

Italy

Transfer Pricing Country Profile

December 2021

		SUMMARY	REFERENCE
The Arm's Length Principle			
1	Does your domestic legislation or regulation make reference to the Arm's Length Principle?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Article 110, para. 7 of the Consolidated Law on Income Taxes (also referred to as Income Tax Code) incorporates into the law the arm's length principle set forth by Article 9 of the OECD Model Tax Convention as follows: "Items of income 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 based on the conditions and prices which would have been agreed between independent parties operating on an arm's length basis and in comparable circumstances." Ministerial Decree of 14 May 2018, Article 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." See also the other Articles of the Ministerial Decree.	Income Tax Code (approved by Presidential Decree No. 917 of 22 December 1986): Art. 110 para. 7 as recently updated in June 2017. See also the Ministerial Decree dated May 14, 2018 .
2	What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?	The Ministerial Decree dated 14 May 2018, in setting out the general guidance for the proper application of the arm's length principle established by law in Article 110, paragraph 7, of the Income Tax Code, makes explicit reference to the OECD Transfer Pricing Guidelines and to the OECD Final Report on BEPS Actions 8-10 as well. See Preamble of the Ministerial Decree.	Ministerial Decree dated May 14, 2018 . See the Commissioner Decision dated 23 November 2020 . As for APA program, see (Italian version only): - Art. 31 ter of the Presidential Decree No. 600 of September 29, 1973, and

		Also, the OECD TPG are mentioned in the implementation of the law provision regarding TP documentation requirements, as well as in the implementation of the law provision endorsing the APA program.	the Commissioner Decision dated 21 March 2016
3	Does your domestic legislation or regulation provide a definition of related parties? If so, please provide the definition contained under your domestic law or regulation.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Art. 110 para. 7 of the Income Tax Code, as amended in June 2017, refers 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 Decree of the Minister of Economy and Finance dated 14 May 2018 provides for the following details: (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;	Income Tax Code (approved by Presidential Decree No. 917 of 22 December 1986): Art. 110 para. 7 as recently updated in June 2017. Ministerial Decree dated May 14, 2018 .

Transfer Pricing Methods

4	Does your domestic legislation provide for transfer pricing methods to be used in respect of transactions between related parties?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If affirmative, please check those provided for in your legislation:	Article 4 of the Ministerial Decree dated May 14, 2018 .												
		<table border="1" style="width: 100%; text-align: center;"> <thead> <tr> <th>CUP</th> <th>Resale Price</th> <th>Cost Plus</th> <th>TNMM</th> <th>Profit Split</th> <th>Other (<i>If so, please describe</i>)</th> </tr> </thead> <tbody> <tr> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </tbody> </table>	CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (<i>If so, please describe</i>)	<input checked="" type="checkbox"/>	<input type="checkbox"/>					
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		TP methods, specifically the methods recognized by the OECD, are described in Article 4 of the Ministerial Decree of May 14, 2018. According to para. 5, taxpayers may apply a method other than CUP, Resale Price, Cost Plus, TNMM and Profit Split only if they can demonstrate that: i) none of those methods could be applied with reliable results to determine the pricing of a controlled transaction on the basis of the arm's length principle; and ii) such different method produces a result consistent with what independent enterprises would be expected to obtain in carrying out comparable uncontrolled transactions.	
5	Which criterion is used in your jurisdiction for the application of transfer pricing methods?	<p>Please check all that apply:</p> <p><input type="checkbox"/> Hierarchy of methods</p> <p><input checked="" type="checkbox"/> Most appropriate method</p> <p><input type="checkbox"/> Other (<i>if so, please explain</i>)</p>	Article 4 of the Ministerial Decree dated May 14, 2018 .
		Article 4 of the Ministerial Decree of May 14, 2018 deals with TP methods.	
6	If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.	<p><input checked="" type="checkbox"/> For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the TPG is followed.</p> <p><input type="checkbox"/> Domestic legislation mandates the use of a specific method for controlled transactions involving commodities (<i>if so, please explain</i>)</p> <p><input type="checkbox"/> Other (<i>if so, please explain</i>)</p>	
		There is no specific guidance in Italy's domestic legislation on commodity transactions.	
Comparability Analysis			
7	Does your jurisdiction follow (or largely follow) the guidance on comparability analysis outlined in Chapter III of the TPG?	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>	Article 3 of the Ministerial Decree dated May 14, 2018 .
		The definition of comparability as described in Article 3 of the Ministerial Decree of May 14, 2018 is the same as that outlined in Chapter III of the OECD TPG. Please, see the Ministerial Decree.	

