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Shortened deadline for drafting TP documentation in Italy

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Federico Vincenti and Carola Valente of Valente Associati GEB Partners/Crowe Valente explain the revised timeframes and requirements for Italian taxpayers submitting transfer pricing

documentation and aiming to benefit from the penalty protection regime

The preparation of transfer pricing documentation is not mandatory in Italy, but it allows companies to benefit from so-called penalty protection in the case of adjustments to transfer prices in intra-group transactions (penalties are generally equal to 90% of the higher tax assessed).

Following the provisions introduced starting from the tax period 2020, it is necessary to finalise the documentation by the deadline for filing the income tax return, communicating in the return the availability of the documentation. Additionally, transfer pricing documentation must be digitally signed by the legal representative of the company, with the addition of a timestamp.

Until the tax period of 2022, Italian taxpayers were required to file their income tax returns within 11 months from the end of the financial year. Therefore, in the event of a financial year ending on December 31 2022, the income tax return had to be filed by November 30 2023. Consequently, transfer pricing documentation also had to be finalised by that date.

Starting from 2024, with reference to the tax period 2023, the deadline for the submission of the income tax return has been changed from 11 months to 9 months. Therefore, for the financial year ending on December 31 2023, the income tax return will have to be filed by September 30 2024. Consequently, the transfer pricing documentation will also have to be finalised by that date.

The possibility to communicate the availability of transfer pricing documentation with a corrective income tax return after the ordinary deadline has been confirmed.

In particular, communications made through a corrective income tax return submitted within 90 days of the ordinary deadline are valid. The signature and timestamp must be affixed to the transfer pricing documentation by the date of submission of the corrective income tax return.

Once the 90 days have expired, the communication can be made by remission in bonis, to be made within the deadline for submitting the first useful corrective income tax return.

Requirements for application of the penalty protection regime

It is important to reiterate that to benefit from the penalty protection regime, certain conditions must be met. Specifically, penalties will not apply if the following criteria are fulfilled:

- The taxpayer has informed the tax authorities through the relevant income tax return that it has prepared transfer pricing documentation;
- The taxpayer provides, within 20 days of the tax auditors' request, transfer pricing documentation drafted in accordance with the structured template outlined in the Italian Revenue Agency's Provision No. 360494, of 2020 (also known as the 2020 TP DOC Regulation); and

- The information presented in the provided documentation accurately reflects the underlying commercial reality.

The transfer pricing documentation will qualify for penalty protection as long as it provides tax auditors with the requisite information for a thorough analysis of transfer prices applied in intercompany transactions.

The penalty protection regime is also applicable in the case of a change to the transfer pricing method or the comparable companies selected by the Italian tax authorities during the tax audit.

As elucidated in Circular No. 15/2021, such protection extends even if the documentation has omissions or partial inaccuracies, provided they do not impede the tax audit conducted by the tax authority.

From 2020, all companies (including Italian permanent establishments) that intend to benefit from penalty protection will have to prepare a master file and a local file. The previous provision provided for a diversification of the documentation to be prepared according to the type of company:

- Holding and sub-holding companies had to prepare a master file and a local file; and
- Controlled companies only had to prepare a local file.

The content of the master file and the local file must be fully aligned with the guidance provided in [annexes 1 and 2 to Chapter V of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations](#).

These documents must be prepared in Italian. However, it is also possible to present the master file in English, considering that in some countries, this document is already mandatory and must be prepared according to OECD standards.

The only simplification provided by the Italian rules is related to small and medium-sized enterprises (with revenues not exceeding €50 million), which can update the comparability analysis every three years. Such simplification will be granted only if the comparability analysis is based on information obtained from publicly available sources and provided that the so-called five comparability factors are not significantly modified in those tax periods.

It is also possible to prepare the documentation only for selected intercompany transactions. Therefore, taxpayers will be able to decide which transactions to analyse, considering the degree of materiality or risk of the transactions. In such cases, penalty protection will be guaranteed only for the transactions covered by the transfer pricing documentation.

Final thoughts on the new Italian TP regulations

The new Italian regulations have not brought about changes concerning the form or contents of transfer pricing documentation but have only modified the deadline for its finalisation.

This alteration should be carefully assessed by Italian taxpayers, especially in cases where they must await the completion of transfer pricing documentation in foreign countries (for example, if the country where the parent company, which prepares the master file, resides has different deadlines). In such instances, various Italian taxpayers will need to consider opting for communication within 90 days following the ordinary deadline.

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