



TP Documentation

Instruction n. 360694
of 23 November 2020

Instruction of Revenue Agency n. 360494

Ten years after the introduction of the Italian Commissioner Decision on transfer pricing documentation, the Revenue Agency published on 23 November 2020 a new Instruction (no. 360494, the «Instruction») which makes significant changes to the above provisions. This contribution examines the new developments thus introduced.

Starting from the 2020 tax year, multinational groups, in order to benefit from the so-called *penalty protection*, must comply with the requirements of the Measure that replaces the provisions introduced in 2010.

The text of the Instruction n. 360494/2020 is available at the following link:

<https://www.agenziaentrate.gov.it/portale/documenti/20143/2794495/Provvisoria%200360494%20del%2023%20112020.pdf/87a55907-b275-a3b5-1bc7-a6e316b70fef>

The text of the repealed Commissioner Decision n. 137654/2010 is available at the following link (English version):

https://www.agenziaentrate.gov.it/portale/documenti/20143/273646/provv+29092010+transfer+pricing+vers+inglese_ItalyCommissionerDecision_29_09_2010_transfer_pricing.pdf/073b5b10-eeb9-e09e-81b7-2b4541a4f536

The Instruction makes the following changes to the previous framework:



Structure of appropriate documentation (Masterfile and Countryfile).



Form, terms of delivery, extension and conditions of effectiveness of the appropriate documentation.



Opportunity to file a supplementary tax return.



Documentation on low value added services.

The following pages will describe the main innovations.

Some rules are unchanged :



Indication in the tax return that the documentation has been prepared



Structure of the documentation, i.e., the Masterfile and the Countryfile.

Major Changes – Structure of appropriate Documentation (Masterfile and Countryfile)

The **structure** of the Masterfile and the Countryfile (both for resident companies and for permanent establishments of non-resident companies) has been updated according to the indications provided for by the ACTION 13 Deliverable of the BEPS project.

In particular, the **Masterfile** (dividend into 5 chapters) should provide a complete overview among other things on:

- » main factors generating the group profits, flows of transactions, agreements for intragroup services, markets, value chain, business reorganizations;
- » intangible assets, indicating entities that have legal ownership and/or perform DEMPE functions, as well as agreements relating to intangible assets and the transfer pricing policy for research and development activities;
- » financial assets, indicating the entities carrying out centralised financing functions. The transfer pricing policy should also be illustrated,
- » financial reports, attaching the consolidated financial statements of the multinational group and providing a list and a brief description of the "prior agreements on transfer prices" and "cross-border preventive rulings".

Masterfile

The **Countryfile** (divided into 3 chapters) must, among other things, provide detailed information on:

- » amount of payments made and/or received;
- » Comparable transactions, accurately illustrating the procedure for selecting the transactions and financial indicators of independent undertakings selected for the purposes of the economic analysis;
- » research strategy, in terms of the selection of *comparables* and sources of information used
- » the main critical assumptions adopted in the application of the chosen method together with the effects resulting from their modification
- » financial information including:
 - › audit reports issued by independent auditors,
 - › reconciliation between the financial data used in the application of the transfer pricing method and that reported in the financial statements,
 - › summary financial data relevant to comparable entities.

Countryfile

Major changes - Form, delivery terms, extension and conditions of effectiveness of the appropriate documentation

The Masterfile and the National Documentation must be signed by the taxpayer's legal representative or by a delegate by **electronic signature with time stamp to be made within the date of submission of the tax return.**

(e.g. Tax Return 2021, relating to the 2020 tax year, the ordinary deadline for preparation and electronic signature is expected no later than 30th November 2021).

The delivery of the documentation to the Financial Administration is due no later than 20 days from the request (presently was 10 days).

Form and
Delivery terms

The Financial Administration may **deny the penalty protection**, despite the fact that the structure of the documentation complies with the Measure, if alternatively:

- » the contents are incomplete and do not comply (including the time stamp) with the Instruction, or
- » information provided does not correspond in whole or in part to the truth.

The Revenue Agency is required to give a detailed reason for the application of sanctions. It remains for the competent Office, when issuing the notice of assessment, to critically assess that judgment with a view to imposing sanctions.

Partial omissions or inaccuracies do not constitute a cause for failure to apply *penalty protection*.

The Revenue Agency will recognize the *penalty protection*, in all cases where the documentation provides the inspectors with the data and elements necessary to carry out an analysis of the conditions and prices applied, with specific regard to:

- » accurate delineation of transactions;
- » comparability analysis, including functional analysis, regardless of whether the methods of setting transfer prices or the selection of transactions or comparable subjects adopted by the taxpayer are disregarded.

Conditions of
effectiveness

Major changes – Supplementary declaration and documentation on low added value services

Where an amending return is filed, implying upwards income or tax adjustments, the term for the communication and the signature is the date of filing of the amending return.

For tax periods up to 2019, if the tax return is amended within 31st December 2020, no penalties or late payment interest is applicable in cases where Article 10(2) of Law No 212 of 27 July 2000 is applicable (*"where the taxpayer has complied with information contained in acts of the financial administration, even if subsequently amended by the administration itself, or where its conduct is carried out as a result of facts directly resulting from delays, omissions or errors of the administration itself"*).

Possibility of sending a dichiarazione integrativa

The drafting of **specific documentation** concerning low added value services is required in order to benefit from the simplified approach applicable to these services in accordance with the provisions of art. 7 DM 14.05.2018.

The **documentation on low added value services** consists of 4 sections:

1. Description of intragroup services (including benefits obtained/expected and allocation criteria);
2. Description of the underlying service agreements;
3. Evaluation of operations;
4. Calculations (demonstrating the allocation criteria).

It must be delivered in the terms set out on the previous page.

Documentation on low added value services

With a presence in more than 100 countries, **WTS Global** is the leading independent network of tax partner firms. Aside from tax services, WTS Global offers legal and consulting services, deliberately refraining from conducting annual audits in order to avoid potential conflicts of interest.

WTS R&A Studio Tributario is a tax consulting firm specialized in international and extraordinary transactions.

The areas of activity are the following:

- Italian income taxes
- VAT, custom duties and other indirect taxes
- International Tax
- Private clients
- Construction sites abroad
- Transfer pricing
- Tax litigation and relationships with tax authorities.



Chiara Mejnardi
chiara.mejnardi@ra-wts.it



Marina Lombardo
marina.lombardo@ra-wts.it



Tea Favoino
tea.favoino@ra-wts.it

WTS R&A Studio Tributario

Italy

Corso Europa 2
20122 Milano
T +39 02 3675 1145

Corso Re Umberto 10
10121 Torino
T +39 011 433 83 51

Vicolo Oratorio 5/A
37121 Verona
T +39 045 472 21 87

segreteria@ra-wts.it · www.ra-wts.it · CF/IVA 08845480014 · Sede legale in Torino

Updated as of November 27th, 2020.

The information is intended to provide general guidance only and should not be relied on as a basis for undertaking any transaction or business decision. Neither the Firm or any of the Authors can accept any responsibility for any inaccuracy or omission.