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RELATORE: Marcello Poggioli

LAUREANDO: Bryan Buratto

MATRICOLA N.: 1206758

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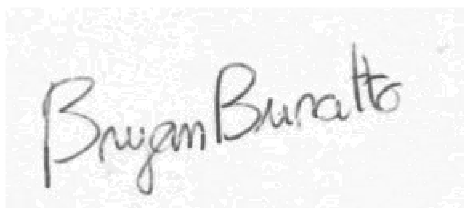
Firma (signature) 

A mamma e papa sempre pronti a supportatmi e sopportarmi in tutti questi anni

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Introduction

This work aims to analyze the various definitions of "control" in the Italian jurisdiction for the Italian companies and the taxation effect that controlling or not a company could lead.
Starting from the Civil Code as the heart of the jurisdiction the thesis will then study all the other different legislation in the Italian system, the so-called "special jurisdiction", like the antitrust law, the procurement law or the banking law. There will be a lot of different ways in which the Italian law defines the control, and this led to some theoretical and practical problems.
Then the study will move to consider the taxation effect on the "group", will examinate when a certain number of companies will be considering a group and which will be the effect on assuring these situations.
Then there will be a detailed study on the system of transfer pricing system and the effect that a manipulation of the transfer prices could have on the tax revenue, and a part on the system that the countries have to limit tax avoidance and tax evasion (like the arm's length principle), following the OECD guidelines.
The so-called controlled foreign companies (CFC) would even be a matter of study.
Eventually, following the group's definition, the thesis will investigate the tax effect of controlling one or more companies on the consolidated balance sheet.
The work aims to show an overview of the tax effect on companies that have some controlled entities and with which they have business and try to find the best way of managing these situations to avoid Italy losing tax revenue, but, at the same time, avoid companies from being double taxed and allow them to do business.

1: Definitions of control

When a Scholar or even a Practitioner confronts himself with the domain of Tax Law, he knows that the word “control” can be associated either to an activity or a relation.
When control is defined as “activity”, in fact, it is intended as the work of the tax administration regarding the audit conducted on taxpayers in relation to the determination of taxable income and the payment of tax.
When control is defined as relation it is explained by the special part of tax law, and it is intended as the application of special provisions on personal income tax and corporate income tax. This part of tax law allows companies and people to have a special way to calculate the taxable base that we will see in the other parts of this work.
Studying the relation between control and tax is important because, in recent years, there have been a lot of new tax provisions in the Italian law, like CFC regulation or the corporate income tax on world consolidated basis, that make fundamental to know who controls whom and what the taxable amount is, by which calculate the amount to pay.
In the next part of the chapter there will be an analysis of the different definition of control in Italy, starting from the Civil Code, through the special legislation, till the European legislation.

1.1 Control in the civil code: art 2359

The main source of the definition of control in the Italian Law is the Civil Code
The most important article is 2359 that reports:

"Subsidiary companies are considered:

1. *companies in which another company holds most votes exercising in the ordinary shareholders' meeting.*
2. *companies in which another company holds enough votes to exercise a dominant influence in the ordinary shareholders' meeting.*

companies that are under the dominant influence of another company by virtue of specific contractual ties with it.

For the purposes of applying the provisions of this code, associated companies are those over which another company exercises significant influence. Influence is presumed when at least

one-fifth of the votes can be exercised in the ordinary shareholders' meeting, or one-tenth if the company has shares listed on regulated markets.” (Italian Civil Code, art. 2359)

This is the final version of the article that has changed over the decades.
The first time the word control is used on Italian legislation is a law from 1931 on the criminal sanctions of the administrators of commercial companies that prohibited directors from taking out loans with the company they managed and with those it controlled or by which it was controlled. But given the industrial backwardness of Italy at the time, this first appearance of "control" had no influence or utility in tax and corporate doctrine.
After this, Italy develops the Commercial Code of 1882, the first business law, but even here there weren’t any references to control.
Only the Civil Code of 1942 introduced the “definition” of control that bans ,in any case, the possibility for the controlled entity to buy shares of the controlling entity and of all the other entity controlled by the parent company. There is not a proper definition of control, instead, it cleared the controlled entity definition which implies the control.
The first modification take place with the reform of 1974, that overtakes the ban for the acquisition of shares of the controlling entity, only if the financing came from reserves and introduce the concept of the “direct control” through the control of the shareholder meeting and the “de facto control” through contracts and the coordination of another company.
Further changes there were with the reform of 1991, which receives the IV and VII European directive and contains important news :

- a company controlled another by rights not because it has the most of the outstanding voting rights but because it has the majority of the vote exercisable during the shareholder meeting. So, even if at the meeting you are not the majority shareholder, but you have the most voting right during the meeting you control the company, thanks to the faculty, with majority, of choosing the board and approving or not the resolutions
- internal and external control have different treatments and are now explicit in the regulations.
- The definition of controlled entity is made explicit and even the control through controlled entity is now ruled. This, especially for the consolidated balance sheet, is a very innovative view, and provides a new way to consolidate the controlled companies
- The reform explicit that controlled entity is those in which another company exercise a “significant influence”

Since 1991 there are no other modification, aside, for the reform of 2003 that substitute the word “exchange” with a more proper “regulated market”.
As we see from the evolution of the regulations, in the Italian Law the definition of control is based on the concept of “dominant influence” (especially after the reform of 1991), definition that have caused some applicative and interpretative problems, that we will see later.
The control issue has been addressed through three main aspects:

1) corporate groups
2) control of the shareholders meeting
3) contracts between different companies

Starting from the first point, it is clear that the link between a group and a company is established primarily by buying shares and having a stake in the other company. But, from Italy point of view, a stake in another company is not enough to configure a group and a control from a company to another. This because, in the 2003 reform, Italy introduce the concept of “management and coordination of a company” (explained in the article 2497 of the Italian Civil Code) by which, even if a company has a stake in another but do not manage and coordinate it, the company has not the control of the other and they are not a group. This new concept strengthens the definition of dominant influence under Italian law. The main issue is to set the link between the concept of coordination (article 2497) and the concept of control (article 2359).
Digging in the second point the Italian code explains that if one or more shareholders have the control of the shareholder meeting, they have the control of the company. But is this always immediate to say? Probably not, because if someone controls the shareholder meeting but has not the power to manage and control the choices of the board, following the article 2497, it does not have the control of the company.

Furthermore, with the new law regarding shares with multiple voting power and shares with and increasing voting power that Italy introduce since 2014, the control of the shareholder meeting could happen without having the majority of the shares of the company. Another way to change the voting power is to establish different types of shares (like the saving shares admitted for the public company in Italy, that usually have less voting power but higher rights on dividends) is always more difficult to establish who has the majority and specially who has the control and the power to coordinate the choice of the board and the company. Moreover, it is even possible that those who have the majority of the share and the power to coordinate the choice of board decided not to interfere with the board, making it even more complicated to understand who controls the company.

So, for sure, the ability to control the shareholder meeting is not enough to establish who controls a company but is fundamental to set "who is able to determine the social will and has the power to take decisions that the law attributes to shareholders meeting" (MOLLO and MONTESANTO, 2015, p.9). The power is to control the meeting and to choose the board, which, in full, if the shareholders interfere with the decision of the board, give them control of the company.

Until now, the two points, refers to control as something "internal". But it could be that the control is "external" and here we find the third point. A company could be controlled by another of by someone through contracts like deals to vote together, established before the meeting, or, with more stricter contracts, by which a company party is forced to keep certain behaviors decided by third parties (when, for example, a company as an exclusive contract with another and cannot sell the product to other – or when the company could not decide a new financing option without the approval of the other). These types of contracts are normal in the American world, and they are taking hold even in Europe.

Here is clear the power to coordinate and "choose the destiny of another company" so who is the payee of the contract has the control over the company.

As said before, the dominant influence is the core of the control issue in the Italian law. So, is fundamental to understand what is the dominant influence: for the majority of the legal scholars "in a narrow sense, as the ability not only to prevent decisions from being taken or operations carried out that are contrary to one's will, but also to impose one's point of view, in particular in the decision to purchase and in the management of the shares or stocks of the parent company by the subsidiary" (DOLLO and MONTESANTO, 2015, p.16). The center of the control is the ability to command the board through the shareholder meeting or contract, as expected by article 2359 of the Italian Civil Code. The consequence is that the one that has the ability to choose the components of the board and the ability to revoke them has the control of the company.

Another view of the Italian law is to establish the "effective dominant influence" and the "potential dominant influence". The controlling company has to demonstrate to not have an effective dominant influence on the controlled one to avoid the control. So, it does not have the power to influence the strategic and management choice of another company. Here we see an evolution of the concept of control, a deeper issue, not only concentrate on the control of the shareholder meeting and the board. Following this view is possible the have a "potential dominant influence" but not the control, because the shareholder could have enough share to exert the control but do not want to or simply is not interested in the management of the company. But is it enough that someone has once the power to influence the shareholder

meeting or the board, to be the controller of the entity? For the Italian law the answer is "no". It is necessary that the activity of coordination be exercised in a stable and continuous way. The control and the coordination must be exercised in a permanent state.
This is valid for internal control, using the power given by the Civil Code. Regarding external control, the definition remains the same, what changes is the instrument by which the entity exercises the control over another. We go from the weight of the shares to the power of contracts. Here the issue is to find the contractual constraints that give a company the power to have a dominant influence on another through a contract.
External control through a contract is such that one company has no room to make any choice without the consent of the controller company. There are three ways for the Italian legal scholar to do so:

- the presence of contractual constraints in the contract that will manage the controlled company especially in its fundamental management choice. So is not enough the mere presence of some constraint to assert contractual control
- the economic dependence of a contractor from the other. The controlled one is not able to survive if the controller entity respects the contract. For example, when a company can sell its products only to another trough and exclusivity provision. In the economic sphere, we can include even the "debt governance" : financing contract that through covenants give the power to the controller to influence or block certain decisions of the controlled company.
- When the contract gives the power of managing the company to another

Another threat is posed by a control chain, when we have a company that controls another company through a third entity. This type of chain has no limit and the control between one and another entity could be direct, indirect, internal or external control. This led to the so-called telescope effect. And, since the article 2359 refers to indirect control only at first and second comma, and not on the third, "If a company controlled by virtue of specific contractual obligations is encountered along the chain of control, only its direct parent company is considered the controlling entity, and not the previous parent companies. However, the fact remains that the contractually controlled company is still a controlled company; therefore, the internal subsidiaries of the contractually controlled company are companies controlled by the company exercising contractual control." (MARINO, 2008, p.37).
Eventually in the last comma of article 2359 there is the notion of associated companies. In this scenario the association seems not to derive from the effective exercise of the dominant influences, since there is enough possibility to exercise the influence on the other entity. Whereas, as the article states, control is presumed when a company has one fifth of the votes

that can be exercised in an ordinary meeting, or one tenth, if the latter has shares listed on regulated markets. Scholarships admit the possibility to have association even with indirect control, when controlled companies have a dominant influence on another controlled entity.
So, for Italian law the "dominant influence" is the base of the control and is fundamental to assert if an entity has dominant influence on another to say that one is controlled by the other. Control could be achieved in an internal or external way in some different ways but the control of the shareholder meeting and the board and the ability to manage and coordinate the company are the focal points of the control.

1.2 Control in the "special legislation"

This control notion and all the modification happened then are the "general law" for corporate law, all the other one that we will see are outside the corporate law and are characterized to be "sector law", a special branch that derives from the general law.
In the Italian legislation, there are a lot of notions of control, so much so that they can be classified following four main criteria:

1) special definition that refers to art. 2359 and other
2) special definition that refers to dominant influence
3) special definition that refers only to art. 2359
4) special definition that does not refer to art. 2359 or any other notions.

One special notion could be found in the law of 2nd May 1976, number 183, where article 10 asserts: "Industrial complexes divided into several factories are considered as a unit, for the purposes of measuring the contribution, when the factories are located in the same municipality, or are contiguous. The same criterion also applies if these establishments, located in the same municipality or contiguous, belong to legally distinct companies, but with technical, financial, and organizational connections that constitute belonging to the same group."(law of 2nd May 1976, number 183).
Here, the concept of group is important to have more contributions, but there are no references to article 2359 or other notions of control, but only to the links between different juridical entities, a new way to understand the controlled entities not yet expected from art. 2359.
Another special notion of control is on the law regarding the administration of insolvent companies, so-called "Legge Prodi" (law 3rd April 1979, n.95)
In Article 3, we find an extension of control:

- "Subsidiary or controlled companies, managed sole and guarantors.

(a) the company which directly controls or indirectly the company under administration extraordinary.

(b)companies directly or indirectly controlled by the company under administration extraordinarily or by the company that controls it

(c) the companies which on the basis of the composition of respective administrative bodies are subject to the same management as the company under extraordinary. administration

(d)companies which have granted credits or guarantee to the company in extraordinary administration and to company referred to in the previous letters for an amount superior, according to the findings of the latest financial statements, to a third of the total value of your own activities'.... In cases of companies connected pursuant to the first paragraph of this article, where the hypothesis of unitary management occurs, the directors of the companies who have exercised this management are jointly and severally liable with the directors of the company under extraordinary administration for damages caused by them to the company itself."(law 3rd April 1979, n.95)

This article has some notions different from the article 2359, like the "unitary management" and the indirect external control, that lead to have another different definition even if at the end of the law there is a remainder of the article 2359 on the controlled companies.

Another way to see control is in the law on publishing, law 5th August 1981, number 416 :

- "… control is defined in accordance with Article 2359 of the Civil Code. People and companies that control the publishing company of daily newspapers, including through a fiduciary heading of shares or shares or through a third party, must give written notice to the controlled company and the publishing service within thirty days of the fact or from the shop which determines the acquisition of control. The existence of relationships configured as such in article 2359 of the civil code constitutes control. The dominant influence provided for in the first paragraph of Article 2359 of the Civil Code shall be deemed to exist, unless proven otherwise, where there are relationships of a financial or organizational nature which allow

  (a) the communication of profits or losses

  (b) the coordination of the management of the publishing undertaking with that of other companies for the purposes of pursuing a common purpose or for the purposes of limiting competition between the companies themselves

  (c) a distribution of profits or losses different, as to the subjects or measure, from that which would have occurred in the absence of the reports themselves

(d) the attribution of greater powers than those deriving from the number of shares or units owned

(e) the attribution to people other than those entitled under the ownership structure of powers in the choice of directors and managers of publishing undertakings as well as directors of published publications."(law 5th August 1981, number 416).

Based on Article 1 reported there are some remainders at article 2359 as the base of the control, but then, there are some new points that integrate the general law giving the idea that the publishing sector needs something more than article 2359 to explain and assert the control.

In the publishing law the control definition aims to monitor all the controlled companies to have a transparent database of all the publishing companies and to avoid concentration of power in a very sensitive sector. This function is not in article 2359 of the Civil Code. Otherwise, after the recalling of article 2359, article 1 allows even the control with a fiduciary entity or with a third person, a possibility that article 2359 does not allow.

Another sector that has a special notion of control is the television sector, with the law of 6th August 1990 number 223 in articles 15,19 and 37:

- Article 15, at 5th comma : "For the purposes of applying this article, the holder of the concession shall be treated as equivalent to control or connection, within the meaning of article 37 of this Law, with companies holding the concession, or, for non-corporate natural or legal persons, the holder of shares or units in the measures indicated in article 2359 of the Civil Code or the existence of the contractual obligations provided for therein…"
- Article 19 at 9th comma: "For the purposes of applying this article, the ownership of the concession is treated as control or connection, pursuant to article 37 of this law, with companies holding the concession, or, for non-corporate natural or legal persons, the ownership of shares or units in the measures indicated in article 2359 of the civil code or the existence of the contractual constraints provided for therein."
- Article 37:"For the purposes of this law, the existence of relationships configured as in article 2359 of the civil code constitutes control and connection, even if such relationships are carried out jointly with other subjects through directly or indirectly controlled companies or through a fiduciary header or through shareholder agreements. The dominant influence provided for by the first paragraph of article 2359 of the civil code is considered to exist, unless proven otherwise, when there are financial or organizational relationships that allow even just one of the following activities.
- (a) the disclosure of profits or losses

- (b) the coordination of the management of the broadcasting undertaking with that of other undertakings with a view to limiting competition between the undertakings themselves
- (c) a distribution of profits or profits different, when to the subjects or the measure, from that which would have occurred in the absence of the relations themselves
- (d) the attribution of greater powers than those deriving from the number of shares or units held
- (e)) Assigning powers to individuals not entitled by the ownership structure to select directors and managers of broadcasting companies, or directors of broadcast publications."

Even with these three articles we have reference to article 2359 but some new notions like the possibilities to have control through fiduciaries entities and shareholders agreement not provided in the Civil Code. Furthermore, these articles provide the notion of coordination of management and indirect external control, so we have another shade of the concept of control regarding the television sector.
Another law where Italian legislation finds new way to describe control is the Antitrust legislation and especially the law of 10th October 1990 number 287 that gives us two different views on control at article 7 regarding law against mergers and at article 27 regarding sharing in credit institution

- Article 7th :"For the purposes of this title, there is control in the cases contemplated by article 2359 of the civil code and also in the presence of rights, contracts or other legal relationships which confer, alone or jointly, and taking into account the factual and legal circumstances, the possibility of exercising a decisive influence on the activities of a company, including through:. (a) rights of ownership or enjoyment over all or parts of the assets of an undertaking. (b) rights, contracts or other legal relationships which confer a determining influence on the composition, deliberations or decisions of the organs of an undertaking.2. Control is acquired by the person or undertaking or group of persons or undertakings. who are holders of the rights or beneficiaries of the contracts or subjects of the other aforementioned legal relationships. (b) who, although not holders of such rights or beneficiaries of such contracts or subjects of such legal relationships, have the power to exercise the rights deriving therefrom" (law of 10th October 1990 number 287)

The reference to article 2359 is clear but then there is a new concept “decisive influence” that substitute the “dominant influence” provided by the Civil Code. Furthermore, this law enables control even with contract on the goods, properties, means and contractual relationship of the enterprise, extending the concept of article 2359 probably trying to include the most possible way to exercise control over an entity to give Antitrust authority power to intervene and avoid any possible harmful merger in Italian market.

Article 27 at comma 2 of the antitrust law gives one more extension of the concept of Civil Code, introducing the possibility to control a company through a shareholder agreement. Before this the law refers to article 2359 for the concept of control.

Here is the text of article 27 at comma 2 :

- “For the purposes of this title, the control relationship is considered to exist, pursuant to article 2359 of the civil code, even when a single member, or several members through participation in a shareholder agreement - in which case each of them is considered controlling - own more than a quarter of the total number of ordinary shares or shares or more by one tenth if they are companies with shares listed on the stock exchange, provided that there is no shareholder or other shareholder agreement made up of other shareholders with a greater overall number of ordinary shares or shares or who otherwise has control over the company '. Any agreement between members that regulates the exercise of voting constitutes a voting union.”

This article was amended and then revoked and substituted by article 23 of the banking law:

- “1. For the purposes of this chapter, control exists, also with reference to subjects other than companies, in the cases provided for by article 2359, first and second paragraphs of the civil code and in the presence of contracts or statutory clauses which have as their objective or effect the power to carry out management and coordination activities.

  2. Control is considered to exist in the form of the dominant influence, unless proven otherwise, when one of the following situations occurs:

  (1) existence of a person who, on the basis of agreements, has the right to appoint or dismiss a majority of directors or the supervisory board or who alone has a majority of votes for the purposes of deliberations relating to the matters referred to in Articles 2364 and 2364-bis of the Civil Code

  (2) possession of holdings capable of enabling a majority of the members of the administrative board or the supervisory board to be appointed or removed

  3) existence of relationships, including between members, of a financial and organizational nature capable of achieving one of the following effects:

- (a) the transmission of profits or losses

- (b) the coordination of the management of the undertaking with that of other undertakings for the purpose of pursuing a common purpose

- (c) the attribution of greater powers than those deriving from the shareholdings held

- (d) the attribution, to people other than those entitled on the basis of ownership of shareholdings, of powers in the choice of directors or members of the supervisory board or managers of undertakings

4) subjection to common management, based on the composition of the administrative bodies or other concordant elements"

Here the banking notion of control refers to Art. 2359 of the Civil Code but extends it to entities other than companies. It also includes cases where contracts or bylaw provisions grant power of management and coordination.

