IN-DEPTH

Transfer Pricing

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Summary

Introduction

Rules on transfer pricing are set out in Article 110 of the Italian Corporate Tax Act (CTA). Transfer pricing rules (TP rules) apply to corporation tax (IRES) and to regional tax on productive activities (IRAP), pursuant to Article 1, Paragraphs 281–284 of Law No. 147/2013.[1] There are no separate rules for capital transactions.There are no separate rules for capital transactions and TP rules are not applicable to shareholders' transactions like dividend distributions and capital contributions. Article 110, Paragraph 7 states that an enterprise's income statement items that derive from transactions with non-resident subjects that directly or indirectly control the enterprise (or are controlled by the enterprise or are controlled by the same entity[2] that itself controls the enterprise) are valued based on the conditions and prices that would have been agreed among third parties, at arm's length and in similar circumstances, if an increase in taxable income arises.[3] Reductions in taxable income are allowed only in specific cases expressly indicated by Article 31 quater of Presidential Decree No. 600/1973.

Guidelines for the application of transfer pricing principles are included in the Decree of 14 May 2018 (the Italian Guidelines), which aimed to make Italian tax practice consistent with the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines and, among the issues covered, provides a specific definition of associated enterprises, a brief description and priority of the methods to be used, and a definition of low-value-adding services, and introduces a definition of the arm's-length range. With regard to the applicable version of the OECD Transfer Pricing Guidelines, as a general rule, the Italian Tax Administration (ITA)[4] and courts refer to the version in force in the tax period under review; the use of a new version of the Guidelines with reference to previous tax periods is not explicitly considered under Italian tax practice.[5]Therefore, if a particular topic has not been considered in a previous version of the OECD Guidelines, suggestions reported in a new version can be extended to cover past issues, subject to specific analysis to be performed on a case-by-case basis.

The Italian penalty protection regime[6]is regulated by the Decision of the Commissioner of the ITA No. 360494 (the New Decision) issued on 23 November 2020 by the Italian Revenue Agency and by Circular Letter No. 15/E of 26 November 2021. Through Circular Letter No. 16/E of 24 May 2022, the ITA issued instructions on the practical identification of the arm's-length range. The New Decision introduced material changes to the structure and the substance of the 'compliant' transfer pricing documentation that must be prepared to support the application of the arm's-length principle (ALP) to controlled transactions, to benefit from the Italian penalty protection regime.

In particular, the New Decision is part of the process aimed at aligning the Italian TP rules with the OECD standards[7]. In Italy, when a transaction is found not to be compliant with the arm's-length principle, there are no specific corporate law implications; however, this could trigger legal or judicial action to protect the stakeholders' rights (e.g., on account of over-payment for goods or services, or accounting fraud). As a general rule, the ITA requires the use of public data for transfer pricing analysis. Italian accounting principles could impact transfer pricing analysis (application of the amortised cost method and identification of the relevant profit level indicator (PLI), etc).

Year in review

Recent updates to the law have introduced significant changes to deadlines for filing tax returns, which has impacted the time allowed for the preparation of transfer pricing documentation. Legislative Decree No. 108/2024 has increased the time permitted for filing income tax returns from nine months to 10 months following financial year end. Transfer pricing documentation must be submitted within the same time frame.[8]

Furthermore, Italian tax system was also subject to a deep review in respect to domestic regimes as well as cross border transactions and reorganisations, having no impact on transfer pricing best practices.

Filing requirements

In Italy, there are no specific transfer pricing returns and there are no mandatory reports to be prepared, but transfer pricing documentation is recommended as evidence of compliance with the arm's-length principle in inter-company transactions. If the documentation complies with the New Decision, the taxpayer is entitled to benefit from the penalty protection regime[9] provided for by Article 1, Paragraph 2 *ter* of Legislative Decree No. 471/1997.

The New Decision requires that the 'compliant' documentation includes both a local file and master file.

Regarding the master file, relevance is attributed to the identification of the key value drivers of the group's profitability, operating structure and value chain. From a structural perspective, detailed information must be shared in relation to activities aimed at developing intangibles and intra-group financing activities, requiring the inclusion of information concerning the group's financing structure, the identification of any entity within the group that carries out central financing activities, and the description of the transfer pricing policies for controlled financial transactions. The New Decision also requires the group to show consolidated income statements, as well as a list of any advance pricing agreements (APA) or other tax rulings entered into with the tax authorities of the countries in which the group operates. The local file must include:

1. a description of the reporting lines for HR personnel in each local business unit;
2. an explanation of the reasons for performing a multi-year analysis and of any comparability;
3. an indication of the principal 'critical assumptions' adopted for the application of the transfer pricing method;
4. further information on economic financial data; and
5. a copy of the unilateral, bilateral or multilateral APAs and of the cross-border rulings to which the resident entity is not a party, but that is connected to the inter-company transactions indicated in the local file.

If taxpayers wish to take advantage of the penalty protection regime, they must communicate the availability of the transfer pricing documentation in their annual income tax return. To obtain the penalty protection, the documentation must be compliant from a substantial and formal point of view, strictly following the structure of the New Decision.

From a formal point of view, the New Decision requires the documentation to be provided in an electronic format. The documentation must include a digital signature (for both the master file and the local file) of the legal representative or a delegate, and a digital timestamp that must be executed before the filing of the relevant tax return[10].The documentation must be prepared in Italian, except for the master file, which can also be in English, and it must cover each fiscal year (including the economic analysis).[11]

The New Decision introduces the option to adopt a 'cherry-picking' approach, by allowing the taxpayer to prepare the documentation exclusively in relation to certain (rather than all) inter-company transactions. In this case, the penalty protection regime will be applicable solely to covered transactions, to the extent the information provided is considered as compliant by the ITA.

