KPMG

Investment in Italy

2017

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Investment in Italy

Preface

Investment in Italy is one of the series of booklets published by KPMG to provide information of interest to those considering investing or doing business in the appropriate countries. This publication has been prepared by KPMG in Italy.

Every care has been taken to ensure that the information presented in this publication is correct and reflects the situation at 31 December 2017. Its purpose is to provide general guidelines on investing or doing business in Italy. However, the reader should be aware that the general framework of the legislation and the detailed regulations underpinning it are subject to frequent changes. Therefore, before taking specific decisions, further advice should be sought. If there is a significant lapse of time between determining a strategy and implementing it, any advice obtained which is critical to the strategy should be confirmed.

KPMG in Italy

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Eighth edition

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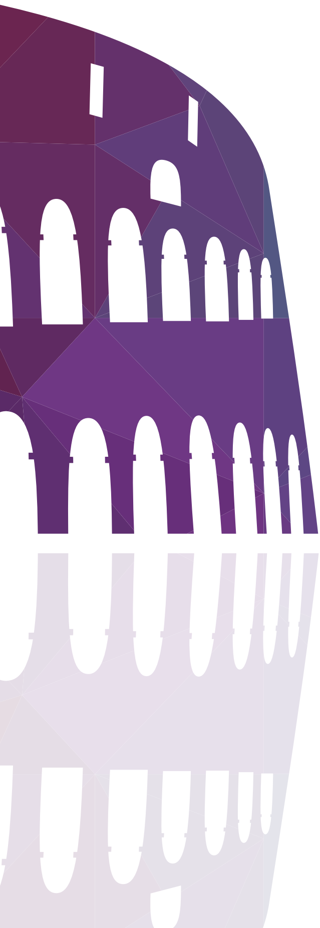
1. Country overview



Italy, with a population of nearly 61 million inhabitants, is divided into 20 regions. Five of these regions (Valle d'Aosta, Trentino-Alto Adige, Friuli-Venezia Giulia, Sicily and Sardinia) have special autonomous status that enables them to enact certain pieces of local legislation.

The country is further subdivided into 110 provinces, 14 metropolitan cities and approximately 8,000 municipalities. In 2017, 14 new municipalities were created through mergers, while 31 were abolished.

Rome, located in the Lazio region, is the largest Italian city (with more than 2.9 million inhabitants). Milan in Lombardy (1.4 million inhabitants), Naples in Campania (1 million inhabitants), Turin in Piedmont (0.9 million inhabitants), and Palermo in Sicily (0.7 million inhabitants) are the other largest Italian cities.

The key business regions are located in the north of the country (Lombardy, Piedmont and Veneto).

The majority of the Italian population (64 percent) falls within the 15-64 age group. The percentage of people older than 65 is rising and currently stands at 22 percent, while the remaining 14 percent of the population falls within the 0-14 age group.

1.1 Transportation network

Airports

Railways

Italy has approximately 130 airports, handling about 163 million passengers and 1 million tonnes of freight per year.

One of its biggest international airports, Leonardo Da Vinci near Rome, handles about 40 million passengers per year.

More than 800 million passengers and over 90 million tonnes of freight travel by rail each year.

Italy has one of the safest railway networks in Europe and boasts 16,787km of track. With the UK, it is the fourth largest in Europe after those of Germany, France and Poland.

High-speed rail services already connect the main Italian cities and are being extended further.

Harbours

Roads

There are approximately 30 major ports, handling 47 million passengers and 447 million tonnes of freight per year.

There are another 148 ports distributed along approximately 7,400km of coastline

The national road network extends over approximately 180,000km.

The national motorway network extends over 6,800km and makes up approximately 9 percent of the European motorway network.

1.2 Snapshot of the Italian economy

1.2.1 Main macro-economic indicators for Italy: 2011-2018

	2011	2012	2013	2014	2015	2016	2017
Real GDP (EUR billion)	1,614	1,568	1,541	1,544	1,557	1,574	**1,599**
GDP (YoY changes)	0.7%	-2.9%	-1.7%	0.2%	0.9%	1.1%	**1.6%**
Unemployment rate (% labour force)	8.4%	10.7%	12.1%	12.6%	11.9%	11.7%	**11.2%**
Average nominal wage inflation	2.4%	2.3%	2.1%	2.5%	2.5%	0.4%	**0.6%**
Consumer price index	3.0%	3.3%	1.2%	0.2%	0.1%	0.0%	**1.3%**
Exports of goods and services (% change)	6.1%	2.0%	0.9%	2.4%	4.2%	2.6%	**5.1%**
Imports of goods and services (% change)	1.1%	-8.2%	-2.3%	3.1%	6.6%	3.3%	**5.9%**

Source: Economist Intelligence Unit

1.2.2 Key industries overview

The Italian economy is characterised by 4.4 million highly dynamic firms operating in a number of different industries. The vast majority are SMEs, of which more than 200,000 have over 10 employees. Only 3,500 are large companies with more than 250 employees. While it is common for many European economies to have a vast majority of SMEs, a defining feature of Italian industry is the large number of micro-firms: approximately 95 percent of companies have fewer than nine employees, 4 percent of companies have 10-49 employees, and approximately 0.6 percent of companies employ more than 50 people (source: ISTAT, 2016). Italy is geographically split into an industrially developed northern region dominated by private companies, and the less developed south, where there is a high rate of unemployment.

The service sector is a major contributor to the Italian economy. It accounts for approximately 74 percent of GDP and is also the fastest growing segment. Tourism, retail and financial services represent a significant part of the sector.

The industrial sector accounts for 18.8 percent of GDP, with the remainder contributed by agriculture (source: L'Italia in cifre, ISTAT, 2016). Motor vehicles, fashion and luxury goods, life sciences, aerospace, chemicals, information and communication technology, logistics, renewable energy, and precision machinery are among the most important Italian manufacturing sectors.

Some of the key Italian sectors are described below.

Tourism

With more than 33,000 hotels across Italy, tourism is one of the driving forces of the Italian economy, with foreign travellers spending approximately EUR 36.4 billion in 2016 (+2.4 percent YoY). Thanks to Italy's remarkable artistic, historic and cultural heritage, combined with its internationally acclaimed excellence in wine, food and natural landscapes, the country offers enormous potential for growth and exceptional investment opportunities.

Excellent investment opportunities are to be found in accommodation, infrastructure and services, such as transport and reception facilities (restaurants, shops and leisure facilities).

In 2016, Rome was the main tourist destination in Italy with nearly 25.2 million stays (6.3 percent), followed by Milan (11 million; 2.7 percent), Venice (10.5 million; 2.6 percent), Florence (9.3million; 2.3 percent), and Rimini (7.1 million; 1.8 percent).

Automotive

In 2017 the national market grew by 8 percent on 2016, with 2 million passenger cars sold/registered. Approximately 28 percent of passenger car sales were made by FCA, while the highest-selling premium brand was Mercedes. The three best-selling models in Italy in 2017 were the FIAT Panda, Lancia Ypsilon, and FIAT Tipo.

The outlook is positive: registrations in 2018 will reach 2,050,000 and rise further in 2019 to 2,200,000.

The fuel in most demand remains diesel: 56.7 percent of the cars registered in 2017 were diesel (57.4 percent in 2016). Alternative fuels are growing: in 2017, 129,812 dual-fuel petrol/LPG vehicles were sold (6.5 percent of the market, up from 5.6 percent in 2016), 66,760 hybrids (3.4 percent of sales, up from 2.1 percent in 2016) and 1,941 electric (up from 1,403 in 2016). Conversely, registrations of CNG cars slowed down (32,746 against 43,903 in 2016).

Fashion and luxury

With revenues of approximately EUR 84 billion, Italy has the most active fashion and luxury industry in the world and, without a doubt, this is one of the most influential sectors of the Italian economy.

In addition to the big names that dominate the market (e.g. Armani, Gucci, Prada, Dolce & Gabbana, Cavalli, Ferragamo, Ermenegildo Zegna and Bottega Veneta in high-end fashion, Bulgari in watches and jewellery, Luxottica and Safilo in eyewear, and firms such as Perini, Azimut and Ferretti in the yacht business), the market is characterised by a large number of SMEs (Kiton, Canali, Corneliani, Brioni in high-end fashion, Minotti and B&B in high-end furniture, etc.). These companies combine creativity with manufacturing skills, and contribute to the global image of the ‘Made In Italy’ trademark.

Pharmaceuticals

The Italian pharmaceuticals industry is worth approximately EUR 30 billion, 71 percent of which is due to exports (EUR 21 billion). Sixty percent of pharmaceutical companies in Italy are foreign-owned (e.g. GlaxoSmith&Kline, Novartis, and Baxter) while the remaining 40 percent are Italian-owned (e.g. Recordati, Zambon, Angelini, Bracco, and Sigma-Tau). In 2016, investments in this sector totalled EUR 2.7 billion, and its workforce comprised 64,000 employees, 90 percent of whom were graduates.

The strong performance of exports in this sector is the result of the increased quality of the medicines and vaccines being exported all over the world: between 2010 and 2016 the average value of exports grew by 52 percent (compared to 18 percent across the EU).

Information and communication technology (ICT)

After years of decline, the Italian ICT market grew by 1.8 percent to EUR 66.1 billion in 2016, which was better than expected. The market returned to modest growth in 2017, driven by cloud (+2.5 percent), IoT (+14.3 percent) and mobile services (+13.1 percent). Telecom services as a whole grew by 3.4 percent in 2017. Other positive sectors included digital content and advertising, up 7.2 percent, and software and ICT solutions, up 4.8 percent.

Chemicals

The Italian chemical industry has a production turnover of approximately EUR 52 billion, making Italy the third biggest chemical producer in Europe, with a market share of 10 percent. It is characterised by the stable presence of many leading foreign companies. The quality of Italian research and Italy’s widely recognised scientific expertise are an important attraction, especially in fine chemistry and specialised chemistry. Manufacturing companies are a good mix of sizes: medium-sized and large Italian companies (including Versalis, the Mapei Group, the Mossi Ghisolfi Group and RadiciGroup) account for 24 percent of production, multinationals (e.g. BASF, Bayer, Air Liquide, and Linde) for 38 percent, and SMEs for 38 percent.

Aerospace

With more than 50,000 employees (estimated 200,000 in the entire production chain), in 2015 aerospace companies produced total revenues of EUR 15.3 billion (8.5 billion export volume). The sector is characterized by high work-force productivity, high capital intensity, long investment cycles and high levels of R&D spending (second sector in Italy with EUR 1.5 billion, equal to 12 percent of the national industry R&D expenses). Italy is leader in this sector, ranking fourth in Europe and seventh in the world.

Italy is home to several multinational companies such as Leonardo, Fincantieri, GE Avio, Iveco and Piaggio Aerospace. Eighty percent of the national production chain is formed by SMEs, mainly located in Piedmont, Lombardy, Lazio, Campania and Apulia.

Renewable energy

Italy is one of the most virtuous of the EU Member States in terms of renewable energy policies and measures: by 2013 it had already exceeded the 2020 energy savings target of 158 million tonnes, and 17.5 percent of its gross final consumption of energy is already from renewable sources (the target was 17 percent by 2020). Furthermore, Italy has the fifth biggest total installed wind-energy capacity in Europe (approximately 9.3 GW, a 6 percent market share). National energy production from renewable sources reached 108 TWh (37.3 percent) in 2016 thanks to the 742,000 plants operating in Italy with 52.3 GW installed power. Hydroelectric is still the most widely-used renewable source, accounting for 39 percent of electricity generation from renewables.

These figures are significant, as renewables will continue to play a key role in helping the EU meet its energy needs beyond 2020. EU countries have already agreed on a new renewable energy target of at least 27 percent of final energy consumption in the EU as a whole by 2030, as part of the EU's energy and climate goals for 2030.

1.2.3 The role of industrial clusters

Italy has 162 industrial clusters. Industrial clusters are a strategic feature of the Italian industrial system, and for some industries, are the backbone of 'Made in Italy' and the essence of the manufacturing sector. The last 15 years have seen progressive and marked growth in the number of clusters, favoured by national and regional legislation and by the average small size of Italian companies, which pushes them to create organic and geographically close conglomerates within the same supply chain/industry.

The Italian network of industrial clusters, which is based on interdependence and cooperation between SMEs located in a specific local area, has historically been one of the strengths of the Italian economy, contributing significantly to the growth of income and employment and ensuring products of the highest quality and originality.

Source: ISTAT, Distretti Industriali Italiani, Osservatorio Nazionale Distretti Italiani

1.2.4 Typical issues facing Italian medium-sized companies

Broad variety of legal forms

Italian law offers a variety of legal forms (e.g. corporations, partnerships), which are subject to specific tax rules and corporate laws. The legal form of a medium-sized company may reflect the stage of development of a business, in that partnerships are typically used for very small or family-run businesses, and are converted into corporations when they grow larger or new shareholders arrive. Changes in Italian tax regulations and the degree of personal risk assumed by shareholders/owners also have an impact on the choice of legal form.

Separation of operating and holding companies

In Italian medium-sized businesses, entrepreneurs tend to keep their business assets separate from other assets such as financial investments or real estate assets, using different legal entities and holding companies. These structures are often tax driven, although risk management also plays a role. Potential investors should give careful consideration to the fact that targets of potential acquisitions may or may not include, for example, real estate assets or companies, and that the capital requirements may therefore vary significantly.

Main shareholder/owner involved in the business

Italian medium-sized companies are often family-owned and run businesses: as such, they are often reliant to a significant degree on the involvement of the shareholder/owner. Certain 'discretionary' transactions are not infrequent, whilst future operating results may depend strongly on the continued presence of this key person.

Requirements for audited financial statements

The audit requirement is dependent on the size of the company (measured by equity, assets, sales and number of employees); therefore, the financial statements of a large number of Italian medium-sized companies are not audited. In addition, the accounting of medium-sized companies is frequently tax driven in a constantly changing tax scenario.

Potential investors should always obtain a thorough financial, tax and legal due diligence review and make use of tax-structuring assistance to identify contingent liabilities.

Language

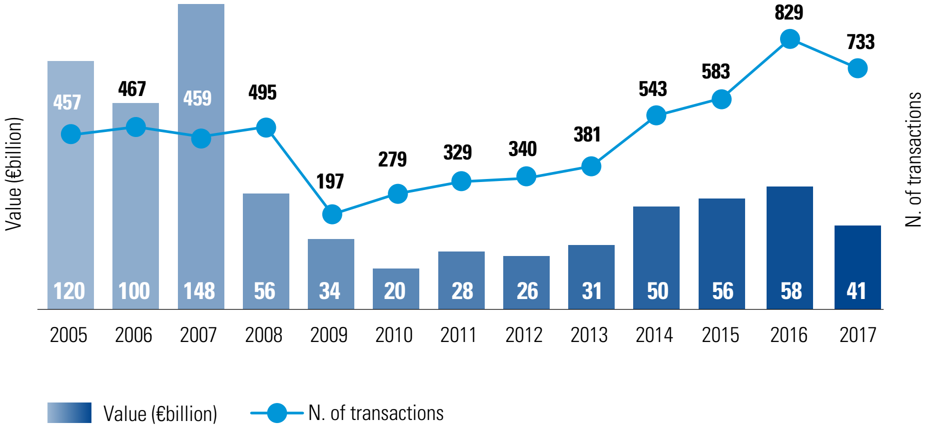
Financial, legal and tax information is generally prepared in Italian and based on Italian GAAP. A potential investor should consider that financial information may differ if reported under the GAAP of other jurisdictions.

Employee issues

Employees are generally highly knowledgeable, experienced and skilled as a result of the Italian system of in-house apprenticeships and vocational studies. Employee remuneration is commonly subject to collective bargaining agreements enforced by strong trade unions. A potential investor should be fully aware that certain company or group restructurings are subject to an agreement with the relevant trade union.

1.3 Private investment in Italian companies

Italian mergers and acquisitions from 2005 to 2017: value and number of transactions



Source: KPMG Corporate Finance

(*) Pre-consolidated data

Due to the weak economic outlook and the credit crunch, in 2008 the M&A market reported the lowest number of transactions in four years, falling further in 2009.

After a period of public investment, mainly through the "Cassa Depositi e Prestiti"*, 2014 was a year of corporate reorganisations involving several leading Italian groups.

In 2016, the M&A market showed solid growth (25 percent gain in value).

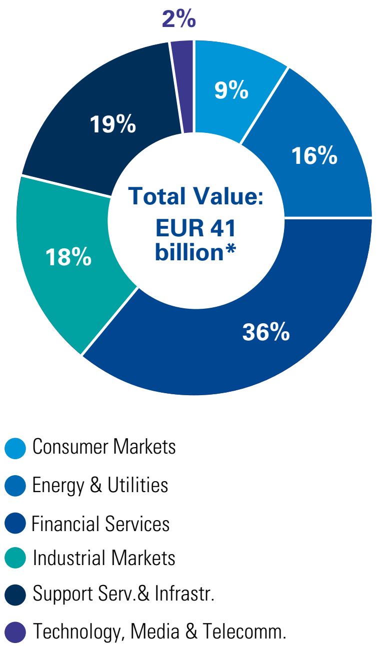
In 2017, however, the number of transactions (733) and their value (EUR 41 billion) fell**.

- Italian-managed transactions abroad fell to 149, with a value of EUR 9.3 billion (in 2016 there were 165 transactions, with a value of EUR 12.1 billion).
- Foreign M&A operations in Italy dropped to 244, with a value of EUR 20 billion, representing around one-third of the total (in 2016 there were 261 foreign-managed transactions in Italy).

**Cassa Depositi e Prestiti is a joint-stock company, 82.8 percent owned by the Italian Ministry of Economy and Finance and 15.9 owned by various banking foundations. The remaining 1.3 percent is represented by treasury shares.*

***Figures as at 18 December 2017.*

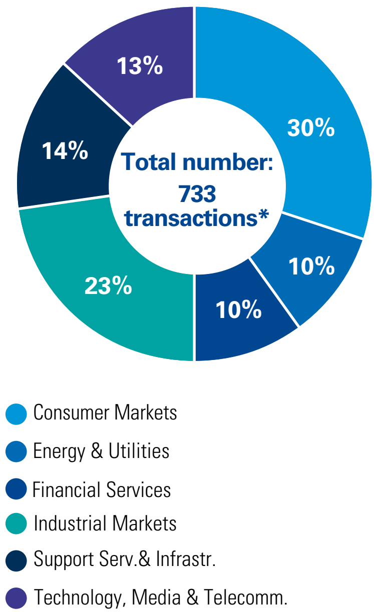
2017 M&A values by industry (target company)



Source: KPMG Corporate Finance

(*) Pre-consolidated data

2017 M&A number of transactions by industry (target company)



Source: KPMG Corporate Finance

(*) Pre-consolidated data

2. Incentives for investors

2.1 Main funding and facilities offered by Europe

2.1.1 Juncker Plan

The investment plan for Europe (also known as the "Juncker Plan") aims to mobilise at least EUR 315 billion in private and public investment over three years (2015-2018). Its goals are to:

- boost investment;
- increase competitiveness;
- support long-term economic growth in the EU.

The plan was proposed by the European Commission in November 2014, following the Council of the European Union's call in June 2014 to address low levels of investment in the EU and boost growth and employment.

As part of the Juncker Plan, the Council adopted a regulation on the EFSI on 25 June 2015, following approval by the European Parliament on 24 June. This regulation entered into force at the beginning of July 2015.

Italy is pressing ahead with new projects and new joint ventures with European partners to increase its share of the EUR 315 billion in funding promised by the Juncker Plan. Italy needs to secure guarantees from the EFSI in order to increase its loans from the EIB and EIF and finance its riskier projects.

The investment plan for Europe has three parts to it:

- Setting up a European fund for strategic investments
- Ensuring that investment finance reaches the real economy
- Improving the investment environment.

2.1.2 European Fund for Strategic Investments (EFSI)

The EFSI uses public funds to mobilise additional private investment. It gives credit protection to financing provided by the EIB and the EIF. The fund was established as an account managed by the EIB.

The EFSI focuses on investment in a broad range of sectors, including infrastructure, energy, research and innovation, broadband and education. It also supports SMEs (mostly via the EIF).

The fund consists of a EUR 16 billion guarantee from the EU budget and EUR 5 billion from the EIB.

The fund - EUR 21 billion in total - is expected to achieve an overall multiplier effect of 1:15, and thus generate up to EUR 315 billion in total investments.

In its first 18 months, the EFSI stimulated EUR 138.3 billion in new investments in 27 Member States. Some 290,000 SMEs and mid-cap companies are expected to benefit, gaining better access to finance.

New proposal regarding the EFSI

In December 2016, the Council finalised its negotiating position on a new proposal for a regulation extending the term of the EFSI until 31 December 2020 and introducing a number of technical improvements to the EFSI and EIAH.

Other key changes to the EFSI agreed by the Council include:

- increasing the investment target to EUR 500 billion;
- increasing the EU budget guarantee to EUR 26 billion (EUR 16 billion of which will be available for guarantee calls until mid-2018);
- increasing the EIB's contribution to EUR 7.5 billion (from the current EUR 5 billion).

The improvements also aim to ensure that the fund supports as many EU countries as possible, and that it finances a wider range of sectors than before, such as agriculture, forestry, fisheries and other parts of the bio-economy, as well as climate-related actions.

The Council will begin discussions with the European Parliament on the final version of the draft regulation when the Parliament has finalised its negotiating stance.

2.1.3 Ensuring that investment finance reaches the real economy

A European investment project portal and a hub called EIAH have been established to help investment finance reach the real economy.

The hub provides technical assistance and support. It bundles together existing EIB technical assistance programmes and provides additional advisory services for cases not covered by these.

The project portal helps potential investors to find information about each project and investment opportunities.

In December 2016, the Council finalised its negotiating position on a proposal to introduce technical improvements to the EIAH. The proposal aims to make it easier for the EIAH to provide more targeted local technical assistance across the EU. It also aims to make it easier to combine EFSI financing with support from other sources of EU funding, including European structural and investment funds.

2.1.4 Improving the investment environment

The aim is to boost investment by improving the business environment and easing access to finance, especially for SMEs.

The overall objective is to remove barriers to investment and create simpler, better and more predictable regulation in the EU, especially in infrastructure, where investments span several years or decades.

To help improve financing conditions in the EU, the plan envisages the creation of a Capital Markets Union to reduce fragmentation in the financial markets and increase the supply of capital to businesses and investment projects.

In December 2016, the Council adopted conclusions on a number of issues affecting investment in the EU, identified by the Economic Policy Committee. The conclusions should influence the recommendations made to the Member States under the European Semester, the EU's policy monitoring process.

2.1.5 Results and examples of EU funding used by Italy

Juncker Plan results in Italy by December 2017

Total financing in Italy by the EFSI amounts to EUR 6.5 billion and is set to trigger EUR 36.7 billion in additional investments.

Infrastructure and innovation projects

- Fifty-four approved projects financed by the EIB with EFSI backing.
- Approximately EUR 4.6 billion in total financing.
- Set to trigger EUR 14 billion in total investments.

Small and medium-sized enterprises

- Fifty-nine approved agreements with intermediary banks or funds financed by EIF with EFSI backing.
- EUR 1.9 billion in total financing.
- Set to trigger approximately EUR 22.4 billion in investments with some 206,211 SMEs and mid-cap companies expected to benefit from improved access to finance.

Examples of EFSI-backed projects in Italy

Dolomiti Energia

- EFSI-backed financing: EUR 100 million.
- Set to trigger EUR 180 million in total investments.

The EIB is lending Dolomiti Energia EUR 100 million to renew and develop its gas and electricity distribution networks. The financing will strengthen and maintain hydroelectric plants in the province of Trento in northern Italy, the main area in which Dolomiti Energia operates and where it employs 1,400 people.

Telecom Italia: high-speed broadband

- EFSI-backed financing: EUR 500 million.
- Set to trigger EUR 1,808 million in total investments.

The EIB is providing EUR 500 million to Telecom Italia for the rollout of a new broadband access network - combined fibre and copper solutions - for ultra-high-speed broadband services in Italy. As a result of this financing, 7 million more households will benefit from high-speed broadband, increasing the population coverage by 32 percent to 60 percent of all Italian households.

Umbria Legno: wooden furniture

Umbria Legno is a young company specialising in the design and manufacture of wooden garden furniture. Being a start-up with no credit history, Umbria Legno struggled to access financing to grow its business. The solution came through a bank loan with the help of Confidicoop Marche, backed by the Juncker Plan. The business is now growing and taking on new staff.

2.2 Main incentives offered by the Italian government

2.2.1 Development contracts

Development contracts (*contratti di sviluppo*) provide incentives for major investments in industry (including businesses that process and sell agricultural products), tourism, environmental protection, and R&D and innovation. The total minimum investment required is EUR 20 million, exclusive of infrastructure expenses. For businesses that process and sell agricultural products, the amount is reduced to EUR 7.5 million. The investment programme must be concluded within 48 months of the date of approval of the application for financing.

Development contracts are targeted at Italian and foreign large, medium-sized and small enterprises. The recipients of the subsidies are:

- the applicant company, which is responsible for technical and financial compliance with the contract and which is also the formal point of contact for Invitalia, also on behalf of other companies involved;
- any companies that implement investment projects under the development contract;
- the participants in any research, development and innovation projects.

Development contracts deliver the following financial benefits (also in combination):

- non-repayable grants towards facilities;
- non-repayable grants towards expenses;
- subsidised financing;
- interest subsidies.

The size of the grant depends on the type of project (investment or research, development or innovation), the location of the initiative, and the size of the company. There are different incentives for environmental projects.

2.2.2 National Industry 4.0 Plan

The expression 'Industry 4.0' refers to the so-called 'fourth industrial revolution'. Made possible by the availability of low-cost sensors and wireless connections, this new industrial revolution is characterised by an increasingly pervasive use of data and information, computerised technology and data analysis, new materials, and totally digitised and interconnected components and systems (the Internet of things and machines).

Italy has developed a National Industry 4.0 Plan, which includes various practical measures. The Ministry of Economic Development's main aims are to:

- promote all forms of advanced technology equally and impartially;
- implement horizontal actions, avoiding vertical or sector-based ones;
- work on enabling factors;
- steer existing instruments to promote technological leaps forward and productivity;
- coordinate key stakeholders without acting as a controller or decision-maker.

The plan follows four strategic lines.

- **Innovative investments:** the aim is to stimulate private investments in Industry 4.0 technology drivers and increase private expenditure in R&D and innovation.
- **Enabling infrastructure:** the strategy is to ensure adequate network infrastructure and the security and protection of data, and to cooperate in establishing the IoT, open standards and interoperability criteria.
- **Expertise and research:** the focus is on developing skills and stimulating research through *ad hoc* training courses.
- **Awareness and governance:** the aim is to generate interest in Industry 4.0 opportunities and create shared public/private governance policies.

2.2.3 National Operational Programme for Research and Innovation

This programme aims to promote the growth of transition regions (Abruzzo, Molise and Sardinia) and less developed regions (Basilicata, Campania, Calabria, Puglia and Sicily), by allocating a total of EUR 1,286 million.

In line with the strategic framework of the Smart Specialisation Strategy (S3) and the National Programme for Research Infrastructure (PNIR), it is structured around 12 fields of application: aerospace, agri-food, blue growth (sea economy), green chemistry, design, creativity and Made in Italy (not R&D), energy, smart manufacturing, sustainable mobility, health, secure and inclusive communities, technology for life environments, and technologies for cultural heritage.

The programme focuses on:

- investing in education, training and vocational training in skills and lifelong learning by developing educational and training infrastructure;
- strengthening research, technological development and innovation.
- The main areas of investment to be supported under the programme include:
- promoting business investment in research and innovation (74 percent of the total resources);

- investing in education, training and vocational training in skills and lifelong learning by developing educational and training infrastructure (22 percent);
- providing technical assistance to support the implementation of the programme (4 percent).

2.2.4 Invitalia

Invitalia is a partner for foreign investors who wish to set up or expand their business in Italy. Its mission is to offer a single and reliable point of reference to current and new investors. The agency offers a wide range of tailor-made, free-of-charge and confidential services to foreign investors, including:

- pre-investment information
- business set-up assistance
- after care.

