

Bird & Bird

Tax Dispute on the fly

A quick overview on Italian developments



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The pandemic situation in Italy has significantly affected how tax audits are conducted and how tax dispute is managed. The Revenue Agency has to combine the need of maintaining an adequate level of tax collections with that of avoiding the pressure on the taxpayers deriving from enforcement actions aimed at increasing incoming flows. Moreover, taxpayers still have the right to discuss their pending cases before the Tax Courts, which have started to schedule in person hearings.

In the periodical analysis regarding the annual income from taxes, the Ministry of Finance detected that the revenues from tax collections were significantly lower, with almost 30% decrease deriving from tax audits and tax assessment activity (mainly due to corporate income tax audits). A major portion is due to reduced collection on corporate income tax (see [Official Communication of the Ministry of Finance](#) dated 5 October 2020).

The negative outcome is due to the inevitable restrictions to perform in-site audit activity during the COVID-19 pandemic, as well as the official suspension from any type of collection of sums due until the end of the year, also due to the most recent emergency legislation.

Tax Audits

The expectation is that new audit activity will start through the notification of questionnaires aimed at requesting information and documentation, especially with respect to Transfer pricing or VAT investigations, which will be reviewed by the Tax Offices at their site. For more serious offences, involving tax fraudulent behaviours, the Tax Police is and will continue making on-site audits following an order of the competent Public Prosecutor.

However, tax auditors could not benefit from any extension of the statute of limitation, irrespective of the suspension applied during COVID-19, since any tax assessment relating to FY2015 (FY2014 in case of omitted filing of the tax return) shall have to be issued and signed by the competent head of the Tax

Office before year end. A delay has been provided only for the notification of tax assessments, which has been postponed to 31 December 2021 (see art. 157 of Law Decree n. 34 of 5 May, 2020, so called [Relaunch Decree](#) – converted into Law n. 77, July 17, 2020).

Another exception applies to tax audits which are not qualified as partial audit (a very limited number, due to the fact that tax audits are mostly qualified as partial, because tax authorities leave themselves the possibility to reopen a certain audit in case they identify additional facts justifying an additional assessment). In such a situation, the Tax office should have invited the taxpayer to appear before them within 2 October 2020. If this is not the case, the statute of limitation is extended from 31 December 2020 to 30 April 2021 (see article 5, par. 3 *bis* and 5 *ter* of the [Legislative Decree n. 218](#) of 19 June, 1997 in force as of 1 July, 2020).

Tax Litigation

The possibility to hold virtual hearing is becoming reality. Tax litigation is the only one which has not been able to hold virtual hearings yet, unlike administrative and criminal proceedings. The workload of the Tax Court currently is and will be, in case no actions are taken, an issue and the possibility for taxpayers to have their case discussed in a safe environment today is a fantasy. The positive news is that the Privacy Authority has released an opinion approving the method to hold online hearings, using a platform that would ensure the confidentiality of the discussion (see [Opinion](#) dated 15 October, 2020) and a newly issued provision formally introduced the possibility into the procedural law (see art. 27 of Law Decree n. 137/2020). Therefore, it is likely that, once the Tax Courts will identify the applicable regulations, hopefully in a short time, tax hearings before the Provincial and the Regional Tax Court could be held online (leaving in any event the taxpayer to request a formal in person hearing). It is envisaged that this possibility may also be applied after the COVID-19 emergency has ended, thus becoming a regular procedural protocol.

Tax Collection

With the aim of supporting those taxpayers most affected by the economic crisis and avoiding the notification of pending notices of collection in a strict timeline, a new legislation has been approved (Law Decree n. 129/2020, "[Collection Decree](#)"). In particular, the Collection Decree introduced the possibility to perform payments related to already notified notices of collection which were due in the suspension period, expiring in the period 8 March and 31 December 2020, in one lump sum by next 31 January 2021 (as already partially provided art. 154 of the [Relaunch Decree](#) and art. 99 of [Law Decree n. 104/2020](#)). Moreover, such a rule will allow them to benefit from any installment plans already in place, irrespective of the circumstance that taxpayers may have failed to pay some installments (*i.e.*, ten installments, instead of five as provided by previous law), to the extent that all the omitted payment are fully performed by the same date (*i.e.*, 31 January 2020). The Decree extended the term for the Tax Collector Office to notify the notice of collection expiring on 2020 up to 31 December 2022.

