

Bird & Bird

*Tax Focus* on Advanced  
Pricing Agreements (APA)



# Tax Focus on Advanced Pricing Agreements (APA)

APAs are now well known to Italian companies belonging to multinational groups, which intended (or intend) to agree on the correct remuneration of intra-group transactions with the Revenue Agency, in order to avoid tax audits, assessments, and lengthy tax litigation. It is a way to mitigate conflicts between taxpayers and tax authorities.

Current legislation provides regulations relating to the procedure for unilateral APAs concluded between the Revenue Agency and the entities present in Italy. If the APA also involves tax authorities of one or more States (so called bilateral or multilateral agreements), the procedure followed is provided for by International Conventions against Double Taxation (art. 31-ter of Presidential Decree no. 600 of 29 September 1973).

The 2021 Budget Law (see art. 1, par. 1101, Law n. 178/2020) introduced some relevant changes to the current APA regulations.

In particular, more precise rules with respect to the period of effectiveness of the APAs (either unilateral or bilateral/multilateral) have been approved (so called 'roll-back').

In addition, a mechanism for the charge of the administrative expenses in case of bilateral and multilateral APAs is now provided.

An implementation Decree shall have to be issued by the Revenue Agency.

A summary and some preliminary comments on the new rules follow.

## Current Provisions

Currently the effectiveness of unilateral APA and bilateral/multilateral APA is the following:

- **Unilateral APA:** this binds the parties for the fiscal year in which they are concluded and for the four subsequent tax periods. The taxpayer has, however, the right to carry back the effects of the APA to the tax year in which the application was

filed, provided that the factual and legal circumstances underlying the agreement have not changed;

- **Bilateral and multilateral APA:** this binds the parties, based on the agreement reached with the foreign tax authorities, also for the fiscal years prior to the date the APA is concluded, but not prior to the fiscal year in which the APA application has been submitted.

## New Provisions

The possibility to give retroactive effects to both unilateral and bilateral/multilateral APA is aligned and expanded, since it will be possible for APAs to rollback to fiscal years for which the deadline for assessment has not yet expired (art. 43 of Presidential Decree no. 600 of 1973), irrespective of the date of the filing. In particular:

- **Unilateral APA:** the taxpayer will have the right to ask for the retroactive application of the APA provided that (i) the same factual and legal circumstances underlying the APA occurs and that (ii) no audit activity has started at the time of execution of the APA;
- **Bilateral and multilateral APA:** in addition to the above-mentioned conditions, it is necessary that the taxpayer (iii) has requested this in the APA submission, the retroactive application and that (iv) the competent authorities agree to extend the agreement with reference to previous years.

In both cases, it is expressly provided that the retroactive application of the APA may take place through a voluntary disclosure procedure and the filing of an amended tax return.

As a result, while the new rules entitle the roll-back effect to tax periods prior to the filing of the APAs request, the other side establishes another important condition, i.e. that no audit activity has to be started.

In practice, the effective benefits introduced by the new rules could be guaranteed only if the negotiation and conclusion of the APAs between the parties

involved is done in a short time, *i.e.* before the closing of the statute of limitation for the tax audits. Otherwise, the rule could have negative consequences for taxpayers, who could see the possibility of retroactive application of the concluded APAs weakened, Costs for unilateral and multilateral procedures

Currently, taxpayers are not required to pay any amount to the Revenue Agency for admission to the APA procedure. The Budget Law provides for a participation of the taxpayer in the expenses incurred by the Revenue Agency for the management of bilateral and multilateral agreement applications, through the payment of a fee that can vary from Euro 10,000 to Euro 50,000 depending on the total turnover of the group to which the taxpayer belongs. Fees are reduced by half in the case of a request for renewal of the prior agreement.

# Contacts

**Giuliana Polacco**

Senior Counsel

Tel: +39 02 3035 6000

[giuliana.polacco@twobirds.com](mailto:giuliana.polacco@twobirds.com)

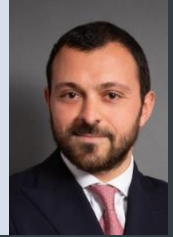


**Francesco Drago**

Senior Associate

Tel: +39 02 3035 6000

[francesco.drago@twobirds.com](mailto:francesco.drago@twobirds.com)



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