

Other fashion groups before the Italian courts

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The Kering case was the largest of a series of Italian proceedings against fashion groups whose foreign companies were alleged to be managed from Italy. In May 2019 the newspaper *Il Foglio* summarized the series under the headline that, from Dolce & Gabbana to Kering, nobody escapes the long war of the Italian tax authorities on fashion.¹ The best-known earlier case concerned the transfer of the Dolce & Gabbana trademarks to a Luxembourg company in 2004. The designers were convicted at first instance and on appeal and finally acquitted of the criminal tax charges by the Court of Cassation on 24 October 2014, on the ground that they had not committed the offence.² The cases differ in their facts and outcome but share a pattern. An Italian group transfers intangible assets or distribution functions to a foreign company in a lower-tax jurisdiction. The Italian authorities argue that the foreign company is managed from Italy or that its Italian activities constitute a permanent establishment. The dispute ends in a settlement or in a judgment that turns on the evidence of where decisions were actually made.

For Ticino, the Kering case had a significance beyond its amount. The Italian authorities had treated the most important company of the Fashion Valley as an Italian business with a Swiss address. To close the matter, the group was prepared to pay a sum larger than the cluster's estimated cantonal tax revenue over many years. It also showed that the Swiss tax ruling or assessment on which LGI had relied did not protect the group against the claim of the state in which the goods were produced. Although the double taxation convention provides for a mutual agreement procedure, a settlement with the Italian authorities under domestic procedures leaves little room for a correlative adjustment in Switzerland.³

Common misconception. It is often said that the Kering settlement of May 2019 concerned only transfer prices and that LGI's Swiss tax position was therefore never questioned. According to Kering's own announcement,

the agreement with the Agenzia delle Entrate covered the transfer pricing between LGI and the Florentine Gucci company as well as the question whether LGI had a permanent establishment in Italy in the years 2011 to 2017.⁴ The amount of EUR 897 million of additional tax shows that the Italian claim went to the attribution of profit itself. The subsequent transfer of LGI's functions to Italy suggests that the group drew the corresponding conclusion.

1 Notes

1. Il Foglio, "Da D&G a Kering, nessuno sfugge alla lunga guerra del fisco alla moda italiana" (16 May 2019), <https://ilfoglio.it/societa/2019/05/16/news/da-dg-a-kering-nessuno-sfugge-alla-lunga-guerra-del-fisco-alla-moda-italiana--184345>. ↩
2. Wikipedia (Italian), "Dolce & Gabbana", https://it.wikipedia.org/wiki/Dolce_%26_Gabbana (consulted as a last resort): conviction on appeal in 2013 and acquittal by the Court of Cassation on 24 October 2014 "per non aver commesso il fatto". ↩
3. Swiss-Italian DTA (above), Art. 26 (mutual agreement procedure), <https://www.droit-bilingue.ch/de-it/0.6/0.67/0.672.945.41-26-29.html>. On mutual agreement procedures in practice see Chapter H.III. ↩
4. FashionUnited (10 May 2019, above). ↩

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