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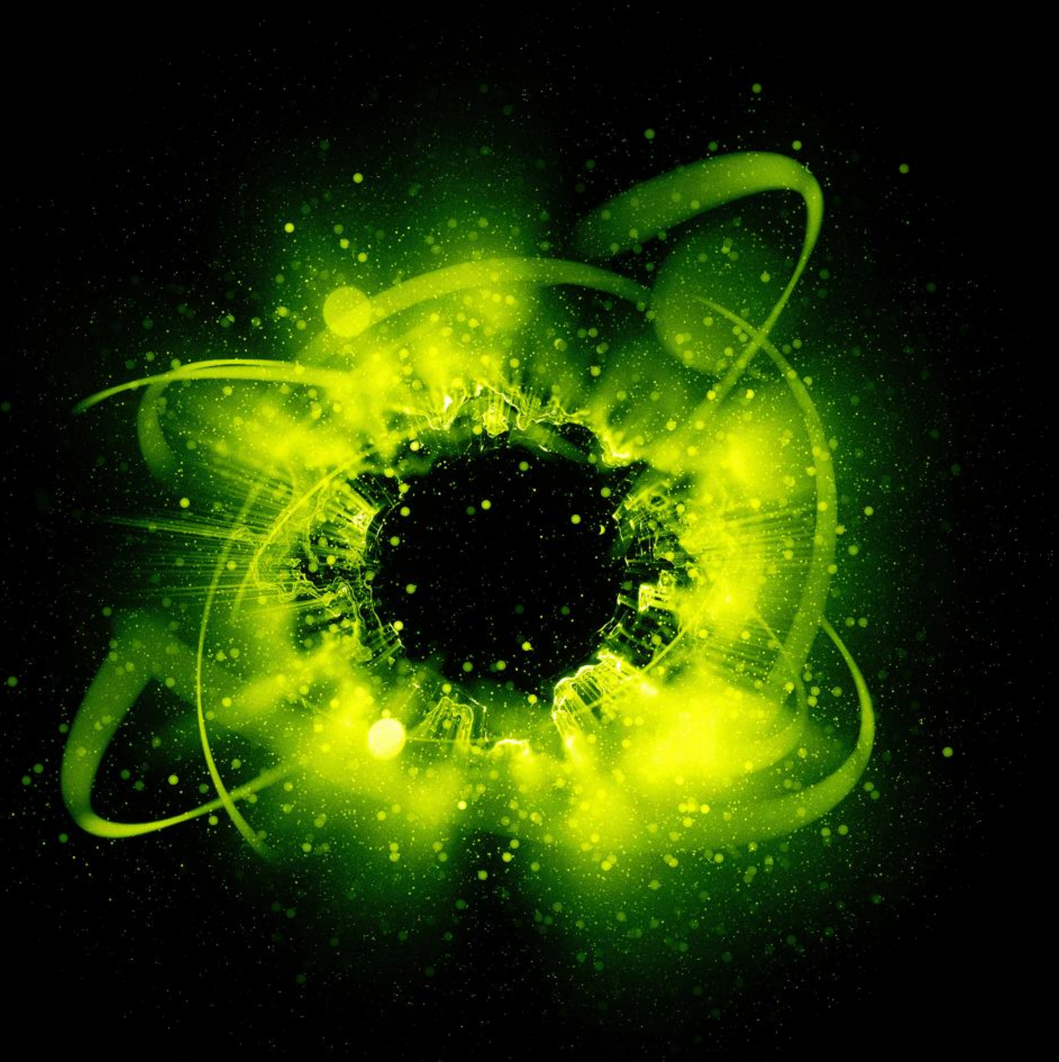

What's new in Legislative Decree 221/2023 on Cooperative Compliance:
Strengthening of the regime and competitive advantages for taxpayers

Key takeaways

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The restyling and strengthening of the Cooperative Compliance

The Italian legislator has introduced significant innovations for the "Adempimento Collaborativo" regime (Cooperative Compliance) according to the Legislative Decree no. 128/2015, that has become a differentiating factor for medium-large corporations and investors.

What's new in Legislative Decree 221/2023: the strengthening of the Cooperative Compliance regime

Since the introduction of the Cooperative Compliance, the change of the Tax Authority-taxpayer relationship and prior certainty on tax issues of significant impact have been the most significant benefits for large companies to access the Cooperative Compliance regime.

The new Legislative Decree 221/2023 significantly strengthened the rewards and increased the range of entities that **from 2024** can apply to access to Cooperative Compliance regime, Italian companies or permanent establishments with revenues or VAT turnover of at least **750 million euros** (**from 2026 not less than 500 million** and **from 2028 not less than 100 million**). The perspective is that the regime will be accessible by all large taxpayers with the Tax Control Framework integrated into the corporate internal control and risk management system.

