16 December 2020

New rules for Transfer Pricing Documentation

Order of the Director of the Revenue Agency No. 360494 of 23 November 2020

At a glance

With the Measure of the Director of the Revenue Agency no. 360494 of 23 November 2020, significant and substantial amendments have been introduced to the provisions relating to transfer pricing documentation and new requirements for access to the penalty protection regime to safeguard from sanctions for unfaithful tax returns have been established.

First, the new provisions extend the obligation to prepare both the Masterfile and the Local File to all entities falling within the scope of the legislation under review.

The Measure also foresees a substantial modification of the structure and a considerable expansion of the data and information of the Masterfile and the Local File, to meet the eligibility requirements.

The new Measure also confirms the simplification foreseen for small and medium-sized enterprises, which have the option not to update the chapters relating to intra-group transactions in the two fiscal years following the one in which the documentation is prepared, provided that, in the absence of significant changes between fiscal years, the comparability analysis is based on data from publicly available sources. However, the Measure, updating the previous rules, excludes from the definition of small and medium-sized enterprises those entities that directly or indirectly control or are controlled by an entity that does not qualify as a small or medium-sized enterprise, essentially excluding from the simplification most of the companies and permanent establishments resident or established in Italy and belonging to foreign multinational groups.

The Measure confirms that transfer pricing documentation must be prepared on an annual basis and in the Italian language. However, the Masterfile may be submitted in English.

One of the main novelties is the introduction of the obligation for the legal representative to sign both the Masterfile and the National Documentation by means of a digital signature with a time stamp to be affixed by the date of submission of the tax return. The affixing of the time stamp is an essential condition for the eligibility of the transfer pricing documentation.

The provisions of the Measure apply from the current fiscal year of the date of its publication (23 November 2020) and, therefore, for entities with a fiscal year coinciding with the calendar year, the new provisions apply from the fiscal year 2020.

In detail

With the Measure of the Director of the Revenue Agency No. 360494 of 23 November 2020 (hereinafter the "Measure"), implementation has gone into effect of the rules set out in Article 1, paragraph 6, and Article 2, paragraph 4-ter, of Legislative Decree 18 December 1997, no. 471, concerning the documentation suitable to allow verification of compliance with the arm's length principle of the conditions and transfer prices practiced by multinational companies, and the Decree of the Minister of Economy and Finance of 14 May 2018 (hereinafter the "Decree"), containing the "Guidelines for the application of the provisions provided for in Article 110 paragraph 7 of the Law on Income Taxes, approved by Presidential Decree No. 917 of 22 December 1986, on transfer pricing"

The Measure introduced significant and substantial amendments to the provisions on transfer pricing documentation and established the new requirements for

access to the penalty protection regime for unfaithful tax returns, provided for in Articles 1(6) and 2(4-ter) of Legislative Decree No. 471/1997.

Appropriate documentation

The Measure establishes first, that the eligible documentation consists of the Masterfile and the Local File.

Therefore, all entities falling within the scope of the transfer pricing legislation are required to prepare the Masterfile, a document previously required only for resident companies, or permanent establishments in Italy, qualifying as holding or sub-holding companies, as well as the Local File.

The Measure also foresees substantial changes in structure compared to the previous provisions, as well as an expansion of the data and information that must be reported in the Masterfile and the National Documentation to meet the eligibility requirements.

The Masterfile must contain information relating to the multinational group and must be divided into chapters and paragraphs, each containing the specific information required by the Measure.

With specific reference to the intangible assets of the multinational group, the Masterfile must, inter alia, provide:

- a general description of the multinational group's overall strategy for the development, ownership, and exploitation of intangible assets, including the location of the main research and development facilities as well as the management of the research and development activity;
- a list of intangible assets or groups of intangible assets held by each enterprise involved in transfer pricing transactions, indicating which entities have legal title to the intangible assets.

The National Documentation must contain information on intra-group transactions relating to the local entity, broken down into chapters, paragraphs, and subparagraphs, each containing the information required by the Measure.

