

Tax Control Framework and Cooperative Compliance in Italy

by Filippo Baglioni and Paolo M. Panteghini

Reprinted from *Tax Notes International*, January 22, 2024, p. 411

Tax Control Framework and Cooperative Compliance in Italy

by Filippo Baglioni and Paolo M. Panteghini



Filippo Baglioni

Paolo M. Panteghini

Filippo Baglioni is a tax manager at BDO Italy in Milan and a PhD student in Business & Law at the University of Brescia. Paolo M. Panteghini is a professor at the University of Brescia.

In this article, Baglioni and Panteghini explain Italy's new cooperative compliance regime, which looks to bring taxpayers and tax administrations together to establish a trusting relationship.

Copyright 2024 Filippo Baglioni and Paolo M. Panteghini.
All rights reserved.

Italy introduced its cooperative compliance regime in 2015. The regime encourages dialogue between large taxpayers and Italian tax authorities, resolving potential tax disputes in advance and providing tax certainty. Tax Reform Law 111/2023 of August 9, 2023, and its implementing Legislative Decree 221 of December 30, 2023, significantly strengthens the regime.

This article discusses recent changes in Italian legislation regarding the tax control framework (TCF) and cooperative compliance regime and highlights how they may affect cooperative compliance.

Evolution of the Institution Within the OECD

As part of a series of grants issued since 2008, the OECD has laid the groundwork for increased collaboration between tax administrations and businesses. This includes businesses adopting tax risk management and containment models. In Italy's case, the path to cooperative compliance legislation included a series of specific steps.

In 2002 the OECD set up the Forum on Tax Administration (FTA), a working group charged with creating a forum through which commissioners (representatives of 47 countries, including the OECD and all G-20 members) could identify, discuss, and influence relevant global trends while improving tax administration worldwide.

Since its establishment, the FTA has published a number of reports on the subject. It published its first report, "Compliance Risk Management: Managing and Improving Tax Compliance," in 2004. This report introduced the idea that individual tax administrations must raise awareness of tax obligations to build trust among taxpayers. The report introduced the idea of tax risk assessment. It asks businesses to evaluate their processes in relation to taxation through:

- analysis of the context;
- identification of risk;
- assessment and prioritization;
- analysis of behaviors with respect to compliance;
- determination, planning, and development of risk strategies; and
- the monitoring of results.

In 2008 the OECD published the report "Study Into the Role of Tax Intermediaries," which aimed to introduce a new enhanced relationship between taxpayers and tax administrations based on mutual cooperation and trust. The report recommended changing the way tax

administrations carry out their activities, including taking into account the business motivations underlying companies' actions, and remaining impartial through the allocation of resources according to taxpayers' risk profile. It also urged tax administrations to make public their individual interpretations and responses to taxpayer questions to ensure transparency in the interpretation and application of tax rules.

The International Fiscal Association (IFA) defines this concept as:

an institutional relationship specifically defined, based on mutually expressed intentions and not on detailed rules, into which taxpayers and tax authorities enter voluntarily, going beyond their basic obligations. This relationship is based on mutual knowledge, respect and active cooperation and has, as its purpose, the management of tax legislation applicable to the taxpayers' business activities, in the most efficient and timely manner possible, making disclosures concerning tax-relevant information (including positions taken) that are complete, rapid and mutual and that lead to an assessment of the correct amount of taxes, taking into consideration the rationale and purpose of tax legislation.¹

The relationship between tax administrations and taxpayers is based on five pillars:

1. Commercial awareness — the tax administration's understanding of the sector in which the business operates and its knowledge of the commercial dynamics driving the taxpayer's activities. The aim is to avoid legal uncertainty and reduce onerous tax disputes.
2. Impartiality — the tax administration's ability to approach a possible tax dispute with consistency and objectivity.
3. Tax administration proportionality when allocating resources or prioritizing actions toward taxpayers and tax issues. In other words, focusing resources on less cooperative and transparent taxpayers.