It does this through stable and structured cooperation with institutional and professional partners, such as regional government bodies, institutional partnerships, national and international banks (such as the China Development Bank, China Exim Bank, Bank of Tokyo-Mitsubishi UFJ, Mizuho Bank Ltd, Unicredit S.p.A., BNL Gruppo BNP Paribas, Banca Popolare di Sondrio, and Banca Intesa San Paolo).

Invitalia supports international action plans to promote investment opportunities in priority sectors, assisting companies in developing business solutions and strategic partnerships.

Invitalia manages institutional development contracts on behalf of the government, planning projects, evaluating them, and implementing procedures.

Minimum investment thresholds

- EUR 20 million for industry (EUR 7.5 million for the agri-food industry).
- EUR 20 million for tourism.
- EUR 20 million for environmental protection.

Types of incentives

Grants and soft loans for capital investments and research and experimental development investments.

2.3 Main incentives offered by the regions

Regional policy has a strong impact in many fields. Regional investments help to meet many EU policy objectives and implement accompanying measures in education, employment, energy, the environment, the single market, and research and innovation. In particular, regional policy provides the necessary investment framework to meet the goals of the Europe 2020 strategy for smart, sustainable and inclusive growth in the European Union by 2020.

All Italian regions have issued specific laws providing business incentives such as:

- grants or subsidised loans to SMEs for capital expenditure and business creation;
- aid to the service industry, trade and tourism;
- aid to local business sectors.

These incentives are often combined with local assistance and consulting services, provided by either local or international business development agencies or by regional financial companies.

Regional programmes are also implemented for the specific purpose of benefitting from the ERDF and the ESF, described below.

2.3.1 European Regional Development Fund (ERDF)

ERDF's aim is to finance infrastructure and manufacturing plants to create and safeguard sustainable jobs. It is aimed specifically at SMEs and provides various financing facilities, including venture capital, debt and guarantee funds, etc.

Areas of investment include the development of industrial sites, research and technology, information technology, protection of the environment, energy, education, equal opportunities, and transnational, cross-border and interregional cooperation.

The ERDF focuses its investments on the following key priority areas:

- innovation and research
- the Italian Digital Agenda
- support for SMEs
- the low-carbon economy.
- The amount of ERDF resources allocated to these priority areas depends on the category of the region.
- In more developed regions (GDP per capita > 90 percent of the EU-27 average), at least 80 percent of funding must go on at least two of the priority areas.
- In transition regions (GDP per capita between 75 percent and <90 percent of the EU-27 average), this drops to 60 percent.
- In less developed regions (GDP per capita <75 percent of the EU-27 average), this drops further, to 50 percent.

Furthermore, the following proportions of ERDF resources must be channelled specifically towards low-carbon economy projects:

- In more developed regions: 20 percent
- In transition regions: 15 percent
- In less developed regions: 12 percent.

Under European Territorial Cooperation programmes, at least 80 percent of funds must be used on the four priority areas listed above.

The ERDF also pays particular attention to specific territorial characteristics. ERDF action is designed to reduce economic, environmental and social problems in urban areas, with a special focus on sustainable urban development. At least 5 percent of ERDF resources are set aside for this field, through integrated actions managed by cities.

Areas that are naturally at a geographical disadvantage (remote, mountainous or sparsely populated areas) benefit from special treatment. Outermost areas also benefit from specific assistance from the ERDF to address possible disadvantages caused by their remoteness.

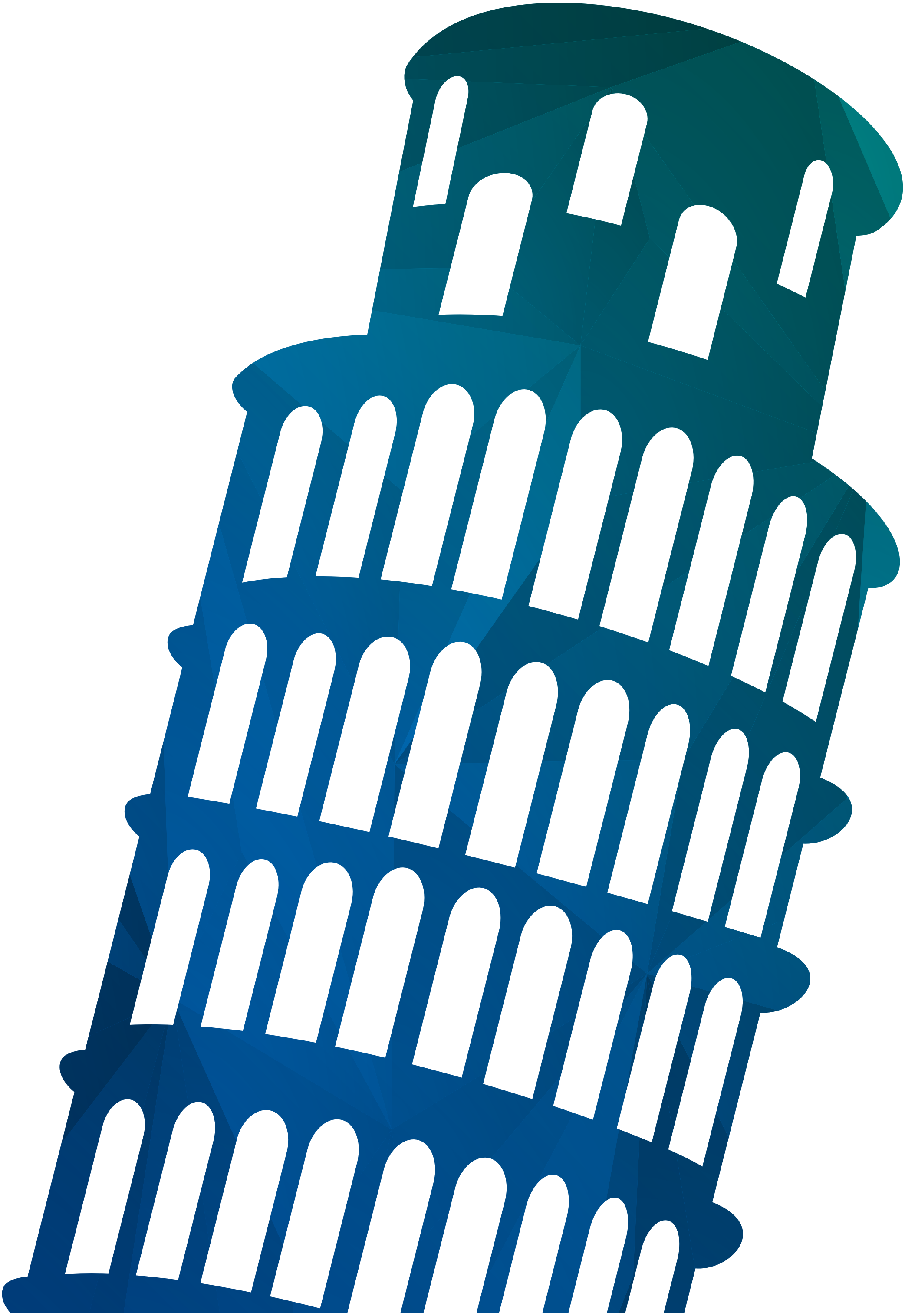
2.3.2 European Social Fund (ESF)

The ESF is Europe's main instrument for supporting jobs, helping people get better jobs, and ensuring fairer job opportunities for all EU citizens. It works by investing in Europe's human capital - its workers, young people and job hunters. ESF financing of EUR 10 billion a year is improving job prospects for millions of Europeans, in particular those who find it difficult to find work.

The European Union is committed to creating more and better jobs and a socially inclusive society. These goals are at the core of the Europe 2020 strategy for generating smart, sustainable and inclusive growth in the EU. The current economic crisis is making this an even more serious challenge. The ESF is playing an important role in meeting Europe's goals, and in mitigating the consequences of the economic crisis - especially the rise in unemployment and poverty levels.

The ESF drive to boost employment is aimed at all sectors and groups of people who can benefit. However, there is a focus on the groups that are worst off or can benefit significantly from ESF funding in the following areas:

- opening pathways to work;
- creating chances for youth;
- boosting business;
- caring for careers.



3. The incorporation or acquisition of a company: legal aspects

3.1 Foreign investors

There are no limits on investments made in Italy by nationals of other European Union Member States and such investments are treated in the same way as those made by Italian nationals.

Investments made by non-EU nationals are subject to reciprocity: a foreigner has the same rights as an Italian citizen if Italian citizens can carry out the same activities in the foreigner's country. Therefore, foreigners enjoy the same rights that the national law of their own country allows to Italian citizens in that country.

Authorisations, and compliance with other conditions, may be necessary for investments in certain industries and regulated sectors (e.g. telecommunications and banking/financial intermediation) through the incorporation or acquisition of a company.

3.2 Company law

3.2.1 General overview

Foreign investors who intend to conduct commercial activities in Italy can choose from a wide range of legal entities that may be incorporated under Italian law, depending on the company's organisational model, its commercial objectives, the level of capital to be committed, the extent of liability, and the tax and accounting implications.

There are two main categories of legal entities:

(i) partnerships (*società di persone*)

(ii) companies (*società di capitali*).

The most important difference between these is that partnerships' assets and liabilities are only partially segregated from the assets and liabilities of their members, while companies' assets and liabilities are completely segregated.

A partnership may be set up in three different forms, as a:

(a) simple partnership (*società semplice*) - this partnership may not be used to carry out business activities;

(b) general partnership (*società in nome collettivo*) - in this partnership, all partners are jointly liable for all of the firm's debts and obligations;

(c) limited partnership (*società in accomandita semplice*) - this is a partnership with two different categories of partners: *soci accomandanti* whose liability is limited to the extent of their capital contribution, and *soci accomandatari* who are jointly liable for all debts and obligations of the partnership.

These kinds of partnerships do not have legal personality and the partners (with the exception of *soci accomandatari*) have unlimited liability.

There are three different kinds of company that may be incorporated under Italian law.

(a) A joint-stock company (*società per azioni or S.p.A.*) - in which the participants' equity is represented by shares.

(b) A limited liability company (*società a responsabilità limitata or S.r.l.*) - in which the capital stock is represented by quotas as opposed to shares.

(c) A partnership limited by shares (*società in accomandita per azioni or S.a.p.a.*) - this combines features of both limited partnerships and joint-stock companies. It is a company in which at least one member has unlimited liability, while the liability of the remaining members is limited to the extent of their capital subscriptions. Apart from this difference, an S.a.p.a. is similar to an S.p.A.

Below is a brief outline of the two main kinds of Italian companies: joint-stock companies and limited liability companies.

3.2.2 Joint-stock companies and limited liability companies

The basic principle governing both types of companies is that only the company is liable with its assets for its obligations: the liability of the shareholders/quotaholders is therefore limited to the amount paid in, or to be paid in, as corporate capital.

Joint-stock companies (S.p.A.s)

The two key features of an S.p.A. are the limited liability of all its members and the division of the capital into shares.

Corporate capital, shareholders and shares

Upon formation, a joint-stock company requires minimum share capital of EUR 50,000, of which at least 25 percent (amounting to EUR 12,500) must be paid to the directors.

For companies operating in specific fields (e.g. the insurance sector, banking) a higher amount of capital is required.

The minimum number of shareholders is one: in this case the share capital must be paid up in full immediately upon formation of the company. There is no maximum number of shareholders. Shareholders of an S.p.A. can be either natural or legal persons, Italian or foreign (see above).

The capital is divided into freely transferable (the company's articles of association may set limits on the transferability of shares) and indivisible shares of equal value (the nominal value of each share corresponds to a fraction of the entire share capital), conferring equal rights, both administrative (e.g. voting rights) and economic (e.g. the right to a share of net profits). In addition to ordinary shares, the company's articles of association may provide for particular classes of shares granting special rights, also in respect of losses.

If permitted by the company's articles of association, capital contributions may also be represented by assets (either tangible, including receivables, or intangible). Contributions in kind must be fully paid in at the time of subscription and the contributor must provide a sworn appraisal of the assets by a court-appointed expert (in certain circumstances a simplified procedure for contributions in kind - without a sworn appraisal - is admitted). In no event can the overall value of the contribution be lower than that of the aggregate increase in share capital.

Governance

The traditional corporate governance model of an S.p.A. is based on:

(i) a shareholders' meeting;

(ii) a governing body (board of directors or sole director, appointed by the shareholders' meeting);

(iii) a supervisory board (board of statutory auditors and registered audit firm, appointed by the shareholders' meeting).

At least one shareholders' meeting must be held each year, to approve the company's annual financial statements, no later than 120 days or, in exceptional circumstances, no later than 180 days after the close of the financial year.

Extraordinary shareholders' meetings must be held to approve matters such as amendments to the articles of association (including amendments to the corporate capital), the winding-up of the company (including the appointment of liquidators, their substitution and their powers), and mergers or similar corporate reorganisations.

The management of the company may be entrusted to a sole director or a board of directors, who handle all matters and transactions necessary or advisable for attaining the corporate object. Their management powers involve a duty to take all necessary and appropriate steps to attain the corporate object and to ensure compliance with the law, including the preparation of the draft annual financial statements.

S.p.A.s must also appoint a board of statutory auditors (*collegio sindacale*), formed by three or five statutory auditors and two alternate auditors. The main duty of the board of statutory auditors is to supervise compliance with the law and the articles of association. It must also verify that the company's organisational, administrative and accounting structures are adequate and work properly. Accounting controls are the responsibility of the board of statutory auditors or an audit firm.

Besides the traditional governance system described above, two further systems are available for S.p.A.s.

In the first (the *sistema monistico* or one-tier model), management and control lies with a board of directors and a management control committee appointed from amongst the members of the board. The management of the company is the exclusive responsibility of the board of directors, whilst the management control committee supervises the adequacy of the company's organisational structure, internal control system and administrative and accounting system. The committee also performs any additional functions assigned to it by the board of directors and, in particular, liaises with the auditors or board of statutory auditors with regard to accounting controls.

The second (the *modello dualistico* or two-tier model) provides for two corporate bodies: a management board and a supervisory board. The management of the company is entrusted exclusively to the management board, which must do everything necessary or advisable for attaining the corporate object. The supervisory board is entrusted with the functions of the board of statutory auditors and with those functions that, in the traditional model, are the sole responsibility of the shareholders' meeting.

Neither model includes a board of statutory auditors: accounting controls are carried out by a registered auditor (or an audit firm).

Limited liability companies (S.r.l.s)

This form of company is the most widely used in Italy because of its organisational flexibility and limited liability.

A limited liability company is suitable for companies with few quotaholders (even a sole quotaholder) and slim management structures.

Corporate capital, quotaholders and quotas

The minimum corporate capital for an S.r.l. is EUR 10,000 (see the minimum corporate capital for a simplified S.r.l. below), of which at least 25 percent (EUR 2,500) must be paid to the directors.

Law no. 99 of 9 August 2013 stipulates that the minimum capital of EUR 10,000 may also be built up over time ("progressive share capital") provided that every financial year the company allocates at least 20 percent of the year's net profits to the legal reserve.

The minimum number of quotaholders is one: in this case the corporate capital must be paid up in full immediately upon formation of the company. As with S.p.A.s, there are no restrictions on the number, residence or nationality of the quotaholders.

The corporate capital is divided into as many quotas as there are quotaholders; the quotas, unless indicated otherwise in the company's articles of association, are freely transferable. Rights, both administrative and economic, belong to quotaholders in proportion to the size of their stake in the company, unless the articles of association allow individual quotaholders special rights relating to the management of the company or the distribution of profits.

If expressly provided for by the company's articles of association, capital contributions may also be made in kind. Unlike contributions to the capital of joint-stock companies, those made to S.r.l.s can also consist of services supplied by the quotaholder.

Governance

The traditional model described above for S.p.A.s generally applies to S.r.l.s, with a number of simplifications and a large degree of flexibility.

Unless otherwise provided for in the company's articles of association, the management of a limited liability company must be entrusted to one or more quotaholders. Those quotaholders not involved in the management of the company are entitled to receive information from the directors and to consult and inspect, also through trusted professionals, the company's books and management documentation, and thus to monitor the directors' activities.

A limited liability company is not required (except in specific cases provided for by law) to appoint a supervisory body: if the quotaholders decide to appoint a supervisory body (or if this is required by law), this can be a sole statutory auditor (sindaco unico) or a board of statutory auditors (*collegio sindacale*).

When a limited liability company has to appoint a supervisory body, this is entrusted not only with the function of supervising compliance with the law and the articles of association, but also with the task of auditing the accounts, unless the articles of association or the law require the company to appoint a registered auditor (or an audit firm).

Simplified S.r.l.s

In addition to the ordinary model, there is another type of S.r.l. - a simplified limited liability company - which was introduced in 2013 to encourage entrepreneurship.

Its capital may not be lower than EUR 1 nor higher than EUR 9,999.99. The capital must be fully paid in cash to the governing body at the time of the company's incorporation.

The quotaholders of a simplified S.r.l. may only be individuals, not companies or other legal entities.

The articles of association of this new type of S.r.l. must be prepared according to a standard model prescribed by law.

No fees are due to the notary for the incorporation of this kind of company.

3.2.3 The main steps in incorporating a company

The main steps in the incorporation of an Italian company are outlined below.

(i) Drafting of the memorandum of association: this records essential information about the company (notarial deed).

(ii) Drafting of the articles of association: these contain rules for the operation and governance of the company (notarial deed).

(iii) Registration with the local VAT office: the new company must apply for a VAT number and tax code as soon as it has been incorporated.

(iv) Acquisition of tax codes for the directors: the members of the board of directors, if foreign, must apply for Italian tax codes.

(v) Enrolment in the Trade Register: the company acquires legal status after registration.

The process of setting up an Italian company can take from one to three weeks.

3.2.4 Liquidation

A company can be dissolved and liquidated for one of the following reasons.

(i) It reaches the end of its duration, as established in its articles of association.

(ii) The purpose for which it was established has been achieved or can no longer be achieved.

(iii) The shareholders'/quotaholders' meeting can no longer operate or remains inactive.

(iv) Its capital falls below the legal minimum.

(v) Its shareholders/quotaholders resolve at an extraordinary general meeting to liquidate the company (voluntary liquidation).

(vi) The company is unable to repay the stake of a departing shareholder/quotaholder.

(vii) Any other reason established in the articles of association or by law.

Most of these grounds for dissolution are automatic, i.e. they do not have to be public knowledge and do not depend on a resolution or public record. When grounds arise, directors have a duty to ascertain the situation, record the event at the Trade Register, and call a shareholders'/quotaholders' meeting to appoint liquidators or remove the cause of liquidation.

If there is cause to wind up a company, the directors may not engage in particularly risky operations and must merely maintain the company's ordinary operations.

If there are grounds for winding up the company (e.g. loss of capital) and the directors or shareholders'/quotaholders' meeting fails to take action, the court will appoint liquidators, at the request of the statutory auditors or individual shareholders/quotaholders.

The main function of liquidators is to dispose of the company's assets, pay off its creditors and prepare the final liquidation financial statements and a report specifying the amount, if any, of the proceeds from the liquidation available for distribution to each shareholder/quotaholder.

If the company's funds are insufficient to repay its debts and liabilities, the liquidators may ask the shareholders/quotaholders to provide the necessary resources, in proportion to their interest in the company. No repayment of capital or earnings can be made before liquidation is complete, unless the accounts show that such payments will not prevent the full repayment of the company's creditors, or unless the shareholders/quotaholders arrange appropriate guarantees.

Liquidation status may be revoked at any time by means of a shareholders'/quotaholders' resolution and, where necessary, after the cause of liquidation has been removed.

The liquidation procedure ends with the distribution of any proceeds from the liquidation to the shareholders/quotaholders. Immediately afterwards, the company is struck off the Trade Register (deregistration) and the books are filed with the court, which holds them for ten years.

3.2.5 Representative offices and branches

Foreign companies have the right to establish the following in Italy:

(i) one or more representative offices, and/or

(ii) one or more branches.

Representative office

A representative office - which is not a legal entity of a foreign company in Italy - is characterised by a local presence to promote the company and its products/services and to perform other non-business operations. From a tax perspective, if the representative office carries on a business activity - such as selling goods, providing services, etc. - it is considered a permanent establishment.

A representative office is not required to keep books, publish financial statements or file income tax or VAT returns. It is, however, required to keep ordinary accounts in order to document the expenses (e.g. personnel costs, office equipment) to be covered by the foreign company's head office.

The establishment of a representative office must be registered with the Trade Register.

Branch

A branch is an extension of the foreign entity and depends - both administratively and financially - on its headquarters. It uses the same name and legal form as the foreign company.

Moreover, it does not have its own internal governing body but is managed directly by the governing body of the foreign company, which appoints one or more permanent legal representatives (preposto/i), who are entrusted with the powers to manage and represent the branch before third parties.

It does not have its own capital and is not required to draw up annual financial statements: a copy of the financial statements of the headquarters must be filed at the Trade Register.

An annual report is only required in order to prepare the Italian income tax return.

Contracts concluded by the branch through its legal representative are binding upon the foreign company and any liabilities for breach of the contractual obligations are directly attributable to the latter.

The setting-up of a branch, together with the appointment of the legal representative, must be recorded in the Trade Register.

3.3 M&A transactions

3.3.1 General overview

Generally, M&A transactions involving existing companies can be carried out through:

(i) share/quota deals involving the purchase of shares (S.p.A.) or quotas (S.r.l.);

(ii) asset deals involving the purchase of some or all of the assets of the target.

Share/quota deals and asset deals are not subject to general investment barriers, with the exception of the limits on foreign investments described above.

When the turnover of the undertakings involved in the acquisition exceeds certain thresholds, prior notice of the transaction has to be given to the:

(i) Italian Competition Authority, and/or

(ii) European Commission.

While in most instances the choice between a share/quota deal and an asset deal will be driven by tax considerations (see below), there are several legal implications to be taken into account in structuring a transaction, and to be carefully addressed when drafting agreements.

3.3.2 Share/quota deals

In a share/quota deal, the purchaser succeeds as shareholder/quotaholder of the target. The purchaser becomes the owner of the legal entity and acquires the company's assets as well as all existing and potential liabilities and debts. It also takes over all the company's contracts, with all the related rights and obligations.

The main benefit of a share/quota deal is that it involves fewer formalities than an asset deal and provides greater certainty of continuity for the underlying business, with the notable exception of the effects of any changes to the control provisions in agreements entered into by the target company.

A change in the controlling interest of the target company does not result in a change of employer on paper, and there are no express legal obligations to notify or consult with trade unions in advance of the quota/share purchase, as is the case for the transfer of a business.

Another major advantage of a share/quota deal, from the seller's perspective, is that all liabilities remain with the company and therefore pass to the buyer upon transfer of ownership.

If the transaction does not involve 100 percent of the corporate capital, it is advisable to enter into agreements with the shareholders/quotaholders to regulate the governance of the target.

3.3.3 Asset deals

In an asset deal, the purchaser acquires all the assets or certain business units of the target. It is important to define the scope of the transaction (i.e. the assets, contracts, liabilities, workforces being transferred).

In asset deals, the following issues have to be taken into consideration.

(i) Despite any agreements between the parties that say otherwise, the purchaser and the seller become jointly liable to creditors for all the debts of the business unit shown in the accounting records.

(ii) The purchaser takes over all contracts pertaining to the business, without prejudice to the right of the counterparty to terminate the contracts on reasonable grounds.

(iii) The seller is bound by a non-competition obligation for a period of five years after the transfer.

(iv) If the transfer involves a company with more than 15 employees, a special procedure involving the trade unions has to be followed (written notice must be sent to the unions at least 25 days before the agreement is signed).

3.3.4 Takeover bids for listed companies

There are special rules for takeover bids for listed companies: a buyer who directly, indirectly or jointly acquires a stake of more than 30 percent in a target company listed on the Italian Stock Exchange must make a public offer or takeover bid (TOB) for the entire corporate capital of the target (a "Mandatory TOB").

The TOB price should not be lower than the highest price paid by the bidder over the last 12 months for any target share.

If no target shares have been purchased against payment in the last 12 months, the TOB price should not be lower than the market average over the previous 12 months.

The main steps in a Mandatory TOB are outlined below.

(i) Announcement of the TOB: notification of the obligation to make the bid is sent immediately to CONSOB.

(ii) Filing of the bid documents: the bid documents are submitted to CONSOB for publication (no later than 20 days after the announcement).

(iii) Approval of the bid documents by CONSOB (within 15 days of filing).

(iv) Immediate publication of the TOB.

(v) Start of the subscription period (not until five days after publication), which lasts between 15 and 25 days.

After a first TOB, other steps may be taken to squeeze out minority shareholders, depending on the size of the stake acquired with the first TOB.

(a) If the stake acquired is less than 90 percent: the bidder may make a further TOB for the remaining shares, with no price constraints.

(b) If the stake acquired is 90 percent or more, but below 95 percent: the bidder can place a minimum stake back on the market within 90 days to guarantee sufficient floating share capital or acquire the minority stake of any shareholder asking to sell. The squeeze-out price is set according to CONSOB rules.

(c) If the stake acquired is 95 percent or higher: the bidder (i) must acquire the minority stake of any shareholder asking to sell; and (ii) will have the right to acquire any minority stake within three months and to delist the target. The squeeze-out price is set according to CONSOB rules.

3.4 Corporate criminal liability

Legislative Decree no. 231 of 8 June 2001 introduced corporate criminal liability into Italian law for specific types of offences.

A company can be held responsible if the offence:

(i) is committed in the interests or to the advantage of the company, and

(ii) is committed by persons who have a work relationship (directors, employees, etc.) with the company.

The crimes which may result in corporate criminal liability are detailed in the decree. They include:

(a) offences against the public administration (such as corruption or embezzlement);

(b) corporate crimes (such as the falsification of financial statements or prospectuses);

(c) offences involving market abuse;

(d) money-laundering crimes;

(e) occupational health and safety crimes;

(f) environmental crimes.

Liability may result in fines of up to EUR 1.5 million (for multiple crimes connected to the same underlying action, fines may be increased threefold, to a maximum of EUR 4.6 million) and other penalties that may endanger the survival of the company, such as:

- suspension or revocation of authorisations, licences or concessions;
- exclusion from public financing, grants or subsidies;
- a permanent operating ban.

The company may be exempted from liability if it can prove that it has adopted and effectively implemented an Organisational, Management and Control Model that (i) is capable of preventing offences, (ii) details the key areas of risk, and (ii) is supplemented by suitable disciplinary and treasury management operating procedures;

Moreover, the company must have appointed a supervisory board, selecting its members from a pool of qualified persons who come from a legal or accounting background and satisfy the requirements of independence, professionalism, ethical standards and expertise. Vested with independent powers, the duty of the supervisory board is to keep the Organisational, Management and Control Model up-to-date, monitor its effectiveness, and check that it is complied with.

4. Accounting & reporting

4.1 Legal framework and regulations

Accounting and reporting are mainly regulated by:

- the Italian Civil Code
- Italian tax codes
- Italian GAAP
- International Accounting Standards/International Financial Reporting Standards, where applicable.

4.2 Requirements

In Italy the double-entry method of bookkeeping is used. Records must be made in chronological order, without empty spaces or notes, and must not contain deletions; only where strictly necessary can text be crossed through in such a way that the letters remain legible. The general ledger must report all transactions on a daily basis.

The accounting books can also be kept on digital supports. There are specific provisions in place to guarantee the true date of entries. All books and records, even if they are computerised, must be kept for at least ten years after the date of the last entry, together with all related business correspondence.

4.3 Compulsory bookkeeping

4.3.1 The general ledger

All the transactions of an Italian company must be recorded in this ledger in detail and in chronological order. Each entry must show the date of the transaction and include a brief description. All entries must be made within 60 days of the relevant transactions.

The general ledger must be consecutively numbered on each page and also show the tax year (e.g. 2017/1, 2017/2, 2017/3, etc.). Stamp duty (currently EUR 16) is due at the beginning of every 100 pages.