Establishes a presumption of "dominant influence" when at least one of the following applies:

- The right, by agreement, to appoint or remove the majority of directors/supervisory board members or to control the majority of votes in meetings under Civil Code arts. 2364 and 2364-bis
- Shareholdings sufficient to allow the appointment or removal of the majority of the board
- Relationships (including among shareholders) of a financial/organizational nature that lead to a Transfer of profits or losses, a coordinated management with other firms for a common purpose, greater powers than those normally granted by the ownership percentage, delegation of powers (e.g., in appointing directors/executives) to persons other than the legal holders of the shares and Common management, inferred from board composition or other consistent elements.

Another extra definition came from the legislative decree of 9th April 1991 number 127 which transpose the IV and VII European directive in article 26 for the control concept that tells:

- "1.For the purposes of Article 25, those referred to in Nos 1 (1) and 2 (2) of the first paragraph of Article 2359 of the Civil Code shall be regarded as controlled undertakings
- 2.For the same purposes, the following shall in all cases be regarded as subsidiaries:

  undertakings over which another has the right, by virtue of a contract or a statutory clause, to exercise a dominant influence, where the applicable law permits such contracts or clauses

  undertakings in which another, under agreements with other members, controls the majority of voting rights alone

- 3.For the purposes of applying the previous paragraph, the rights due to subsidiaries, trust companies and interposed people are also considered; those due on behalf of third parties are not considered."

and at article 37 for consolidation purposes:

- "1. Undertakings over which an undertaking included in the consolidation have control jointly with other shareholders and under agreements with them may also be included in the consolidated financial statements, provided that the holding held is not less than the percentages indicated in the third paragraph of Article 2359 of the Civil Code.
- 2. In this case, inclusion in the consolidation occurs according to the criterion of proportion to the shareholding held. "

As we can see, article 26 itself that includes the notion of the Civil code for the control but at the subsequent paragraph adds some other notions, so it is a broader definition for banking purposes. And in article 37 we find the expression "jointly controlled", introducing the proportional consolidation for the controlled entities that we can see later in the thesis.
Even the law against insider trading has its own definition of control, not a new one, but it goes beyond the general definition of Civil code, recalling the antitrust legislation after article 2359, at article 1 and 2 of the legislative decree of 17th May 1991 number 157.
Banking law has another definition of control in article 4 of the legislative decree of 1992 number 87. Here, for the consolidation purpose, entities part of the same group are considered the "(a) the individual credit or financial institution and the individual parent company that is not a parent company pursuant to art. 25, (b) the parent undertaking within the meaning of Article 25, undertakings from this controls as well as the controlling party that is not
parent undertaking within the meaning of the said Article, (c) undertakings, whether or not other than credit and financial institutions, which operate according to a unitary direction, the companies from these also check the controlling party that is not a company group leader pursuant to art. 25.", specifying for the banking sector the possible controlled entities over the general definition of Civil Code.
Article 19 of the same law provides the "significant influence" to control the company only if the parent company has a stake in the other company, another difference from the dominant influence and threshold from the article 2359.
Always the banking law provides, with article 25, some new and in bigger number, situations by which one company could control another, producing a new extension of article 2359. Here are the various possibilities of article 25 :

- “ 1. For the purposes of Article 24, a parent undertaking is a credit or financial institution which in respect of another undertaking, known as a subsidiary undertaking, is

  (a) has a majority of the voting rights that can be exercised at the ordinary meeting

  (b) or has the right, by virtue of a contract or statutory clause, to exercise a dominant influence, when the applicable law permits such contracts or clauses

  (c) or, being in the position of shareholder or partner, is in one of the following situations:

  (1) has the right to appoint or dismiss a majority of the members of the administrative bodies

  (2) controls alone, pursuant to agreements with other shareholders or members, the majority of the voting rights exercising at the ordinary meeting

  (3) has sufficient voting rights to exercise a dominant influence at the ordinary meeting

  (4) has appointed, by virtue only of the exercise of its voting rights, the majority of the members of the administrative bodies in office during the last two financial years, including the one at the close, and until the consolidated financial statements are drawn up; this provision does not apply if another credit or financial institution is a parent undertaking within the meaning of points (a), (b) or (c) (1).”

But is not here the end for the banking law. After a reform the articles below changed and now is in charge the article 157 of the new banking law, that has introduced a threshold of 20% of the shares on article 19 to assert the significant influence, and on article 25 the reformed law specify which could be the parent company making a difference between a banking group, a generic financial group and a traded entity.

Following the European Transparency Directive, Italian legislators made an extra definition of control regarding the information to be made public when a company buy or sell a strategic stake in another company, so here if important to understand who control who and which is the limit threshold for the communication. Italian legislators do not consider enough the Civil Code view and with the legislative decree of 27th January 1992 number 90 at article 5 has a new specification regarding the control and the controlled entity.

Article 5 specify : “For the application of Articles 5, 5-a and 5-ter above, a company shall be deemed to be a subsidiary in the cases provided for in Article 2359 of the Civil Code. In any case, companies in which another person, based on agreements with other shareholders,

controls the majority of voting rights alone, or has the right to appoint or revoke the majority of directors, are considered subsidiaries."

This includes article 2359 but then adds another specification on the majority of voting rights and on the ability to revoke the board of directors to have control of a company. A slight difference from Civil Code but enough to have a new definition and to keep it different from the general rule, for publicity purposes.

Other subject is the legislation on takeover bid. the legislators confirm that every sector or different situation has its own definition of control, so with law 12th February 1992 number 149 at article 10 we have: " … the offer must concern at least an amount of securities which allows overall control of the company to be acquired, without prejudice to the minimum quantity prescribed by article 18, paragraph 1.

2. For the purposes of this article, control is achieved through a participation that allows the majority of voting rights exercisable in the ordinary meeting to be available, or to exercise a dominant influence in the same meeting, also through a third party, a trust company, or through participation in voting unions…. The public takeover bid obligation shall in any event not apply where a single company directly holds control within the meaning of Article 2359, first paragraph, No 1 (1) of the Civil Code and the majority of the share capital."

Again, in addition to recalling the article 2359, the legislator made some new assumption only for the takeover bid using, however, notions like "dominant influence" and "majority of voting rights", already present in the Civil Code definition.

The other fundamental article in the Italian legislation is the article 93 of the TUF that reports as follow: "In this part, companies are considered subsidiaries, in addition to those indicated in Article 2359, first paragraph, numbers 1 and 2, of the Civil Code, also when:
a) the company, whether Italian or foreign, is subject to a dominant influence by another entity by virtue of a contract or a statutory clause, provided that the applicable law allows such contracts or clauses;
b) the company, whether Italian or foreign, is subject to a dominant influence in the ordinary shareholders' meeting by a shareholder who, based on agreements with other shareholders, alone holds a sufficient number of votes to exercise such influence.

For the purposes of paragraph 1, rights held by subsidiary companies or exercised through trustees or intermediaries are also considered; rights held on behalf of third parties are not considered."

The article explains clearly that control could be exercised through a contract or through shareholder agreement to have a dominant influence on the company. In article 2359 these definitions are not reported. So, the article 93 of the TUF expand the definition of control in the

Italian legislation. Furthermore, the article 93 tell that not only a company but every “subject”, including an association, a foundation, an individual could be qualified as a controlled entity, even here, extending the definition of the article 2359 that have only the word “company” in it. The main issue of article 93 is that, as article 2359, is that it reports that the control is from a single entity and does not admit a plurality of entities who collaborate to control a company. Is this reliable? Since in the last decades a lot has changed regarding shares with multiple voting rights, shareholders’ agreements and other ways to decrease the stake in the company and increase the voting rights, the fact that only a single subject could control a company and not more than one through an agreement or new type of share seems not keeping up with the times. But the Italian legal scholars have to interpret the law as they are written, so they tent to exclude the control by plural entity in most of the cases.

Regarding, otherwise, the control trough contract, the article 93 for the Italian law scholar, configure only the “domain contracts” (contract to control a foreign company) as act that could led to a dominant influence and finally to control. And exclude the other case in point of the article 2359, like the control via “debt governance” or via commercial contract.

Last “sector” that has add another definition of control in the Italian legislation is the law regarding disposition for protecting the investments of savings with the law 262 of 28th December 2005 where there are particular transparency obligations towards the directors of listed Italian companies and companies issuing financial instruments distributed among the public, who control companies with their registered office in a tax haven or who are connected to the latter.

After seeing all these different definitions of control in the Italian legislation, is clear that the legislators have the purpose to give a new notion of control every time it will recognize a small difference with the Civil Code definition or when it asserts that the article 2359 is not enough to cover all the possibilities that a particular sector could provide. It seems there is a “fear” to forget all the possibilities, and this led to a huge production of law, often overlapping, that could create applicative and interpretative problems. Which is the right definition to use if not provided by all these laws? Usually, general law is the basis and the fundamental field to apply, special law is just an exception. General law is the one to use to interpret and understand the special law not the opposite, but in some cases, it seems that the Italian legislators do this way.

To conclude “article 2359 of the Civil Code, although it represents the most important rule as well as the “model” on which the other definitions often draw, represents the “general” notion of control only in the context of company law, which, although it constitutes the main area of

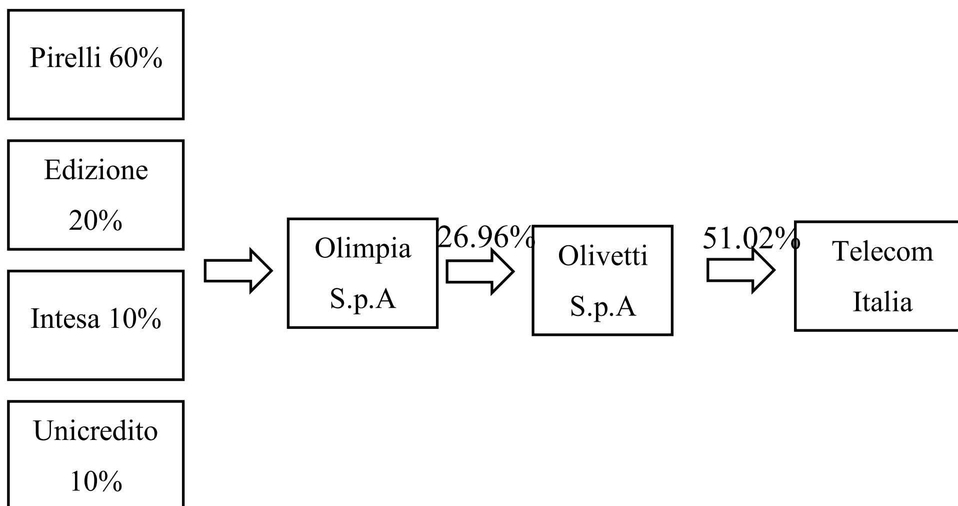
company law, does not exhaust it. With respect to it, the other rules defining control can therefore be said to be "special" – and as such capable of analogical application and integration of the general rule – only in the context in which Article 2359 of the Civil Code has general force. Outside company law, they take on the nature of "sectoral", rather than "special" rules, which in any case prevents them from being considered to be amending Article 2359 of the Civil Code, or mutually supplementary, but not from extending them analogically into other sectors of the legal system." (MARINO, 2008, p.68).

1.3 A leading case of "control" in Italy

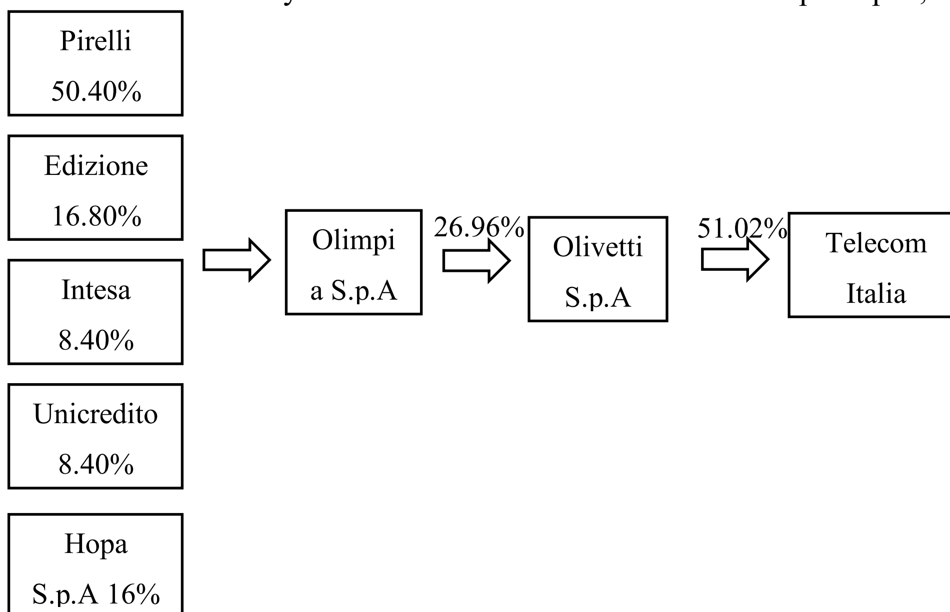
One of the most important "case study" in Italian history regarding the control and the dominant influence was the situation between Pirelli S.p.A., Olimpia S.p.A and Olivetti S.p.A.
The story was that on July/October 2001 Pirelli, with Edizione (the holding of the Benetton family), Intesa BCI S.p.A and Unicredito Italiano make the holding Olimpia S.p.A to buy a stake of 26.96% of Olivetti S.p.A (now has the name of Telecom Italia S.p.A/ TIM S.p.A) from Bell S.A. Edizione was already present in the business of telecommunication, so the European commission the give the permission of the acquisition impose to Edizione some reparations, certifying a joint control of Olimpia of Pirelli and Edizione due to the shareholder agreement between them by which Edizione actively participate in the management of Olimpia.
Otherwise, Pirelli declares that they do not control Olivetti through Olimpia thanks to the fact that the percentage of participation in the shareholder meeting change a lot, so the authority has not to consider the old meeting but only the one since 2001 to assert the stable de facto control of Olimpia over Olivetti.
So, Pirelli declares that he does not solely control Olimpia due to the shareholder agreement with Edizione and due to the fact that participation in shareholder meetings and the shareholder changing a lot.
Then during 2003 Olivetti merged with Telecom Italia and, at the end of this operation, Olimpia had 14.16% of the share capital of the new company Telecom Italia.
Eventually on 9th May 2003 a company named Holy S.p.A merged in Olimpia, changing the percentages of shares owned by each shareholder. So CONSOB, study the situation before and after the 9th of May 2003, and give two different answers regarding the control and the dominant influence on the two periods, considering the shareholder meeting participation, each stake on Olimpia of each shareholder and the clause of the shareholder agreement between

Edizione and Pirelli that lead to a clarification from CONSON of when a company is controlled by another under Italian law using the art. 2359 of the Civil Code and the art. 93 of the TUF.

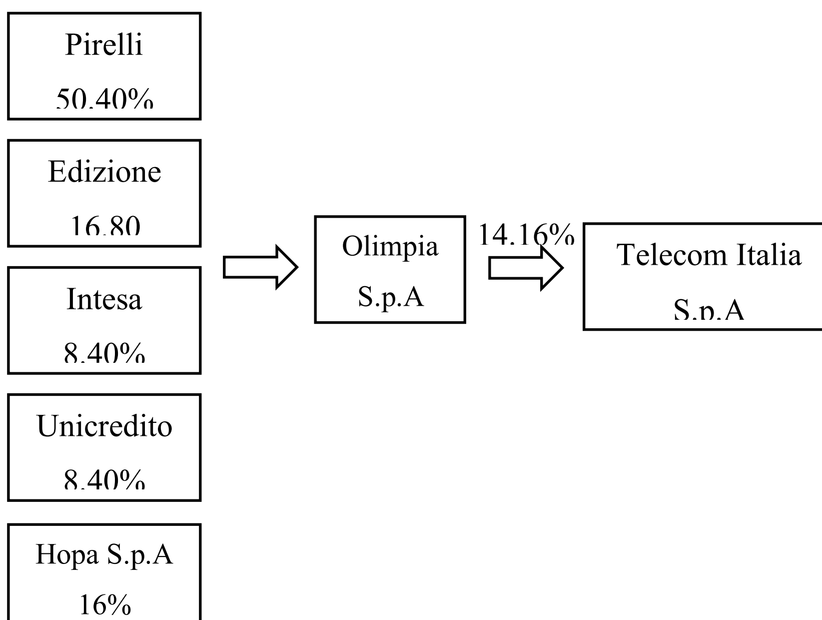
Situation in July/October 2001



Situation after 9th May 2003 and the new shareholder of Olimpia S.p.A, Hopa S.p.A



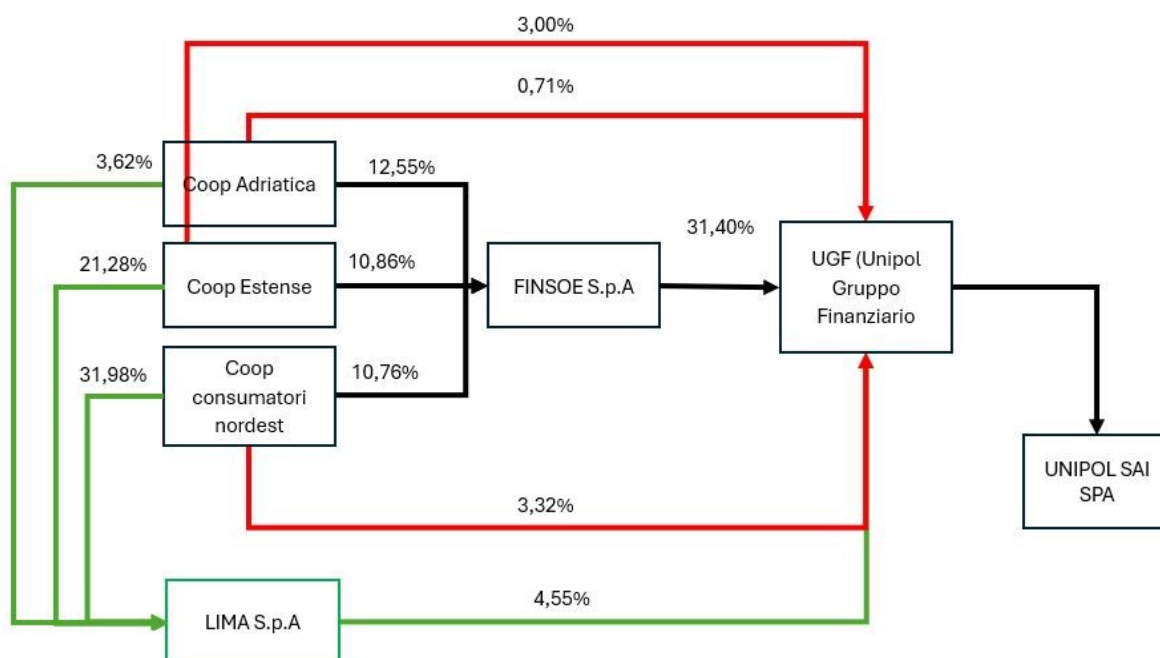
Situation after 15th October 2003 , after the merger between Olivetti and Telecom Italia.



Looking at the ownership percentages, we can assert the Pirelli, having more than 50% of the shares of Olimpia, will control it even after the change in the shareholder's composition, because it can be able to nominee the majority of the board without any help from the other shareholder and has the majority of the voting rights.

Another case in Italy, where the work from CONSOB in Pirelli/Olimpia is used, is the question that Unipol Gruppo Finanziario/Finsoe S.p.A asked to CONSOB is the changing of the shareholder structure of the controlling holding could lead to a change in control and to a mandatory purchase offer.

This is the shareholder structure before the change :



The three companies, Coop Adriatica- Coop Estense - Coop Consumatori Nordest, have agreed to merge and create a new company that is entitled of the 34.16% of FINSOE S.p.A and the 11.58% of UGF (4.55% through the company LIMA S.p.A. and 7.03% directly).

The question from UGF/FINSOE was if, with this new shareholder structure, there was a mandatory purchase offer to do. This happens only when there is a change in control.

On 24th February 2015, CONSOB, with communication DCG 0013637, already assert that the three companies involved have the joint control of UGF and were not obliged to make a purchase offer on UGF and consequentially on Unipol Sai S.p.A. (CONSOB, Communication No. DCG/0013637, 24 February 2015).

The shareholder meeting of FINSOE in the last years has a percentage of participation always over 85%, so, even if the three companies merge their shares, they will not have enough votes to control and have an influence over the meeting.

Over this, in the last meetings, FINSONE took every decision at unanimity, so it could be reasonable that even in the future the decision will take place with the request of unanimity.

