



# Transfer Pricing Country Guide

## Italy

### *A. Transfer Pricing Methods*

#### **1. List of Methods**

No specific law provides for the accepted transfer pricing methods.

The Circular Letter no. 32/9/2267 dated 22 September 1980 refers to the following transfer pricing methods:

CUP, Resale Price, Cost Plus, Profit Split, Profit Comparison, Invested Capital Profitability, Economic Sector Gross Margin.

#### **2. Preference of Methods**

The Italian tax authorities prefer traditional transaction methods.

CUP is preferred over Resale Price and Cost Plus.

Profit Split, Profit Comparison, Invested Capital Profitability, Economic Sector Gross Margin apply if CUP, Resale Price and Cost Plus are not applicable.

#### **3. Specific Requirements for the Application of any Method**

No specific requirements are requested for the application of any method listed above.

#### **4. Deviations (transfer pricing processes, systems or solutions)**

In consideration of the fact that no specific law regulates transfer pricing, tax auditors are free to assess the arm's length price as they want.

If the tax authority uses a different transfer pricing solution from what the taxpayer applies, the tax payer can challenge the Tax Administration proving that, with suitable documentation, his method is the best one in order to comply with the arm's length principle.

### *B. Transfer Pricing Documentation*

#### **1. Statutory Requirements**

No specific transfer pricing documentation is requested by any laws, regulations, rulings or guidelines.

However Judgment no. 158/8/05 dated 28 June 2005 of Milan Tax Court lists documents/information which could give evidence of the arm's length price:

a) a written agreement indicating specifically the services that will be recharged;



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- b) specific and determined criteria for the fee determination (not of a generic nature);
- c) a flow chart from which it is possible to understand that there is no cost duplication between the subsidiaries;
- d) documentation stating the continues relationship between the Group companies;
- e) periodical reports of the services provided and the criteria through which the costs are recharged;
- f) formal correctness of the fee, which must be recharged in consistency with the agreement, and correct posting of the invoices issued by the service provider in the service recipient's accounting books;
- g) a comfort letter on the service provider's accounts issued by an independent auditor, stating that the costs were actually incurred, correctly accounted for, and apportioned through appropriate allocation keys;
- h) documentation showing, for each type of services, both the effectiveness of the services and the benefits obtained by the recipient entity.

Such a judgment has been confirmed by other subsequent judgments but still not consider by tax inspectors.

## **2. Burden of Proof during a Tax Authority Tax Examination**

Tax authority has the burden of proof during a tax examination.

However, taxpayer is often in a position to demonstrate the correctness of transfer pricing applied and the existence and inherence of charges.

## **3. Acceptance of Cost Contribution Arrangements or Cost Sharing Agreements by National Regulations**

Both cost contribution arrangements and cost sharing agreements are accepted in Italy subject to the fact that the company has really enjoyed the related benefit (for instance when legal fees are shared, the legal department must provide assistance when needed).

In order to deduct these costs, they must satisfy the arm's length standard and have sufficient nexus with taxpayer's income.

The payments are not subject to withholding.

## **4. Commissionaire Arrangements**

Commissionaire arrangements are allowed.

## **5. Acceptance of Foreign Companies as Comparable Companies**

Local comparables are preferred but if not available, relevant foreign comparables may be considered.



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## **6. Accepted Languages for Transfer Pricing Documentation**

The Italian tax authorities have the right to require that all documentation submitted is in Italian or translated into Italian before submission. They may accept documentation in other languages but there is no guarantee that they will, as they are not obliged to accept documentation in foreign languages.

## **7. Application of Transfer Pricing Documentation for Branch Operations**

Transfer pricing documentation is applicable for branch operations.

### ***C. Transfer Pricing Penalties***

#### **1. Application of Repercussions or Penalties for not having Transfer Pricing Documentation**

No specific repercussions or penalties apply for not having transfer pricing documentation.

Should the transfer pricing not adequately supported by specific documentation the related cost can be considered partially or totally not deductible for tax purposes.

#### **2. When do such repercussions or penalties apply?**

N/A.