The documentation must be provided to the ITA within 20 days of request. Tax auditors may also request additional information or documentation, which should be provided within seven days of the request (or within a longer period depending on the complexity of the transactions under analysis). If these terms are not met, the ITA is not bound to apply the penalty protection. The New Decision requires additional specific documentation relating to low-value-added services,[12] which should contain information concerning the description of intra-group services, service supply contracts, the valuation of operations and the related calculations. Finally, domestic provisions also require the filing of a country-by-country report (CbCR), in accordance with the decision of the Commissioner of the Revenue Agency, dated 28 November 2017.

In particular, the CbCR must be filed by the end of the 12th month following the end of the taxpayer's financial year (the consolidated accounts). The information required is aligned to the OECD standard (except in respect of some minor issues, which mainly concern mismatches in Italian translation) and EC Directive 2021/2101 concerning the requirement to publish CbCR has been implemented under Italian Law by Legislative Decree no. 128/2024. Additional attention to the correct filing of CbCR is required, since its data will be relevant for the application of the Transitional Safe Harbors (TSH) under the GloBE rules. On 20 May, 2024, the Italian Ministry of Economy and Finance issued a decree regulating TSH aimed at simplifying for a three-year period the calculation of taxes under GloBE rules, allowing the use of CbCR[13]data instead of GloBE-derived figures. TSH apply to tax years starting on or before December 31, 2026, but excludes those ending after 30 June 2028. For calendar-year entities, TSH cover fiscal years 2024–26.

Presenting the case

Pricing methods

Acceptable pricing methods are those recommended by the OECD. According to the Italian Guidelines, transaction-based methods are preferred over profit-based methods, and the comparable uncontrolled price (CUP) method, if applicable,[14] is preferred over the resale price and cost-plus methods. However, the ITA is aware of the difficulties that application of the CUP or resale price methods present to operators, so profit-based methods (particularly the transactional net margin method are accepted).[15]

When a transactional net margin method (TNMM) is selected, the ITA's approach is often to perform a new benchmark analysis to check the results obtained by the taxpayer, and tax challenges are often based on the median value of the set of comparables resulting from the benchmark analysis.[16]

The Italian Guidelines provide that each point in the interquartile range should be compliant with the arm's-length principle, provided that all the items included in the benchmark have a sufficient degree of comparability.[17]

The above-mentioned principle has been confirmed by the ITA in Circular Letter No. 16/E 2022, which states that:

> If the benchmark analysis is reliable and all the third-party transactions identified have the same level or degree of comparability, when applying the most appropriate method and the related financial indicator, the 'full range' should be taken into consideration since all the values included in the range shall be considered at arm's length.

Otherwise, if the same high degree of comparability is not met, the 'narrow range'[18] or the most central tendency figure (i.e., the median) should be used to identify the arm's-length value.

Because the ITA uses the databases provided by Bureau van Dijk, taxpayers also tend to use these, except for operations involving intangibles (e.g., royalties) for which different databases are used in addition to or instead of the databases provided by Bureau van Dijk. The ITA has also expressly stated in Circular No. 21/E 2022 that activities scrutinising transfer pricing matters must always be carried out with the primary aim of establishing a deeper understanding of the facts and circumstances of the case, and also considering the actual economic conditions that characterise intra-group transactions, stressing the importance of the investigation of the actual conduct of the parties where this differs from written agreements (i.e., the principle of substance over form).

Authority scrutiny and evidence gathering

The ITA consists of two entities: the Italian Revenue Agency and the Italian Finance Police, which are both entitled to carry out inspections aimed at detecting the infringement of tax law. For confidentiality reasons, audit results are not published.

The ITA's approach during tax audits is mainly oriented towards understanding the role of the Italian companies under scrutiny in the group's value chain. They can also be triggered by requests for clarification about the activities performed by their foreign related counterparts. This is to check the consistency of the transfer pricing methods applied and the results of the benchmark analysis. The procedure for acquiring the information usually starts with the analysis of transfer pricing documentation (if available), agreements in force and a breakdown of their figures. Face-to-face interviews can be held with the process owners.

In complex cases, and when the audit is carried out by the Finance Police, the tax auditors can look for evidence of the information provided by the company by asking for confirmation from third parties, such as customers or suppliers, and by seeking access to and inspections of the taxpayer's premises; dawn raids are used in case the Finance Police suspect the taxpayer is involved in fraud or a large abuse of law conduct.

The option to ask questions or request documents from taxpayers outside the Italian tax jurisdiction is, however, limited to a limited number of cases of joint tax audits conducted with foreign tax authorities.

Under Italian tax rules, the use of expert witnesses is not explicitly outlined.

Intangible assets

As a general rule, intangible assets held by each single company involved in inter-company transactions must be considered when setting the correct pricing. Notably, under the New Decision, detailed information regarding the group's intangible assets must be shared in the master file, including a full list of the group's intra-group agreements (identifying the relevant counterparts) on intellectual property (IP) with particular focus on the IP's exploitation or utilisation (or both) in the transactions that have taken place between associated enterprises. The list of assets used in a specific transaction must also be reported in the local file, together with the contractual terms.

Given the importance of intangible assets, taxpayers are also required to describe any intangibles not reported in the financial statements (e.g., the know-how, the positive impact from synergies and the positive effects of networks). Any business restructuring that involves a reallocation of intangibles must also be described, in addition to an analysis of the legal ownership and the time of creation of the assets.

Recently, in Italy, growing attention has been paid to matters concerning intangible assets from both sides (taxpayers and the ITA), with particular focus on the DEMPE[19] functions.