4. Tax administration openness and responsiveness as demonstrated in discussions with the taxpayer over the tax implications of a business move before the taxpayer submits a tax return or carries out the transaction.
5. Disclosure and transparency on the part of the taxpayer through prompt responses to clarification requests from the tax administration, both for existing operations and future transactions, emphasizing prior consultation. Likewise, the tax administration² must be transparent to the utmost and share operational strategies with the aim of creating a tax system devoid of interpretative bias and uncertainty in its implementation.³

The FTA published a new report in 2013, "Cooperative Compliance: A Framework from Enhanced Relationship to Cooperative Compliance," which confirmed the principles of the previous study. It also went beyond the concept of enhanced and basic relationships, the traditional situation in which tax administrations typically ensure the correct fulfillment of taxpayer obligations once the filing is complete.

However, in practice *ex post facto* monitoring is only minimally effective in encouraging compliance with tax obligations, mainly because of its inability to foster dialogue between tax administrations and taxpayers.⁴ The 2013 report acknowledges and extends key pillars of the previous report, recommending that taxpayers establish a relationship of cooperative compliance by setting up a TCF. This is an internal control system for monitoring, controlling, and assessing tax risk that guarantees clear and objective verification of the taxpayer's ability and willingness to be transparent. The cooperative regime relies on a mutual exchange: the taxpayer provides tax authorities with information on the identification, measurement, management, and

² See OECD, *Study Into the Role of Tax Intermediaries* (2008).

³ See *id.*

⁴ See Giuseppe Melis, "La cooperative compliance: una visione di sistema," presentation at conference "Adempimento collaborativo: risultati e prospettive. Confronto a più voci sulla cooperative compliance," Università Luiss Guido Carli (July 14, 2022) (in Italian).

¹ See IFA, "IFA Initiative on the Enhanced Relationship" (May 2012).

control of tax risk; and the tax administration provides certainty about the tax treatment of risks.⁵

The relationship requires the tax administration to act impartially, proportionally, and responsibly, taking particular account of the company's unique commercial activities. Of course, it requires transparency from both parties, which for taxpayers involves sharing data and information with the tax administration.

Once the TCF was identified as the necessary element for cooperative compliance regimes, the OECD in 2016 published the report "Co-operative Tax Compliance: Building Better Tax Control Frameworks." This paper outlined the fundamental elements of a tax risk control system, establishing the criteria needed to ensure appropriate levels of transparency for entry into a cooperative compliance regime.

Legislation and Practice in Italy

Italy's cooperative compliance regime came into force with Legislative Decree 128/2015. Following OECD guidance, the regime is open to taxpayers with a system in place for detecting, measuring, managing, and controlling tax risk, understood as the risk from violating tax laws or doing business in a way contrary to the principles and purposes of the tax system.⁶

Legislative Decree 128/2015 is more of an overview and required further explanation and guidance from Italy's Revenue Agency. On April 14, 2016,⁷ it provided initial clarification on:

- the objective and subjective requirements for joining the regime;
- how to apply; and
- the TCF model's audit activities carried out by the tax administration to determine the taxpayer's eligibility.

⁵ Sandro Maria Galardo, "Cooperative Compliance: Relazioni Fisco-Contribuente, la Nuova Sfida," 36/2016 *Corriere Tributario* 2735 (2016) (in Italian).

⁶ In 2013, close to the publication of the above-mentioned OECD report of the same year, Italy's Revenue Agency launched a pilot project, defined as a "cooperative compliance regime" for large taxpayers. It aimed at laying the groundwork for the identification of a reference scheme for new forms of advanced dialogue, based on cooperation, transparency, and trust between the tax administration and the taxpayer.

⁷ See Agenzia Entrate, Prot. N. 54237/2016 (Apr. 14, 2016) (in Italian).

Early adopters raised a number of questions. In response, the Revenue Agency published Memorandum 38/E⁸ on September 16, 2016, which provided "clarifications on application queries and doubts concerning the cooperative compliance regime."

The June 15, 2016, Ministerial Decree is another significant regulatory milestone. It established the "abbreviated" ruling procedure as one of the benefits for taxpayers that join the cooperative regime. The decree states that tax risk is:

the risk of operating in violation of tax legislation or contrary to the principles or purposes of the tax system.

One of the most significant Revenue Agency provisions was issued May 26, 2017. Here, the tax administration offered practical guidance for managing the cooperative compliance regime, including (among others):

- Revenue Agency and taxpayer duties;
- procedures for managing constant and preemptive dialogue;
- formalizing positions taken during the ruling procedures; and
- requirements for closing the tax period.

