

Italy amends its patent box regulation

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The patent box regime was introduced in Italy with the *Legge di Stabilità 2015* and has been subject to amendments over subsequent years. The aim of this regime is to provide for tax relief on income deriving from intangible assets like industrial patent and intellectual property designs and models.

The original regulation provided for the obligation to undergo a ruling procedure by the Italian tax authority to identify methods of determining the qualified income deriving from the direct use of intangible assets (in the case of indirect use of intangible assets, this ruling was not mandatory).

Article 4 of Legislative Decree 34/2019 (*Decreto Crescita*) has made it possible to determine and declare clearly in the tax return any qualified income for patent box purposes deriving from the use of intangible assets, without the previously required ruling procedure.

The Provision of the Revenue Agency of July 30 2019 includes the implementing rules for the new option provided for in the application of the patent box regime.

Taxpayers selecting this option must communicate their wish to do so in the tax return for the fiscal period to which the patent box benefit relates. It has a yearly duration and is both renewable and irrevocable.

Furthermore, those wishing to determine and declare their qualified income directly without the ruling procedure, must provide specific documentation containing the information required for determining the qualified income.

That documentation comprises two sections, A and B, which must be completed with specific data and information, as provided by the Revenue Agency in its provision of July 30 2019.

Section A requires the following information related to the fiscal period of the patent box benefit:

- Ownership structure and organisational model of the company;
- Transactions with affiliated companies;
- Characteristics of the target market and key competitive factors;
- Description of the value chain and functional analysis of the company;
- Intangible assets (qualified or not) and research and development (R&D) activity of the company; and
- Capital gain deriving from the transfer of qualified intangible assets.

The following information must be included in Section B:

- A summary of information on the qualified income;
- An evaluation related to the intangible assets of the patent box benefit; and
- The selected method (comparable uncontrolled price, profit split, or other methods) and the reasons why this method has been selected.

If the above-mentioned information is already included in the transfer pricing (TP) documentation, it is possible to refer to the TP documentation.

Patent box documentation must be:

- Prepared in Italian (information and data related to transactions with related parties and foreign third parties may be in English);
- Signed by the legal representative of the company by electronic signature with a stamp dated within the required filing period of the tax return; and
- Prepared for each fiscal year chosen by the taxpayer to determine the qualified income.

If the electronic signature and accompanying date stamp or certain documentation is missing, or if erroneous information is included in the documentation, the patent box benefit may be rejected in full and interest and sanctions may apply.

Taxpayers must communicate that they are in possession of this documentation in the tax return related to the fiscal period of the benefit. If this is not done, the taxpayer will not be able to take advantage of the non-application of sanctions in cases where adjustments are made by the tax authority.

The taxpayer must submit the relevant documentation to the tax authority within 20 days from the date of the related request.

Where an economic analysis is required to determine the qualified income (a benchmark analysis related to the profit split method), micro-enterprises and small and medium enterprises will be able to use a sector benchmark analysis on the basis of activity codes that can be provided by the Revenue Agency upon request.

According to the provision, this option is available to:

- Beneficiaries who already have a ruling agreement and wish to proceed with a renewal (therefore, the option will be an alternative to the renewal of the ruling); and
- Parties with a ruling procedure that was already in process at the date of entry into force of the *Decreto Crescita* (May 1 2019).

In both the above cases, parties must contact the office where the relevant procedure is pending, and communicate their express wish to waive the relevant procedure.