

INSIGHT: Implementing the EU Directive on Tax Dispute Resolution in Italy

BY FRANCESCO BONICHI

The EU Tax Dispute Resolution Directive has recently been implemented in Italy through Decree No. 49/2020 and published in the Official Gazette on June 10, 2020.

Decree No. 49/2020 entered into force on June 25, 2020 and introduces new and effective rules to encourage and promote the resolution of tax disputes between Italian and other EU tax authorities regarding the interpretation and application of multilateral agreements and conventions for the avoidance of double taxation (“Mutual Agreement Procedure” or “MAP”).

Decree No. 49/2020 implements the provisions set out by Council Directive 2017/1852 (October 2017) which establishes significant improvements for solving cross-border tax disputes more quickly and efficiently, by providing companies and individuals with new mechanisms to resolve disputes on the interpretation and application of tax treaties.

The innovative provisions refer to double taxation issues arising from conflicting interpretations or violations of the tax treaties in force between EU member states; in general terms, double taxation events may occur in the event that two or more countries claim their right to tax the same profits or any kind of income related to individuals, companies or entities whereby both countries have specific connections.

Filing of the MAP Requests: Terms and Conditions Pursuant to Decree No. 49/2020, the taxpayer may submit a specific MAP request simultaneously to the Italian Tax

Office and to the competent authorities of the other member state involved in the tax issue. The request needs to be filed within three years from:

- the date of notification of the measure (notice of the tax assessment received or any equivalent administrative document); or

- the date on which the measure leading to the disputed tax treatment takes place.

The new procedure replaces the previous legislation according to which MAP was an alternative mechanism compared to litigation.

Decree No. 49/2020 expressly states that the taxpayer is not required to initiate a tax litigation before filing of the MAP. At the same time, once the specific MAP request has been filed, the taxpayer reserves the right to file an appeal against the tax assessment: in this case, the taxpayer may request the suspension of the tax litigation (if already pending) before the competent tax court.

However, the MAP request cannot be filed if a final judgment has been given on the disputed issue or in case the parties reached a binding agreement in the course of the litigation procedure.

In addition to the above, a simplified procedure is provided for Italian resident individuals and for small and medium-sized companies that are not part of a large multinational group. These taxpayers may submit a specific MAP request only with the Italian tax authorities, that will then notify the other tax administrations of the relevant countries involved.

Preparatory Stage If necessary for investigative purposes, the Italian tax authority could request that the taxpayer provides additional information within three months from the date of receipt of the relevant request.

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In such a case, the taxpayer should reply to the Italian Revenue within three months from the date of receipt of the request.

Multilateral Agreement Procedure Upon filing of a MAP request, the Italian tax authority may decide to:

- go through the procedure unilaterally without the involvement of the tax administrations of the other member states, only if the controversy can be resolved within six months from the date in which the request has been received;

- reject the request, explaining the reasons for its decision;

- accept the request or remain silent for more than six months; in the latter case, the MAP request is considered as formally accepted.

If the case the decision is rejected, the taxpayer is entitled to appeal it before the competent tax court.

It should be noted that when the taxpayer's request is accepted, the MAP procedure is official and the tax administrations of the member states involved are required to find a solution and resolve the controversial tax issue within two years from the day in which the formal acceptance of the request is notified to the applicant. Upon request from one of the tax administrations involved, the MAP procedure can be extended for an additional year.

Once the agreement with the tax authorities of the other member states has been reached, the Italian Revenue must notify the final decision to the interested taxpayer within 30 days; if no agreement is reached, the Italian tax authority will inform the taxpayer of the negative outcome.

Advisory Commission Appointment

A further new measure introduced by Decree No. 49/2020 to solve international conflicts and avoid double taxation is the possibility for the taxpayer to request, to the Italian Revenue and the competent authorities of the other member states involved, the appointment of an Advisory Commission for reviewing and resolving tax issues.

The Advisory Commission may be appointed in the following cases:

- when the MAP request has been rejected by at least one, but not by all, the competent tax authorities;

- when the MAP request has been rejected by all the tax authorities of the member states concerned and at least one tax decision in favor of the taxpayer has been issued (decision arising from the appeal before the tax court of a member state of the rejection decision of the authority of that member state);

- when the competent authorities of the member states concerned have accepted the MAP request, but they have not been able to reach an agreement.

The Italian Revenue has the right to oppose the taxpayer's request to set up an Advisory Commission in the following cases:

- the tax controversy to be presented before the Advisory Commission implies a tax criminal offense; or

- the controversial tax issue does not give rise to a double taxation.

The Advisory Commission must be appointed within 120 days from the date in which the taxpayer filed the request. Members of the Commission include:

- the president;

- one representative for each tax administration involved;

- one independent member.

The Advisory Commission must decide on the taxpayer's request within six months from its appointment.

Should the Commission not be appointed within the deadline of 120 days, the interested applicant can bring the case in front of the Regional Tax Commission of Lazio, requiring the President to set up the Advisory Commission and/or to appoint the independent member.

Alternative Dispute Resolution Mechanism

Decree No. 49/2020 also provides for an additional and alternative dispute resolution mechanism.

The competent authorities of the member states involved can decide to set up an Alternative Dispute Resolution Commission, instead of the Advisory Commission. The appointment of this Alternative Dispute Resolution Commission is more flexible, considering that the tax administrations would be free to suggest the way to resolve the controversy.

When the Advisory Commission, or the Alternative Dispute Resolution Commission, provides for a solution, the tax authorities shall agree on the identified solution and resolve the controversy within six months. Please note that any results reached during the arbitration phase are not binding for the tax administrations involved, which could at any time find and agree on different solutions from those proposed by the Commissions. However, if no agreement is reached, the controversy shall be solved in accordance with the decision resulting from the arbitration procedure.

The Italian Revenue shall notify the final decision on the controversial issue to the taxpayer within 30 days from the date in which the same decision has been adopted.

Interaction with Other Multilateral Agreement Procedures

When a MAP is requested on a multiple legal basis (i.e. international agreements or conventions for the avoidance of double taxation), the procedure will take

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place and will be regulated by the provisions of Decree No. 49/2020.

Enforcement of the Final Decision

Decree No. 49/2020 also establishes rules to implement the decision arising from the MAP or the arbitration procedure. Specifically, the Italian Revenue shall apply the decision either by:

- collecting the higher tax due;
- granting a tax refund;
- granting a relief for tax not due.

The Italian Tax Administration will apply administrative penalties plus late payment interest, calculated starting from the date in which the final decision has been adopted.

The resolution of the controversy between the tax administrations involved is enforced provided that the taxpayer accepts in writing the final decision within 60 days from the relevant communication and, contextually, renounces to appeal it.

Planning Points Decree No. 49/2020 implements the Council Directive 2017/1852, introducing significant improvements for solving cross-border tax disputes,

which may arise from different interpretations of international agreements or conventions against the double taxation taken by tax administrations from different EU countries.

- EU taxpayers might benefit from the new EU tax dispute resolution mechanism, by applying for a MAP request. It represents an alternative procedure to a tax litigation and can be applied also if a tax litigation is already pending;

- under the MAP procedure, the taxpayer may suspend a pending tax litigation and may claim the suspension of the related tax collection;

- it is now possible for the taxpayer to request the appointment of an Advisory Commission or an Alternative Dispute Resolution Commission to settle cross-border tax conflicts between EU tax administrations;

- new rules also provide for simplified and certain procedures to efficiently reach an agreed solution on double taxation issues in a reasonable timeframe.

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