In Resolution 49 of July 22, 2021, the Revenue Agency provided clarification on the procedures for managing taxpayer-tax administration discussions on the formalization of positions taken during the ruling procedures, and the importance of tax risk disclosure for the taxpayer to benefit from reduced sanctions.

Cooperative compliance seeks to create a taxpayer-tax administration relationship of trust through constant and preemptive dialogue on factual matters, including anticipating controls. The final goal is to avoid tax risk as much as possible. Taxpayers may voluntarily participate in the cooperative compliance regime if they meet subjective and objective requirements (outlined below).⁹

The subjective requirements are identified in article 7 of Legislative Decree 128/2015, point 2 of

⁸ See Agenzia Entrate, Circolare N. 38/E (Sept. 16, 2016) (in Italian).

⁹ See Agenzia Entrate, "Regime di adempimento collaborativo — Che cos'è" (last updated May 4, 2022) (in Italian).

the Revenue Agency's provision dated April 14, 2016, and the Ministerial Decree of January 31, 2022. The combination of provisions and rules should provide that the regime is reserved — for the years 2022, 2023, and 2024 — for resident and nonresident entities with a permanent establishment in Italy and turnover of at least €1 billion. The entry threshold was subsequently reduced by the Ministerial Decree of January 31, 2022, to €5 million for fiscal 2020 and 2021. The regime requires companies to implement the Revenue Agency response to a request for a ruling on new investments under article 2 of Legislative Decree 147 of September 14, 2015, irrespective of their turnover or revenue.¹⁰ Entry is also allowed to individuals who are part of the VAT group of companies already admitted to the regime under Decree Law 119/2018, irrespective of their turnover or revenue.

In this regard, according to sections 2.5 and 2.6 of the Revenue Agency provision,¹¹ resident or nonresident entities with a PE in Italy that perform “functions of guidance” on a system of detection, measurement, management, and control of tax risk may join the regime by means of a “knock-on” effect from the entities described above, even if they do not meet the size requirements.

In line with the 2016 OECD paper, “Building Better Tax Control Framework,” entities in Italy must embed an efficient tax risk control system within their corporate governance and internal control systems.

Tax risk has been defined twice by the director of the Italian Revenue Agency (published in 2016 and 2017, respectively). Under the definition, tax risk may arise from uncertain business activities. It may relate to the interpretation of the legislation and practice of a country other than that in which the company has its headquarters, or from the

definition of a management system for the activity carried out to optimize the fiscal variable.¹²

In light of the combined provisions of Italy's legislation, the TCF is considered effective when it ensures that the company enjoys constant supervision of its tax risks. To join, the business must write a summary document, approved by its top management. It must highlight the company's risk appetite, the extent of top management's participation in tax planning decisions, and the company's objectives concerning tax risk management. The tax strategy must also include the operational approaches to be taken for the company to be rated at the selected levels of risk; for example, the description of incentive mechanisms to compensate top managers.¹³

The system must also clarify personnel roles in relation to skills and experience, and specify the responsibilities for detecting, measuring, managing, and controlling tax risk. Tasks and responsibilities should be allocated to different operators involved in the process to prevent an excessive concentration of powers. This reduces the likelihood of errors or inappropriate or fraudulent behavior: Each person involved in the process can control the actions of others. Segregation of duties is applied both horizontally (the distribution of tasks and responsibilities among operators engaged in the same process), and vertically (ensuring the separation of operational functions from control functions to prevent conflicts of interest).

Compliance with procedures must be ensured at all corporate levels. Hence, the company must provide training on the main tax risks as well as the related control measures.

The TCF must also be properly integrated with other business structures. In common business practice, models have three levels of control. The first level is the control owners responsible for business processes. They verify the application of business processes and

¹⁰The request for ruling on new investments, established under article 2 of Legislative Decree 147/2015, referred to as the “internationalization decree,” can be submitted to the Revenue Agency by both Italian and foreign investors who intend to make major investments in the national territory, valued at a minimum of €15 million, and that are expected to yield significant and lasting employment outcomes.

