



# Tax news

April 2018

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## Permanent establishment: Italian Tax Police Regulation

On April 13, 2018, the Italian Tax Police issued Regulation no. 114153/2018, to draw attention to the main changes made by:

- Tax decree 2018 - Annex 1;
- Budget Law 2018 - Annex 2.

In the annexes to the Regulation, the Tax Police describes the new rules and provides some indications on what will characterize the future controls carried out by their Departments. Budget Law 2018 (Law dated December 27, 2017, No. 205, Article 1, paragraph 1010) has modified art. 162 of TUIR (Italian consolidating act on income taxes) introducing the changes of BEPS Action 7 related to permanent establishments.

In particular, the relevant changes concern the following aspects:

- introduction of the anti-fragmentation rule, i.e. the rule

providing that the activities carried out by a foreign company in different places in Italy, or by different companies of the same group should be considered as a single company for the purpose of verifying whether such activities are "auxiliary and preparatory" (and, therefore, whether they must be taxed or not);

- definition of personal permanent establishment, providing that a dependent agent, who works to put in place contracts in the name of a foreign company, is also considered as a permanent establishment, if the contracts are approved by the foreign company without substantial modifications.

### Anti-fragmentation rule

The purpose of the anti-fragmentation rule is to prevent multinational companies from artificially fragmenting their activities to avoid the recognition of a permanent establishment. The rule provides that the auxiliary or preparatory nature of an activity carried out by a multinational company must be established considering also the functions performed by any other subsidiary resident in Italy. As a result of this new rule, the Regulation states that the approach of inspectors must change, as they will no longer have to verify the minimum requirements of a permanent establishment for the single legal entity and its activities, but their inspection must also be extended to the functions performed in Italy

from the other companies of the multinational group.

Indeed, inspectors will have to revoke the application of the tax exemption, based on the auxiliary character or preparatory activity of the company, in cases where it is ascertained that the same company (or other closely related businesses) carries out integrated and complementary functions in one or more locations in Italy when these functions have, as a whole, the characteristics of a permanent establishment.

### Personal Permanent Establishment

Budget Law modified the definition of a personal permanent establishment, in order to reflect the latest guidelines provided by the OECD. New art. 162, paragraph 6, of TUIR establishes that, for the purpose of recognition of a personal permanent

establishment in Italy, it is necessary that a dependent agent:

- acts in the territory of the State on behalf of the non-resident company;
- usually concludes contracts or, in any case, works to conclude contracts in the name of the non-resident company, which approves them without making substantial changes.

The new standard extends the status of a personal permanent establishment to cases in which the agent acts in Italy on behalf of a non-resident company and habitually concludes contracts, or operates for the purpose of concluding contracts, without substantial changes made by the company, unless the activities of that entity are not exclusively preparatory or auxiliary.

As a result, it is no longer relevant if the agent signs contract in his/her own name or on behalf of the foreign company, but rather it is necessary to evaluate how they are carried out in concrete negotiations and any other event that can influence the stipulation of contracts.

Therefore, the Regulation of the Tax Police highlights that during the inspection activities, it will be necessary to go beyond the legal-formal character of contractual events, assessing, in a timely manner, the functions actually carried out by agents and their capacity, in concrete, to decisively condition the conclusion of the agreements.

# Flash News

## FATCA agreement between Italy and the United States – reporting deadline

Italian Tax Authorities published Protocol No. 87319/2018 of 24 April 2018. The Protocol establishes the reporting deadline for submitting information related to tax year 2017 and required by the Italy-United States FATCA Model 1A Agreement (2014), signed on 10 January 2014.

## Automatic exchange of information in tax matters – reporting deadline

On 26 April 2018, the Italian Tax Authorities published Protocol No. 87316/2018 of 24 April 2018. The Protocol establishes the reporting deadline for submitting information related to the tax year 2017 and required by Council Directive 2014/107/EU of 9 December 2014 amending the European Union Mutual Assistance Directive (2011).

## Pre-filled tax returns available online

On 16 April 2018, the Italian Tax Authorities made available online pre-filled tax returns to qualifying individual taxpayers, or their tax representatives, as provided by Legislative Decree No. 175 of 21 November 2014.

If accepted, the pre-filled tax returns will become final, and assessed tax refunds will be paid without further examinations. Alternatively, taxpayers will have the possibility to amend the online tax return from 2 May 2018. Further details are available on the Italian Revenue Office website.

## Transfer pricing – consultation responses published

On 5 April 2018, the Ministry of Economy and Finance published the responses received to the public consultation on transfer pricing legislation launched in February 2018.

Comments and proposals are available on the website of the Ministry of Economy and Finance. For further details, please refer to our March Tax News.



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Clients are encouraged to seek appropriate professional advice.

We will be pleased to discuss with you the particular application of the changes to your own circumstances. To this end please contact Alessandro Dragonetti or Gabriele Labombarda at their e-mail address below:  
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Some pieces of news herein contained may be material to Advisory Services issues. Clients who are interested in delving into these items are encouraged to contact Stefano Salvadeo, Advisory Services specialist, at the following email address: [stefano.salvadeo@bgt.it.gt.com](mailto:stefano.salvadeo@bgt.it.gt.com)

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