These functions are key issues in determining prices for controlled transactions and in determining which entity or entities ultimately will be entitled to returns derived by the multinational enterprise group from the exploitation of intangibles. Currently, under Italian practice no specific guidelines are available in respect to DEMPE functions and they should be taken into account in transfer pricing analysis according to principles outlined in the OECD guidelines.

As of 2015, Italian taxpayers that perform research and development (R&D) may elect for a 'patent-box' regime; under new patent box provisions applicable from FY 2021,[20] taxpayers are entitled to an additional deduction (110 per cent) of the R&D costs incurred for the creation of copyrighted software, patents, designs and models.

Circular No. 32/1980 is still applicable and provides for safe harbour ranges with respect to royalties paid by Italian companies for intangibles (royalties higher than 5 per cent must be justified by the legal and economic conditions of the relevant agreement).[21]

Settlements

General rules regarding settlements among taxpayers and ITA are also applicable to transfer pricing assessments. The most common settlement process, in accordance with Legislative Decree No. 218 of 19 June 1997, takes place following a tax audit. [22] ITA are obliged to notify the taxpayer with a draft assessment notice between the issuance of the preliminary report of the findings (PVC)[23] and the final assessment notice. Upon receipt of a draft assessment notice, the taxpayer can file counterarguments within 60 days or submit a request to the ITA aimed at reaching an agreement within 30 days.

If no settlement on the draft assessment notice is found, the ITA is allowed to issue the assessment notice taking into account the counterarguments proposed in respect to the draft assessment notice, and taxpayers have 60 days to challenge the assessment before the tax court or to submit a request to the ITA aimed at reaching an agreement. During the 90 days subsequent to the settlement request, taxpayers and the ITA can meet several times to discuss their positions and to exchange proposals. An agreement is reached (before the deadline for filing the appeal against the assessment with the competent tax court) with the payment of the relevant taxes and signature by both parties; penalties, if any, will be reduced by one-third of the minimum amount. The settlement covers the years under assessment and related matters. If there are multiple years under assessment, they can be dealt with either together or separately. However, a court settlement can be reached after judicial procedures have begun.[24]

Applicable penalties[25] are reduced in the event of a court settlement; the reduction varies depending on the timing of the agreement (reduction to 40 per cent before the first instance tax court hearing and to 50 per cent before the second instance tax court hearing).

Until 2017, a final settlement could not be disregarded by the ITA or the taxpayer and could not be wholly or partially overturned by a mutual agreement procedure (MAP).

However, settlements are not binding for future years or different matters and are not automatically incorporated into an APA; they can only represent a starting point for future discussions. Settlements are generally confidential.

For tax audits related to 2018 and beyond, taxpayers may claim for a MAP, in accordance with Legislative Decree No. 49/2020 (implementing EU Directive 2017/1852-1 into Italian law), even if a settlement procedure[26] has already taken place.

Investigations

Tax auditors involved in transfer pricing investigations have ordinary and broad audit powers provided by law (see 'Authority scrutiny and evidence gathering', above).[27]

Law No. 212 of 27 July 2000 provides taxpayers with several rights and protections during tax inspections and audits.[28]

A tax audit could take several months to be completed, but there is a time limit.[29]

A common issue that is heavily investigated during tax inspections of multinational enterprises relates to management fees and intra-group services; in particular, in cases where costs are borne by the Italian entity in respect of these types of services, the ITA often questions their deductibility, based on the general 'principle of inherence'[30] rather than based on transfer pricing provisions (consequently with a risk of non-recognition of the full costs borne by the Italian entity, rather than restatement of the pricing of the transaction).

The option for tax authorities to challenge costs related to intra-group services or management fees based on the general principle of inherence (instead of transfer pricing) gives rise to negative consequences for taxpayers (no penalty protection regime available, access to MAPs and arbitration is excluded and, under certain conditions, criminal penalties could be applicable).

In 2018, the Finance Police issued operative internal instructions in relation to tax inspections applicable (Circular No. 1/2018). Among other things, the Circular provides specific guidelines on transfer pricing assessments, such as the methods of acquisition of information regarding the taxpayer's processes for drafting transfer pricing documentation; for example, by inspecting emails regarding previous versions of the documentation to identify any possible omission or fraud.

As a general rule,[31] a tax assessment must be issued by the end of the fifth year following the year in which the tax return was filed.[32]

Litigation

Procedure

Tax assessments may be settled by reaching an agreement with the ITA (see 'Settlements', above) or may be directly challenged before the tax court. According to Article 7, Paragraph 4 of Legislative Decree No. 546/1992, only written witness evidence is allowed. Also, declarations made during the tax audit or before the judicial hearing (or both) can be taken into account by the competent tax court. In brief, Italy uses a three-tier litigation process, which involves the following steps:[33]

1. challenge before the tax court of first instance (represented by the provincial tax court of reference for the taxpayer's domicile) within 60 days of the notification[34] of the tax assessment;
2. first instance tax court hearing: this usually takes place several months after the presentation of the petition to the court (at least six months but up to two years, depending on the workload of the tax court in charge);
3. first instance decision: this is usually issued between three months and one year after the hearing;
4. the losing party can then appeal the first instance decision with the tax court of second instance (represented by the regional tax court of reference for the taxpayer's domicile); the deadline for filing the appeal is six months after the decision has been issued;[35]

5. second instance tax court hearing and decision: the procedure and timing are similar to the first instance hearing and decision but the appeal shall mainly rebut the reasons of the first instance decision; and
6. the losing party can then apply to the Supreme Court for the final decision on the litigation; the deadline for filing an appeal is six months after the second instance decision has been issued.[36]

Tax litigation usually takes at least five years. Decisions of the courts of first and second instance are based on facts, while the Supreme Court's decisions refer only to matters of law. Before assuming their positions, the tax courts are allowed to engage independent experts to analyse the case, although this is not common practice.

