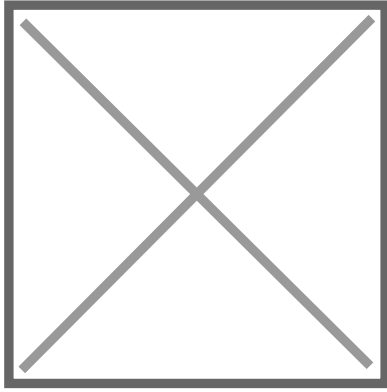




Intra-Group Service Costs in Italy: What the 2026 Cassazione Ruling Means for Multinational Groups

Descrizione

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Italy's Supreme Court has issued a landmark ruling that significantly tightens the conditions under which Italian companies within multinational groups may deduct costs charged by parent or affiliate entities. The decision — Cassazione n. 5753 of 13 March 2026, involving an Italian subsidiary of Shell — confirms and reinforces a demanding standard that applies to any company operating in Italy as part of a corporate group.

The Core Principle: Inerenza

Under Article 109 of the Italian Consolidated Income Tax Act (TUIR), a cost is only deductible if it is *inerente* — that is, genuinely relevant and connected to the income-generating activity of the Italian entity claiming the deduction. This is not a technicality; it is the foundational gatekeeper for any business expense deduction in Italy.

For intra-group charges, the principle operates with particular rigour. The mere existence of a cost-sharing agreement, an intercompany contract, or paid invoices is not enough. The Italian company must demonstrate that the services charged actually served its own business operations and produced — or were objectively capable of producing — a real economic benefit for the recipient.

The Benefit Test: What You Must Prove

The Cassazione in ruling n. 5753/2026 confirmed that the burden of proof falls entirely on the Italian subsidiary. To sustain the deduction, the company must be able to show:

- the precise nature and scope of the services received;
- that those services were actually performed and delivered to the Italian entity (not merely invoiced);
- the real and quantifiable benefit the subsidiary derived from them;
- adequate documentation of the associated costs and payments.

It is not sufficient to say that services formed part of a group-wide programme or that the parent's overhead was allocated on a pro-rata basis. The Italian entity must be able to establish concretely what it received and why that service was useful to it specifically.

Shareholder Activities: What Cannot Be Recharged

A critical distinction confirmed by the ruling — and consistent with the OECD Transfer Pricing Guidelines — is the treatment of shareholder activities. These are services that the parent company performs in its own interest as a shareholder: strategic group oversight, corporate governance, consolidated accounting, group-level brand management, and similar activities that serve the structure as a whole rather than any particular subsidiary.

According to settled Italian case law and OECD guidance, these costs cannot legitimately be recharged to subsidiaries. They respond to the needs and interests of the parent, not those of the Italian entity. Including such charges in an intercompany cost allocation without adequate segregation exposes the entire set of deductions to challenge.

The Temporal Competence Issue

The ruling also reaffirmed the non-derogable nature of temporal competence rules under Italian law. A company cannot elect to claim a deduction in a different tax year to manage its tax results. Costs must be recognised and deducted in the period to which they economically belong. Attempting to absorb prior-year charges into a more convenient year — outside of the formal procedures for amended returns or refund claims — will not be accepted by the tax authorities or the courts.

Practical Implications for Group Companies in Italy

Any Italian entity that is part of a multinational group — whether the Italian operation is a subsidiary, a branch, or a principal structure — should review its intercompany arrangements in light of this ruling. The key risk areas are: cost-sharing agreements where the benefit to the Italian entity is not clearly documented; management fee structures where operational services and shareholder activities are not clearly separated; and historical deductions claimed under arrangements that pre-date current documentation standards.

The Revenue Agency has consistently challenged intra-group cost deductions where documentation is generic, and the courts have continued to uphold that approach. Ruling n. 5753/2026 gives added judicial weight to this line of enforcement.

A Note for U.S. entities

U.S. persons who own or manage Italian subsidiaries through U.S. parent entities face a layered compliance picture. On the Italian side, the rules described above apply fully. On the U.S. side, the IRS has its own transfer pricing regime under Section 482 of the Internal Revenue Code, which requires intercompany charges to reflect arm's length pricing and to be supported by contemporaneous documentation. Where an Italian subsidiary is disallowed a deduction because the benefit test is not met, this can also affect the U.S. parent's consolidated tax position, including the treatment of any income received as a management fee. U.S.-owned groups operating in Italy should ensure that their Italian transfer pricing documentation and their U.S. Section 482 documentation are aligned and mutually consistent. Specialist advice on both sides is strongly recommended.

Final Considerations

Ruling n. 5753/2026 does not introduce new law, but it consolidates and sharpens a rigorous judicial standard that Italian tax authorities are actively applying. For multinational groups with Italian operations, the message is clear: intercompany cost arrangements must be backed by substance, specificity, and contemporaneous documentation — not just contracts and invoices. Companies that review and strengthen their documentation now, and that clearly separate operational service charges from shareholder-level overhead, will be in a significantly stronger position in the event of an audit. Given the complexity of these issues, professional advice tailored to the group's specific structure is essential.

Tag

1. Foreign companies

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