

ITALY

TRANSFER PRICING PROFILE

1. Reference to the Arm's Length Principle

In the Italian tax legislation reference to the arm's length principle is contained in the Income Tax Code, TUIR (approved by Presidential Decree No. 917 of 22 December 1986): Art 110 par 7 as recently updated in June 2017. See also the Ministerial Decree of 14 May 2018.

Abstract from TUIR (unofficial translation):
Article 110

"7. Income components arising from transactions with non-resident companies which directly or indirectly control the enterprise, are controlled by it or are controlled by the same company controlling the enterprise, are determined by making reference to the conditions and to the prices which would have been agreed between independent parties operating under arm's length conditions and in comparable circumstances, if this result in an increase in taxable income. This provision shall also apply if this result in a decrease in taxable income, in accordance with the terms and conditions referred to in Article 31-quater of the Decree of the President of the Republic No 600 of 29 September 1973. A Decree of the Minister of Economy and Finance may draw up the guidelines for the application of this paragraph based on best international practice."

Abstract from the Ministerial Decree of 14 May 2018 (unofficial translation):
Article 1_Scope

"1. This decree, taking into account international best practices, provides guidelines for the application of the provisions included in Article 110, paragraph 7, of the Consolidated Law on Income Taxes, referred to in Presidential decree No 917 of 22 December 1986 (hereafter "TUIR"), for the sake of compliance with the arm's length principle contained therein."

It is important to note that the documentation requirements' regime introduced in Italy in the year 2010 (see article 26 of the Law Decree No. 78 of May 31, 2010 and the Decision of the Commissioner of Italy Revenue Agency dated September 29, 2010 and Circular Letter of December 5, 2010 n. 58/E) makes explicit reference to the arm's length principle and to the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

2. Reference to the OECD Transfer Pricing Guidelines

The Italian "Transfer Pricing provision" in Article 110, para.7, of the Italian Consolidated Income Tax Act, as amended by Law no. 96 of 21 June 2017, referred to a Decree of the Minister of Economy and Finance that would draw up guidelines based on best international practice. The Decree, then subsequently issued on the 14 May 2018, refers to Article 9 of the OECD Model, to the OECD Final Report on Actions 8-10 of BEPS project and to the OECD TPG.

The Decision of the Commissioner of Italy Revenue Agency dated September 29, 2010 and the Circular Letter of December 5, 2010 No. 58/E make direct reference to the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

Reference to the OECD TPG can also be found in the implementation of the law provision endorsing the APA program.

3. Definition of related parties

Art 110 par 7 of Income Tax Code, as amended in June 2017, refers to non-resident companies which directly or indirectly control the Italian enterprise, are controlled by it or are controlled by the same company controlling the Italian enterprise. The Decree of the Minister of Economy and Finance dated 14 May 2018 provides for the following details:

“Ai fini del presente decreto si intende per:

a) imprese associate: l’impresa residente nel territorio dello Stato e le società non residenti allorché:

- 1) una di esse partecipa, direttamente o indirettamente, nella gestione, nel controllo o nel capitale dell’altra, o
- 2) lo stesso soggetto partecipa, direttamente o indirettamente, nella gestione, nel controllo o nel capitale di entrambe le imprese;

b) partecipazione nella gestione, nel controllo o nel capitale:

- a) la partecipazione per oltre il 50 per cento nel capitale, nei diritti di voto, o negli utili di un’altra impresa;

oppure

- b) l’influenza dominante sulla gestione di un’altra impresa, sulla base di vincoli azionari o contrattuali”¹

4. Transfer pricing methods

TP methods, specifically the methods recognized by OECD, are described in Article 4 of the Ministerial Decree of 14 May 2018, as follows.