And there are some other rules regarding the governance of FINSOE that prevent the three companies having control beyond unanimity:

- The presence in the current statute of provisions aimed at avoiding, through approval and pre-emption clauses, alterations to the shareholding structure, at encouraging the sharing of decisions among the shareholder cooperatives and at guaranteeing the representativeness of each of them in the Board of Directors.
- The high number of members of the Board of Directors of Finsoe (as well as of UGF) and the fact that only three of the current members of the Board also hold administrative positions in the cooperatives affected by the Merger. This element, together with the statutory provision whereby the Board of Directors of Finsoe deliberates by simple majority and for some resolutions, relating to the entry of new members, by qualified majority of 60%, may constitute, in fact, a further indicator for ascertaining the absence of a de facto control.
- the constant and stable presence in terms of percentage held in the shareholding of Finsoe of the same cooperatives and the non-incidence on these balances of the corporate reallocation operations that affected the chain of control of UGF

Said that, CONSOB concludes that on the basis of the elements highlighted, it can therefore be concluded that by not acquiring control of FINSOE by Company X (the new company born from the merger of the three cooperatives) and therefore not configuring, on the basis of what is represented in the question [...] the merger does not in itself entail the emergence of an obligation to make a public offer on the part of Company X; this is because:

- UGF post-Merger will continue to be controlled by Finsoe with the same shareholding of 31.4%.
- Finsoe will continue not to be controlled, pursuant to art. 93 of the Consolidated Law on Finance, individually by any of its shareholders.
- as a result of the aggregation of the three Cooperatives [...] in Company X there will be no significant changes in the control structures of FINSOE.

CONSOB uses the same way for checking the control and the dominant influence, used in the case Pirelli/Olimpia vs CONSOB previously explained, showing that the path is correct and

could be used in any case where there is the problem of asserting the control, for consolidation issue or regarding a mandatory offer after the change in shareholder structure.
So, after these cases CONSOB made a “manual” with all the points requested to assert if a minority shareholding could lead to dominant influence and then to the control of a company.
The points are:

- The meetings to be taken as a reference are ordinary meetings of particular significance (appointment of directors, approval of the budget)
- The shareholding quota suitable for ensuring the dominant influence is variable because it depends on the factual situation in which the company finds itself and, in particular on the degree of fragmentation of the shareholding structure and on the level of usual absenteeism of the members holding smaller shares
- It must not be occasional control, due to a contingent situation, but it must be a relatively stable legal situation
- Such relative stability must necessarily be ascertained through an analysis of the performance of the meetings of the investee company for a reasonably significant period of time, which does not necessarily have to be subsequent to the moment in which the presumed controlling party acquired the shareholding
- It is considered, however, necessary that an investigation also be carried out into past meeting events, to analyze the percentage of votes that was on average necessary to reach the deliberate quorum. Such analysis of the past will be significant only in cases where, in addition to the purchase of the relevant shareholding, which must be assessed for the purposes of its possible qualification as controlling shareholding, there have been no other substantial changes in the shareholding structure.
- With regard to companies with listed shares, it will finally be necessary to verify whether the relevant shareholders with shareholdings greater than 2% have remained substantially unchanged, and therefore whether the so-called free float has remained substantially the same

All the points have to be investigated to understand precisely if a company that has a minority shareholding in another exercise a de facto control over it with a dominant influence.
The work of CONSOB is fundamental because gave us a “manual” to us, avoiding the doubt growth using only the Civil Law and TUF articles for these issues.

2 : Relation between control and groups

In the first chapter I have explained all the various definitions of control in the Italian Legislation, showing multiple possibilities of interpretation and application of the notion. The concept is particularly important when the groups emerge as a new type of organization that asked relevant question to tax scholar in Italy: when is there a group? When does a company control another is already a group or is necessary other characteristics to define such organizations? How has to be treated the tax side of the group ?
Groups start arising in the 20th century and were a huge news for tax and commercial scholars, because they were born from a private and entrepreneurial initiative not a new law issue by government, as it was limited company for example.

2.1 Historical perspective and reform on groups legislation

Debate regarding relation between control and groups was an issue of the doctrine and of some special law till the 2003 reform. Otherwise, before this reform, some legislative intervention boosts the doctrinal work of scholars.
The law number 216 of 1974, modify the article 2359 as shown on chapter one, and introduce the concept of “group” for consolidated balance sheet for the first time. The law does not give a definition of the groups, neither define when some companies became a group, but it started an important discussion regarding this argument in the Italian world.
Other occasion where the group issue has been addressed is the implementation of the VII European directive (that led Italy to have the most complete and exhaustive definition of control) where terms like “mother company” and “sister company” appear, implementing the obligation to have consolidated financial statement for groups; following the directive, the Italian law of 3rd Aprile 1979 number 95, so-called “Legge Prodi”, on the extraordinary intervention on large-scale enterprises, talks about unitary management of various entities controlled by one company, but even here there a direct reference to the word “group” or a definition of when a series of entities could make a group.
In the context of antitrust legislation (from the general one to that relating to publishing and radio and television communications) the group assumes relevance in order to identify that set of subjects who, although endowed with legal autonomy, must be considered in a unitary way for the purpose of identifying a restriction on competition.

Even the Consolidated Law on Banking provides sanctions for managers of the mother companies of the group and the controlled one, entails the existence of the group.
Eventually, the procurement law, allows the "companies of the group" to participate to contract and work win by the mother companies.
Following these first laws on the "groups issue" it is clear that in Italy the control is the power and ability to coordinate and manage one or more company through a unique vision, the group, for now, is the link, the relation between all the different entities over the controlling interest of a company or a person.
Control is a mandatory precondition for the existence of the group, without control it is not possible that a group exists. But is it control the only condition to assert the existence of the group ? "The question that the doctrine has asked itself is whether this position of power is also in itself a sufficient prerequisite for a group to be determined, or instead the occurrence of a further element is necessary. And again, whether this additional element is an element of a formal organizational nature or instead is an element of a substantial nature, namely an economic element which by linking the individual enterprises allows a coordination of the various activities and with them, group action and the continuation of a group interest.
If every group assumes a control position that allows coordination of action, not every control position necessarily results in a group phenomenon.
It has been noted that, if the expression "control" indicates a position of power of a subject in the economic and legal sphere of another subject, and the expression "group" indicates a phenomenon of aggregation between autonomous companies which this position follows, the source to which the position of power is linked is not always the same the degree of aggregation that follows from it is not always the same and consequently the group discipline is not always the same." (MARINO, 2008, p. 74-75).
So, the concept of group goes over the mere controlling stake in another company (that, in any case, does not imply automatically the existence of a group) as know as "the jure control" from article 2359 of the Civil Code.
For the control by a contract the situation is different: the main goal is to pursue an "further interest" (MARINO, 2008, p.76) beyond the one of the single entities through a coordinate action that determine the position of control. So, there needs to be a coordinate group action to pursue the group's interest that led to the integration of different actions of every single entity.
This group is a collaboration between different entities to achieve a common economic goal starting from a contract between them (in Italy these types of groups are consortiums, ATI (temporary association of entities) or agreements).

But this is not the proper group that law aims to acknowledge for tax purposes. The interested one are groups where “whose characteristic is given by the centralization, at the level of the parent company, of management functions inherent to the individual entities of the complex” (MARINO, 2008, p.77). this definition seems to recall the “dominant influence” of the article 2359 of the Civil Code, where parent company is able to interfere with the “business life” of controlled companies and make decisions on behalf of the controlled entities.

All these considerations are before the reform of 2003 in which the Italian legislators add a new chapter regarding the commercial law named “Management and coordination of companies” introducing, by law, some new and very important concept regarding the mother company and the controlled ones:

- direct liability of the parent company towards the shareholders and creditors of the subsidiary company
- publicity obligations relating to membership of a group
- motivation of social decisions influenced by management and coordination activities

As we can see, in the law the concept of parent company and management and coordination activities is clearly expressed.

For the first time in the Italian law the legislator gives importance to the phenomenon of groups and the effect that this entity could have.

Otherwise, at article 2497 comma number 6 it says:

- “For the purposes of the provisions of this chapter, it is presumed without prejudice contrary evidence that the management and coordination of companies is carried out by the company or body required to consolidation of their financial statements or which in any case controls them pursuant to Article 2359.

  The provisions of this chapter also apply to the company or entity which, outside the hypotheses referred to in article 2497-sexies, carries out management and coordination activities of companies on the basis of a contract with the companies themselves or clauses of their statutes.” (Italian Civil Code, art. 2497)

Focal point of the group is the activity of coordination and management of the controlled entities. The new article links the existence of a control situation normed by article 2359 to the fact that there is a group where a company coordinates and manages this activity, but, before this reform, there a no reference to this fact. This assumption works even for the entities in the control chain controlled by mother company.

To strengthen the concept of group and to make aware the investors, the reform made some mandatory requirements regarding publicity: the management of the controlled entity is

obligated to indicate who carries out the coordination activity and which companies are included in the group, so all the investors have a clear idea of the scope of the group and who take the decision.
Another recent choice of the Italian legislator made clear the importance of recognizing the groups : till 2024 was not possible to “use” the losses of a company in a group to offset the profits of another company of the group, creating some disadvantages and issues. Problem partially solved with the reform of the article 177-ter of the Italian Tax Law.
Before the introduction of Article 177-ter, Italian tax law did not provide for a “group rule” dedicated to the circulation of tax losses in transactions between companies such as divisions, mergers, or contributions. Consequently, the carry-over of losses within a corporate group was subject to the limits imposed by Articles 84, 172, 173 and 176. In practice, the applicability of such limitations could hinder ordinary internal restructuring, despite there being "economic continuity" as the companies are part of the same group. The article underwent a reform that took shape in Legislative Decree no. 192/2024, and which modified the old vision by explicitly recognizing the group as a relevant economic unit for the purpose of carrying forward losses in certain extraordinary transactions, thus extending the group's recognition, in a further step of Italian legislation in aligning European and international legislation. Article 177-ter introduces, as a general principle, the non-application of the limitations and conditions which normally limit the carry-over of losses when the operation takes place between companies belonging to the same group. The reform was then completed by the Ministerial Decree of June 27, 2025, which defines the concepts of group as “the whole consisting of companies or entities between which there is a control relationship and companies or entities subject to the control of the same entity” (Ministerial Decree of June 27, 2025, p.1) and the concept of control as “the relationship referred to in Article 2359, first and second paragraphs, of the Civil Code, including through entities resident in States or territories that allow for an adequate exchange of information” (Ministerial Decree of June 27, 2025, p.2) and establishes operational criteria to delimit the scope of application of the measure and avoid abuses. The choice to use the definition of control reported in art. 2359 of the civil code shows the legislator's will to consider de jure control, where the majority of votes counts, both de facto control, in which control is exercised by those with influence over the ordinary assembly and including dominant influence, seeking to extend the scope of control as far as possible by making it possible in most extraordinary transactions to use the previous losses of one group company to "cover" the income produced by the others and by eliminating any tax distortions. Consequently, this article can only be applied at what time one company controls another under article 2359 making it crucial to understand when a company is controlled so as to make it possible to use previous losses to its advantage.

So-called cascade control is therefore included. As mentioned above, for the purposes of Article 177-ter, control can also exist indirectly, through intermediate companies already controlled by the same parent company. So, where company A controls company B and company B in turn controls company C, company A can also be considered as controlling company C, even if its actual stake in C is mathematically less than 50% (if by hypothesis A controls B with 51% and B controls C with 51%, A will actually have 26% of C, but by controlling B, it consequently also controls C). What matters, therefore, is not simply the actual percentage of participation, but the existence of a legal relationship of control within the group. This interpretation is particularly important in extraordinary transactions involving companies linked through indirect control.

Article 177 ter allows the losses incurred by companies when they were already part of the group to always be used to lower the tax base, without having to pass the tests provided for in other articles of the TUIR.

Whereas for the losses that occurred before the companies joined the group, they can only be used when they have passed the other "tests" provided for in the other articles of the TUIR, for this reason they are called "approved" as they can only be used in certain cases.

The main "tests" are provided for in Article 172 paragraph 7 of the TUIR:

- the company must have revenues and costs greater than at least 40% of the costs and revenues of the previous two financial years (life test, so as to avoid the phenomenon of acquiring companies that are no longer operational just to exploit their tax losses)
- losses cannot be reported in an amount greater than the value of the net assets of the company that generated them, as shown in the last financial statements

The possibility of using losses to compensate for the income produced is also linked to the "seniority of belonging to the group" which establishes a temporal criterion for the use of losses. Intra-group ones can always be used without time limits, those approved only after having passed the various tests provided for, while for losses coming from extraordinary transactions the shorter length of participation in the group between the two involved is considered (if in a merger one company has belonged to the group for 5 years and the other for two, the permitted losses will be those of the last two years) so as to avoid abuse.

With this reform and other changes, Italian legislation made some progress, explicitly recognizing the existence of group and norming some sides of the coordination activity, especially thanks to European directive, getting closer to other European countries, because it was becoming harmful not to recognize this evolution in the field of commercial law, also considering the implications in tax law that the group's recognition will have.

Speaking about the contribution of European law, the aim to have a legislation on the taxation for groups born through the desire of European institution to promote the development of multinational company in Europe that could compete with the huge corporations around the world and give effect and strengthens to the "freedom of establishment" principle around the European union.

This principle is enshrined by articles 49 and 54 of the Treaty on the functioning of European Union.

Article 49 provides that "Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State" with a reference to article 54 that tells "Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union shall, for the purposes of this Chapter, be treated in the same way as natural persons who are nationals of Member States. 'Companies or firms' means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profitmaking." (Treaty on the Functioning of the European Union, arts 49 and 54)

The respect of the principle is fundamental in European fabric, and it is used as an instrument to invest and develop. The only limit, placed by some judgment of the European Cour of Justice, is the prohibition to use the freedom of establishment to elude or evade taxes or make any other kind of abuse. Following these judgments from ECJ, there are two directives issued by the European council that aim to avoid double imposition. (Court of Justice of the European Union, settled case-law on freedom of establishment)

The directive 90/435 of the European council provided for the exemption of dividends from withholdings in the State of source −that is, the State in which the subsidiary company resides − and, likewise, the exemption thereof (or, alternatively, the granting of a foreign tax credit) in the State of residence of the parent company, thereby eliminating legal and economic double taxation on the profits of "the group".

While the directive 2003/49 of the European council provided that intragroup interest and royalty payments must be immune from any taxation in the State of origin of the payments. ... also intending to counteract the legal double taxation imposed on these forms of payments, so for a "group" there will be no double impositions.

The above-mentioned regulatory measures, together with directive number 90/434 of the European council (now substitute by the directive 2009/133 of the European council) on the common tax regime for cross-border business operations, contribute positively to the strengthening of groups of undertakings and to the mitigation of phenomena of dual or multiple international taxation, which affect in particular the parent company on which the wealth of "group" materializes.
Moreover, according to the European Court of Justice, the Treaty provisions relating to freedom of establishment include the national provisions that apply to the holding of controlling stake in another company, specifically those interests that confer a certain degree of influence on the person who holds them.
The ECJ also highlighted that freedom of establishment includes the right for companies established under the laws of a Member State and which have their registered office, central administration or head office in the territory of the Union, to carry out their business activity freely through a subsidiary company, a branch or agency located in a Member State other than that in which the aforementioned head office is situated.
Eventually, European jurisprudence has two different ways of protecting freedom of establishment:

- articles 49 and 54 of the European Union Treaty prevent the State of Origin from blocking the establishment of its own national or company established under its own rules in another Member State.
- freedom of establishment that ensure the host Member State receives full national treatment and to prevent discrimination against companies based on their headquarters location.

Moreover, following ECJ judgments and the rules on freedom of establishment established by the European treaties, the right to form companies cannot be restricted by tax laws in Member States, including restrictions on shareholdings in subsidiary capital since:

- holding of controlling interests in companies located in Member States other than the one of origin is prohibited by all national tax rules.
- law of a Member State cannot implement measures that discriminate against tax treatment for controlling interests held in resident companies based on nationality of the controlling undertaking.

From these legislations it seems that European law always and, in any case, protects the companies to establish their controlled entity in any state, thinking that they could establish in the state that has the best tax treatment.

European legislation, to guarantee the freedom of establishment, it tolerates the physiological asymmetries between tax rates in the different Member States, within the framework of direct taxation, but punishes the instrumental and artificial use of the control report as a means of evading or eluding taxes by artificially benefiting from the guarantees and protections granted by belonging to the common European area.

At national level there are some legislations to avoid BEPS (base erosion and profit shift) system following the OECD Report. These national rules to combat the use of so-called controlled foreign companies are useful in order to prevent income "with no economic connection" from being taxed with the territory of a State by being charged to such companies, in order to escape taxation in the State of residence of the controlling company instead, that we will see in the other chapter of the thesis.

In any case, these legislations must always respect the freedom of establishment, as ruled by ECJ, and could be applied only if they are only related to systems that were created to gain a tax advantage and not to prevent the effective pursuit of economic activities in other states, even if the acquisition of tax advantages is necessary. So, freedom of establishment remains, in principle, unaffected even in the face of hypotheses in which tax advantages derive from the overall architecture of the "group"; only in cases where the "group" uses purely fictitious structures, devoid of any economic sense, can the parent company be attributed an abusive exercise of the freedom of establishment, "suspending" the freedom of establishment.

Freedom of establishment prevails over the need to increase the tax revenue of member states. This also applies regarding anti-avoidance clauses in national legal systems, which cannot affect the free exercise of Community rights, except in the prohibited cases just mentioned above. In all other cases, the freedom of businesses and groups must be safeguarded.

2.2 Tax liability regarding groups

The existence of a group has several consequences on tax side, on a national and international level.

The first point is the juridical personality of every entity and, on the tax side, the tax liability.

Juridical personality is defined as the right to bear legally protected interests. The very broad category includes first and foremost natural and legal people. We will focus on companies and tax liability defined as the capacity to pay taxes following the existence of an income that could be taxed by the fiscal authority, known as negative tax liability.

There are two funding elements of subjectivity:

- the subject as “first point of reference for qualified interests and their related cases, and as a final point of reference for assigning legal situations related to them.” (GIOVANNINI, 2013, p.2). So, is the holder of rights and obligations, with legal personality
- center of interest as the entity to which Italian law links legal effects and tax relationships, whether or not it has legal personality. In other words, it is the “pole” to which income, assets and tax obligations are attributed, in which we can include the groups before the 2003 reform.

There are some types of subjects in Italian legislation:

- so-called active subject: it is the right holders who demand the tax, that is, those who are on the opposite side of the tax legal relationship, the active side of the tax relationship. The active subject is the tax authority, entitled to collect the tax.
- So-called passive subject: they are the recipients of the tax obligation: the person who has to pay the tax, the liability side of the tax relationship.
- The taxable person is the person bearing the tax burden because he holds the ability to pay identified by the tax assumption.
- So-called third-parties subject: Third parties are entities other than the person who is expected to pay the tax to the authority, but still involved in the fulfillment, often by will of law (for example as substitutes or tax managers). Article 64 of Presidential Decree 600/1973 in fact regulates tax substitutes or persons liable for tax: they are "third parties" in relation to the assumption, because they are not those who generate the tax, but also third parties in relation to the tax obligation, where the tax remains with the original taxable person. Third parties do not have a direct connection with the taxable event, but the law makes them liable, in whole or in part, for compliance.

Tax liability is normed by the article 73 of the Italian law on income taxes where at fist comma are listed the entities that have the tax liability :
“1. They are subject to corporate income tax:
(a) public limited companies and limited partnerships, limited liability companies, cooperative companies and mutual insurance companies, as well as European companies referred to in Regulation (EC) No 2157/2001 and European cooperative companies referred to in Regulation (EC) No 1435/2003 resident in the territory of the State
(b) public and private entities other than corporations, as well as trusts, resident in the territory of the State, which have as their exclusive or principal object the exercise of commercial activities

(c) public and private bodies other than corporations, trusts which do not have as their exclusive or principal object the exercise of commercial activity as well as collective investment savings undertakings, resident in the territory of the State

(d) corporations and entities of all kinds, including trusts, with or without legal personality, not resident in the territory of the State"

But, reading this article, it seems clear that group or other entities not explicitly normed in Italian law are excluded by the payment of taxes. So Italian legislators, after a reform, on second comma provide that :

"… other organizations not belonging to other taxable subjects, against which the tax requirement occurs in a unitary and autonomous manner".

Subjectivity represents the technical tool chosen by the legislator to extend the provisions envisaged for legal persons also to those figures who are not such, but who would not be legitimate to send "exempt". So, to avoid some wrong exemption, tax law, "give" a special juridical personality to the entities not normed to give them the "ability" to pay taxes. The subjectivity is the way by which the authorities have the right to levy taxes from different entities that could be exempted by the general law, creating a hole in the jurisdiction and, economically, giving an unfair advantage to these companies.

