



Tax news

March 2018

Public consultation regarding implementation measures for transfer pricing provisions

On 22 February 2018, the Ministry of Economy and Finance launched a public consultation on transfer pricing, relating to the implementation of the provisions of Article 110, paragraph 7 of the TUIR and Article 31-quater of Presidential Decree n. 600/1973. As part of the consultation, the following draft documents (TP Package) were issued:

- Draft of the Ministerial Decree (the Draft Decree) based on the revised wording of Art. 110, Par. 7, of Presidential Decree n. 917 of 1986 (TUIR), as amended by Art. 59 of the Law Decree n. 50/2017 to clarify certain transfer pricing issues;
 - Draft of the Commissioner of Revenue Office Paper (the Draft Paper) provided for by Art. 31-quater of Presidential Decree n. 600 of 1973 regarding the newly introduced procedure allowing Italian taxpayers to obtain a unilateral downward adjustment on their taxable income as a result of transfer pricing adjustments made by foreign tax authorities as opposed to initiating the ordinary mutual agreement procedure (MAP);
 - An Italian translation of the relevant sections of the 2017 Organisation for Economic Co-operation and Development's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD TPG).
- The main purpose of the Draft Decree is to address certain issues that may give rise to controversial interpretations during a tax audit. The issues addressed include:
- Definition of ownership in order for a company to be considered as "associated enterprise";
 - Guidance to define comparability based on the five comparability criteria provided by the OECD TPG;
 - Criteria to identify the transfer pricing methods available and selection of the most appropriate method;

- Possibility to analyse different transactions jointly;
- Definition of the arm's-length range.

The main purpose of the Draft Paper is to eliminate double taxation arising from a foreign transfer pricing adjustment provided that this is final in its quantification and consistent with the arm's-length principle. The content of the Draft Paper can be summarized as follows:

Scope of the procedure

The procedure can be started by Italian taxpayers (including Italian permanent establishments of foreign multinationals) involved in intercompany transactions with foreign affiliates that have been subject to transfer pricing adjustments in the foreign country.

Content of the application

1. identification of the taxpayer;
2. subject of the request;
3. mandatory attachments such as copy of the foreign tax

assessments and certification by the foreign tax authorities that the assessment is final; and

4. description of the reasons for which the adjustments are considered in line with the arm's-length principle.

Admissibility

Within 30 days from the filing of the request, the Revenue Office declares it admissible or requests additional documentation. If any of the requirements is not met or the additional documentation is not provided, the request is declared inadmissible.

Procedure

The competent body reviews the request and may invite the taxpayer for a discussion. The term for the procedure is set at 180 days from the filing, however the competent body may also start an exchange of information with the foreign tax authorities and this could extend the mentioned timing.

Conclusion

The request is finally accepted or rejected. If accepted, a notification is sent to the foreign tax authorities and the refund is granted to the Italian taxpayer via a decision of the Commissioner of the Revenue Office. If rejected, the taxpayer can still apply for a MAP.

Finally, in order to facilitate the reading of the guidelines published by the OECD on transfer pricing in the version updated to July 2017, a courtesy translation into Italian of the relevant parts of the same was carried out.

Once the consultation, in which Bernoni Grant Thornton participated with his own project, is concluded, the MEF will draw up the definitive measures.

Flash News

Expenses for private university education – Ministerial Decree published

On 17 March 2018, the Ministerial Decree dated 28 December 2017, issued by the Ministry of Education, University and Research (Ministero dell'Istruzione, dell'Università e della Ricerca, MIUR), was published in Official Gazette No. 64.

Under article 15(1)(e) of the Consolidating Act on Income Taxes (Testo unico delle imposte sui redditi, TUIR), a 19% tax credit is granted for expenses incurred for private university education, up to the amounts established by the MIUR after taking into account the average tuition fees of public universities. The Ministerial Decree provides the specific amounts for 2017, which vary for each region and academic discipline.

Guide on tax incentives for inward expatriates published

On 22 March 2018, the Italian Tax Authorities issued a guide on the tax incentives available to inward expatriates. In particular, the guide describes the domestic residence criteria, the incentives available to qualifying researchers, employees and self-employed individuals, the favourable regime for new residents and the related administrative procedures.

All published tax guides are available on the Italian Revenue Office website.

Quarterly communication of data on periodical VAT calculations – new form published

On 21 March 2018, the Italian Tax Authorities issued Protocol No. 62214 and published the new model form to be used for the quarterly communication of data on periodical VAT calculations introduced by Law Decree No. 193 of 22 October 2016.

Data must be electronically transmitted on a quarterly basis, by the end of the second month following the quarter of reference (with few derogations). The form and related instructions are available on the Italian Revenue Office website.



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Clients are encouraged to seek appropriate professional advice.

We will be pleased to discuss with you the particular application of the changes to your own circumstances. To this end please contact Alessandro Dragonetti or Gabriele Labombarda at their e-mail address below:
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Some pieces of news herein contained may be material to Advisory Services issues. Clients who are interested in delving into these items are encouraged to contact Stefano Salvadeo, Advisory Services specialist, at the following email address: stefano.salvadeo@bgt.it.gt.com

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