specific risk analyses carried out on the individual taxpayer. These take into consideration not only the taxpayer’s “tax behavior,” but also the characteristics of the productive sector in which it operates. Each taxpayer being tutored is thus attributed a risk-intensity level, on the basis of probability and the kind of nonconforming behaviors, as well as the tendency of the taxpayer to maintain a cooperative and transparent attitude toward the tax authorities.

By doing so, tutoring intends to address the need to appropriately select the areas to monitor and to use the auditing tools available as efficiently as possible, while at the same time intensifying the dialogue between tax authorities and large taxpayers and increasing the level of spontaneous compliance.

III. Pilot Program Objectives

The intent of the Revenue Office is to create, through the pilot program, a new regime, more advanced than tutoring, that involves deeper commitment by both the taxpayer and the tax authorities. Such a

system will be based on the taxpayer's commitment to ensure compliance-based behaviors and promptly provide all relevant information relating to transactions that imply a specific level of tax risk or that may give rise to differing interpretations. On the other hand, the Revenue Office will respond more effectively to the needs of the taxpayers and "facilitate the resolution of the most significant tax issues in a timely and balanced manner."

This will entail, in practice, the transition to a form of auditing *ex ante*, which replaces the traditional *ex post* intervention, with undeniable positive effects arising from "prior certainty that the choices made comply with the correct and concretely applicable tax rules."

Under the pilot program, selected companies will collaborate with the Revenue Office (specifically the Large Taxpayers Unit of the Central Investigation Directorate) and take part in specific technical roundtables that will discuss issues such as:

- the characteristics of internal models of tax risk management;
- the features and peculiarities of the new tax authority-taxpayer approach;
- the taxpayers' obligations and incentives; and
- the tax authority's commitments.

To ensure the effectiveness and implementation of the program, the Revenue Office specified that the number of taxpayers involved in the project should be limited. Therefore, at the sole discretion of the Revenue Office, the applications received will be analyzed based on their compliance with preferred or mandatory access requirements and only a certain number of them will be selected.

Some of the mandatory access requirements include:

- qualifying as a large taxpayer, which entails having earned a turnover equal to or greater than €100 million in 2011;
- the use of the organizational or managerial models referred to in article 6 of Legislative Decree No. 231/2001; and
- the adoption of a tax risk management and control system, known as the tax control framework.

Some of the preferred requirements identified by the Revenue Office include:

- belonging to a multinational group or exercising activities in Italy or abroad through permanent establishments;
- subscribing, under other legal systems, to other forms of cooperative compliance or to codes of conduct with the respective tax authorities; and
- adopting collaborative compliance measures such as the international tax ruling or the voluntary documentation regime in transfer pricing matters.

The application form, which must be submitted by e-mail to the Revenue Office no later than July 31, 2013, must include, along with information on meeting the mandatory and preferred requirements, the motivations for wishing to join the program and a brief description of the internal control and risk management system.

IV. OECD's Cooperative Compliance

The pilot project promoted by the Revenue Office is an important step toward the evolution of the current practice of tutoring into a more advanced program consistent with the OECD guidelines regarding cooperative compliance. The OECD report "Co-operative Compliance: A Framework — From Enhanced Relationship to Co-operative Compliance," released in 2013, shows the impact of the cooperative compliance approaches taken by member states and provides them with recommendations.

The report highlights how the number of countries that have put in place programs based on the concept of cooperative compliance has increased following the 2008 publication of the OECD analysis "Study Into the Role of Tax Intermediaries," with positive results in terms of transparency in the relationship between tax authorities and taxpayers, optimization of the strategies for tax risk management, and reduction of the number of disputes. The report emphasizes that these programs should be based on the following key pillars:

- the tax authorities' awareness of the commercial aspects that determine the transactions and activities of large taxpayers;
- an unbiased and objective approach toward the taxpayer;
- proportionality in the allocation of resources, guaranteed by an appropriate risk management process;
- an attitude of "openness and responsiveness" toward the taxpayer on the part of the tax authority; and
- transparency and willingness to make the relevant information available on the part of the taxpayer.

The report therefore calls on member states to implement programs that conform to these basic principles and to make good use of data deriving from existing practices in order to be able to properly assess their functioning and impact. It also encourages states to share the "best practices" identified and, taking into account the current increasingly globalized economic environment, to include internal compliance in a broader framework of "cross border transparency" and assess the opportunities for "multilateral cooperative compliance." ◆