#### **3. Application of Repercussions or Penalties for**

##### **a. failing to submit transfer pricing documentation**

N/A.

##### **b. insufficient transfer pricing documentation**

N/A.

##### **c. transfer pricing adjustments made by the taxing authority**

General rule applies: penalty corresponding to 100% of tax evaded.

##### **d. tax evasion or fraud**

In case of tax fraud criminal penalties (1-6 years imprisonment) may apply.

#### **4. Transfer Pricing Penalty Relief or Reduction**

Penalty may be reduced to one-fourth if paid, without appealing to Tax Court, within 60 days of notification from tax authorities.



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## **5. Challenge of Adjustment or Penalties**

No specific procedure is required to challenge the transfer pricing adjustment and penalties. General procedures to challenge tax authorities' adjustment are the following:

- appeal to Tax Court within 60 days after notification of payment request;
- ask for an agreement within 60 days after notification of payment request. In this case the terms for appealing are suspended by 90 days. In our experience tax authorities never agreed reduction of more than 30% of the initial adjustment.

## **6. Loss of Ability to apply for MAP Procedures in Case of Noncompliance with Transfer Pricing Documentation**

As previously mentioned, taxpayer does not have any specific documentation compliance to fulfill.

### ***D. Statute of Limitations***

#### **1. Statute of Limitations for Business Tax Returns**

Tax returns must be filed to tax authorities within the end of the ninth month following the end of the accounting period (i.e. accounting period ended 31 December 2009 – Tax Return to be submitted by 30 September 2010).

Tax assessments must be notified to the taxpayers within 4 years from the end of the year in which the tax return has been filed.

If a tax return has been omitted, tax assessments must be notified to the taxpayers by 31 December of the fifth year following that in which the tax return should have been filed.

#### **2. Transfer Pricing Documentation Deadlines, to include**

##### **a. when the taxpayer is required to submit transfer pricing documentation to the taxing authority;**

Italian authorities can request a deadline to submit documentation, which cannot be less than 15 days from the date of notification (Article 32 of Presidential Decree n. 600 of September 29, 1973). The Tax Authority retains discretion over extension requests.

##### **b. when related documentation must be submitted upon examination**

N/A.

##### **c. steps that could be taken to extend the above-mentioned transfer pricing documentation deadlines**

N/A.



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**d. when a taxpayer is required to provide information requested by a tax authority examiner**

The taxpayer is required to submit transfer pricing documentation following a tax audit. As a general rule tax authority can request documents with a deadline which can not be less than 15 days from the date of the request.

The deadline may be extended but only at tax authorities' discretion.

## ***E. Tax Return Disclosures***

### **1. Tax Return Disclosures of Related Parties**

Italian companies have to communicate to the Register of Companies (and include in documents and correspondence) whether they are "managed and controlled" by another company and the name of this company.

Financial statements should include the essential data of the last financial statement of the above mentioned companies and all credit, debit, revenues and costs of controlled companies and holding companies as well as all transactions carried out with related parties that do not comply with the arm's length principle.

### **2. Transfer Pricing Disclosures**

The Tax Return must only give indication if the company is controlled by foreign company.

## ***F. Audit Risk***

### **1. Areas of Significant Audit Risk**

Currently a significant audit risk is connected to management fees paid for intercompany service agreement.

Italian tax authority usually challenges the price of intercompany transactions that do not comply with the arm's length principle or when a mismatch between the services rendered and their remuneration arises.

### **2. Risk of Transfer Pricing Scrutiny during a Tax Audit**

The risk of transfer pricing scrutiny during a tax audit is very high: the lack of specific regulations increase the risk of different evaluation by the tax authorities. Currently tax authorities are focused on management fees.

### **3. Submission of Questionnaires with Transfer Pricing Issues to Taxpayers during General Income Tax Audits**

No questionnaires relating to transfer pricing issues are submitted to taxpayers.



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During general income tax audits the tax authorities request all documents the taxpayers can provide for in order to support the tax issues.

