

ITALY

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Federico Vincenti and Alessandro Valente

Italy publishes updated 2020 transfer pricing documentation guidance

Federico Vincenti and Carola Valente of Crowe Valente / Valente Associati GEB Partners outline the key elements for businesses to consider from the provision which amended the 2010 transfer pricing documentation requirements.

On November 23 2020, the Italian Revenue Agency published a provision by which it amended the Italian regulation on transfer pricing documentation, making it more compliant with the OECD Transfer Pricing Guidelines.

The new measures replace those of the provision of September 29 2010 and are applicable from the 2020 tax period.

The preparation of transfer pricing documentation remains optional for Italian companies. In the case of the predisposition of suitable documentation, companies can benefit from the so-called penalty protection in case of transfer pricing adjustments by the Italian tax administration.

The previous provision provided for a diversification of the documentation to be prepared according to the type of company:

- Holding and sub-holding companies had to prepare a masterfile and local file; and
- Controlled companies only had to prepare the local file.

From 2020, all companies (including Italian permanent establishments) that intend to benefit from penalty protection will have to prepare both the masterfile and the local file.

The provision details the structure of the masterfile and the local file that taxpayers must follow when preparing the transfer pricing documentation to benefit from the penalty protection reward scheme.

The content of the masterfile and the local file is fully aligned with the guidance provided in Annexes 1 and 2 to Chapter V of the OECD Transfer Pricing Guidelines.

The provision specifies that these documents must be prepared in Italian. However, it is also possible to present the masterfile in English, considering that in some countries, this document is already mandatory and must be prepared accord-

ing to OECD standards.

The possibility is confirmed for small and medium-sized enterprises (with revenues not exceeding €50 million) not to update, in the two tax periods following the one to which the local file relates, certain chapters concerning intra-group transactions (concerning the five comparability factors).

Such simplification will be granted only if the comparability analysis is based on information obtained from publicly available sources and provided that the elements referred the five comparability factors are not significantly modified in those tax periods.

It is also possible to prepare the documentation only for selected inter-company transactions. Therefore, taxpayers will be able to decide which transactions to analyse, considering the degree of materiality or risk of the transactions. In such cases, penalty protection will be guaranteed only for the transactions covered by the transfer pricing documentation.

The provision extends the period for the submission of documentation from 10 days to 20 days from the date of request by the tax authorities.

The provision specifies that the transfer pricing documentation must be considered appropriate in all cases, in which it provides the tax authorities with the data and information necessary to carry out an analysis of the transfer pricing policy. This should be the case regardless of whether the transfer pricing method, or the selection of transactions or comparable subjects adopted by the taxpayer, are different from those identified by the tax administration.

An important novelty of the provision concerns the documentation relating to low value-added services, which as a necessity, must contain information concerning the description of intra-group services, service supply contracts, valuation of operations and the related calculations.

Therefore, such information must be provided with specific documentation other than the transfer pricing documentation.

The masterfile and the local file must be signed by the taxpayer's legal representative or his delegate by electronic signature with a timestamp to be appended by the date of submission of the income tax return. Therefore, the transfer pricing documentation must be finalised within the deadline for the submission of the income tax return (generally within September 30, which has been extended in the last years to November 30).

In line with the current regulatory provisions, the communication of the availability of the transfer pricing

documentation must be made in the annual income tax return.

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