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Transfer pricing documentation and Italian penalty protection regime

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Introduction

- ✓ On 23 November 2020, the Italian Revenue Agency issued **new guidelines** concerning the content/validity of the elective **TP documentation** available to Italian resident enterprises/PE to benefit of the **penalty protection regime** in case of a tax assessment.
- ✓ The guidelines introduce **significant changes** to the mandatory contents of the TP documentation in order to adopt the **BEPS Action 13** deliverable and the associated revisions to **OECD TP Guidelines** on documentation.

New guidelines

- ✓ The guidelines confirm that the set of TP documentation **must include**:
 - (i) **Masterfile**
 - (ii) **Local country file**while introducing a **new structure** of the respective content.

- ✓ The Masterfile will become a **mandatory document** for all Italian taxpayers that want to access the elective Italian **TP penalty protection regime** (including subsidiaries for which, under the previous regime, no Masterfile was required).

Masterfile

- ✓ The Masterfile must include information on the **multinational group** as a whole and must be structured in **5 chapters** regarding:
 - (1) Description of the group **structure**
 - (2) Description of the **activities** carried out by the group
 - (3) Description of the **intangible assets** owned by the group
 - (4) Description of the intercompany **financial transactions**
 - (5) Description of the group **financial reports**

Local country file

- ✓ The Local country file must include information relating to the **Italian resident taxpayer** and must be structured as follows:
 - (1) General description of the **entity** (history, market trends, etc.)
 - (2) Intercompany **transactions** (including a summary of all the transactions analyzed and the relevant amounts)
 - (3) **Financial** information
 - (4) **Attachments**

Small and medium-sized enterprises

- ✓ SMEs (turnover/revenues not exceeding 50 million Euros) are **exempted** from updating chapters related to **intra-group transactions** in the **2 following FY** (if comparability analysis is based on publicly available sources and no significant changes has occurred).
- ✓ The simplification is **not available** to local entities directly or indirectly controlled by an entity **not qualifying** as a SME.

Low value-added services

- ✓ **Specific documentation** is required for applying the simplified approach for **low value-added intercompany services** (5% mark-up on costs as an appropriate arm's-length value of such services).

- ✓ The documentation must include specific content:
 - (1) Description of intragroup **services by category**
 - (2) Intercompany services **agreements**
 - (3) **Value** of the operations
 - (4) Calculations demonstrating the **cost allocation**

Drafting and validity requirements

- ✓ The **Local country file** must be in **Italian**, while the **Masterfile** may be in **English**.
- ✓ Both the Masterfile and the Local country file must be signed by the Italian legal representative of the entity by means of an **electronic signature** and a **digital time stamp** no later than the date of filing the tax return.
- ✓ All the **documentation** must be submitted in **electronic format**.
- ✓ The TP documentation cover only **one FY** and is valid only if its content is **complete** and **truthful**.

Conclusion

- ✓ The guidelines represent a **key step** in aligning the **Italian TP framework** to the **OECD standards** on TP documentation.
- ✓ This likely will suggest a **review** of the existing TP documentation **preparation process** and of the data/information **gathering activities**.
- ✓ On the other hand, the **changes** introduced and the **increase** in data/information to provide within the timeline imposed by the time stamp will require more **compliance burdens** and **efforts** to fulfill the new documentation standards.

Many thanks for your attention!

For any further information or to evaluate how this issue may affect your client's business, please contact:

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