

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 notion of "normal value". Relevant provisions are included in the Italian Consolidated Income Tax (Testo Unico delle Imposte sui Redditi, TUIR) articles 9 paragraph 3 and 4, and article 110, paragraph 7, of the Presidential Decree no. 917 of 22 December 1986. Regulations on transfer pricing were issued in the early 80s (Circular Letter of the Ministry of Finance of 22 September 1980 no. 32/9/2267; Circular Letter of the Ministry of Finance 12 December 1981, no. 42/12/1587).

It is important to note that the new 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, approved by the OECD Council on 22 July 2010.

Abstract from TUIR (in the original language):

Article 9 "[...]"

3. Per valore normale, salvo quanto stabilito nel comma 4 per i beni ivi considerati, si intende il prezzo o corrispettivo mediamente praticato per i beni e i servizi della stessa specie o similari, in condizioni di libera concorrenza e al medesimo stadio di commercializzazione, nel tempo e nel luogo in cui i beni o servizi sono stati acquisiti o prestati, e, in mancanza, nel tempo e nel luogo più prossimi. Per la determinazione del valore normale si fa riferimento, in quanto possibile, ai listini o alle tariffe del soggetto che ha fornito i beni o i servizi e, in mancanza, alle mercuriali e ai listini delle camere di commercio e alle tariffe professionali, tenendo conto degli sconti d'uso. Per i beni e i servizi soggetti a disciplina dei prezzi si fa riferimento ai provvedimenti in vigore.
4. Il valore normale è determinato:
 - a) per le azioni, obbligazioni e altri titoli negoziati in mercati regolamentati italiani o esteri, in base alla media aritmetica dei prezzi rilevati nell'ultimo mese;
 - b) per le altre azioni, per le quote di società non azionarie e per i titoli o quote di partecipazione al capitale di enti diversi dalle società, in proporzione al valore del patrimonio netto della società o ente, ovvero, per le società o enti di nuova costituzione, all'ammontare complessivo dei conferimenti;
 - c) per le obbligazioni e gli altri titoli diversi da quelli indicati alle lettere a) e b), comparativamente al valore normale dei titoli aventi analoghe caratteristiche negoziati in mercati regolamentati italiani o esteri e, in mancanza, in base ad altri elementi determinabili in modo obiettivo.

[...]"¹

¹ Unofficial translation:

Article 9 "[...]"

3. Subject to the provision under paragraph 4 as to the goods considered therein, normal value means the price or consideration charged on average to goods and services of equal or similar kind, at arm's length and at the same marketing stage, at the time and place the goods and services have been purchased or supplied and, where such information is lacking, at the nearest time and place. For determining the normal value, reference is made, as far as it is possible, to the price lists or tariffs of the person supplying goods or services and, where such information is lacking, to the market-lists of the Chamber of Commerce as well as to professional tariffs, taking into account distributor discounts. For goods and services subject to price control, referred is made to the regulations in force.
4. Normal value is determined:
 - a) for shares, bonds and other securities listed in a domestic or foreign stock exchange, on the basis of the average price recorded in the last month;

Article 110 “[...]”

7. I componenti del reddito derivanti da operazioni con società non residenti nel territorio dello Stato, che direttamente o indirettamente controllano l'impresa, ne sono controllate o sono controllate dalla stessa società che controlla l'impresa, sono valutati in base al valore normale dei beni ceduti, dei servizi prestati e dei beni e servizi ricevuti, determinato a norma del comma 2, se ne deriva aumento del reddito; la stessa disposizione si applica anche se ne deriva una diminuzione del reddito, ma soltanto in esecuzione degli accordi conclusi con le autorità competenti degli Stati esteri a seguito delle speciali “procedure amichevoli” previste dalle convenzioni internazionali contro le doppie imposizioni sui redditi. La presente disposizione si applica anche per i beni ceduti e i servizi prestati da società non residenti nel territorio dello Stato per conto delle quali l'impresa esplica attività di vendita e collocamento di materie prime o merci o di fabbricazione o lavorazione di prodotti[...]²

2. Reference to the OECD Transfer Pricing Guidelines

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, approved by the OECD Council on 22 July 2010.

3. Definition of related parties

The definition of related parties is provided for by Circular Letter no. 32/9/2267 of 22 September 1980. Control is defined for transfer pricing purposes in order to cover all hypothesis of potential or actual economic influence, according to the facts and circumstances of the case.

4. Transfer pricing methods

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, approved by the OECD Council on 22 July 2010.

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- b) for other shares, participations of companies not limited by shares, and for securities or shares representing participations in the capital of entities other than companies, in proportion to the company or entity net worth or, for newly established companies or entities, to the total amount of the contribution of capital;
 - c) for bonds and securities other than those referred to in the above subparagraphs a) and b), by analogy with securities with similar features listed in a domestic or foreign stock exchange and, where such information is lacking, on the basis other elements which can be objectively determined.

² Unofficial translation:

Article 110 “[...]”

7. Elements of income arising from transactions with non-resident companies which control - directly or indirectly - the enterprise, or are controlled by the enterprise or by the same person controlling the enterprise, are evaluated, in accordance with para. 2 of this article, on the basis of the normal value of the goods supplied, the services rendered and the goods and services received, if they produce an increase in taxable income; this provision shall also apply if the result is a decrease in taxable income, but only in compliance with agreements concluded by the competent authorities of foreign States in accordance with the mutual agreement procedures provided for by international conventions for the avoidance of double taxation. This provision applies also to goods supplied and services rendered by non-resident companies on behalf of which the enterprise carries out the sale and marketing of raw materials or manufactured goods or the manufacturing or processing of products. [...]”

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 new 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:

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

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

8. Information on dispute resolution

Competent Authority	Mr. Marco Iuvinale – Director 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@finanze.it
Organization	Ministry of Economy and Finance Finance Department International Relations
Scope of MAP & MAP APA	- 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	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
Time for filing	Within the time limit provided for by individual DTCs.
Form of request	No specific form.
Documentation	No formal requirement.

requirement	The taxpayer is expected to supply documentation in support of a MAP request.
User fees	None
Tax collection / penalty / interest	General rules apply.
Other dispute resolution mechanisms	The EU Arbitration convention for the transfer pricing cases. 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."

9. Relevant regulations on Advance Pricing Arrangements

Article 8 of Decree-Law no. 269/2003, provides for arrangements (so-called International Tax Ruling) between the Italian tax administration and enterprises carrying out their business activity at international level concerning mainly, but not exclusively, transfer pricing, dividends, interest, royalties and other international issues. The relevant implementation rules have been issued by Italy Revenue Agency (Agenzia delle entrate) on July 23, 2004.

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](#)

International Standard Ruling Report
http://www.agenziaentrate.gov.it/wps/wcm/connect/a091c080426dddc1860a9fc065cef0e8/Bolletti_no_URI+2010_ENGLISH_+21+4+10.pdf?MOD=AJPERES&CACHEID=a091c080426dddc1860a9fc065cef0e8

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