The benefits to join the Cooperative Compliance regime have been increased as follows:

- **Disapplication of administrative penalties** for the taxpayer who timely and fully discloses tax risks through ruling or risk communication by registered email (PEC)

- **Reduction to 50% of the administrative penalties** applicable to conduct carried out in tax periods prior to the access to the regime, reported within 120 days of admission, as well as the 50% reduction of penalties applicable to voluntary corrections related to "non-significant" risks previously included in the tax risk-control matrix

- **No liability for the crime of unfaithful tax return**, pursuant to art. 4 of Legislative Decree 74/2000 for conduct related to active elements, timely communicated to the Revenue Agency through ruling or risk communication by registered email (PEC)

- **Reduction by 2 years of the statute of limitation** for corporate income taxes (IRES/IRAP) and VAT purposes, as well as for the notification of notice of penalty, for the tax periods to whom the regime applies with certified TCF (the certification requirement does not apply to individuals already in the Cooperative Compliance)

- **Additional 1-year reduction of the statute of limitation if the taxpayer** obtains the tax certification according to the art. 36 of the Legislative Decree 241/1997 (so-called "visto pesante") where a tax professional certifies the correct application of the substantive tax provisions and the performance of controls and fulfillments

- New **preventive discussion** with respect to the notification of a negative response to a ruling or a response contrary to the taxpayer's behavior in case of a tax risk communication

The new provisions introduced by the Decree change the scenario, expanding the benefits granted to companies in Cooperative Compliance. This aspect is one of the main drivers for the top management's decision to adopt the Tax Control Framework to access the Cooperative Compliance regime.

The restyling and strengthening of the Cooperative Compliance

What's new in Legislative Decree 221/2023: the strengthening of the Cooperative Compliance regime

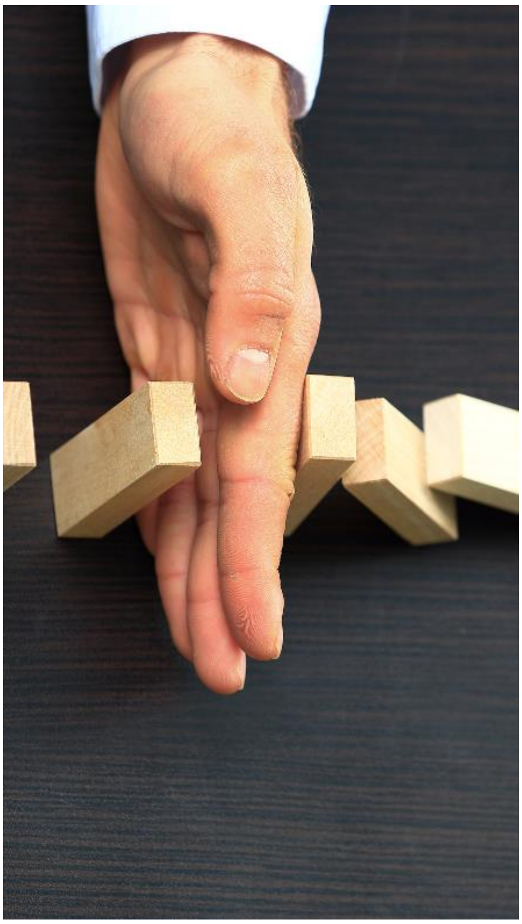
And further:

- Optional extension of admission to the regime to taxpayers who are part of the **domestic tax consolidation** of the entity with the size requirements, in case of adoption of the certified TCF
- Confirmed and formalized the taxpayer's ability to access the regime if the company has implemented the response to the **new investment ruling** according to the art. 2 of Legislative Decree 147/2015
- Introduction of a transitional observation period (120 renewable days) for taxpayers who have not complied with commitments made upon entering the regime (e.g. communications of significant tax risks), prior to the exclusion
- The regulatory and implementation framework will be better detailed based on future Decrees and Regulations.

The new optional Tax Control Framework

The provision of being able to optionally adopt a tax risk detection, measurement, management and control system (Tax Control Framework) by companies that do not meet the size requirements to access the Cooperative Compliance regime is a relevant innovation for **medium and small taxpayers** who, waiting for the gradual lowering of the threshold to access, wish to identify, assess and monitor their tax risks through an integrated TCF system. The benefits provided in case of optional TCF are:

- **Reduction to 1/3 of the administrative penalties** applicable to violations related to tax risks timely communicated by ruling to the Tax Authority, prior to the filing of tax returns or before the relevant tax deadlines have expired;
- **No criminal liability for unfaithful tax return** pursuant to Article 4 of Legislative Decree 74/2000 in relation to conduct related to the active elements, communicated in advance to the Tax Authority through ruling.
- The voluntary adoption of a TCF must be communicated to the Tax Authority; the option lasts for two tax periods (tacit renewal for additional two tax periods). The TCF must also be certified by independent professionals.