Art. 4

Transfer pricing methods

1. The pricing of a controlled transaction under the arm’s length principle is determined by applying the most appropriate method to the circumstances of the case. Except as provided in paragraph 5, the most appropriate method should be selected among the methods indicated in paragraph 2 of this Article, taking into account the following criteria:

¹ Unofficial translation:

(a) “associated enterprises” means an enterprise resident in the Italian territory as well as non-resident companies where:

1. one of them participates directly or indirectly in the management, control or capital of the other, or
2. the same person participates directly or indirectly in the management, control or capital of both enterprises;

(b) “participation in the management, control or capital” means:

- a. a participation of more than 50% in the capital, voting rights or profits of another enterprise; or
- b. the dominant influence over the management of another enterprise, based on equity or contractual constraints;

- (a) the respective strengths and weaknesses of each method depending on the circumstances of the case;
 - (b) the appropriateness of the method in consideration of the economically relevant characteristics of the controlled transaction;
 - (c) the availability of reliable information, in particular on uncontrolled comparables;
 - (d) the degree of comparability between controlled and uncontrolled transactions, including the reliability of comparability adjustments that may be needed to eliminate the effects of the differences between them.
2. For the purposes of the application of paragraph 1 of this Article, the transfer pricing methods consistent with the arm's length principle are the following:
- (a) comparable uncontrolled price method: based on the comparison between the price charged for property or services transferred in a controlled transaction to the price charged in comparable uncontrolled transactions.
 - (b) resale price method: based on the comparison between the gross profit margin that a purchaser earns in a controlled transaction by subsequently reselling in an uncontrolled transaction to the gross profit margin earned in comparable uncontrolled transactions;
 - (c) cost plus method: based on the comparison between the gross profit margin earned on costs directly and indirectly incurred in a controlled transaction to the gross profit margin earned in comparable uncontrolled transactions;
 - (d) transactional net margin method: based on the comparison of the ratio between the net profit margin and an appropriate base, which may be, depending on the circumstances, costs, sales or assets, realized by an enterprise in a controlled transaction to the ratio between the net profit margin and the same base realized in comparable uncontrolled transactions;
 - (e) transactional profit split method: based on the allocation to each associated enterprise participating in a controlled transaction of the share of profit or loss in relation to such transaction, determined on the basis of the division that would have been agreed in comparable uncontrolled transactions, taking into account their respective contributions to the controlled transaction, or based on the allocation to each of them of a portion of any residual profit or loss remaining after some of the functions performed in connection with the controlled transaction have been priced at arm's length on the basis of one of the methods described in letters a) to d) above.
3. Where, taking into account the criteria referred to in paragraph 1, one of the methods described in subparagraphs (a) to (c) of paragraph 2 may be applied with the same degree of reliability as one of the methods described in the subsequent letters (d) and (e), the method described in the aforementioned letters (a) to (c) is preferable. In any case, if, taking into account the criteria referred to in paragraph 1, the comparable uncontrolled price method described in subparagraph (a) of paragraph 2 may be applied with the same degree of reliability as any other method described in letters (b) to (e), the comparable uncontrolled price method is to be preferred.
4. It is not necessary to apply more than one method to establish if a controlled transaction complies with the arm's length principle.
5. Taxpayers may apply a method other than the methods described in paragraph 2, if they can demonstrate that none of those methods could reliably be applied to determine the pricing of a controlled transaction on the basis of the arm's length principle and that such different method produces a result consistent with what independent enterprises would be expected to obtain in carrying out comparable uncontrolled transactions.
6. Where an enterprise has used a method that complies with the provisions of paragraphs 1 to 5 to determine the price of a controlled transaction, the assessment by the tax

authorities of the consistency of such pricing with the arm's length principle must be based on the method applied by the enterprise.

Moreover, the aforesaid Decision of the Commissioner of Italy Revenue Agency dated September 29, 2010 and the Circular Letter of December 5, 2010 No. 58/E are consistent with the approach aimed at finding "the most appropriate transfer pricing method to the circumstances of the case" adopted by the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

5. Transfer pricing documentation requirements

Italy has introduced a documentation requirements optional regime relevant to avoid the application of transfer pricing adjustments' related penalties (article 26 of the Law Decree No. 78 of may 31, 2010, implemented - with amendments – by Law No. 122 of 30 July 2010). The regime, as implemented by the Decision of the Commissioner of Italy Revenue Agency dated September 29, 2010, is also consistent with the Resolution of the Council and of the Representatives of the Member States within the Council, on a Code of Conduct on transfer pricing documentation for associated enterprises in the European Union (EU TPD) (2006/C 176/01). Further guidance is found in the Circular Letter of December 5, 2010 No. 58/E.

