

# TRANSFER PRICING

NEW DOCUMENTS TO PREVENT THE APPLICATION OF PENALTIES



On 23 November 2020, the Revenue Agency published Regulatory Provision no. 360494, with which it implemented Art. 8 of Min. Dec. 14 May 2018 requiring **the revision of regulations on transfer pricing documents**. This Regulatory Provision radically changed the manner of preparing transfer pricing documents appropriate to ensure penalty protection to taxpayers.

The following paragraphs briefly recap the provisions of this Regulatory Provision.

**25 NOVEMBER 2020**

## EFFECTIVE DATE - ART. 8

The regulatory measure replaces the one issued on 29 September 2010 and its provisions will be effective **starting from the 2020 tax year.**

## APPROPRIATE TRANSFER PRICING DOCUMENTS - ART. 2

Transfer pricing documents need to be drafted annually and to comprise:

1. The **Master File**, which gives an overview of the business of the multinational group, the description of the nature of the business transactions completed worldwide, general transfer pricing policies, and the allocation of income at world level and of economic activities;
2. The **Country Specific Documentation** or **Local File**, which discloses more details on specific intercompany transactions, focusing more on information concerning the transfer pricing analysis of intercompany transactions.

## SIGNATURE OF THE DOCUMENTS - ART 5.1.2

The Master File and the Local File need to be signed by the **legal representative** of the taxpayer or his delegate by **ELECTRONIC SIGNATURE WITH TIME STAMP placed by the deadline for filing the income tax return.**

## LANGUAGE AND LAYOUT OF THE DOCUMENTS - ART. 5

The Master File and the Local File have to be drafted in Italian. However, the Masterfile may be drafted in English. The Documents need to be exhibited to the Tax Administration in electronic format within 20 days after their request.

## MASTER FILE (ART. 2.2)

The Master File needs to be structured as follows:

1. **Organization Structure**
2. **Business carried out**
  - Main factors generating group profits
  - Transaction flows
  - Agreements for intercompany services
  - Major markets
  - Operating structure of the value chain
  - Business restructuring transactions
3. **Intangible assets of the multinational group**
  - Group strategy
  - Intangible assets
  - Agreements on intangible assets
  - Transfer pricing policies for research and development activities
  - Relevant transactions
4. **Intercompany financial assets**
  - Financing arrangements
  - Centralized financing functions
  - Transfer pricing policies for financial transactions
5. **Financial relations of the Multinational Group**
  - Consolidated financial statements
  - Agreements on financial transactions



## LOCAL FILE - ART. 2.3

The Local File has to be structured as follows:

### 1. General description of the local entity

- Operating structure
- Pursued strategy and activity of the enterprise

### 2. Intercompany transactions

- Type 1 transactions
- Description of the transactions
  - a) Amount of payments made or received
  - b) Identification of involved associated enterprises
  - c) Comparable uncontrolled transactions
- Comparability analysis
- Adopted transfer pricing method
  - a) Statement of the selected method and of the reasons for its compliance with the arm's length principle
  - b) Application of the selected method
    - i. tested associated enterprise
    - ii. multi-year analysis
    - iii. comparability adjustments
    - iv. search strategy
    - v. range of arm's length values
- Results
- Critical assumptions adopted in applying the selected method

### 3. Financial information

The Local File needs to annex the following documents:

- Annual accounts of the local entities for the relevant tax year
- Schedules disclosing and reconciling financial data used in applying the transfer pricing method with the financial statements
- Schedules recapping significant financial data for comparable entities

### 4. Annexes

- Copy of all intercompany agreements
- Any advance pricing agreements and advance cross-border tax rulings.



#### LOW-VALUE-ADDING SERVICES - ART. 7

Under Art. 7 of Ministerial Decree 14 May 2018, low-value-adding services are services that:

- a) are of a supportive nature;
- b) are not part of the core business of the multinational enterprise;
- c) do not require the use of unique and valuable intangibles, and do not contribute to the creation of unique and valuable intangibles;
- d) do not involve the assumption or the control of substantial or significant risk by the service provider and do not give rise to the creation of significant risk for the service provider.

These services do not trigger the need for a benchmark analysis, but applying a 5% markup to incurred cost is sufficient.

However, a document with the following structure needs to be prepared:

- Description of intercompany services
- Service agreements
- Valuation of the transactions
- Calculations

#### DOCUMENTS FOR SMALL AND MEDIUM-SIZED ENTERPRISES - ART. 4

Small and medium-sized enterprises (revenues not exceeding €50 million) need not revise the chapters on intercompany transactions of the Local File in the two tax years that follow the year of reference of the Local File "if the comparability analysis is based on information from publicly available sources and provided that the elements in the comparability analysis of the Local File (art. 2.3) do not change significantly in such tax years".



### CONDITIONS FOR THE DOCUMENTS TO BE EFFECTIVE - ART. 5.3

The documents are regarded as appropriate in all cases in which they give audit bodies factual data and elements needed to analyze applied transfer prices and conditions, with specific reference to the accurate outlining of transactions and to the comparability analysis, including the functional analysis, regardless of the fact that the transfer pricing method or the selection of transactions or comparables adopted by the taxpayers are different from the ones adopted by the Tax Administration.

### REPORTING POSSESSION OF THE DOCUMENTS - ART. 6

Possession of the transfer pricing documents needs to be disclosed in the annual income tax return. If a supplementary return is filed by 31 December 2020, and solely with reference to tax years prior to the one in progress on the date the Regulatory Provision under review was published, no penalties or late interest apply.



## *CONTACT US*

We invite you to speak with your contact professional within the Firm for any further explanation

[www.carnelutti.com](http://www.carnelutti.com)  
+39 02 655851