Local software is normally designed so that each entry in the general ledger is also automatically recorded in the VAT registers.

Amounts in foreign currency cannot be converted at an average monthly exchange rate, since it is compulsory for tax and legal purposes to adopt the official exchange rate valid on the date of the transaction.

Accounts must be closed and reopened at the end of the financial year. The general ledger must be supported by ledger cards for each account (e.g. a 'bank deposit account XXY' ledger card; a 'cash 1 account' ledger card; a 'client XYZ' ledger card).

All the transactions that are chronologically recorded in the general ledger also have to be recorded in the ledger cards.

To summarise, the following details should appear:

- the progressive number of the transaction;
- the progressive number of the general ledger line;
- the date of the transaction;
- the code and/or title of the account;
- the nature of the transaction (not mandatory but recommended);
- a brief description of the transaction;
- the third party in the transaction;
- the adjusting/closing/opening entries at the end of the year.

The end of each page should show the aggregate debit/credit amount to be carried forward to the next page.

To provide bookkeeping staff with comprehensive information, a petty cash book and a cheque disbursement book are also required.

4.3.2 The inventory ledger

The inventory ledger must contain a description and valuation of the company's assets and liabilities as reported in the balance sheet.

4.3.3 Business correspondence

The company must keep copies of all documents (letters, invoices, telegrams) sent and received in connection with each transaction. The copies must be stored in an orderly manner.

4.4 The language of accounting records

Civil law and tax law do not expressly impose the use of Italian in the general ledger and VAT books. Therefore, using a foreign language for accounting records is not a violation of VAT and accounting rules.

However, according to the Italian Civil Code, books and accounting records may be used as elements of proof and put on record in court cases, and the law requires the Italian language to be used for legal documents in court proceedings.

Considering that the records may be presented to the tax authorities/courts during assessments or litigation proceedings, it is thus advisable for them to be in Italian.

4.5 Keeping accounting records abroad

The Italian Civil Code and tax rules do not expressly prohibit a company from keeping its accounting records and compulsory accounting books outside Italy. Moreover, the Italian Ministry of Finance clarified (in Tax Ruling 167/E of 2000) that the accounting records of Italian companies belonging to multinational groups may be kept abroad. The accounts may be recorded and processed, in real time, using an electronic data processing system located abroad, connected to the Italian subsidiary via telephone/satellite.

However, the accounting books must then be printed on the subsidiary's premises in Italy, where the data, books and supporting documentation must also be kept. It must also be possible to print accounting data already registered at any moment and in real time at the Italian company's premises.

In a tax inspection, the books, registers and accounting documents must be made available to the tax authorities immediately upon request. If the accounting books are not shown to the tax authorities upon request, the financial data may be considered unreliable and the authorities will have the right to assess income taxes and VAT on the basis of assumptions, without considering the company's actual results.

The Italian tax authorities also clarified (in Circular 45 of 19 October 2005) that invoices may be stored abroad in a digital system on condition that:

- there is a reciprocity agreement in place between the two states with regard to indirect taxation;
- the Italian company can ensure automatic access to the archive at all times from its registered office;
- the integrity and readability of the data is ensured during the whole period of storage;
- all the documents and data stored in the digital system can be printed and downloaded onto another system.

4.6 The financial statements

The directors must draw up the financial statements after the end of the year. The statements comprise a balance sheet, profit and loss account, explanatory notes and cash flow statement.

The financial statements must be drawn up clearly and present a true and fair view of the assets, liabilities, financial position, and profits or losses of the company. If the information required by law is insufficient to give a true and fair view, additional information must be given.

If, in exceptional cases, the application of a rule is incompatible with a true and fair view, the rule must not be applied. The notes to the financial statements must explain the departure from the rule and the impact this has on the representation of the assets, liabilities, financial position, and profit or loss.

Special rules on the format of financial statements are provided for companies operating in specific sectors. A short form and a reduction in the amount of information required are provided for micro and small enterprises.

4.7 International Accounting Standards/ International Financial Reporting Standards (IAS/ IFRS)

4.7.1 Differences between local GAAP and IFRS

According to Legislative Decree no. 38 of 28 February 2005, the following entities must adopt IFRS:

- listed entities;
- issuers of publicly traded financial instruments within the EU;
- banks and financial intermediaries whose business activities are supervised by the Bank of Italy;
- insurance companies.

Unlisted entities may adopt IFRS to prepare their separate financial statements provided that they do not have the option of drawing up their annual financial statements in the condensed form as per article 2435-*bis* of the Italian Civil Code (companies whose securities are not listed on a regulated market may draw up their annual financial statements in the condensed form when, for three consecutive years, they have not exceeded two of the following limits: total assets of EUR 4,400,000; revenues of EUR 8,800,000 from sales and services; an average of 50 employees per year).

Local GAAP and IFRS differ in many ways, varying in their degree of relative importance, and both sets of principles are subject to unpredictable regulatory changes. Therefore, should it be necessary to study their differences in any depth, this should be done when the information is needed and only under expert guidance. The table below is intended solely as a way of illustrating certain notions that could be of interest and therefore cannot be considered exhaustive.

INTERNALLY GENERATED INTANGIBLE ASSETS	IFRS
General	
A statement of cash flows is required. The layout of the financial statements is indicated in company law. No extraordinary items are listed on the income statements. They are disclosed in the notes. Restatements of comparatives are not allowed. The effects of changes in accounting policies and corrections of errors are included in the income statements of the current year. Net equity changes only as a result of (i) actions attributable to equity holders and (ii) the profit or loss of the period.	A statement of cash flows is required. IFRS do not prescribe a standard format for the financial statements. No extraordinary items are presented in the income statements. Changes in accounting policies and corrections of errors could lead to restatements of comparatives. Net equity changes as a result of (i) actions attributable to equity holders, (ii) the profit or loss of the period, and (iii) income or expenses recognised directly as equity (other comprehensive income).
Consolidation	
Currently exercisable potential voting rights are not taken into consideration in identifying subsidiaries and associates. SPVs may be included in the consolidation when the results of the SPV could affect the investor. Minority interests are not part of net equity. Consolidation is required when two of the following limits are exceeded in two consecutive years (public interest companies are outside the scope of this rule): * Total assets: EUR 20 million * Total revenue: EUR 40 million * 250 employees.	An entity is consolidated when it is considered to be under the control of another. Having control is defined as having the power to control the assets of an entity and being exposed to the results of that entity. In identifying subsidiaries and associates, the existence of currently exeraisable potential voting rights is taken into consideration. SPVs are considered to be controlled entities when the investor is exposed to fluctuations in the SPV's results; there is no specific threshold.

ASSETS	
Acquired intangible assets	
All intangible fixed assets are amortised and some have a maximum useful life of five years. Start-up costs (e.g. training) and the cost of issuing shares can be capitalised, with certain restrictions. Advertising costs may not be capitalised. Goodwill arising from a business combination is amortised over its useful life. The amortisation period cannot be longer than ten years by law (Italian GAAP allow this period to be extended to a maximum of 20 years in certain cases). Revaluations are not permitted unless authorised by special laws.	If the criteria for capitalisation are satisfied, intangible assets must be amortised over their estimated useful life. The cost of issuing shares is recognised as a deduction from equity. Goodwill arising from a business combination and intangible assets with an indefinite useful life are not amortised but subject to an impairment test at least once a year. Revaluations are possible in very few cases.
Internally generated intangible assets	
Research costs may not be capitalised. There is the option of capitalising and amortising development costs if certain conditions are satisfied.	Research costs are charged when incurred. Development costs are capitalised and amortised when rigorous criteria are satisfied.
Property, plant and equipment	
These must be stated at their historical cost. Revaluations are not permitted unless authorised by special laws.	These are measured using either the cost model or the revaluation model. When the revaluation model is used, the entire category of assets has to be revaluated with sufficient regularity.
Leases (as lessee)	
All leases are recognised in the financial statements as operating leases. Disclosures are required by law for financial leases.	Financial leases are recognised in the financial statements on the basis of substance rather than form.
Investment properties	
These must be stated at cost and depreciated over their useful life. Fair value is not permitted.	These must be stated at their depreciated cost or at fair value. If fair value is used, variations are recognised in the profit or loss.
Inventories	
Similar to IFRS, although the FIFO, LIFO and Weighted Average Cost methods are allowed.	Stated at the lower of cost and net realisable value. The cost is calculated using the FIFO or Weighted Average Cost method. The LIFO method is not admitted.

Financial assets (measurement and derecognition)	
Long-term investments are recognised at the cost of acquisition. When this cost is permanently impaired, they are recognised at their lower value. Short-term investments are recognised at the cost of acquisition. They are valued at the lower of cost of acquisition and market value. Loans and receivables with a reduced and favourable interest rate are recognised at their amortised cost. There is no guidance on derecognition, which is generally based on loss of legal ownership.	Measurement of financial assets depends on their classification and may be at: – their amortised cost (held-to-maturity assets, loans and receivables); – their fair value through equity (financial assets available for sale); – their fair value through profit or loss (financial assets not included in the above categories). The derecognition of financial assets is mainly based on the transfer of risk and rewards.
Hedging derivatives instruments	
Specific guidance is provided by OIC Standard 32 on the definition and valuation of hedging derivatives and the information required in the statutory financial statements. All derivative instruments are measured at their fair value. Fair value hedges have different representation criteria to cash flow hedges.	All derivative instruments are measured at fair value. Any change in fair value is recognised in income statements, except for effective cash flow hedges, where the changes are deferred in equity until the effect of the underlying transaction is recognised in the income statement.
LIABILITIES AND EQUITY	
Financial liabilities and equity instruments (classification)	
Classification is based on the legal form of the financial instruments. Preference shares are always included in equity. Convertible debt is always recognised as a financial liability. Purchased own shares are recognised as a deduction from equity.	Classification depends on the substance of the issuer's obligations. Mandatorily redeemable preference shares are classified as financial liabilities. Proceeds received as a result of issuing convertible debt are allocated between equity and financial liabilities. Purchased own shares are recognised as a deduction from equity.
Restructuring provision	
A restructuring provision is recognised at the moment of the board of directors' resolution.	A restructuring provision must be made if a detailed plan has been announced or if the implementation of a plan has actually started.

INCOME STATEMENTS	
Revenue	
OIC Standard 12 provides guidelines on revenue recognition. Revenues are generally recognised when ownership is transferred or when revenue is legally enforceable.	Based on several criteria, which require the recognition of revenue when risks and rewards have been transferred and the revenue can be measured reliably.
Employee benefits - pension costs (defined benefit plans)	
There is no binding guidance on pension costs. An actuarial calculation may be used in calculating the amount to be set aside for TFR when the amount is a large one and long-term planning is important.	The amount to be set aside for a defined benefit plan is estimated using an actuarial calculation (projected unit credit method).

4.8 Due dates for filing the year-end accounts and tax returns and for making tax payments

4.8.1 Year-end accounts

	Task	Description	Deadline
1.	Approval of the annual financial statements.	The shareholders approve the year-end financial statements (including notes) by adopting a specific resolution during a general meeting convened in accordance with the company's articles of association.	Within 120 days of the tax year end (180 days in special circumstances).
2.	Filing of the annual financial statements.	The financial statements (including the notes) and the minutes of the shareholders' meeting must be filed in electronic format at the local Trade Register.	Within 30 days of the shareholders' approval.
3.	Updating of the inventory ledger.	The inventory ledger must be updated by adding details of the assets and liabilities shown in the annual financial statements.	Within three months of the annual income tax return filing date.

4.8.2 Tax returns and tax payments

	Task	Description	Deadline
1.	Filing of the annual VAT return for the previous calendar year.	No late filings are allowed.	30 April
2.	Filing of certificates of income subject to WHT.	The certificates must be sent electronically or by recorded delivery letter to every local payee (e.g. agents, professionals, employees) and every non-resident entity that has received payments of royalties, interest or dividends. The certificates must be sent in electronic format to the Revenue Agency.	7 March to the payee. 31 March to the Revenue Agency.
3.	Payment of the annual duty on accounting records.	A duty of EUR 309.87 must be paid if the share/quota capital is lower than EUR 516,456.90; otherwise the duty is EUR 516.46	16 March
4.	Payment of any remaining VAT not paid by the monthly due dates during the previous calendar year.	The difference between output and input VAT is payable on the 16th of each subsequent month. Late payments are subject to fines.	16 March
5.	Payment of the balance of income taxes (IRES + IRAP) for the tax year ending 31 December.	The income taxes payable are net of the advances due by the 20th of the sixth month and by the end of the 11th month of the previous tax year.	30 June
6.	Payment of the annual Trade Register charge.	Payment is due on the same date as payment of the balance of income taxes. The amount is decided by the Chamber of Commerce and published in advance.	16 June
7.	Filing of the 770 tax return.	The 770 tax return for WHT must be filed electronically.	31 October
8.	Filing of the Redditi SC return for the tax year ending 31 December.	The Redditi SC return for income taxes must be filed electronically.	31 October
9.	Payment of the advance VAT due for December.	When applicable, and based on the historical method, the advance VAT due is 88 percent of the VAT paid in December of the previous year.	27 December
10.	Quarterly VAT reporting of the details of sale and purchase invoices.	The data must be filed electronically using special software. Data on periodic VAT payments must be included. The due dates for 2018 are: 31 May 2018, 30 September 2018, 30 November 2018 and 28 February 2019.	Quarterly
11.	Quarterly VAT reporting of periodic settlement data.	The data must be filed electronically using special software. Data on periodic VAT payments must be included. The due dates for 2018 are: – 31 May 2018 for Q1 – 30 September 2018 for Q2 – 30 November 2018 for Q3 – 28 February 2019 for Q4.	Quarterly

4.9 Failure to keep accounting books and records properly

Failure to keep accounting records is punishable by fines ranging, for the period up to 31 December 2016, from EUR 1,032 to EUR 7,746 and, as of 1 January 2017, from EUR 1,000 to EUR 8,000. Fines are doubled if, in any tax year, unpaid corporate taxes or VAT amount to more than EUR 51,645.69 for tax periods up to 31 December 2016, and more than EUR 50,000 from 1 January 2017.

If the company fails to keep accounting books and records in an attempt to conceal profits or turnover, the legal representative is liable to criminal prosecution.

Upon the incorporation of a company, the tax authorities must be informed of where the accounting books and records are kept and may be accessed during tax inspections. Any subsequent changes must also be reported accordingly.

As explained above, bookkeeping abroad is allowed on condition that all mandatory accounting books and records can be printed out promptly when necessary, i.e. during tax inspections. The original documentation must, however, be stored in Italy until such time as the law allows for an optical storage system.

4.10 Electronic invoicing

Starting from 1 January 2019, invoices for all B2B transactions must be issued electronically and transmitted via the official certified SDI system.

From 1 July 2018, B2B transactions involving the following must be invoiced electronically:

- transport fuel sold at gas stations
- services based on a subcontracting agreement.

5. Taxation of business income

5.1 Corporations

BASIC TAX FACTS	
Corporate tax rate	24% (IRES) + 3.9% (IRAP)
Limits on interest deduction	Yes (earning stripping rule)
Rules on dormant companies	Yes
Patent Box regime	Yes
Loss relief (carryforward/carryback)	Carryforward
Capital gains tax rate	13.95%/26%/0%
Participation Exemption	Yes (95% exemption)
WHT rate on dividends paid to non-residents (pre-treaty relief)	26%/1.2%/0%
WHT rate on interest paid to non-residents (pre-treaty relief)	26%/12.5%/5%/0%
WHT rate on royalties paid to non-residents (pre-treaty relief)	22.5%/30%/0%
Approximate number of countries with which Italy has a DTT	95
Double taxation relief for dividend income from controlled subsidiaries (tax with credit/exemption)	Exemption (95%)
Double taxation relief on income derived from a foreign permanent establishment (foreign tax credit/exemption)	Foreign tax credit; exemption (optional) under certain conditions
Tax group	Yes
Double taxation relief	Yes (foreign tax credit)
General anti-avoidance rule	Yes
CFC rule	Yes

5.1.1 Tax residence

A company or entity is tax resident in Italy if its registered office, place of management or main business is in Italy for more than half of the tax year.

Resident companies are taxed on their worldwide income, while non-residents are only taxed on their Italian-source income.

5.1.2 Tax rates

The IRES rate is 24 percent. For banks and other financial institutions, it is 27.5 percent.

The standard IRAP rate is 3.9 percent but Italian regions may increase or decrease the standard rate by up to 0.92 percent. The compound tax rate is therefore approximately 27.9 percent, whilst the effective rate may be very different.

The IRAP base is normally different from the IRES base.

5.1.3 Calculation of taxable income

For IRES purposes

Taxable income is calculated on the basis of the P&L account, drawn up according to Italian GAAP or IAS/IFRS and adjusted in accordance with tax law and regulations. The accruals method is generally used, with certain exceptions (e.g. dividends and directors' fees are taxed upon receipt).

In general, costs and expenses recorded in the P&L account can be deducted for tax purposes. However, the following are never deductible:

- generic risk provisions or provisions not specified in tax law (such as that for inventory obsolescence);
- costs/expenses related to prior years (known as 'sopravvenienze passive').

For IAS/IFRS adopters (e.g. banks and listed companies), the IAS/IFRS criteria for the definition, accrual and classification of income and costs also apply for CIT purposes and prevail over any provisions contained in the ITC.

Following the new accounting measures introduced by Legislative Decree no. 139/2015, Law Decree no. 244 of 30 December 2016 provides that, also for local GAAP adopters (excluding certain small companies), the OIC criteria governing the definition, accrual and classification of income and costs apply for CIT purposes and prevail over any provisions contained in the ITC.

A Ministerial Decree of 3 August 2017 extends many of the rules applicable to IAS/IFRS adopters to companies that adopt local GAAP (e.g. certain rules on financial instruments and derivatives).

For IRAP purposes

Taxable income is calculated exclusively on the basis of the P&L account, with certain adjustments. For instance, bad debts and interest expense (including interest on lease payments) are generally non-deductible.

The labour costs of employees on a permanent contract are fully deductible for IRAP purposes. The labour costs of temporary employees are partially deductible (70 percent of the costs, rising to 100 percent for 2018) if certain conditions are met.

IAS adopters must base their calculation on the corresponding items of their IAS/IFRS income statement.

IRAP itself is not an allowed expense; however, for IRES purposes, since the tax year in progress on 31 December 2008, 10 percent of IRAP payments have been deductible. This amount should, in principle, correspond to the IRAP paid on interest. Furthermore, IRAP paid on any non-deductible labour costs is deductible from the IRES base.

Special rules apply to banks and insurance companies.

5.1.4 Tax treatment of (inbound) dividends and capital gains/ losses

Dividends

Ninety-five percent of domestic dividends are exempt from IRES. For IAS/IFRS-adopters, however, dividends received on shares that are held-for-trading are fully taxable.

Domestic dividends and capital gains on shares are not included in the IRAP base.

Ninety-five percent of foreign dividends are also exempt from IRES if the distributor is (i) not resident in a CFC low-tax jurisdiction[1] and (ii) not allowed to deduct the dividend distribution[2].

One hundred percent of the dividends received by a resident taxpayer from an affiliate located or operating in a CFC low-tax jurisdiction are subject to IRES in Italy - whether the dividends are received directly or indirectly (through a controlled company located in Italy or in a jurisdiction that is not a CFC low-tax jurisdiction). Until 2017, exceptions were made only for the following.

a) The portion of the dividend corresponding to the CFC income previously allocated and taxed to the Italian shareholder, under the CFC rule[3].

b) Whole dividends taxed at an acceptable level before being received by the Italian shareholder (e.g. at least 75 percent of dividends taxed in a jurisdiction not qualifying as a CFC low-tax jurisdiction - the second CFC safe-harbour rule or 'subject-to-tax test'). It is possible to submit an application for a ruling on this.

Moreover, CFC low-tax jurisdiction dividends must be reported separately in the income tax return if the taxpayer wishes to benefit from the safe harbour rule but has not submitted any advance tax ruling request (or the outcome of the ruling is unfavourable). Penalties apply if dividends from CFC low-tax jurisdictions are not reported separately in the tax return.

The 2018 Budget Law stipulates that 50 percent of dividends arising from a CFC low-tax jurisdiction will be excluded from the taxable income of the resident shareholder if the latter can prove that, as its core business, the CFC paying the dividends actually trades on the market of the state or territory in which it is located (first CFC safe-harbour rule or 'business test'). In such cases, the resident shareholder (or its intermediate controlled companies) may benefit from a foreign tax credit for income taxes paid on profits accrued by the company resident in the CFC low-tax jurisdiction over the period that the shares are held.

However, the 2018 Budget Law also establishes that, in order to ascertain whether dividends have arisen in a CFC low-tax jurisdiction, the shareholder must refer to the rules in force in the year when the profits accrue.

- Dividends received since the fiscal year following that in progress on 31 December 2014, but accrued in an earlier year, in which the foreign company was not resident in a CFC low-tax jurisdiction (under the rules in force at that time), are not deemed to have arisen in a CFC low-tax jurisdiction.
- Dividends accrued in a year following that in progress on 31 December 2014, and in which the foreign company is not deemed to be resident in a CFC low-tax jurisdiction, will not be treated as having arisen from a CFC low-tax jurisdiction, even if paid in a year when the foreign company is deemed to be resident in a CFC low-tax jurisdiction.

In any case, the law stipulates that profits distributed by a non-resident are presumed to be formed first

1 *As of 2016, CFC low-tax jurisdictions are countries whose ordinary or special tax regimes grant a nominal level of taxation that is less than half the level of taxation in Italy - see the section headed "Controlled foreign company rule".*

2 *Article 26 of European Law no. 122/2016 governs the case of dividends paid to an Italian parent by an EU subsidiary eligible for the Parent-Subsidiary Directive. From 2016, 95 percent of the dividends that cannot be deducted by the subsidiary are exempt from tax in the hands of the Italian parent. Therefore, only the portion that can be deducted by the subsidiary is taxed in Italy (previously, the 95 percent exemption applied only if the subsidiary was unable to deduct any of the payment).*

3 *See the section headed "Controlled foreign company rule".*

by those that are not from countries or territories considered to be CFC low-tax jurisdictions.

Capital gains on the transfer of shares

Capital gains on the transfer - by a non-resident company with no permanent establishment in Italy - of shares in listed Italian companies are taxable in Italy, even if the shares are not held through an Italian bank.

- If the shares sold during a 12-month period are not listed and represent more than 20 percent of the voting rights or 25 percent of the stated capital (a qualifying share), only 58.14 percent of the gain is included in taxable income and taxed at the general 24 percent rate. The same percentage of capital losses is deductible. The taxpayer must report the capital gains and losses in its income tax return. However, capital gains realised as of 2019 by non-residents on the sale of qualifying shares in resident unlisted companies will be subject to a 26 percent substitute tax, like those realised on the sale of non-qualifying shares in unlisted resident companies (see below).
- If a resident company is not listed and the shares sold during a 12-month period do not represent more than 20 percent of the voting rights or 25 percent of the stated capital (a non-qualifying share), the capital gains are subject to a 26 percent final substitute tax (20 percent until 30 June 2014). Residents of cooperative jurisdictions[4] are exempt from taxation on these capital gains.
- If a resident company is listed and the amount of shares sold during a 12-month period does not represent more than 2 percent of the voting rights or 5 percent of the stated capital (a non-qualifying share), the capital gain is not regarded as Italian-source income. By contrast, if the amount of shares sold during a 12-month period represents more than 2 percent of the voting rights or 5 percent of the stated capital (a qualifying share), 58.14 percent of the capital gain is included in taxable income and taxed at the general 24 percent rate. Capital gains realised as of 2019 on the sale of qualifying shares in resident listed companies will be subject to a 26 percent substitute tax.
- If a DTT applies, capital gains are usually taxable only in the seller's country of residence.

These rules are summarised in the following table.

Capital gains realised by a non-resident (corporate) shareholder with no permanent establishment in Italy from the sale of shares in Italian companies

SHAREHOLDING		TAXABLE GAIN		TAX RATE	
		2018	2019	2018	2019
Unlisted	>20% voting rights or >25% capital (qualifying)	58.14%	100%	24%	26% (final WHT)
	20% or less of voting rights; 25% or less of capital (non-qualifying)	100%	100%	26% (final WHT); zero if the investor is resident in a cooperative jurisdiction.	26% (final WHT); zero if the investor is resident in a cooperative jurisdiction.
Listed	>2% voting rights or >5% of capital (qualifying)	58.14%	100%	24%	26% (final WHT)
	2% or less of voting rights or 5% or less of capital (non-qualifying)				

4 *See the glossary for a list of these countries.*

Under the Participation Exemption regime, 95 percent of capital gains earned by a resident company from the transfer of shares or quotas, equivalent financial instruments, and equity interests in partnerships are tax-exempt if the following requirements are met.

- The seller has held the shares uninterruptedly for 12 months before their transfer (FIFO is used in the case of shares issued by the same company and purchased at different times).
- The shares are booked under fixed assets in the first financial statements approved after their purchase.
- The shares are in a company which, in the three years before their transfer, engaged in actual business and was resident in a cooperative jurisdiction (or an advance ruling is obtained, confirming that the company directly produced most of its taxable income in a cooperative jurisdiction).

If these requirements are met, 100 percent of capital losses earned from the transfer of shares are not deductible.

If these requirements are not met, IRES (no IRAP) is due upfront and cannot be paid in instalments.

Write-offs, losses and step-ups in the tax basis of shares are not normally tax-relevant (occasionally, however, temporary rules have been issued, allowing step-ups against payment of substitute tax).

Capital gains on business assets

Capital gains on the sale of business assets may be taxed upfront or over a maximum of five years, starting from the year in which the gain is realised (in the second case the assets must have been held for at least three years before disposal). These gains are subject to both IRES and IRAP; however, when realised on the transfer of a business concern, or a branch of business, they are only subject to IRES and are exempt from IRAP.

5.1.5 Deductions

A number of deductible business expenses are specified in tax law and described in the following sections. The items (by no means an exhaustive list) are deductible for both IRES and IRAP purposes, unless otherwise stated.

Depreciation of tangible assets

The depreciation of income-producing assets is based on their purchase or manufacturing cost, which may include interest on funds borrowed to purchase the assets. That interest must be capitalised until the asset goes into use.

Depreciation should start from the date an asset is first used. It should be charged on a straight-line basis over the estimated useful life of the asset, determined using the Ministry of Finance tables provided for each sector of industry and each category of assets.

In the first year of use, the ordinary depreciation rate is halved.

If the purchase cost of the asset is not higher than EUR 516.46 it may be fully deducted in the year of purchase.

Extra depreciation

The extra depreciation regime provided for by article 1(91) of the 2016 Stability Law has been extended. Therefore, for business income and self-employment income tax purposes, and with exclusive reference to the calculation of depreciation rates and financial lease payments, the depreciation of investments made in new tangible operating assets up to 31 December 2018 is increased by 30 percent. The benefit also applies to investments made by 30 June 2019, as long as the order is accepted by the supplier and at least 20 percent of the cost is paid before the end of 2018. The benefit is only relevant for income tax and not for IRAP purposes. For lease payments, the benefit only applies to the principal amount, which can be increased by the cost of redemption. Unlike in the previous version of the regime, vehicles and the other means of transport indicated in article 164(1) of the ITC are excluded. The benefit only applies to depreciation costs, and therefore has no impact on capital gains or losses if the asset is disposed of, or on the parameters for determining maintenance and repair cost limits.

The benefit does not apply to investments in: real estate assets; other tangible assets for which the Ministerial Decree of 1988 provides a depreciation rate lower than 6.5 percent; the assets indicated in Appendix 3 to the 2016 Stability Law (e.g. pipelines).

The law sets certain documentary evidence requirements.

Hyper depreciation

The hyper depreciation regime has been introduced for certain highly technological operating assets identified in the 2017 Budget Law. The depreciation cost of these assets has been increased by the following percentages:

a) 150 percent for investments in the new operating assets listed in Appendix A to the Budget Law;

b) 40 percent for investments in the intangible assets (e.g. software) listed in Appendix B to the Budget Law and used to operate the assets referred to under a).

