

# New set of rules for Italian TP documentation

## Foreword

New official instructions (“Provvedimento”) for the preparation of Transfer Pricing Documentation in Italy were issued on November 23rd, 2020 by the Italian Inland Revenue Director. Compared to the previous rules, the Provvedimento introduces a number of innovations to the Transfer Pricing Documentation (“the Documentation”) requirements that taxpayers have to comply with in order to be eligible for the so-called “penalty protection regime”.

The Provvedimento follows the Ministerial Decree issued on May 14th, 2018 and entirely replaces the former Provvedimento in force to date. It is worth saying that it relies on the last version of OECD Transfer Pricing Guidelines.

## Adequate Documentation

For all taxpayers who wish to benefit from the penalty protection regime, the Documentation required is composed of both a Master File and a Local File, to be prepared in Italian language. Under specific circumstances to be better clarified by the Inland Revenue, the Master File can be provided in English.

The requirements above are valid for Permanent Establishments as well, where applicable.

## Structure and contents of the Documentation

For the intercompany transactions reported, the purpose of the Documentation is to provide evidence of their consistency with the arm’s length principle. The Provvedimento provides that both the structure and contents of the Master File and the Local File should be aligned with those contained in the last version of the OECD Transfer Pricing Guidelines. In general terms:

## Master File

A Master File containing information on the multinational group activities and global allocation of income among different entities must be prepared.

## Local File

The Local File supplements the Master File with a focus on the local entity.

Such a document contains specific information on the peculiarities of the local entity, as well as the transfer pricing analyses related to the transactions occurring between the latter and related parties located in different jurisdictions.

## Small and Medium Enterprises (SMEs)

According to the Provvedimento, an SME is defined as a company whose turnover does not exceed 50 million Euros.

Whereby a company falls under the definition of an SME and is involved in intercompany transactions that satisfy the following requirements:

- no significant changes in the comparability analysis occur in the period at issue
- the analyses are carried out by relying on publicly available data

it will have the possibility not to update the qualitative and quantitative analyses referred to the aforementioned intercompany transactions in the Local File for the two years following the one when the analysis was performed at first. As opposed to the past, the Provvedimento makes clear that entities directly or indirectly controlled by or controlling an entity whose turnover exceeds the 50 million Euro threshold will not fall within the definition of SME and, therefore, will not qualify for the above-mentioned simplified documentation regime.

### Low value-adding services

A thorough qualitative analysis is required on the nature of the services for which the taxpayer may consider to apply the “simplified approach” as defined by the OECD Guidelines.

The qualitative analysis must include a detailed description of the nature of the transactions and of the benefits obtained or expected by the recipient entities (i.e. “benefit test”). Furthermore, the taxpayer is also required to include clear and precise details on the criteria used to determine and allocate the amounts underlying the transactions.

### Electronic signature and time stamp

This is one of the main innovations introduced by the Provvedimento. The Documentation must be signed electronically by the Legal Representative (or a delegated substitute). The electronic signature gives certainty (through a “time stamp”) to the signing date, which must be prior to the tax return filing date for the relevant fiscal year. Failure to comply with this requirement will not allow the taxpayer to be eligible for penalty protection regime.

In case of a tax audit, the Documentation must be submitted within 20 days from the request of the Tax Inspectors. Any additional information that may be requested in the course of a tax audit has to be provided within 7 days. Such a term may be extendable depending on the complexity of the request.

### Amendment of the Documentation and supplementary tax return

As in the past, in order to be eligible for the penalty protection regime, the taxpayer must communicate to the Tax Authority the possession of the Documentation upon filing of the relevant tax return. Under certain circumstances, the taxpayer is allowed to amend the Documentation. In this case, a specific communication has to be submitted by filing an amended tax return.

Further clarifications are expected from the Tax Authorities on the topic.

### “Partial” Documentation

According to the Provvedimento, the taxpayer is now entitled to report only specific intercompany transactions taking place during the relevant fiscal year. In this case, eligibility for the penalty protection regime would apply only with respect to the documented transactions.

### Entry into force

The new requirements will apply starting from the ongoing fiscal year at the date of November 23<sup>rd</sup>, 2020.



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