# Italy releases final regulations on transfer pricing

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The Italian Ministry of Economy and Finance has signed the final transfer pricing regulations, following public consultation on its draft regulations.

The content and impact of the draft regulations, which aimed to provide guidance on the application of the arm's length principle based on international best practices, were covered in our previous insight.

- All the definitions and transfer pricing methods outlined in the final regulations were largely unchanged from the draft regulations:
- The definition of related entities includes both juridical and de facto control over the entity
- The concept of comparability factors aligns with 2017 OECD Transfer Pricing Guidelines (OECD TPG)
- The four criteria used to determine the most appropriate transfer pricing method are consistent with the guidance on method selection provided in the OECD TPG
- The regulation is an endorsement of the five OECD transfer pricing methods, with an explicit preference for the comparable uncontrolled price method and
- The regulation includes a definition of an arm's length range

**New elements in the final regulations**

The final regulations cover two more aspects that were not included in the draft regulations: the concept of low value-adding services, and updates to transfer pricing documentation.

Article 7 defines the scope of low value-adding services to which a 5 percent markup shall be added (with no need to perform a benchmarking analysis). Services that are considered low value-adding, consistent with paragraph 7.45 of the OECD TPG, include services that:

- are supportive in nature
- are not part of the core business
- do not require the use of unique and valuable intangibles and
- do not involve the assumption or control of significant risk.

Article 8 of the final regulations anticipates that additional guidance will be issued to update the transfer pricing documentation requirements in light of best international practice and to clarify when penalty protection should be granted.

In this respect, the final regulations clarify that, in any event, transfer pricing documentation should allow taxpayers access to the penalty protection regime when (a) it contains all the data and information necessary for the tax authority to conduct a proper transfer pricing analysis, whether or not there is disagreement on the method selection or the relevant application criteria; and (b) any omissions or misrepresentations do not prevent the tax authority from conducting a proper transfer pricing analysis.

**Key takeaways**

As the Italian government fully aligns its transfer pricing rules with international standards, transfer pricing risks are becoming increasingly relevant for the Italian tax authority and for multinational enterprises with Italian operations. With particular reference to the latter, recent history has shown that correct management of transfer pricing risks is indeed crucial, from both a corporate governance and a reputational perspective.

With this in mind, transfer pricing documentation should be considered an important and strategic tool for proper risk management, rather than just a tool for accessing the penalty protection regime. Clearly, in order to maximize its efficacy, transfer pricing documentation has to meet high-quality standards.
In any event, filing for an advance pricing agreement (unilateral or multilateral) still represents the best course of action to prevent exposure to transfer pricing risks.

Further, it is important to note that neither the draft nor the final regulations mention that if the value of a related party transaction falls outside the arm's length range, the transfer pricing adjustment is to be made to the median. Instead, it shall be made to *a point inside the arm's length range*. This will likely prevent the tax authority from making adjustments to the median without a justification, in line with the European Commission Joint Transfer Pricing Forum recommendations, and may help the taxpayer resolves any disputes with the Italian tax authority.

For more information on this or other transfer pricing issues generally, please contact the authors, your regular DLA Piper tax advisor, or Joel Cooper or Randall Fox, co-heads of our International Transfer Pricing group.

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