The requirements of an effective Tax Control Framework

Integration

To be an effective tax risk prevention system, the TCF must be integrated and fit into the internal control system, with shared methodologies and internal controls in place, information flows, and into the system of corporate governance, with clear allocation of roles and responsibilities to corporate bodies and functions. Integration is also critical for the purpose of mapping business processes and related tax risks to leverage on synergies.

Certification

Certification of the Tax Control Framework is now a prerequisite to access the Cooperative Compliance regime. The certification will have to be updated periodically by qualified tax accountants or lawyers, being independent towards the certified entity, also being supported by labour consultants. Instructions will be published on the requirements of the certifier and the operational procedures to issue the certification, which effectively reduces the assessment period for direct taxes and VAT purposes.

Timely and comprehensive ruling or risk communication

In order to obtain the penalty protection, the risk must be disclosed to the Tax Authority by means of a ruling or qualified risk notice, prior to the filing of the tax return. The probative ruling is reserved only to subjects in cooperative compliance or for new investment ruling.

Guidelines for risk management and mapping

It was announced that instructions will be published, e.g. the Guidelines for the TCF adoption and management, to enhance the level of reliance on the system and rationalizing the best practices, identifying a standard reference model for entities wishing to adopt a TCF.

Requirements aligned with OECD-level building blocks

The Revenue Agency has defined the essential requirements of the tax risk-control system, i.e. tax strategy, clear definition of roles and responsibilities, risk management and control procedures, monitoring, adaptability with respect to the internal and external environment, reporting to management bodies. They are in line with the "essential building blocks" of a TCF established by the OECD in “OECD (2016), Co-operative Tax Compliance: Building Better Tax Control Frameworks”. Therefore, the adoption of a TCF in one jurisdiction can be extended with limited effort to the other countries in which the Group operates.

The new requirements to access the Cooperative Compliance

Below a representation of the requirements to access to the Cooperative Compliance regime in light of the new provisions of the Legislative Decree 221/2023

Size requirements	Year of the threshold reduction	What's new for accessing the Cooperative Compliance regime*	Optional TCF from 2024 (no size threshold)
Revenues / VAT turnover < 100M Euro	N/A	-	✓
100M > Revenues / VATturnover < 500M Euro	2028	✓ Integrated TCF ✓ TCF certification ✓ "Optional" tax certification	✓
500M > Revenues / VAT turnover < 750M Euro	2026	✓ Integrated TCF ✓ TCF certification ✓ "Optional" tax certification	✓
Revenues / VAT turnover > 750M Euro	2024	✓ Integrated TCF ✓ TCF certification ✓ "Optional" tax certification	✗
Companies already in Cooperative Compliance before 2024	N/A	✓ Integrated TCF ✓ "Optional" tax certification	✗

* These requirements are additional to those already provided by the Regulations already published (e.g. Provvedimento of April 14, 2016).

In addition to the size requirements mentioned above, the following rules are valid to grant the access to the Cooperative Compliance regime:

