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Overview

LED Taxand, Italy

LED Taxand is a tax advisory firm providing tailored advice on domestic and international tax matters. Drawing on strong technical expertise and a pragmatic approach, the firm assists clients in addressing complex tax issues and implementing effective solutions for their business projects.

LED Taxand has a dedicated Transfer Pricing and Business Restructuring team that provides tailor-made assistance to the clients. The services provided include the following:

- Business model analysis, Definition/Design of TP Policies (based on ESG principles as well) and corporate restructuring/Operational Transfer Pricing/Complex statistical models for TP risk assessment
- Business/IP valuation, IP planning and structuring, Assistance with Patent Box regime
- Assistance during tax audits and litigation, Negotiation of mutual agreements and arbitration procedures
- Preparing transfer pricing documentation and assisting with Country-by-Country reporting.

General: Transfer Pricing Framework

Transfer Pricing rules are laid down in the Income Tax Code ("ITC", approved by the Presidential Decree No. 917 of 22 December 1986). Art. 110 para. 7 of the ITC, as amended in June 2017, is applicable to transactions that occurred between an Italian enterprise and non-resident companies that: "directly or indirectly control the Italian enterprise, or are controlled by it, or are controlled by the same company controlling the Italian enterprise". The Ministerial Decree dated May 14, 2018 (in the following "the Ministerial Decree"), implementing the arm's length principle in the general tax system, provided additional clarifications with reference to the definition of "associated enterprises", and namely:

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:

1) a participation of more than 50% in the capital, voting rights or profits of another enterprise; or

2) the dominant influence over the management of another enterprise, based on equity or contractual constraints.

The Decision of the Commissioner of the Italian Revenue Agency "Agenzia delle Entrate" of 23 November 2020 "the Provision", Circular Letter no. 15/2021 and Circular Letter no. 16/2022 provide some rules and clarifications concerning transfer pricing documentation requirements and the arm's length range.

Accepted Transfer Pricing Methodologies

The Italian Transfer Pricing legislation follows the OECD standards. The Ministerial Decree implements the arm's length principle in Italy and sets forth the methods to be applied, consistently with the OECD Guidelines, updated from time to time.

In particular, the Ministerial Decree (in Article 4) refers to both traditional transaction methods (CUP, Resale Price, Cost Plus) and income methods (TNMM and Profit Split). Alternative methods can be selected where appropriate and when taxpayers can demonstrate the following:

i) none of those methods could be applied with reliable results to determine the pricing of a controlled transaction based on the arm's length principle; and

ii) such different method produces a result consistent with what independent enterprises would expect to obtain in carrying out comparable uncontrolled transactions.

In compliance with the OECD Guidelines "the best method rule" applies. However, when a traditional method and an income method can be applied with the same degree of reliability, the former must be preferred. Furthermore, if the CUP method can be applied with the same degree of reliability as other traditional methods, the former must be applied.

Transfer Pricing Documentation Requirements

Documentation requirements were first introduced in 2010 and updated in 2020 by the November 23 Provision. The Italian Tax Authority provided additional clarifications with the Circular Letter no. 15, released on 26 November 2021. In general terms, local rules are consistent with the OECD Guidelines. However, there are some differences that taxpayers must consider.

Local regulations do not require the taxpayer to prepare the documentation (Masterfile and Local File) as an obligation. Taxpayers filing "proper" documentation will benefit of so called "penalty protection" in case of upward adjustments assessed by the Tax Authority. Penalty protection is recognized only if the formal and substantive requirements of the Provision are met.

The Masterfile can be drafted in English; Local File must be drafted in Italian.

Both Masterfile and Local File must be prepared annually and signed electronically by the legal representative (or a delegate) with a time stamp, to be put by the date of filing of the relevant income tax return (the tenth month following the end of the tax period).

The documentation does not have to be sent to the Italian Tax Authority. Its possession must be communicated by "checking the box" in the annual tax return ("Modello Redditi", Section RS, Line 106). In case of tax audit, the taxpayer shall submit the transfer pricing documentation to the Tax Authority in electronic form within 20 days upon request.

Country-by-country reporting "CbCR" was introduced in Italy by Law No. 208 dated December 2015, (published in the Official Gazette No. 302 on December 30, 2015) and entered into force on January 1, 2016. Ministerial Decree dated 23 February 2017 "the CbCR Decree" and the Decision of the Commissioner of the Italian Revenue Agency dated 28 November 2017 provided for detailed implementation guidance of CbCR.

In principle, CbCR must be prepared by eligible taxpayers, i.e., parent companies of multinational groups with a consolidated turnover of not less than €750 million. However, in some cases (e.g., where the group foreign parent company is not obliged to or fails to file the CbCR in its jurisdiction), the burden of filing the CbCR falls on an Italian entity of the group.

The CbCR Decree clarified that an entity (parent or subsidiary) subject to reporting obligation, within the deadline to file the tax return referred to the fiscal year forming the scope of the reporting must notify the Italian Tax Authority of its reporting obligation.