8	Is there a preference in your jurisdiction for domestic comparables over foreign comparables?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
9	Does your tax administration use secret comparables for transfer pricing assessment purposes?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
10	Does your legislation allow or require the use of an arm's length range and/or statistical measure for determining arm's length remuneration?	<input type="checkbox"/> Yes <input type="checkbox"/> No Article 6 of the Ministerial Decree dated 14 May 2018 deals with the arm's length range. The range of figures resulting from the financial indicator selected to apply the most appropriate method shall be considered at arm's length where the figures reflect a number of uncontrolled transactions, each of which is equally comparable to the controlled transaction, following the comparability analysis. A controlled transaction is deemed to have been carried out complying with the arm's length principle, if the relevant financial indicator is within the above-mentioned range referred to in paragraph 1 of this Article. Where the financial indicator of a controlled transaction is not within the arm's length range, the tax administration shall adjust it so that it falls within the range, without prejudice to the right of the associated enterprise to produce evidence that the controlled transaction satisfies the arm's length principle, as well as to the power of the tax administration to disregard such evidence providing an adequate statement of reasons.	Article 6 of the Ministerial Decree dated May 14, 2018 .
11	Are comparability adjustments required under your domestic legislation or regulations?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Intangible Property			
12	Does your domestic legislation or regulations contain guidance specific to	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Ministerial Decree dated May 14, 2018 .

	the pricing of controlled transactions involving intangibles?	<p>Italy's TP domestic legislation or regulations does not contain specific guidance on the pricing of controlled transactions involving intangibles. Arm's length principle applies.</p> <p>Ministerial Decree of 14 May 2018 refers in the Preamble to the Final Report on Actions 8-10 of the OECD/G20 BEPS Project and to the OECD Guidelines approved by the OECD Council on 10 July 2017. Also, it establishes in Art. 9 that any additional implementing arrangement shall be provided for by one or more Commissioner Decision, taking into account the provisions of the OECD Guidelines as regularly updated.</p> <p>As for transactions involving intangibles, references to the OECD TPG are also present in patent box regime (see the answer to question 14).</p>	
13	Does your domestic legislation or regulation provide for transfer pricing rules or special measures regarding hard to value intangibles (HTVI)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
14	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <p>The Patent box regime</p> <p>Italy introduced in 2015 an IP optional regime ("patent box") built on the nexus approach, in accordance with BEPS Action 5.</p> <p>This regime provides for exclusion from the tax base, up to 50% of the income deriving from the exploitation of intangibles.</p> <p>To benefit from the regime, taxpayers must incur costs for research and development activities aimed at the development or maintenance of eligible IP assets.</p> <p>The eligible IP assets are: copyrighted software, industrial patents, designs and models, processes, formulae and information relating to experience acquired in the industrial, commercial or scientific field, legally protectable.</p> <p>Explicit reference to the OECD TPG is provided by law. Law provision establishes that the intangible related income is to be determined based on the principles and methodologies recommended by the OECD TPG.</p>	Patent box regime

Intra-group Services

15	Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		Italian transfer pricing domestic legislation does not contain specific guidance on intra-group services transactions. The OECD TPG are followed.	
16	Do you have any simplified approach for low value-adding intra-group services?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Article 7 of the Ministerial Decree dated May 14, 2018 . See para.7 of the Implementation guidance on TP Documentation (Master File and Country Specific Documentation) contained in the Decision of the Commissioner of Italian Revenue Agency dated 23 November 2020.
		Article 7 of the Ministerial Decree of 14 May 2018 regulates the simplified approach for low value-adding intra-group services, as it is described in BEPS Actions 8-10, without thresholds. This approach is consistent with BEPS Actions 8-10. When applying the simplified approach for low value-adding intra-group services, the companies are required to provide specific information in the Country File (Country specific documentation).	
17	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Financial transactions

18	[NEW] Does your domestic legislation or regulations provide guidance specific to financial transactions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		Italian domestic legislation does not contain specific transfer pricing guidance on financial transactions. The OECD TPG are followed.	
19	[NEW] Are there any other rules outside transfer pricing rules that are	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	See Legislative Decree 29 November 2018, no. 142

	relevant for the tax treatment of financial transactions?	Italy has implemented the measures in BEPS Action 4 to limit interest deductions and other financial payments (see legislative decree 142/2018 which implemented the EU ATAD Directives).	
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Cost Contribution Agreements			
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20	Does your jurisdiction have legislation or regulations on cost contribution agreements?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		TP domestic legislation does not provide any specific guidance on cost contribution arrangements. The OECD TPG are followed.	

