

NEWS REGARDING TRANSFER PRICING DOCUMENTATION - the changes introduced by the Revenue Agency Measure issued on November 23rd, 2020

With the Measure published last November 23rd, 2020, the Italian Revenue Agency modified the Italian regulations regarding the documentation on transfer pricing.

More precisely, the changes made by the new Measure, mainly concern:

- set of transfer pricing documents;
- the definition of small and medium-sized enterprises;
- the content of the transfer pricing documentation;
- the simplified approach provided for low value-added services;
- the effectiveness conditions of an appropriate documentation.

Set of transfer pricing documents

The new Measure establishes that the documentation that allows companies resident or established in Italy, which are located, compared to non-resident companies or their foreign PEs, in one or more of the cases indicated in Articles 110, paragraph 7, 152, paragraph 3, and 168-ter, paragraph 10, of the Italian Tax Code, to benefit from the penalty protection, should be represented by a Masterfile and a Country File. The Masterfile shall contain information related to the multinational group, while the National Documentation shall contain a detailed description of intra-group transactions carried out in a specific fiscal year. This innovation therefore makes the documentation burden more complex for those taxpayers who, before the new provisions - since they were defined as "controlled companies" by the previous measure - were allowed to prepare only the Country File. With the entry into force of the new Measure, however, all the taxpayers will have to provide themselves with a double documentation: point 2.1 of the Measure itself, in fact, specifies that the appropriate documentation consists of a) a document called Masterfile; and b) a document called Country File.

Definition of SMEs

The new definition of small and medium-sized enterprises, contained in point 1.1.a) of the Measure, in addition to confirming that SMEs are defined as enterprises that achieve a turnover or revenue which amount is lower than EUR 50 million, establishes that entities that directly or indirectly control or are controlled by an entity that is not qualified as SME, do not fall within this definition. In this way, the Revenue Agency also excludes from the scope of application of the benefits provided for SMEs companies that, while respecting the abovementioned quantitative threshold, are controlled (even indirectly) by entities whose revenues or turnover has exceeded 50 million euro during the year.

Content of the transfer pricing documentation



The abovementioned Measure redefines the structure of transfer pricing documentation (both Masterfile and National Documentation) as well as the documents to be attached.

In fact, after having exhaustively listed the chapters, paragraphs and sub-paragraphs in which the documentation must be structured and having also provided the necessary indications regarding the content of each structural element, the Revenue Agency also specifies which new documents should be attached to the documentation:

- with reference to the Masterfile, in chapter 5 - "financial reports of the multinational group" - the taxpayer is requested to attach the consolidated financial statements of the multinational group for the fiscal year in question (in addition to a list of APAs and cross-border preventive rulings, already provided for by the previous provisions of 2010);
- with regard to the National Documentation, the Measure establishes, with reference to chapter 3 - "financial information" - that the latter must be accompanied by: i) the financial statement of the local entities for the fiscal year and, if available, the reports issued by the independent auditors; ii) the reconciliation statements between the data used for the transfer pricing analysis and the financial statements; iii) the summary statements of the financial data relevant to the comparable entities used for the transfer pricing analysis.

Simplified approach provided for low value-added services

Point 7 of the Measure in question specifies the content that the taxpayer is required to provide if the so-called simplified valorization approach has been chosen. It is recalled, in fact, that in the case of services with low added value, the taxpayer has the possibility to value the service by aggregating the total direct and indirect costs connected to the service itself adding a profit margin of 5% (simplified approach).

Effectiveness conditions of an appropriate documentation

Among the most important changes introduced last November 23rd there is certainly the introduction of the electronic signature with time stamp. In fact, in order to be able to consider the documentation suitable (both Masterfile and National Documentation) – and therefore benefit from the disapplication of penalties for unfaithful return – it is necessary that the legal representative electronically sign the same with time stamp to be applied by the date of submission of the tax return.

As already provided by art. 8 of the MEF Decree of May 14th, 2018, it is established that the documentation must be considered suitable whenever it provides the Tax Authorities with the data and information necessary to carry out an analysis of the conditions and transfer prices applied.

The Measure also extends the deadline for submitting the documentation to the Financial Administration in case of a specific request, from 10 to 20 days.

Finally, considering the need to communicate the possession of the documentation when submitting the annual income tax return and also considering the need to collect a time stamp



signature by the date scheduled for sending the return, the Measure specifies that, in case of sending a supplementary income tax return (ex. Art. 2, paragraph 8, of Presidential Decree 322/1998) in order to correct mistakes or omissions arising from non-compliance with the arm's length principle, the taxpayer is allowed to supplement or modify the transfer pricing documentation – for which specific notice of possession must also be given when submitting the supplementary tax return. In this case, it would seem to remain valid, to the interpretation of the writer, the necessity to collect the electronic signature of the legal representative again, by affixing a time stamp, as mentioned above.

The new provision, in implementation of the provisions of the Ministerial Decree of May 14th, 2018, replaces the provisions contained in the previous Measure of September 29th, 2010 and applies from the fiscal year in progress at the date of its publication.

Andersen in Italy is at your disposal for any additional clarification and explanation.

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