To obtain the benefit, the legal representative of the company must provide a self-declaration as per Presidential Decree no. 445 of 28 December 2000 or, if the purchase cost of the asset exceeds EUR 500,000, a technical appraisal to confirm that the asset meets the requirements.

The 2018 Budget Law extends hyper depreciation to investments made in 2018 and, as long as the order is accepted by the supplier and at least 20 percent of the cost is paid before the end of 2018, until 31 December 2019.

Amortisation of intangible assets

Patents and know-how: up to 50 percent of the cost of the asset can be deducted in each tax year, i.e. the minimum amortisation period is two years.

Goodwill and trademarks: up to 5.55 percent of the cost of the asset can be deducted in each tax year, i.e. the minimum amortisation period is 18 years. The amortisation of goodwill and trademarks is deductible regardless of how they are recorded in the company's accounts; therefore, it can also be deducted by IAS/IFRS adopters, whose goodwill and trademarks should be tested for impairment rather than amortised.

Licences and other rights: amortisation is deductible on a straight-line basis over the useful life of the asset, as determined by the underlying contract or by law.

Repairs and maintenance

Ordinary repair and maintenance costs are deductible to the extent of 5 percent of the gross value of the depreciable tangible assets at the beginning of the tax year. Any remaining costs may be deducted over the following five tax years.

Entertainment expenses

Entertainment expenses are deductible if they (i) meet specific criteria that differentiate them from advertising and marketing costs, and (ii) are business-related, reasonable and properly documented.

Free gifts costing not more than EUR 50 each are immediately and fully deductible.

Special provisions apply to pharmaceutical companies, e.g. partial deduction of conference costs, and no deduction of costs of goods and services offered directly or indirectly to doctors, vets or pharmacists in order to promote sales of drugs or pharmaceutical goods.

Interest expense

Net interest expense (the portion of interest expense exceeding interest income) can be deducted to the extent of 30 percent of EBITDA (gross operating income). EBITDA is the difference between the value of production (item A of the P&L account) and the cost of production (item B of the P&L account), excluding depreciation, amortisation, and finance lease payments for business assets. IAS adopters must base their calculation on the corresponding items of their IAS/IFRS income statement. Any portion of the interest expense that exceeds 30 percent of EBITDA may be carried forward indefinitely and deducted in subsequent tax years to the extent that the net interest expense accrued in those subsequent years is less than 30 percent of EBITDA. If, in a given tax year, the 30 percent of EBITDA is higher than the net interest expense, the surplus may be carried forward indefinitely and used to increase the EBITDA available in subsequent years.

Within a domestic tax group, a company may offset the portion of its interest expense (accrued since it joined the tax group) that exceeds 30 percent of its EBITDA against the 30 percent of EBITDA that another company in the tax group has not used to deduct its own interest expense. Since 2016, the 'virtual inclusion in the tax group' of foreign affiliates for the purpose of interest offsetting has not been allowed.

With effect from 2017 (for calendar-year taxpayers), dividends received from foreign subsidiaries can no longer be included in EBITDA for the purposes of deducting interest expenses.

Special rules apply to banks, financial institutions and insurance companies.

Inventory

For income tax purposes, inventory can be valued using any reasonable costing method, such as FIFO, LIFO or weighted average cost; however, it cannot be valued at less than its LIFO value. A write-down of inventory to its market value is deductible only when the average unit cost of the goods in the inventory is higher than their average market value during the last month of the tax year. Any other write-down is generally deductible only when the loss is realised, i.e. when the goods have been sold or destroyed, in which case formal procedures must be followed. Work in progress and finished goods should be valued at production cost, inclusive of production overheads. Special rules apply to the valuation of long-term contracts.

Provision for bad debts

A provision for bad debts is allowed each year, to the extent of 0.5 percent of the face value (or acquisition cost) of the receivable that is not covered by any form of guarantee. However, if the total provision for bad debts exceeds 5 percent of the aggregate face value (or acquisition cost) of the trade receivables shown in the annual financial statements, deductions of provisions are not allowed. Provisions are deductible for IRES purposes only. Special rules apply to banks, financial institutions and insurance companies.

The partial or total write-off of a receivable is allowed only if insolvency proceedings have started or when it can be proved that no amount is recoverable.

Credit losses are deductible in either of the following cases.

(i) If they are substantiated by certain and precise details.

(ii) If the debtor is going through insolvency proceedings or has an agreed restructuring plan[5].

Details are certain and precise when, for example, the account receivable has been written off or derecognised or, if the face value of the receivable is not higher than EUR 2,500 (or EUR 5,000 in the case of companies with turnover of EUR 100 million or more), when the debt has been overdue for at least six months.

Credit losses can also be deducted when substantiated by foreign insolvency proceedings equivalent to Italian ones. Whether the customers are going through Italian insolvency proceedings or equivalent foreign proceedings, if the face value of the debt is not higher than EUR 2,500 (or EUR 5,000 in the case of companies with turnover of EUR 100 million or more) and the debt has been overdue for at least six months, the rule on when they can be deducted is the same: credit losses are deductible in the tax year in which they are recognised in the accounts, even if this is after

5 The restructuring plan indicated in article 182-bis of the Italian Bankruptcy Law (Decree no. 267 of 1942).

the year in which the debtor goes into insolvency or the credit losses are substantiated by certain and precise details. However, from the tax year in which they must be derecognised in accordance with the relevant accounting standards, such credit losses cannot be deducted.

In 2015, new rules on the deduction of bad loans by banks and other financial institutions came into force. Such institutions may now deduct 100 percent of all kinds of write-offs and write-downs of qualifying loans in the tax year in which they are booked for statutory accounting purposes.

5.1.6 Tax losses

For IRES purposes only, companies may carry forward tax losses indefinitely and use them to offset up to 80 percent of the taxable income of any subsequent year. However, the 80 percent limit does not apply to tax losses incurred in the first three years of business, which can be offset against 100 percent of the taxable income of any future year until they are used up.

Carry forward is not allowed when both of the following apply.

- The majority of the shares carrying voting rights at ordinary shareholders' meetings are, even temporarily, transferred to third parties.
- The company's main activity is no longer the actual business that it pursued in the tax years when it incurred the losses (this change is significant if it occurs in the tax year of the transfer or the two previous or subsequent years).

There may also be limits on loss carryforwards when a company has been involved in a merger or demerger. However, there are safe-harbour rules (a business vitality test).

If they originate during the consolidation period, tax losses can be transferred to the parent of a tax group to offset income produced by the parent or other group companies. The parent can carry forward group losses in accordance with the general rules (the losses can be used to offset up to 80 percent of the taxable income of each year, or up to 100 percent if incurred in the first three years of business).

5.1.7 Incentives

Patent Box

Since the tax year following that in progress on 31 December 2014, entrepreneurs resident in Italy, or Italian permanent establishments of entities resident in countries that have signed a DTT and exchange information with Italy, have been able to opt for the Patent Box regime if they carry out R&D activities.

Under the regime, a certain percentage of qualifying income is excluded from the tax base. Qualifying income is that deriving from the licensing or direct use of eligible IP (software protected by copyright, patents, trademarks, designs, models, processes, secret formulas and industrial, commercial or scientific knowledge, including know-how). The percentage of qualifying income that is not included in the IRES or IRAP base was 30 percent for 2015 and 40 percent for 2016, and is 50 percent as of 2017 (for calendar-year taxpayers). Once it has been opted for, the arrangement is irrevocable and remains in place for five years. It can be renewed.

When income is attributable to direct use of intangibles by their owner, its amount has to be agreed with the tax authorities through the international tax ruling procedure.

The eligible portion of the tax base is given by the ratio of the R&D costs incurred in maintaining and developing the intangible asset to the total costs of producing that asset.

This computation method is compliant with the OECD 'nexus approach'.

Gains from the transfer of qualifying assets are excluded from the tax base, provided that 90 percent or more of the consideration is reinvested in maintenance or development of other qualifying intangible assets before the end of the second tax year following that of the asset transfer.

A decree issued by the Ministry for Economic Development on 30 July 2015, in collaboration with the Ministry of Economy and Finance, contains implementation measures that clarify the main technical aspects, e.g. calculation of the eligible tax base. The decree states, inter alia, that the IP income covered by the regime must be determined on the basis of OECD international standards, in particular the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

To align Italian tax law with the OECD guidelines contained in the final Report on BEPS Action 5, trademarks have been removed from the list of qualifying intangibles. The new rule applies to taxpayers who opt for the Patent Box regime after 31 December 2016 (i.e. for calendar-year taxpayers, the benefit is not available for income attributable to trademarks from 2017). Options exercised with respect to trademarks in tax years in progress on 31 December 2015 or 31 December 2016 have been grandfathered and will remain valid until their natural deadline (2019 and 2020, respectively) or, at the latest, 30 June 2021. A Ministerial Decree of 28 November 2017 updates the implementation measures contained in the Decree of 30 July 2015.

R&D tax credit

The Budget Law approved in 2016 modified the R&D tax credit regime. An enterprise now qualifies for a tax credit if:

(i) it invests at least EUR 30,000 per year in certain forms of R&D, and

(ii) its total R&D spending in a given year exceeds the average amount spent on corresponding forms of R&D over the three tax years preceding that in progress on 31 December 2016 (2013, 2014 and 2015 for calendar-year taxpayers).

The tax credit is 50 percent of the difference in spending and is capped at EUR 20 million per year for each beneficiary.

The R&D tax credit is also available for research centers which are established in Italy and develop IP on behalf of foreign companies.

Allowance for corporate equity (ACE)

Italian resident companies (and permanent establishments of non-resident entities) can benefit from ACE, which is calculated by multiplying a certain amount of equity (the portion by which equity - as defined in the relevant rules - has increased since 31 December 2010) by a nominal rate of interest. The rates were 4 percent for 2014, 4.5 percent for 2015 and 4.75 percent for 2016. The rate dropped to 1.6 percent for 2017 and will be 1.5 percent from 2018.

The equity increases that qualify for ACE purposes include those resulting from (i) cash contributions, (ii) waivers of amounts owed by a company to its shareholders, and (iii) undistributed profits set aside to freely disposable reserves. The equity increases must be net of decreases resulting from distributions or assignments of shares to shareholders. The equity increase is reduced by certain group transactions, and specific anti-tax avoidance rules apply to equity injections made by non-resident shareholders. General anti-tax avoidance rules also apply.

A decree issued on 3 August 2017 has redefined, the ACE anti-avoidance rules in order to exclude duplications of ACE within a group of enterprises, especially when intra-group transactions involve non-residents.

ACE is deducted from a company's net taxable income but cannot result in a tax loss. Should the allowance be higher than the year-end taxable income, the difference can be carried forward to offset the taxable income of future years.

Other incentives

Other tax incentives are available for companies that invest in innovative start-ups or SMEs, for companies that provide employee training leading to qualifications, and for SMEs that purchase consultancy services for the listing of their shares.

5.1.8 Withholding taxes

Dividends paid to non-residents

Dividends paid to non-resident shareholders are generally subject to a 26 percent WHT. A partial refund of up to 11/26 of the WHT can be claimed by recipients who are able to prove - by presenting documentary evidence issued by their foreign tax authority - that a final tax has been paid on the same dividends. There is also a 26 percent WHT on savings shares (but no 11/26 tax credit refund). The WHT rate is 11 percent on dividends paid to EU and EEA pension funds set up in cooperative jurisdictions[6] (with no 11/26 tax credit refund).

The above rates may be reduced under DTTs.

In accordance with the Parent-Subsidiary Directive, no WHT is levied on dividends paid to a qualifying EU parent company that has owned at least 10 percent of the Italian subsidiary's equity for an uninterrupted period of at least one year before payment of the dividends (a qualifying company is one that has one of the legal forms covered by the Parent-Subsidiary Directive, is resident in an EU Member State and is not exempt from income taxes). The general anti-avoidance rule applies.

By the payment date of the profits, the beneficial owner must submit a form to the payer (the WHT agent) in order to directly benefit from the exemption. The form includes a certificate of residence signed by the foreign tax authorities and an attestation by the recipient that the minimum holding period has been respected.

Should the Parent-Subsidiary Directive be inapplicable, dividends paid to companies or other entities that are resident and paying CIT in an EU or an EEA cooperative jurisdiction may be subject to a reduced 1.2 percent domestic WHT (the same level of taxation applied to dividends received by domestic parent companies).

Under article 15 of the Savings Agreement of 26 October 2004 between the European Union and Switzerland, Italy must exempt dividend payments to companies resident in Switzerland under essentially the same conditions as those laid down in the EC Parent-Subsidiary Directive (before the amendments effective from 1 January 2005). The conditions are listed below.

- The parent must have directly held at least 25 percent of the subsidiary's equity for at least two years.
- One company must be resident for tax purposes in Italy and the other company must be resident for tax purposes in Switzerland.
- Under any DTTs with third states, neither company must be resident for tax purposes in that third state.
- Both companies must be fully subject to CIT, without benefitting from exemptions.
- Each company must be a corporation.

Interest and royalties paid to non-residents

Interest

In general, there is a 26 percent WHT on interest payments. This rate may be reduced under DTTs. There are also certain domestic lower rates or exemptions (see below). For instance, interest from Italian treasury bonds and similar instruments is taxed at a lower rate of 12.5 percent. Moreover, an exemption is available if the requirements of the Interest and Royalties Directive are met (see below under the section on "Exemption under the Interest and Royalties Directive").

Interest paid by an Italian company to an EU affiliate

A lower 5 percent WHT is levied on interest paid by an Italian company to an affiliate established in another EU Member State if:

(i) all the exemption requirements established by the Interest and Royalties Directive (see below) are met, apart from the payee's beneficial owner status;

6 *As defined in the glossary.*

(ii) the non-resident affiliate issues bonds that are listed on a regulated market of an EU or EEA cooperative jurisdiction;

(iii) the interest payments to the EU company service interest payments to the bondholders;

(iv) the bonds issued by the EU company are guaranteed by the Italian company or another group company (e.g. the parent).

Exemption on interest paid on qualifying bonds to a foreign taxpayer established in a cooperative jurisdiction

Interest and similar proceeds (e.g. issue discounts) are exempt from WHT if both the following conditions are satisfied.

a) The non-resident payee is (i) a foreign central bank or body that invests the public reserves of its country, or (ii) resident in a cooperative jurisdiction, whether or not subject to tax (these residents may include institutional investors such as investment funds).

b) Interest accrues on, inter alia, the following assets: (i) Italian bonds and treasury bonds of cooperative jurisdictions; (ii) bonds, bond-like securities and commercial papers issued by Italian banks or by Italian companies whose shares are traded on regulated markets or the multilateral trading facilities of a cooperative EEA jurisdiction; (iii) notes issued by securitisation vehicles (as defined by Law no. 130/1999). In certain cases, interest on bonds, bond-like securities and commercial papers issued by unlisted entities can also benefit from the tax exemption.

In order to benefit from the exemption, the non-resident beneficial owner must deposit the bonds with a resident bank or other authorised intermediary and file a special form.

Exemption on interest on cross-border loans

The WHT exemption also applies to interest on cross-border loans if all of the following apply.

(i) The loan is medium- or long-term.

(ii) The borrower is a resident enterprise.

(iii) The lender is a bank or insurance company established in an EU Member State or an institutional investor set up and subject to supervision in a country on the List of Cooperative Jurisdictions[7] (e.g. an investment fund).

Royalties

Generally, a 30 percent final WHT is levied on 75 percent of the gross royalties (i.e. 22.5 percent) arising from IP and paid by a resident taxpayer (including a permanent establishment in Italy of a non-resident) to a non-resident taxpayer.

A 30 percent WHT is also levied on the full amount of royalties (or 'rent') represented by payments for the use of, or the right to use, industrial, commercial or scientific equipment located In Italy.

There is no WHT on payments to Italian permanent establishments of non-resident entities.

The WHT may be reduced or eliminated under DTTs or the Interest and Royalties Directive (see below).

Exemption under the Interest and Royalties Directive

Under the Interest and Royalties Directive, interest and royalties are exempt from Italian WHT if the following conditions are satisfied.

(i) The beneficial owner of the interest or royalties is a company of another EU Member State or a permanent establishment, situated in another EU Member State, of a company of an EU Member State.

7 *As defined in the glossary.*

(ii) The payer and the beneficial owner are companies (or permanent establishments of companies) that fulfil the requirements established in Annexes A (legal form) and B (liability to tax) of Presidential Decree no. 600/73. These requirements correspond to those of the Directive.

(iii) The payer and the beneficial owner are associated in one of the following ways.

a) The first company directly holds at least 25 percent of the voting rights in the second company.

b) The second company directly holds at least 25 percent of the voting rights in the first company.

c) A third company, which fulfils the requirements established in Annexes A and B of Presidential Decree no. 600/73, directly holds at least 25 percent of the voting rights in both the first and the second company.

These equity interests must be held for an uninterrupted period of at least one year.

By the payment date, the beneficial owner must submit a form to the payer (the WHT agent) in order to directly benefit from the exemption.

Under article 15 of the Savings Agreement of 26 October 2004 between the European Union and Switzerland (providing for measures equivalent to those laid down in EC Savings Directive 2003/48/EC), effective since 1 July 2005, outbound interest payments to companies resident in Switzerland are exempt under essentially the same conditions as those laid down in the Interest and Royalties Directive, except for the holding period (two years instead of one) and a 25 percent equity holding (instead of voting rights).

5.1.9 Tax consolidation

Both domestic and worldwide consolidation are available.

Domestic tax consolidation

An Italian company and one or more of its Italian subsidiaries may opt for domestic tax consolidation, provided that the following conditions are fulfilled.

- The parent must directly or indirectly:
  - (i) hold the majority of the voting rights at the subsidiary's shareholders' meeting;
  - (ii) hold more than 50 percent of the subsidiary's stated capital;
  - (ii) be entitled to more than 50 percent of the profits of the subsidiary.
- The parent and the subsidiaries must have the same tax year.
- The parent and each participating subsidiary must opt for tax consolidation.
- The decision to opt for domestic tax consolidation must be indicated in the tax return filed for the first tax year of consolidation.
- Each subsidiary must opt to be domiciled for tax purposes at the domicile of the parent company.

Domestic tax consolidation lasts for three tax years and has various implications, some of which are listed below.

- The parent calculates the consolidated base, after each of the companies has calculated its own tax base in accordance with the ordinary IRES rules.
- The parent makes the periodic and final tax payments and may carry forward any net tax losses.
- Tax losses incurred by the consolidated companies during consolidation may be offset against the income of other consolidated companies.

- Tax losses incurred before the creation of the tax group may be offset only against the income of the company that has incurred them.
- Transfers of business assets are taxable in the ordinary way.
- The option is binding for three years and automatically renewed for another three years thereafter unless the participants opt out.
- Claw-back rules apply if the consolidation regime terminates early or is not renewed after three years.
- If the regime is terminated early, the consolidating company alone may carry forward the tax losses incurred by the consolidated companies during the consolidation period. However, different criteria can be agreed between the participants.

Under the provisions in force until 2014, non-resident companies could opt for Italian tax consolidation only (i) as consolidating entities, (ii) if they were resident in a treaty country, and (iii) had a permanent establishment in Italy whose assets included shares/quotas in the Italian consolidated entities. In 2015, condition (iii) was repealed, in compliance with the principles set out in the European Court of Justice's judgment of 12 June 2014 in Case C-40/13. Therefore, companies resident in Italy can be consolidated for tax purposes if they are controlled by a foreign company that is resident in a treaty country and that pursues its activity in Italy through a permanent establishment, even if that permanent establishment does not hold the shares in the Italian subsidiary.

Moreover, companies resident in Italy can be consolidated for tax purposes if they are controlled by a foreign company that is resident in an EU/EEA cooperative jurisdiction and has no permanent establishment in Italy. Permanent establishments - in Italy or in an EU/EEA cooperative jurisdiction - of controlled companies resident in another EU/EEA cooperative jurisdiction can also be consolidated. This form of consolidation requires the non-resident controlling entity to appoint an Italian (or EU/EEA) controlled company as the consolidating entity of the sub-group.

Worldwide tax consolidation

An Italian company may opt for worldwide tax consolidation with its non-resident subsidiaries provided that the Italian company is:

(i) listed on a regulated market, or

(ii) controlled by the government, by a governmental entity, or by Italian-resident individuals who do not directly or indirectly control other resident or non-resident companies.

Eligible non-resident subsidiaries are those in which the resident parent directly or indirectly holds more than 50 percent of the stated capital, voting rights and rights to profits. All of the following conditions must also be fulfilled.

- All of the non-resident subsidiaries must join the tax group (all-in or all-out).
- The parent company and the subsidiaries must have the same tax year.
- The financial statements of the consolidated entities must be audited.
- The non-resident subsidiaries must give written consent to the auditing of their financial statements and a written undertaking to cooperate with the parent company in determining the consolidated taxable income.

Worldwide tax consolidation is subject to approval by the Italian Revenue Agency, issued in the form of a ruling. This form of tax consolidation is valid for at least five years and automatically renewed for another three years thereafter unless the participants opt out.

Under the worldwide consolidation regime, the income of each non-resident subsidiary, determined in accordance with IRES rules (except for certain adjustments), is allocated to the parent company in proportion to its share in the profits of the subsidiary. Losses incurred before a company elects to join the tax group cannot be offset against income generated while the tax group is in place.

5.1.10 Consortium relief

The taxable income or tax loss of a qualifying Italian company can, by election, be allocated to its Italian corporate shareholders in proportion to their dividend rights. Qualifying companies are those whose shareholders are all corporates, holding an interest of between 10 percent and 50 percent in the profits and in the voting rights of the company. The option must be exercised jointly by the resident company and by all its shareholders.

The option is binding for three years and automatically renewed for another three years thereafter unless the participants opt out.

Non-resident corporate shareholders may opt for this regime on condition that no WHT is levied on the profits distributed by the Italian subsidiary. In practice, this requirement is satisfied only when the Parent-Subsidiary Directive applies.

Companies opting for tax consolidation do not qualify for this relief.

Tax losses carried forward by the shareholders and generated before election cannot be used to offset profits allocated under the consortium relief.

5.1.11 Anti-avoidance measures

General anti-avoidance rule

In a move to provide greater certainty in tax matters and improve the relationship between taxpayers and the Italian Revenue Agency, new measures were introduced in 2015. The wide-scope anti-avoidance rule contained in article 37-*bis* of Decree no. 600/73 was repealed and replaced by a newly introduced legal definition of abuse of law, effective from October 2015. This definition, which incorporates the concept of tax avoidance, is to be found in the Taxpayers' Charter (Law no. 212 of 2000), in the newly added article 10-*bis*. Previously, the concept of tax avoidance was defined by article 37-*bis*, while abuse of law was defined only by case law, without any legal definition.

The new definition is a broad one and no longer lists the transactions that are subject to the anti-avoidance rule. It applies to all income taxes and indirect taxes, except customs duties. Abuse of law arises when all the following factors are in play.

(i) The transaction (or series of interconnected transactions) has no economic substance. In other words, though valid on paper, it is an inappropriate way of achieving the stated business goal.

(ii) An undue tax advantage is obtained, even without breaking any tax rule.

(iii) The tax advantage is the essential effect of the transaction.

The concept of abuse of law applies only when a transaction cannot be assessed under a specific anti-avoidance measure. If an abusive transaction is discovered by the Italian Revenue Agency, it will be disallowed for tax purposes and the tax benefits will be denied. Transactions cannot be defined as abusive if they are justified by sound business reasons; these reasons include shake-ups or management decisions to improve the structure or operations of a business or professional activity. It is up to the Italian Revenue Agency to prove that a transaction is abusive, while the taxpayer has to demonstrate that there is a sound business purpose. No criminal penalties can be applied - just administrative sanctions.

Like the former rule, the new one establishes certain procedures that the Italian Revenue Agency must follow. For example, the assessment notice must be preceded by a clarification request, and the taxpayer has 60 days to answer the request.

In a recent statement of practice[8], the Italian Revenue Agency has clarified that a demerger followed by a transfer of shares in the demerging entity is not an abusive transaction, provided that (i) it ensures the continuation of the business activity of each participating company, and (ii) the companies involved pursue actual business

8 *Resolution no. 97 of 25 July 2017.*

activities and do not only contain cash, intangibles or real estate. This resolution is important because it marks a change of approach by the Revenue Agency. Under the former anti-avoidance rule, it used to take the position that demergers, especially when followed by a transfer of shares, were abusive.

Specific anti-avoidance rules

These rules, imposed by law, tax-authority practice and case law, include the:

- dormant companies rule;
- rule on the tax residence of foreign companies and entities (including trusts);
- CFC rule;
- rule on the full taxation of capital gains arising from the transfer of shares in companies situated in CFC low-tax jurisdictions;
- rule on the full taxation of inbound dividends from CFC low-tax jurisdictions;
- anti-hybrid rule;
- transfer pricing rule;
- beneficial owner rule;
- rule on the reclassification of shareholder loans.

Dormant companies rule

Italian companies, partnerships and permanent establishments of non-resident enterprises are treated as dormant if their taxable income falls below levels commensurate with the nature and book value of their assets - in other words, if they fail the vitality test. In such cases, a minimum level of taxable income is deemed to be realised for IRES and IRAP purposes. Dormant companies are subject to a 10.5 percent IRES surtax (making the nominal rate 34.5 percent).

Safe-harbour rules apply, inter alia, to the following:

- companies that, even indirectly, control or are controlled by publicly traded companies;
- companies in their first year of business;
- companies going through bankruptcy proceedings;
- companies that have obtained an advance tax ruling.

Dormant companies may rebut the minimum taxable income presumption by giving evidence of the circumstances that have prevented them from passing the vitality test. To this end, a company can either obtain a ruling from the Revenue Agency, confirming the circumstances, or give a separate indication of the circumstances in its annual tax return.

Dormant companies may carry forward their tax losses and offset them against any portion of taxable income that exceeds the minimum level.

A company is also deemed to be dormant from the sixth tax year if it has reported one of the following:

(i) tax losses for five consecutive tax years;

(ii) tax losses in four tax years and taxable income lower than the minimum deemed income of dormant companies in the fifth year.

Rule on the tax residence of foreign companies, entities and trusts

Foreign companies and entities

Foreign companies and entities that own a controlling interest in an Italian company are deemed to be tax resident in Italy in either of the following cases.

a) The foreign company/entity is, in turn, directly or indirectly controlled by an Italian individual or entity.

b) The majority of the members of the board of directors of the foreign company/entity are Italian residents.

Unless there is evidence to the contrary, a non-resident company is also presumed to be resident in Italy if (i) most of its assets are units of Italian closed-end REIFs, and (ii) it is directly or indirectly controlled by a resident company or individual.

Foreign trusts

Unless there is evidence to the contrary, foreign trusts are deemed to be Italian residents if both of the following apply.

- They are not established in a country on the List of Cooperative Jurisdictions[9].
- At least one of the settlors and at least one of the beneficiaries are resident in Italy.

Italian tax residence is also triggered if an Italian resident (i.e. settlor) transfers real estate or property rights to a trust that has been set up in a country not on the List of Cooperative Jurisdictions.

Moving tax residence to Italy: tax basis of assets and liabilities

If a non-resident entrepreneur or enterprise changes residence and moves to Italy from a cooperative jurisdiction, the Italian tax basis of the business assets and liabilities will be their current market value. If the move is from a country that is not on the List of Cooperative Jurisdictions, the current market value must be determined in agreement with the tax authorities, via the international ruling procedure[10]. If no agreement is reached or requested, the tax basis is the purchase cost, book value or market value: for assets it is the lowest of these, for liabilities it is the highest.

In a recent statement of practice[11] the Revenue Agency has clarified that the above rules apply regardless of the activity pursued by the non-resident enterprise (including that of a pure holding) and also when the transfer of residence is a consequence of a cross-border merger.

Moving tax residence outside Italy

If an Italian company moves abroad, this is (in principle) treated as a deemed disposal of the company's assets. The assets are deemed to be realised at their market value and any corresponding capital gain is subject to income tax in Italy, unless the assets are allocated to a permanent establishment in Italy.

