



Impact of Italian guidelines on TP audits and APAs

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Cooperation, transparency, and trust between the tax authorities and taxpayers are notable goals in the latest audit guidelines, say Federico

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In recent years, this firm has assisted in an increasing number of tax audits related to transfer pricing matters, permanent establishment issues, and VAT fraud, among others. Considering this rise in audit activity, the Italian Tax Revenue Agency's Circular No. 21/E that was published on June 20 2022 is a highly relevant document in providing additional guidance concerning tax audit activities for 2022.

The circular provides indications regarding:

- Activities concerning audit prevention, anti-evasion, and tax litigation – making distinctions according to the type of taxpayer (large taxpayers, and medium-sized and small enterprises);
- Consultancy – with particular reference to responses to appeals, legal advice, and cooperative compliance; and
- Services to taxpayers – illustrating the different types of assistance and information provided to taxpayers.

The tax authorities' assessment activities will focus on evasive and abusive phenomena, such as fraud, abuse of the law, false offsetting, and undue use of concessional regimes and support measures provided to cope with the negative consequences of the COVID pandemic.

With reference to large taxpayers and international matters, the control activity will focus on the correct application of the Common Reporting Standard rules, due diligence obligations, and the need for administrations to:

- Activate the available types of information exchange, including spontaneous exchange of information through country-by-country reports and cross-border arrangements, etc.; and
- Make use of further international cooperation instruments, such as collaboration between officials and simultaneous or multilateral controls, or mutual assistance in collection as a further means of protecting the tax credit.

APAs and MAPs

Advance pricing agreements (APAs) and mutual agreement procedures (MAPs) assume great importance within the tax compliance process of companies operating internationally.

With reference to APAs, Article 31-ter of Presidential Decree No. 600/1973 provides that for the tax periods for which the agreement is in force, the tax authorities shall exercise their powers of assessment only with respect to matters other than those covered by the agreement.

It follows that if in the course of an audit a company that has entered into an APA is audited, it will be necessary for the tax administration to promptly coordinate with the office that has issued the agreement, to avoid overlapping actions involving the performance of the same investigative activities. The SERPICO tool should be checked to assess the existence of APA procedures and their status (whether in progress or concluded).

During 2022, audit activities have continued to assess:

- Compliance with unilateral or bilateral agreements entered into between tax administrations and taxpayers; and
- Compliance on patent box agreements.

Furthermore, the circular confirms that the audit and activity with regard to transfer pricing must be characterised by a high degree of in-depth examination of the facts and circumstances of the case. To this end, the Central Directorate for Large Taxpayers and International Taxpayers will prepare directives to improve the uniformity of assessment activities in transfer pricing and will continue discussing the most commonly recurring issues in the assessment and international MAPs with the regional office.

The aim is to implement mechanisms that lead to dialogue, increased cooperation, and mutual trust between the tax authorities and the taxpayer, which will lead to a decrease in litigation and an expected reduction in the number of appeals.

The need to ensure the fairness of the tax claim and to reduce conflict with taxpayers will be ensured through the full and proper use of the tools available to the administration and to the taxpayer for reducing litigation. The tax authorities are called upon to carry out accurate analyses on the specific cases, as well as of the arguments that may be put forward by the taxpayers (for example, after the delivery of the assessment notice or following the submission of requests for self-defence). The acceptance of the exceptions put forward by the taxpayer shall be recognised if the grounds are properly supported.

Moving towards cooperation

From the guidelines published, it emerges that the Italian tax authorities wish to ensure that their relationship with taxpayers is based on fair cooperation and transparency.

With regard to expected coordination between tax offices “to avoid overlapping actions involving the execution of the same audit activities”, it should be ensured that not only concluded APAs are covered, but also ongoing APAs (considering that the tool is increasingly in use, and tax administrations often take some time to conclude the APA). Clear guidance should also be released with regard to APA rollbacks and control/audit activities.

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