Transfer Pricing Documentation			
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21	Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>If affirmative, please check all that apply:</i> <ul style="list-style-type: none"> <input type="checkbox"/> Master file consistent with Annex I to Chapter V of the TPG <input type="checkbox"/> Local file consistent with Annex II to Chapter V of the TPG <input checked="" type="checkbox"/> Country-by-country report consistent with Annex III to Chapter V of the TPG <input type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return) <input type="checkbox"/> Other (specify): <p>The Italian legislation requires the taxpayer to prepare transfer pricing documentation regarding Country-by-Country report correspondent to Annex III to Chapter V of the TPG.</p> <p>Law no. 208, dated 28 December 2015 introduced Country-by-Country report. Ministerial Decree dated 23 February 2017 provides for regulations for CbCR, in compliance with the EU Council Directive 2016/881/UE dated 25 May 2016. The Decision of the Commissioner of the Italian Revenue Agency dated 28 November 2017 provides for detailed implementation guidance of CbCR.</p> <p>The Italian legislation or regulation do not require the taxpayer to prepare Master File and Country Specific Documentation (Local File) as an obligation. Master</p>	<p>As for Master File and Country Specific Documentation, see Article 26 of Law Decree No. 78 of May 31, 2010 implemented – with amendments – by Law No. 122 of 30 July 2010:</p> <p>See Implementation guidance on TP Documentation (Master File and Country Specific Documentation) contained in the Decision of the Commissioner of Italian Revenue Agency dated 23 November 2020.</p> <p>As for CbCR’s references, see the following: Article 1, paragraph 145, in Law no. 208, 28 December 2015.</p> <p>Ministerial Decree 23 February 2017, published in the Gazzetta Ufficiale of 8.3.2017.</p> <p>Provvedimento of the Director of the Italian Revenue Agency (“PROVVEDIMENTO PROT. 275956” dated November 28, 2017), containing implementation guidance for the</p>
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		File and Country Specific Documentation (Local File) are optional for taxpayers. Taxpayers filing proper TP Documentation will benefit of so called “penalty protection” in case of upward adjustments. In this case, Article 26 of the Law Decree No. 78 of May 31, 2010 implemented – with amendments – by Law No. 122 of 30 July 2010 introduced a penalty protection regime for companies filing proper TP documentation. The content of Master File and Country Specific Documentation (Local File) - dealt with in the implementation guidance, contained in the Decision of the Commissioner of the Italian Revenue Agency dated 23 November 2020 – is substantially identical to Annex I and II to Chapter V of the TPG.	submission of CbC reports and provisions on appropriate use.
22	Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)	<p>Companies opting for TP documentation (Master File, Country specific documentation) must file it for each fiscal year by the time of the tax return. The Master File and Country Specific Documentation (Local File) must be signed by the legal representative or by a delegate representing the taxpayer by electronic signature with a time stamp to be put by the date of presentation of the tax return.</p> <p>The taxpayer shall submit the TP Documentation to the tax authorities in electronic form within 20 days upon request.</p> <p>The Master file and the Country Specific Documentation must be drafted in Italian. However, the Masterfile can be submitted in English.</p> <p>CbCR is mandatory for eligible taxpayers, as defined in the Ministerial Decree of 23 February 2017. It must be filed for each reporting fiscal year within 12 months from the last day of the reporting fiscal year.</p>	<p>As for Master File and Country specific documentation, see the Commissioner Decision dated 23 November 2020.</p> <p>As for CbCR, see: Ministerial Decree of 23 February 2017.</p>
23	Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	As for Master File and Country specific documentation, see the Commissioner Decision dated 23 November 2020.
		For companies opting for TP documentation (Master File and Country specific documentation) penalty protection is guaranteed if the documentation requirements are met (i.e. the TP documentation is proper, in the meaning that it provides the tax auditors with the data and information necessary to perform an analysis of the transfer pricing applied, with a specific accurate description of the material transactions and comparability analysis, including a functional analysis, regardless of the fact that the transfer pricing method or the selection of comparable transactions or enterprises adopted by the taxpayer are different from those identified by the tax authorities).	