The phrase 'other organizations' in the article is considered to be indicative of a legal category endowed with the characteristics of self-sufficiency, autonomy, and the capacity to pay. However, in order to qualify as a taxable person, this organization must not be attributable to the figures already identified in the first paragraph, nor must it constitute their segment or operational structure. So, it seems that groups could be parts of "other organizations", have a special juridical subjectivity and give authorities the power to levy taxes from them.

Referring to the second comma of article 73 is important to explain better the term "*unitary and autonomous manner",* that recall one quality to assert groups that is the "unitary coordination", the term "unitary" should refer exclusively to the fact that, although the sources of income may be various and from different companies, the tax base on which to calculate taxes is single, unitary. While the term "autonomous" is the fact that individual companies are the taxable subjects who have the "subjectivity" to pay taxes and individually are responsible for their tax obligations.

From the analysis groups seems to have a "consolidated" income from which tax authorities could levy the taxes. But this is not true. Since the group is not normed by Italian legislation as a juridical entity, is not possible to proceed this way. Furthermore, at article 72 of the general tax law, the precondition for authority to levy taxes is that the income is owned by the legal entity : "*prerequisite for corporate income tax is the owning of income in cash or in kind falling*

within the categories indicated in Article 6". Since group is not a legal entity, it is not possible that it owned the income, and so, it is not possible to levy taxes from the consolidated income. Italian jurisprudence made another observation: since the group is not a legal entity, it is not an entrepreneur, so is not possible to levy taxes on it. This observation is remarked in the last reform of corporate law where, in article 2497, managers of the controlled entities are responsible for the management of the companies, managers of the parent company are responsible only for the activity of coordination of the controlled entities, not even for the management of them.

This has led to some problems of double taxation till the 2003 reform. For example, a company that controlled many others, and these pay dividend to the parent. Taxes will be paid in the residence country of the controlled one and again in the country of the parent company. For tax authorities this is very good but for management purposes is a cost that could affect the activity. Over the dividends, same issue will be with any other exchange between parent and controlled companies.

Authorities made only some legislation on transfer pricing and against the tax havens for groups, always to intercept tax elusion and tax evasion, but the issue with the legal entity of groups and the problem of double imposition remain unsolved till the 2003 reform, for Italian legislation.

2.3 Leading cases

Before the reform of 2003, one of the "school cases" used by the tax law scholars was the Caltagirone Case, where it was discussed the possibility to submit on bankruptcy law a holding company, asserting that it was an entrepreneur, mandatory assumption for applying the bankruptcy law in the Italian legislation.

Here the most important event of the case:

- On 15th March 1980, Rome's court assert the insolvency condition of Caltagirone's brothers and, in extension, the bankruptcy of a companies of their own
- In 1987, Court of Appeal confirmed the bankruptcy
- On 26th February 1990, Court of Cassation nullifies the sentences providing some focal point that jurisprudence will use in the future : control and coordination are different and a holding in an entrepreneur only if it operates on its own and produces an income, use its name to make business and make a continuative business (recalling the definition of entrepreneur by the Civil Code). Courts have to study each time if the holding is the parent company too, that coordinates the controlled entity and, in any case, for

insolvency purposes, the holding responses only for its debt, not for the debts of the controlled companies.

With the judgment of 26th February 1990 number 1439 the Supreme Court of Cassation assert that the holding by which Caltagirone's family manages their business is an entrepreneur and it could be admitted to bankruptcy law. Most important is that the Court assert that a holding company could be an entrepreneur only if it exercises and activity of coordination in a group of companies such that the group has some further economic advantages with respect to not have a coordination by the holding. (Supreme Court of Cassation, Judgment No. 1439 of 26 February 1990)

The court came to this decision thanks to the fact that the holding is a juridical subject provide by Italian law, so the fact the coordination is made by a juridical subject on a non-juridical subject (the group) led to the possibility to bankrupt the holding to repay the debt contracted, not to respond for the liabilities of the controlled entities.

So, it is important to understand who makes the coordination activity even for the purpose of the protection of creditors regarding the bankruptcy law. This judgment of the Court makes a point in Italian jurisprudence, asserting again the importance of groups and the main issue of the activity of coordination.

Another judgment of the Court of Cassation regards managers of a controlled company of a group. The Court recall that group is not a juridical subject but a "factual phenomenon", so is not provide by the law but it has to be considered on judgment as a phenomenon part of the Italian economy.

We can conclude that "Italian jurisprudence conceives the group as a constellation of entities, each endowed with its own distinct interest and its own distinctness, subjectivity" (MARINO, 2008, p. 84).

Following this vision, for Italian jurisprudence, is not possible that a company is responsible for the liabilities of another, even if, one controlled the other but is something that the group is now recognize as a juridical fact.

2.4 Major taxes and their effect in Italian legislation

Regarding companies, the main taxes that Italian legislation levy on them are I.R.A.P, a tax paid by companies to regions to finance the healthcare system, and I.R.E.S, a corporate tax on the income of the companies.

We will see which are the law that norm these two taxes, how they work, and which is the purpose on a single entity and on a group basis, and the implication of these taxes for the business of the Italian companies.

2.4.1 I.R.A.P

The regional tax on productive activities (Regional Tax on Productive Activities, IRAP) was established by legislative decree 15 December 1997, n. 446, in force since 1° January 1998. This reform replaced the Local Income Tax (ILOR) and other taxes with the aim of simplifying the Italian tax system and allowing the regions to have their own "source of revenue" especially to finance the health system and other expenses under the jurisdiction of Italian regions. IRAP is levied on level on production and not on profit, a choice made by the legislator probably to increase the tax revenue but not very "business friendly", since is the profit that has to be taxes and not net value of production (total revenue minus the costs).

IRAP had lot of changes through years : first version is Articles 5 of Legislative Decree 446/1997, that differentiate the taxable amount according to the type of taxpayer. For companies, taxable amounts were defined by the difference between revenues and costs, including personnel costs. For other taxpayers like natural persons, public administrations and non-commercial entities rules are different but we will focus our study on companies. The standard rate was fixed at 4.25, with every region that could decide to increase or decrease this rate by a maximum of 1%.

In 1999, Legislative Decree No. 506/1999 there were some modifications especially for banking and insurance sectors, that have, even today, different tax rates and method of calculation of taxable amounts.

One substantial reform took place in 2008, with the financial law 244/2007, that provides a 10% deduction of the IRAP paid by companies. This modification meets the request of Italian industrial world, that complained about the structure of the tax, that strikes more companies with a lot of workers, and in a manufacturing economy like the Italian one, this is a problem.

Most important change happened in 2011, during a severe crisis for Italy, when government decided to made deductible the part of IRAP referred to labor cost, meet the request of industrial world.

Another reform took place in 2015, eliminating the IRAP for professionals, because, for someone that works for himself, paying the tax would mean taxing himself, that is not the meaning of the tax.

Other reforms have taken place in last years, always reducing the scope of the taxable amount of the tax. So, during years, IRAP was modified a lot, and the scope of the tax is narrow every time, trying to avoid distortions and following the request of companies. This with a complex system of deduction and calculation, with a difference between every region and type of taxpayer. It would be a good choice to rethink this tax in a simpler way or find other wat to finance the health system and the expense of region in Italy.

Now the standard rate is at 3.9%, with regions permitted to adjust the rate by ±0.92 percentage points.

Another problem regarding IRAP is how it works for corporate groups: it is not possible to offset losses from companies of the same group for IRAP, so this creates problems for corporate groups that could use losses from one company to lower the tax burden on profits from another company of the same group.

Having one company with €10 euros of revenues and 7€ of cost, that give a 3€ taxable amount for IRAP, give 0,117€ to be paid to Italian tax authority. If we have the same cost and revenues divided by two companies of the same group, where one has a positive taxable amount and the other has a negative taxable amount, with the possibility to offset the two values, total tax to pay will be lower than without the possibilities.

This example is the rigidity and some of the distorting effects of IRAP. On the one hand, the tax guarantees stable and predictable revenues for Italian regions, achieving the primary purpose for which it was created, while also eliminating the possibility of tax evasion. On the other hand, it penalizes firms with large workforces (a common feature in the Italian manufacturing economy) and creates inefficiencies within groups, forcing them to use less-than-optimal structures to reduce fragmentation and thus lower the cost of IRAP.

2.4.2 I.R.E.S

IRES (Corporate Income Tax) is the main income tax for legal entities in Italy (not only corporations, but also individuals and any other entity engaged in economic activity). It was introduced by Legislative Decree No. 344 of December 12, 2003, and has been in effect since January 1, 2004, replacing a previous tax called IRPEG. IRES is a corporate income tax, and similar ones exist in all European and non-European countries. Initially, the rate was 33%, later lowered to 27.5%, and further reduced to 24% in 2017. A whole series of costs, including the base rate, can contribute to reducing the maximum rate in an effort to reduce the tax burden on businesses and increase their investment capacity. For a company, tax has a significant impact

on its profit and cash flow. The tax calculated on profit results in a reduction in net income and a cash outflow to be paid to the Italian tax authority. Since the Italian economy is based primarily on small and medium-sized enterprises, this tax, which results in a significant cash outflow at year-end, can cause problems, especially for smaller and less stable companies.
IRES at least solves one of the most serious problems with IRAP, namely the ability to offset tax debts and credits among the various components of a group. Therefore, a group where some companies make a profit and others make a loss can calculate a single taxable base derived from the sum of the various taxable bases and pay IRES only on the resulting taxable base, avoiding costly cash outlays and offsetting debts/credits with the tax authorities.
This option has reduced the need to pay tax to each individual entity within the group, as the profits of one offset the losses of another. This leads to simpler and less burdensome liquidity management and tends to encourage groups of companies to centralize liquidity management, simplifying all administrative tasks and reducing the burden on the management of the various group components.
For example, if one company has a profit of €1,000 and the other, belonging to the same group, has a loss of €500, the total IRES to be paid would be €240 (24% of €1,000), if consolidation were not permitted.
Under current legislation, the taxable base would be €500 and the IRES paid would be only €120, reducing the cash outflow and allowing the loss of the second company to be offset against the profits of the first.
After the consolidation of the IRES, Italy followed global practice and developed legislation that avoided double taxation even for dividend and capital gains within the same group, called PEX legislation. Before this legislation, dividends and capital gains could be taxed, both at the individual company level and at the group level entailing a considerable burden and discouraging all those operations involving the presence of intra-group dividends and capital gains.
Italy has adopted PEX legislation which, under certain conditions, exempts up to a maximum of 95% of dividends and capital gains from being considered a taxable base, and which therefore only once reported to the parent company, together with all the other items in the balance sheet, will contribute to the profit/loss and the subsequent calculation of the taxable base on which the IRES will be paid.
Another way for companies to lower their IRES tax rate is through research and development expenses. Since 2010, Italy has developed a series of incentives for research and development that allow companies to choose whether or not to consider certain expenses, thus lowering their

taxable base and reducing the cost of IRES, which is effectively lower than the 24% required by law.
All these choices in the Italian regulations are certainly a decisive step towards consolidated taxation and not for taxation on individual companies which it no longer has without developing in an economy such as the one in which we find ourselves.
Ahe choices made with respect to the PEX regulation, consolidation and legislation in the area of research and development for sure help the country to attract rants and have simplified the system and made less burdensome for businesses the payment of income taxes.
Clearly, the IRES is a tax on the income of companies that could use that income for investments. There's a heated debate on the issue in Italy, regarding favoring lowering corporate taxation by shifting it to income, thus freeing up investment resources. However, some agree that companies should also contribute significantly to the financing of public spending and welfare. The solution could probably be a decisive action against tax evasion so that corporate taxation can be lowered without having to resort to income tax increases and maintain a level of appropriate public revenues.
corporate income taxation is present in all European countries, with different rates and different regimes for exemptions to lower the taxable amount, and different legislations on the items that make up the taxable amount. international organizations have made proposals for the improvement of these taxes and to increase their efficiency. surely a first step could be the tentative of finding common legislation in the European union also to discourage any attempt at tax avoidance by companies.

3 : TRANSFERS PRICING AND ITS TAX EFFECT

In the early 1920s, following the increasing globalization of the global economy, there was a problem regarding the group of multinational companies: exchanging good between themselves with a certain price could lead to huge earning at the cost of national fiscal agencies, because group of companies manage the mutual exchanging good and their prices moving the profits to the country that has more favorable fiscal system, leading the a loss for the fiscal agency of the country that has higher tax rate. (the problem is the “transfer price” at which the transaction took place)
Since this issue was becoming a serious problem for the countries, at international level, some studies try to find a solution to avoid this issue and to level the field for all the companies and the countries and try to find a way to avoid the “elusion” of the tax.

There is difference between evasion and avoidance (or elusion) of tax. Tax evasion is illegal and usually involves either fraud or intentional non-disclosure of income. Tax avoidance means transaction or arrangements entered into by taxpayers in a formally lawful manner, but in order to gain a tax benefit or a tax result that is inconsistent with the spirit of the taxation law. Formally there is no problem but is a "use" of the law that is in contrast with the law itself. Main goal is to minimize the tax burden (quantity objective) and the cost and risk of compliance (quality objective). It is not important only to save money by minimizing tax burden, but it is fundamental to save the highest tax burden with the lowest cost and risk of compliance. It is clear that is not an "easy job" and could require expert staff and office to follow all these procedures, especially to avoid any problem with tax authorities, since the line between evasion and avoidance is very narrow.
Every national taxation system has developed anti-avoidance legislation. There is specific anti-avoidance legislation, like the transfer price legislation explained later in the chapter that is ruled to solve a specific problem of avoidance and general anti-avoidance rules (GAAR) that are ruled to be applied in any avoidance situation. Italy has its GAAR legislation under the "Bill of taxpayers right".
Otherwise, there is another objective that is to avoid double taxation on the same profit, because if there is no agreement between the two countries in which the multinational company operates, for sure the earning will be taxed two times, creating an issue.
So, the core of the problem is to find a way to set the correct price of the transaction between companies belonging to the same group (related persons) as they occur between non-correlated parties.

3.1 Evolution of international legislation on transfer prices

First attempt was made the League of Nations (ancestors of the ONU) in 1928 with the introduction of the concept of "unitary entity theory", by which income of the group was calculated as the some of every single income in each country. Subsequently, this global income was shared between the different countries in which the group operated, using flat-rate criteria or pre-established formulas (for example, based on the ratio of total sales in that country, the number of employees or assets employed locally).
Although the 1928 model proposed the Unitary Entity Theory, it failed to gain the necessary global consensus, primarily because:

- States couldn't agree on a standardized, shared formula for apportioning global income.

- formula risked interfering with the internal accounting and legal principles of individual states, which preferred to base taxation on the actual results of local activity.

The "unitary entity theory" system is set out in the report of a working group of the League of Nations, entitled “Report and Resolution on Double Taxation and Tax Evasion”, which, despite not having been followed up at a global level, focused attention on the topic of double taxation of income and tax evasion, and its importance, more than for the contents, it can be traced back to the fact that for the first time in history this issue was given prominence at a global level, attempting to co-ordinate the various countries and proceed with a unitary reform to create a leveled competitive environment that eliminated the distortions created by different tax systems and agreements between different countries.
This publication was therefore a first step towards the subsequent centrality which then took on the fiscal theme as an area to be carefully monitored in order to guarantee economic stability.
in 1933 League of Nations, through a group of work dedicated, release another convention, abandoning the “unitary entity theory” and presenting the “separate accounting theory” (or separate entity approach) ending the consideration of related entities as one unique company but considering, for fiscal issues, every entity as a single company, with its income and cost and, as a result, different earnings that fiscal agency could tax. So, before this new model groups of companies were seen as a unique entity, instead now we have to consider each component of the group as an “autonomous” company. This is, for sure, a better way to impose taxes for the countries and avoid double taxation and any problem of unfair taxation in different countries that previous model could create using fixed tax rate, detached from the real earning that an entity has in the country in which it operates.
For sure, unit entity theory, would have been a better way to avoid the elusions systems, following the fact that the group is a unique entity, and, even if there is some attempt to move the profits through entities of the group, taxation will be made on a group bases, so there is no incentive to move the profits through the group. But, at international level, the separate system was considered the best and, since 1933, this has been the system implemented all over the world, and we will see then how.
The strategy most used by groups operating in different states, consists of transferring the tax base from one country to another by means of intragroup exchanges at conditions different from those of the market, inflating the profits of companies operating in states with preferential taxation, leading to a loss of revenue to states that have less competitive tax systems and also posing a theme of unfair competition, as not all companies can afford these systems to "save" on taxes.

The difficulty of the tax authorities of the countries involved lies precisely in understanding when intra-group trade really had elusive purposes (therefore with the desire to pay as little tax as possible by making use of the possibilities offered by the different tax systems in which the various controls operate) and when the conditions agreed in the group were instead consistent with internal policies and market trends. The manipulation of the value of these exchanges could be motivated by the group by claiming that precisely due to the nature of associated/controlled companies, discounts were applied to internal trading operations. The risk was that of being faced with totally unregulated operations and absolutely different conditions compared to those carried out against third parties (precisely what we wanted to avoid).
In order to stem these risks, the local financial administration attempted to draw up a boundary within which intragroup operations could be considered appropriate: the aim was to establish whether the operations were carried out for an elusive purpose or for an actual operational reason.
To trace this line, the tax authorities were unable to go into specifics, which is why even today we talk about the "grey area" of the regulation, but they had to place themselves at a higher level in order to give a definition that could be applied to all cases, albeit with certain limits, since finding a definition and a system that can be applied without distinction to all cases is objectively impossible.
The result of these works was showed in the convention in Mexico City in 1943 introducing the "normal value" as the right price to make the transaction between related parties. If some transactions differ from the normal value, the tax authorities could investigate to find incorrect behaviors by companies.
In 1946 the League of Nations ceased to exist and the work regarding these fiscal issues has continued by Organization for European Economic Cooperation (OECE) responsible to eliminate most of the barriers that existed between European countries before the European Union. Following the commitment of 16 European countries, Canada and USA joined the OECE and create the Organization for Economic Co-operation and Development (OECD) that in 1963 he published the document called "Draft Double Taxation Convention on Income and Capital", and at the same time recommended its adoption to all member states. The model, although not binding as it did not have the nature of a rule of international law, pushed States, from that moment on, to draw up the bilateral conventions conforming to the discipline and giving life to a movement that would from what moment attempt to iron out the differences between the different tax systems and try to create a fair environment for all businesses. In particular article 9 of the convention is a fundamental tool to avoid every tentative of avoiding taxes: "Where conditions are made or imposed between the two associated enterprises in their

commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and tax accordingly" and to avoid double taxations "where a contractarian state includes in the profits of an enterprise of that state, and tax accordingly, profits on which enterprise of the other contractarian state has been charged to tax in that other state and the profits so included are profits which would have been accrued to the enterprise of the first-mentioned state if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other state shall make an appropriate adjustments to the amount of tax charged therein on those profits, in determining such adjustment, due regard shall be had to the other provisions of this convention and the competent authorities of the contracting state shall if necessary consult each other". (OECD Model Tax Convention, Art. 9)

Again in 1979 , another model was released, specifying the "Arm's Length Principale" following the indication of article 9 of the convention of 1963. The focus is insistent on the contrast between transfer prices applied to groups of multinational companies and the principle of free competition (arm's length principle), making it clear that this is precisely the main point of the regulation on which to leverage in order to guarantee an adequate allocation of the income produced and consequently correct taxation. Despite the specificity with which the topics are addressed, it should be noted that the Report does not it represents a document that summarizes and exhaustively regulates all the cases involved in the panorama, both due to the impossibility of obtaining a result comprehensive given the extreme heterogeneity of the economic realities to which it is aimed, both for the high granularity of the dynamics that can be created in relationships intragroup. The intention, as is clearly understandable from the structure of the document, is to lay down guidelines which can be set out in practice in the application of appropriate transfer prices as close as possible to the arm's length price. The recommendation is placed at a higher level than national regimes and related regulations, in response to the need to integrate the disparate fiscal disciplines, which in order to be effective also towards multinationals, require harmonization dictated by a supranational body. National regulation on transfer pricing tracked independently would not be sufficient to overcome the problem of double taxation: two countries in which the corporate group carries out its activities could have regimes that are considered jointly in the context of a cross-border operation would sanction double taxation of the same income, deriving from the same source, if not supported by an overlying regulation.

