

Italy vs GE Medical Systems Italia S.p.A. & Nuovo Pignone Holding S.p.A.

(Italian Supreme Court, Cases No. 7169/2026 & 7163/2026, March 2026)

Facts

- GE Medical Systems Italia S.p.A. and Nuovo Pignone Holding S.p.A. were involved in transfer pricing disputes with the Italian tax authorities.
- The disputes related to cross-border transactions entered into with their foreign associated enterprises.
- The Italian Revenue Agency alleged that the intercompany transactions were not conducted at arm's length and resulted in reduction of taxable profits in Italy.
- The tax authorities claimed that the pricing methods adopted by the companies did not reflect market conditions and therefore transfer pricing adjustments were required.
- Additional tax demands and penalties were imposed for alleged non-compliance with transfer pricing documentation and reporting obligations.
- The companies challenged the adjustments before the Italian courts, arguing that they had maintained proper transfer pricing documentation and benchmarking studies supporting their pricing policies.
- The taxpayers further argued that the tax authorities made adjustments merely based on assumptions and differences in methodology without proving actual profit shifting outside Italy.

Issues Involved

- Whether transfer pricing adjustments can be made merely because the tax authorities disagree with the pricing methodology adopted by the taxpayer.
- Whether the burden of proof lies on the tax authorities to establish that the transactions were not at arm's length.
- Whether tax authorities sufficiently demonstrated that profits were artificially shifted outside Italy.
- Whether penalties can be imposed when taxpayers maintain proper transfer pricing documentation and cooperate during assessments.
- Whether differences in profitability alone are sufficient to justify transfer pricing adjustments.

Supreme Court's Findings

- The Italian Supreme Court held that transfer pricing adjustments cannot be based merely on assumptions, estimations, or disagreement with the taxpayer's methodology.
- The Court emphasized that the burden of proof primarily lies on the tax authorities to establish:
 - that the controlled transactions were inconsistent with the arm's length principle, and
 - that profits were improperly shifted outside Italy.
- The Court clarified that lower profitability in Italy or use of a different transfer pricing method does not automatically justify an adjustment.
- It observed that transfer pricing analysis must be supported by:
 - proper comparability analysis,
 - objective economic evidence, and
 - examination of the commercial substance of transactions.
- The Supreme Court further held that where taxpayers maintain adequate transfer pricing documentation, benchmarking studies, and economic analysis, penalties should generally not be imposed unless deliberate tax avoidance or non-compliance is proven.
- The Court stressed that transfer pricing assessments must be carried out using factual and economic evidence rather than theoretical assumptions.

Conclusion

- The Supreme Court ruled largely in favour of the taxpayers.
- It held that the Italian Revenue Agency failed to provide sufficient evidence proving that the intercompany transactions were not at arm's length.
- The Court also granted relief from penalties because the taxpayers had maintained proper transfer pricing documentation and complied with reporting obligations.
- The ruling reinforced the principle that:
 - the burden of proof in transfer pricing disputes mainly lies on the tax authorities, and
 - transfer pricing adjustments must be supported by strong economic and factual analysis.
- The decision is significant for multinational enterprises operating in Italy because it strengthens taxpayer protection against arbitrary transfer pricing adjustments and highlights the importance of maintaining robust transfer pricing documentation.