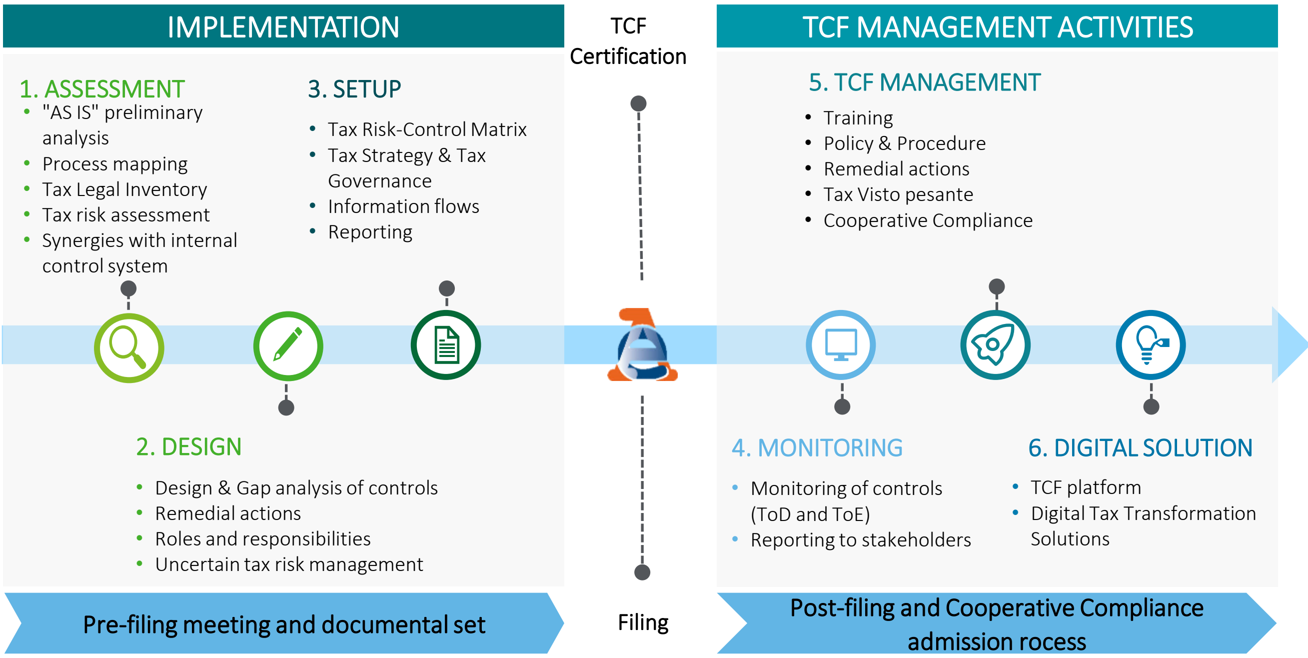
- The company with the TCF structure/governance in the same Group of the entity meeting the size requirements
- Obligation to access the regime for entities that are part of a VAT Group of at least one company already admitted to the regime (Decree-Law no. 119/2018), regardless of the VAT turnover/revenues
- Faculty of access to the regime of the taxpayer who has agreed and adopted the response to the new investment ruling according to art. 2 of Legislative Decree 147/2015
- Eligibility of taxpayers who are part of the national tax consolidation of the entity meeting the size requirements

The path of sustainable taxation: our approach

The Tax Control Framework for preventive, integrated and monitored management of tax risks

Our broad experience to assist companies in the design and roll-out of Tax Control Framework models has enabled us to refine our **tailor-made methodological proposal**, which allows us to deliver a **smart TCF solution**, adaptable according to the needs and resources of the organization, able to evolve easily with respect to changes inside and outside the organization.

Deloitte proposes a solution articulated in **several modules**, each one with phases and activities to be defined according to the prospective needs. The goal is to put companies in a position to detect/equip themselves with adequate controls aimed at mitigating tax risks, as well as to benefit from the advantages of Cooperative Compliance, with minimal impact on the organization.



The methodological approach proposed by Deloitte can adapt to different needs and sizes of companies, including:

- for **small to medium sized entities** (revenues > 100M and < 750M), we provide assistance in the assessment of tax risks and controls, the adoption of governance and a "simplified" tax risk management model, aimed at the adoption of an optional and certified TCF, even for future access to Cooperative Compliance;
- for **medium to large companies** (revenues > 750M), we provide support for the adoption of an integrated and effective Tax Control Framework and related management activities, including digital solutions;
- support to companies during the **access and following phases of the Cooperative Compliance regime**, including the certification of the Tax Control Framework and post-admission meeting with the Revenue Agency;
- for **companies already in Cooperative Compliance**, we provide TCF evolution and efficiency services, as well as digitization of processes and fiscal controls.

The path of sustainable taxation: our approach

Services related to good tax governance (continuously evolving)

Tax Control Framework

- Maturity level analysis
- Design and monitoring
- Cooperative Compliance
- Tax risk analysis & Optional TCF
- TCF evolution

Outsourcing

- Tax Risk Manager Activities
- TCF Assurance & Third Level
- TCF management activities
- Support to Internal Audit & Compliance

Certifications

- TCF certification
- Tax certification

Tax ESG & reporting

- Tax ESG Assessment / Due diligence
- Tax Transparency Report
- CSRD

Fiscal controls and processes

- Implementation of remedial actions
- Tax department evolution
- Governance & information flows
- “Smart” procedures
- Tax management reorganization

Digital solutions

- Tax Digital Assessment
- Tax control automation
- GRC
- Digitization of fiscal processes and controls

The adoption of sustainable taxation instruments, such as a Tax Control Framework and the access to the Cooperative Compliance regime, can **improve the assessment of investment sustainability** through the reduction of uncertainty arising from litigation and assessments by the tax authorities, resulting in financial and reputational damages, including criminal damage. In addition, TCF and access to Cooperative Compliance can **improve the ESG rating** (e.g., ESG Risk Rating - Sustainalytics) of companies that adopt these tools. **An effective TCF increases the level of tax certainty**, through preventive discussion with the Tax Authority and anticipation of control, reducing litigation and unexpected disputes, with savings in terms of penalties and effort of the Tax function and, ultimately, with value creation for stakeholders. The certainty and stability of the actual tax burden (ETR) is a differentiating factor and competitive advantage, which should also be disclosed in sustainability reports.

Deloitte.