Resident companies which transfer their registered office to an EU/EEA cooperative jurisdiction can opt to defer the taxation of the deemed gains, if the destination country is a qualifying one, i.e. has concluded an agreement with Italy that ensures assistance in line with that guaranteed under Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures.

An Italian company that transfers its tax residence to a qualifying country may elect to do one of the following, instead of immediately paying the full tax on the deemed gain.

- Defer the taxation of the deemed gain on certain assets.
- Pay the tax on the deemed gain in six annual instalments.

Under the deferral regime, the company must comply with specific reporting obligations.

Any of the following events terminates the deferral regime and the instalment regime.

- The company transfers its residence from a qualifying country to another jurisdiction that is not a qualifying country.
- The company is liquidated and wound up.
- The company undergoes a merger or a demerger that entails the transfer of the company’s business to a jurisdiction that is not a qualifying country.

Tax deferral is also possible in the transfer of an Italian permanent establishment and the transfer of residence from Italy to an EU/EEA Member State as a result of a cross-border merger, demerger or contribution of a going concern. Implementing measures were issued in 2013 and 2014.

9 As defined in the glossary.

10 See the section headed “International rulings”.

11 Resolution no. 69/2016.

Controlled foreign company rule (CFC rule)

Definition of a CFC

A CFC is a foreign company in which an Italian resident directly or indirectly, even through a trust company or other third party, holds the majority of votes or exercises a dominant influence. There are two types of CFC, for the purposes of the CFC rule.

1. A "Low-Tax CFC" is a CFC resident or established in a CFC low-tax jurisdiction.

   Until the end of the tax year in progress on 31 December 2015, a CFC low-tax jurisdiction meant one of the jurisdictions listed in the CFC List of Low-Tax Jurisdictions, i.e. those offering a level of taxation significantly lower than in Italy or an inadequate exchange of information with the Italian Revenue Agency[12].

   As of the tax year following that in progress on 31 December 2015, Low-Tax CFCs are those resident or established in states or territories - other than EU and EEA Member States - whose tax regimes (ordinary or special) offer a nominal level of taxation that is less than half the level of corporate taxation in Italy, i.e. whose nominal rate is less than half the IRES + IRAP rate.

2. A "Non-Low-Tax CFC" qualifies as such if (i) the CFC is resident or established in a country (including EU/EEA Member States) that is not a CFC low-tax jurisdiction, (ii) the CFC's ETR is less than half of the Italian ETR that would apply if the CFC were tax resident in Italy, and (iii) the CFC's income is mainly passive (i.e. dividends, interest, royalties) or originates from related-party transactions.

Effects of the CFC rule

Under the CFC rule, the CFC's income is taxed to the shareholder resident in Italy. The income subject to tax in Italy is computed in accordance with the Italian rules and taxation is separate (e.g. available tax loss carryforwards cannot be used to shelter the CFC income).

Safe-harbour rules

In the case of a Low-Tax CFC, an Italian taxpayer can avoid the CFC rule, by proving one of the following in its application for an advance ruling or in a tax assessment.

a) That, as its core business, the Low-Tax CFC actually trades on the market of the state or territory in which it is located (**business test**).

b) That at least 75 percent of the income of the Low-Tax CFC is subject to tax in a state or territory whose nominal level of taxation is equal to or higher than 50 percent of the level of corporate taxation in Italy, the EU or EEA (**subject-to-tax test**).

In the case of a Non-Low-Tax CFC, an Italian taxpayer can avoid being taxed on the CFC's income only if it can prove that the CFC **is not an artificial structure**.

Recent developments

The 2015 Growth and Internationalisation Decree (Legislative Decree no. 147 of 2015) introduced the following amendments to the CFC rule, with effect from 1 January 2015.

- Advance rulings, formerly required to exclude the application of the CFC rule, are no longer mandatory and the taxpayer may provide evidence of safe-harbour conditions during a tax audit. However, if an advance-ruling application has not been submitted or the outcome of the ruling is unfavourable, the investment must be reported separately in the income tax return. There are special penalties for failure to comply with this reporting requirement.
- Before issuing a notice of assessment focussing on CFC income, the Revenue Agency must allow the taxpayer time to provide evidence of safe-harbour conditions. Therefore, the notice

12 *See glossary for the full list.*

of assessment can be issued only 90 days after a formal request for further information; otherwise it is invalid. Any tax assessment notice must include specific comments on the information provided by the taxpayer.

- The CFC rule no longer applies to companies located in a CFC low-tax jurisdiction and not controlled by a resident taxpayer.

For Non-Low-Tax CFCs, the Italian Revenue Agency issued a statement of practice[13] identifying the simplified criteria to be used in assessing whether the ETR of a CFC is less than half the ETR that would apply if it were resident in Italy.

The Italian Revenue Agency, in Circular 35/2016, provided extensive clarifications on the regime, with particular respect to the definition of special regimes and of CFC low-tax jurisdictions.

Rule on the full taxation of capital gains arising from the transfer of shares in companies located in CFC low-tax jurisdictions[14]

In general, capital gains realised on the disposal of shares in foreign companies are treated just like domestic gains and are 95 percent exempt (Participation Exemption). This exemption is conditional upon the foreign company being resident in a cooperative jurisdiction for three years.

However, capital gains realised on the disposal of shares in companies located in CFC low-tax jurisdictions are taxed in full.

Rule on the full taxation of inbound dividends[15]

One hundred percent of the dividends arising (directly or indirectly) from companies (controlled or not) located in a CFC low-tax jurisdiction are generally taxable in the hands of the resident corporate shareholder at the full CIT rate, unless they are already taxed in Italy under the CFC rule or the foreign CFC passes the subject-to-tax test. More specifically:

- dividends paid by a Low-Tax CFC passing the subject-to-tax test (see safe-harbour rules above) qualify for the 95 percent exemption;
- one hundred percent of dividends arising from profits that have already been taxed in Italy under the CFC rule are excluded from taxable income.

The 2018 Budget Law provides that 50 percent of the dividends arising from a CFC low-tax jurisdiction will be excluded from the taxable income of the resident shareholder, if it can prove that the foreign CFC passes the business test (see safe-harbour rules above).

Anti-hybrid rule

The 95 percent dividend exemption is granted on condition that the payer is not resident in a CFC low-tax jurisdiction, the payment is not deductible by the non-resident payer, and the payer declares this. From 2016 - in the case of dividends paid to an Italian parent by an EU subsidiary eligible for the Parent-Subsidiary Directive - 95 percent of the dividends that cannot be deducted by the subsidiary are exempt from tax in the hands of the Italian parent. Therefore, only the portion that can be deducted by the subsidiary is taxed in Italy (previously, the 95 percent exemption applied only if the subsidiary was unable to deduct any of the payment).

For foreign dividends paid by a non-EU subsidiary or an EU subsidiary not compliant with the Parent-Subsidiary Directive, the 95 percent exemption is still conditional upon the full non-deductibility of the payment from the taxable income of the payer.

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13 Statement of practice no. 143239 issued on 16 September 2016.

14 See the section headed "Tax treatment of (inbound) dividends and capital gains/losses".

15 See the section headed "Tax treatment of (inbound) dividends and capital gains/losses".

Transfer pricing rule

This will be dealt with in section 6.

Beneficial owner rule

Certain domestic rules require the payee to be the beneficial owner of income in order to benefit from a WHT exemption or reduced rate (see, for instance, the measure implementing the Interest and Royalties Directive). Moreover, the Italian Revenue Agency often imposes this condition[16]. In practice, assessments of foreign entities, aimed at disallowing interest, royalties or even dividend exemptions are frequent.

Italian tax law does not contain a definition of beneficial owner. The Italian Revenue Agency has clarified that, in order to identify the beneficial owner of income, it may be necessary to look at the economic and contractual details of a transaction, consider whether the structure is appropriate, and even examine capability to manage financial risks[17].

In dealing with the application of DTT benefits, the Italian Revenue Agency has clarified that an intermediary in charge of passing on income to other persons is not its beneficial owner. In such cases, the intermediary is not entitled to exploit the asset generating the income, and is prohibited from using the funds received on the current account for purposes other than passing on the income[18].

In other cases, the Revenue Agency requires the beneficiary to have an adequate structure, in terms of financial and management resources, and an adequate level of legal and economic substance - see Circular 6/2016, which clarifies that an entity with a light structure, no actual business and, de facto, no decision-making power, may be considered as a conduit company and not as the beneficial owner of interest.

The evaluation of beneficial ownership is particularly complex with respect to holding companies, whose activities generally do not require a significant physical presence.

Italian case law has basically confirmed this approach, highlighting that it is necessary to verify whether the recipient of the income has economic and legal autonomy in determining how to use the income. However, Italian Supreme Court Decision no. 27113 shows a more flexible approach to foreign pure holding companies that receive dividends.

Rule on the reclassification of shareholder loans

The Italian Revenue Agency has clarified[19] that foreign shareholder loans may sometimes be redefined as contributions of capital. If they are, the interest payments made by the Italian borrower cannot be deducted.

This happens, for example, if "*considering the borrower's financial situation, the investment should not have been made in that form*" or if, in the contract, one or more of the following features point to a mismatch between the form of the debt and its substance.

- The repayments of principal and payments of interest are deferred until those due to third-party lenders have been settled.
- The financial indicators defined in the financial covenants, which set out the terms of default, do not include, in the definitions of debt and interest, the shareholder loan and shareholder interest, respectively.
- The payments of interest and repayments of capital are subject to the same restrictions as dividends, capital reductions and reductions in capital reserves.

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16 See, for instance, the official forms for the WHT exemption/reduced WHT rate under the Interest and Royalties Directive, Parent-Subsidiary Directive, or DTT; Circular 32/2011, on the reduced 1.2 percent WHT rate on dividends paid to EU affiliates; Circular 6/2016 on interest payments in leveraged buyouts.

17 See Circular 41/2011.

18 See Resolutions no. 86/2006 and no. 167/2008.

19 In section 3.3 of Circular 6/2016.

5.1.12 Foreign tax credit

Taxes paid on foreign business income are creditable against the IRES due, up to the portion of IRES that corresponds to the ratio of foreign income to total income (net of any tax loss carryforwards). This limit applies to each country.

The credit should be claimed in the tax return for the year in which the foreign income must be declared, on condition that the foreign tax payment is definitive before the deadline for submission of the tax return. Should the foreign income be partially exempt (as in the case of foreign dividends) the creditable foreign tax is reduced proportionally.

More favourable conditions may be available under DTTs. Some treaties in force with Italy still include matching-credit or tax-sparing clauses which allow Italian investors to credit notional foreign taxes, irrespective of the actual or lower payments made in the country of source (due, for instance, to local tax incentives).

When business income is earned through foreign permanent establishments or a non-resident company included in a worldwide tax consolidation arrangement, any surplus credit can be carried back for up to eight years and offset against IRES on the same type of income from the same country. If there is not enough IRES for this, the surplus credit can be carried forward for up to eight years.

From 1 January 2015, the rules previously applying only to taxes paid by a foreign permanent establishment (such as the carry-back option for surplus foreign tax credits) were extended to all types of foreign income earned by an Italian company.

Moreover, foreign tax credits are now granted for all types of foreign income tax payments, whether or not they fall within the definition of foreign income tax payments found in the relevant DTT with Italy. Uncertain cases should be cleared in advance with the Italian Revenue Agency.

5.1.13 Tax rulings

Ordinary tax rulings

Since 1 January 2016, there has been a new classification of tax ruling procedures, with five types of ruling.

a) '*Interpello ordinario*', for an interpretation of unclear tax rules in a pending case.

b) '*Interpello qualificatorio*', for a legal definition of pending transactions that do not clearly fit the definitions provided by tax law.

c) '*Interpello probatorio*', for confirmation that a taxpayer qualifies for certain tax benefits or tax regimes (e.g. the advance tax ruling that can be requested in order to prove that the CFC safe-harbour conditions apply[20]).

d) '*Interpello antiabuso*', to understand whether the new abuse of law rule applies to one or more transactions[21].

e) '*Interpello disapplicativo*', which should be filed beforehand, to allow the disapplication of specific anti-avoidance measures (e.g. measures to limit loss carryforwards of companies involved in a merger or demerger and prevent dividend washing).

These five categories of ruling are governed by the same rules, which cover aspects such as the timing of applications, eligibility to apply, investigation procedures and causes of inadmissibility. For instance, ruling applications must be submitted before the deadline for submission of the tax return or fulfilment of the other tax obligations queried in the application. However - and this marks a considerable change from the previous rules - the Revenue Agency may respond after this deadline. Only in the case of an 'interpello ordinario' and 'interpello qualificatorio' must the Italian Revenue Agency reply within 90 days. For other categories of ruling, the Italian Revenue Agency must reply within 120 days. In all cases, if the Revenue Agency requires additional documentation, the response time can be deferred by 60 days, only once.

20 *See the above section headed "Controlled foreign company rule".*

If the Revenue Agency does not respond within the above time frames, the solution proposed by the taxpayer is deemed to have been accepted by the Revenue Agency.

On 4 January 2016, the Director of the Revenue Agency issued a regulation containing implementing measures; moreover, Ministerial Circular 9 of 1 April 2016 outlined the main features of the new ruling procedure.

Ruling for substantial investments

Since 20 May 2016, a specific form of tax ruling has been available for companies that intend to invest a minimum of EUR 30 million in Italy, generating new employment. The idea is to provide greater certainty about the income generated by such investment plans and the wider tax implications. Together with its application for a ruling, the investor, whether resident or non-resident, must present a business plan indicating the size of the investment, its timing and mode of implementation, and the number of workers who are likely to be hired. The investor may ask for a tax ruling on various issues, including, for example, whether abuse-of-law or other anti-avoidance measures are likely to be triggered, the tax implications of a group reorganisation, and whether certain assets constitute a going concern. The Revenue Agency should provide the investor with a written answer within 120 days. If it does not, the solution proposed by the taxpayer is deemed to have been accepted. The answer is binding as long as the facts and circumstances do not change.

Ruling for the cooperative compliance regime

Since 2015, MNEs that have an effective tax control framework (i.e. those equipped with an adequate system for mapping, measuring, preventing and managing tax risks, as well as internal systems enabling clear definition of roles and responsibilities within the organisation) are eligible to opt for the Italian cooperative compliance regime provided that they satisfy one of the following conditions.

- Their turnover (or income) exceeds EUR 10 billion.
- Regardless of their turnover, they have obtained a tax ruling on substantial investments.
- They have disclosed the existence of an unreported permanent establishment to the Revenue Agency and settled this issue with it.

The taxpayer may opt for the regime by submitting an electronic application. Following the Revenue Agency's confirmation, communicated within 120 days of the application, the regime runs from the tax year in which the application has been submitted.

The Italian cooperative compliance regime offers various benefits, listed below.

- It allows a continuous exchange of information between the Revenue Agency and taxpayers with a view to preventing tax litigation.
- It allows taxpayers to evaluate any potential tax risks with the Italian Revenue Agency before the deadlines for their tax returns.
- It allows a fast-track advance ruling request, to which the Revenue Agency must reply within 45 days (instead of the 90-120 days for a standard ruling).
- Administrative sanctions can be reduced by 50 percent and collection of these sanctions is suspended until final assessment.
- If the taxpayer is accused of a tax crime, the Italian Revenue Agency will inform the public prosecutor that the taxpayer has adhered to the cooperation regime.

Two statements of practice, one published on 14 April 2016 and one on 26 May 2017, describe the implementing measures and the form to be used when applying for the regime.

International ruling

International rulings are for companies that have international business operations. The following types of companies can apply for an international ruling:

- resident companies that satisfy transfer pricing requirements;
- resident companies owned by or owning non-resident companies;
- resident companies that have paid interest, dividends or royalties to non-residents or have been paid these by non-residents;
- non-resident companies that operate in Italy through a permanent establishment.

Through an international ruling it is possible to:

- predefine the transfer pricing methods to be used in calculating the arm's length value of transactions;
- clarify how to apply the rules, including DTT rules, on the:
  - payment to (or receipt from) non-residents of dividends, interest, royalties or other income;
  - allocation of gains or losses to permanent establishments;
- clarify whether the activity that an MNE intends to pursue in Italy may trigger a permanent establishment in Italy, under Italian tax law and DTTs;
- respond to queries about the tax basis of assets and liabilities in a transfer of residence (to Italy or from Italy to a different EU Member State)[22].

The application must be filed with the Revenue Agency in Milan or Rome, depending on where the applicant is domiciled for tax purposes, and must be accompanied by full documentary proof that the applicant is eligible for an international ruling.

Before filing an application, taxpayers may ask for a meeting with the Revenue Agency (also on an anonymous basis) for further information on the procedure.

The process should be completed within 180 days of filing the application but in practice - especially for rulings on transfer pricing matters - it takes much longer, as several meetings between the taxpayer and Revenue Agency are generally necessary, as well as double-checks.

So that it can collect the information it requires, the Revenue Agency has access to the sites where the company or permanent establishment operates. The Revenue Agency may also seek the cooperation of foreign tax administrations, in which case the 180-day time limit may be suspended until the information requested from the foreign tax administration has been obtained.

To complete the process, the taxpayer and the Revenue Agency must sign an agreement. This is binding for five years and prevents the Revenue Agency from carrying out any tax assessment of the matters that it regulates. A report will be issued if the parties fail to reach an agreement.

Once the agreement is signed, the taxpayer must submit documents and information, either periodically or upon request by the Revenue Agency, to let the Revenue Agency verify compliance with the agreement.

Partial or total violation of the agreement results in its cancellation. The agreement will also be rescinded if there are any material changes in the facts or the law. Therefore, the company must keep the Revenue Agency informed of any new circumstances and give it free access to its records.

Before the agreement expires, the taxpayer can apply to renew it. Renewal (or changes) may involve an inquiry or further discussions between the Revenue Agency and the taxpayer.

22 See the above section headed "Moving tax residence to Italy: tax basis of assets and liabilities".

For a transfer-pricing ruling, the applicant must illustrate the criteria and methods that it intends to use in calculating the arm's length values of the transactions, and explain why it thinks these are the right ones. It must also produce the relevant documentation. If the ruling regards other matters, the applicant must indicate which of the legally available solutions it advocates, and why it considers this solution to be in accordance with the law.

Advance pricing agreements

Bilateral and multilateral APAs are available (even if not regulated by any specific law) and are binding for five years, while international rulings, with respect to transfer pricing matters - see above - are a form of unilateral APA.

5.2 Partnerships

5.2.1 Determination of taxable income

Italian partnerships are tax-transparent and are not included in the list of taxpayers subject to CIT. Income is allocated to partners whether or not it is actually paid. However, just like the income of companies subject to CIT, the income of both a general partnership ('*società in nome collettivo*' or '*Snc*') and a limited partnership ('*società in accomandita semplice*' or '*SAS*') is always treated as business income, even if it includes other categories of income, such as capital income or miscellaneous income. Such income is allocated and taxed to the partners as business income, in proportion to their contributions, whether or not they are entrepreneurs.

The income of an Italian partnership that is allocated to non-resident partners is always taxed in Italy as business income, even if the non-resident partner has no permanent establishment in Italy.

As of 1 January 2017, general partnerships can opt for a new tax called IRI, provided that they use ordinary accounting methods (meaning that they do not use simplified accounting methods, which may be used by businesses meeting certain statutory requirements). This IRI regime, derogating from the transparency principle, allows the partnership to be taxed at a rate of 24 percent on the income that remains within it. General partnerships may opt for IRI in their tax return for FY 2017. The regime runs for five years and is not renewable.

5.2.2 Foreign partnerships

Under Italian tax laws, non-resident entities (whether partnerships or corporations) are never considered to be transparent entities. Therefore, for Italian tax purposes, a foreign partnership is always similar to a corporation. Should it earn income from Italy, it will be subject to IRES.

However, the Italian income attributed to the non-resident partnership is not heaped together and treated as business income but is calculated in accordance with the specific rules established for each single category of income (capital income, real estate income, etc.). Only if the non-resident partnership has a permanent establishment in Italy will the income generated by the permanent establishment be considered (and calculated) as business income.

According to the Italian Revenue Agency[23], if a foreign partnership cannot be considered as tax resident in a treaty country, because the partnership's income is allocated to its partners for taxation in their own countries of residence, then Italy should grant the benefits provided by its treaties with the states in which the partners are resident.

23 See the interpretation given in Italian Revenue Agency Circular 306/1996.

By contrast, where the foreign partnership is considered as a corporation under the domestic law where it is resident (in general, when it is not considered as transparent), it can qualify as a person resident in a contracting state for DTT purposes and is entitled to DTT benefits [24].

5.3 Permanent establishments

5.3.1 Definition of permanent establishment

Under the domestic definition in force until 31 December 2017, for IRES and IRAP purposes a permanent establishment is a fixed place of business through which the business of a non-resident enterprise is wholly or partly carried on in Italy. The ITC gives a list of examples that are presumed to constitute a **fixed-place permanent establishment**, unless the taxpayer gives evidence to the contrary: (i) a place of management, (ii) a branch, (iii) an office, (iv) a factory, (v) a workshop, and (vi) a mine, an oil or gas well, a quarry or other place for the extraction of natural resources. However, a fixed place of business is not deemed to be a permanent establishment in Italy if it is used only to perform certain preparatory or auxiliary activities. Moreover, computers and auxiliary equipment for the collection of information and the transmission of data for the sale of goods or services do not by themselves constitute a permanent establishment.

A resident or non-resident person that habitually concludes contracts in Italy in the name of a non-resident enterprise, other than for the purchase of goods, is deemed to be an **agency permanent establishment** in Italy of the non-resident enterprise. However, the mere fact that a

24 Further information on the entitlement of foreign transparent entities to treaty benefits is given in this footnote.

Official interpretations on foreign transparent entities generally concern their entitlement to DTT benefits. Usually, transparent entities are not deemed to be resident for DTT purposes and therefore are not entitled to DTT benefits. Investors in the transparent entity are entitled to DTT benefits if they fulfil the following conditions.

- *They qualify as resident persons and are therefore liable to tax in their country of residence.*
- *They are the beneficial owners of the partnership income.*

With respect to the first condition, issues will arise if the investor itself is an entity, such as a collective investment vehicle (e.g. a pension fund or real estate trust), which is exempt from income taxes in its country of residence. In this case, a certificate of residence issued by the tax authorities of the country of residence of the investor/fund is required.

Two particular cases are described below.

Dividends paid by Italian companies to an Irish common contractual fund

The Italian Revenue Agency has clarified that, since this fund is a transparent entity not subject to tax on its income, it is not entitled to DTT benefits. Moreover, in order for the fund investors to be entitled to the benefits of the DTT in force between Italy and their country of residence, two conditions must be met.

a) The articles of the fund must provide for the annual distribution of profits.
b) Distributions must be subject to tax in the country of residence of the investors.

P**roceeds (dividends and capital gains) from investments made by a pension fund, set up under the law of the Netherlands, in Italian companies held through a Luxembourg fund (known in Luxembourg as an 'FCP')**

The Italian Revenue Agency has clarified that:

- *the FCP cannot be deemed to be a resident person for DTT purposes as it is fiscally transparent and not subject to unlimited tax liability in Luxembourg;*
- *consequently, the DTT in force between Italy and Luxembourg is not applicable to proceeds distributed to the FCP. In compliance with the OECD Commentary on article 4 of the OECD Model Tax Convention, the DTT between Italy and the Netherlands – the country of residence of the investor (the pension fund) – is applicable, provided that the investor is entitled to the DTT benefits. This means that it must be resident for DTT purposes in the Netherlands and be the beneficial owner of the income. As proof that these two conditions are satisfied, the Italian Revenue Agency requires the following.*

a) The articles of the FCP must provide for annual distribution of profits.
b) The proceeds from distribution must be subject to tax in the country of residence of the pension fund.
c) The pension fund, even though exempt, must be subject to CIT in the Netherlands, as stated in a certificate issued by the tax authority.

non-resident enterprise pursues its activity in Italy through a broker, general commission agent or any other agent of an independent status does not constitute a permanent establishment, provided those persons act in the ordinary course of their business. Moreover, the fact that a non-resident enterprise controls a resident enterprise, or is controlled by it, or that the two enterprises are both controlled by the same third entity, does not of itself make either of these enterprises a permanent establishment of the other.

The domestic definition of permanent establishment is basically consistent with the definition given by the 2014 OECD Model Tax Convention. There are, however, a few differences.

- **Length of time necessary to fulfil the permanency requirement for a building site:** this is three months in domestic law and 12 months in the OECD Model Tax Convention.
- **Supervisory activity in connection with a building site:** this is included in the definition of a permanent establishment given by domestic law but not in the definition given in the OECD Model Tax Convention.
- **Preparatory and auxiliary activities - combination of activities:** domestic law lists a series of ways in which a fixed place of business can be used without giving rise to a permanent establishment, in line with the OECD Model Tax Convention. But it differs from ordinary Italian tax-treaty negotiation practice because the last of the listed ways - a combination of activities that, viewed as a whole, constitutes a preparatory or auxiliary activity - does not appear in the lists found in the DTTs concluded by Italy. However, this does not seem to result in any material difference as the more advantageous domestic rule should prevail.
- Electronic commerce: "the availability of computers and other auxiliary systems that enable the collection and transmission of data and information for the sale of goods and services does not constitute, of itself, a permanent establishment". This less stringent rule is not in the OECD Model Tax Convention.
- **Agency permanent establishment:** under domestic law, "a resident or non-resident person who habitually concludes contracts in Italy in the name of a non-resident enterprise, other than for the purchase of goods, constitutes a permanent establishment in Italy of the non-resident enterprise". Unlike the OECD rule, this does not require the agent to act on behalf of the non-resident enterprise; nor does it expressly require the agent to have an authority to conclude contracts in the name of the enterprise. Moreover, according to the OECD Model Tax Convention, a dependent agent does not give rise to a permanent establishment if the agent's activities are of an auxiliary or preparatory nature; whereas, according to Italian law, the exclusion only applies to the purchase of goods. In practice, however, in light of case law (in its observations on the 2014 Commentary on the OECD Model Tax Convention, Italy states that its jurisprudence is not to be ignored in interpretation of the agent permanent establishment definition), the fact that the resident person acts on behalf, even if not in the name, of the non-resident is seen as a symptom of dependence; moreover, the exclusion for preparatory and auxiliary activities also applies to agents.
- **Control:** according to Italian law, the fact that a non-resident enterprise controls a resident enterprise, or is controlled by it, or that the two enterprises are both controlled by the same third entity, does not of itself make either of these enterprises a permanent establishment of the other. The Italian rule is broader than the one found in the OECD Model Tax Convention as it includes companies under common control.
- **Gaming business:** under Italian law a permanent establishment has specific features when it is involved in a gaming business (which it does not under the OECD Model).

The 2018 Budget Law has broadened the domestic permanent establishment definition, contained in article 162 ITC, with effect from 2018, in order to make it fully consistent with that proposed by the OECD in the BEPS Action 7 Final Report and the 2017 OECD Model Tax Convention and Commentary. More specifically, the amendment:

- extends the agency permanent establishment definition to a person that "*operates for the conclusion of contracts by the foreign enterprise with no material modifications*" and narrows the notion of an independent agent;
- makes the 'negative' list conditional on the taxpayer proving the preparatory or auxiliary nature of the activities;
- includes an anti-fragmentation rule;
- introduces an additional definition of a fixed-place permanent establishment: a "*significant and continuous economic presence in the territory of Italy, built in such a way that it will not result in a physical presence in Italy*".

These changes to the domestic permanent establishment definition will need to be coordinated with Italy's position on the Multilateral Convention (or MLI)[25]: Italy, for instance, reserved the right not to broaden the agency permanent establishment definition (see below under section 5.5).

5.3.2 Cooperation and enhanced collaboration for multinational enterprises

Article 1-*bis* of Law Decree no. 50 of 2017 introduces a special rule for MNEs, whereby certain non-resident enterprises may apply to the Italian Revenue Agency for a ruling, in order to (i) verify whether their business activities in Italy may trigger a permanent establishment, or (ii) voluntarily disclose the existence of a previously unreported permanent establishment. If a permanent establishment is deemed to exist, the applicant can follow a settlement procedure for the open fiscal years, paying the additional taxes and interest due, but lower penalties. No criminal consequences will ensue and, as an additional benefit, the applicant can automatically access the Italian cooperative compliance regime (see above in the section headed "Tax rulings").