The impact of pending tax proceedings on the business of enterprises

This has become an important topic, and a new provision which has been definitely approved last September states that an enterprise could be excluded from a public bid if the deemed customer becomes aware and could give proof that the enterprise has not complied with serious obligations related to the payment of the taxes or of social security contributions, even though not definitely assessed (unless the enterprise pays the relevant amounts). The pending liability would be serious, which according to law would mean higher than 5.000 Euro (see art. 8, par. 5, [Law Decree n. 76/2020](#), as modified by Law n. 120/2020, which modified art. 80, par. 4, Legislative Decree n. 50/2016). As a result, unlike previous years, a pending litigation and liability might create obstacles for future participation to bids unless taxes due are actually paid. The provision is still highly criticised but is considered a tool for the Tax Administration to fight tax evasion in the context of public bid and tender.

International factors

It is important to mention that the Supreme Court released a report to outline and comment on the new legislation on the Dispute Resolution Mechanism

(DRM) following the implementation of the EU Directive 2017/1852. The Report analyses in detail the legislation and comments on the relevant procedure. In particular, it acknowledges that starting from tax assessments for FY2018, many controversies that have cross border impacts and give rise to double taxation have the possibility to be brought to the attention of the Competent Authorities, who will be obliged to try to identify a decision and eliminate the double taxation. The litigation could in any event be started and suspended until the decision of the Competent Authorities is released (see the [Report on Tax Litigation – International Tax Disputes](#) released by the Supreme Court on 28 September, 2020 and published on 2 October, 2020).

Tax risk management and the possibility to enter into cooperative compliance program

In this incoming period, during which tax investigations on-site are limited but Italian Revenue Agency need to collect additional resources and may become more aggressive in the future, there would be an opportunity in considering the implementation of a tax risk management program inside the Company. This approach will prevent tough tax audits and allow the Company to focus on those processes, which may be particularly exposed to the scrutiny of tax authorities (e.g. VAT, custom and transfer pricing). Although currently the cooperative compliance program is still accessible by a limited number of Italian enterprises (e.g. with recorded revenues amounting at least 5 billion of Euros, or 1 billion in case of request to access the pilot project), starting internal tax control framework will be a benefit in order to anticipate a trend which is expected to become the "new normality" inside business organisations, also taking into account the number of issues that may end with a criminal offence at the level of the Company (please see recent development on the corporate criminal liabilities provided by [Law Decree n. 231/2001](#), as recently amended by Law Decree no. 124/2019). Recently the Revenue Agency issued a [Regulation](#) confirming that the Cooperative Compliance Office, inside the Italian Revenue Agency, is the office competent for the analysis of the requirements to access to the Regime for the fiscal years 2020 and 2021. Such regulation is a signal of the increasing interest of the Revenue Agency to the cooperative compliance program, pending that the threshold of the revenues will be reduced to expand the number of eligible taxpayers. This aspect has

been also analysed in the last circular letter issued by the Tax Police which emphasised the recommendable presence of the two frameworks from both a pure tax perspective and for corporate criminal liabilities purposes, preventing administrative penalties on one side and criminal ramification at the level of the corporations on the other side.



Contacts

Giuliana Polacco

Senior Counsel

Tel: +39 02 3035 6000

giuliana.polacco@twobirds.com

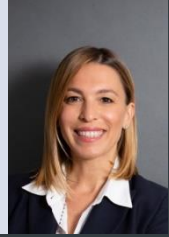


Annarita De Carne

Senior Associate

Tel: +39 02 3035 6000

annarita.decarne@twobirds.com



twobirds.com

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