¹¹Revenue Agency, Provision Ref. No. 54237/2016: “Regulations on the Requirements for Access to the Cooperative Compliance Regime Governed by Articles 3 et seq. of Legislative Decree 128 of August 5, 2015.”

¹²*Corporate Tax Governance: Il rischio fiscale nei modelli di gestione di impresa* (2018) (in Italian).

¹³OECD, “Co-Operative Tax Compliance: Building Better Tax Control Frameworks,” at “Essential Building Blocks of a TCF: 1. Tax Strategy Established; 2. Applied Comprehensively; 3. Responsibility Assigned; 4. Governance Documented; 5. Testing Performed; 6. Assurance Provided” (2016).

procedures with a view to full compliance with applicable tax regulations. The second level is the newly introduced tax risk manager, focused on evaluating the efficiency and effectiveness of the first-level controls. This is accomplished through continuous monitoring of business processes and associated tax risks that facilitate fulfillment of the company's transparency and cooperation obligations outlined in article 5, paragraph 2 of Legislative Decree 128 dated August 5, 2015. The third-level control periodically evaluates the adequacy of the entire risk control system.

The risk management model must include a mapping of business processes and an assessment of all potential tax risks. For every identified risk, there must be a control system, structured as a process governed by a suitable company procedure. Corporate controls, TCF operational rules, and the relative responsibilities assigned to each, must be addressed by company procedures.

To be effective, the TCF must adapt in a timely manner to major changes affecting the business, including changes in tax legislation. The mapping of tax risks should follow an *ex ante* approach, with process and risk mapping always kept up to date. To this end, the company must provide for consolidated procedures or practices that enable the tax risk manager to be informed about new features of business processes as well as updates to tax legislation to keep the mapping of processes and risks current at all times.

The system must include effective periodic monitoring and testing procedures that, through a self-learning cycle, detect any deficiencies or errors in the system's operation and then activate the necessary corrective measures.

According to Italian legislation, the TCF must produce an annual report prepared by the tax risk manager to be submitted to the management bodies, indicating:

- a description of the activities planned and carried out by the second-level control (or tax risk manager) during the year;
- the outcomes of monitoring and testing activities;
- a description of any control deficiencies identified and an individual assessment of their significance;
- a description of the identified remedial actions (remediation plan) and follow-up;

- any observations by the third-level control function;
- training activities carried out in the reporting period and planned for the following year; and
- the plan for total cost of ownership monitoring and testing activities for the following year.

Taxpayers meeting these conditions can apply for entry into the cooperative compliance regime using a specific form.¹⁴ If subjective requirements are met through the request for ruling on new investments, the taxpayer will have to prove that they comply with the interpretation of the tax administration.

The application for entry must be accompanied by:

- a description of the business conducted by the company;
- the tax strategy;
- a description of the tax risk control system adopted and how it operates;
- a mapping of business processes; and
- a mapping of the tax risks identified by the tax risk control system since its implementation and the controls provided.

Upon receiving the application, the Revenue Agency examines the applicant's documents, evaluates the fulfillment of all essential requirements of the TCF, and carries out spot checks on the company's tax-related business processes. If the audit is successful, the Revenue Agency grants a ruling effective retroactively to the date when the application for entry to the cooperative compliance regime was submitted.

The list of companies eligible for the cooperative compliance regime is published on the Revenue Agency website.¹⁵ So far, only 96 companies have been included. However, this small number is useful for checking the efficiency of existing rules.

Admission to the cooperative compliance regime provides taxpayers with multiple benefits from strengthening the relationship with the tax administration, which help prevent and mitigate

¹⁴ See Agenzia Entrate, "Modello e istruzioni" (May 4, 2022) (in Italian).

¹⁵ To date, 96 companies are listed on the Revenue Agency website.

negative tax consequences resulting from the taxpayer's actions, and offer greater fiscal certainty.

From a procedural perspective, the sole cooperative compliance department within the Revenue Agency, supported by its regional offices, is responsible for checking tax returns, correct fulfillment of other tax obligations, and all activities associated with the regime. Therefore, taxpayers have the benefit of a single contact. For example, if the Guardia di Finanza (Italian finance police) intends to carry out checks on a taxpayer, it is required to inform the cooperative compliance department at the Revenue Agency, which will then conduct its own assessments and liaise with the taxpayer.