Other small changes have been made after this important model of 1979, but it is in 1995/1996 when the OECD Guidelines were published, which for the first time also gave indications regarding disclosure, concretely preparing a set of documents relating to the regulation of transfer pricing, as well as an update on the methodologies for determining transfer prices.
In particular, the report envisaged the introduction of a fundamental tool with a view to resolving disputes between tax authorities and taxpayers (businesses), called APA (Advance Pricing Arrangements): these are real agreements stipulated between the company and the tax administration aimed at joint determination of transfer prices before implementing the transaction (it is therefore a preventive tool for the possible dispute).
On the other hand, since it was not possible to intervene assiduously in advance of disputes, the Mutual Agreement Procedure (MAP) was also proposed, a series of procedures that could be implemented in order to resolve ex-post disputes that arose.
Subsequently, to consolidate the disclosure rules (already introduced in 1995), in 2002 the European Commission established the European Joint Transfer Pricing Forum, which is a means for comparison between the various national authorities in order to define a precise set of documents to support cross-border transactions. This aggregate of information took the name of European Union Transfer Price Documentation (EU TPD), composed of:

- Master file: document related to the multinational group it collects information aimed at providing a general overview of the business of group, of its structure, of the context in which it operates and the market in which it operates.
- Country file: supplementary document to the Master file which summarizes a series of detailed information regarding the individual members of the group and describes the transfer pricing policies adopted by the same. Filling this file, the taxpayer is exempted from penalties, should the tax authorities ever rectify the price.

The introduction of such disclosure requirements has further helped to reduce the possibility of taking evasive action by multinational groups, a demonstration of how fiscal discipline was also progressing in tandem with the evolution of world economic and trade scenarios.
In 2010 the OECD Guidelines were updated, which it does not introduce significant changes in terms of new directives and disclosures, but rather in terms of application methods: if until that moment the Organization Models drew up a sort of hierarchy of methods to be used, this update marks the transition to the best method rule, or to the theory according to which there is no better method in absolute terms, but must be identified based on the circumstances.

In 2010 and 2017 there were other adjustment, in particular with the definition of 5 methods (3 traditional methods and 2 income methods) by which tax authorities could set the "normal value" satisfying the arm's length principle:

1) CUP: comparable uncontrolled price method: tax authorities find comparable or similar products made between unrelated partis and keep this price as the arm's length price. This method is useful if there are similar products in the market, if products or services are unique or particular, this is not the correct way by which find the normal value. The best comparable is an "external comparable", one that is outside companies of the group or in another country. Is even accepted to use an "internal comparable" which is a product of the same country of the firm or even a product made by a company of the group.
2) Resale Price Minus: normal price is set subtracting an appropriate markup from the price at which goods are sold to unrelated parties. An example could be a manufacturer company that sells its goods to a distributor, followed by a resale to final customer without any other process. If the distributor is located in a country that has a very "supportive" fiscal system, the manufacturer could think of selling to the distributor with a very low mark up and then the distributor put a very high markup for the final customer, making a huge profit and paying low taxes thanks to the "supportive" fiscal system. The manufacturer, on the other hand, made no profit or probably a loss, causing a problem for the fiscal authority where it is based.
3) Cost plus method uses the manufacturing and other costs of the seller as the starting point in establishing the normal value. Then, an appropriate amount of profits is added to these costs by multiplying the seller's cost to an appropriate profit percentage. This percentage is determined by reference to the gross profit percentage earned by the seller in transactions with unrelated parties (is like a CUP method but concentrated on the markup and profits, not on the price). An example for the application of this method could be a manufacturer that sells to a related party, that affix its brand on it and resale to final unrelated customers.
4) Profit-split method: worldwide taxable income of related parties engaging in a common line of business is computed, works for vertically integrated industries. After that taxable income is allocated among related parties in proportion to the contribution they are considered to have made in earning the income. Usually, this method could be useful when none of the other three method showed before could be applied.
5) TNNM (transactional net margin method): sometimes defined as CPM (comparable profit method) may be used in determining transfer price for sales of tangible and

intangible property. The net profitability of the taxpayer is compared to the rate of profitability established by tax authorities usually measured among unrelated enterprises of the same sector. If the tested party's reported profits fall outside that range, the tax authorities may adjust transfer prices so that the overall profits fall within the range, typically at midpoint.

In 2019, the Joint Transfer Pricing Forum released a study on the application of profit-sharing method clarifying some essential aspects. The greatest difficulty of the method lies in identifying the profit-sharing mechanisms: the method in fact requires that the global profit be recognized and that it is subsequently distributed on the basis of the costs actually incurred, the risks assumed and the contribution of each individual company of the Group to achieving the final goal. To this end, integration has clarified the two paths that can be taken in assessing the breakdown:

- Analysis of the contribution: this criterion provides that the division of profits takes place by virtue of the "relative value" of the functions carried out by associated companies, comparing where possible with market data relating to the distribution carried out by independent companies, or, otherwise, considering the risks assumed and the assets used in the transactions analyzed
- Analysis of the residual - the criterion provides for an initial distribution phase in which a share of profit is assigned to each associated company, determined on the basis of market returns obtained in similar operations by independent companies, which still guarantees an adequate return; the residual profit is then divided by analyzing circumstances useful for understanding how the division between independent companies would have occurred.

The Profit split method is therefore particularly complex in its application, given the high degree of arbitrariness in calculating profits attributable to various members of the group, but, on the other hand, it is functional to the calculation of transfer prices relating to transactions involving intangible assets, which by their nature are in most cases difficult to compare. It is therefore clear how the issue of intangibles is difficult not only for the taxpayer, but also for the financial administration, which in its analyses cannot rely on comparison with comparative operations, a factor which significantly influences the determination of the price, the latter being clearly subjective.

Here we have concentrated our goal on exploring how the international agencies try to solve the problem of transfer pricing with related parties. But multinational companies have other way to lower the tax burden, a report from OECD identifies "key pressure points" that are involved in corporation reducing tax rates:

- Hybrid mismatch and tax arrangements: “creating instruments that generate deductible payments in one jurisdiction but are treated as non-taxable receipts in the other jurisdiction. This technique involves structuring and instrument that would be classified as debt in one country and generate deductible interest payments, but the payment would be treated as an exempt participation dividend in the other country and could be received tax free”. (AULT, 2013, p.1196). in this case if there is not an agreement between the two countries a multinational company could take advantage of the mismatch.
- Digital good and services: “internet companies have not a permanent establishment under current principals since there was no fixed base or dependent agent in OECD model sense”. (AULT, 2013, p.1197). So, internet companies could take advantage of this and not pay any taxes since, formally, there is no company in the country.
- Intragroup financial transactions: “generating interest deductions in high-tax jurisdictions with corresponding receipts by a related party in law-tax jurisdictions”. (AULT, 2013, p.1197)
- Transfer pricing: with all the issues explained above

All of the work of OECD, research, modules, conventions and so on, is part of the base erosion and profit shifting project, called BEPS PROJECT, e, periodically the OECD released a report takes stock of the progress made in implementing the BEPS measures and the economic impact these changes have had. It shows how the BEPS Project has changed the conversation on international tax and established new expectations for corporate responsibility and transparency, strengthening collaboration between tax authorities and enhancing tax certainty through the definition and coordinated application of common international tax rules.

3.2 Italy situation and the evolution of anti-avoidance legislation

Before looking at the anti-avoidance legislation in Italy, is important to understand which definition of control the Italian tax authority took in relation to transfer pricing.
Through the year, some changes happened. The first control definition adopted by Italian tax legislation is the one included in circular 32 of 22nd September 1980 where is exposed that, regarding the transfer prices, definition of Civil Code is to narrow and tax authority has to embrace a more flexible definition bearing in mind that price changes in commercial transactions are often due to the greater power of one party over the other, and not simply to an agreement between the two parties aimed at generating as much profit as possible, so, in the circular 32, Italian tax authority does not recall specifically article 2359 of the Civil Code and this seems a correct decision considering that the objectives of the tax authority are almost

totally different from the civil side of the legislation. in reality the reason that determines the transfer prices between two or more companies of the same group depends on the power that one party has over the other more than on contractual limitations or shareholdings, therefore, surely, at the tax level, the notion of control must be extended to every hypothesis of economic influence that also considers factual elements in addition to the formal ones provided by the legislation. Precisely for this reason, circular 32 lists a series of situations, in addition to those provided for by legislation, which lead to the deduction of the control of one subject over another:

- exclusive sales of products manufactured by the other company, not always normed by contract, and usually this product is the only one made by a party, so without it the party is not able to survive.
- total dependence on the capital and products of another company without which the company would not survive (a typical situation is joint ventures, where when one of the parties withdraws, the joint venture ceases due to the impossibility of continuing with the activity)
- right to appoint members of the company's board of directors or elected bodies
- common members of the board of directors
- family relations between the parties
- financial economic dependence on the other party or large assignment of receivables
- participation by undertakings in joint procurement or sales centers
- participation of undertakings in cartels or consortia, in particular if aimed at fixing prices, now illegal and prohibited by antitrust law
- control of supply or outlets where one party can decide the fate of the other simply by closing a supply route or a commodity/sales customer
- series of contracts that regulate a monopolistic situation
- in general, all assumptions in which an influence on business decisions is potentially or currently exercised.

Even the Court of Cassation in Italy reaffirmed these statements. In a 2025 ruling concerning the company Viropa Import (where the Italian company made a lot of high-value transaction with an Austrian company – Viropa Gmbh – over the transfer pricing legislation but without considering that the Italian company control the Austrian one) explains that precisely the anti-evasion purpose of the discipline requires a broad interpretation of the concept. The "legal" control reported in Article 2359 of the Civil Code is only one of the possible manifestations of a broader relationship of influence and control. The Court states unequivocally that the concept

of control in transfer pricing: “It does not coincide with that referred to in Article 2359 of the Civil Code, which, in fact, is not expressly referred to, but extends to any hypothesis of potential or current economic influence deducible from individual circumstances.” (Supreme Court of Cassation, Judgment 7 May 2025, p. 3).

In other words, the concept of control in transfer pricing for the purposes of applying tax legislation on transfer pricing (Article 110, paragraph 7, TUIR) is broader than the concept of control in a civil sense, that is, the one condensed in Article 2359 of the Civil Code.

The same ordinance of the Supreme Court, to provide practical guidance, lists a series of factual “circumstances”, which recall those of circular 32 and into which Viropa Import and Viropa Gmbh fall. An economic and legal analysis of the situation must therefore be conducted to highlight all the elements necessary to identify the actual power to determine the intra-group price between companies that are apparently not linked by any relationship. It is essential to understand, even in the absence of shareholdings or contracts, whether the parties are permanently bound and whether one is wasteful continued by the other so as to assert control and proceed to use anti-avoidance legislation.

Another limitation of the civil definition considers only corporate-type control; however, the circular considers companies not only companies and individuals but also sole-companies and permanent foreign organizations operating in Italy, effectively extending the limited civil vision. This point is expressed by article 75 of the d.P.R n. 597/1983 which ruled “The components of business income from operations with non-residents who by their direct or indirect relations with the enterprise ne are under the dominant influence or have dominant influence over it is valued, if it results in an increase in taxable income, based on the normal value of goods disposed of, services provided or goods or services received. The provision shall also apply where the undertaking and the non-resident are subjected to the dominant influence of one and the same subject.”

Also, “transfer pricing legislation should also be applied to related companies, i.e. companies with more than 20% share ownership or more than 10% in the case of listed companies, provided that the stake, even if a minority, determines the effective exercise of control.”(MARINO, p.154, 2008)

So, it is clear that the civility view of control is not enough to embrace all the situations in which a party could control another and assess some situation to avoid taxes. Tax authority chooses a wider scope of definition of control, especially counting on definition of dominant influence as reported in circular 32 of 1980 whereby “the linking criterion which determines the alteration of the prices of transfer is often constituted by the influence of a company on the entrepreneurial

decisions of the other, which goes far beyond contractual or equity constraints bordering on de facto considerations of a merely economic nature."

In another 2025 ruling by the court of Cassation, the concept of dominant influence is remarked as a matter of control. The case is the Domori/Illy, with sentences 18080,18072 and 18058.

They analyze in concrete what is meant by "dominant influence", shifting the focus from mere possession of shares to the actual ability to direct the strategic and management choices of the company.

According to the judges of legitimacy, the dominant influence relationship is expressed in the power of one subject towards another of: "ensure the exercise of managerial and strategic influence on the overall business activity".

This principle, borrowed from a previous and important judgment (Cass. 15688/22), becomes the true beacon of interpretation. The notion of control in transfer pricing is therefore embodied in the ability to determine the commercial, production and financial policies of the "controlled" entity.

The above-mentioned twin ordinances add another piece. Here, among the evidence highlighted by the Italian tax authority and considered relevant by the Court of Cassation, there were the mix of social, administrative and management positions existing between the two corporate bodies. For example, a trustee of the family that owned the parent was also a partner and director of the company "subsidiary".

The Court does not consider this element, on its own, as definitive evidence. However, it puts it into a broader presumptive framework. The presence of key figures operating in both companies, especially if they have management powers, is a strong indication. It suggests that decisions are not made independently but follow a group logic. The notion of control in transfer pricing is also made up of these elements, which reveal the channels through which the dominant influence is concretely exercised.

This substantive approach has enormous operational implications. An enterprise could fall within the scope of the discipline of transfer pricing even in the absence of any direct participatory link. An exclusive supply contract, a particularly binding franchise agreement, heavy technological or financial dependence, or the presence of joint directors with key powers can, if analyzed jointly, constitute de facto control. Evaluation, therefore, requires a case-by-case analysis of economic reality as correctly identifying a situation of "dominant economic influence" is a complex operation. The structuring of commercial and contractual relationships within a multinational group is an area of high fiscal risk. A prior analysis by a lawyer specializing in international tax law can help draft contracts that, while protecting commercial

interests, minimize the risk of being classified as evidence of de facto control, thus ensuring greater compliance with transfer pricing regulations.

Italy has in article 110 of the T.U.I.R the most important article regarding transferring prices, that, till 2017, use the term “normal value” to asserts the value of the transaction, and after the modifications of 2017 ruled: “The components of income arising from operations with companies not resident in the territory of the State, which directly or indirectly control the enterprise, are controlled by it or are controlled by the same company that controls the enterprise, are determined by reference to the conditions and prices that would have been agreed between independent entities operating under conditions of free competition and in comparable circumstances, ….”(Italian Income Tax Code – TUIR, art. 110(7) , emphasizing the will of including all the possible transaction of any controlled entity, even not national, at the free market prices, that is the pole star of the anti-avoidance system in the world.
“The notion from Civil Code does not appear ideal to include all the hypotheses suitable for the implementation of maneuvers aimed at avoiding tax evasion or avoidance. The notion of control of Article 110, therefore, seems to be presented as a notion free from quantitative references and capable of embracing ANY FORM OF CONTROL (internal, external, direct and indirect) including that characterized by the presence of a unitary management or a superordinate decision-making center or by the existence of constraints linked to the commonality of directors”(MARINO, p.158,2008). This, also because the law of the civil code on control has a general function, to which each specific legislation (in this case the tax one) refers, integrating or correcting it from time to time depending on the situations that gradually arise.
Having said that, there have been, over time, various rulings that have instead disproved this particularly broad view of control and that have instead considered mainly the notion of control as per article 2359 of the civil code and admitted control only with the various cases provided for in circular 32. One of these rulings comes from the provincial tax commission of Alexandria, which in 1995 with ruling number 1416 wronged the tax authority for the application of transfer pricing legislation in a situation where an Italian company granted a loan to another English. Tax authorities agreed that there was a dominant influence and therefore there was a control and therefore room to apply the law on transposition pricing. The commission, applying the concept of "restrictive" control of article 2359 wronged the authority by ruling that the two companies, while carrying out objectively distinct complementary activities, were legally autonomous companies not linked by any relationship that could justify a corporate control under article 2359 and therefore the transfer pricing law could not be applied.

Linked to these legislations, it seems appropriate to take a look at article 31 of d.P.R 600/1973, that introduce in Italian legislation the "international ruling" by which companies that has internation activities could agree with tax authorities the methodology for the determination of arm's length. Agreement is binding for five years and companies are exempted from penalties since methodology for transferred prices is chosen and approved.
Italian tax authority, for the purpose of international ruling, define a company with international activity, the one that:

- is, in respect of non-resident companies, in one or more of the conditions indicated in Article 110
- whose assets, fund or capital are participated in by non-residents or participate in the assets, fund or capital of non-residents
- has paid or received from non-residents dividends, interest or royalties

Following this definition, it is noted how the fiscal authority does not assume any criteria among the known ones of control or connection to identify the perimeter of the group, to allow the maximum application of this new institution without limiting it by definitions already present in the legislation.
The notion of control in transfer pricing is a purely fiscal and substantive notion, free from the formal constraints of corporate law, of civil origin. This approach, known internationally as "substance over form", requires looking at the economic reality of relationships between companies. The main objective of transfer pricing legislation is, in fact, to combat the artificial shifting of the tax base.
Control is thus extended to all those situations in which one firm, although formally independent, exercises de facto dominant influence over the commercial and strategic decisions of another.
Now we will show two "case study" regarding the Italian situation in which the Court of Cassation applied the concept of control to solve disputes between the Italian tax authority and companies.

Iprona Case

The case is structured as follows: the Italian company Iprona S.p.A sold fruit powders to its Austrian subsidiary Beerenfrost for a fee of 1,030,050 euros, establishing the sale as an intragroup. The same goods, within a few days and without undergoing substantial transformations, were subject to a series of changes of ownership within the same corporate group, passing through an Austrian company (Donaufrucht Gmbh) and a Swiss one (Fructobel

AG). Finally, the chain of sales ended with the sale of the goods to a company from Liechtenstein (Apeco establishment) for a final price of 2,918,300 euros, almost triple the original price charged by Iprona, without feeling that the product was undergoing transformations that justified the huge price increase and transiting from countries such as Switzerland and Liechtenstein known to be known as tax havens.
According to the Revenue Agency, this chain of transactions was artificially constructed to move taxable material from Italy to countries with milder taxes. The “normal” price of the initial transaction should have been aligned with the final market value, resulting in the recovery of taxation in the hands of the Italian company Iprona that the Italian tax authority was supposed to collect.
The Court of Cassation considered this resale chain to be the queen proof of price control and manipulation. The anomaly of the initial price, clearly lower than the final market price, demonstrated the existence of a unitary design. A design orchestrated by the group leader to artificially shift profits from one higher tax jurisdiction (Italy) to another lower tax jurisdiction (Liechtenstein). It is what can be defined as a BEPS (Base Erosion and Profit Shifting) practice.
The Court therefore valued the approach of the Office, which had correctly used the resale price method (so-called resale price method) to reconstruct the so-called “normal value” of the goods.
For the Supreme Court of Cassation, faced with such overwhelming economic evidence, the burden of proving the appropriateness of the initial price fell entirely on the taxpayer. The notion of control in transfer pricing emerges directly from the structure of the transaction, which betrays a dominant influence and a very specific group strategy. "Normal value" is used here because the transaction dates back to legislation prior to the 2017 reforms.
This is a clear example of a mechanism for tax evasion and shifting profits from a high-tax country to a tax haven. The Court of Cassation has also confirmed that control in this case is not due to the possession of controlling interests but to a situation of "dominant influence" and management of one company over the others, I confirm the broad vision of the concept of control, going well beyond that expressed by the civil code.

Vulcanair case

Here control does not derive from participation but from a strong contract between parties. An Italian company -Vulcanair S.p.A- an aircraft manufacturer, was linked to a Swiss company, a tax haven,-Vulcanair SA-by a worldwide exclusive distribution contract.
The Revenue Agency has accused the Italian company Vulcanair S.p.A of selling its aircraft to a Swiss subsidiary at artificially low prices, thus shifting taxable profits to a tax-privileged

country. The foundation of the assessment lies in the notion of control in transfer pricing. The Financial Administration, as reported in the ruling, found total economic dependence, deriving from the exclusivity contract, which deprived the Italian company of commercial autonomy, integrated the assumption of de facto control going beyond mere control as set out in Articles 2359 of the Civil Code.

The heart of the legal battle focused on the calculation methodology. The Agency applied the "Cost Plus".

The taxpayer, however, defended the correctness of the prices charged, demonstrating their congruity with the different price comparison method ("CUP-Comparable Uncontrolled Price"), based on its own sales lists to third-party customers.

The lower courts (Tax Commissions) fully accepted the taxpayer's argument. They considered the method most appropriate to the present case and, finding that the prices charged were in line with market prices, cancelled the assessment notices in their entirety.

