KPMG

# Transfer Pricing Update

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On November 26th, 2021, the Italian Tax Authorities issued the Circular letter No. 15/E 2021, which provides clarifications on the transfer pricing requirements contained in the provision No. 360494 of November 23rd 2020.

In the next paragraphs the main items of attention are summarized.

## General aspects

The circular letter No. 15/E 2021 ('the Circular') confirmed that:

— the structure and the contents of the TP Documentation for penalty protection must be in line with those outlined by the provision No. 360494 of 23 November 2020 (Tax alert issued on November 27th, 2020).

— the TP Documentation must always include a Master file and a Country file.

— the TP Documentation and related annexes must be electronically signed by the legal representative of the Italian taxpayer with a legally binding digital signature and a time stamp must be affixed before the filing of the income tax return. In case the Masterfile has already been signed by the legal representative of the direct or indirect parent company, it must also be digitally signed by the legal representative of the Italian taxpayer; the time stamp must be affixed as well.

Additionally, the Circular confirmed that the taxpayer, within 90 days from the original deadline to file the income tax return, can file a late or an amending income tax return to communicate to the Italian Tax Authorities that the TP Documentation was completed in the period between the original deadline and the extended one. Also in this case, the TP documentation must be digitally signed and time stamped prior to the filing of the late or amended tax return.

## Masterfile

The Circular confirmed that the Italian taxpayer can present the Masterfile, prepared by the direct or indirect parent company, relating to the entire group or to the division in which the Italian taxpayer operates. It is necessary however, that such document has a structure and content precisely aligned with Annex I of Chapter V of the OECD TP Guidelines.

If the Masterfile presents a structure and/or content not aligned with such requirements, the Italian taxpayer will have to prepare an appendix that provides reconciliation/necessary integrations between the requirements of the Provision and the structure/content of the group Masterfile prepared centrally.

The Circular clarifies that in case the fiscal year of the parent company that prepares the Masterfile does not match with that of the Italian entity, it is possible to submit the Masterfile that refers to the fiscal year preceding the one for which the Italian entity is preparing the TP Documentation.

As for financing arrangements, the Circular clarifies that is it important to provide a clear and complete description of the funding from third parties. In particular, for each relevant funding instrument the following information should be provided: type of contract, lender, beneficiary, date of stipulation, duration of the contract, amount, currency, conditions, interest rate applied, as well as any guarantees given.

## Country File

Regarding the Country File the Circular makes the following clarifications:

— organizational structure: the number of human resources assigned to each company department, as well as the description of the role of the local management and of the individuals to whom they report, both from a functional and hierarchical perspective, must be included;

— royalties and interest expenses: the amounts of royalties and interest expenses must be provided according to the accrual criteria;

— financial data reconciliation: the economic data of the tested party used for the calculation of the profit level indicators should be reconciled with the entity's financial statements. In particular, such reconciliation is necessary also whether the tested party is a foreign entity;

— if a transactional profit method is selected, it is necessary to explain why the potential application of a traditional transaction method has been rejected. Similarly, if a method different from Comparable Uncontrolled Price ('CUP') is applied, it is necessary to indicate the reason for rejecting such method;

— the Circular confirmed that the taxpayer should provide a summary of the "*critical assumptions*" relating to the application of the selected transfer pricing method, with an indication, in cases considered particularly relevant, of the effects deriving from the change in such "*critical assumptions*";

— APAs/rulings: a copy of the existing unilateral, bilateral, or multilateral advance pricing agreements and the cross-border rulings to which the Italian taxpayer is not a party, but that are connected to the intercompany transactions that involve the Italian taxpayer, must be attached to the Country File. Only the APAs/rulings valid in the fiscal year for which the TP Documentation is prepared, must be attached. In case such documents contain a confidentiality clause that do not allow the disclosure to third parties, it is possible to provide a summary of their content.

## Low value-adding services

The Circular confirms that the section "l*ow value-adding services"* (OECD Guidelines Par. 7.43-7.64) should be prepared in case the I/C services (i) are of a supportive nature, (ii) are not part of the main activities of the multinational group, (iii) do not require the use of unique and valuable intangible assets and do not contribute to the creation of those assets, (iv) do not involve the assumption or control of a significant risk by the service provider or give rise to such a risk on its part, v) are remunerated in line with the indications contained in Art. 7 of the Ministerial Decree dated 14 May 2018.

In this case the dedicated section should include all the information needed to understand how the cost base was determined in terms of detailed list of underlying costs and accounts of the service provider and its allocation to all the beneficiaries of the MNE.

## Small and medium enterprises ('SMEs')

The Circular confirms that only the SMEs are entitled not to perform fully new benchmark analysis every year. The Circular also explains that an entity can be qualified as SME if its annual turnover does not exceed Eur 50 million for the fiscal year to which the TP Documentation refers and that does not control / are not controlled by an entity not qualified as SME.

## Contacts

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