Implementation of the Code of Conduct on Transfer Pricing documentation for associated enterprises in the European Union (EU TPD) - summary of Member States' responses to the 2013 JTPF questionnaire on the implementation of the EU TPD:

https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/jtpf/2013/summary-ms.pdf

As for CBCR legislation, CBCR is required to be filed by the Ultimate Parent Entity, resident in Italy, of a MNE Group having total consolidated group revenue of not less than € 750 000 000.

Also the subsidiaries, resident in the territory of the State, are to fulfill the CBCR in the case where the UPE is resident in a State that has not introduced the obligation to submit the country-by-country report or that has not into effect with Italy an agreement allowing the exchange of information related to the country-by-country reporting, or that is not complying with its obligation to exchange information related to the country-by-country reporting.

In case of failure to submit the CBCR or in case of incomplete or untruthful data submission, an administrative sanction ranging from Eur 10 000 to Eur 50 000 applies.

6. Specific transfer pricing audit procedures and / or specific transfer pricing penalties

Transfer pricing audits on Large Business Taxpayers are based on specific risk-based analyses. As far as transfer pricing penalties are concerned, please see point 5 above.

7. Information for Small and Medium Enterprises on TP

Information relevant for SMEs in tackling transfer pricing matters is available on the JTPF webpage at:

https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/profiles/profile-it.pdf

A simplified approach is provided for SME with reference to the information provided in the Country File (Country specific documentation): Small and medium sized enterprises are entitled not to update the results of the comparability analysis for two fiscal periods following the period which the

documentation relates to, in case the comparability analysis is based on publicly available information sources, and insofar as the comparability factors do not incur substantial changes during the above mentioned taxable periods.

8. Information on dispute resolution

Competent Authority	<p>Competent Authority for MAPs and APAs requests Agenzia delle Entrate Direzione Centrale Grandi Contribuenti Ufficio Accordi preventivi e controversie internazionali Via Cristoforo Colombo n. 426 C/D 00145 Roma E-mail: dc.grandicontribuenti@agenziaentrate.it</p> <p style="text-align: center;">dc.gc.accordi@agenziaentrate.it</p> <p>Organization Agenzia delle Entrate Direzione Centrale Grandi Contribuenti Ufficio Accordi preventivi e controversie internazionali</p> <p>Competent Authority for general issues arising from interpretation or application of DTCs Direzione Relazioni Internazionali Dipartimento delle Finanze Ministero dell'Economia e delle Finanze Via dei Normanni, 5 00184 – Roma (Italia) Tel. 0039-06-93836414 / Fax 0039-06-93836218 E-mail: df.dri.segreteria@mef.gov.it</p> <p>Organization Ministry of Economy and Finance Department of Finance International Relations</p>
Scope of MAP & MAP APA	<ul style="list-style-type: none"> - To eliminate taxation in contrast with the provisions of double taxation treaties; - To discuss issues of interpretation or application of treaties.
Domestic guidelines & administrative arrangements	<p>Revenue Agency – Circular Letter n. 21/E dated 5 June 2012 (Settlement of International Tax Disputes. The Mutual Agreement Procedures). Government website: http://www.finanze.gov.it - www.agenziaentrate.gov.it</p>
Time for filing	<p>Within the time limit provided for by individual DTCs.</p>
Form of request	<p>No specific form.</p>
Documentation requirement	<p>No formal requirement. The taxpayer is expected to supply documentation in support of a MAP request.</p>
User fees	<p>None</p>
Tax collection / penalty / interest	<p>General rules apply.</p>
Other dispute	<p>The EU Arbitration convention for the transfer pricing cases.</p>

resolution mechanisms	Arbitration procedure under bilateral tax conventions (when applicable).
Government Website	http://www.finanze.gov.it

Dispute resolution under the Arbitration Convention does not need to be initiated and may be suspended if one of the enterprises involved is subject to a 'serious penalty' for the transactions giving rise to the profit adjustment (Article 8).

Unilateral Declaration of Italy on Article 8 of the Arbitration Convention (*Official Journal L 225, 20/08/1990 P. 0010 – 0024*)

"The term 'serious penalties' means penalties laid down for illicit acts, within the meaning of the domestic law, constituting a tax offence." See also Circular Letter n. 21/E dated 5 June 2012.

As for the time being, Italy is involved in the implementation process of the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. The implementation is due by 30 June 2019.