Local Jurisdiction Benchmarks

Benchmarking analyses are commonly used to support the arm's length nature of controlled transactions, particularly where one-sided methods such as the TNMM are applied. Economic analyses are typically performed using publicly available databases, such as Moody's databases or other reliable sources, and should be tailored to the specific features of the transactions under review and the relevant comparability factors.

Italian transfer pricing rules do not establish a formal preference for domestic comparables over foreign comparables; comparables should be selected on the basis of the highest degree of reliability, taking into account the relevant comparability factors and the market in which the tested party operates. In practice, where the tested party is an Italian entity, Italian comparables may prove more reliable in the specific facts and circumstances of the case. It should be noted that, in the event of an audit, the selection of comparables is often reviewed together with the underlying search strategy, screening criteria and the taxpayer's positioning within the arm's length range.

Taxpayers must carry out relevant benchmark analyses on a yearly basis. Small and medium-sized enterprises can update relevant financial data (i.e., not performing a "fresh" benchmarking), assuming that the comparability analysis is based on information from publicly available sources and that there have been no changes in the comparability factors.

The Italian Revenue Agency has clarified that any point within the full range may be regarded as arm's length where the comparables are equally reliable. Where, however, the comparables do not present the same degree of comparability and residual comparability defects remain, statistical tools such as the interquartile range may be used to narrow the range and strengthen its reliability. Resort to a central value within the range should be limited to cases in which the range, even if statistically refined, does not contain values characterised by a sufficiently homogeneous degree of comparability, and should in any event be specifically reasoned.

Focus on Financial Transactions

Under Italian law, intercompany financial transactions fall within the ordinary transfer pricing framework and must be assessed in accordance with the arm's length principle, as reflected in Article 110(7) of the Italian Income Tax Code, Ministerial Decree of 14 May 2018 and the OECD Transfer Pricing Guidelines.

While Italian domestic legislation does not provide transfer pricing guidance specifically dedicated to financial transactions, recent Italian Supreme Court case law confirms an increasing focus on the actual delineation of intra-group financial arrangements, including, in particular, interest-free financing and the possible recharacterization of purported debt in exceptional cases.

Accordingly, the analysis should not be reduced to the mere presence, absence or quantum of remuneration, but should also take into account the borrower's creditworthiness, the amount and duration of the financing, the realistically available options, the effects of group membership and implicit support, the existence of guarantees or other security, and the functions and risks actually assumed by the parties.

In the case of cash pooling and treasury arrangements, the remuneration of the treasury entity depends on its actual role: where it performs only coordination or agency functions, only a limited remuneration would generally be appropriate, whereas a higher remuneration requires more substantive functions and the assumption of economically significant risks.

Likewise, the pricing of guarantees should distinguish between passive association benefits and legally binding credit support that provides an incremental benefit to the borrower.

Finally, the transfer pricing analysis must be considered together with the Italian domestic rules on the deductibility of interest expenses, including Article 96 of the Italian Income Tax Code.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

In general APAs (unilateral/bilateral/multilateral) are available in Italy.

An APA may be requested by resident companies with "international activities", i.e., fulfilling one or more of the following requirements:

- having transactions with non-resident associated companies;
- holding stakes in the assets, funds, capital of non-resident companies or whose assets, funds, capital are held by non-resident companies;
- paying to or receiving by non-resident companies income items such as dividends, interests or royalties;
- conducting their business through a permanent establishment outside Italy;
- transferring their residence from Italy to another State or from another State to Italy.

A specific application must be sent to the Italian Tax Authority; details of the procedure are set out in the Decision of the Commissioner of the Italian Revenue Agency of 21 March 2016. Filing an application for a bilateral or multilateral APA requires the payment of a fee as follows:

- EUR 10,000 for groups with consolidated revenues below EUR 100 million;
- EUR 30,000 for groups with consolidated revenues between EUR 100 million and EUR 750 million; and
- EUR 50,000 for groups with consolidated revenues above EUR 750 million.

The fees listed above are reduced to 50% in case of renewal of a previous APA. There is no charge for unilateral APA.

The procedure is concluded with a binding agreement. As a general rule, the agreement is binding for the fiscal year in which it is signed and for the four subsequent fiscal years, unless relevant factual or legal circumstances change. In the case of bilateral or multilateral APAs, the scope and period covered by the agreement may also depend on the outcome of the negotiations between the competent authorities of the jurisdictions involved.

The roll-back of the APA may apply to previous fiscal years for which the statute of limitation has not expired, subject to specific conditions. More in detail:

- For unilateral APAs, rollback is permitted for fiscal years still subject to tax audits, provided that no changes occurred to the agreed conditions and no tax audits started.
- For non-unilateral APAs, rollback is permitted as of the fiscal year during which the APA request was filed with the Italian Tax Authority. However, rollback is allowed also to previous fiscal years, provided that:
  - the same factual and legal circumstances exist for these periods on the basis of the agreement stipulated with the competent authorities of foreign countries
  - the taxpayer has requested the roll back in the APA request
  - the competent authorities of foreign countries agree to extend the agreement to previous years, and
  - no inspections or tax audits started in relation to these fiscal years.

