

NEW ITALIAN REGULATIONS ON TRANSFER PRICING DOCUMENTATION



1. Foreword

The Italian Tax Authorities have recently issued the Provision no. 360494 that has amended the Italian regulations on Transfer Pricing documentation; such new regulations are applicable from fiscal year 2020.

The Provision, which replaces the previous Provision no. 137654 of 10/09/2010, conforms the Italian regulations on Transfer Pricing to OECD standards.

2. The main changes related to the contents of the Masterfile and the Local File

The Transfer Pricing Documentation continues to consist of the Masterfile and the Local Country File.

The main purpose of the new Italian regulations on Transfer Pricing documentation is to align the content of the Masterfile and Local File with OECD standards and guidelines.

2.1. Changes to the content of the Masterfile

In the light of the changes introduced by the Provision, the Masterfile now consists of five chapters.

The first chapter concerns the organizational structure of the group.

The second chapter concerns the activities carried out by the group, and the main profit generator factors of the group.

The third chapter is entirely focused on the group's intangible assets, with respect to which, for example, it shall:

- provide a description of the group's strategy for the development and exploitation of intangible assets;
- indicate the intra-group agreements relating to such intangible assets;
- describe the transfer pricing policies relating to research and development activities and intangible assets;
- provide a list of relevant intra-group transactions with regard to the assets in question.

The fourth chapter addresses the group's financial activities and it shall include a general description of the group's financial arrangements and of transfer pricing policies related to intragroup financial transactions, taking care to indicate the group entities that perform centralized financing functions.

The fifth chapter addresses the group's financial transactions and it is now required that the group's consolidated financial statement for the reference tax period be attached thereto, as well as that a list of the duly signed APAs and cross-border rulings be provided.



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2.2. Changes to the content of the Local Country File

Due to the changes introduced by the Provision, the Local Country File is now made up of four chapters.

The first chapter shall include a general description of the local entity.

The second chapter shall report the intra-group transactions, taking care to indicate their amount, the companies involved, the comparability analysis carried out, the method chosen for the determination of the transfer price, the results and the critical assumptions made in the application of the chosen method.

The third chapter shall report some financial information of the local entity, including the annual accounts for the tax period in question.

In the fourth and last chapter, the taxpayer shall attach all the intra-group agreements signed by the local entity and related to the transactions mentioned in the document, as well as the unilateral and bilateral advance pricing agreements to which the Italian local entity is a party or not, provided that they are related to the intra-group transactions analyzed.

3. Electronic signature with time stamp

Another significant innovation introduced by the Provision is that the Masterfile and the Local File must be signed by the taxpayer's legal representative (or his/her delegate) by means of electronic signature with a timestamp to be affixed by the date of filing of the annual corporate income tax return.

4. The documentation on low value-added services

The Provision also requires the taxpayer to prepare a specific documentation if the same intends to apply and benefit from the simplified approach provided for evaluating the low value-added services (so-called *safe harbour* introduced by the Ministerial Decree of 14 May 2018).

The documentation in question shall contain a description of the intra-group low value-added services, the contracts governing the supply of such intra-group services, as well as the pricing of such transactions along with the related calculations.

5. The election for the penalty protection regime and the deadline for the submission of the TP documentation

The Provision confirms that the taxpayer shall elect for the so-called *penalty protection regime* by selecting the possession of the Transfer Pricing Documentation within the annual income tax return. In case of a tax audit on transfer pricing, the taxpayer shall submit the TP documentation to the tax auditors, and in this regard the deadline for the submission of the TP Documentation is extended from 10 to 20 days.

6. Conclusions

The Provision introduced several and particularly significant innovations, although in some instances they are still not entirely clear. It is therefore desirable that the Italian Inland Revenue Agency provide the necessary clarifications by means of an appropriate Circular, as happened following the publication of Provision no. 137654 of 10 September 2010.

In any case, it is important that the multinational groups that have already developed and adopted the Transfer Pricing Documentation in previous tax years, organize the information to be included in as well as prepare the documents to be attached to the new TP Documentation to be prepared in accordance with the new standards.