Non-resident enterprises eligible to apply for a tax ruling are those that (i) belong to groups whose worldwide consolidated annual revenues top EUR 1 billion, and (ii) have annual sales of over EUR 50 million in Italy, obtained with the support of Italian entities belonging to the same group.

Though it seemed from the preparatory work within Parliament that the rule was meant to apply to enterprises in the digital economy, the final version is not narrowly worded and should also apply to industries operating outside the digital economy.

Measures implementing this rule have not yet been issued; therefore, it is not yet applicable.

5.3.3 Determination of taxable income

An Italian permanent establishment of a foreign company is subject to both IRES and IRAP on income from business in Italy. The taxable income is calculated in accordance with the rules applicable to resident companies.

No branch remittance tax is currently imposed on net profit transferred to the head office, whether or not the head office is located within the EU.

The attribution of profit to the permanent establishment now follows the approach of the OECD Model Tax Convention ("these profits are the profits that the permanent establishment might be expected to make if it were a separate and independent enterprise") and of the 2008 and 2010 OECD reports on attribution of profits to permanent establishments. So-called 'internal dealings' between a permanent establishment and its own foreign headquarters must also be at arm's length.

25 *OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.*

5.3.4 The branch exemption regime

The branch-exemption regime allows a resident taxpayer, as of 2016, to opt for the exemption of all its foreign branches (all or nothing). If there are branches that are established in a CFC low-tax jurisdiction or that have (i) an ETR which is less than half of that in Italy and (ii) mainly passive income (see the above section on the "Controlled foreign company rule"), the branch exemption will not apply and the income of such branches will be allocated to the Italian headquarters like CFC income. By contrast, if such CFC branches comply with the safe-harbour rules (again, see the above section on the "Controlled foreign company rule"), the branch exemption remains available.

Certain claw-back rules apply if such branches are loss-making before the election is made.

On 28 August 2017, the Italian Revenue Agency published Regulation no. 165138 to implement the new regime.

5.4 New tax on digital services (web tax)

The 2018 Budget Law introduced a new 3 percent tax on payments (net of VAT) - made by taxpayers resident in Italy (other than private individuals) and by **permanent establishments in Italy** - for digital services supplied electronically. This means supplies of services which are delivered over the Internet or an electronic network, which are essentially automated and involve minimal human intervention, and which are impossible to ensure without information technology. A forthcoming ministerial decree will define these services in more detail and introduce implementing measures.

The tax will apply to services supplied by resident or non-resident taxpayers that carry out more than 3,000 digital transactions in a calendar year. It must be levied by the recipient of the services on the payment date and must be paid by the 16th of the following month.

This new 3 percent tax should apply as of fiscal year 2019.

5.5 Double tax treaty relief

Italy currently has 95 DTTs in force[26]. Under article 169 ITC, the provisions of the DTTs prevail over those of domestic law, unless the latter are more favourable to taxpayers.

On 7 June 2017, the Italian Minister of Finance, Pier Carlo Padoan, signed the OECD MLI, aimed at amending the DTTs in compliance with the OECD guidelines contained in the BEPS Reports.

The MLI must be ratified through a law approved by the Italian Parliament and published in the Official Gazette.

However, no official announcements have yet been made as to the steps and timing of ratification. Therefore, at present, the provisions of the DTTs currently in force still apply.

The main positions[27] expressed by Italy on the MLI are the following[28].

26 See the Ministry of Finance's website: http://www.finanze.it/opencms/it/fiscalita-comunitaria-e-internazionale/convenzioni-e-accordi/convenzioni-per-evitare-le-doppie-imposizioni/

27 Under the provisions of the MLI, each signing jurisdiction was required to provide a list of reservations and notifications (the "MLI Position") at the time of signature. As clarified by the OECD, a reservation made by a Contracting Jurisdiction with respect to a provision generally blocks the application of the provision, whether or not the other Contracting Jurisdiction has also made the reservation. By contrast, both Contracting Jurisdictions are required to choose to apply the same optional provision in order to apply the provision.

28 The text of Italy's MLI Position (as defined below) is available at the following link: http://www.oecd.org/tax/treaties/beps-mli-position-italy.pdf

Covered Tax Agreements

Italy applies the MLI to 84 DTTs (including certain DTTs that are not yet in force, such as that with Kenya) out of the 95 currently in force. These 84 DTTs are the "Covered Tax Agreements".

Hybrid mismatches (Action 2)

Italy has decided to opt out of the main provisions regarding hybrid entities.

Prevention of treaty abuse (Action 6)

Italy has opted for the 'principal purpose test' or 'PPT' rule, either by accepting the default rule, or by opting out on the basis of an existing PPT.

Permanent establishment (Action 7)

Artificial avoidance of permanent establishment status through commissionaire arrangements and similar strategies (article 12 of the MLI)

Italy reserves the right for the entirety of article 12 not to apply to its Covered Tax Agreements and has therefore decided not to amend the agency PE definition in compliance with Action 7 in its DTTs[29].

Artificial avoidance of permanent establishment status through the specific activity exemptions (article 13 of the MLI)

Italy has chosen to apply Option A under article 13(1) of the MLI and has therefore decided to make the list of exemptions, present in all the 84 Covered Tax Agreements, subject to the further condition that they must have a preparatory or auxiliary character.

Italy has elected to include the anti-fragmentation rule, contained in article 13(4) of the MLI, in its Covered Tax Agreements.

Splitting-up of contracts (article 14 of the MLI)

Italy reserves the right for the entirety of article 14 not to apply to its Covered Tax Agreements.

Definition of a person closely related to an enterprise (article 15 of the MLI)

With respect to the anti-fragmentation rule, Italy applies the (very wide) definition of closely related enterprise contained in the BEPS Action 7 Final Report[30].

Mandatory binding arbitration (Action 14)

Italy has chosen to adopt the "mandatory binding arbitration" provision to improve dispute resolution.

5.6 EU directives, regulations and agreements concerning direct taxation

The following EU rules on income taxation have been adopted by Italy.

- Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (IAS/IFRS). This was implemented in Italian tax law through Legislative Decree no. 38/2005 and the implementing Ministerial Decree no. 48 of 2009 and Ministerial Decree of 8 June 2011 (as amended by a Decree of 3 August 2017).
- Council Directive 90/435/EEC of 23 July 1990 (the Parent-Subsidiary Directive) - amended by Council Directives 2003/123/EC and 2011/96/

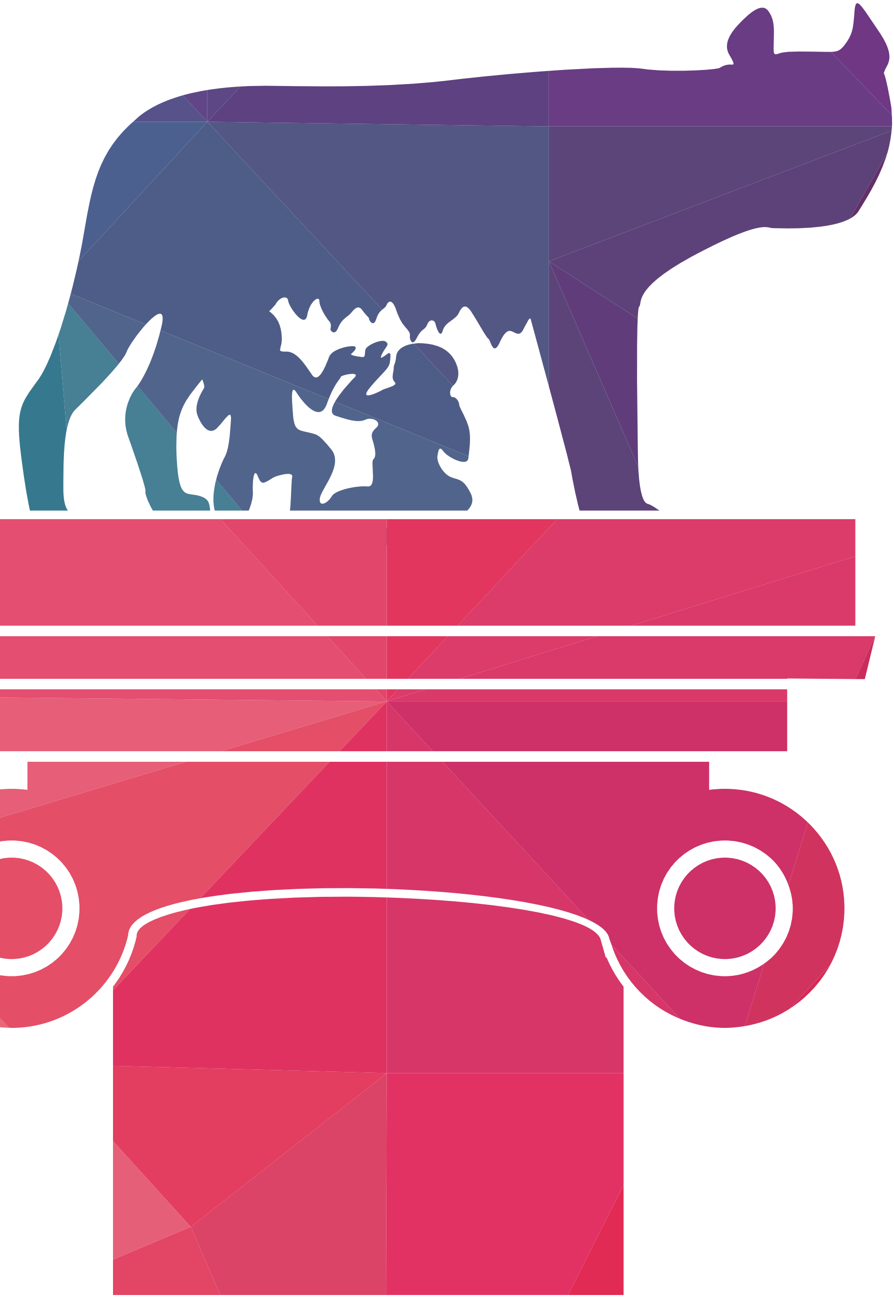
29 However, it has implemented Action 7 in its domestic rule (see above).

30 This was also included in article 162 ITC.

EU of 30 November 2011 (recast) - was implemented by Legislative Decree no. 49 of 6 February 2007. Its provisions are contained in article 27-*bis* of Presidential Decree no. 600/73. Directives 2014/86/EU and 2015/121/EU of 27 January 2015 introduced further amendments to Directive 2011/96/EU, which were brought into Italian tax law.

- Council Directive 2003/49/EC of 3 June 2003 (the Interest and Royalties Directive), on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States, was implemented by Legislative Decree no. 143 of 30 May 2005. Its provisions are contained in article 26-quater of Presidential Decree no. 600/73.
- Council Directive 2003/48/EC of 3 June 2003, on taxation of savings income in the form of interest payments, was implemented by Legislative Decree no. 84 of 18 April 2005. This directive was repealed by Directive 2015/2060/EU.
- The EU-Swiss Savings Agreement of 26 October 2004 entered into force on 1 July 2005. Under article 15 of this agreement, Switzerland must exempt interest and dividend payments made to companies resident in EU Member States under essentially the same conditions as those laid down in, respectively, the Interest and Royalties Directive and the Parent-Subsidiary Directive.
- Council Directive 90/434/EEC, repealed and replaced by Council Directive 2009/133/EC of 19 October 2009 (recast), as amended in 2013, on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States (the Merger Directive). This directive was brought into Italian tax law and its provisions are contained in articles 178-181 ITC.
- Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings - amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC - was brought into Italian law through Legislative Decree no. 139 of 18 August 2015. New provisions, which amend the rules of civil law on financial statements of resident companies, entered in force on 1 January 2016. Article 13-*bis* of Law Decree no. 244 of 2016 contains rules on the coordination of Legislative Decree no. 139/2015 with the tax rules for corporates (IRES and IRAP). Other such coordination rules are laid down in the implementing decrees of 3 August 2017.
- Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation (repealing Council Directive 77/799/EEC). This directive was amended by Council Directive 2014/107/EU of 9 December 2014 (which extends the scope of the mandatory automatic exchange of information) and brought into Italian tax law.
- Council Directive (EU) 2015/2060 of 10 November 2015 (repealing Council Directive 2003/48/EC on taxation of savings income in the form of interest payments) has been brought into Italian tax law.
- Convention 90/436/EEC of 23 July 1990 - on the elimination of double taxation in connection with the adjustment of profits of associated enterprises - was ratified in Italy by Law no. 99 of 22 March 1993 and introduced a Mutual Agreement Procedure. This Convention will be replaced by Council Directive (EU) 2017/1852 of 10 October 2017, to be implemented by 30 June 2019.
- In European Delegation Law no. 163 of 25 October 2017, Parliament asked the Government to issue a decree to implement the ATAD I Directive (Council Directive (EU) 2016/164 of 12 July 2016). The ATAD Directive should be implemented by 1 January 2019.

- EU Council anti-tax avoidance package, comprising:
  - Council Directive (EU) 2016/881 of 25 May 2016 - amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (automatic exchange of CbC Reports) - which was implemented in Italy through the Ministerial Decree of 23 February 2017 and Regulation no. 275956 of 28 November 2017.
  - EU Commission proposal for a directive amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches (12 April 2016 - COM(2016) 198): with a view to implementing G20/OECD CbC reporting and providing for mandatory publication of the CbC Report (i.e. a public report).
  - EU Commission Proposal for a Council Directive on a Common Corporate Tax Base (25 October 2016 - COM (2016) 685), which takes BEPS Reports into account.
- Commission Recommendation (EU) 2016/136 of 28 January 2016, on the implementation of measures against tax treaty abuse, encourages Member States to adopt provisions implementing the definition of permanent establishment contained in the OECD BEPS Action 7 Report. It was implemented through the 2018 Budget Law, which amended article 162 ITC.
- Council Directive (EU) 2015/2376 of 8 December 2015, amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (i.e. requires automatic exchange of international tax rulings, in compliance with the OECD BEPS Action 5). It was implemented in Italy through Legislative Decree no. 32 of 15 March 2017.
- Council Directive (EU) 2016/2258 of 6 December 2016, amending Directive 2011/16/EU as regards access to anti-money-laundering information by tax authorities. Law no. 163 of 2017 (Delegation Law for 2016-2017) delegates the Government to implement the directive.
- Commission Recommendation 2012/772/EU of 6 December 2012 on aggressive tax planning.
- Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014, transposed into Legislative Decree no. 136 of 17 July 2016, on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System.
- Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.
- Communication from the Commission - Framework for State aid for research and development and innovation (2014/C 198/01).
- Council conclusions of 5 December 2017 on the EU list of non-cooperative jurisdictions for tax purposes, which are set out in the annex (http://www.consilium.europa.eu/media/31945/st15429en17.pdf).
- Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011, on Alternative Investment Fund Managers. This was implemented by Legislative Decree no. 44 of 4 March 2014.
- Council Resolution of 8 June 2010 on coordination of the Controlled Foreign Corporation (CFC) and thin capitalization rules within the European Union (2010/C 156/01).
- European Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (2016/C 262/01).
- Communication from the Commission to the European Parliament and the Council - A Fair and Efficient Tax System in the European Union for the Digital Single Market (21 September 2017 - COM(2017) 547).



6. Transfer pricing

6.1 General principles

Italian transfer pricing regulations are included in the CIT rules and, more specifically, in article 110 (7) of the ITC. This article has recently been amended by article 59 of Law Decree no. 50/2017, converted into Law no. 96/2017 ("Article 59"). Amongst other things, Article 59 replaces the concept of fair market value ("*valore normale*") with a direct reference in article 110 (7) to the arm's length criterion stated in the OECD Transfer Pricing Guidelines. The Ministry of Economy and Finance is expected to issue implementation rules and guidance on the application of the transfer pricing rules, taking most recent international best practice into account.

The principle that international transactions between related parties must be in compliance with the arm's length standard means that, in determining the value of components of income derived from intragroup transactions, it is necessary to take into account the conditions and prices that would have been agreed between independent parties, operating at arm's length conditions and in comparable circumstances.

In accordance with the new rules[31], the application of the arm's length principle may trigger both increases and reductions in taxable income. However reductions are only accepted in the following cases.

- Under agreements reached by the competent tax authorities in the context of a MAP.
- After audits carried out as part of international cooperation activities, the results of which are shared by the cooperating countries.
- Upon request by the taxpayer (in accordance with rules to be defined by the Italian tax authorities) following a final upward adjustment of the taxable income by a country with which Italy has a tax treaty allowing an adequate exchange of information.

The arm's length test is based on the methods identified by the 2017 OECD Transfer Pricing Guidelines. However, in its official instructions, the Italian tax authorities still recommend that the Comparable Uncontrolled Price (CUP) Method be applied whenever possible. In practice, the principle established by the OECD Transfer Pricing Guidelines - that the method most suited to the circumstances of the case must be selected - is commonly accepted and applied.

Transfer pricing regulations in Italy only apply to cross-border transactions between related entities (i.e. an Italian company and its direct or indirect parent, subsidiary or sister companies). The application of transfer pricing rules to domestic transactions is excluded by article 5 (2) of Legislative Decree no. 147/2015, and this principle has been upheld in several Italian court cases.

Transfer pricing rules apply for both IRES and IRAP purposes.

31 Article 110 (7) of the ITC and article 31-quater of Presidential Decree no. 600/1973, as both amended by Article 59

6.2 Documentation issues

In drawing up transfer pricing documentation, reference is generally made to (i) the principles established in the OECD Transfer Pricing Guidelines, supplemented by the EU Transfer Pricing Code of Conduct issued by the EU Joint Transfer Pricing Forum, and (ii) Italian tax regulations.

Italian tax regulations[32] establish a penalty-protection regime for taxpayers that prepare transfer pricing documentation. Penalty protection is subject to certain requirements: (i) that the taxpayer prepares in advance and discloses the existence of transfer pricing documentation in its annual tax return; (ii) that, on request, the taxpayer submits the documentation in a timely manner; (iii) that the documents strictly comply with the template indicated in the tax authorities' guidelines; (iv) that the transfer pricing documentation is deemed to be appropriate by the Italian tax authorities in their tax audit report.

If the taxpayer is in possession of proper transfer pricing documentation, the burden of proof generally lies with the tax authorities; vice versa, a lack of documentation makes it easier for the tax authorities to justify a tax assessment and a transfer pricing adjustment and, therefore, shifts the burden of proof to the taxpayer, who must demonstrate that the tax authorities' approach is incorrect.

Italian transfer pricing regulations provide templates for a master file/country-specific documentation; however, the indications given in OECD BEPS Action 13 and the revised Chapter V of the 2017 OECD Transfer Pricing Guidelines, with reference to the master file/local file approach, have not yet been implemented in Italy.

For certain transactions, such as intra-group services, general Italian CIT rules require evidence that the services are actually (i) related to the business, and (ii) that the company receiving the services obtains or can reasonably expect to obtain a benefit from them, in view of its ordinary business activity. This circumstance must be demonstrated by appropriate (additional) documentation, which must be shown to the Italian tax inspectors in the event of a tax audit. The Italian tax authorities generally take a very aggressive approach to Italian companies that are members of multinational groups and that deduct intra-group charges for services, usually disallowing the deduction if the charges are not appropriately documented.

6.2.1 Country-by-Country (CbC) reporting

The 2016 Budget Law (paragraphs 145 and 146 of article 1) introduced CbC reporting obligations - pursuant to OECD BEPS Action 13 - for Italian parent companies of groups with consolidated turnover of over EUR 750 million. The obligation also extends to Italian subsidiaries when the ultimate parent company has to prepare consolidated financial statements but is resident in a country that has not implemented CbC reporting rules or does not exchange information gathered under the CbC reporting rules.

An implementation decree issued on 23 February 2017 established the content of the CbC Report and other details (the first year for CbC reporting, the CbC reporting dates, and other procedural aspects). Further guidelines were issued by the Italian tax authorities on 28 November 2017, explaining the content of the Report and how it should be submitted.

The CbC Report must be submitted within 12 months of the last day of the MNE group's tax year.

Failure to comply with the CbC reporting obligation triggers an administrative penalty ranging from EUR 10,000 to EUR 50,000.

32 Article 26 of Law Decree no. 78/2010, converted into Law no. 122/2010 and supplemented by the guidelines issued on 29 September 2010 by the Italian tax authorities and the subsequent Circular issued on 15 December 2010.

6.3 Penalties

In the event of a tax assessment, no penalties should apply if the taxpayer qualifies for the penalty protection regime described above. Otherwise, standard CIT penalties, modified by Legislative Decree no. 158/2015 and ranging from 90 to 180 percent of the additional tax, can be applied where higher taxable profits have emerged as a result of a transfer pricing adjustment. The taxpayer may, however, be able to reduce the penalties in the event of early settlement.

In certain circumstances, criminal penalties may also apply.

6.4 Advance tax agreements for enterprises with international activities

Advance tax agreements for enterprises with international activities resolve both transfer pricing and other international taxation matters. With specific reference to transfer pricing, unilateral, bilateral and multilateral APAs have been introduced in Italy, to define in advance the methods to be used in calculating the arm's length value of transactions subject to transfer pricing regulations. The APA procedure may also be used to determine the attribution of profits between a permanent establishment and its head office and to ascertain in advance whether a foreign enterprise has a permanent establishment in Italy.

The APA procedure is reserved for enterprises with international activities, namely:

- resident companies that meet the conditions imposed by transfer pricing rules;
- resident companies owned by or owning non-resident companies;
- resident companies that have paid interest, dividends or royalties to non-residents or have been paid these by non-residents;
- non-resident companies that operate in Italy through a permanent establishment.

The APA procedure starts with an application, to be filed with the Italian APA Office in Milan or Rome, depending on the tax domicile of the applicant. The application must be accompanied by full documentary evidence that the applicant is eligible for the procedure. The APA Office may seek the international cooperation of foreign tax authorities. In this case, the deadline for completion of the procedure may be postponed until the information requested from the foreign tax authorities has been obtained.

The procedure ends with the taxpayer and the director of the APA Office signing an agreement that is binding on the taxpayer and the Italian tax authorities for the fiscal year in which the agreement is issued, and for the following four years, provided the factual and legal circumstances remain unchanged.

Under article 31-*ter* of Presidential Decree no. 600/1973, an APA agreement may also apply retroactively in two situations. First, if the APA is based on a MAP, under a DTT, it is binding back to the tax year in which the APA application was submitted. Second, if the factual and legal circumstances on which the APA is based were the same in prior fiscal years, the taxpayer may roll back the terms of the APA to the tax year in which the APA application was submitted, and amend its tax returns, without facing any penalties.

If an APA is not reached, a written report is drawn up.

Over the five tax years in which the APA is valid, the tax authorities may only carry out tax assessments in relation to matters other than those covered by the APA. After the APA has been signed, the APA Office may conduct audits in order to assess whether the terms and conditions are being respected and whether there have been any changes in the factual or legal circumstances on which the APA is based.

The taxpayer must submit, periodically or on request, any documents or information that enable the APA Office to monitor the company's compliance with the terms and conditions of the APA. The APA Office can also visit the premises of the company, at a time agreed beforehand; the APA Office's activities must be described in a report, a copy of which is given to the company's legal representative.

If the company violates the APA, in whole or in part - i.e. the APA Office realizes, from documentation, information, visits to the company's premises or other sources, that the company has not respected the terms of the agreement or demonstrates a lack of cooperation or transparency - the APA Office will serve the company a notice inviting it to submit its arguments of defence within 30 days. If the company fails to submit its arguments on time, or if the APA Office believes that the company's arguments do not sufficiently disprove the accusations against it, the APA Office will notify the company that the agreement is invalid.

Italian regulations also explain how the APA can be amended if the original circumstances change, and how the APA can be renewed. Up to 90 days before it expires, taxpayers can submit an application to renew the APA. Amendments and renewal may both involve an inquiry or further debate between the APA Office and the taxpayer.

7. Taxation of individual income

7.1 General rules

7.1.1 Introduction

An individual's liability to Italian income tax is based on their residence status for taxation purposes and on the source of income.

The Italian tax year is the calendar year.

7.1.2 Tax residents of Italy

Individuals who are tax resident in Italy are subject to income tax on their worldwide income, unless they are exempt under the provisions of a treaty.

An individual is considered to be an Italian resident for tax purposes, subject to tax treaty provisions, if at least one of the following conditions is met for the greater part of the tax year (i.e. for 183 days or more in a calendar year).

- The individual is registered in the *Anagrafe*.
- The individual has a residence in Italy as defined in the Italian Civil Code.
- The individual has a domicile in Italy, as defined in the Italian Civil Code.

A person's "residence" is their place of habitual abode; their "domicile" is the place they establish as their main centre of business and interests (centre of vital interests).

Meeting at least one of the above conditions is sufficient for an individual to be deemed Italian tax resident.

Spouses are taxed separately on their earned income. Furthermore, each spouse is taxed on half the income of minors and on half the income generated by (i) jointly-owned marital assets and (ii) family assets.

7.1.3 Non-residents

Individuals who are not resident in Italy for tax purposes are subject to Italian income tax on certain categories of income from Italian sources only.

Non-resident individuals who:

- are residents of an EU or EEA country that provides for an adequate exchange of information with the Italian tax authorities, and
- derive more than 75 percent of their income from Italian sources

can benefit from all allowances that resident individuals are entitled to, while still qualifying (and being taxed) as non-resident individuals, on condition that they do not benefit from similar allowances in their state of residence.

This rule provides for the full recognition of tax allowances and reliefs, subject to certain conditions. In particular, qualifying non-resident individuals are required to submit a special declaration to their withholding agent, providing all the necessary information, e.g. their state of residence for tax purposes and, if they are entitled to personal credits, the personal data of family members. Furthermore, they must keep and, where required, submit various documents to the Italian tax authorities, including a copy of their tax return filed in the foreign state of residence.

7.1.4 Types of personal taxes

Taxable income is subject to IRPEF. In addition, regional and municipal taxes are levied; these vary according to the place of residence and the regulations issued by the regional and municipal authorities.

Individuals who are resident in Italy are subject to wealth taxes (IVIE and IVAFE) on real estate and financial products held outside Italy.

7.2 Taxable income

7.2.1 Categories

Resident individuals are subject to IRPEF on the following worldwide income:

- income from immovable property
- income from capital
- income from self-employment (professional income)
- income from employment
- business income
- miscellaneous income, including capital gains.

The aggregate taxable income is calculated by adding together the income of each category; only losses arising from a business, trade or profession may be deducted.

Tax allowances differ according to the type of income. Losses arising from a business, trade or profession may be carried forward for a maximum of five years and offset against income of the same kind. The profits and losses included in aggregate income are calculated separately for each income category in accordance with statutory rules, based upon the net total of all sources in the same category.

In calculating profits and losses, revenue, expenses and charges in foreign currency are valued at the exchange rate of the date on which they are received or incurred, at the exchange rate of the nearest prior date or, failing that, the average exchange rate of the month in which they are received or incurred.

7.2.2 Employment income

Salary

Income from employment consists of all remuneration - in cash or in kind and including gifts - received during a tax year in connection with employment. All types of pensions and equivalent allowances are deemed to be income from employment.

No deductions from employment income are allowed for work-related expenses.

As a general rule, all reimbursements by the employer are taxable to the employee, with the exception of refunds of travelling expenses, subject to certain terms and conditions.

Payments made upon termination of employment may be taxed separately; however, at the taxpayer’s request they can also be taxed under the ordinary taxation system.

Benefits in kind

As a general rule, benefits in kind are taxable in the hands of the employee if they exceed EUR 258.23 in the tax year. They include benefits received by family members of the employee and benefits from third parties.

Benefits in kind are deemed to constitute income equal to their market value, with some exceptions: special provisions apply, for instance, to vehicles put at the disposal of employees, rental costs for accommodation paid by employers, and low-interest loans to employees from employers.

