

# Italy's Tax Police publishes manual against tax evasion and fraud

In a new circular, Italy's Tax Police has updated practical procedures for transfer pricing audits. Salvatore Mattia and Federico Vincenti of Crowe Valente / Valente Associati GEB Partners detail the new provisions concerning multinational companies in Italy.

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On December 4 2017, the Italian Financial Guard (Tax Police), updated its practical guidelines regarding performance of tax audits with the release of the *Operational Manual against evasion and tax fraud – Circular n. 1/2018* (circular). The circular was updated on December 1 2017 and entered into effect on 1 January 1 2018.

Transfer pricing is one of the subjects detailed in the circular. Following specification of the applicable rules and recent OECD developments, the circular illustrates the practical procedures for transfer pricing audits.

According to the provisions of the circular, in case of tax audits concerning multinational groups, the auditors must focus on potential transfer pricing issues, already from the stage of the preparation of the audit and its primary planning. Most importantly, it must be verified from the outset whether or not the taxpayer (i) has prepared transfer pricing documentation and (ii) has communicated the availability of such documentation to the Italian Revenue Agency in the context of the tax return.

In the above scenario, a formal request for the provision of the documentation available on the transfer pricing policy of the group - master file/country file – (Transfer Pricing Documentation) shall be made. The request must be satisfied within 10 days from the date of receipt, as clarified by the Italian Revenue Agency.

In addition, the Tax Police acquires correspondence, including in informal and electronic format, regarding the relations of the taxpayer under audit with related foreign entities. Such acquisition is usually achieved through special research based on key words. This targeted investigation seeks to trace any previous drafts of the final version of the Transfer Pricing Documentation, correspondence or other internal communications revealing relevant comments or considerations and/or allowing better understanding of the logical *iter* leading to the final version of the documents. Such actions are all the more important where the taxpayer has not prepared master file/country file including information specifying the transfer pricing policy of the group.

Once the Tax Police obtains the documentation indicating the transfer pricing policy of the enterprise:

- It must critically assess the logical process that led to the selection of the transfer pricing method deemed appropriate for the transactions with related foreign companies;
- Where the method so determined by the taxpayer is not regarded appropriate by the Tax Police, the latter must

identify and apply the most appropriate (in its view) method;

- Where the method so determined is deemed appropriate by the Tax Police, the latter must verify all calculations made by the taxpayer in order to identify and correct any mistakes or omissions, formal or logical.

From a documentation viewpoint, as regards intra-group services, it is important, from the outset, to ascertain that any contracts are in writing and with legal date or at least that the operations are specifically documented. In such context, it might be important to reconcile the dates and other elements of the contracts, the *pro-memoria* or other files prior to the contract, any communications of the parties, invoices and registrations for accounting purposes.

With respect to comparability analysis, the circular reveals that the Tax Police uses the tool *TP catalyst* to develop the benchmark analysis. In this framework, the Tax Police describes the practical steps for such analysis. The main advantages of the aforementioned tool are that (i) it allows benchmark analyses driven by the tool itself and (ii) such analyses are made on the basis of releases of previous tax years. Hence the tool permits the Tax Police to verify Transfer Pricing Documentation and comparability analyses for previous tax years using the data available to the taxpayer at the time the latter effected the analysis.

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