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FEATURED PERSPECTIVES

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The OECD suggests that the search for effective action strategies by the tax authorities goes through the introduction of incentives for the most compliant taxpayers and disincentives for those who choose to persevere with aggressive tax planning activities.

Fostering a better tax authority-taxpayer relationship — one of enhanced cooperation based on dialogue, mutual trust, and collaboration rather than hostile confrontations — becomes crucial.

For large taxpayers, the tax authorities have long adopted an approach inspired by the strategy of enhanced cooperation, which uses international rulings as one of its tools and is designed to prevent tax violations through preliminary discussions on issues of considerable impact, such as transfer pricing or structured finance operations (which could be indicative of avoidance or abusive actions).

For large taxpayers, the government has the authority to regulate structured corporate systems of tax risk management.

The Delegated Tax Law (article 6) provides for the introduction of systems of tax risk management that permit the timely identification of aggressive tax planning — viable behaviors that have unexpected and undesired consequences on the amount of collectable taxes.

The companies that will activate these internal control systems will be granted a series of incentives such as fewer compliance requirements, reduced penalties, and fewer and lower tax assessments.

Further, on tax avoidance matters, the government has the authority to enact provisions on abuse of law issues (which were the object of many controversies in the last few years) and, in particular, to take a position on their criminal relevance.

The Italian legislature's goal is to implement the OECD's and the European Commission's guidelines and recommendations on fighting tax fraud, tax evasion, tax havens, and aggressive tax planning:

- the report ''Tackling Aggressive Tax Planning Through Improved Transparency and Disclosure,'' of February 2011;
- the ''Communication from the Commission to the European Parliament and the Council on Concrete Ways to Reinforce the Fight Against Tax Fraud and Tax Evasion including in Relation to Third Countries,'' COM(2012)351 of June 27, 2012;
- Recommendation C(2012) 8805 on good governance in tax matters, which takes a decisive stand against tax havens; and
- Recommendation C(2012) 8806 on aggressive tax planning, which invites member states to intervene on the technicalities and the legislation gaps that multinational companies take advantage of to avoid their tax obligations.

Note, however, that in November 2012 the approval procedure of the Delegated Tax Law was put on hold by the Italian Senate.

Circular No. 18/E of the Italian Revenue Office, dated May 31, 2012, highlights the positive results in fighting tax evasion by the tax authorities in the previous three years and outlines strategies for the following three years.

In 2009 the tax authorities began a reorganization of their methods for fighting tax evasion by:

- controlling the various types of taxpayers (large and medium enterprises, small enterprises and self-employed workers, noncommercial institutions, and physical persons); and
- adopting intervention methodologies that are different for each type and coherent with the respective systems for the analysis and the assessment of tax evasion or tax avoidance risks.

The activity of the tax authorities is oriented toward:

- the strengthening of the fight against tax fraudulent behaviors;
- the so-called tutoring of the large enterprises by the regional departments (under article 27, paragraphs 9-15, of Decree Law No. 185/2008) by means of:
  - — a thorough analysis of the risks correlated with the productive sector of each enterprise and with a personalized risk level, designed to differentiate the control; and
  - — a systematic preventive control designed to assure a high degree of correctness of target taxpayers' tax behaviors;
- the control of all large taxpayers (enterprises and professionals with VAT transactions turnover, revenues, or payments greater than €100 million) by the regional departments; and
- the control of midsize enterprises (that is, those with VAT transactions turnover, revenues, or payments of between €5,164,569 and €100 million), which, because of their specific economic and tax peculiarities, demand increasingly incisive and sophisticated risk analysis methodologies.

The control on the taxpayers by the Italian tax authorities differs according to:

- the taxpayer's size;
- the types of intervention adopted; and
- the kind of law that was violated.

More and more attention has been paid to the tutoring of large taxpayers. Beginning in 2012, the tutoring activity involved all large taxpayers carrying on a business activity (that is, 3,200 taxpayers as opposed to the approximate 2,000 that were tutored in 2011).

This tutoring activity includes the constant monitoring of some occurrences associated with important risk factors that are also analyzed by the OECD, such as:

- international tax planning schemes;
- policies for the instrumental use of tax losses;
- the kinds of arbitrage based on the exploitation of complex financial tools; and
- transfer pricing policies that are not in line with the arm's-length principle.

Also, in the selection of large taxpayers to control, the tax authorities will pay particular attention to:

- taxpayers that prepared their budget according to IAS/IFRS accounting principles; and
- the existence of:
  - — relations with nonresident entities, especially in cases of intercompany relations;
  - — negative items deriving from transactions with companies tax resident in countries or territories not belonging to the European Union and enjoying tax privileged regimes;
  - — royalties or interest paid by a company resident in one of the EU member states to a company of the same group residing in another EU member state;
  - — extraordinary business reorganization;
  - — income-related items of particular interest (such as considerable financial or extraordinary obligations and high costs for services); and
  - — VAT credits that are remarkably high when compared with the activity carried out. ◆