

ITALY

Valente Associati GEB Partners/Crowe Valente



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Italy releases circular on TP documentation rules

Federico Vincenti and Alessandro Valente of Valente Associati GEB Partners/Crowe Valente explain Circular 15/E which provides guidance on transfer pricing documentation in Italy.

The Italian Revenue Agency published a circular aimed at providing clarifications on the subject of transfer pricing (TP) documentation on September 26 2021. The circular took into account the comments made by professionals during the public consultation that ended on October 12 2021.

The purpose of the circular is to provide further operational instructions on the new features introduced by the regulation published on November 23 2020, regarding the suitability of the declaration which allows companies to make use of the penalty protection.

As specified by the Tax Revenue Agency among the main objectives of the TP documentation we find:

- The need to provide evidence for the reasons why the transactions between associated companies can be deemed compliant with the arm's-length principle. This can be assessed through the correct definition of the characteristics of transactions between associated companies and the identification of any comparable transactions (or subjects); and
- Provision of information to the competent authorities which is:
 - Necessary to carry out an assessment on TP's risk;
 - Useful for checking compliance with the arm's-length principle on intra-group transactions.

In order for the documentation to be deemed suitable, the circular provides that both the master file and the national documentation must follow the structure envisaged by the November 23 2020 provision, which is not limited to providing a mere indication of the information elements, but provides specific indications with reference to the nature and substantial content of the information required.

Circular 15/E of November 26 2021 confirms that:

- These documents must be prepared in Italian; however, it is possible to present the master file in English, also consider-

ing that in some countries, this document is already mandatory and must be prepared according to OECD standards;

- The master file and the local file must be signed by the taxpayer's legal representative or his delegate by electronic signature with time stamp to be appended by the date of submission of the tax declaration. Therefore, the TP documentation must be finalised within the deadline for the submission of the income tax return (generally by September 30, extended in recent years to November 30); and
- In line with the current regulatory provisions, the communication of the availability of the TP documentation must be made in the annual income tax return.

With reference to the timing required for the communication of the possession of the documentation, Circular No. 15/E of November 26 2021 specifies that:

- Communications made through declarations submitted within 90 days of the ordinary deadline are valid. The signature and time stamp must be affixed to the TP documentation by the date of submission of the late, substitute or supplementary declaration;
- Once the 90 days has expired, the communication can be made by remission in bonis discipline (Article 2, paragraph 1, Law Decree 16/ 2012), but the documentation with time stamp must be prepared within 90 days from the ordinary deadline for submitting the annual declaration; the communication must be made within the deadline for submitting the first useful declaration;
- It is possible to submit a supplementary declaration, following a declaration submitted within the terms, necessary to correct errors or omissions. In this case, the master file and the national documentation, integrated or modified, must be signed with a time stamp to be affixed by the date of presentation of the supplementary declaration, and the communication must be made through the supplementary declaration; and
- If the communication of the possession of the documents has not been carried out in a timely manner (within the remission in bonis), it cannot be carried out through any supplementary declaration submitted to correct the errors or omissions.

The assessment on the documentation's suitability is based on a substantial and not formal analysis of the data and elements indicated to allow the tax authorities a complete and thorough analysis of the transfer prices charged.

Circular No. 15/E/2021 confirms the possibility:

- For non-resident companies: to present the documentation with reference to the

operations carried out by the Italian PE with the parent company, or the other companies of the group; and

- For resident companies: to present the documentation with reference to the operations carried out by the foreign PE, under the branch exemption regime, with the other companies of the group, or with the parent company itself.

The circular also provides specific guidance on the suitable documentation for small and medium-sized companies. The possibility is confirmed for small and medium-sized enterprises (with revenues not exceeding €50 million) not to update, in the two tax periods following the one to which the local file refers, certain paragraphs relating to intragroup transactions (paragraphs 2.1.1. to 2.1.5) (as provided for under the previous regime).

Such simplification will be granted should the comparability analysis be based on publicly available sources and provided that the elements referred the five comparability factors are not significantly modified in those tax periods.

The presence of the conditions that enable small and medium-sized companies to take advantage of the scheme does not exempt them from providing yearly information, regarding the company, with particular reference to the operating structure, the activity and business strategy pursued, and intragroup transactions.

The circular confirms the novelty of the indications regarding the documentation relating to low value-added services that enable companies to adopt the so-called 'simplified approach'. Low value-added service covers services that are of a supportive nature, are not part of the core business of the group, do not require the use of unique and valuable intangibles and do not lead to the creation of unique and valuable intangible, do not involve the assumption or control of significant risk by the service provider and do not give rise to the creation of significant risk for the service provider.

Although the clarifications provided in the circular confirm Italy's alignment with OECD guidelines, in order for a documentation to be considered suitable, in addition to the substantial analysis of the contents, the tax authorities will also check the formal requirements (i.e. communication by the date of submission of the annual tax return and affixing of the signature and time stamp).

Consequently, companies should allocate the right resources (professional and economic) to ensure full compliance with new provisions and guidance released.

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