



Transfer pricing and double taxation: Italy's downward adjustment procedure

The Italian Revenue Agency issued new rules regarding the requirements and procedure for the pursuit of downward adjustment of taxable income. TP Week's Italy correspondents Antonella Della Rovere and Federico Vincenti of Crowe Valente / Valente Associati GEB Partners explain the new provision.

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The new rules (*regulation - Provvedimento 108954/2018*) were issued on *30 May 2018*, following a public consultation launched in February 2018.

The new regulation follows the amendments introduced in 2017 for Italian transfer pricing rules. Such amendments provided for an extended taxpayer's right to request downward adjustment in connection with the correct application of the arm's-length principle.

In particular, downward adjustment of income taxable in Italy may now be pursued in the following cases:

- a) Mutual agreement between Italian and foreign tax authorities following mutual agreement procedure (MAP) either under a double tax convention (DTC) or under the EU Arbitration Convention no. 436/90/CEE;
- b) Joint audit in the context of international administrative cooperation;
- c) Taxpayer's application in view of a definitive upward adjustment following application of the arm's-length principle in another state.

In this respect, the new regulation illustrates:

- The requirements for the submission of a request for downwards adjustment in Italy;
- The relevant procedure.

The request may be submitted by Italian residents in view of (i) a definitive upwards adjustment of their taxable income (ii) following application of the arm's-length principle (iii) in a foreign state which has a DTC in force with Italy and allows for effective exchange of information.

Such request is submitted to the International Office for Preventive Agreements and Disputes of the Italian Revenue Agency. It should necessarily indicate the specific legal instrument for resolution of international disputes to be activated, i.e. MAP under a DTC or under the EU Arbitration Convention or under other legal framework.

Under penalty of inadmissibility, the deadlines stipulated in such legal instrument should be complied with and the request should include the information necessary for the activation of such instrument. In any case, the request must:

- Indicate the subject-matter clearly, i.e. the request for elimination of double taxation generated by a definitive upwards adjustment following application of the arm's-length principle in a foreign state. If the above adjustment is still not definitive on the date of submission, this should be indicated along with the conditions for the adjustment to become definitive;
- Include translation in Italian (or in English) of the foreign tax assessment from which the upward adjustment arises;
- Indicate all factual and legal circumstances necessary to evaluate the upwards adjustment, under the arm's-length principle;
- Be signed by the legal representative of the requesting entity or another person with power of representation.

From a procedural point of view, the competent authority shall declare the request admissible within 30 days by virtue of respective notification to the taxpayer. In the same timeframe, the competent authority shall notify the taxpayer of the lack of any information necessary, as above, granting 30 days to provide it. If the lack of information is not remedied promptly, the request shall be rejected as inadmissible.

The procedure should be concluded within 180 days from the receipt of the request by virtue of a reasoned act of acceptance or rejection. In case of acceptance, the competent authority shall communicate to the tax authority of the foreign state the recognition of the downward adjustment. Following receipt of the foreign tax certificate (or equivalent document) of the definitive nature of the upward adjustment abroad, the Director of the Italian Revenue Agency shall issue a ruling on the downward adjustment in Italy corresponding to the upwards adjustment abroad.

Finally, the new regulation includes provisions on the relation between the aforementioned procedure for downward adjustment in Italy and MAP. In this regard, the regulation stipulates that the submission of a request as above functions for the activation of MAP as per the applicable legal instrument. If downwards adjustment is not granted by the Italian tax authorities, the taxpayer can still independently activate MAP under a DTC or the EU Arbitration Convention. Equally, taxpayers can proceed directly with MAP, without first submitting a request under the procedure herein.



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