Another notable advantage for the taxpayer is the option of sharing uncertain tax issues with the Revenue Agency in advance and receiving clarification on the correct interpretation of tax legislation.

On the one hand, taxpayers can access a fast-track ruling procedure. The Revenue Agency is required to provide a response within 45 days (instead of the standard period of 90 or 120 days in the case of specific ruling requests) from the submission date of the ruling request or upon receipt of supplementary documentation provided by the taxpayer. On the other hand, taxpayers can request a preliminary assessment of tax issues to understand the Revenue Agency's stance, particularly in relation to sensitive tax issues, and to mitigate negative tax effects. Within the framework of the regime, dialogue with the Revenue Agency is continuous, and taxpayers are required to behave with the utmost transparency. In this way, disclosure of potential tax risks can lead to significant tax benefits.¹⁶ Under the current provisions, if a taxpayer notifies the Revenue Agency of tax risks before the deadline for filing its tax return, and the Revenue Agency disagrees with the taxpayer's position, the taxpayer could benefit from a 50 percent reduction in the sanctions for the tax violation. Further, the Revenue Agency suspends the collection of

penalties: They will be paid only when the tax assessment has been closed.

For criminal tax matters, there is no regulatory protection for the taxpayer. However, to mitigate criminal liability, the Revenue Agency must inform the Public Prosecutor's Office whether the taxpayer has joined the cooperative compliance regime. This protection has just been introduced by Legislative Decree 221/2023 of December 30, 2023, which implemented Tax Reform Law 111/2023, which will be discussed in more detail later in the article.

Also, the taxpayer is not required to provide any guarantees in relation to tax refund claims. This is a significant financial benefit, especially in terms of a VAT credit refund. Taxpayers also benefit from a positive reputation among stakeholders, thanks to the publication of the list of companies admitted to the regime on the Revenue Agency website.¹⁷

Legislative Decree 221/2023 of December 30, 2023, aims to strengthen cooperative compliance and, to this end, introduced the following new elements.

First, the regulation envisages a program to decrease the revenue or turnover threshold required for entry to broaden the scope of application. It has been set at €750 million for 2024, €500 million for the period 2025-2027, and €100 million for 2028.

Size is assessed by using the higher of revenue reported in the financial statements for the year preceding the year of the application date and the two preceding years, or the turnover reported in the VAT return for the previous calendar year and the two preceding calendar years as a benchmark.

The regulation also provides for entry into the cooperative compliance regime for taxpayers that belong to the same national tax consolidation outlined in article 117 et seq. of Presidential Decree 917/1986, provided that at least one company participating in group taxation meets the size requirements and that the group adopts a TCF.

Article 1(a) of the proposed decree modifies article 4 of Legislative Decree 128/2015, requiring

¹⁶ Luigi Quaratino, "Italy's Cooperative Compliance Regime Broadened in Scope Under 2023 Tax Reform Law," 63(11) *European Taxation* (2023).

¹⁷ See Agenzia Entrate, "Elenco società ammesse al regime" (in Italian).

taxpayers to have an effective integrated tax risk detection, measurement, management, and TCF that provides for a comprehensive mapping of business processes and associated tax risks, including those related to the correct application of accounting principles. Moreover, according to the tax reform, certification of the tax risk control system is needed, including compliance with adopted accounting principles. A new paragraph (1-bis under article 4 of Legislative Decree 128/2015) states that the TCF must be:

- prepared in a manner consistent with guidelines that will be provided in a provision of the Revenue Agency;¹⁸ and
- certified by independent professionals with specific qualifications, duly registered as lawyers or certified public accountants.

TCF certification plays a crucial role in verifying that the company has a reliable tax risk control system integrated with its financial and accounting reporting control system. It ensures the soundness of the accounting data upon which the tax obligations are based.

Hence, TCF certification is an essential requirement to be eligible for the cooperative compliance regime. However, according to article 1(3) of the draft under review, individuals who have already been admitted are not required to certify a TCF.

