

Tax | Cooperative Compliance

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Amendments to the "Cooperative Compliance" regime

Following the approval of Legislative Decree No. 221 of 30 December 2023, published in the Official Journal No. 2 of 3 January 2024, which came into force on 18 January 2024 (the "Decree"), the new Cooperative Compliance regime is effective, which provides an enhancement of the existing regime in terms of requirements, duties, effects, powers and procedures.

The Cooperative Compliance, established by Legislative Decree No. 128 of 5 August 2015, under the heading "Provisions on legal certainty in relations between tax authorities and taxpayers", aims to promote enhanced forms of communication and cooperation between tax authorities and taxpayers (in possession of certain requirements), favoring the prevention and resolution of disputes in tax matters.

✓ **Entry thresholds**

One of the novelties brought about by the Decree concerns the size requirements of the entities eligible. Pursuant to Art. 7, c. *1-bis*, of Legislative Decree No. 128/2015, introduced by the Decree, the regime is accessible by those taxpayers with turnover or revenues exceeding:

- EUR 750 million since 2024;
- EUR 500 million since 2026;
- EUR 100 million since 2028.

In order to check the entry thresholds at the date of submission of the application it is necessary to select the higher value between (i) revenues accounted, in accordance with correct accounting principles, in the financial statements for the previous financial year and the two previous financial years and (ii) the turnover arising from the VAT return filed for the previous calendar year and the two previous ones.

Pursuant to the newly introduced paragraph *1-quater* of Art. 7 of Legislative Decree No. 128/2015, the Cooperative Compliance is eligible for taxpayers belonging to the same tax consolidation scheme pursuant to Art. 117 et seq. of Presidential Decree No. 917/1986, provided that (i) at least one taxpayer adhering to the group taxation system meets the size requirements set forth in paragraph *1-bis* and that (ii) the group adopts an integrated tax risk detection, measurement, management and control system ("Tax Control Framework"), certified pursuant to Art. 4, c. *1-bis* of Legislative Decree No. 128/2015.

This regime remains eligible, irrespective of the amount of turnover or revenues and provided the other requirements provided for by the regime are met, to taxpayers who implement the response to the new investments tax ruling (pursuant to Art. 2 of Legislative Decree No. 147/2015).

✓ **Certification of the Tax Control Framework**

Among the new features of the Decree, Art. 4, c. *1-bis* of Legislative Decree No. 128/2015, set forth by the Decree, provides that the system for the detection, measurement, management and control of tax risk (Tax Control Framework) must be certified, also with regard to its compliance with the accounting standards, by independent qualified professionals with certified experience and registered with the Register

of Lawyers or Chartered Tax Advisors and Accounting Experts. They may be supported by auxiliary labor consultants for matters within their expertise, provided that the certification is signed by the former.

Subsequent operative regulations, to be issued by 2 April 2024 (pursuant to Art. 1, c. 2 of the Decree, i.e. “*within ninety days of the date of entry into force of this decree*”), will set for the minimum requirements of the professionals to be authorized to issue the certification, their tasks and requested fulfillments.

Guidelines for the preparation of an effective system for the detection, measurement, management and control of tax risk and its updating, including the periodic adjustment of the certification, will be issued in a subsequent provision.

In addition to the faithful and timely fulfilment of tax obligations, the Tax Control Framework must ensure: *a)* a well-defined allocation of roles and responsibilities to the various functions of the taxpayer's organization in relation to tax risks; *b)* effective procedures for the detection, measurement, management and control of tax risks, which effectiveness and compliance shall be ensured at all company levels; *c)* effective procedures aimed to remedy any shortcomings found in operations and to adopt the necessary corrective actions; *c-bis)* a mapping of tax risks relating to company processes (the latter being a new feature introduced by the Decree).

✓ **Ongoing review and consultation between tax authorities and taxpayers in Cooperative Compliance**

A new decree to be adopted by 2 April 2024 will define a code of conduct regulating the commitments that the tax authorities and the taxpayers under the Cooperative Compliance regime mutually undertake, including the one relating to the reporting of tax-related risks and, in particular, of transactions that may fall within the scope of aggressive tax planning.

New regulations will also be adopted by 2 April 2024 regulating the procedures for regularizing the taxpayer's position in the event of voluntary amendments deriving from the Tax Authorities guidelines, providing for a prior cross-examination as well as simplified procedures and reduced deadlines for the settle of proceedings or audits.

As a result of the new paragraph *2-bis* of Article 6 of Legislative Decree No. 128/2015, the Italian Tax Authorities, before notifying an unfavorable answer to a tax ruling, or before formalizing any deny to a risk communication, invites the taxpayer to a consultation to discuss its position. The implementing provisions of this procedures are left to a subsequent decree, also to be adopted by 2 April 2024.

✓ **Benefits under the Cooperative Compliance regime**

An important novelty introduced by the amendment to Article 6, c. 3, of Legislative Decree No. 128/2015, is the total relief from administrative penalties in the event of adherence to the Cooperative Compliance, to the extent that the tax risks are communicated to the Italian Tax Authorities in a timely and exhaustive manner, by means of an appropriate communication, filed by the relevant tax deadlines, or before the relevant tax deadlines have passed, and provided that the conduct of the taxpayer is “exactly” corresponding to the one represented in the communication. It is understood that this benefit scheme is not applicable in cases of tax violations characterized by simulations or

fraud and such as to undermine the mutual trust between the tax authorities and the taxpayer.

There is also the possibility to get a reduction in applicable penalties down to 50% (and in any case no more than the minimum edictal amount), if the conduct adopted relates to a “non-significant” tax risk, which the taxpayer has nevertheless included in the tax risk map. In this case, the suspension of the collection of penalties is granted until the assessment is final.