After the Supreme Court issues a decision, there are, in principle, no further opportunities to discuss the litigation.[37] Partial payments are imposed by law during the judicial procedure;[38] if the taxpayer is the winning party, these payments are reimbursed by the ITA.

Recent cases

The consolidated position of the Supreme Court is to consider the transfer pricing regime a safeguard of the principle of fair competition between countries, rather than as an anti-avoidance provision (regardless of the tax rate of the foreign countries involved).[39] As far as burden of proof is concerned, in the most recent cases, the Supreme Court[40] stated that this should be borne by the tax authority to the extent that an inter-company transaction occurred that was not consistent with the ALP.[41]

The Supreme Court's position confirmed that costs deriving from intra-group services are deductible provided that the benefit for the receiver is proved by the taxpayer.[42]

With regard to financial transactions,[43] the treatment of interest-free intercompany loans under TP rules has evolved with conflicting interpretations. Early Supreme Court decisions limited the scrutiny to cases concerning explicit taxable income items or undue tax savings. This approach was overturned by the Supreme Court in Decisions No. 13387/2016 and 3223/2025, which stated that Article 110, Paragraph 7 of CTA provides for the application of arm’s length principles in respect to all related-party transactions, including interest-free loans. Nevertheless, recent cases of law[44] confirming the application of the ALP state that interest-free loans may comply with TP rules if justified by sound economic reasons, such as a subsidiary’s financial distress, strategic group support, or alignment with third-party creditor terms.

The Supreme Court also clarified that recommendations contained in the OECD Guidelines (i.e., selection of the tested party and analysis of the comparability factors for TNMM or the in-depth analysis of the conditions for the application of the CUP) must be followed.[45]

Finally, transfer pricing provisions are not applicable to domestic transactions as set forth by Legislative Decree No. 147/2015.[46] This position was recently confirmed by the Supreme Court in Decision No. 8176/2021. Nevertheless, the ITA is allowed to assess transactions between Italian-related parties that did not comply with ALP, verifying their potential economic irrationality or disadvantage for the subjects involved.[47]

The positions of the provincial and regional tax courts are very fragmented and do not represent reliable precedents as Italy is a civil law country. Recent tax court decisions have referred to the new Italian Guidelines and provide more detailed interpretations on territoriality of comparables, period of reference for the calculation of the PLI, inclusion of loss-making companies, and compliance with the arm's-length principle where the PLI of the tested party falls within the whole interquartile range.

Secondary adjustment and penalties

In Italy, there are no specific provisions for secondary adjustments and, in practice, they are not applied.[48]

With specific reference to financial transactions or transactions involving intangibles (or both), primary adjustments may have a consequent effect on withholding taxes. In particular, in the case of outbound interest or royalties on which no withholding tax (based on the EU Interest and Royalties Directive) or a reduced withholding tax (based on double taxation treaties) has been applied, the amount paid in excess to the arm's-length value is challenged as subject to the ordinary withholding rate provided by domestic legislation (i.e., 30 per cent). As far as penalties are concerned, if, in the event of a tax assessment, the documentation provided (Master file or Local file) is considered by the ITA to be non-compliant[49] with the New Decision, ordinary administrative penalties are applied. For infringements committed from 1 September 2024 (i.e., fiscal year 2023 for calendar-year taxpayers), the applicable penalty is 70 per cent of the assessed higher income.[50]

However, where transfer pricing documentation is considered to be compliant, penalty protection provides protection against these penalties being applied. The penalty protection also applies for withholding tax purposes, in the case of assessment based on the arm's-length value. Regarding criminal law, penalties are applicable to any director signing the relevant tax returns if certain conditions, as set out in Article 4 of Law No. 74/2000, are jointly met. In principle, provided that transfer pricing documentation complies with the Italian regulations, criminal consequences should be excluded. The wording of Article 4 is somewhat unclear and some tax offices are still advising public prosecutors that a criminal offence has occurred. However, if an agreement is reached with the ITA before formal litigation in the competent tax courts commences, it is increasingly common for public prosecutors to halt criminal proceedings.

Broader taxation issues

Diverted profits tax, digital sales taxes and other supplementary measures

Profits that are deemed to be realised in Italy (even by non-resident entities)[51] are subject to IRES and – to the extent they are related to activities performed in Italy – to IRAP.

There are also specific additional anti-avoidance provisions aimed at addressing possible profits shifted to foreign countries, such as:

1. controlled foreign corporation rules;
2. presumptions regarding the residence of foreign incorporated entities; and
3. permanent establishment provisions.[52]

These provisions have a broader scope than transfer pricing regulations because they are enforceable even in the absence of controlled transactions. Under Italian tax regulations, no other specific rules, such as diverted profits tax or Base Erosion and Anti-Abuse Tax/global intangible low taxed income provisions, are in force. The Digital Service Tax (DST) was introduced by Law No. 145/2018 as amended by Law No. 207 of December 30, 2024.[53] The implemented provisions and interpretations are contained in Administrative Regulation No. 13185/2021 and Circular Letter No. 3/2021 (collectively, IDST)[54] issued by the ITA. The DST is due at the rate of 3 per cent on gross revenues (net of VAT and other indirect taxes) generated from business-to-business and business-to-customer activities in a given calendar year on digital services that are within the scope of the Italian DST, for any user located in Italy.

The IDST does not interact with transfer pricing issues because inter-company revenues are excluded from its taxable base. State aid investigations have been neither launched nor threatened by the European Commission against Italy in relation to the application of transfer pricing rules or EU arm's-length provisions.