The National Documentation must, among other things, provide:

- a general description of the local entity (history, recent evolution, and general outline of the reference markets);
- a description of the operational structure of the local entity, the organisational chart, and an indication of the individuals to whom the local management functions should report, specifying the country in which the principal offices of these individuals are located;
- a description of the business and strategy pursued by the local entity, including specific strategies related to particular sectors or markets and any changes in strategy from the previous fiscal year;

- a detailed description of intra-group transactions. For each transaction or homogeneous category of intra-group transactions, not marginal with respect to the total intra-group transactions, in which the entity is involved, the specific information required by the Measure must be provided.

Documentation on permanent establishments

The Measure foresees that the documentation for permanent establishments in the territory of the State of non-resident companies referred to in Article 162 of the TUIR, and for companies resident in the territory of the State with permanent establishments abroad, consists of the Masterfile and the Local File.

Appropriate documentation for small and medium-sized enterprises

The Measure confirms the simplification provided for small and medium-sized enterprises, which have the option not to update the chapters relating to intra-group transactions in the two fiscal years following the one in which the documentation is prepared, provided that the comparability analysis is based on data from publicly available sources and there are no significant changes between fiscal years. However, the Measure, updating previous rules, excludes from the definition of small and medium-sized enterprises those entities that directly or indirectly control or are controlled by an entity that does not qualify as a small or medium-sized enterprise, essentially excluding from the simplification most of the companies and permanent establishments resident or established in Italy and belonging to foreign multinational groups.

Forms, extent, and conditions of effectiveness of appropriate documentation

The Masterfile and the Local File must be drafted in Italian; however, the Masterfile may be submitted in English.

The Masterfile and the Local File must be signed by the legal representative or its delegate by means of a digital signature with a time stamp to be affixed by the date of submission of the corporate tax return.

The documentation must be submitted in electronic format and shall be handed over within 20 days of the relevant request.

The documentation must be drawn up on an annual basis, is effective only for the fiscal year to which it relates and must be retained until the expiry of the time limit for assessment.

Notification to the Revenue Agency of possession of documentation

Possession of transfer pricing documentation must be communicated to the Revenue Agency when filing the tax

return. In the event of a subsequent return filed to correct errors or omissions arising from the non-compliance of transfer pricing terms and conditions with the arm's length principle, resulting in a lower taxable income or, in any event, a lower tax liability or a higher credit (so-called unfavourable supplementary return), the appropriate documentation may be supplemented or amended and the relevant communication to the Revenue Agency must be made together with the filing of the aforesaid unfavourable supplementary return.

The Measure refers to the concept of 'modification' and 'integration'. It follows that the option for access to the regime in question may be exercised by the taxpayer only in the declaration originally submitted.

Documentation for low value-added services

The Measure provides for the possibility to use a simplified approach for low value-added services (referred to in Article 7 of the Decree of the Minister of Economy and Finance of 14 May 2018). In this case, special documentation is required - in addition to the Masterfile and the National Documentation - containing: (i) the description of the intra-group services, (ii) the relevant service contracts (iii) the valuation of the transactions, (iv) the relevant calculation schedules and (v) other documentation, if any. Such documentation may also be found in Chapter 2 of the Local File.

Effective date of the new provisions

The provisions of the Measure apply as of the fiscal year in progress at the date of its publication (23 November 2020) and, therefore, for entities with a fiscal year coinciding with the calendar year, the new provisions apply as of the fiscal year 2020.

The Measure also provides for a transitional regime in relation to fiscal years prior to the one in progress at the date of publication of the Measure and still subject to assessment, with the possibility to file a supplementary tax return and prepare the transfer pricing documentation required by the Measure, by 31 December 2020, without application of administrative sanctions or interest, in cases where the taxpayer complies with the instructions contained in acts of the tax administration or where its conduct is put in place as a result of facts directly resulting from delays, omissions or errors of the administration.

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