The Court of Cassation ruled in favor of the contributing company, confirming the price calculation method (CUP) it applied. Here, however, it is important to note how the Court confirmed the Financial Administration's argument regarding the subordination relationship between the Italian and Swiss companies. The Italian firm, in fact, lacked real commercial autonomy on the global market. Its sales policies, and therefore the determination of its revenues, were entirely dependent on the decisions of its Swiss subsidiary. Well, this economic, contractual and commercial dependence of the Italian company (Vulcanair SpA) on the Swiss company (Vulcanair SA) integrated a de facto control of the latter with respect to the former, thus bringing out the notion of control in transfer pricing.

This case clearly demonstrates how the scope of the rule is extremely broad. Undertakings must pay close attention to the drafting and management of intra-group contracts. Distribution agreements, trademark licenses, supply or management contracts can create such tight constraints that they qualify as forms of de facto control. Risk assessment must not be limited to balance sheet analysis but extend to all contractual relationships linking group entities.

We can summarize the key principles that emerged in four key points to guide us:

- The relevant control for tax purposes is broader than the civil one. It is not limited to participations or voting rights but extends to all forms of "dominant economic influence". This influence, even if only potential, must however be proven by the Office in its "concreteness" factual.
- For tax periods prior to the 2017 reform, this "elastic" and jurisprudential notion continue to apply. The new and more restrictive regulation, linked to Article 2359 of the

Civil Code, has no retroactive effect, being innovative in nature and not merely interpretative.

- The burden of proving the existence of such substantial control rests on Financial Administration. Once this test has been completed, the “ball” passes to the taxpayer. It will be the latter that will have to prove that the prices charged comply with the arm's length principle (arm's length principle), by providing adequate evidence.
- Assessing the level of control requires comprehensive analysis of the situation, considering both the company's financial situation and all existing contracts with third parties. Case law favors substance over form, as demonstrated by various rulings of the European Court of Justice.

The gist of what I've just said is that the topic is extremely complex, and sterile data on control percentages or a series of contracts are not enough to establish who controls a company and how. It's necessary to have a comprehensive view and combine knowledge of various branches of law and economics to arrive at a correct solution.

3.3 Situation at European level

In recent decades, the European Union has experienced a deep transformation in its legal and policy framework designed to combat tax avoidance, particularly in relation to transfer pricing and profit shifting. This evolution marks a shift from a fragmented system—largely dependent on domestic legislation and soft-law instruments issued by international bodies—to a coordinated supra-national approach that increasingly reflects the economic reality of globalized business models. For many years, multinationals and groups of companies present in multiple countries have exploited different tax jurisdictions, especially those of tax havens (jurisdictions with very low rates), to try to evade if not evade the payment of taxes and duties, through the exploitation of all those "holes" present between the various jurisdictions, through the manipulation of the inter-groups prices between the various subsidiaries especially with regard to intangible assets.

The big limitation was that the tax systems were essentially national and did not cooperate and communicated with other states, giving the possibility to multinationals to exploit these shortcomings to their advantage at the tax level.

Things began to change in the 1990s, with the publication of the OECD Transfer Pricing Guidelines, which sought to harmonize the subject of transfer pricing internationally. However, these guidelines were not binding on OECD member states, and therefore not much has changed

for multinationals. The guidelines were, however, a first step against all circumvention practices and a sign that from then on, legislature would evolve to no longer allow these elusive or even evasive practices. The turning point came in 2013 with the launch of the BEPS (Base erosion and profit sharing) project by the OECD, which, rather than proposing common legislation, has brought to the fore all the problems of the various legislations, the problem of misalignment of laws between the various states and brought to light the significant loss of revenue that states had as a result of the unscrupulous use of these practices by multinationals. The main objective of the OECD-led BEPS project was to harmonize different regulations to try to close all the legal loopholes that multinationals used to evade taxes, also because multinational groups are becoming increasingly complex and using increasingly sophisticated techniques to evade taxes. Actions 8 and 10 of the BEPS plan in particular focused on the actual economic activities of the foreign subsidiaries rather than on contracts and agreements of the subsidiary and controlling, a considerable step forward compared to the past. At the same time, following Action 13 of the BEPS plan, the demand for infringements to companies was increased, through three schemes, the Master File - Local File and Country by country reporting, which significantly increased the information available to European tax authorities above all, thus giving him the instruments to investigate all the controls of multinational groups and attempt to understand how they carried out their evasive actions to the detriment of the countries' tax authorities.

The EU collected the considerations of the BEPS program and translated and applied them through two key directives, ATAD1 and ATAD2, which established minimum and common rules for all EU states against tax avoidance.

ATAD 1 provided a general framework and common rules and limits on the most widely used multi-national tax avoidance techniques, such as the use of intra-group loans to avoid paying taxes, as well as a general minimum anti-avoidance regulation for all European countries.

ATAD 2 focused on the different legislations within the EU, trying to eliminate all those differences that allowed the use of evasive schemes, and began a process to close all those "holes" even towards third countries.

in addition to these two directives, another key step was all the legislation on administrative harmonization and collaboration within the EU, the so-called DAC directive. This directive has made the exchange of information between the various tax authorities in EU countries structural and has greatly improved the transparency of companies (the DAC directives are varied, and each one involves an improvement in transparency and collaboration between the various authorities).

With the ATAD and DAC directives now the tax authorities have all the instruments to deal with the evasive practices put in place by multinationals. This shift from opacity to transparency is one of the most significant structural reforms in European taxation over the past two decades. Alongside legislative and administrative developments, the Court of Justice of the European Union has played a crucial role in shaping the anti-avoidance landscape. Through its jurisprudence, the Court has elaborate principles that balance fundamental freedoms with the need to combat abusive practices. Judgments such as Halifax and Cadbury Schweppes have provided key doctrinal insights, helping to define the scope of acceptable anti-avoidance measures and establishing criteria for identifying artificial arrangements.
Two rulings by the European Court of Justice have shaped the vision of EU legislation on tax avoidance, we are talking about Halifax Plc against the European Commission and the Cadbury Schweppes plc case.
The Halifax case concerns the transaction carried out by Halifax plc on VAT deductions on a series of products/services sold to a subsidiary. The company claimed that the deduction was due to it, while the tax authorities did not. The ruling is crucial as the Court of Justice has ruled that: the substance prevails over the furnace, and, unless it is stated that the transactions are carried out with a clear evasive intent, then there are no irregularities on the part of the company. So, even if the transaction raised doubts, if the purpose was economic, and therefore it falls within the scope of the group's companies' activities to carry on their business and is not done with the sole intention of evading taxes, the transaction is correct. The ruling is also crucial as it decided that deductions and concessions cannot be granted for transactions that have no economic substance, and laid the foundation for the European Union's ATAD regulations, limiting concession concessions to the economic side only and not also to the formal side that would have allowed for an "intensive" of concessions and would certainly have lent itself to evasive transactions. for a multinational which shifts its profits from one subsidiary to another, this is a clear prohibition unless done for economic and business reasons.
The Cadbury Schweppes case reaffirmed the concept of liberty of establishment in the EU as the foundation of freedom of economic initiatives, with which the treaties are permeated, and imposed on the states the possibility of placing limits only and exclusively if there were clear evasive intent, remaining once again that substance prevails over form.
The Cadbury Schweppes case concerned the use of a foreign subsidiary in Cadbury's tax haven for the pure purpose of tax evasion. The court held that freedom of establishment can only be limited if the foreign subsidiary is a "purely artificial construction" designed solely to evade taxes. If there is economic activity, even if used to evade taxation society cannot be restricted.

The two rulings contributed to the construction of the European rules on avoidance, transfer pricing and cfc, endowing the union with a complete but complete system to combat avoidance without placing limits on the freedom of establishment and economic initiation that is considered the basis of European construction.
The judgment in the Cadbury case gives the European authorities the right to examine the subsidiaries of the various multinationals and understand whether they are artificially constructed to evade taxation and whether they have an economic purpose, so that they are totally protected by European legislation on freedom of establishment
By establishing clear principles for the assessment of abusive arrangements, these judgments guide both the design and implementation of EU directives, national legislation, and corporate compliance practices, ensuring that tax advantages cannot be claimed for artificial structures while respecting the rights of enterprises operating within the internal market. (Court of Justice of the European Union, Cadbury Schweppes case, C-196/04)
These principles were later codified in ATAD’s general anti-abuse rule and continue to influence the development of national laws. The Court’s jurisprudence underscores the tension between economic freedoms and the integrity of tax systems, highlighting the need for carefully calibrated measures that respect EU law while effectively addressing avoidance. A further step against tax avoidance was taken by applying the Second OECD Pilaster regarding the taxation of multinationals, imposing a minimum taxation of 15% on multinational groups with a turnover above a certain threshold, aiming to neutralize the benefit of shifting profits between various jurisdictions and thus avoid tax evasion, useful within the EU especially due to the presence of various tax havens such as Luxembourg, Ireland or Switzerland. Despite everything, however, there are still significant issues, especially with regard to intangible assets, on which the legislation is still decidedly weak and the significant compliance costs required of companies by the DAC directives. But all these steps are fundamental to eradicating the phenomenon of avoidance that takes resources away from states. Smaller Member States may face capacity constraints in effectively enforcing sophisticated anti-avoidance rules, potentially creating uneven levels of protection across the Union. These challenges have prompted the EU to consider more ambitious reforms. The BEFIT proposal, which seeks to create a common tax base and allocate profits using formulary apportionment, signals a willingness to move beyond the traditional transfer pricing paradigm. A similar change would be epochal and would move away from the now established principle of arm's length. However, it represents a recognition that the current system will be increasingly incapable of addressing future challenges and ensuring states have a steady and predictable tax flow. In conclusion, over the last twenty to twenty years, the European legislative framework has evolved from a national dimension to a

more coherent and integrated one, managing to arrive at a system of rules useful for countering tax avoidance attempts worldwide. The trajectory is clear: ever-increasing harmonization, more transparency and fewer and fewer possibilities for multinationals to circumvent tax systems and tax payments by exploiting various different tax laws. The continued refinement of this framework will be essential to ensure that the internal market functions fairly and that Member States are equipped to protect their tax bases in an era of rapid economic transformation.

4 : CONTROLLED FOREIGN COMPANIES LEGISLATION

Controlled Foreign Companies (CFCs) represent one of the most significant instruments in the field of international taxation aimed at combating base erosion and the artificial shifting of profits. The rationale underlying CFC legislation is to prevent taxpayers that are resident in high-tax jurisdictions from deferring or avoiding taxation on income generated through controlled entities established in low-tax jurisdictions. In the current global context, characterized by high capital mobility and increasingly complex multinational corporate structures, CFC rules play a fundamental role in safeguarding tax neutrality and fairness (GARBARINO, 2017).

A CFC is a “parking spot” for profits, by which companies could lower the tax burden and pay less taxes through tax havens jurisdiction, so, domestic tax on foreign-source income could be deferred or postponed easily establishing a foreign company or trust to receive the income from parent company in high tax jurisdiction. Because the foreign company is usually considered to be a separate legal entity and a separate taxable entity, the controlling shareholders are not taxable until distributions from the corporation are received. This is a real problem of elusion suffered by tax authorities of countries with high taxes, and the solution is the CFC legislation that aims to avoid use of foreign companies only to lower tax burden and not for commercial purposes.

The first CFC regime was introduced in the United States in the 1960s through the Subpart F provisions of the Internal Revenue Code (IRC §§951–965), with the objective of immediately taxing certain categories of passive income earned by foreign controlled corporations (IRS n.d.). The underlying economic rationale was to prevent U.S. taxpayers from artificially locating profits outside the United States in order to defer domestic taxation.

CFC rules are based on two fundamental principles:

1. the residence principle of controlling taxpayers, allowing the state to tax worldwide income; and

2. the substance-over-form principle, which permits tax authorities to assess the actual economic substance of arrangements irrespective of their legal form (AVI-YONAH, 2016).

Within the Base Erosion and Profit Shifting (BEPS) Project, the OECD developed an international framework for the design of effective CFC rules. The report *Designing Effective Controlled Foreign Company Rules* (OECD 2015) constitutes the most authoritative reference in this area and identifies six key building blocks:

- definition of control
- definition of CFC income
- identification of exemptions
- rules for computing attributable income
- rules for attributing income to the controlling taxpayer; and
- anti-avoidance and coordination measures.

Rather than imposing a uniform model, the OECD promotes general principles that states may adapt to their domestic tax systems. The overarching objective is to prevent regulatory mismatches that enable tax arbitrage between jurisdictions (PISTONE, 2016).
For the report of OECD, CFC legislation has to work as a deterrent for profits shifting, not as a way for tax authorities to increase taxation. The aim of the CFC legislation has been to discourage multinational corporations to create foreign companies to lower tax burden. In the best world CFC legislation eliminates the incentives to shift income in low tax jurisdiction creating a level plain field "all over the world" where is not necessary to shift profits.
CFC rules are related to transfer pricing, as told in a report from OECD :"transfer pricing rules are intended to adjust the taxable profits of associated enterprises to eliminate distortions arising whenever the prices or other conditions of transactions between those enterprises differ from what they would have been if the enterprises had been unrelated. Because controlled foreign company rules by definition address related parties (as the companies that are captured by such rules are controlled by another party), jurisdictions often also use these rules to combat the adjusted prices charged between related parties. In other words, CFC rules are seen as a way for a parent jurisdiction to capture income earned by a foreign subsidiary that may not have been earned had the original pricing of the income-creating asset been set correctly. CFC rules are thus often referred to as "backstops" to transfer pricing rules. That terminology, however, is misleading, in that CFC rules do not always complement transfer pricing rules. CFC rules may target the same income as transfer pricing rules in some situations, but it is unlikely that

either CFC rules or transfer pricing rules in practice eliminate the need for the other set of rules. Instead, while CFC rules may capture some income that is not captured by transfer pricing rules (and vice versa), neither set of rules fully captures the income that the other set of rules intends to capture. Transfer pricing rules, which generally rely on facts and circumstances analysis and focus primarily on payments between related parties, do not remove the need for CFC rules. CFC rules are generally more mechanical and more targeted than transfer pricing rules, and many CFC rules automatically attribute certain categories of income that are more likely to be geographically mobile and therefore easy to shift into a low-tax foreign jurisdiction, regardless of whether the income was earned from a related party. CFC rules therefore play a unique role in the international tax system. Transfer pricing rules should generally apply before CFC rules, but even after the completion of the BEPS work on transfer pricing under the BEPS Action Plan, there will still be situations where income allocated to a CFC could be subject to CFC rules" (OECD, 2013, Action Plan on Base Erosion and Profit Shifting, p. 14).

Other goal of the report is trying not to increase the compliance costs, so to keep the "bureaucracy" level low for countries and for companies, so there would been another incentive to apply the CFC legislation and not to shift profits, because for company there would be an higher cost to establish and manage the foreign company that to be transparent and pay the "correct" amount of taxes in any legislations their companies are based. As said by the OECD report of 2013 "CFC rules must strike a balance between the reduced complexity inherent in mechanical rules and the effectiveness of more subjective rules". (OECD, 2013, Action Plan on Base Erosion and Profit Shifting)

A linked issue with CFC legislation is, for sure, the risk of double taxation, in which the incomes in the tax haven are taxed two times, one from the tax haven legislation (it could be very low but is always a cost for the companies) and the taxation after the application of CFC legislation in the country with high taxes. Usually, every national CFC legislation has exemptions or foreign tax credit that could lower or cancel double taxation, that we will see later in this chapter.

The design of CFC legislation could vary especially for two main reasons : if a jurisdiction has a worldwide tax system or a territorial tax system and whether a jurisdiction is a member of the EU or not.

In tax systems based on a worldwide principle, Controlled Foreign Company (CFC) rules can be designed with a relatively broad scope without undermining the internal coherence of the tax framework. Since worldwide regimes aim to tax the global income of resident firms, the inclusion of foreign income that is not immediately subject to domestic taxation through CFC provisions can be justified on efficiency grounds. In particular, such an approach may reduce

distortions in firms' location and profit-shifting decisions by limiting the tax advantages associated with relocating mobile income to low-tax jurisdictions.

Conversely, under predominant territorial tax systems, efficiency and competitiveness considerations often support a more targeted application of CFC legislation. Since national legislation does not usually tax foreign income, wanting to avoid double taxation that produces distortions and additional costs, taxing CFCs could be counterproductive and lead to double taxation that would be negative for everyone, so states try to tax only those "risk" profits, perhaps resulting from transactions in intangible assets, so as to maintain a certain neutrality and not run into the problem of double taxation.

National systems attempted to find a balance between the taxation of CFCs and the desire not to tax the same profit twice, although it is not always easy. States are faced with the choice of increasing their tax revenues or protecting the competitiveness of their businesses at all costs. The position a jurisdiction occupies along the worldwide–territorial continuum therefore plays a crucial role in determining how CFC rules are calibrated to balance these economic considerations.

Particular concerns could arise at EU level where minimum harmonization of CFC rules was achieved through the Anti-Tax Avoidance Directive (ATAD) (European Union 2016). Member States are required to introduce CFC provisions ensuring a minimum level of protection against profit shifting.

The Directive provides for two alternative models:

- Model A: taxation based on specific categories of passive income (interest, royalties, dividends, financial income);
- Model B: taxation of income from fictitious operations, which have nothing to do with the economic activity of a business

Member states can choose the model they prefer, usually, as in the Italian case, a mixed system has been chosen.

Italy introduced CFC legislation at the national level, then supplemented and extensively amended it with the first European directive ATAD1. Current legislation is mainly included in Articles 167 and 168 of the Consolidated Income Tax Act (TUIR).

Under the current framework, a foreign entity qualifies as a CFC where:

a. it is subject to an effective tax burden lower than 50 per cent of the tax that would have been levied in Italy; and
b. more than one third of its income consists of passive income.

Taxpayers may avoid the application of CFC rules by demonstrating that:

- the foreign entity carries out genuine economic activity; and

- it is supported by valid commercial reasons and an adequate organizational structure.

Compared to jurisdictions such as the United Kingdom and the United States, the Italian system combines formal tax-rate tests with substantive economic tests, resulting in a more complex yet flexible framework (MARINO and RUSSO, 2018).

The U.S. CFC regime is based on Subpart F and the Global Intangible Low-Taxed Income (GILTI) provisions introduced by the Tax Cuts and Jobs Act of 2017 (United States Congress 2017. GILTI legislation has also affected income from non-material goods, affecting a still very weak point in national and international legislation. UK legislation on the matter is seen as an example when it has found the right balance and fails to address the usual problems faced by other tax systems. The ATAD framework represents a compromise between substance-based and income-category-based approaches. Although differences among Member States remain, the minimum harmonization contributes to reducing intra-EU tax arbitrage.

One "case study" on CFC legislation in the EU is the so-called "Cadbury Schweppes" case where Cadbury establish a foreign company, controlled, in Irland (a tax haven) Cadbury Schweppes Overseas Ltd. The sentence of ECJ that has stated "CFC rules and other tax provisions that apply to cross-border transactions and that are justified by the prevention of tax avoidance must "specifically target wholly artificial arrangements which do not reflect economic reality and whose only purpose would be to obtain a tax advantage" (OECD, 2013, Action Plan on Base Erosion and Profit Shifting, p.17).

Returning to Cadbury case the foreign company is considered and actual company a not only an "empty box" used by Cadbury to shift profits and losses, so is not possible to apply the CFC legislation and levy taxes as hoped but the English tax authority. As said before, another crucial point is the freedom of establishment, heart of the European Union, that could be stopped only if the CFC rules itself discriminate against the non-resident establishment. The ECJ sentence says "That difference in treatment creates a tax disadvantage for the resident company to which the legislation on CFCs is applicable. Even considering […] the fact referred to by the national court that such a resident company does not pay, on the profits of a CFC within the scope of application of that legislation, more

tax than that which would have been payable on those profits if they had been made by a subsidiary established in the United Kingdom, the fact remains that under such legislation the resident company is taxed on profits of another legal person. That is not the case for a resident company with a subsidiary taxed in the United Kingdom or a subsidiary established outside that Member State which is not subject to a lower level of taxation"(Court of Justice of the European Union, Cadbury Schweppes case, C-196/04).

Therefore, if a CFC rule treats domestic subsidiaries the same as cross-border subsidiaries, it arguably should not be treated as discriminatory under the case law of the ECJ, and no justification is needed. Such an approach would attribute the allocable income of any controlled company, whether foreign or domestic, to its resident shareholders. (OECD, 2013, Action Plan on Base Erosion and Profit Shifting, p.18).