Pension income

There are no special provisions for pensions. Pensions and allowances regarded as equivalent to a pension are treated as income from employment. However, certain annuities from qualifying pension plans are treated as income from capital and are, therefore, subject to a substitute tax of 26 percent.

For income deriving from complementary pension funds, the tax treatment differs considerably.

- Periodical payments made by pension funds (including those derived from TFR payments and both tax-deductible and non-tax-deductible employee contributions) are subject to separate taxation at a maximum flat rate of 15 percent, varying in accordance with the years accrued.
- The financial component of annuities is treated as income from capital and subject to a 20 percent substitute tax. Where the fund invests in Italian bonds or government bonds of cooperative jurisdictions, the substitute tax is 20 percent but the taxable base is reduced to 62.5 percent.
- The capital component of annuities is not subject to tax.

Directors' remuneration

Remuneration paid to the members of a board of directors or supervisory board is taxed as employment income. If the functions carried out by a director or supervisory board member are typical of their professional activity, the remuneration is taxed as professional income (see below).

7.2.3 Business and professional income

Business income is that derived from running a business. It is generally taxed at the progressive rates of individual income tax.

The income of general and limited partnerships, regardless of its source and the purpose of the partnership, is considered to be business income and is calculated in accordance with the rules governing such income. The partners of a partnership engaging in trade may opt to have partnership income taxed at the rate of 24 percent (from 1 January 2017, the corporate tax rate was decreased from 27.5 percent to 24 percent). Once the income, taxed as such, is distributed to the partners, it is subject to tax at the ordinary progressive rates.

Professional income is that derived from a trade or profession and is the difference between the fees received during the tax year (in cash or in kind, including profit shares) and the expenses incurred in practising that trade or profession during the same period.

7.2.4 Investment income

The law lists the items of income that are to be treated as income from capital if received by private individuals (i.e. individuals not engaged in a trade or business). For individual entrepreneurs, these items of income do not constitute income from capital when they relate to their business activity. Instead, they are treated as components of business income and are subject to the rules on calculating such income.

Broadly speaking, in the case of bonds and similar securities, proceeds other than those pre-determined at issue (or indexed) are not regarded as investment income but as miscellaneous income (capital gains) and taxed accordingly.

Investment income includes:

- interest from loans, deposits and current accounts
- dividends and other distributions
- royalties
- other.

Please refer to section 6.4.2 for the taxation rules on investment income.

7.3 Tax-exempt items and personal deductions

7.3.1 Tax-exempt income

Payments not treated as taxable remuneration include certain social welfare payments, life and accident insurance payments, and reimbursements of business expenses documented by original receipts.

Social welfare

Mandatory social security contributions paid by the taxpayer are deductible from taxable income within certain limits and on certain conditions.

Voluntary contributions made to pension funds (i.e. a company's pension fund), even if paid abroad, are tax deductible (or tax-exempt when they are made by the employer) up to the amount of EUR 5,164.57.

Medical insurance

Contributions of up to EUR 3,615.20, paid into Italian National Health Service funds (Fondi integrativi al Servizio Sanitario Nazionale) for medical assistance, both by the employer and by the employee, are not taxable.

Benefits in kind and reimbursements of business expenses

Reimbursements of business expenses incurred by an employee are not considered taxable remuneration if the expenses can be proven with original receipts.

The following business expenses are not included in taxable income:

- food served in canteens or equivalent services (up to a daily ceiling);
- transportation between home and work, even if this is contracted out to third parties;
- the cost of educational, recreational, health, religious and social welfare services provided by the employer for the benefit of all (or certain categories of) employees.

If a company car or motorcycle is made available to an employee, the taxable benefit is 30 percent of the amount calculated on the basis of published tables and an assumed annual mileage of 15,000 km.

If an employee receives a low-interest loan from an employer or a third-party lender, the taxable benefit is 50 percent of the difference between the official discount rate of interest and the actual rate of interest paid by the employee at the end of each year.

7.3.2 Deductions

Various allowances of differing amounts are granted for dependent family members, provided that the family member and taxpayer's income do not exceed certain amounts.

Family deductions

The following deductions for family members are allowed as deductions from gross tax. However, deductions only apply if the family member's aggregate annual income does not exceed EUR 2,840.51.

Starting from 1 January 2019, the threshold will increase to EUR 4,000 for children up to the age of 24 years.

Dependent spouse - from zero to EUR 800. This allowance is theoretical as the deduction decreases as income increases. No allowance is granted when income exceeds EUR 80,000.

With the introduction of the Cirinnà Law (Law no. 76 of 20 May 2016) on civil unions, the same deductions apply to same-sex couples.

Dependent children - EUR 1,220 (for children up to three years) and EUR 950 (for children over three years) for dependent children, with an extra EUR 400 for children with disabilities. If there are more than three children in the family, the amount increases by EUR 200 for each child after the first.

These amounts decrease as income rises. Moreover:

- for taxpayers with one child, the deduction is not available for income of over EUR 95,000;
- for taxpayers with two children, the deduction is not available for income of over EUR 110,000;
- for three children, the deduction is not available for income of over EUR 125,000
- for four children, the deduction is not available for income of over EUR 140,000, and so on.

A further deduction is available for individuals with four or more dependent children who qualify for a deduction. The deduction is EUR 1,200, regardless of their income.

The above deductions are also available to non-residents, although the latter must be able to prove their family relationships by means of a local family relationship certificate. They must also:

- generate at least 75 percent of their aggregate income in Italy;
- be living in Italy;
- not benefit from similar deductions in their country of residence.

Other family members - EUR 750. This allowance is theoretical and depends on the income amount. No allowance is granted for income above EUR 80,000.

Other deductions

Resident taxpayers are allowed to deduct **19 percent** of the following expenses from their gross tax:

- the portion of medical expenses exceeding EUR 129.11, incurred by the taxpayer, his/her spouse or other dependents, and including fees charged by specialists;
- veterinary expenses: up to EUR 387.34;
- voluntary life insurance premiums and accident premiums not exceeding EUR 530 (provided that certain conditions are met);
- insurance premiums covering assistance for disabled persons: up to EUR 750;
- insurance premiums covering the risk of no longer being able to complete ordinary daily tasks: up to EUR 1,291.14;
- insurance premiums covering the risk of calamities affecting housing;
- interest paid to banks resident in the EU on mortgage loans (for owner-occupied dwellings) secured by property in Italy, up to a maximum of EUR 4,000 per year (if other taxpayers share ownership of the property the deduction is calculated in proportion to the respective percentages of ownership);
- interest paid to banks resident in the EU on agricultural loans, up to the declared income from the land;
- funeral expenses, up to a maximum of EUR 1,550;
- nursery school tuition: up to EUR 632;
- elementary, junior and high-school tuition: up to EUR 786;
- university fees up to the amount of tuition fees payable to state schools and universities;
- expenses for children’s sports (for children aged 5 - 18 years old): up to EUR 210 per child;
- expenses paid to real estate agents, up to a maximum of EUR 1,000;
- grants for particular public objectives;
- season tickets for public transport services, up to a maximum of EUR 250 (including costs incurred for family members);
- expenses incurred to help individuals with a specific learning disability, until the completion of secondary school;
- rents of university students "away from home", up to a maximum amount of EUR 2,633.

Resident taxpayers are allowed to deduct **50 or 65 percent** of the following expenses from their gross tax:

- furniture purchased for a renovated house (50 percent);
- building renovation (50 percent);
- energy retrofits (65 percent);
- earthquake-proof building renovations (from 80 to 85 percent);
- maintenance of gardens and terraces (36 percent - with a cap of EUR 5,000 on expenses).

The eligible expenses for building renovations are limited to EUR 48,000 per dwelling for building renovations carried out between 2005 and 25 June 2012, and EUR 96,000 for building renovations carried out between 26 June 2012 and 31 December 2018. The deduction for building renovation and energy retrofits must be spread over 10 years.

7.4 Tax rates

7.4.1 General rules

The following rates of individual income tax apply:

TAXABLE INCOME	TOTAL TAX ON INCOME BELOW BRACKET	RATE ON EXCESS
EUR	EUR	Percent
0 - 15,000		23
15,001 - 28,000	3,450	27
28,001 - 55,000	6,960	38
55,001 - 75,000	17,220	41
Over 75,000	25,420	43

In addition to personal income tax (IRPEF), regional tax and municipal tax are due on the same taxable income. The tax rates depend on the region and the municipality in which the individual is domiciled. Regional taxes range between 1.23 percent and 3.33 percent, depending on the region. Municipal taxes usually range between 0.0 percent and 0.9 percent.

7.4.2 Separately taxed items

Taxation of investment income and capital gains

The tax treatment of both Italian and foreign dividends is summarised below.

Italian dividends

Recipient	Non-qualifying shareholding	Qualifying shareholding
Private individual (dividend taxed as income from capital).	26 percent final WHT on 100 percent of the dividend.	26 percent final WHT on 100 percent of the dividend.

There is a temporary regulation for the distribution of dividends from qualifying shares, approved between 1 January 2018 and 31 December 2022 and constituted by profits produced by 31 December 2017. In such cases the dividends are taxed according to the previous rules (therefore, with the progressive IRPEF rates on a tax base reduced to 40 percent, 49.72 percent or 58.14 percent, depending on the year in which the profits were produced).

Recipient	Non-qualifying shareholding	Qualifying shareholding
Private individual (dividend taxed as income from capital).	26 percent final tax on the dividend net of the tax paid in the foreign country.	26 percent final tax on the dividend if it derives from a company located in a cooperative jurisdiction. (Progressive taxation on 100 percent of the dividend if the shareholding is in a company in a low-tax jurisdiction. The tax basis is reduced to 50 percent of the dividend if it is proved that the foreign company carries on an effective activity in the low-tax jurisdiction).

Capital gains

Under Italian tax law, capital gains are treated as miscellaneous income.

The tax is levied on the difference between the selling price and the purchase cost, which may include additional legal and administrative expenses.

The taxation is levied in two different ways (from 1 January 2019 the tax rate will be 26 per cent).

Interest

Generally, interest income is taxable. There are, however, different taxation rules for financial instruments, according to the source of the interest. Interest income from bonds issued by government or similar entities, whether Italian or foreign (provided that the foreign entities are included in the List of Cooperative Jurisdictions), is subject to a final WHT of 12.5 percent.

Interest income and income from other securities issued by banks or companies listed on the stock exchange are subject to a final WHT of 26 percent.

Interest on bank and postal current accounts is subject to a final WHT of 26 percent. Taxpayers may choose to tax interest at progressive tax rates.

Royalties

Royalty income includes that derived from the third-party use of intellectual property, patents, industrial inventions, trademarks and know-how. Royalties are treated as professional income if received by an author or inventor, or as miscellaneous income if received by individuals other than the author or inventor. A flat rate of 25 percent of expenses may be deducted from gross royalties where certain conditions are met (the deduction is increased to 40 percent if the beneficiary is under 35 years of age).

Payments received from the lease of tangible property are not treated as royalty income but as business income if derived in the course of a trade or business, or as miscellaneous income if derived in some other way.

Income from immovable property

In general, income from the ownership of land and buildings is a notional amount based on a cadastral system. In the case of property that is rented out, the taxable basis is the higher of the notional cadastral income and the actual income, net of directly attributable expenses of up to 5 percent of the gross income (i.e. the actual net income cannot be lower than 95 percent of the gross income).

If the immovable property is rented out to an individual for living purposes, the landlord may opt for a flat-rate tax (*cedolare secca*) of 21 percent (or 10 percent for houses in municipalities with high-density populations) instead of the ordinary progressive tax rates. The tax base is 100 percent of the rental income stipulated in the rental contract.

Owner-occupied homes are deemed to produce taxable income for the owner. However, the notional income of an owner-occupied dwelling is not subject to tax.

Income from immovable property located abroad is obviously not subject to the cadastral system of taxation.

Principal residence: gains and losses

Capital gains realised on the sale of real estate in Italy are generally taxable whether or not the owner is resident in Italy. Italian tax law provides that capital gains realised on the transfer for a consideration of buildings held for less than five years are to be included in the individual's taxable income. The sale of the first habitual dwelling is not taxed as a capital gain if the building has been named as the owner's habitual dwelling for the greater part of the period of possession.

Capital gains realised on the sale of real estate purchased more than five years previously are not taxed.

Capital gains realised on the sale of real estate outside Italy are taxable in Italy under the above rules if the owner is considered to be an Italian tax resident, subject to the DTT provisions.

Taxation of investment capital gains

Capital gains realised on the sale of financial investments are taxable as miscellaneous income. The tax base is generally the difference between the proceeds and the cost (including the transaction costs).

Since 1 July 2014, the tax rate has stood at 26 percent.

7.5 Administrative and filing requirements

7.5.1 Withholding taxes

Salaries and other income from employment paid by companies, businesses and professionals are subject to advance WHT, which is creditable against the recipient's income tax liability. The tax is withheld at the ordinary income tax rates corresponding to the relevant brackets, on a pro rata basis according to the period for which the payment is made.

7.5.2 Deadlines

For individual taxpayers, the tax year is the calendar year.

Income tax is generally due by 30 June of the subsequent year and before the Italian tax return filing deadline; however, the Italian Revenue Office can accept delayed payments with interest and penalties, if applicable. The 730 tax return must be filed by **23 July** of the subsequent year, whereas the filing deadline for the *Redditi PF* tax return is **31 October**. The RW form is filed together with the *Redditi PF* tax return.

The deadlines may be extended further by the Italian government.

7.5.3 Foreign asset monitoring

Regardless of their obligation to file an income tax return, all individuals who are tax residents of Italy must comply with exchange control regulations in Italy and declare their foreign investments.

Tax residents are required to report all assets held outside Italy (on form RW). Such assets include real estate, financial investments, bank accounts, precious metals, artwork, luxury automobiles and yachts. This requirement applies not only to income-producing assets, but also to assets capable of producing future income or gains.

7.5.4 Payment of tax

Income taxes must be paid as described below.

- By 30 June of each year the taxpayer must pay the balance for the previous calendar year and the first advance payment for the current year. The first advance payment amounts to 40 percent of the difference between the net tax amount and WHT and other tax credits. It is possible to pay by 30 July, with a small tax surcharge of 0.4 percent.
- By 30 November of each year the taxpayer must pay the second instalment, equal to the remaining 60 percent of the difference between the net tax amount and WHT and other tax credits.

A 30 percent advance payment for the additional municipal income tax must be paid together with the balance of taxes due for the previous year.

7.5.5 Penalties

If the tax return is filed between one and 90 days after the deadline, a penalty of EUR 25.80 is due.

If any tax is due, the following penalties for delayed payments apply (taking payments due in 2018 as an example):

- Payment by 31 July 2018 - interest of 0.4 percent.
- Payment between 31 July and 30 August 2018 - if the payment is made between 1 and 15 August 2018, there is a reduced penalty equal to 0.1 percent of the unpaid tax for each day of delayed payment, up to and including the payment date, plus interest. Between 16 and 30 August 2018, the penalty is 1.5 percent of the unpaid tax, plus interest.
- Payment between 31 August 2018 and 29 October 2018 - a reduced penalty of 1.67 percent of the unpaid tax, plus interest.
- Higher penalties are due in the event of any further delay in payment.

Tax returns filed more than 90 days after the deadline are considered as omitted tax returns and are subject to penalties of between 120 percent and 240 percent of the tax due. Inaccurate tax returns (which report less taxable income than assessed or higher credits/deductions than assessed) are subject to penalties of between 90 percent and 180 percent of the additional tax due. In some circumstances, criminal penalties may be imposed.

7.6 Other taxes

7.6.1 Wealth tax on foreign assets

Foreign financial products held outside Italy are subject to IVAFE. For bank accounts, postal accounts and savings accounts, the tax is fixed at EUR 34.20 per account, if the annual average balance is higher than EUR 5,000. Other foreign financial products are subject to a tax rate of 0.2 percent of the value at the end of the tax year or at the end of possession, in proportion to the percentage of ownership and days of possession.

Foreign real estate is subject to IVIE. As of FY 2016, if the property in question is used as the principal residence, then IVIE is no longer due. If it is not used as the principal residence, the tax amounts to 0.76 percent of the purchase price or, in some cases, of the foreign cadastral income, in proportion to the percentage of ownership and days of possession.

7.6.2 Municipal property tax (IMU)

IMU is levied on those who own immovable property (buildings, development land, rural land) located in Italy.

The tax base is the notional cadastral income attributed by the immovable property registry, multiplied by 1.05 and then by 160 for residential property.

The tax rate is equal to 0.76 percent (for other buildings not used as the main dwelling). The municipality may increase or decrease the tax rates. This tax is not deductible for income tax purposes.

7.6.3 Gift and inheritance tax

Gift and inheritance tax is applicable to all Italian residents and also to non-residents who have property in Italy. The tax rates are as follows.

- Four percent for beneficiaries directly related to the donor or the testator (i.e. spouse and children). An exemption is given for the first EUR 1 million of assets and cash transferred to each beneficiary (the threshold rises to EUR 1,500,000 for disabled beneficiaries).
- Six percent for siblings of the donor or the testator. An exemption is given for the first EUR 100,000 of assets and cash transferred to each beneficiary.
- Six percent for other relatives, with no tax exemptions.
- Eight percent for beneficiaries not related to the donor or the testator, with no tax exemptions.

When real estate is inherited or gifted, cadastral tax and mortgage tax apply at the rates of 1 percent and 2 percent respectively. If the real estate is the principal dwelling, the cadastral and mortgage taxes are substituted by a fixed tax of EUR 200.

7.7 International aspects

7.7.1 Expatriates

Income derived by employees from an activity permanently performed abroad is taxable on the basis of notional salaries determined annually by decree of the Ministry of Labour and Social Security (Ministerial Decree of 22 December 2016 for FY 2017) instead of the salary actually received. This applies only if (i) the activity performed abroad is the exclusive object of the employment, (ii) the activity is not occasional, and (iii) the employee stays abroad for more than 183 days of the year.

The notional salaries are normally used as the basis for paying Italian social security contributions when an Italian employee is seconded to a non-social security treaty country. Italian employers must levy WHT on the monthly notional salary for their Italian employees working abroad and all the benefits linked to the foreign employment are deemed to be included in the notional salary. It may be possible for an Italian employee seconded abroad to be subject to double taxation (in Italy and in the host country). However, double taxation can be avoided or reduced through the tax credit mechanism.

These rules do not apply to Italian employees who are seconded abroad and cease to be Italian tax residents.

7.7.2 Double taxation relief

Resident individuals are subject to individual income tax on their worldwide income. In order to avoid international double taxation, a foreign tax credit is granted to residents with foreign income.

Such foreign taxes may be credited up to the amount of IRPEF due on the same income, based on the ratio of foreign income to total income (net of any tax loss carryforwards).

If foreign income is derived from more than one country, the foreign tax credit is applied separately on a per-country basis.

The credit must be claimed, upon penalty of forfeiture, in the tax return for the tax year in which the foreign taxes are definitively paid. According to the tax authorities, a tax is definitively paid when no partial or total reimbursement may be obtained.

No credit is granted if an individual fails to file a tax return or report income generated abroad in the tax return. No tax-sparing clause is available at the domestic level.

7.7.3 Specifics of non-resident taxation

Non-resident individuals are subject to individual income tax on Italian-source income. As a general rule, income tax is calculated in the same way as for resident individuals, on the aggregate income derived from Italy.

Non-residents must file an annual tax return for income from Italian sources, as well as income subject to a final WHT or to substitute tax. The procedure is the same as for resident individuals.

Income from employment (including pensions) is subject to taxation in Italy if the work is performed in Italy. Pensions, similar allowances and termination payments are also subject to taxation in Italy if paid by the state, residents of Italy or Italian permanent establishments of non-residents.

Investment income and professional income are subject to a final WHT or substitute tax. Where withholding or a substitute tax is not applied, the non-resident is, when filing a tax return, subject to taxation at the ordinary income tax rates.

Income from a business carried on in Italy is only taxable if it is earned through a permanent establishment. Income from a profession practised in Italy by a non-resident is subject to a 30 percent final WHT if the payer is a withholding agent. Income from a profession includes directors' fees paid by a resident company.

Non-residents are also subject to IRAP on the net value of production derived from a business or profession run or practised in Italy through a permanent establishment or a fixed base for at least three months.

Dividends are subject to a final WHT of 26 percent unless a lower rate applies under a tax treaty. If tax has also been paid on the dividends in the recipient's country of residence, a refund is available up to the percentage stipulated in the relevant tax treaty.

In general, **interest** payments to non-resident individuals are subject to a final WHT at the rates applicable to interest paid to residents. However, a 26 percent rate applies to loan interest paid to individuals resident in a country or territory that is outside the European Union and has a preferential tax regime.

In addition, interest paid to non-residents on deposit accounts with banks and post offices is exempt. Interest paid to non-residents on bonds issued by the state, banks or listed companies with a maturity of at least 18 months is exempt if the beneficial owner is resident in a country with which Italy has an adequate exchange of information. In order to benefit from this exemption, the non-resident must deposit the bonds with a resident bank or other approved intermediary.

Royalties paid to non-residents are subject to a 30 percent WHT, which is generally applied to 75 percent of the gross payment, resulting in an effective rate of 22.5 percent. However, if the recipient is not the author or the inventor and the underlying right was acquired without consideration, the tax is applied to the full amount of the royalties.

Income from immovable property located in Italy is subject to income tax.

Capital gains arising from the disposal of immovable property (in Italy) are subject to individual income tax through self-assessment.

As a general rule, capital gains from the sale of shares in Italian companies or other securities are taxable in Italy, unless a DTT applies.

7.7.4 Special tax regime for new non-domiciled residents

The 2017 Budget Law added article 24-*bis* to the ITC, to provide new residents with a favourable tax regime, allowing them to pay a fixed tax of EUR 100,000 for themselves and EUR 25,000 for their relatives. The following types of foreign income are eligible:

- rental income
- capital income
- employment income
- self-employment income
- corporate income (with or without a permanent establishment)
- other income.

The law also offers an exemption from monitoring obligations (RW Form filing) and related wealth tax payments.

Ordinary taxes will only be applied to:

- capital gains from qualifying shareholdings, realised in the first five tax years;
- Italian-source income.

Inheritance and gift tax will be due on Italian assets only (and not on assets held abroad).

The new regime is available from FY 2017 and, once opted for, will run for 15 years. It can be revoked at any time. The special arrangements will terminate immediately if tax is not paid, or is only partially paid, by the tax payment deadline of every year.

The regime is subject to certain conditions as the applicant must:

- have been tax resident outside Italy for at least nine of the 10 previous tax years;
- become a resident of Italy under Italian tax law;
- opt for this regime through the Italian annual income tax return.

The applicant can apply for a tax ruling from the Italian tax authorities in order to ensure that the requirements are satisfied. The tax ruling application can be submitted even before the individual moves to Italy.

7.7.5 Special tax regime for certain inbound workers

The Italian Government offers a tax break to certain workers who move to Italy, by treating 50 percent of their employment or self-employment income as exempt from IRPEF. The exemption runs for five tax years, starting from that in which the worker's residence is transferred to Italy.

The regime is applicable to individuals:

a) who have not been resident in Italy in the five tax years preceding their transfer;

b) who remain resident in Italy for at least two tax years;

c) who work for an Italian company and have an employment contract with an Italian company, a company that controls an Italian company, or a company directly or indirectly controlled by an Italian company;

d) whose work is carried out mainly in Italy;

e) who occupy managerial or executive roles or are highly qualified/specialised employees.

The same regime is also available for graduates (EU citizens and citizens of non-EU countries with which Italy has a DTT or an Information Exchange Agreement) who have:

- lived abroad continuously for the last 24 months at least;
- decided to move to Italy after studying, working, or gaining post-graduate qualifications abroad.

8. Labour law and immigration

8.1 Labour law

8.1.1 Conditions of employment

National collective labour agreements (CCNLs)

CCNLs between employer associations and trade unions broadly govern employment relationships and the resulting rights and obligations.

These agreements are the compulsory standard point of reference for employees in particular industries, even if they are not members of a trade union. Case law recognises that CCNLs may establish a minimum salary and minimum terms of employment for each employee; with the exception of certain cases, an employment contract may not establish working conditions that are less favourable than those defined by the relevant CCNL.

Wages and salaries

An employer must pay at least the minimum basic salary established by the relevant CCNL.

The various CCNLs establish a statutory minimum salary for each level of employee; with each periodic renewal of the CCNL there is a salary increase.

An employer can pay additional amounts, called "superminimi", on top of the minimum basic salary.

An employee's salary is normally paid in 13 monthly instalments (the extra month is paid in December). However, many CCNLs (including the CCNL for the trade sector) also provide for the payment of a fourteenth instalment, which is generally paid in June. Internal company agreements may provide for even more instalments.

An employer can also grant benefits in kind such as housing, canteen/subsidised meals, a company car, housing, insurance policies and loans, etc. Both benefits in kind and salaries are subject to taxation and social security contributions.

Other conditions

Fixed-term or open-ended agreements

Italian labour law allows both fixed-term and open-ended employment contracts.

Legislative Decree no. 81/2015 confirmed that employers are no longer required to justify the use of fixed-term employment contracts.

The maximum duration of a fixed-term contract is 36 months, including extensions. For executives the maximum duration is five years.

The number of fixed-term contracts cannot exceed 20 percent of the number of open-ended contracts in force on 1 January of the same year, unless a different ratio is established by the CCNLs applied by the company.

Trial period

The parties may opt for a trial period. The maximum length cannot exceed six months.

A trial period must be agreed in writing before the start of employment; otherwise, the trial period is null and void and the relationship is considered an open-ended employment contract, running from when employment starts.

During the trial period, both the employer and the employee can terminate the employment relationship at any time (without notice and without any indemnity).

Working hours

Working hours are established by the law and the CCNLs and cannot normally exceed 40 hours per week for employees.

There is a statutory minimum overtime rate, equal to the ordinary rate plus a certain percentage (approximately 15 percent).

Special rates apply for night work.

Holidays

As a general rule, holiday rights cannot be waived.

The holiday allowance is determined by the CCNL for each category of employee and cannot be less than four weeks per year by law. At least two weeks of holiday per year must be taken.

The employer and the employee must agree on the holiday period. Employees are entitled to take at least two weeks of holiday per year during periods of their choice.

Maternity leave

There are strict rules on maternity leave and terminating employment relationships with pregnant women, which must be observed very carefully.

Italian labour law provides for compulsory maternity leave. Female employees may not work for two months before and three months after their due date. Alternatively, a woman can decide to stop working one month before her due date and return four months after the birth of her child. In this case, the employee must submit an application to her employer and to INPS, together with a medical certificate stating that this arrangement will not harm the mother or the child.

Compulsory maternity leave may start earlier or be extended if there are serious health issues or if the employee's job involves tiring duties.

Italian labour law forbids employers from terminating the employment of a pregnant woman from the start of her pregnancy until the child is one-year-old. Dismissal is considered null and void in this period.

However, termination of employment during this period is valid if:

- there is proof of gross misconduct by the employee, which triggers the immediate termination of the working relationship without any notice period;
- the company closes;
- a fixed-term contract expires during this period.

End-of-service allowance (TFR - Trattamento di fine rapporto)

Regardless of the circumstances under which their employment relationship ends, employees are entitled to receive TFR, which is approximately equal to their monthly salary multiplied by the number of years of work (re-evaluated each year according to specific accounting rules).

Employers must therefore set aside a TFR provision each year for their employees.

Alternatively, an employee may ask their employer to pay their TFR into a pension fund.

Types of employment contract

Open-ended contracts

The standard type of employment contract is an open-ended one. New open-ended contracts offer various levels of protection against dismissal, which increase the longer the contract remains in force.

Apprenticeship contracts

An apprenticeship is an open-ended employment contract aimed at the training and employment of young people.

The contract must be drawn up in writing and contain an individual training plan, following the outlines established by collective bargaining agreements or bilateral agencies.

Unless otherwise provided for by CCNLs, employers with at least 50 workers may recruit new apprentices, provided they permanently take on at least 20 percent of the apprentices who have been employed in the 36 months prior to the new intake and who have completed their apprenticeship.

