

## **Update on Italian Regional Tax on Productive Activities Brings Clarity**

**January 14, 2014**

**ITR CORRESPONDENT - VALENTE ASSOCIATI GEB PARTNERS**

Before 2014, IRAP (the Italian Regional Tax on Productive Activities) regulations gave rise to some interpretative difficulties when transfer pricing issues were involved, especially during tax audits and assessments.

It must be noted that the provision on transfer pricing documentation currently in force, namely Art. 26 of Decree-Law No. 78/2010, only refers to Art. 1 of Legislative Decree No. 471 of December 18, 1997, omitting any reference to Art. 32 of Legislative Decree No. 446 of December 15, 1997, the so-called IRAP Decree.

Further, Law No. 244 of December 24 2007 (the 2008 Financial Act) amended the IRAP Decree, which became effective on January 18, 2008, by introducing the “principle of direct derivation” whereby the IRAP tax base is derived directly from profits as indicated in the statutory financial statements.

The objective of these regulatory changes is to make the computation of the IRAP tax base better adhere to the criteria adopted in national accounting for the calculation of production value and value added across various economic sectors.

In light of these changes, since 2008, transfer pricing regulations (as per article 110, paragraph 7 of the Income Tax Code) were irrelevant for IRAP calculation purposes.

Indeed, because of the repeal of article 11-*bis* of the IRAP Decree, the positive and negative components of income derive directly from the figures in the statutory financial statements and are no longer subject to the rules on corporate income mandated by the TUIR.

However, an amendment to the Stability Law approved on December 23 2013 has now introduced a specific provision whereby “Art. 110, paragraph 7 of the Income Tax Code has to be applied to the calculation of the net turnover for IRAP purposes also for years subsequent to those ongoing on December 31<sup>st</sup>, 2007”.

Therefore, IRAP is fully applicable to the higher taxable amounts deriving from a transfer pricing audit. However, penalties envisaged by article 1, paragraph 2 of Legislative Decree n. 471/1997 (from 100% to 200% of the higher taxes due) will not be applied to audits on years between the one ongoing on December 31 2007 and the year for which at the time of the approval of the legislative decree the tax return can still be filed (unless penalties have been already definitively charged before December 31 2013, in which case they are remain applicable).

Since the legislative decree will be effective from January 1, 2014, this means that for companies with calendar financial statements, penalties on IRAP won't be applied for years 2007 to 2012.

Valente Associati GEB Partners  
Viale Bianca Maria, 45  
20122 Milano  
Tel 39 02 7626131  
Fax 39 02 76001091  
([www.gebpartners.it](http://www.gebpartners.it))