Tax challenges arising from digitalisation

Italy has not yet implemented the OECD/Inclusive Framework recommendations on Pillar One or taken an official position in relation to its introduction.[55] Italy's tax system remains in flux. Furthermore, Italy has not yet implemented measures to tackle the use of shell companies so as to avoid tax benefits being granted to EU companies with no or minimal economic substance (the ATAD 3 Directive).

Double taxation

Presently, there are three different applicable procedures to limit double taxation:

1. the EU Arbitration Convention, for disputes concerning cross-border issues involving other EU countries;
2. Legislative Decree 49/2020,[56] implementing EU Directive 2017/1852-1 (ITA implementation); and
3. MAPs provided by bilateral treaties (mainly based on Article 25 of the OECD Model Tax Convention)[57] in cases involving non-EU countries.[58]

The three procedures differ in several aspects, among which the most important are:

1. scope of application: the procedure mentioned in point (1), above, is applicable to transfer pricing litigation and attribution of profit to permanent establishments only, while the procedures discussed in points (2) and (3), above, are applicable to all matters covered by the specific treaty (including transfer pricing);

2. mandatory result: in principle, in the procedure mentioned in points (1) and (2), there is a mandatory arbitration phase, after two years of unsuccessful negotiations between the litigating countries; in contrast, in respect to the procedure discussed in point (3), the majority of tax treaties signed by Italy[59] do not include mandatory arbitration; consequently, disputes may not be resolved if the litigating countries are unable to reach an agreement; and
3. interactions with the domestic litigation procedure:[60] the procedure mentioned in point (1), is an alternative to domestic litigation, meaning that the result is binding for the taxpayer and tax administrations, while the procedure mentioned in point (2), is not an alternative to domestic litigation and is also applicable in the case of activation of the settlement procedure by the taxpayer (e.g., settlement or other agreements with the ITA in the case of tax audits), meaning that if the outcome of the MAP is not considered satisfactory, the taxpayer can still continue the domestic litigation procedure.[61]

In contrast, in principle, any agreement reached pursuant to the procedure in point (3), is not binding for the taxpayer, which can decide to refuse it and elect to go through the domestic litigation procedure.[62]

In all three cases, provisions regarding suspension of the domestic litigation procedure could apply,[63] but only according to ITA implementation. Under Legislative Decree No. 49/2020, suspension could be claimed as early as at the time of its submission, without waiting for its admissibility to be confirmed by the ITA. In this regard, suspension of domestic litigation leads to the automatic suspension of the tax claim by the ITA.

Further guidance is expected after the implementation of the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the Multilateral Instrument (MLI)). Italy was a member of the group that developed the MLI and signed the agreement on 7 June 2017. As far as options are concerned, Italy has, for the moment, adopted a minimalist position, limited mainly to the minimum mandatory changes; however, during the ratification process, the choices made may still be reviewed. Thus, it is worth noting that, under the version of the MLI presently adopted by Italy, the arbitration phase will also be mandatory under procedure (3), above, and the positive outcome of a MAP should be implemented notwithstanding domestic statutory limitations.

Another way of avoiding or resolving double taxation is possible pursuant to Article 31 *quater* of Presidential Decree No. 600/1973 (see 'Introduction'). More specifically, letter (c) of Article 31 *quater* allows the ITA to grant unilateral corresponding downward adjustments where a foreign tax authority makes a primary adjustment under the arm's-length principle. On 30 May 2018, the Director of the Italian Revenue Agency issued Decision No. 108954/2018 on practical provisions regarding the application procedure for filing requests under letter (c). To commence this procedure, the following conditions must be met:

1. the primary adjustment in the foreign country must be final (or at a final stage);
2. the primary adjustment in the foreign country must be compliant with the arm's-length principle; and

3. the jurisdiction where the primary adjustment is set must be a party to a double tax treaty with Italy that provides an adequate exchange of information.

In the initial filing, the taxpayer must also choose a suitable instrument for the resolution of international disputes concomitant with the requested downward adjustment (i.e., MAP, the EU Arbitration Convention or other instrument, including mechanisms provided by the Tax Dispute Resolution Directive)[64] as a precaution against the unilateral adjustment not being granted directly by the ITA. The request shall be filed within the specific deadline established by the selected instrument.

The Italian Revenue Agency may invite the taxpayer to further discuss the issues examined or may require additional documentation when examining the matter. The procedure should be concluded within 180 days with a recognition or denial of the unilateral corresponding adjustment.

Bilateral or multilateral APAs provide alternative means to prevent double taxation; the ITA is currently encouraging these types of agreements, and the number of cases submitted to the competent revenue office has recently increased.[65] Notably, within the current framework, there are countries with which a bilateral agreement is very difficult to be reached (e.g., China), according to ITA feedback. Taxpayers are allowed to ask for a rollback of APAs for all the fiscal years that are still subject to assessment at the date of signature of the agreement, with no penalties (for bilateral or multilateral APAs, this opportunity is subject to approval by the foreign authority).[66]

Following the entry into force of Legislative Decree No. 32/2017, Italy has engaged in the exchange of APAs with foreign tax authorities. To this effect, 'new rulings' (issued, modified or revised as of 1 January 2017) are automatically exchanged, and 'old rulings' (issued five years prior to 1 January 2017) are exchanged under certain conditions only.[67]

Consequential impact for other taxes

Pursuant to the applicable law, the VAT-taxable base is generally represented by the contractual consideration due.[68]

