



Cooperative compliance for Italian PEs

Tax & Legal



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New cooperative compliance program available to Italian permanent establishments of foreign companies

The Italian tax authorities ('ITA') issued the implementing provisions of the cooperative compliance program aimed at ascertaining the existence of permanent establishments ('PE'), as introduced by Law Decree no. 50/2017.

Large multinationals who engage in direct sales in Italy are now allowed to file a specific ruling request to determine, in an open discussion with ITA, whether their activities amount to a PE in Italy or not. In case a PE is determined to exist, the applicants enjoy substantial penalties reduction, avoid criminal prosecution, obtain certainty on the profit attributable to the PE and may achieve other important benefits.



Who

The procedure applies to non-resident entities who:

- Belong to large multinational groups with a worldwide turnover exceeding EUR 1 billion (at least in one of the last three years);
- Enter into supplies of goods or services in Italy exceeding EUR 50 million (at least in one of the last three years). This threshold refers to the overall amount of sales carried out by all the non-resident entities part of the same group;
- Carry out the above-mentioned supplies with the support of one or more Italian-resident auxiliary companies (or PEs) belonging to the same group.

The procedure does not apply to non-resident entities if ITA have already notified them (or the Italian-resident auxiliary company) the start of any tax or criminal audit activity regarding investigations on the existence of an undisclosed PE in Italy.

Why

In case of successful completion of the procedure, the non-resident entity:

- Has certainty on the profit attributable to the PE (both under a direct tax and VAT perspectives);
- Is discharged from criminal penalties related to the failure to submit the tax return;
- Enjoys penalty reduction to 1/6 of the ordinary rate;
- May have access to the cooperative compliance program set forth by Legislative Decree no. 128/2015, with further benefits and advantages.

The agreement is valid only after the timely payment of additional taxes due, interest and penalties.

If the procedure finds that the non-resident entity has not operated through a PE in Italy, ITA are bound by this outcome, to the extent that factual and legal circumstances remain unchanged.

How

The request shall be drafted according to a form already available on ITA website. Such form contains the relevant information for the identification of the non-resident entity as well as of the Italian-resident auxiliary companies/PEs.

Other documents to be filed:

- Statement on the non-resident entity's business model;
- TP documentation;
- Financial statements (consolidated and separate);
- Supporting documents to the (non) existence of a PE in Italy.

ITA must declare the request admissible within 30 days from receipt of the request and documentation (in case of further requests, such deadline is extended) and the assessment procedure shall be concluded within 180 days from acceptance.

How we can help

Our dedicated team can provide a preliminary analysis on the background and actual facts to help understanding the pros/cons of the procedure in each specific case. Once the decision is taken, we can assist in:

- Pre-filing meeting with ITA;
- Drafting the form for the ruling and filing it with the competent ITA office;
- Preparing, reviewing and filing all other necessary documents (e.g. statement on the non-resident entity's business model, TP documentation, financial statements etc.);
- Managing the entire procedure with ITA, including constant contact, discussion and meetings with the competent ITA office in order to ensure a smooth process and a swift conclusion.

Should ITA ascertain the existence of a PE in Italy in the past, we can help with:

- Discussions and meetings with ITA in order to reach a truthful and reasonable profit allocation to the PE;
- Settlement of the PE disclosure process (i.e. support in reviewing and paying taxes, interest and penalties);
- Manage the request and the process of the optional enhanced cooperative compliance set for by Legislative Decree no. 128/2015;
- All the tax and legal formalities required to open and register the PE in Italy;
- Ongoing direct and indirect tax compliance formalities (i.e. bookkeeping, tax payments and reporting, tax returns, etc.).

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