24	<p>If your legislation provides for exemption from transfer pricing documentation obligations, please explain.</p>	<p>For companies opting for TP documentation (Master File, Country specific documentation - please see also answer to question 21) a simplified approach is provided for small and medium-sized enterprises (SMEs) with reference to the information provided in the Country File (Country specific documentation): SMEs are entitled not to update specific information 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.</p> <p>Companies are qualified as “small or medium-sized enterprises” in the event their total turnover or revenue does not exceed the threshold of fifty million Euros. Notwithstanding this definition, entities do not fall within this definition should they control directly or indirectly – or should they be controlled directly or indirectly by - an entity not qualified as a “small or medium sized enterprise”.</p> <p>As for CbCR legislation, the Ultimate Parent Entity, resident in Italy, of a MNE Group having total consolidated group revenue of not less than EUR 750 000 000 must file CbCR.</p>	<p>As for Master File and Country specific documentation, see the Commissioner Decision dated 23 November 2020.</p>
Administrative Approaches to Avoiding and Resolving Disputes			
25	<p>Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?</p>	<p>Please check those that apply:</p> <p><input type="checkbox"/> Rulings</p> <p><input type="checkbox"/> Enhanced engagement programs</p> <p><input checked="" type="checkbox"/> Advance Pricing Agreements (APA)</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Unilateral APAs</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Bilateral APAs</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Multilateral APAs</p> <p><input checked="" type="checkbox"/> Mutual Agreement Procedures</p> <p><input checked="" type="checkbox"/> Other (<i>please specify</i>):</p> <hr/> <p>– Multilateral Controls (e.g. simultaneous audits)</p> <p>– Unilateral corresponding adjustment</p>	<p>As for APAs, see Presidential Decree no.600/1973, Article 31-ter, introduced by art 1 of Legislative Decree 147 dated September 14 2015, and modified by art 2 of Legislative Decree 32 dated March 15 2015.</p> <p>As for Mutual agreement procedures, see Circular letter no. 21 released by Italian Revenue on June 5 2012 (English version available).</p> <p>As for Multilateral Controls (e.g. simultaneous audits), see Presidential Decree no.600/1973, Article 31 bis as modified by the Legislative Decree no. 29 dated 4 March 2014.</p> <p>As for unilateral corresponding adjustment, see new Article 31 quarter of Presidential Decree n. 600 dated 29 September 1973, introduced by Law Decree no 50 dated 24 April 2017.</p>

		<p>Resident taxpayers can request a unilateral corresponding adjustment to the Italian tax administration in case of a primary adjustment notified by another Country resulting in double taxation.</p> <p>In case of a foreign primary Transfer Pricing adjustment, the Italian Revenue Agency (IRA) can recognize a downward adjustment not only in execution of a Mutual Agreement Procedure but also upon formal request by the taxpayer.</p> <p>The newly introduced procedure allows Italian taxpayers to obtain a unilateral downward adjustment on their taxable income as a result of transfer pricing adjustment made by foreign tax authorities.</p> <p>The IRA evaluates whether the primary adjustment made by the other State is in accordance with the ALP, provided that a DTC is in force with the other State, allowing an adequate exchange of information.</p>	<p>For implementation guidance of unilateral corresponding adjustment request, see also the Decision of the Commissioner of Italian Revenue Agency dated 30 May 2018 (“PROVVEDIMENTO PROT.108954/2018).</p> <p>Italy's MAP Profile</p>
Safe Harbours and Other Simplification Measures			
26	Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		Italy does not have rules on safe harbours.	
27	Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		Italy has no other simplification measures apart from the simplified approach for low value-added intra-group services and the simplified approach provided for SME - opting for TP documentation - with reference to the information provided in the Country specific documentation.	
Other Legislative Aspects or Administrative Procedures			
28	Does your jurisdiction allow/require taxpayers to make year-end adjustments?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
29	Does your jurisdiction make secondary adjustments?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

		Italy does not have internal legislation and regulations on secondary adjustments.	
Attribution of Profits to Permanent Establishments			
30	[NEW] Does your jurisdiction follow the Authorised OECD Approaches for the attribution of profits to PEs (AOA)?	<input checked="" type="checkbox"/> Yes The 2010 OECD Model Tax Convention version of Article 7 has been included in two Tax Treaties already in force and in a number of treaties under negotiation and/or ratification. Tax treaties that do not contain the AOA may also be interpreted dynamically, to the extent that it does not imply an infringement of the Treaty, given that the AOA is also provided for by domestic legislation.	See Article 152 of DPR 22 December 1986, n. 917
		<input type="checkbox"/> No	
31	[NEW] Does your jurisdiction follow also another approach?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Other Relevant Information			
32	Other legislative aspects or administrative procedures regarding transfer pricing	N/A	
33	Other relevant information (e.g. <i>whether your jurisdiction is preparing new transfer pricing regulations, or other relevant aspects not addressed in this questionnaire</i>)	N/A	

For more information, please visit: <https://oe.cd/transfer-pricing-country-profiles>