9. Relevant regulations on Advance Pricing Arrangements

According to Article 31-ter of DPR 600/1973, as modified by Legislative Decree no.32 of 15/3/2017, enterprises with international activities wishing to reach a prior settlement and a shared evaluation with the Italian Revenue Agency, may request for an advance tax agreement in order to:

- define the most appropriate transfer pricing methods and criteria applicable to the transactions carried out with related parties, according to Article 9 of OECD Model tax convention as provided for by paragraph 7 of Article 110 of the Presidential Decree no. 917 of 22 December 1986
- determine the entry or exit value of assets when the entity transfers its residence in or out of Italy
- in case a non-resident company starts a new business in Italy, verify through prior assessment whether the conditions for permanent establishment to exist in Italy are met, before the business starts
- define the tax law provisions, including double taxation treaties provisions applicable to cross-border items, among which the tax treatment of income (such as dividends, interests, royalties or other income items) paid to/received from non-resident companies
- determine the attribution of profits to a permanent establishment in Italy of a non-resident company or to a permanent establishment in another State of a resident company, according to the international standard recommended.

As for implementation provisions, see also [Provvedimento del Direttore dell'Agenzia delle entrate del 21 marzo 2016 - pdf](#).

10. Links to relevant government websites

www.finanze.gov.it (Finance Department)
www.agenziaentrate.gov.it (Revenue Agency)
<http://dt.finanze.it/doctrib/SilverStream/Pages/DOCTRIBFrameset.html>
(Tax documentation database)
Italian version only available

11. Other relevant information

Secondary and compensating year-end adjustments may result in double taxation. Two questionnaires launched by the EU Joint Transfer Pricing Forum (JTPF) in 2011 took stock of the situation prevailing in each EU Member State with respect to secondary and compensating year-end adjustments as on 1 July 2011.

[Secondary Adjustments - overview on the legal and administrative/practical aspects in the different Member States](#)

[Compensating/year-end Adjustments - overview on the legal and administrative/practical aspects in the different Member States](#)

Advance Tax Agreements for enterprises with international activities

https://www.agenziaentrate.gov.it/wps/content/Nsilib/NSE/Invest+in+Italy/Advance+tax+agreements/?page=invest_italy

Implementation of the provisions regarding the documentation requirements in order to verify the consistency of the transfer prices set by multinational enterprises with the arm's length principle
http://www.agenziaentrate.gov.it/wps/wcm/connect/407e6800444f85af891ceb536ed3dbc9/ItalyCommissionerDecision_29_09_2010_transfer_pricing.pdf?MOD=AJPERES&CACHEID=407e6800444f85af891ceb536ed3dbc9

Guidance regarding the Mutual Agreement Procedures based on article 25 of the OECD Model tax convention and the EU Arbitration Convention:

Circular Letter of June, 5 No. 21/E on Mutual Agreement Procedures

<http://def.finanze.it/DocTribFrontend/getContent.do?rand=4672519228497197875>

Italian and English versions available

Italy implemented Article 11 of the EU Directive 2011/16 with the Legislative decree dated 4 March 2014, no.29 (see Presidential Decree no.600/1973, Article 31 bis). As a result, by agreement between a EU Member State's requesting authority and the Italian requested authority and in accordance with the arrangements laid down by the latter, tax officials authorised by the EU Member State's requesting authority may, with a view to exchanging information, be present in the offices where the Italian administrative authorities carry out their duties and be present during administrative enquiries carried out in the territory of Italy.

Where tax officials of the EU Member State's requesting authority are present during administrative enquiries, they may interview the persons being assessed and examine records.

In Italy, there are also legal provisions allowing to perform downward adjustments as a result of a coordinated transfer pricing control.

Presidential Decree no.600/1973, Article 31 bis as modified by the Legislative Decree 4 March 2014 no.29

(<http://def.finanze.it/DocTribFrontend/getAttoNormativoDetail.do?ACTION=getArticolo&id={178F0CBC-1969-49F3-974E-7C0E87B9A568}&codiceOrdinamento=20000310000200&articolo=Articolo%2031%20bis>)

and Article 31 quarter introduced by Decree-Law no 50 of 24 April 2017

(<http://def.finanze.it/DocTribFrontend/getAttoNormativoDetail.do?ACTION=getArticolo&id={178F0CBC-1969-49F3-974E-7C0E87B9A568}&codiceOrdinamento=20000310000400&articolo=Articolo%2031%20quarter>)