Transfer Pricing Audits

The Italian tax authorities perform tax audits on the basis of risk-assessment criteria and data-driven selection processes.

In practice, the selection of taxpayers may be informed by information obtained through country-by-country reporting, international exchange of information mechanisms, cross-border arrangement disclosures and other data available to the tax administration.

Recent planning documents issued by the Italian Ministry of Economy and Finance and the Italian Revenue Agency confirm a further shift towards coordinated, risk-based audits supported by upfront data analysis.

Tax audits may be carried out by both the Italian Revenue Agency (Agenzia delle Entrate) and the Tax police (Guardia di Finanza), whereas tax assessment notices may be issued only by the Italian Revenue Agency.

In transfer pricing audits, the Italian tax authorities typically focus on the selection of comparables and the positioning of the tested party within the arm's length range, as well as on intra-group services, royalty payments, business restructurings, permanent establishment issues, tax residence and intercompany financing.

Accordingly, taxpayers should ensure that their transfer pricing documentation is consistent with the wider set of information available to the tax authorities, including tax returns, intercompany agreements, financial data and other mandatory disclosures.

Burden of Proof in Transfer Pricing: Theory versus Practice

Regarding the burden of proof, the Italian Supreme Court (*"Corte di Cassazione"*) has stated that the tax authorities bear the burden of proving the breach of the arm's length principle, while the taxpayer shall prove compliance with it in IC transactions.

According to the Ministerial Decree of May 14, 2018 (concerning the application of Italian transfer pricing regulations), if the Italian company has adopted one of the methods provided for in the mentioned Decree (i.e., the methods expressly provided for in the OECD Transfer Pricing Guidelines) in compliance with the comparability criteria and the best method rule, any re-assessment shall be based on the method selected by the taxpayer.

In practice it is common to experience situations in which the tax authority disregards the scenario described above, challenging the TP policy applied even if only on the basis of presumptions or inadequate reasoning and proceeding directly to recalculate the arm's length range.

Transfer Pricing Penalties

The taxpayer who has prepared transfer pricing documentation that complies with the requirements (both formal and substantial) mentioned above, can benefit from the "penalty protection regime".

In Italy there are no specific transfer pricing penalties. Ordinary administrative penalties, equal to 70% of the higher tax assessed, can be applied[1].

[1] Please note that the mentioned penalties are applicable for violations committed on or after September 2024. For prior violations, penalties ranging from 90% to 180% of the higher tax assessed were applicable.

Local Hot Topics and Recent Updates

- Amount B

According to the OECD Transfer Pricing Country Profile updated in October 2025, Italy states that the domestic application of the simplified and streamlined approach for baseline marketing and distribution activities (Amount B) is currently "under evaluation". The same profile also indicates that Italy respects the outcome of the application of the approach by a covered jurisdiction, in line with the Inclusive Framework political commitment, subject to domestic legislation and administrative practices.

- Cooperative compliance

The Italian cooperative compliance regime continues to expand and is becoming increasingly relevant for large multinational groups. Following the latest reform, the revenue thresholds for access to the regime were reduced to EUR 750 million from 2024, EUR 500 million from 2026 and EUR 100 million from 2028. In parallel, in February 2026 the Italian Revenue Agency launched the optional regime based on the adoption of a tax risk control framework, thereby extending the practical relevance of tax governance and internal control systems also to smaller businesses.

- Public CbCR

Another significant development is the introduction of Italy's public CbCR rules under Legislative Decree No. 128/2024, implementing EU Directive 2021/2101. The new rules apply to financial years beginning on or after 22 June 2024 and require both filing with the Companies Register and publication of the report on the company's website.

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Documentation threshold

Master file	Not applicable
Local file	Not applicable
CbCR	€ 750 million

Submission deadline

Master file	Both Master file and Local File do not have to be submitted, but must have been prepared, signed and marked before sending the corporate income tax return. The tax return is due by the end of the 10th month after the closing of the relevant fiscal year.
Local file	
CbCR	To be submitted within 12 months following the last day of the multinational group's reporting fiscal year

Penalty Provisions

Documentation – late filing provision	Failure to timely prepare and properly disclose transfer pricing documentation results in ineligibility for the "penalty protection regime"
Tax return disclosure – late/incomplete/no filing	A tax return filed within 90 days after the statutory deadline is treated as late-filed but validly submitted and is subject to a fixed penalty of EUR 250. A tax return filed more than 90 days after the statutory deadline is treated as omitted and is subject to a penalty equal to 120% of the tax due, or to a penalty ranging from EUR 250 to EUR 1,000 where no tax is due.[2] An inaccurate tax return is subject to a penalty equal to 70% of the higher tax due.
CbCR – late/incomplete/no filing	Late, incomplete or omitted filling of CbCR is subject to an administrative penalty ranging from € 10,000 to € 50,000.

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[2] Please see previous footnote.