

Bird & Bird & Tax alert

*New Provision of the Italian Revenue Agency:
news regarding the transfer pricing
documentation*



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On 23 November 2020, the Italian Revenue Agency published the new Administrative Provision n. 360494 (the “**Provision**”), endorsed in the Decree of the Ministry of Economy and Finance of 14 May 2018 (the “**Decree**”) which laid down new transfer pricing guidelines for the application of the arm’s length principle in compliance with the provisions set forth in article 110, paragraph 7 of the Corporate Income Tax Code (TUIR).

The Provision starts from FY 2020 and replaces the previous Administrative Provision of the Italian Revenue Agency dated 29 September 2010 on transfer pricing documentation requirements.

In particular, the Provision provides the new regulations relating to the transfer pricing documentation and establishes the eligibility requirements of the same in order to benefit from the penalty protection regime provided for by Article 1, paragraph 6 and Article 2, paragraph 4-ter, of Legislative Decree n. 471 of 18 December 1997.

The main points of the Provision are reported below.

1. Masterfile’s content

The “new” Masterfile is made up of five chapters and the first two are dedicated to the organisational structure of the group and of the activities carried out, with a particular focus on the value chain and on the main profit-generating factors, as well as on the relevant markets of reference and on any corporate restructurings.

The third chapter describes the intangible assets owned by the group and any agreements relating to them, the group’s transfer pricing policies for research and development activities, as well as the significant transactions relating to intangible assets.

The fourth and fifth chapters, on the other hand, look at intra-group financial operations, and the related transfer pricing policies applied, as well as the financial relationships of the group, including

the listing and description of any APAs and cross-border advance rulings relating to financial transactions within the group signed with, or issued by, the tax administrations of the countries in which the group operates.

2. Local File’s content

The “new” Local File contains information regarding the “local entity” and is organised in four chapters, the first of which presents the general description of the enterprise in terms of history, general overview of the relevant markets of reference, organisational structure and activities carried out.

The second chapter focuses on intra-group transactions, the comparability analysis, and the description of the selected transfer pricing method and the results deriving from it. However, it also requires certain passages to be made explicit, ranging from the choices related to the possible selection of comparable transactions (external and internal) to any comparability adjustments and positioning within the full range.

The third chapter provides a series of financial information such as the annual accounts of the local entity accompanied by the auditors’ report (if any), reconciliation statements between financial statements and data used for the application of the transfer pricing method.

Annexes to the Local File must be displayed in the fourth chapter, including copies of the intra-group contracts and of the existing unilateral and bilateral/multilateral APAs and cross-border advance rulings of which the local entity is not a party but which are anyway linked to the intra-group transactions described in the documentation.

3. Time stamp and electronic format

From a “procedural” point of view, one of the main innovations introduced concerns the obligation of digital signature with time stamp to be put on the

documentation by the legal representative (or by a delegate representing the taxpayer) by the date of submission of the tax return for the relevant tax year, in order to benefit from the penalty protection regime.

This new measure will undoubtedly have an impact on the management of the timing relating to the drafting of the documentation itself, which must be reviewed by taxpayers according to the newly introduced requirements. Furthermore, the documentation must be submitted in electronic format no later than 20 days following a request by the Tax Administration.

4. Compliance with the documentation requirements

The documentation must be considered compliant in all cases in which it provides the tax authorities with the full data and information necessary to carry out an analysis of the conditions and transfer prices applied, regardless of whether the transfer pricing method applied by the taxpayer or the selection of comparable transactions and/or subjects differs from those identified by the Tax Administration.

5. Communication of the availability of the adequate documentation

In line with current regulatory provisions, the availability of the documentation must be communicated to the Revenue Agency by ticking the appropriate box in the annual tax return. However, in the limited case of errors or omissions deriving from non-compliance with the arm's length principle, the documentation can be modified or integrated and the related communication to the Revenue Agency is made through the submission of a supplementary tax return.

In case of submission of the supplementary tax return, made by 31 December 2020, and with exclusive regard to the tax years prior to the one in progress at the date of publication of the Provision, no penalties or default interests are imposed.

6. Simplifications for low value-adding services

The taxpayer that intends to apply the simplified approach for low value-adding intra-group services (transfer price determined by aggregating all the related direct and indirect costs and applying a 5% mark-up on the latter) must draft a specific

documentation providing details regarding the services, the allocation criteria used and the underlying reasons for such choice, as well as the detailed explanation and documentation of the cost base and of the calculations underlying the allocation.

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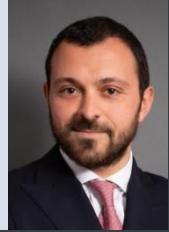


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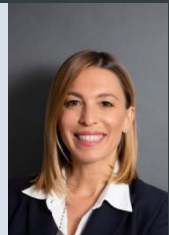


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