So, the ECJ, seems to prioritize the freedom of establishment and demanding that only for "empty box" the CFC legislation could be applied in total. This could be fair with the European approach, founded on free movement of people and companies through the EU, and with the effort to have a common legislation with the ATAD that should remove all the differences between the various legislation so that we no longer have to deal with cases like those in Cadbury.

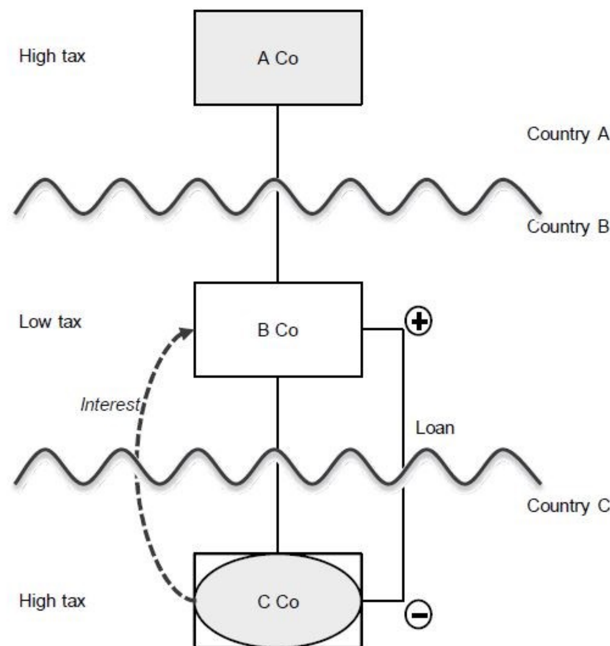
4.1 When and how apply CFC legislation

In order to know if CFC legislation should be applied or not it is fundamental to understand if a foreign company meets all the requirements to be considered a CFC and if the parent company has a sufficient level of influence over the foreign company that it could control it. For sure corporate entities have to be included but even some transparent entities and permanent establishments could be a CFC in certain scenarios, where income raised from them could create some BEPS problems and the intervention of the authority is necessary to avoid evasive behaviors.

Regarding the permanent establishment (PE), is defined by the OECD, as a "fixed place of business", that has to carry substantial business activity with a certain degree of performance. A PE could be an office, a place of management, a branch, a factory, a workshop or any other "fixed place" where some sort of activity is carried out. The OECD in its form and the most double taxation treaties between countries agreed on an exclusive or shared power to tax income of PE. In the exclusive one, only one part could tax, in the shared one, each of the part involved could tax, but usually is a system to "split the cake" between the two authorities with exemption for the company , avoiding in any case the pure double taxation. A PE could be even a person, like an agent.

Seeing the definition of PE and the rules of different countries, PE couldn't be considered for the application of CFC, otherwise, the beneficial effect of the double taxation treaties would be thwarted. But if a PE places some BEPS concerns, tax authorities are entitled to apply the CFC legislation and levy taxes on the income of PE.

Biggest problems are different legislations around the world, by which companies could take advantage and have some company in some jurisdictions and avoid paying taxes. For example, if a jurisdiction exempts the income of a PE from taxation and this raise BEPS concerns, the CFC legislation could be broad enough to tax the income and avoid this potential "loophole" in legislation. Another concern is the treatment of certain payment between entities, for example, intra-group transactions, where in a jurisdiction they could exclude taxing and give space to base erosion or vice versa, we will see an example where an intra-group payment through a transparent company in a foreign country could lead to avoid payment of taxes :



(OECD, 2013, *Modified hybrid mismatch rule,* chart, Action Plan on Base Erosion and Profit Shifting, p.23)

"In the structure illustrated, A Co, a company resident in Country A, holds all the shares of B Co, a company resident in Country B. B Co, in turn, holds all the shares in C Co, a company resident in Country C. Country A and Country C are high tax jurisdictions while Country B is a low tax jurisdiction. C Co is a disregarded entity for Country A tax purposes (like a PE or a transparent company). C Co borrows money from B Co, and because C Co is treated as transparent under the laws of Country A, the payment of interest to B Co is ignored under the

laws of Country A and therefore not included within the calculation of CFC income for Country A purposes. Note that this example would not currently be caught by the rules recommended under Action Item 2 of the OECD work on BEPS, as this payment does not create a hybrid mismatch under the rules of either Country B or Country C, which are the residence jurisdictions of the counterparties. Instead, it only creates a hybrid mismatch under the laws of Country A, which is the country that treats C Co as transparent. The interest payment is a deductible intra-group payment. The reason it is not included in the calculation of CFC income is due to the treatment of the payer under the laws of the parent jurisdiction. Under the rule set out above, the payment would be included as an item of interest paid by another CFC when calculating A Co's CFC income.(OECD, 2013, Action Plan on Base Erosion and Profit Shifting, p.23). In this example C Co paid interest to B Co lowering is base that could be taxed and simply shifting profits to B Co established in a low tax jurisdiction and not considered by country A that treats C Co as transparent in its legislation, exposing the tax authority to a loss of tax revenue only because the agreement with country C and the definition in its legislation. This is an example where avoiding double taxation exposes a country to a loss just because its laws are not broad enough to cover all the possible systems used by companies to avoid payment of taxes. A clear example of tax elusion, all is perfect legal, but "correct" in the behavior ? it seems not for sure.

Another issue to consider is the type and the level of control to decide for the application or not for the CFC legislation.

There are four main types of control :

- legal control : where the resident company has enough voting rights to control the foreign one. Usually there is control when the resident is able to nominee the board of directors of the foreign entity and follow the instructions of the resident one.
- economic control : is based on the rights on the profits of the resident entity to the foreign company. It is not crucial that the resident has the majority of shares of the controlled one, it is enough that the resident has the right on the profits or has the first refusal right during the possible liquidation or dissolution of the controlled entity. It is not difficult to avoid this type of control, it is enough to put another company between the two (a holding) to avoid economic and even legal control, because the direct link between the two companies is gone.
- de facto control : here control Is given by dominant influence of the resident over foreign entity, so when there are economic ties between two entities or when resident one takes decisions regarding foreign company.

- control based on consolidation : there is control when a non-resident company is consolidated in the accounts of a resident company following accounting principles and legislation.

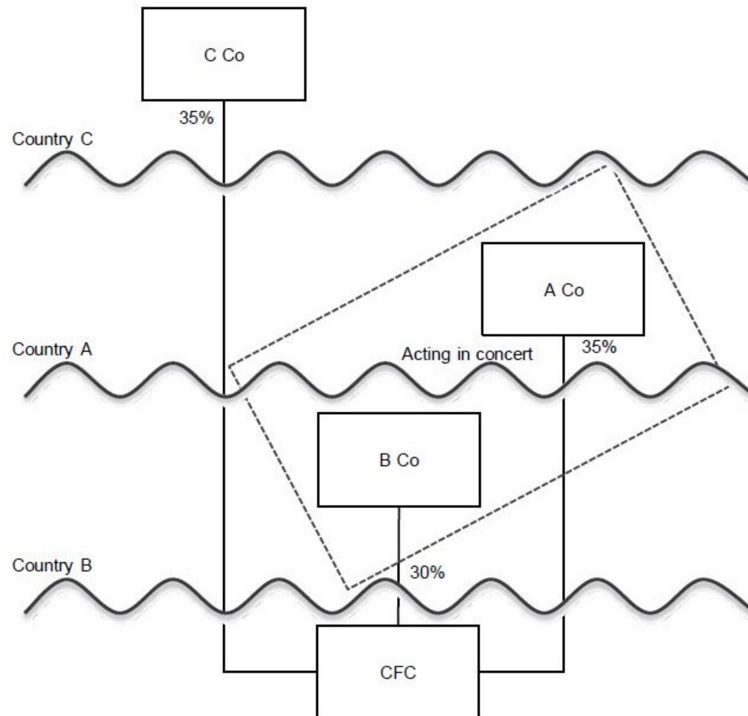
"The above approaches are often combined to prevent circumvention and to ensure that rules operate effectively. Based on the above analysis, a control test should focus on a combined approach that includes at least legal and economic control. Both of these tests are reasonably mechanical and so should limit the administrative and compliance burden involved. However, countries could also consider supplementing these tests with either a de facto test or a test based on consolidation for accounting purposes. Both of these, but particularly a broad de facto test, could increase complexity and compliance costs. Therefore, countries that are attracted to using one of the latter two tests to address specific problems (such as those raised by inversions) may find that these problems could be better addressed with separate targeted provisions rather than through an extension of the concept of control for CFC purposes". (OECD, 2013, Action Plan on Base Erosion and Profit Shifting, p.25)

After clearing that there is control between a resident and a foreign company, next step is to assert the level of control there is between the two entities to decide whether to proceed with the application of CFC rules. Usually, the 50%+1 threshold is considered the one that separates the control from no control. Remember that the aim of CFC legislation is to avoid profit shifting between different countries, this threshold is certainly the one that permits shareholders to control the company and take decisions regarding the foreign one. But there is situation in which a single shareholder has less than 50% or when there are some shareholders with minority stake that act together. Are these situation cases of control or not ? to solve this problem tax authorities have to consider all type of control and extend the "control test" to the level of control to assert the capacity of shareholders to dispose of the profits and decide for the foreign entity, making it necessary to enforce CFC legislation.

There are mainly three tests to determine the control of the minority shareholders on a non-resident company :

- acting-in-concert test : try to find if some minority shareholders, acting together, could lead to control of the non-resident company. Administrative and compliance costs are high for this test, but it is very accurate to find concert decisions.

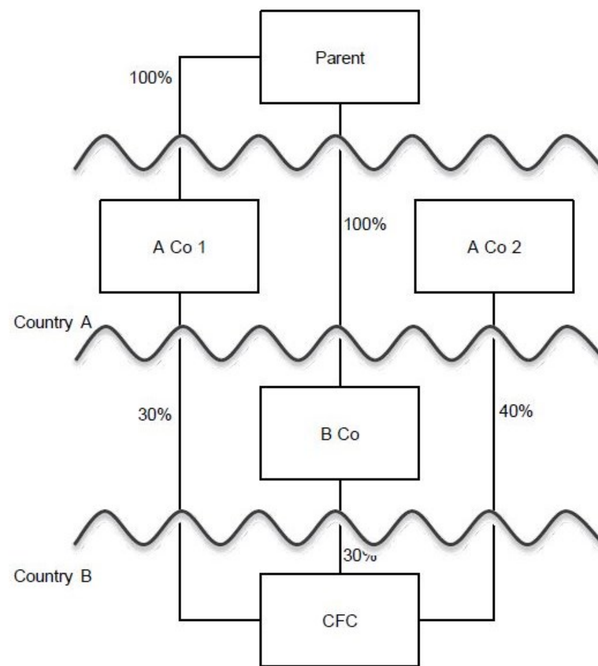
An example from *Action plan on base erosion and profit sharing of OECD* will clear the point:



(OECD, 2013, *control interest held by unrelated parties acting in concert,* chart, Action Plan on Base Erosion and Profit Shifting, p.26)

"C Co, A Co and B Co are all unrelated parties. Country A's CFC rules require a controlling interest of more than 50% before they can be applied. There is no other resident taxpayer in Country A so unless Country A has an acting-in-concert rule that aggregates the interest of both residents and non-residents, and the acting in concert rule can be shown to apply, then there will be no attribution of the income of CFC to A Co. As mentioned above, an acting-in-concert rule would add complexity and compliance costs, especially where it is applied to both residents and non-residents. However, it could also prevent circumvention of CFC rules". (OECD, 2013, Action Plan on Base Erosion and Profit Shifting, p.26)

- Relationship between parties : here is included all the *related* parties, not only that one that has stake in the companies. This would include broad entities and be easier for tax authorities to check for control, reducing compliance and administrative costs.



(OECD, 2013, *Control interest hel by related parties,* chart, Action Plan on Base Erosion and Profit Shifting, p.27)

"A Co 1 and A Co 2 are unrelated residents in Country A. For Country A's CFC rules to apply, related parties or residents that act in concert must hold an aggregate interest in the CFC of more than 50%. Parent Co splits the interest in CFC between A Co 1 and B Co, in order to circumvent the control requirement in country A. If, however, Country A applied a related party rule that aggregates the interests of related parties to determine control, then A Co 1 would be found to be a controlling shareholder because of the shared ownership between A Co 1 and B Co, which are both owned by Parent. This would mean that 30% of the income of CFC would be attributed to A Co 1. No income would be attributed to A Co 2. The same outcome is likely to arise under an acting-in-concert test. Whether or not income is attributed to B Co depends on the rules in operation in Country B but if they operated the same form of related party rule, then 30% of the income of CFC would also be attributed to B Co." (OECD, 2013, Action Plan on Base Erosion and Profit Shifting, p.27)

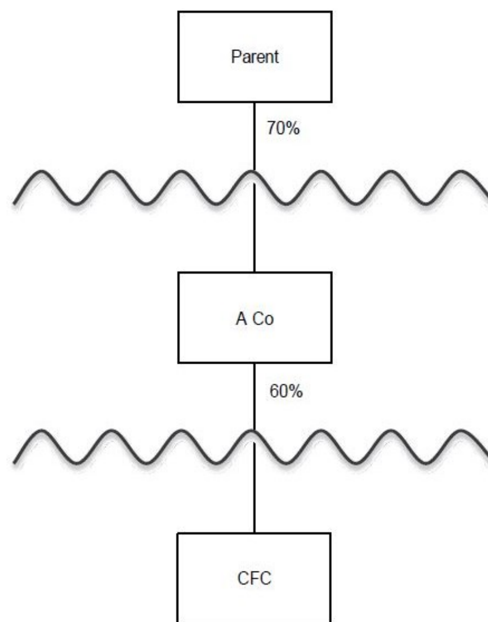
There is a third way to assert the level of control regarding CFC legislation, and it to impose a *concentrated ownership requirement.* In the USA there is a threshold of 10% for this requirement, so, if minority shareholders own at least 10% of each share and together, they have 50%, the foreign company became CFC, and the legislation is applied accordingly.

All these tests are done by tax authorities to prevent companies from circumventing paying taxes on profits made in a country and CFC legislation is the core of these procedures. OECD

recommends countries to have complete legislation on these issues to contrast the evasion and avoidance in a strong manner.

Furthermore, is important to include either direct and indirect control as profit shifting opportunities for companies that could take advantages from the different legislation and the "holes" in the rules around the world. It is especially fundamental to include indirect control, because without these provisions, it would be very easy for companies to avoid paying taxes.

An example will explain the issue :



(OECD, 2013, *Calculation of indirect control interest,* chart, Action Plan on Base Erosion and Profit Shifting, p.29)

"In this example, Parent has a 70% interest in A Co, which holds a 60% interest in CFC. There is therefore more than 50% control at each tier, but Parent itself only has an interest of 42% (70% x 60%) of CFC. Despite this limited legal control, A Co has enough economic control to influence CFC and Parent has enough economic control to influence A Co, so it is recommended that CFC rules should find Parent to have sufficient influence over CFC to meet the control threshold since the control threshold is met at each level in the chain of ownership. The amount of income attributed to Parent should, however, be limited to its actual economic interest of 42%. Although including both direct and indirect control in the control analysis could arguably increase the potential for double taxation if all countries were to introduce CFC rules, this situation should be addressed with rules to reduce or eliminate double taxation. Determining whether a company in the parent jurisdiction has control also requires a rule determining when control should be established as well as what types of entities can be considered to have control. On the first question, many rules determine control based on how

much of an economic or legal interest was held at the end of the year, but jurisdictions concerned about circumvention of this rule can also include anti-abuse provisions or a test that looks at whether the parent company had the necessary
level of control at any point during the year. On the second question, in order to ensure that all situations where resident shareholders have the opportunity to shift income into a foreign subsidiary are captured, CFC rules should consider the interests held by all resident taxpayers, rather than limiting this inquiry to corporate entities or other limited groups" (OECD, 2013, Action Plan on Base Erosion and Profit Shifting, p.29)
CFC rules constitute a cornerstone of international anti-avoidance measures. Together with transfer pricing rules, exit taxation, anti-hybrid provisions and enhanced administrative cooperation, they contribute to a more transparent and coherent international tax system (SCHON, 2015).
Their effectiveness depends on:

- international coordination
- administrative capacity of tax authorities
- availability of reliable information; and
- prevention of double taxation, which may arise in the absence of coordinated CFC regimes.

CFC rules are now a fundamental pillar of international taxation. The increasing complexity of global business models requires a balanced and effective framework capable of addressing tax avoidance while preserving legitimate cross-border economic activity. The OECD, the European Union and major national legal systems are converging towards an integrated approach combining formal criteria, substance-based tests and enhanced international cooperation.
The Italian CFC regime is broadly aligned with international standards but requires continuous adaptation, particularly with regard to the assessment of economic substance, coordination with transfer pricing rules and the prevention of double taxation. In an ever-evolving global environment, CFC rules will continue to play a central role in international tax planning and multinational corporate governance.

4.2 Italian legislation on CFC

As shown before it is important to understand where the fiscal residence of every company is to understand if it is possible to levy taxes on income.
Article 73 of the taxation law in Italy stands that :

"Unless proven otherwise, companies and entities that hold controlling interests, pursuant to the first paragraph of Article 2359 of the Civil Code, in the entities referred to in letters a) and b) of paragraph 1 shall also be considered resident in the territory of the State, if alternatively:
a) they are controlled, even indirectly, pursuant to the first paragraph of Article 2359 of the Civil Code, by entities resident in the territory of the State
b) are administered by a board of directors, or other equivalent management body, composed mainly of councilors residing in the territory of the State."(Italia tax code, Article 73)

So, there is a clear recall to article 2359 of the Civil Code, which is not the case for control regarding transfer price.
The legislator's choice to rely on the definition of control provided for in Article 2359 of the Civil Code is not without contradictions: for example, Article 73 provides that a foreign company can be controlled, even indirectly, by a company resident in Italy, referring to the cases in paragraph 1 of Article 2359 of the Civil Code, which, however, does not provide for any form of indirect control.
According to paragraph 5-bis of Article 73, indirect control is to be excluded for so-called "holding" companies: it must hold direct stakes in the other companies pursuant to paragraph 1 of Article 2359 of the Civil Code. Regarding this issue, it should be specified that the rule refers to control only of a participatory type (control through possession of shares or units of the company) by the Italian holding company of companies based abroad, and excludes the possibility that control occurs due to contractual constraints or dominated influence.
Despite some contradictions, the legislator's intent to arrive at a series of rules that recall the Civil Code is clear, so as not to create another "type" of control that would complement the already long list of different types of control present in Italian legislation.
Article 73 is, however, the basis from which Italian legislation has moved to have a regulation on the CFC, which finds its center in Article 167 of the Italian tax law.
Article 167 is the result of a process that began in 1999, as the anti-avoidance legislation of the time had proven ineffective in combating the evasive strategies of Italian companies and controlling them in tax havens. The 1999 law proposed accepting the OECD's recommendations

to create legislation on CFCs. The original text used ownership of at least 25% of the company, not control, as the discriminating factor. There was also a minimum threshold for the value of the shareholding to apply the legislation. Subsequent amendments led to the law passed in June 2000 establishing the concept of control as a prerogative for the application of CFC legislation. Furthermore, the law explicitly states that "indirect control can also be achieved through sub-holding as well as through inter-person ownership."
The law introduces Article 127 into Italian tax legislation which will then be amended and will lead to the current Article 167.
Following the promulgation of Article 127, the Italian Ministry of Economy amended the related regulation which specifies: "for the purposes of verifying the existence of the control referred to in paragraph 1, the criteria indicated in Article 2359 shall apply, even with regard to entities other than commercial companies... the provisions of the preceding paragraphs shall not apply if the entity exercising control pursuant to Article 2359... does not own any profit sharing"
Article 167 reads: "

1. If an entity resident in Italy holds, directly or indirectly, including through trust companies or by interposed person, control of an enterprise, company or other entity, resident or located in States or territories with a privileged tax regime, the income obtained by the participating foreign entity is charged, starting from the end of the financial year or management period of the participating foreign entity, to resident entities in proportion to the shareholdings they hold. These provisions shall also apply for holdings in non-residents in respect of income from their permanent establishments subject to the above-mentioned preferential tax arrangements.
2. The provisions of paragraph 1 shall apply to resident natural persons and to the persons referred to in Articles 5 and 73, paragraph 1, letters a), b) and c).
3. For the purposes of determining the limit of control referred to in paragraph 1, Article 2359 of the Civil Code shall apply, in respect of controlled companies and associated companies."
(Italian tax law, art. 167)

Here too, there are four counter-additions, or rather, choices have been made which can lead to confusion with respect to other rules and above all a new situation regarding control which was definitely not needed.
For example, Article 167 refers to the "possession" of control and not to the "possession" or "availability" of control, terms that are already used in Italian legislative language related to the

tax and control environment, such as when referring to "availability of voting rights in the assembly."
The term "possession" of control is used only in this specific case of control for CFCs, representing a novelty compared to existing legislation and inserting an alternative expression to indicate possession of control over a company. It would certainly have been more logical, also with a view to "standardizing" the rules, to use terms such as possession or availability, which would not have caused any interpretative problems in such a sensitive discipline.
Or again, the rule provides that, upon the occurrence of the assumption of the holding of control by a subject, the income of the foreign subject participated is attributed to the "resident subjects in proportion to the participation they hold". From this it can be deduced that control is calibrated to the holding of capital, and contractual control, instead provided for by Article 2359 from which 167 departs, is excluded.
Another interpretative doubt concerns "indirect control," that is, indirect ownership of a controlling interest. It must be clarified whether the indirect interest can only be held through a trust company or through an intermediary, or even through other mechanisms, thus interpreting the provision broadly and not exclusively literally. Case law favors the second choice for two essential reasons:

- article provides that participation may be held "also" through trust companies or interposed person, leaving open the possibility of using other mechanisms, and not using words such as "exclusively" or "only through"
- second motivation is the extension of the CFC regulations to holdings in non-residents with regard to income from their permanent establishments, thus covering everything that is not interposed person or trust company

Thus, holding and sub-holding are considered surely instruments to exercise indirect control, and also the case law agrees stating that indirect equity control occurs when company A controls company B which controls company C, company that considers itself indirectly controlled by company A.
The last point to consider is the so-called "joint control", in which several subjects (none with a single controlling share) add up their votes as if they were a single subject and are in a position of dominance in the assembly and have the power to exercise control over the assembly and the company.
Joint control can only occur in the event of an agreement between some of the members who decide in advance how to vote and then find themselves voting in the assembly as if they were a single entity. Case law provides the following examples of joint control :

- Voting union, where a majority of a company's votes or shares are grouped together and where the members of the pact have sufficient votes to appoint a majority of directors or block primary deliberations. In this case, all members of the pact must consider themselves "joint dominants."

