

Italian tax authorities clarify APA procedure

March 29, 2016

ITR Correspondent

On March 21 2016, the director of the Italian Revenue Office (Agenzia delle Entrate) issued regulation no. 42295/2016 (the regulation), containing provisions for the application of the rules on advance pricing agreements (APAs) for enterprises with international activities.

The regulation clarifies the operative aspects of the procedure which leads to the conclusion of APAs with the Italian tax authorities. The APA institution was introduced into the Italian tax regime by legislative decree no. 147/2015 (the Internationalization Decree) providing for tax measures on the growth and development of multinational enterprises (MNEs).

The procedure allows both MNEs and the Italian tax authorities to conclude APAs in different areas such as transfer pricing, flows of dividends, interests and royalties, and exit or entry values in the case of transfer of residence.

The regulation applies also to proceedings that have already started although not yet concluded at the time of its enactment.

Enterprises involved

As clarified by the new regulation, APAs may be concluded with the Italian tax authorities by:

- Italian resident companies which, alternatively or collectively:
 - meet requirements set forth in Article 110, paragraph 7, of the Italian Income Tax Code (i.e., associated enterprises for transfer pricing purposes);
 - own a shareholding in the capital of foreign enterprises residing in Italy;
 - have paid to, or have received from foreign enterprises residing in Italy, dividends, interests or royalties;
 - carry out their business activity through a permanent establishment (PE) located in another country.
- Non-Italian resident companies which carry on or have the intention to carry on their business activity in Italy through a PE.

Scope of the APAs

MNEs may conclude APAs with the Italian tax authorities with the aim to:

- determine the methodology for the calculation of the arm's-length price to be applied to transactions with associated enterprises abroad (ex article 110, paragraph 7 of the Italian Income Tax Code);
- define the application to a concrete case of rules concerning the attribution of profits to a PE in another state of an Italian company, or to a PE in Italy of a foreign company; or
- define the application to a concrete case of rules concerning the payment to foreign subjects residing in Italy, or the receipt from a foreign subject residing in Italy, of dividends, interests, royalties and/or other income.

According to the regulation, the definition of the exit or entry values in the case of a transfer of the residence, as well as the evaluation of the requirements for the existence of a PE on the Italian territory, may fall within the scope of the APAs with the Italian tax authorities.

Request for the procedure

The regulation clarifies that enterprises which intend to conclude an APA with the Italian tax authorities must file a request (an *istanza*) to be submitted to the *Ufficio Accordi Preventivi e Controversie Internazionali* of the Central Directorate of the Italian Revenue Office, department in Rome or Milan.

The request may be submitted by registered mail or may be hand-delivered directly to the competent office.

The request should contain all details concerning the enterprise and should outline all facts and circumstances on which the proposed solution is based. Finally, it has to be signed by the legal representative of the company.

By Piergiorgio Valente, Managing Partner at Valente Associati GEB Partners – Italian Correspondent



Piergiorgio Valente, Managing Partner
p.valente@gebnetwork.it