In general, adjustments made for transfer pricing purposes can take the form of either price adjustments (differences affecting the prices of specific products or services sold, purchased or rendered by the company) or profitability adjustments (differences in the companies' margins so as to align them to the benchmark profitability). In the first case, the adjustment can have an impact on value added tax (VAT) (both for products sold and services rendered); in the second case (profitability adjustments), the adjustment should be excluded from VAT and from the customs-taxable base, in line with the VAT Expert Group (VEG) working paper VEG No. 071 REV2. Italian legislation does not expressly address the VAT impact of these adjustments; however, in a specific request filed by a taxpayer,[69] the ITA's position was aligned with that of the VAT Expert Group. This is also confirmed by the answers provided by the ITA in the request for clarifications No. 884, issued in December 2021 and No. 266, issued in December 2024.[70]

From a customs perspective, Circular No. 16/D/2015 issued by the Italian Customs Authority states that the OECD methods are deemed acceptable by Customs, particularly with reference to the traditional transaction methods. However, profit-based methods (i.e., the TNMM) could also be acceptable should specific conditions be met. Circular No. 16/D/2015 proposed the use of two alternative procedures provided by European customs legislation (i.e., the European Customs Code and its implementing provisions) to handle the transfer pricing adjustments problem. These procedures are contained in the following legislation:

1. Article 76(a) of the European Union Customs Code and Article 254 et seq. of EU Commission Regulation (EEC) No. 2454/93, according to which the business operator can file a customs declaration, both for import and export transactions, omitting some elements or documents to be transmitted a second time and within a specific term; and
2. Article 156 *bis* of Regulation (EEC) No. 2454/93, stating the option for the business operator, only in import transactions, to make a lump sum payment.

Both procedures must be authorised by Customs; additional practical matters have been dealt with by Customs in Circular No. 5 of 21 April 2017.

Outlook and conclusions

The increasing attention that the ITA is paying to multinational groups and cross-border matters has resulted in greater focus on the tax risks deriving from transfer pricing matters.

However, domestic judicial procedures remain lengthy and uncertain, and international dispute resolution instruments are sometimes ineffective, notwithstanding the ITA's determined efforts to materially reduce MAP cases in recent years. Because of its recent introduction, and due to the fact that there is no public case law available as yet, the actual impact of the provision on unilateral downward adjustments is still unknown.

The new Italian Guidelines have aligned Italian tax practice with the 2022 OECD Guidelines, and further provisions are expected to clarify certain practical issues. Following the release of the OECD's final guidelines concerning transfer pricing issues in financial transactions, a new circular letter in this regard is expected to be issued by the ITA, particularly because the applicable rules governing Italian practice are very limited and date back to Circular No. 32/9/2267 of 1980.

While Legislative Decree No. 209/2023 has implemented Pillar Two into the domestic tax system, in accordance with EU Directive 2022/2523, Italy has not taken a position on Pillar One and the actual application of the "Consolidated report on Amount B" and related tool.

Endnotes

1 TP rules apply to companies resident in Italy and permanent establishments of foreign companies. ^ Back to section

2 Note that entities controlled by the same individuals or non-corporate bodies (e.g., trusts) are within the scope of the provision. ^ Back to section

3 Legislative Decree No. 147/2015 states that TP rules do not apply when both parties involved in an inter-company transaction are resident in Italy for tax purposes, even if they belong to the same group. ^ Back to section

4 Namely the Italian Revenue Agency and the Italian Finance Police. ^ Back to section

5 OECD Guidelines are considered as soft law and according to Decision no. 26432/2024 of the Supreme Court they cannot be considered as law under Italian domestic system, providing only practical solutions in respect to transfer pricing issues. ^ Back to section

6 Introduced by Law Decree No. 78 of 31 May 2010. ^ Back to section

7 Chapter V of the OECD Guidelines of January 2022. The New Decree requires a master file, local file and documentation for low-value-adding services, substantially consistent with Annex I (master file) and Annex II (local file) of Chapter V, and § D3 (on low-value-adding services) of Chapter VII, of the 2022 OECD Guidelines, respectively. ^ Back to section

8 The deadline is the last day of the 10th month after the closing of the relevant fiscal year. ^ Back to section

9 However, if inter-company transactions result in hybrid mismatches, penalty protection is not automatically granted. Article 61 of Legislative Decree 209/2023 established a penalty protection regime for hybrid mismatches for taxpayers that prepare specific documentation. The ITA has released instructions on the content and structure of this documentation with the Decree of 6 December 2024. ^ Back to section

10 The timestamp is an essential requirement for transfer pricing documentation to be considered compliant. All documentation must be certified with the timestamp. A grace period of 90 days is granted for late submissions of tax returns, which also applies for the transfer pricing documentation. Under specific circumstances, compliant transfer pricing documentation is considered valid even if the taxpayer has mistakenly not communicated its existence in the relevant tax return. ^ Back to section

11 Ruling no.174/2024 issued by ITA. ^ Back to section

12 This information is a fundamental requirement for applying the simplified approach and a 5 per cent markup on related costs, for low-value-adding services. ^ Back to section

13 On 9 July 2024, the Decree, outlining provisions for Italy's Domestic Minimum Top-up Tax under Article 18 of Legislative Decree 209/2023 was released. Italy's national minimum tax takes priority over top-up taxes on low-taxed entities within its jurisdiction before the Income Inclusion Rule (IIR) and Undertaxed Payments Rule (UTPR) apply.- ^ Back to section

14 In a recent development, the Supreme Court, in Decision No. 1311/2025, reaffirmed the preference for the CUP method when comparable commercial transactions with independent entities are available. ^ Back to section

15 Specific rules apply to investment management entities (the CUP method and the profit split method are preferred; if the latter is not applicable, the TNMM should be used) while all methods suggested by the OECD can be used (see Article 1, Paragraph 255 of Law No. 197/2022 and Decree of the Ministry of Economy and Finance of 22 February 2024). ^ Back to section

