CMS Expert Guide to International Transfer Pricing Documentation

Italy
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A. Transfer pricing documentation requirement

1. In your jurisdiction, are taxpayers obliged to maintain transfer pricing documentation? Does this obligation apply to all taxpayers, or only to certain categories (e.g. taxpayers with turnover or assets exceeding a particular threshold)?

There is no specific provision of law which obliges Italian taxpayers to maintain proper transfer pricing documentation. However, it is advisable for them to maintain such documentation in readiness for a possible assessment by the tax authorities. Moreover, there is a penalty protection regime that excludes the possibility to apply penalties in case of transfer pricing assessment if the taxpayer (i) has prepared proper transfer pricing documentation and (ii) has informed the Italian Revenue Agency about the existence of such documentation (to that end a specific box has to be marked in the relevant tax return). It is basically a matter of disclosure, i.e. if pricing policies are disclosed (through proper transfer pricing documentation) the assessment is however possible but penalties on assessed amounts may not be imposed.

2. What is the content of the documentation that must be prepared?

1) Which transactions must be documented (all transactions with associated enterprises, or only those which exceed a particular threshold)?

All transactions with associated enterprises, except those that may be considered “residual” (i.e. transactions that, even if not taken into account, are not able to affect the reliability of the entire analysis).

2) What is the definition of “associated enterprises” for the purposes of this requirement (in particular, are transactions between a permanent establishment and its head office in the scope of the documentation requirement)?
Under the Italian income tax code (Presidential Decree 22 December 1986, N. 917), transfer pricing rules apply in cases of “control”. This means that one company is considered to be associated to another if the former (i) is controlled by the latter, (ii) controls the latter or (iii) is controlled by the same entity that controls the latter. Both legal control (i.e., direct or indirect participation in the majority of the capital of the company) and de facto control should be taken into account.

Transactions between a permanent establishment and its head office are included in the scope of the documentation requirement.

:) For EU countries, is the content of the documentation similar to that described in the EU Code of Conduct on transfer pricing documentation for associated enterprises (“EU TPD”)? If not, are taxpayers entitled to choose between the local requirements and the EU TPD?

Both taxpayers and tax authorities usually refer to EU TPD. However, in order to apply the above mentioned penalty protection regime there is a specific format required by the Italian Revenue Agency.

1) For all countries (and, in particular, OECD countries), is the content of the documentation similar to that described in the revisions to chapter V of the OECD transfer pricing guidelines (final report on Action 13 of the BEPS project)? If not, are taxpayers entitled to choose between the local requirements and the OECD approach?

Yes, but in order to apply the above mentioned penalty protection regime there is a specific format required by the Italian Revenue Agency.

:) Do taxpayers which are not established in your jurisdiction need to undertake to provide any specific information upon request? Can your tax authorities require the taxpayer in your jurisdiction to provide information which is located in another state?
Taxpayers who are not established in Italy do not need to provide any particular information upon request. However, the Italian tax authorities might start an exchange of information procedure with the country where the taxpayer is established. Moreover, taxpayers who are established in Italy should be ready to provide certain information on other entities of the group that are not established in Italy, in order to support the transfer prices that have been adopted.

1) If comparable studies are to be provided, do the tax authorities generally accept regional benchmark studies (e.g. pan-European benchmark studies)?

Yes, but only if there are no Italian comparables and it is demonstrated that the market to be taken into account is the European one and not the Italian one.

2) If comparable studies are to be provided in general, are safe harbours/specific circumstances exempting taxpayers from preparing benchmark studies (such as the EU Joint Transfer Pricing Forum guidelines on low value adding services or revisions to chapter VII of the OECD transfer pricing guidelines about low value adding intra-group services) in your jurisdiction or are there situations in which tax authorities do not request benchmark studies? If so, in which circumstances taxpayers are exempted from benchmark studies?

Taxpayers are never exempted from preparing benchmark studies if they want to invoke the above mentioned penalty protection regime. However:

- benchmark studies may be avoided for intragroup transactions that have a marginal value;
- benchmark studies may be updated every three years if the taxpayer has a turnover not exceeding EUR 50m (assuming the business model and economic conditions remain unchanged);
- safe harbours were set for royalties in the ‘80s by a circular letter of the Tax administration; the latter sometimes still makes reference to these safe harbours.
1) **What language(s) are to be used by taxpayers in submitting the transfer pricing documentation?**

It has to be in Italian.

3. What is the deadline or timescale for providing transfer pricing documentation to the tax authorities (is it to be provided for example upon filing of the tax returns, at the beginning of a tax audit, or on the specific request of the tax authorities)?

Upon specific request from the tax authorities

4. In the event that the documentation is not provided within the applicable timescale, or is incomplete, do documentation-related penalties apply in your jurisdiction? If so, please detail the penalties and the circumstances in which they do and do not apply.

Documentation-related penalties do not apply in Italy, since the preparation of proper transfer pricing supporting documentation is not an obligation but rather an option to get penalty protection.