## ***G. Tax Authority and Law***

### **1. Name of National Taxing Authority**

Ministry of Economy and Finance (MEF).

### **2. Internet Links**

[www.finanze.it](http://www.finanze.it)  
[www.agenziaentrate.it](http://www.agenziaentrate.it)

### **3. Recognition of OECD Transfer Pricing Guidelines**

Currently no specific transfer pricing law is in force in the Italian tax legislation, therefore no explicit reference to the OECD Guidelines has been made in our legislation.

Circular Letter of the Ministry of Finance no. 32/9/2267 dated 22 September 1980 refers to methods for determining the arm's length price as they are described in the OECD guidelines.

### **4. Relevant Regulations, Rulings, Guidelines**

Italian tax legislation refers to the concept of normal value, which is consistent with the arm's length principle.

Relevant principles are included in the Italian Tax Code (Presidential Decree no.917 of 22 December 1986) article 9 and article 110.

Specific guidelines on transfer pricing issue were stated by the following Circular Letter of the Ministry of Finance:

- no. 32/9/2267 dated 22 September 1980;
- no. 42/12/1587 dated 12 December 1981 (general methods for tax audits);
- no. 271/E/1059 dated 21 October 1997;
- no. 24/2001 dated 26 March 2001.

### **5. Necessary Relationship between Parties**

The definition of related parties is provided for by Circular Letter no. 32/9/2267 dated 22 September 1980.

Transfer pricing rules apply:

1. To any kind of relationship between a resident and a non-resident entity determining actual or potential economic influence on business decisions;
2. To companies belonging to the same group.



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## ***H. Advance Pricing Agreements (APA)***

### **1. Types of Available APAs (Multilateral, Unilateral and Bilateral)**

Taxpayers with international business activities may apply for an “International Tax Ruling” (Decree Law no. 269/2003) similar to a unilateral APA in relation to transfer prices, interest, dividends and royalties.

### **2. Covered Years in an APA Application**

The agreement remains in force for three years (including the year in which it is signed) unless new facts change the conditions regarding the transactions covered by the agreement.

### **3. Average Time to Negotiate and Complete an APA (Include Timeframes for Multilateral, Unilateral and Bilateral)**

The maximum period allowed to complete the procedure is 180 days.

### **4. APA Application Fees**

None.

## ***I. Self-initiated adjustments***

### **1. Allowance of Self-Initiated Transfer Pricing Adjustments by Taxing Authority**

As a general rule self-initiated adjustments are permitted after year-end.

If the adjustments provide for an increase of the taxable income it can be promoted within 4 years from the end of the year in which the tax return has been filed.

Otherwise, if the adjustments provide for a decrease of the taxable income it can be promoted within the filing due date of the next year tax return.

### **2. Allowance of Set-Offs for Other Related Party Transactions**

No formal provision. In general, transactions must be separately booked, both for civil and tax regulation purposes.



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## *J. Transfer Pricing, Customs Duties and VAT Rules*

### **1. Effects of Transfer Pricing for Valuations of Imports Used for Customs/GST/VAT Purposes**

Under a VAT point of view, all adjustment of tax authorities have VAT consequences, unless the transaction itself is VAT exempt.

With reference to transfer pricing, the law for Custom Duties refers to a different concept for normal value of transactions (art. 30/31/41/42 Custom Code) which has to be suitable with some indicators provided for by the Custom Code.

### **2. Consequences of a Transfer Pricing Adjustment to a Declared Value Previously Accepted by Customs and Vice-Versa**

The adjustments of tax authorities have no consequence on the value already accepted by the Custom Authorities.

An adjustment of Custom Authorities may lead to a VAT adjustment.

International Tax Ruling (Decree Law no. 269/2003) could also be used to avoid risk of enquiries by custom authorities.

## **K. Comments**

- Comply with indications provided for by Milan Tax Court Judgment n. 158/8/05 of 28 June 2005 (see par. B.1);
- Be consistent either in good and bad years;
- Tax authorities announced the release, in a short term, of guidelines about transfer pricing.

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