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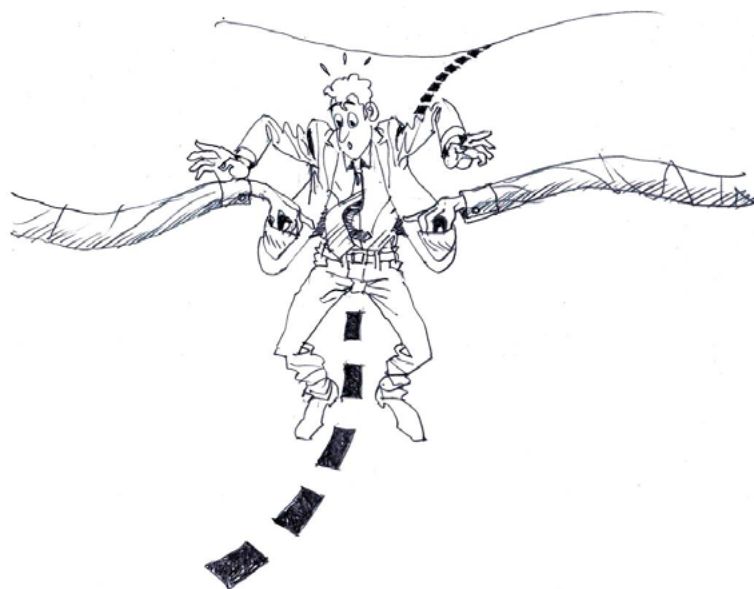
Italy warms up the engines for the implementation of the EU Dispute Resolution Directive

The deadline of June 30 for the implementation of the EU Dispute Resolution Directive was missed but Italy did not stand still, as it is now warming up its engines to set out the guidelines to be followed in translating the EU provisions into domestic law.

The Directive

The Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union (“**Dispute Resolution Directive**” or the “**Directive**”) aims at ensuring the effective resolution of disputes concerning the interpretation and application of bilateral tax treaties.

Indeed, in most cases, competent tax authorities are not obliged to reach an agreement on a common interpretation of the law in relation to specific cases, thus resulting in possible double or even multiple taxation.



Under the Directive, should the authorities fail to reach a common agreement, the taxpayers affected can still request the set up of a specific Advisory Commission, whose opinion is not naturally binding for the authorities unless they (a) decide to deviate from it but (b) further fail to reach any common conclusion.

The procedure is quite lengthy but eventually taxpayers should be able to obtain a uniform application of tax laws by the Member States involved.

Interaction with national proceedings

Affected taxpayers may submit a complaint under the Directive regardless of the recourse to any remedy available under domestic legislation. However, in such a case, the terms for the procedures set forth by the Directive from either the date on which a judgment delivered in those proceedings is final or where the proceedings have been suspended (the latter will probably be the only alternative under Italian law).

Once the procedure has started:

- In the event Member States reach an agreement and the affected taxpayers decide to comply with it, the question in dispute is resolved;
- If the agreement is reached but the taxpayers involved are not satisfied with the outcome, they can decide to still pursue the national remedies, with likely not-negligible difficulties.

The guidelines for the national transposition

The draft European Delegation law sets forth the guidelines for the national transposition of the Dispute Resolution Directive.

The guidelines are rather general and no specific direction can be found as to the specific options to be exercised in the implementation of the Directive. Such options are mentioned in Article 16 of the Directive and refer to the possibility to deny access to the procedure (a) in case of tax fraud, willful default or gross negligence and (b) with respect to disputes that do not involve double taxation.

Conclusion

The implementation of the Directive is urgent, especially in light of the significant number of cross-border disputes arising with the tax authorities of the EU Member States.

The effectiveness of the Directive is however weakened insofar as most of the questions at stake give rise to potential criminal tax investigations which may urge for a tax settlement that, in some cases, might result in unfairness and double taxation. In addition, the implementation decree may allow Italy to deny access to the Directive in situations of willful default or gross negligence which, in the tax authorities' view, may happen quite frequently in cross-border disputes.

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