5. Does the absence or incompleteness of documentation reverse the burden of proof as regards the arm’s length character of the transactions?

In theory, the absence or incompleteness of documentation does not reverse the burden of proof. However, in practice, in order to face tax authorities challenges to the adopted transfer prices, the taxpayer should not only oppose their calculations point by point, but also provide its own reconstruction of the said prices.

6. In the event that the tax authorities (i) impose documentation-related penalties and (ii) make a transfer
pricing reassessment, does the imposition of
documentation-related penalties prevent the taxpayer
from initiating any mutual agreement procedure which
may be contained in an applicable tax treaty (or, for EU
countries, the procedure contained in the EU Arbitration
Convention) with a view to eliminating any double
taxation resulting from the transfer pricing
reassessment?

Not applicable (documentation-related penalties are not provided for by Italian law).

7. Any other relevant aspect not addressed above?

Not applicable.

**B. Country-by-Country reporting (“CbCR”)**

1. Did your jurisdiction implement the obligation to file a
CbCR? If not, is the introduction of the CbCR in your
jurisdiction contemplated and, if so, when?

The 2016 Finance Bill has introduced a new provision relevant to CbCR. This provision
entered into force on 1 January 2016. However, its practical application requires the
adoption of a decree by the Ministry of Finance that is still missing (even if it should
have been issued within March 2016).

2. If the obligation to file a CbCR is in force, what is the tax
year from which this obligation applies and what is the
deadline for filing the CbCR?

These aspects should be regulated by the above mentioned decree. However, also
considering the existing proposal to amend EU rules on exchange of information, the
first CbCR should be relevant to the 2016 tax year.
3. Which taxpayers have to file a CbCR in your jurisdiction?

The obligation should apply to resident controlling companies obliged to file consolidated accounts that have a consolidated turnover of at least 750m euro and that are not controlled by persons other than individuals.

The obligation should also apply to resident controlled companies in case the relevant controlling company that is obliged to file consolidated accounts is resident in a Country that has not introduced CbCR or has not concluded with Italy an exchange of information agreement that allows to exchange CbCR information or is in breach of such agreement.

4. Is the content of the CbCR fully in line with the OECD model (final report on Action 13 of the BEPS project)? If not, what are the differences?

The consistency of the Italian CbCR with the OECD model may not yet be verified since the above mentioned decree is still missing. However, based in the information available so far, the Italian approach should be consistent with the OECD standard.

5. What is the penalty for failing to file the CbCR on time? Can local subsidiaries of a foreign group suffer the local penalty if the foreign group has not filed the CbCR?

A specific penalty, ranging between EUR 10,000 and EUR 50,000, has been introduced. It should be applicable in case of violations of Italian filing obligations (not also in case of violations of foreign filing obligations).

6. Are there tax treaties in force in your jurisdiction allowing the communication of CbCR with other jurisdictions?

No.

7. Any other relevant aspect not addressed above?
C. As the case may be, other documentation/filing requirement in relation to transfer pricing?

1. In your jurisdiction, are there any other documentation/filing requirements in relation to transfer pricing?

No. However, intragroup transactions have to be detailed in the annual financial statements. Moreover, limited information on intragroup items of income have also to be reported in the annual income tax return. Furthermore, there are particular rules applicable in particular cases (see disclosure requirements applicable to banks based on Art. 89 of the UE Directive No. 36 of 26 June 2013)

2. If so, what is the content of such documentation/filing requirement? What language(s) are to be used by taxpayers?

Information to be provided in the annual financial statements include – but may be not limited to – a table showing the amount of intragroup commercial and financial receivables and payables at yearend, as well as the amount of intragroup commercial and financial revenues and costs of the year.

Information to be provided in the annual income tax return are limited to the existence of a control relationship involving a foreign entity (as direct or indirect parent or subsidiary), the total amount of intragroup revenues and the total amount of intragroup costs.

The use of Italian language is requested.

3. What is the deadline for meeting this documentation/filing requirement?

The annual financial statements, showing the above mentioned information, usually have to be approved within four months from yearend and filed with the Chamber of
Commerce for publication within the following month.

The annual income tax return, showing the above mentioned information, usually has to be filed with the Revenue Agency within nine months from yearend.

4. Does this obligation apply to all taxpayers, or only to certain categories (e.g. taxpayers with turnover or assets exceeding a particular threshold)?

With regard to the information to be included in the annual financial statements, in general the obligation does not apply to small size companies. To that end, small size companies are those not exceeding for two subsequent years at least two of the following thresholds: EUR 4.4m of total assets, EUR 8.8m of revenues and 50 employees on average during the year.

With regard to the information to be included in the annual income tax return, the obligation applies to all taxpayers.

5. What is the penalty for failing to meet this requirement on time?

There is no specific penalty (ordinary fixed penalties for incompleteness of documentation are however applicable).

6. Any other relevant aspect not addressed above?

Not applicable.
1 Report called “Guidelines on low value adding intra-group services” adopted by the European Union Joint Transfer Pricing Forum during the meeting of 4 February 2010.

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