16 With regard to the selection of comparables, Decision No. 19512/2024 of the Supreme Court clarified that companies showing operating losses should not be automatically excluded from benchmark analyses. Instead, an assessment of the reasons behind these losses is requested. In particular, it is necessary to establish whether they stem from ordinary market conditions or exceptional circumstances (e.g., start-up phase, insolvency) that could affect their comparability with the tested transaction. ^ Back to section

17 Regional Tax Court of Lombardy Decision No. 5005/2018 and Provincial Tax Court of Milan Decision No. 5445/2018 recognised this principle as stated in the Italian Guidelines. ^ Back to section

18 The range is based on the use of statistical tools. ^ Back to section

19 Developing, enhancing, maintaining, protecting and exploiting intangibles. ^ Back to section

20 See Law Decree No. 146/21, converted into Law No. 215/2021 and Circular Letter No. 5/E 2023. ^ Back to section

21 Safe harbours are not consistent with the OECD's Base Erosion and Profit Shifting (BEPS) project, and their application during a tax audit by the ITA is often disregarded; notwithstanding this, no formal instructions have yet been issued by the competent tax authorities. ^ Back to section

22 Some tax audits are excluded from the described procedure, which is not applicable when there is a well-founded risk of taxpayer insolvency. ^ Back to section

23 After investigative activities have been concluded, and before the issuance of an assessment notice, tax authorities usually issue a PVC addressing the proposed adjustments to the taxpayer's position and taxable income. PVCs issued from 30 April 2024 can be settled within 30 days by paying the relevant taxes and penalties, which may be reduced to one-sixth of the minimum amount. Otherwise, the taxpayer has the option of settling the audit by correcting its tax return and paying (in part or in full) the amount liable in the PVC, in which case the applicable penalties are reduced to one-fifth of the original amount. ^ Back to section

24 Based on Legislative Decree 220/2023, a court settlement is still available in litigations pending before the Supreme Court and deriving from appeals filed from 5 January 2024 (penalties are reduced to 60 per cent of the minimum). ^ Back to section

25 In principle, penalties should not be applicable for transfer pricing assessment if the taxpayer is compliant with the penalty protection regime (see 'Introduction'). ^ Back to section

26 Note, however, court settlements do not allow access to MAPs. ^ Back to section

27 Provided by Presidential Decree No. 600 of 29 September 1973. ^ Back to section

28 Article12 of Law No. 212 of 27 July 2000. ^ Back to section

29 In principle, investigations based on physical access to the taxpayer's premises cannot last more than 30 days, and the 30 days need not be consecutive. This can be extended for an additional 30 days only. ^ Back to section

30 As a general rule, the CTA allows deductions of costs only to the extent they are connected to the taxpayer's activity and to the extent they refer to services that have actually been rendered. ^ Back to section

31 Article 43 of Presidential Decree No. 600 of 29 September 1973. ^ Back to section

32 In the event that the tax return has not been filed, the deadline for the tax assessment is the end of the seventh year following the year in which the tax return should have been filed. Moreover, it should be noted that Article 67, Paragraph 1, of Law Decree No. 18/2020 established an 85-day suspension, from 8 March to 31 May 2020, of the ordinary statute limitations because of the covid -19 pandemic. The Supreme Court, with Decree No. 1630/2025 confirmed Decision No. 960/2025, extending the applicability of the suspension also to assessment activities expiring in tax years beyond 2020. In other words, according to the Supreme Court, the 85-day extension should apply to all tax years for which the assessment deadlines were still pending as of the entry into force of Law Decree No. 18/2020. ^ Back to section

33 The relevant provisions regarding tax litigation procedures are contained in Legislative Decree No. 546 of 31 December 1992. ^ Back to section

34 Summer holiday suspension (from 1 to 31 August) should also be considered. ^ Back to section

35 The term is reduced to 60 days in the case of formal notification of the decision by the winning party. ^ Back to section

36 ibid. ^ Back to section

37 In exceptional and specific cases identified by law, a Supreme Court decision could be subject to review. ^ Back to section

38 Under certain conditions, a petition to suspend the collection of the partial payments can be submitted either to the competent court or to the ITA. ^ Back to section

39 See, for example, the following decisions: Supreme Court No. 2805, 5 February 2011; Supreme Court No. 11949, 13 July 2012; Supreme Court No. 10739 and No. 10742, 8 May 2013; Supreme Court No. 22010, 25 September 2013; Supreme Court No. 15282 and No. 15298, 21 July 2015; Supreme Court No. 16398, 5 August 2015; Supreme Court No. 6311, 1 April 2016; Supreme Court No. 6656, 6 April 2016; Supreme Court No. 7493, 15 April 2016; Supreme Court No. 13387, 30 June 2016; Supreme Court No. 26545, 21 December 2016; Supreme Court No. 28335, 7 November 2018; Supreme Court No. 5646, 2 March 2020; Supreme Court No. 11837, 18 June 2020; and Supreme Court No. 26695, 28 September 2021. ^ Back to section

40 See, for example, the following decisions: Supreme Court No. 22539, 10 August 2021; and Supreme Court No. 1374, 28 January 2022. Nevertheless, Supreme Court Decision No. 2387, 29 January 2019, transferred the burden of proof to the taxpayer based on the assumption that it has deeper knowledge of the facts. ^ Back to section

41 See Supreme Court, Decision No. 10499/2024, where the provisions of Art. 110, § 7, of Presidential Decree no. 917/1986 is construed as not requiring the ITA to prove tax avoidance purposes, but the mere existence of transactions between related parties not negotiated at arm's length values. ^ Back to section

