

Updated transfer pricing documentation requirements



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Corporate Tax, Italy

- 🕒 **Introduction**
- 🕒 **New provision**
- 🕒 **Compliant documentation: master file and local file**
- 🕒 **Validity and timing**
- 🕒 **SME simplification**
- 🕒 **Electronic signatures and digital timestamps**

Introduction

On 23 November 2020 the director of the Revenue Agency issued Provision 360494 concerning transfer pricing documentation.

The provision replaces the previous practice (contained in Provision 2010/137654 of 29 September 2010) and establishes the requirements for the suitability of transfer pricing documentation.

New provision

In order to align the domestic transfer pricing framework with the Organisation for Economic Cooperation and Development (OECD) standards, the provision updates the rules relating to the content of transfer pricing documentation, which must be prepared in order to support the application of the arm's-length principle to intercompany transactions (known as 'compliant documentation').

In this scenario, it should be noted that transfer pricing documentation is not a compulsory filing under Italian domestic law. However, if it is available in time (see below) and consistent with the requirements of the provision, the taxpayer is entitled to benefit from the penalty protection provided for by Articles 1(6) and 2(4^{ter}) of Legislative Decree 471 of 18 December 1997.

Moreover, under the provision, it is possible to limit the transactions covered by the administrative penalty protection documentation. In such cases, penalty protection will be granted exclusively for the listed transactions for which the information provided complies with the requirements.

The transfer pricing documentation should be considered compliant when it provides the tax authorities with the information necessary to execute an analysis of the transfer pricing policy applied by the taxpayer, notwithstanding the fact that the transfer pricing method or the selection of transactions or benchmarks adopted by the taxpayer are different from those identified by the tax administration.

Compliant documentation: master file and local file

Unlike in the past, the compliant documentation must now include both the master file and the local file for all Italian entities (ie, resident enterprises, commercial entities, entrepreneurs and Italian permanent establishments of non-resident entities). Previously, both documents were requested only from resident entities or Italian permanent establishments qualifying as holdings or sub-holdings.

Under the new provision, the compliant documentation has undergone substantial formatting changes as well as seeing a significant increase in data and information in accordance with the annexes to Chapter V of the OECD Transfer Pricing Guidelines 2017.

The master file must contain information on the multinational group, including the nature of the global business activities, the general transfer pricing policies and the global allocation of income and economic activities, in order to allow tax administrations to assess the presence of a significant transfer pricing risk.

The local file provides more detailed information on specific intra-group transactions. In particular, the local file should include information concerning the local entity (ie, the Italian group company or Italian permanent establishment of a non-resident group company).

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The provision states that the documents must be prepared in Italian; however, it is also possible to provide the master file in English, considering that this document is mandatory in the jurisdiction of the ultimate parent company and is usually prepared according to OECD standards.

Finally, the provision includes new specific rules concerning the documentation relating to low value added services, which should contain information concerning the description of intra-group services, service supply contracts, the valuation of operations and the related calculations. Such information should be provided with a specific set of documentation separate from the master file and country file.

Validity and timing

The compliant documentation, which is drawn up on an annual basis, is effective only for the tax period to which it relates and is retained until the expiry of the domestic statutory limitation for tax audits.

The documentation must be delivered to the tax authorities no later than 20 days from the relevant request.

If, in the course of a tax audit, the need for additional or supplementary information emerges with respect to the information contained in the documentation submitted to the tax authorities, such information must be provided within seven days of receipt of the request or within a longer period depending on the complexity of the transactions subject to analysis, provided that this period is compatible with the timing of the audit.

SME simplification

The new provision confirms a simplification for small and medium-sized enterprises (SMEs) with a turnover or revenue of up to €50 million, which, under certain conditions, can no longer update annually certain data in the comparability analysis. Entities with access to the simplification procedure are materially limited since the controlling entity of an SME must also meet the revenue threshold.

Electronic signatures and digital timestamps

The new provision requires the digital signature of the legal representative (for both the master file and local file), which must have an electronic timestamp, executed no later than the date of filing of the relevant tax return. Therefore, the timestamp will have a relevant operative impact on the timeline for finalising the transfer pricing documentation.

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