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New Guidelines for the Italian Transfer Pricing Documentation

The Measure of the Director of the Revenue Agency no. 360494 (the “Measure”) on transfer pricing was published on 23 November 2020.

This Measure, which fully replaces the previous measure dated 29 September 2010, follows the provisions of article 8 of the Ministerial Decree dated 14 May 2018 (the “Decree”) to bring the domestic transfer pricing regulations into line with the standards of the OECD Guidelines 2017.

The Measure introduces significant and substantial changes to the provisions concerning the documentation deemed “appropriate” to allow checking the compliance of transfer pricing with the arm's length principle pursuant to article 110.7 of the Consolidated Income Tax Act (TUIR), and establishes the new requirements for access to the penalty protection regime envisaged in articles 1.6 and 2.4-ter of Legislative decree no. 471/1997.

Appropriate documentation

All taxpayers willing to avail of the penalty protection regime must provide appropriate documentation (the “Documentation”), consisting of a Masterfile and a Local File, to be drafted in Italian, with the possibility for the taxpayers to prepare the Masterfile in English.

Compared to the previous measure, taxpayers are no longer classified as holdings, sub-holdings and subsidiaries, with the possibility provided for the latter to prepare only the Local File. Now, all companies must prepare also a Masterfile. In practice, the domestic rules have been brought into line with the OECD Guidelines which implemented the requirements of BEPS Action 13, which already included such indication.

The same rules also apply to permanent establishments in Italy of non-resident companies and to resident companies with permanent establishments abroad.

Structure and content of the Documentation

The aim of the Documentation is to provide evidence that the intra-group transactions reported therein are consistent with the arm's length principle.

The Measure has brought into line the structure and content of the Masterfile and Local File with those set out in the OECD Guidelines 2017. Generally speaking:

A. Masterfile

The Masterfile must include information on the activities of the multinational group and the global allocation of income between the different entities.

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In case the multinational group carries out different business activities regulated by specific transfer pricing policies, taxpayers are allowed to prepare different Masterfiles.

B. Local File

The Local File complements the Masterfile with a focus on the local entity.

The Local File contains specific information on the characteristics of the local entity and transfer pricing analyses of transactions between the latter and related parties based in different jurisdictions.

Electronic signature with time stamp

One of the main changes is the introduction of the electronic signature of the Masterfile and the Local File with a time stamp.

In order to be considered adequate, the Documentation must be signed electronically by the legal representative (or by a delegated substitute) and bear a time stamp so as to confirm to the Revenue Agency the signing date, which must be prior to the tax return filing date for the relevant tax year. Failure to meet this requirement will prevent the taxpayers to be eligible for the penalty protection regime.

In case of a tax audit, the Documentation must be submitted within 20 days from the relevant request. Any additional information that may be requested during the tax audit must be provided within 7 days. Such term can be extended depending on the complexity of the request.

Low value-adding services

For low value-adding services, for which the taxpayer has decided to apply the simplified approach envisaged by article 7 of the Decree, the Measure introduced specific documentation requirements.

In particular, it will be necessary to provide details regarding the nature of the services, the perimeter of the beneficiaries, the expected or effective benefits received (i.e.: benefit test), the allocation criteria used and the underlying reasons for such choice, as well as the detailed explanation and documentation of the cost base and of the calculations underlying the allocation.

Simplified documentation for small-medium enterprises (SMEs)

SMEs may opt not to update their quantitative and qualitative analyses of the intra-group transactions covered by the Local File for the two years following that in which the initial analysis was carried out, provided that the following requirements are met:

- no significant changes in the comparability analysis have occurred in the period under analysis; and

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- the analyses were carried out based on publicly available data.

According to the definition set out in the Measure, a SME is a company whose turnover does not exceed Euro 50 million. Entities directly or indirectly controlled by or controlling an entity whose turnover exceeds the Euro 50 million threshold do not fall within the definition of SME and, accordingly, do not qualify for the simplified documentation regime.

Entry into force

The new requirements introduced by the Measure will apply starting from the tax year underway at 23 November 2020.