In case law, it is excluded that Article 2359 could attribute importance to joint control, since the agreement between the members of the pact is relevant to the effects of control only if it attributes to only one of the members the availability of a majority of votes in the assembly. Consequently, Article 167 seems to consider what has just been said, if one considers the logic whereby the holding of control is attributed to a single entity, while the income of the foreign entity can be attributed to multiple entities in proportion to the holding, and it can be concluded that joint control is to be excluded as a possibility of control included in Article 167.

In the discipline of transfer pricing, it has been accepted that it considers a broad concept of control, which also considers a "economic" control situation, not just a legal one, as a form of control, regardless of a shareholding or a contractual obligation. Using the same interpretation also in the CFC framework does not seem correct due to the importance that the possession, or rather, the holding, of a participation by an entity in the foreign enterprise has in the mechanisms for attributing income in Article 167. Herein lies the different function of the CFC rules from those on transfer pricing, for which mere membership of the group gives rise to the fear that transactions will not take place at normal value.

A circular from the ministry also clarifies that the scope of Article 167 is also extended to entities other than commercial companies and determines, in particular, that for natural persons, the votes due to the spouse, relatives within the third degree and in-laws within the second degree are considered. The standard is intended to avoid elusive practices through the fractionation of control between members of the same core. This is a form of joint control that Article 167 would not provide for, and it "contrasts" with the article, but the legislator's attempt to restrict the possibilities of circumvention by natural persons as much as possible is evident.

Another thing to consider is "the exercise of control," which can be exercised, and therefore effective, or not. Italian law specifies that to gain control and enable the application of CFC legislation, it is not enough to have control but rather to exercise it (for example, by having the capacity to appoint a majority of directors) and the enterprise must actually carry out commercial activities as its main arrival in the tax haven and have an organizational structure suitable for carrying out the intended activity.

Thus, for contractual control, it will no longer be sufficient that "on paper" the contract allows him to control the company, but the position of domination must actually be exercised (this

aspect recalls the activity of "direction and coordination" provided for in article 2359 of the civil code)

The article has undergone many changes over the years, but the definitions and articles it relies on have remained the same, failing to address these issues, which can create inconsistencies in case law every day. The only attempt made by the Italian financial administration was with a circular that specified that "those under the influence dominated by another company by virtue of particular contractual constraints are considered related companies", will partially resolve the doubts arising from the wording of Article 167, in any case not by changing the article and maintaining the interpretation problems just seen.

What has been said so far aims to understand whether in CFC legislation the concept of control can be understood in a broad sense as occurs in the discipline of transfer pricing or must comply with the provisions of the rules.

Furthermore, the fact that the legislator wanted to make changes by merging regulations and not directly modifying the primary source raises doubts about its effective applicability.

Perhaps a comprehensive review, considering all the new developments that have emerged and all the legislation on CFCs, could be the best solution to legislation that appears to be at times "confusing".

4.3 Situation at European level

We will now see how European CFC legislation has evolved over the last few decades, framing it in the general path of integration between the various legislation of the individual countries, also passing through "lateral" regulations which, however, contribute to strengthening the general framework of CFC rules and making the fight against tax avoidance more effective.

Initially, the lack of harmonized EU-wide legislation led to the development of exclusively national CFC regimes, which differed greatly in structure, application requirements, and the intensity of the measures adopted. In this context, European regulations on CFCs have maintained the centrality of the freedom of establishment provided for by the European Union, giving importance, also following some rulings of the European Court of Justice, to the actual economic activity of the company, following the principle whereby substance (economic activity) is more important than form. This approach, aimed at protecting the freedom of the internal market, has helped limit the application of CFC legislation, reducing its effectiveness compared to large multinationals that create complex tax avoidance systems, but which, while maintaining minimal economic activity, cannot be prosecuted for this tax avoidance activity. It has resulted in each state has attempted to limit these practices with its own legislation, helping

to further complicate the European framework of legislation and not achieving results against circumvention, but rather, granting multinationals further loopholes verso states with particularly permissive legislations.
A considerable step forward has taken place since the OECD launched its BEPS program, with the Union taking an active part in drafting the program and cooperating decisively. After several years of work, the Union enacted the first directive against the phenomenon of tax avoidance, Directive 2016/1164, better known as the Anti-Tax Avoidance Directive (ATAD I), which introduced minimum standards common to all states of the European Union and finally began to seek common legislation throughout the Union.
The two basic articles of the Directive with respect to CFCs are number 7 and number 8 which define the scope of application of CFC legislation and how foreign income is charged against the income of the controlling company.
Article 7 identifies the conditions under which a company is defined as a foreign subsidiary company (CFC) and on which the legislation can therefore be applied:

- is CFC when there is a direct or indirect participation of at least 50% of the voting rights, capital or shareholders are entitled to receive at least 50% of the profits of the company

AND

- where the tax paid is lower than that which would actually have been paid in the state of the parent

So, both conditions must be met to apply CFC legislation, considering both direct and indirect control and the level of taxation paid by the foreign subsidiary.
Fundamental is the passage that excludes from this legislation all those companies that carry out economic activities, taking up the rulings of the Court of Justice, which have freedom of establishment as their cornerstone.
If the existence of a CFC for the sole purpose of tax evasion is established, then Article 8 of the European Directive ATAD1 comes into play, which establishes which income of the foreign subsidiary must be included in the application of the CFC rules, in proportion to the shareholding held in the foreign subsidiary.
The ATAD1 Directive was a first step in trying to achieve harmonization between the laws of the various European states. It was not a definitive directive, but it marked the path forward, closing a whole series of loopholes that multinationals could use to evade paying taxes.

Another significant obstacle to combat tax avoidance was the lack of communication between various tax agencies in different European countries and a significant lack of transparency on the part of companies. The union has therefore developed a series of directives on administrative cooperation, known as DACs, to implement communication between the union's tax agencies and to significantly increase the transparency of information.
Of particular importance is the DAC2 Directive, which incorporates OECD advice and provides for the acquisition of relevant data on current accounts held abroad by taxpayers, strengthening control over foreign activities and providing tax authorities with information they can cross-reference and use to find circumventing patterns.
This directive is complementary to the ATADs and strengthens the tools that the authorities have to combat all those evasive phenomena increasingly present and used by multinationals.
Even more relevant is the DAC6 Directive, which provides for the prior communication of potential tax-havens avoidance schemes between the various tax authorities. This way, authorities are pre-alerted and can take action to nip aggressive tax planning behavior in the bud.
The ATAD and DAC Directives demonstrate the growing attention of EU legislatures to all those aggressive tax planning practices that for years have resulted in a significant loss of tax revenue and which the union is no longer willing to tolerate.
Always with a focus on not limiting freedom of establishment and economic activity, legislation shifts attention to substance, and attempts to harmonize many different legislations, providing the necessary tools to combat these evasive activities, without compromising the founding foundations of the European market, but placing proportional limits on strategies to evade tax payments.
The discipline is constantly evolving, both because of the autonomy that states still have at the legislative level and because of the ever-new evasion techniques that large groups create, especially now with intangible assets. But there is no doubt that these directives are a concrete step towards harmonizing the various legislations and putting an end to tax planning methods that have resulted in huge losses for member states.

Conclusion

Corporate control is at the heart of a complex regulatory framework that intertwines civil law, sector-specific regulations, and tax agency regulations, with decisive impacts on tax base determination and anti-avoidance measures. A noteworthy development is the growing relevance of the concept of "group" from a civil law perspective within tax legislation – particularly in the income tax regimes analyzed here– without, however, ever qualifying the group as an autonomous taxable entity, thus still leaving some legislative gaps that would be better addressed to complete the picture. This analysis reveals how the notion of "control" referred to in art. 2359 of the Italian Civil Code – although central – requires functional adaptations in transfer pricing (art. 110 TUIR), Foreign Subsidiaries (CFCs, art. 167 TUIR) and group taxation (Article 177-ter TUIR), generating uncertainty that common and unequivocal legislation would avoid. Despite recent tax reforms in 2024-2025 and some Supreme Court rulings (Cass. Nos. 18080, 18072, 18058/2025), these uncertainties have not been reduced.

The fragmentation in the definition of control present in Italian legislation creates uncertainty between anti-evasion rules and certainty of the regulation to be applied. In the context of the growing harmonization of the EU (ATAD, DAC6, Parent-Daughter Directive), Italian legislation –this is, at least, my main idea – requires a unified and dynamic fiscal concept of control, built on three pillars:

1. Dynamic reference to Article 2359 of the Civil Code as the "default" for IRES/IRAP/consolidation without particular differentiation at the sector level, with specific rules exclusively for TP ("substance before form") and CFC regulations.
2. Clarification of "acting in concert" and joint control, supplementing art. 93 TUF and the Supreme Court's 2025 Approach: Relevance not only of voting shares held, but also of the effective ability to guide strategic choices (e.g., joint directors, economic dependence).
3. Interpretative circular of the Tax Agency defining the "main indicators" of control (equity ties, management overlap, economic dependence), reducing the risks of retrospective retraining and promoting advanced decisions pursuant to art. 31 DPR 600/1973.

Such harmonization –without sacrificing anti-circumvention effectiveness– would balance revenue protection and business predictability, allowing Italy to attract investment in compliance with OECD/BEPS standards and also achieve improved tax revenue as a result of a more business-friendly environment.

Legislative inaction risks perpetuating a "variable geometry" system, with increasing costs for both taxpayers and tax authorities.

Bibliography

ARNOLD, B.J. (1986). The taxation of controlled foreign corporations: An international comparison. Toronto: Canadian Tax Foundation.

AVI-YONAH, R.S. (2016). International tax as international law. Cambridge: Cambridge University Press.

BAERENTZEN, S. (2022). The effectiveness of general anti-avoidance rules: An international comparative analysis. Amsterdam: IBFD.

BECKERS, D. (2017). The General Anti-Abuse Rule of the Anti-Tax Avoidance Directive. EC Tax Review, 26(4), pp. 173–183.

COLLIER, R. (2018). Dissecting the EU's recent anti-tax avoidance measures. EconPol Policy Report, 7, pp. 1–30.

European Parliament (2022). Assessment of recent anti-tax avoidance and evasion measures. Brussels: EPRS.

GARBARINO, C. (2017). Diritto tributario internazionale. Milano: Egea.

MARINO, B. and RUSSO, R. (2018). La tassazione internazionale dell'impresa. Torino: Giappichelli.

MARINO G.(2008). La relazione di controllo nel diritto tributario. Padova: CEDAM.

MICHELUTTI, R. & D'ETTORRE, A. (2025) Esimente per la circolazione delle perdite: anzianità di gruppo, ordine di utilizzo e consolidato. Corriere Tributario. 11/2025. pp. 905-919.

MICHELUTTI, R. & D'ETTORRE, A. (2025) Esimente per la circolazione delle perdite: nozione di controllo, perdite infragruppo e omologate. Corriere Tributario. 10/2025. pp. 796-806.

MICHELUTTI, R. & PRAMPOLINI, A. (2024) Il riordino della disciplina di circolazione delle perdite nelle operazioni straordinarie. Corriere Tributario. 8-9/2024. pp. 690-703.

MOLLO, G. and MONTESANTO, D. (2015). Il controllo societario nel Testo unico della finanza: problemi e prospettive di riforma. June.

PISTONE, P. (2016). Cooperative compliance and BEPS. Amsterdam: IBFD.

QUENTIN, D. (2021). Gently down the stream: BEPS, value theory and the allocation of profitability. World Tax Journal, 13(2), pp. 145–176.
SCHÖN, W. (2015). Combating tax avoidance in the digital economy. World Tax Journal, 7(1), pp. 1–24.

SCARIONI, P. & FIORENTINO MARTINO, A. (2025) La nuova disciplina della circolazione delle perdite nelle operazioni infragruppo. Corriere Tributario. 3/2025. pp. 219-228.

Units Research Repository (2021). Implementation of the Anti-Tax Avoidance Directive in Italy: a comparative approach. University of Trieste.

United States Internal Revenue Service (IRS) (n.d.). Internal Revenue Code, Subpart F, §§ 951–965. Washington, DC: U.S. Government.

World Tax (2020). Italy introduces new documentation requirements for anti-hybrid mismatch rules. ITRWorldTax.

Other sources

Italian tax authority(2024). Non-resident capital gains: the Agency's updated instructions. FiscoOggi, 19 February.

Supreme Court of Cassation, 26 February 1990, No. 1439 (1991).

Supreme Court of Cassation, 8 May 1991, No. 1918 (1991).

Commissione Nazionale per le Società e la Borsa (CONSOB) (n.d.). Annex No. 3 – Regulatory framework on takeover bids. Rome: CONSOB.

Commissione Nazionale per le Società e la Borsa (CONSOB) (2002). Communication No. 2057476 of 14 August 2002. Rome: CONSOB.

Commissione Nazionale per le Società e la Borsa (CONSOB) (2003). Communication DEM/3074183: Qualification of shareholding relationships among Pirelli S.p.A., Olimpia S.p.A. and Olivetti S.p.A. Rome: CONSOB.

Commissione Nazionale per le Società e la Borsa (CONSOB) (2015). Communication No. DCG/0076067 of 1 October 2015. Rome: CONSOB.

Commissione Nazionale per le Società e la Borsa (CONSOB) (2024). Issuers' regulation, 29 February. Rome: CONSOB.

Council of the European Union (2011). Council Directive 2011/16/EU of 15 February. Official Journal of the European Union, L 64, 11 March, pp. 1–12.

Council of the European Union (2014). Council Directive 2014/107/EU of 9 December 2014. Official Journal of the European Union, L 359, 16 December, pp. 1–29.

Council of the European Union (2016). Council Directive (EU) 2016/1164 (ATAD I). Official Journal of the European Union, L 193.

Council of the European Union (2017). Council Directive (EU) 2017/952 (ATAD II). Official Journal of the European Union, L 144.

Council of the European Union (2018). Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU. Official Journal of the European Union, L 139, 5 June, pp. 1–13.

Council of the European Union (2022). Council Directive (EU) 2022/2523 on a global minimum level of taxation (Pillar Two). Official Journal of the European Union, L 328.

Supreme Court of Cassation (2023). Judgment No. 21261 of 19 July 2023. Rome: Supreme Court of Cassation.

Court of Justice of the European Union (2006a). Cadbury Schweppes plc v Commissioners of Irland Revenue (C-196/04), EU:C:2006:544.

Court of Justice of the European Union (2006b). Halifax plc and Others v Commissioners of Customs & Excise (C-255/02), EU:C:2006:121.

Decree of the President of the Republic 22 December 1986, No. 917. Italian Income Tax Code (TUIR).

Deloitte (2023). Italy: Budget Law 2024 – Extension of participation exemption regime. Deloitte Insights.

DLA Piper (2023). The Italian Supreme Court extends the participation exemption regime to French and EU companies. DLA Piper.

Directive of European Council 23 July 1990 (90/435/EEC).

Directive of European Council 3 June 2003 (2003/49/EC).

Directive of European Council 19 October 2009 (2009/133/EC).

European Commission (2021). Proposal for a directive on public country-by-country reporting. Brussels: European Commission.

EY Global (2018). Italy issues draft legislative decree for ATAD implementation. EY Global Tax Alert.

EY Global (2019). Italy officially releases ATAD decree. EY Global Tax Alert.

GGI – Geneva Group International (2024). Participation exemption rule extended to companies not resident in Italy.

ICLG (2024). Corporate tax laws and regulations: Italy. International Comparative Legal Guides.

Italian Civil Code (Italy) (1942). Royal Decree of 16 March 1942, No. 262.

K&L Gates (2015). Italian tax reform: General Anti-Abuse Rule introduced. K&L Gates.

Law No. 213/2023. State Budget for Financial Year 2024 and Multiannual Budget for 2024–2026.

Law 2 April 1882, No. 681.

Law 2 May 1976, No. 183, art. 10.

Law 5 August 1981, No. 416, art. 1.

Law 6 August 1990, No. 223, arts 15, 19 and 37.

Law 10 October 1990, No. 287, arts 7 and 27.

Law 17 May 1991, No. 157, art. 2.

Law 12 February 1992, No. 149, art. 10.

Legislative Decree 9 April 1991, No. 127, arts 26 and 37.

Legislative Decree 27 January 1992, No. 87, arts 4, 19, 25 and 26.

Legislative Decree 27 January 1992, No. 90, art. 2.

Legislative Decree 1 September 1993, No. 385, art. 23.

Legislative Decree 24 February 1998, No. 58.

Legislative Decree 8 July 1999, No. 270, arts 80 and 83.

Legislative Decree 14 May 2018.

Legislative Decree 27 June 2025

OECD (1995). OECD transfer pricing guidelines for multinational enterprises and tax administration. Paris: OECD Publishing.

OECD (1998). Harmful tax competition: An emerging global issue. Paris: OECD Publishing.

OECD (2013). Action plan on base erosion and profit shifting. Paris: OECD Publishing.

OECD (2015a). Aligning transfer pricing outcomes with value creation – BEPS Actions 8–10. Paris: OECD Publishing.

OECD (2015b). Transfer pricing documentation and country-by-country reporting – BEPS Action 13. Paris: OECD Publishing.

OECD (2015c). Designing effective controlled foreign company rules – BEPS Action 3 final report. Paris: OECD Publishing.

OECD (2022). Tax challenges arising from the digitalization of the economy – Global anti-base erosion model rules (Pillar Two). Paris: OECD Publishing.

OECD (2025). A decade of the BEPS initiative: Evaluation and future perspectives. Paris: OECD Publishing.

PARK, W.W. (1979). Fiscal jurisdiction and accrual basis taxation: Lifting the corporate veil to tax foreign company profits.

Supreme Court of Cassation (2025). Judgment No. 4853 of 25 February 2025.

Supreme Court of Cassation (2025). Judgment No. 15101 of 5 June 2025.

Supreme Court of Cassation (2025). Order No. 11954 of 7 May 2025.

Supreme Court of Cassation (2025). Order No. 18058 of 3 July 2025.

Webography

- SSRN: *Social Science Research Network* – https://www.ssrn.com/index.cfm/en/
- Consob: *Commissione Nazionale per le Società e la Borsa* – https://www.consob.it/web/area-pubblica/home
- EUR-Lex: *Access to European Union Law* – https://eur-lex.europa.eu/homepage.html
- Borsa Italiana: *Italian Stock Exchange* – https://www.borsaitaliana.it/homepage/homepage.htm