It is also given the possibility to benefit from the reduction in the applicable penalties down to 50% (and in any case not exceeding the minimum amount), if the taxpayer spontaneously communicates the tax risks related to conducts carried out in tax periods prior to the one of entry into the regime within 120 days from the notification of access to the Cooperative Compliance regime. This option is subject to the condition that the disclosure of such risks is made in a comprehensive manner, and before the taxpayer has had formal knowledge of any accesses, inspections, audits, or the commencement of any administrative assessment or criminal investigation of the risks disclosed. Unlike in the case of violations related to “non-significant” risks, in this circumstance there is no suspension of the collection of penalties until the assessment is final.

With the entry into force of the Decree, the false declarations (Art. 4 of Legislative Decree No. 74/2000) coming from tax risks relating to elements communicated in a timely and exhaustive manner to the Italian Tax Authorities, by means of a tax ruling, before the submission of tax returns or before the expiry of the relevant tax deadlines, is not subject to criminal penalties.

Finally, reductions in the statute of limitation have been provided for pursuant to Art. 1, par. 1, c), No. 6) of the Decree (with the introduction of paragraphs *6-bis* and *6-ter* of Article 6 of Legislative Decree No. 128/2015). In particular, if the Tax Control Framework is certified pursuant to Art. 4, c. 1-bis of Legislative Decree no. 128/2015, the statute of limitation pursuant to Art. 43, c. 1, Presidential Decree no. 600/1973, Art. 57, c. 1, Presidential Decree no. 633/1972 and Art. 20 of Legislative Decree no. L. 472/1997, is reduced by two years, for the tax periods to which the Cooperative Compliance regime applies.

These time limits are reduced by a further year if it is issued the “tax certification” provided for in Art. 36 of Legislative Decree No. 241/1997, certifying the correct application of the substantive tax rules, as well as the performance of the fulfilments, controls and activities indicated annually by a specific decree.

It is understood that the reductions in the statute of limitation are not applicable in the case of infringements committed by means of false documentation or for non-existent transactions, through artifice or deception, simulative or fraudulent conduct.

✓ **Operative guidelines of the Cooperative Compliance regime**

In a subsequent decree, the operative guidelines for the application of the Cooperative Compliance regime will be released.

Taxpayers wishing to join the regime must apply electronically using the appropriate form available on the Italian Tax Authorities website. Once the existence of all the requirements provided for by the regulations has been verified, the Italian Tax Authorities will notify taxpayers of their admission to the regime within the following 120 days. The effects of the Cooperative Compliance regime apply to the tax period in which the

application is submitted to the Italian Tax Authorities. Tacit renewal of the regime is provided for, unless the taxpayer expressly notifies the Tax Authorities of its withdrawal from the regime.

The Italian Tax Authorities may declare the exclusion - which takes effect as from the date of notification of the measure - from the Cooperative Compliance regime, by means of a reasoned measure, upon invitation to consultation to be carried out within the following thirty days, in the event of loss of the requirements provided for by the regulations or in the event of non-compliance with the obligations provided for by Art. 5, c. 2, Legislative Decree no. 128/2015. In the latter hypothesis, a transitional observation period is allowed, aimed at verifying the adoption by the taxpayer of all the actions deemed necessary for the adoption of the Cooperative Compliance regime and the regularization of the related tax violations, after which the exit from, or permanence in, the regime is determined. This 120-days observation period is renewable for a further period of equal duration in the event of objective justifications and is not applicable in the event of fraudulent conduct, such as to undermine the mutual trust between the tax administration and the taxpayer.

✓ **Cooperative Compliance regime by option**

With the introduction of Art. 7-bis of Legislative Decree No. 128/2015 (pursuant to Art. 2 of the Decree), the possibility is given also to those taxpayers who do not meet the requirements to apply the Cooperative Compliance regime and adopt a tax risk detection, measurement, management and control system provided for by Art. 4 c. 1-bis of Legislative Decree No. 128/2015, introduced by Art. 1, par. 1, lett. a), No. 2 of the Decree, upon a specific communication to the Italian Tax Authorities. The option takes effect from the beginning of the tax period in which it is communicated, has a duration of two tax periods and is irrevocable. At the end of this period, the option is tacitly renewed for another two tax periods, unless expressly revoked.

Through the option, violations relating to tax risks communicated in advance through the tax ruling pursuant to Article 11 of Law No. 212/2000, filed before the submission of tax returns or before the expiration of the relevant tax deadlines, administrative penalties are reduced to one-third (and in any case may not be applied to an extent higher than the minimum amount).

In addition, for the offence of false declaration (Art. 4 of Legislative Decree no. 74/2000) no criminal penalty regime is provided for in the event of prior and circumstantiated communication to the Italian Tax Authorities - again by means of a tax ruling pursuant to Art. 11 of Law no. 212/2000 - of the concrete cases in which tax risks are identified in relation to assets.

A specific decree will be issued to regulate the procedures for the application of the Cooperative Compliance regime by option provided for in Art. 7-bis of Legislative Decree No. 128/2015.

✓ **Effects for taxpayers already admitted to the Cooperative Compliance regime or who have already applied for**

With reference to the taxpayers already admitted to the Cooperative Compliance regime or who have already applied for prior to the entry into force of the Decree, it is not

required the certification of the tax risk detection, measurement, management and control system provided for by Art. 4, par. 1-*bis* of Legislative Decree 128/2015, introduced by Art. 1, par. 1, lett. a), No. 2 of the Decree.

In addition, the reductions in the statute of limitation provided for in Art. 6, par. 6-*bis* and 6-*ter* of the Decree No. 128/2015 apply as from the tax period in progress on 1 January 2024.

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