In line with the provisions of the enabling act, article 5 of Legislative Decree 128/2015 is amended to call for a code of conduct outlining the commitments mutually undertaken by both the tax administration and taxpayers participating in the regime. This includes the periodic publication on the Revenue Agency website of an updated list of transactions, structures, and schemes deemed to involve aggressive tax planning.¹⁹

To simplify the tax relationship, Legislative Decree 221/2023 requires that Minister of Economy and Finance regulations govern the

procedures for the regularization of the taxpayer's position following compliance with Revenue Agency instructions involving a voluntary tax correction. These procedures should provide for a prior cross-examination as well as simplified procedures and shorter deadlines for the closure of the proceedings.

Further, the recently introduced paragraph 2-bis, article 6 of Legislative Decree 128/2015 states that before issuing an unfavorable response to a ruling request or formalizing any other position contrary to a disclosure of risk under article 5, paragraph 2(b) of Legislative Decree 128/2015, the Revenue Agency must invite the taxpayer for a cross-examination to explain its position. The implementation of this paragraph is adopted by decree of the Minister of Economy and Finance.

Potentially the most significant changes introduced by the legislative decree are the amendment to the sanction system and the two-year reduction of the investigation period.

The new wording of article 6 of Legislative Decree 128/2015 stipulates that (except in cases of tax violations characterized by fraud that undermines the mutual trust between the tax administration and the taxpayer), sanctions won't apply to individuals who adhere to the regime and who, before filing tax returns or the expiration of the related fiscal deadlines, communicate in a comprehensive manner to the Revenue Agency, through the ruling procedure, the tax risks, provided that the conduct maintained is exactly as represented at the time of the communication.

If a taxpayer behaves in a manner consistent with a nonsignificant tax risk identified in the risk map, the applicable administrative sanctions are reduced by half, not exceeding the minimum prescribed by law. Collection of sanctions is in any case suspended until the assessment is definitive.

Further, taxpayers are allowed to report tax risks associated with actions taken in tax periods before their entry into the regime, provided that these risks are communicated exhaustively, before the taxpayer becomes formally aware of any audits, inspections, verifications, or the commencement of any administrative assessment or criminal investigation into the reported risks. For the communications that must be made no later than 120 days from notification of the

¹⁸The standardization is intended to shift from an "open" system (in which each applicant submits their own form at the time of filing) toward a more standardized system. Using the usual Revenue Agency documents, four standard types of TCF will likely be envisaged, taken from the existing standard company models: industrial, banking, insurance, and holding company.

¹⁹The drafting of the code of conduct is delegated to a decree of the Minister of Economy and Finance.

admission to the regime, the applicable administrative penalties are reduced by half, not exceeding the minimum prescribed by law.

From a criminal tax perspective, the reform introduces new grounds for exemption from the offense of false declaration governed by article 4 of Legislative Decree 74/2000. This provision sanctions anyone who declares assets in one of the annual tax statements for a total amount below the actual amount or declares nonexistent liabilities when, concurrently:

- the amount of tax evasion exceeds €100,000; and
- the total amount of undeclared assets (including entries for nonexistent liabilities) is either more than 10 percent of the total amount of assets declared, or, in any case, exceeds €2 million.

The revised wording of article 6 of Legislative Decree 128/2015 ensures no penalties for the conduct referred to in article 4 of the Legislative Decree 74 of March 10, 2000, arising from tax risks related to active elements, provided these are communicated to the Revenue Agency in a timely and comprehensive manner, through the ruling procedure, or in accordance with article 5, paragraph 2, subparagraph (b), before the submission of tax declarations or before the expiration of their respective fiscal deadlines. However, this reprieve does not apply to violations arising from tax risks related to nonexistent passive elements.

The new article 6, paragraph 6 of Legislative Decree 128/2015 provides for an exemption from the requirement to provide a guarantee in the case of a VAT refund request submitted by the VAT group representative, in all instances in which at least one of the participants in the group has adhered to the cooperative compliance regime.

Another significant revision is the two-year reduction in investigation deadline for TCF-certified taxpayers. There is an additional one-year reduction in the assessment deadline if the taxpayer obtains the tax certification outlined in article 36 of Legislative Decree 241/1997. These reductions do not apply when violations are carried out using false documentation or for nonexistent transactions, through artifice, deception, or fraud.

