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NEWSLETTER N. 9/2026

ITALY – PENALTY PROTECTION AND TRANSFER PRICING DOCUMENTATION REQUIREMENTS

TRANSFER PRICING DOCUMENTATION

In its decision no. 360494 dated 23 November 2020 adopting the provisions already contained in the ministerial decree dated 14 May 2018, the Italian tax authority provided an update of the provisions on transfer pricing documentation and sets forth the requirements for proper documentation in order to benefit from the penalty protection scheme. Further clarifications have been provided through the Circular Letter n. 15/E published by the Revenue on 26 Nov. 2021.

Moreover, through Circular Letter no. 16/E of 24 May 2022, the Revenue provided clarifications regarding: the interpretation of the concept of *range*, the positioning of the profit level indicator within the same interval, the usability of comparables in a loss-making position and the adjustments introduced to raise the degree of comparability between the tested party and comparables. The clarifications provided show a full alignment with the OECD TP Guidelines.

Please find below the most important provisions to benefit from the non-application of the administrative penalties (so called “penalty protection”).

1. Proper transfer pricing documentation pursuant to section 1 (6) and section 2 (4-ter) of the Italian legislative decree 471/1997

Documentation is deemed proper whenever it ensures that it can be assessed whether the terms and conditions and the transfer prices applied by multinational enterprises are in compliance with the arm's length principle. Such documentation includes:

- a **masterfile** that contains information on the multinational group and is divided into the sections and paragraphs specified in the decision.

The most important amendments (with regard to the previous Revenue Commissioner's Decision issued on 29.09.2010) relates to the sections on carried out operations and on the group's most important profit generating factors (section 2); on the group's intangible fixed assets (section 3); on intercompany financial fixed assets (section 4).

- a **local file** that contains information on the company's intercompany transactions and is divided into the sections, paragraphs and subparagraphs specified in the decision.

In addition, financial information on (i) the local entities' annual accounts relating to the tax period concerned, (ii) the financial data information and tables on reconciliation with the annual report; (iii) the summary tables of relevant financial data for comparable entities must be disclosed.

The annexes include a copy of the intercompany agreements entered into by the local entity and a copy of the preliminary agreements and cross-border rulings relating to the intercompany operations.

The master and local files' structures and contents are basically in line with the provisions set forth under the 2017 and 2022 versions of the OECD Transfer Pricing Guidelines.

2. Permanent establishments

The provisions on proper documentation apply even to permanent establishments located in Italy of non-resident enterprises

and to resident enterprises with permanent establishments abroad managed under the branch exemption regime (ref. Art. 168-ter of the TUIR).

3. Small and medium-sized enterprises

Small and medium-sized enterprises (SMEs) may choose not to update the sections on "intercompany transactions" in the two tax periods following the one to which the local file relates if the comparability analysis is based on information from publicly available sources and provided that functional analysis elements did not significantly change in such two tax periods.

Please be advised that, apart from the confirmation of this simplification option, the definition of SMEs has been changed: indeed, the 2020 Commissioner's Decision sets forth that all those enterprises achieving a turnover or revenues of no more than EUR 50 million in the tax period to which the transfer pricing documentation relates are deemed "small and medium-sized enterprises".

However, entities directly or indirectly controlling or controlled by an entity that does not qualify as "small and medium-sized enterprise" do not fall under this definition.

4. Documentation: formal requirements

The master and the local file must be prepared in Italian. The master file may be in English.

It should be noted that the attachments to the local file can be presented in a language other than Italian; in the event that these attachments, and any appendices to the master file, are written in a language other than Italian or English, and during the audit or other investigation activity, the need arises to have a translation into Italian or English, the local entity must make this translation available at the request of the tax inspectors.

The documents must be signed electronically (together with time stamp) by the legal representative within the deadline for the filing of the annual corporate income tax return.

5. Deadline for the submission of the documentation

The documentation must be submitted to the Italian tax authority no later than 20 (calendar) days from the official request of the tax administration (e.g., during a tax inspection; pursuant to a questionnaire). The documentation must be filed electronically.

6. Notice on the possession of proper transfer pricing documentation

The notice on the possession of transfer pricing documentation must be communicated in the annual corporate income tax return by checking the dedicated box. Any contingent mistakes or omissions due to non-compliance with the arm's length principle may be corrected by supplementing or amending the documentation that shall be signed anew and communication must be filed to the Central Revenue by means of a supplementary tax return.

It is relevant to consider also that belated communication of the possession of the TP documentation can be done within 90 days from the ordinary deadline. However, in case a tax inspection (or any other official investigation activity) starts in the meanwhile, the penalty protection will not be granted.

7. Low value-adding services

The documentation on low-value-adding services must compulsorily contain information on and a description of intercompany services, service provision agreements and the amounts set forth for the transactions as well as the respective calculations.

The relating documentation can be included in a separate report, so in addition to the master file and the local file. Hence, even such report must be signed electronically within the deadline for the filing of the tax return - in order to benefit from penalty protection - and the box on the possession of transfer pricing documentation must also be ticked.

As an alternative to the separate report, it is possible to include in the local file the same specific information requested for low value-adding services.

8. Legal effect of the new provisions

The new decision is effective as of the tax period ongoing at the date of its publication (23rd November 2020) and entirely replaces the provisions of the Commissioner's Decision no. 137654 dated 29 September 2010.

9. Final remarks and imminent deadlines

Given the documentation requirements and the close scrutiny tax auditors apply to transfer pricing and related international tax issues (such as the existence of an undisclosed permanent establishment), multinational groups must carefully plan their work to complete their transfer pricing documentation by the income tax return filing deadline. This ensures they can apply the required digital signature in compliance with current documentation obligations.

Finally, it is important to note the filing deadline for the corporate income tax (IRES) return and the regional tax on productive activities (IRAP) return: specifically, current legislation provides that the deadline is the last day of the tenth month following the close of the financial year.

Therefore, if a company or any other type of entity subject to IRES has a tax period coinciding with the calendar year—i.e., January 1 to December 31, 2025—the income tax return filing deadline is October 31, 2026. However, since this date falls on a Saturday, the deadline is postponed to the next available business day: November 2, 2026.

For companies that fail to finalize their transfer pricing documentation by November 2, 2026, it remains possible to provide a delayed notification of possession of the documentation—via a non integrative tax return—within a 90-day grace period (i.e., by January 31, 2027, for the FY 2025).

In this regard, it is important to remind that - if a tax audit (or any other official investigative activity) concerning the taxpayer begins before the integrative tax return is filed - tax authorities are entitled to deny the penalty protection.

Do not hesitate to contact us for any further information or clarification.

Yours sincerely,

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