42 Decision No. 2599, 24 November 2022 of the Supreme Court. ^ Back to section

43 See, for example, Supreme Court Decision No. 13850, 20 May 2022. See also Supreme Court No. 1230, 10 January 2024, dealing with the reassesment of a cash pooling agreement as a loan. ^ Back to section

44 Decision No. 1633/4/2024 of the Lombardy Tax Court. ^ Back to section

45 See, for example, the following decisions: Supreme Court No. 34728, 14 October 2022; Supreme Court No. 36275, 14 October 2022; Supreme Court No. 15668, 9 March 2022; Supreme Court No. 1162, 4 May 2023; and Supreme Court No. 7174, 10 March 2024. ^ Back to section

46 See in particular Article 5 Paragraph 2. ^ Back to section

47 Decision No. 5859/2024 of the Supreme Court. ^ Back to section

48 Nevertheless, secondary adjustments deriving from MAPs are acceptable in Italian practice. ^ Back to section

49 The New Decision establishes that tax auditors must explicitly provide reasons for compliancy, without prejudice to the power of the assessment office to make the final administrative decision. In particular, it specifies that the documentation shall be considered 'compliant' when it provides the tax authorities with the information necessary to execute an analysis of the transfer pricing policy applied by the taxpayer, notwithstanding the fact that the transfer pricing method or the selection of transactions or benchmarks adopted by the taxpayer are different from those identified by the tax administration. ^ Back to section

50 For infringements committed before 1 September 2024 (i.e., fiscal year 2023 for calendar-year taxpayers), ordinary administrative penalties are applied, ranging from 90 per cent (minimum amount) to 180 per cent of the assessed higher income. ^ Back to section

51 With the exception of individuals. ^ Back to section

52 The domestic definition of permanent establishment is consistent with BEPS Action 7. Other amendments relate to new Paragraph 7 ter of Article 162 of the CTA, modified by the Italian Minister of Economy and Finance Decree on 22 February 2024. The Decree implements the new provisions introduced by Article Paragraph 1 255 of Law 197/2022, dealing with the investment management exemption (IME) regime. The IME regime provides that foreign investment vehicles and their subsidiaries would not trigger the existence of an Italian permanent establishment under certain conditions. ITA published Circular No. 23/E on 19 November 2024, providing operational guidelines on the IME regime. Based on such Circular, the IME regime applies if specific conditions are met, ensuring the independence of the investment vehicle and its managers. Investment vehicles must engage in financial investment management, be under the control of regulatory authorities, provide services to several investors, and be domiciled in jurisdictions with tax information exchange agreements with Italy. Should IME regime be applicable the relevant structure would not be in the scope of application of TP rules. ^ Back to section

53 The amendments concern also the revision of the subjective scope and the introduction of a deposit payment obligation. ^ Back to section

54 The IDST gives an overview of the various provisions laid down in the DST and confirms that the DST applies to taxpayers (whether Italian resident or not) whose the amount of worldwide revenue reported at consolidated level is at least €750 million. ^ Back to section

55 Except for the position described in the previous footnote. ^ Back to section

56 Entered into force on 25 June 2020 for disputes on or after FY 2018. It is applicable in addition to point (1), which also concerns individuals. ^ Back to section

57 Most of the tax treaties signed by Italy are still based on the 2008 OECD Model Tax Convention and they do not include a mandatory arbitration clause for situations in which contracting states are unable to find a positive solution to a MAP request. ^ Back to section

58 On 9 April 2020, the OECD released 'Making Dispute Resolution More Effective – MAP Peer Review Report, Italy (Stage 2)'. This report reflects the outcome of the stage 2 peer monitoring of the implementation of the Action 14 Minimum Standard of the BEPS project by Italy. ^ Back to section

59 Only a few treaties in force between Italy and foreign countries include an arbitration clause, which can be either discretionary or mandatory (e.g., Armenia, Canada, Chile, Croatia, Hong Kong, Jordan and the United States). ^ Back to section

60 The matter is analysed in Circular Letter No. 21/E issued by the Italian Revenue Agency on 5 June 2012. ^ Back to section

61 Attention has to be paid to the expiry terms to challenge an assessment before national courts (see 'Litigation', above). ^ Back to section

62 ibid. ^ Back to section

63 Article 39, Paragraph 1 *ter* of Legislative Decree No. 546/1992. ^ Back to section

64 Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. ^ Back to section

65 Following the entry into force of Law No. 178 of 30 December 2020 (the 2021 Budget Law), under the provisions set forth in Article 31 *ter*, Paragraph 3 *bis* of Presidential Decree No. 600/1973, taxpayers are requested to pay a lump sum ranging from €10,000 to €50,000 (the amount is linked to the total turnover of the relevant group to which the taxpayer belongs) to start an APA procedure with the ITA. See also Protocol No. 2021/297428. ^ Back to section

66 See Article 1 1, §1001 of the 2021 Budget Law. ^ Back to section

67 Old rulings are exchanged only if they meet specific requirements, as provided in Directive 2011/16/EU: (1) if they were issued, amended or renewed between 1 January 2012 and 31 December 2013, the exchange shall take place under the condition that they were still valid on 1 January 2014; and (2) if they were issued, amended or renewed between 1 January 2014 and 31 December 2016, the exchange shall take place irrespective of whether they are still valid. ^ Back to section

68 The arm's-length principle for VAT purposes is provided in exceptional cases only (Article 13, Paragraph 3 and Article 14 of the VAT Code). ^ Back to section

69 Ruling No. 60/2018. ^ Back to section

70 See also Private Ruling No. 529 issued in August 2021 (agenziaentrate.gov.it), which states that when a profitability adjustment is linked to a specific controlled sale of goods, the adjustment is subject to VAT. ^ Back to section

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