The new article 7(a) of Legislative Decree 128/2015 on cooperative compliance provides for the optional adoption of a tax risk control system. Taxpayers who fail to qualify for the cooperative compliance regime because of size requirements have the option of adopting a tax risk detection, measurement, management, and control system as outlined in article 4, with due disclosure to the Revenue Agency. This option is available from the tax period in which it is applied. Moreover, it lasts two tax periods, and is irrevocable. At the end of this period, the option is automatically renewed for two tax periods, unless expressly revoked according to the terms and procedures.

If the option is adopted, administrative sanctions are reduced to one-third and in any case cannot be below the minimum prescribed by law for violations relating to tax risks disclosed in advance through a pre-submission ruling or before the expiration of the relative tax return deadlines. It is worth noting that there is also an exemption for false declaration (article 4 of Legislative Decree 74/2000) for tax violations deriving from tax risks from assets, provided that the risk has been previously disclosed through a ruling in accordance with article 11 of Law 212/2000.

With the aim of extending application of the regime as far as possible, the newly introduced paragraph 7 of Legislative Decree 128/2015 foresees assigning the Guardia di Finanza to investigate eligible taxpayers. The Guardia di Finanza will be required to cooperate and coordinate with the Revenue Agency.

Some amendments to the regime's application procedure regarding which taxpayers must submit applications online using the form on the Revenue Agency website are also expected. Once the Revenue Agency has verified that applicants meet all requirements, it admits a taxpayer within 120 days. The regime applies from the tax period in which the application is submitted to the Revenue Agency. It is renewed automatically unless the taxpayer sends a request to withdraw from the cooperative compliance regime.

If a taxpayer fails to fulfill the commitments undertaken, it will be subject to a transitional observation period. At the end of this period, a decision is made whether to expel the taxpayer or allow it to remain. The transitional observation

period is not applicable in cases of tax violations involving fraud.

The transitional observation period checks whether a taxpayer has implemented the necessary actions to meet the regime objectives and has regularized its position in relation to the associated tax violations. The transitional observation period lasts for 120 days and may be extended only once.

Finally, the exclusion of taxpayers from the regime becomes effective from the date of notification of the measure.

Concluding Remarks

Cooperative compliance entails the joint application of both supranational and national rules. Moreover, it requires changes to rules to increase effectiveness and efficiency.

However, further changes are necessary. In our view, one of the main problems with Italy's cooperative compliance regime is the application procedure. Unfortunately, it is time-consuming and burdensome, especially when we include TCF compliance. The 96 eligible taxpayers have loudly underscored this point.

The TCF certification by qualified professionals could dramatically reduce the admission time. Certification would "secure" the TCF in terms of reliability and reduce the burden of control on the Revenue Agency,²⁰ making the entry procedure faster and more streamlined.

For the TCF certification, clarifications are also needed. The frequency of certification and the way this relates to the reduction in ascertainable tax years is unclear. Further clarification is also

needed about which professionals are qualified to certify the TCF. The regulation mentions independent professionals already possessing a specific qualification who are registered as lawyers or certified public accountants. However, it is unclear which kind of specific qualification these professionals should have.

There is a question as to whether certification requirements for the application of accounting principles, especially for large companies, result in duplication. This is particularly relevant for firms with minimal tax risk because of the misapplication of these principles, which do not necessitate additional mapping or certification. Examples include companies with financial statements audited by prominent firms.

With reference to the involvement of the Guardia di Finanza, we believe that they should follow the important principle of preemptive dialogue. An after-the-fact approach would undermine the rationale of the TCF.

Finally, the exemption for the offense of false declaration (governed by article 4 of Legislative Decree 74/2000) should be applied only with reference to cases involving assets. The spirit of the regulation is not to envisage exemption for cases of false declarations deriving from fraudulent conduct. However, it is worth noting that there are nonfraudulent cases involving liabilities deserving of similar protection, such as violations related to the pertinence of costs. We believe the exemption should include false statements derived from liabilities, provided they are not fictitious or nonexistent, or the result of fraudulent conduct.

To sum up, Italy is at the crossroads in terms of an effective and friendly relationship between taxpayers and tax authorities. ■

²⁰Quarantino, *supra* note 16.