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Guide to Italy's cooperative compliance regime for managing tax risks

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Federico Vincenti and Carola Valente of Valente Associati GEB Partners/Crowe Valente explain the benefits and recently updated provisions of the cooperative compliance regime

The cooperative compliance regime, introduced in Italy by Legislative Decree No. 128/2015 and amended by Legislative Decree No. 221/2023, allows for a constant dialogue between Italian taxpayers and the Italian tax authorities to prevent and resolve tax disputes.

The regime is reserved for taxpayers that achieve a turnover of no less than:

- €750 million, starting from 2024;
- €500 million, starting from 2026; and
- €100 million, starting from 2028.

Taxpayers participating in the regime must have an effective integrated system for detecting, measuring, managing, and controlling tax risks, embedded within the corporate governance and internal control system (tax control framework, or TCF). The system must be capable of ensuring:

- A clear assignment of roles and responsibilities to various sectors of the taxpayer's organisation concerning tax risks;
- Effective procedures for detecting, measuring, managing, and controlling tax risks, ensuring compliance at all corporate levels;
- Effective procedures to address any deficiencies identified in its operation and to implement the necessary corrective actions; and
- A mapping of tax risks related to business processes.

The TCF must be certified, including its compliance with accounting principles, by independent professionals who possess specific expertise and are registered in the bar association or the register of certified public accountants and accounting experts.

The requirements for qualified professionals, as well as their tasks and obligations, will be regulated by a decree from the Ministry of Economy and Finance in agreement with the Ministry of Justice, after consulting the respective professional associations.

Benefits for companies

Access to the regime provides several rewarding effects for companies, such as:

- An expedited preliminary ruling procedure in which the Italian tax authorities commit to responding to companies' queries within 45 days from receipt of the request or any additional requested documentation;
- Procedures for regularising the taxpayer's position if adhering to the Italian tax authorities' indications requires self-corrections;
- A complete waiver of administrative penalties for tax risks reported in a timely and comprehensive manner;
- The halving of penalties for conduct related to non-significant tax risks included in the risk map;
- An exemption from providing guarantees for direct and indirect tax refunds for the entire period of participation in the regime;
- The possibility of initiating a dialogue within the regime, even regarding situations concerning previous fiscal years, within 120 days of admission to the regime;
- A ground for non-punishment for criminal offenses; and
- A reduction of the limitation periods for assessment activities by the Italian tax authorities.

The Code of Conduct

On June 7 2024, the Ministerial Decree of April 29, 2024, concerning the Code of Conduct related to the Cooperative Compliance Regime (the Code of Conduct), was published in the Official Gazette.

The Code of Conduct aims to define the commitments mutually undertaken by the Italian tax authorities and taxpayers participating in the regime. Such commitments bind the parties from the tax period during which the request to join the regime is submitted to the Italian tax authorities.

The Code of Conduct prescribes that the Italian tax authorities respect the following principles:

- Collaboration, fairness, and transparency;
- Preventive certainty; and
- Assessment of the control system.

Turning to the commitments of the taxpayer, by signing the Code of Conduct, the taxpayers bind their continued participation in the cooperative compliance regime to adherence to the following principles:

- Tax transparency and ethical behaviour, by adopting a tax strategy that ensures the dissemination of a culture of tax risk control at all company levels and promotes behaviours based on transparency, honesty, fairness, and compliance with regulations;
- Low tax risk appetite – the taxpayer applies tax regulations ensuring that the letter, spirit, and purpose of the provisions are respected;
- Effective management of tax risk and tax compliance, establishing an effective integrated TCF; and
- A transparent relationship with the tax authorities, engaging in constant and proactive dialogues on significant tax risks.

Taxpayers already admitted to the regime as of June 7 2024 have until October 5 2024 to sign the code. They commit, among other things, to:

- Not undertake investments in low-tax countries solely for the purpose of obtaining tax savings;
- Comply with transfer pricing regulations and ensure proper income allocation across different countries; and
- Refrain from conducting transactions with tax effects contrary to the purpose of the invoked provisions, including those arising from existing asymmetries between the tax systems of different jurisdictions, or that result in double deduction, deduction/non-inclusion, double non-taxation, or the creation of purely artificial arrangements.

Updated provisions

To improve access to the regime, on June 20 2024, the Italian Council of Ministers approved a corrective decree that will integrate the primary regulatory framework.

The main points of the provision are:

- Strengthening the criminal exemption for tax risks communicated in a timely and exhaustive manner;
- Expanding the administrative and criminal exemption for tax risks associated with conduct undertaken in tax periods preceding entry into the regime;
- Revising the notion of groups of companies from a civil law perspective (compared with the previously adopted tax perspective) for inclusion in the regime; and
- Increasing the penalties coverage for the optional TCF regime, reserved for companies outside the cooperative compliance perimeter.

Further legislative interventions are expected in the near future aimed at fully delineating the implementation framework of the cooperative compliance regime and enhancing taxpayers' interest in this tool.

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