Occasional work contracts ("Lavoro accessorio")

Occasional work is work on which there is both a time limit and a remuneration limit. It is allowed only up to a cap of EUR 5,000 per year. This limit applies to both employers and workers (i.e. an employer cannot pay more than EUR 5,000 per year for occasional work, regardless of the number of occasional workers used; while a worker cannot earn more than EUR 5,000 per year for occasional work, regardless of the number of employers). Moreover, the work performed for the same principal cannot exceed EUR 2,500 per year.

On-call contracts

These contracts are allowed for employees under 24 or over 55 years-old. In any three-year period, the number of days worked cannot exceed 400 (except in the tourism, entertainment, and commercial business sectors).

Consultancy agreements

Effective from 1 January 2016, consultancy agreements drawn up on a coordinated and continuing basis are automatically reclassified as employment agreements if the services are personally rendered by the consultant at the principal's premises and if the consultant is bound by working-time directives. Exceptions are provided for certain categories identified by CCNLs, individuals enrolled in professional registers (e.g. lawyers, engineers, architects), members of governing and supervisory boards of companies, contractors providing services to sports associations, and companies affiliated with national sports federations.

Staff-leasing and temporary supply of manpower

Companies can use agencies, duly authorised by the Ministry of Labour, to procure workers on a permanent or temporary basis. When workers are supplied on a permanent basis, this is known as staff-leasing.

Staff-leasing can be used in any sector. However, the number of workers used under staff-leasing arrangements cannot exceed 20 percent of the open-ended employment contracts in force with other workers in the company (or the limit established by the applicable CCNL).

Temporary supplies of manpower are subject to the limits established by the relevant CCNL.

8.1.2 Termination of individual and collective employment contracts

Termination of an individual employment contract - individual dismissals

Employees

The dismissal of an employee is valid only when there is **true and just cause** (gross misconduct of the employee resulting in the immediate termination of the working relationship without any notice period) or a **justified reason** (less serious misconduct of an employee, or business reasons such as the company's winding-up, reorganisation, etc.).

If the dismissal of an employee is not based on one of the above grounds, and the employee obtains a declaratory judgment of unlawful dismissal, the economic compensation received by the employee will depend on the size of the employer and whether or not the employee was hired before or after the Jobs Act came into force.

In all contracts signed after the entry into force of the Jobs Act, a worker's right to reinstatement is restricted to cases of invalid and discriminatory dismissal. Reinstatement is excluded for dismissals made for business reasons, for which compensation (which increases with the length of service) is paid instead.

Notice period. When an employee is dismissed for a **justified reason**, the employer must give the employee a period of notice, the length of which is established by the CCNL according to the employee's job title and number of years worked. If there is **true and just cause**, the employment relationship can be terminated immediately.

Executives

The rules described above do not apply to executives. CCNLs for executives (which are different for each sector) generally state that there must be good grounds for their dismissal. Therefore, an executive may contest dismissal and seek damages if the dismissal is not supported by any valid reason.

Notice period. CCNLs for executives specify that the length of the notice period depends on the executive's length of service.

Redundancy procedures - collective dismissals

A collective dismissal is where an employer with more than 15 employees dismisses at least five employees within 120 days.

When a company intends to make a collective dismissal, it must follow a special redundancy procedure. This procedure also applies when a company is closed down. Law no. 223 of 23 July 1991 establishes the steps to be taken.

- The company must give advance written notice to its internal union representatives and to the trade unions of its intention to start the redundancy procedure.
- Written notice must also be sent to the local office of the Ministry of Labour (with a copy of the receipt for the payment made to INPS, if applicable) to start the collective dismissal procedure.
- Within seven days of receiving the notice, the trade unions can request a meeting with the company's management in order to examine the reasons for the decision and evaluate possible alternative solutions. This first phase involving the trade unions ends 45 days after they receive the notice.
- Should the two parties fail to reach an agreement, another attempt must be made by the manager of the local office of the Ministry of Labour. This phase involving the Ministry of Labour ends 30 days after the date of the notice sent by the company to the office to inform it of the results of the consultation with the trade unions and the reasons for the negative outcome.
- Once an agreement with the trade unions has been reached, or the procedure has been completed, the company's management must inform the employees of their dismissal in writing, in accordance with the terms and conditions communicated beforehand to the trade unions.

On receipt of their dismissal indemnity, employees normally sign an official settlement agreement at the local office of the Ministry of Labour (*Direzione Territoriale del Lavoro*) or at a trade union office. This is to avoid any future disputes and claims against the company.

The company must also pay the dismissed employees all the other indemnities provided for by Italian law and the relevant CCNL, such as an indemnity in lieu of notice, TFR, additional monthly instalments, and any outstanding holiday leave.

8.1.3 New rules on the posting of workers to Italy

The Italian government recently introduced legislation, i.e. Legislative Decree no. 136/2016, implementing Directive 2014/67/EU concerning the posting of workers in the EU.

The main provisions of this decree are the following.

- When workers are posted to Italy, foreign employers and placement agencies must give **notice** to Italy's Ministry of Labour at least 24 hours in advance, and meet any mandatory obligations imposed by Italian immigration law.
- The home company must appoint someone in Italy to keep the secondment documentation (employment contract, pay-slips, etc., all of which must **be translated into Italian**) and someone to liaise with the trade unions.
- The national labour inspection bodies will verify the **authenticity of the secondment** by checking the actual secondment activity and the business relationship between the home and the host company. When a secondment is not genuine (based on the assessment), the posted workers are considered as being directly hired by the host company. In this case, both the home and host company will be subject to sanctions.
- Workers seconded to Italy must be granted the **same treatment** (both economic and regulatory) as workers of the same level hired in Italy and performing the same duties.
- The home and host companies are jointly liable with regard to the treatment of workers.

8.1.4 The social security and pension system in Italy

The social security system (accident coverage, unemployment, sickness, maternity)

A state-run system of social security operates in Italy, covering illness, maternity, unemployment, pensions, disability and family allowances. This system is financed by contributions from employees and employers, calculated as a percentage of the employee's gross remuneration.

As these contributions represent a relatively high surcharge on employment costs, they are of paramount importance in determining operational business costs.

The employer's share of social security contributions ranges from 29 to 32 percent of the employee's gross salary, while the employee contributes approximately 10 percent. Similar percentages apply to executives, although contributions can be made through various types of specialised funds.

The employer must also pay contributions to INAIL, to cover the risk of accidents at work or occupational diseases. The cost of this insurance ranges from 0.4 to 3 percent of the employee's gross salary.

Pension treatment

Italian law provides for two different types of pension: old-age pensions and early-retirement pensions.

Old-age pensions

Employees registered with INPS are entitled to an old-age pension provided that they meet the following requirements.

- They have paid social security contributions for at least 20 years.
- They are 66 years and seven months old (men) or 65 years and seven months old (women). These ages apply from 2017 but will rise in years to come, also taking into account increasing life expectancy.

The right to an old-age pension is subject to termination of employment.

Early-retirement pensions

Employees registered with INPS are entitled to an early-retirement pension when they meet one of the following requirements.

- They have paid contributions for 42 years and 10 months (men).
- They have paid contributions for 41 years and 10 months (women).

This requirement will increase gradually, up to 45 years of contributions.

8.2 Immigration

8.2.1 EU citizens

Entry requirements, immigration procedures and occupational activities are regulated by the Schengen Agreement, which made it possible to build a common area of free movement between the signatory states and eliminate border controls. EU citizens with a valid passport/ID card can travel in Italy and are exempt from entry/visa requirements.

Residence

EU citizens who reside in Italy for fewer than 90 days do not have to register at the town hall. If an individual remains in Italy for more than three months, registration is necessary.

Employment

EU citizens are free to work in Italy without any special work permit.

8.2.2 Non-EU citizens

Entry for business/tourism

A non-EU citizen must have an entry visa in their passport to enter Italy. However, some foreign citizens entering Italy - such as Japanese or American citizens - do not require a visa for tourism or business trips, provided that they do not stay for more than 90 days. In other cases, entry visas are issued by Italian consulates in the country of origin or last residence. This kind of visa does not allow the person to work permanently in Italy.

Entry for study

A visa for study purposes may be requested at the Italian consulate in the foreigner's country of residence. It is valid for the length of the student's course, but cannot exceed one year.

A foreign national who legally enters Italy for an intended stay of more than 90 days must apply for a permit to stay within eight working days of arrival.

The application for a permit to stay must be submitted by post.

The permit to stay will indicate the same reasons for the stay as those stated in the entry visa.

A permit to stay for study purposes also allows the person in question to have a part-time job.

Entry for family reunification purposes

This type of visa is granted when the applicant is a foreigner already residing in Italy and holds a residence card or permit to stay that is valid for no less than one year and is issued for employment purposes (including self-employment), study or religious reasons. The visa will only be granted to the applicant's immediate relatives, such as a spouse or children. This type of visa allows the holder to work.

Entry for work

To work in Italy, a foreign national must hold a work visa. There are limits on the number of foreign citizens that can be hired in Italy each year.

However, the secondment of workers is generally excluded from the limits established by the Italian government, given that it involves companies engaging highly qualified workers.

The main requirement for secondment is a relationship between the home company and the host company in Italy. Nevertheless, a work visa is still required for a seconded worker.

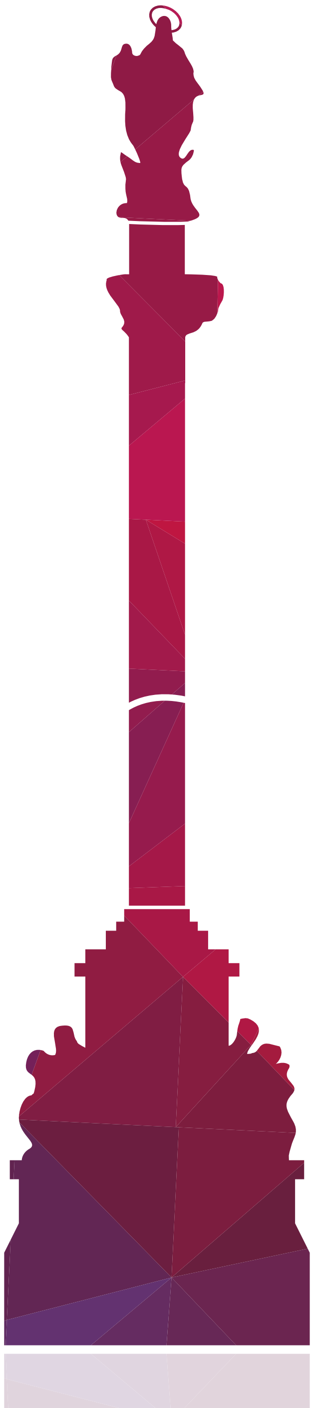
The company to which the worker will be seconded must submit an application to the local branch of the Immigration Office (*Prefettura Sportello Unico per l'Immigrazione*). The Immigration Office checks the terms of employment and the documentation required and then issues the work visa, along with a *Nulla Osta*. The terms of employment cannot be less favourable than those established by the relevant CCNL.

Once the *Nulla Osta* has been obtained, a visa must also be obtained from the Italian diplomatic mission of the foreign worker's country of residence.

A foreign national who legally enters Italy for an intended stay of more than 90 days must apply for a permit to stay within eight working days of arrival. Within this same period, the worker and the Italian employer must sign a 'stay contract' summarising the main terms of employment.

The application for a permit to stay must be submitted by post.

The permit to stay will indicate the same reasons for the stay as those stated in the entry visa.



9. VAT

9.1 Scope

VAT is due on any taxable supply of goods or services made in Italy by a taxable person in the course of or to further their business. Supply means all forms of supply, but does not normally include anything done for anything other than a consideration. However, certain transactions without consideration are deemed to be supplies, e.g. conditional sales, lease contracts with a binding transfer of ownership clause, the private use of business assets (or, more generally, their use for purposes other than those of the business), free-of-charge disposals, and supplies of services (where the value exceeds EUR 50) for private use or for free.

VAT is also due on all imports.

9.2 Rates

The standard rate of VAT is 22 percent but there are reduced rates of VAT for certain goods and services, as well as zero rates and exemptions for others.

10 percent VAT rate

- Certain foods
- Domestic fuel and power
- Public transport
- Certain pharmaceutical products
- Water
- Hotel accommodation
- Services of writers and composers
- Social housing
- Renewable energy
- Etc.

5 percent VAT rate

- Services provided by cooperative companies and their consortia: medical, social-care, educational, home-care, outpatient, community services and the like
- Authorised water passenger transport services operating in urban areas
- Etc.

4 percent VAT rate

- Basic foodstuffs
- Books, newspapers and e-books
- A person's main dwelling
- Certain pharmaceutical products
- Medical equipment and aids for the disabled
- Etc.

Zero-rated supplies

- Exports and EU supplies
- Supply, modification, repair, maintenance, chartering and hiring of sea-going vessels and aircraft used for international traffic
- International transport services

- Services directly connected with exports or imports;
- Work on goods to be delivered outside Italy
- Etc.

Exempted supplies

- Financial services
- Insurance services
- Tax-collection services
- Lotteries, betting, and other games of chance
- Certain transactions involving residential property
- Postal services
- Cultural services
- Certain real-estate transactions.
- Etc.

NB. It is not possible to recover VAT on exempt supplies.

The 2018 Budget Law provides for a gradual increase in VAT rates from 1 January 2019.

- The reduced 10 percent VAT rate will increase to:
  - 11.5 percent on 1 January 2019;
  - 13 percent on 1 January 2020.
- The standard 22 percent VAT rate will increase to:
  - 24.2 percent on 1 January 2019;
  - 24.9 percent on 1 January 2020;
  - 25 percent on 1 January 2021.

The 'super' reduced VAT rate of 4 percent will remain unchanged.

These VAT rate increases will not apply if certain budgetary targets are met.

9.3 Registration

9.3.1 Italian entities

If a business makes taxable supplies in Italy, it is required to register for and account for Italian VAT. There is no VAT registration threshold in Italy.

9.3.2 Non-Italian entities

The registration rules that apply to Italian entities also apply to non-Italian entities which make taxable supplies in Italy that are not subject to the reverse charge mechanism.

If a business is not registered for VAT in Italy and sells and delivers goods from another EU Member State to customers in Italy who are not VAT-registered (distance sales), it is required to register and account for VAT in Italy (through the direct identification procedure, where possible, or by appointing a VAT representative) when the value of these sales exceeds EUR 35,000.

The direct identification form and instructions, as well as the form and instructions for appointing a VAT representative, can be found on the Italian Revenue Agency's website:

www.agenziaentrate.it

The penalty for failing to register for VAT on time ranges from EUR 500 to EUR 2,000.

Certain simplification schemes may apply as follows.

- **Triangulation**

If a business in one Member State (acting as an intermediate supplier to an Italian buyer) purchases goods from a business in a second EU Member State and the goods are then delivered directly from that second Member State to Italy, VAT can be accounted for by the Italian customer (if registered as a VAT person).

- **Call-off stock**

When a foreign company stores stock at the Italian customer's premises and the goods remain under its control, the customer will account for VAT on the supply as an acquisition at the moment in which it removes the goods from the premises.

- **Supply and installation**

If a business supplies goods and installs or assembles them in Italy, the transaction qualifies as a domestic supply (i.e. not as a cross border transaction) and its business customer must account for acquisition tax in Italy. The business must be registered for VAT in another EU Member State and the goods must be shipped from within the EU.

- **Domestic reverse charge**

In general, the obligation to account for VAT must be shifted to the customer if (i) the customer is established in Italy and registered there for Italian VAT purposes, and (ii) the supplier is a non-established entity. This rule is applied, for example, in the following cases.

  – In compliance with article 17(2) of the Italian VAT Act (implementing articles 194 and 196 of the VAT Directive), customers established and VAT-registered in Italy are liable to account for Italian VAT under the compulsory reverse charge mechanism when domestic supplies of goods and services are made by **suppliers established in other Member States**; for this purpose, customers must complete the invoices issued by their suppliers by adding, amongst other details, the proper Italian VAT rate and the amount of Italian VAT to be paid.

  – For domestic supplies of goods and services made by **non-EU suppliers**, Italian customers must issue a self-billed invoice, charging Italian VAT to themselves.

9.4 VAT grouping

9.4.1 New VAT grouping rules

The 2017 Budget Law introduced new VAT grouping rules in Italy, which allow taxpayers to opt for VAT grouping from 1 January 2018 (with the VAT group becoming effective from 1 January 2019 at the earliest). VAT group members must be taxable persons (not necessarily companies) established in Italy. Permanent establishments or head offices of Italian permanent establishments located abroad are not eligible to join. Companies that are in the process of being wound up or subject to bankruptcy or asset-seizure procedures by the courts are also excluded.

To form a VAT group, taxable persons must have financial, economic and organisational links.

- The financial link is based on control, and must have existed since 1 July of the calendar year preceding that in which the option is exercised (the minimum holding period). The person exercising control must be an Italian resident or be based in a country that has an exchange of information agreement with Italy.

- The economic link is activity-based. All members must have the same core business, or their activities must be complementary/ interdependent or benefit the other members in some way.
- The organisational link is based on legal coordination between the decision-makers.

It is presumed that if a financial link exists between potential members of a VAT group, the economic and organisational links are also present. However, that presumption can be rebutted (i.e. it is possible to argue that economic and organisational links do not exist) before the Revenue Agency.

A group is set up by all the taxable persons who are established in Italy and have the necessary links (the 'all-in, all-out principle'). The representative of the group must exercise the option to form the VAT group by filing a statement containing all the relevant information, such as details of the members of the group, a declaration confirming the existence of the links among them, as well as the activities of the group. The timing of this determines the start date of the group. If the option is exercised between October and December, the group will not exist until the start of the second year thereafter. Therefore, an option exercised in October 2018 would lead to the group being effective only from January 2020, whereas an option exercised on 30 September 2018 would lead to the group becoming effective in January 2019. New members can join once they meet the necessary conditions.

If a taxable person meets the conditions to be part of the VAT group but is not mentioned in the option, the VAT group ceases to exist the year following that where the irregularity is ascertained, unless that person exercises the option to join the group.

The option is binding for three years and automatically renewed annually thereafter until revoked. If one member revokes the option, the whole group is dissolved. The timing of the revocation determines the date on which the group is dissolved. Any member that ceases to have the necessary links, or to meet the other necessary conditions, ceases to be a member.

The member representing the group is the parent company or, if the parent company is established outside Italy, the VAT group member with the highest turnover or revenue. The representative has the biggest responsibility for ensuring compliance, but all the members are jointly and severally liable for VAT debts.

The group's internal transactions are disregarded for VAT purposes while supplies by a member of the group to a third party or by a third party to a member of the group are treated as supplies carried out by or to the VAT group. Moreover, the 2018 Budget Law has implemented the principles set out by the European Court of Justice in Case C-7/13 of 17 September 2014 ("Skandia America"). Therefore, head office to branch charges will no longer be disregarded for VAT purposes when the head office or the branch belongs to a VAT group in Italy or another jurisdiction. This means that goods and services provided:

- by a head office (or branch) established in Italy and belonging to an Italian VAT group, to a branch (or head office) established in another state, are deemed to be supplied by the VAT group to a separate taxable person;
- by a head office (or branch) established in another state, to a branch (or head office) belonging to an Italian VAT group, are deemed to be supplied by a separate taxable person to the Italian VAT group;
- by a head office (or branch) established in another state and belonging to a foreign VAT group, to a branch (or head office) established in Italy, are deemed to be supplied by the foreign VAT group to a separate Italian taxable person;
- by a head office (or branch) established in Italy to a branch (or head office) established in another state and belonging to a foreign VAT group, are deemed to be made by a separate Italian taxable person to the foreign VAT group.

The special simplified compliance obligations for banks, insurance companies and fund managers apply even when they belong to a VAT group.

9.4.2 Consolidated VAT regime

As an alternative to the VAT group regime, the consolidated VAT regime governed by article 73 of the Italian VAT Act remains in force. Under this regime, members may pool their VAT positions to offset their respective VAT debts and credits, even if each group member has its own VAT number. When this happens, intra-group transactions are not disregarded in Italy, because the members remain separate VAT persons.

VAT repayment positions accrued by new consolidated VAT group members before they enter the group cannot be used to offset the net VAT payment positions of other members.

The option for the consolidated VAT regime should be exercised in section VG of the annual VAT return submitted during the financial year in which the consolidated VAT regime will start (e.g. the option for VAT consolidation from 2018 is exercised in the annual VAT return for FY 2017, to be submitted by the end of April 2018). Once elected, the regime remains in place until revoked.

The minimum holding period for this regime should be observed from 1 July of the calendar year preceding that in which the option is exercised.

9.5 Returns

9.5.1 Annual returns

All registered businesses are required to submit VAT returns annually. Annual VAT returns for FY 2017 onwards must be filed between 1 February and 30 April of the following year. Failure to file VAT returns and settle any outstanding payments on time may result in penalties of up to 240 percent of the outstanding amount of VAT.

VAT is paid on a monthly or quarterly basis and repayments are made on an annual basis (quarterly repayment claims are admitted only in certain cases).

9.5.2 Guarantees

The European Law for 2017 (Law no. 167/2017) provides that taxpayers who submit guarantees in order to obtain VAT refunds are entitled to receive a lump-sum indemnity corresponding to 0.15 percent of the guaranteed amount, for each year of the guarantee. The purpose of this rule is to enable taxpayers to recover part of the costs of the guarantee. This indemnity is paid on expiry of the statute of limitations for the year to which the refund claim refers or, if a tax assessment notice has been served, when the right to obtain the VAT refund has been finally certified by the Italian Revenue Agency. The rule applies to VAT refunds claimed in annual VAT returns from FY 2017, and to the quarterly VAT refund claim filed for the first quarter of 2018. In practice, the first indemnities will become due in 2023 (when the statute of limitations for FY 2017 expires).

9.5.3 VAT invoice reporting

Since 2017, VAT reporting obligations have included (i) the quarterly communication of details of invoices received and issued (so-called "*Spesometro*"), and (ii) the quarterly communication of periodical VAT settlements. Both of these are due by the end of the second month following the relevant quarter. However, the "*Spesometro*" can be submitted on a six-monthly basis for FY 2018 and will no longer be required from 1 January 2019.

From 1 January 2019, Italian taxpayers will have to report the invoice details of cross-border transactions by the end of the month following that in which the invoices (other than those transmitted through the 'Sistema di Interscambio' system - see section 9.8.3 below - and those for imports documented by customs bills) are issued or received.

A penalty of EUR 2 per invoice (capped at EUR 1,000 per quarter) may apply for failing to submit a report or submitting an incorrect one. However, if the submission is made or amended within 15 days of the deadline, penalties will be reduced by 50 percent and capped at EUR 500.

9.5.4 Intrastat

In Italy, European sales listings and statistical report forms (Intrastat) have been combined. They are normally referred to collectively as Intrastat returns. There is one return for outbound supplies of goods and another return for outbound supplies of services. The Intrastat returns for inbound supplies - one for goods and one for services - are no longer due for tax purposes, but are required for statistical purposes.

Intrastat returns may be submitted on a monthly or quarterly basis, depending on levels of EU transactions over the previous four quarters.

Monthly returns for intra-EU sales of goods and services should be submitted when these transactions are equal to or higher than EUR 50,000 in at least one of the four previous quarters. However, the statistical section of the monthly Intrastat return for intra-EU sales must be filled in only if the sales are equal to or higher than EUR 100,000 in one of the previous four quarters.

Monthly returns for intra-EU purchases of goods and services should be submitted where said transactions have been equal to or exceeded EUR 200,000 for goods and EUR 100,000 for services in at least one of the four previous quarters.

Failure to submit Intrastat returns on time may result in a penalty ranging from EUR 500 to EUR 1000, plus an additional penalty (for statistical violations) ranging from EUR 500 to EUR 5,000.

The Intrastat forms can be found on the following website:

www.agenziadogane.it

9.6 VAT recovery

In general, input VAT incurred by taxpayers to purchase goods and services used within their business activity is recoverable.

9.6.1 Time limit for VAT recovery

As a result of Law Decree no. 50/2017, there is less time to recover input VAT. Under the previous rules, input VAT could be recovered, at the latest, through the annual VAT return for the second year after that in which the VAT became payable (i.e. when the tax point was triggered). Now, input VAT incurred on purchase invoices and customs bills issued from 1 January 2017 can be recovered, at the latest, by the deadline for submission of the annual VAT return for the year in which the VAT becomes payable (i.e. when the tax point is triggered).

However, the Italian Revenue Agency has provided guidance on this matter in Circular 1/E of 17 January 2018. It has clarified, among other things, how to identify the final deadline by which the VAT recovery right can be exercised (intra-EU purchase invoices are not substantially affected by these changes in the law).

In the Circular, the Revenue Agency recognises the principles stated by ECJ case law and in particular in Case C-152/04, according to which: "*the right to deduct must be exercised in respect of the tax period in which the two conditions required by that provision are satisfied, namely that the goods have been delivered or the services performed and that the taxable person holds the invoice or the document which, under the criteria determined by the Member State in question, may be considered to serve as an invoice*". Based on this, the Revenue Agency clarifies that the VAT recovery right is triggered in the calendar year when the following two conditions are both met.

- The tax point is triggered/the VAT becomes chargeable.
- The customer receives a valid VAT invoice (i.e. compliant with article 21 of the Italian VAT Act).

Therefore, the right to recover VAT can be exercised "at the latest in the annual VAT return for the year in which both the above conditions are met and with reference to that year".

Essentially, for purchase invoices/customs bills dated 2017 and received in 2018, the following situations could arise.

- The invoices/customs bills are posted in the VAT ledgers during 2018, so that the input VAT is included in the monthly VAT settlements for FY 2018.
- The invoices/customs bills are posted in the VAT ledgers in the period January to April 2019: in this case, these documents (to be posted in a separate section of the 2019 VAT ledgers) should be excluded from the monthly VAT settlements of the first four months of 2019, and the related input VAT can be recovered only in the VAT return for FY 2018, due by the end of April 2019.

For purchase invoices/customs bills issued in 2017, received in 2018 but posted in the input VAT ledgers after April 2019, it might still be possible to recover the input VAT by submitting (at the latest by 31 December 2024, i.e. by the end of the statute of limitations for FY 2018) a supplementary VAT return amending that for FY 2018.

9.6.2 VAT errors

The 2018 Budget Law has recognised VAT recoverability also in cases where VAT is charged in error on out-of-scope, exempt or zero-rated transactions, or is charged at an incorrect higher rate, provided that the supplier has remitted the wrongly charged VAT to the Treasury, and that no fraud is involved.

If so, the customer will only be subject to a fixed penalty ranging from EUR 250 to EUR 10,000. It is not yet clear whether this new rule will apply retrospectively. Under the previous regime, customers were not entitled to recover VAT charged in error, and faced high proportional penalties for unduly recovering VAT and thus submitting inaccurate VAT returns.

9.6.3 Unrecoverable or partially recoverable VAT

There are certain items for which VAT cannot be recovered or for which it is only partially recoverable. Some examples are given below.

- **Exempt supplies**: where VAT relates to both taxable and exempt supplies, it must be apportioned.
- **Non-business (including private) activities:** where VAT relates to both business and non-business activities, it must be apportioned.
- **Vehicles (excluding commercial vehicles):** the VAT recovery rate is limited to 40 percent for expenditure on cars not wholly used for business purposes. The limit covers any expenditure on cars: the purchase of the vehicle (including assembly contracts and the like), intra-Community purchases, imports, leasing or hire, modifications, repair or maintenance, etc. The restriction does not apply if the vehicle falls into any of the following categories.
  - The vehicle forms part of the taxable person's stock in trade used in the pursuit of a business activity.
  - The vehicle is used as a taxi.
  - The vehicle is used for instruction by a driving school.
  - The vehicle is hired out or leased.
  - The vehicle is used by sales representatives.

From 1 July 2018, input VAT on purchases of fuel and oil and other services related to means of transport can be recovered only if the payment is made through a credit card, debit card, prepaid card or other similar means of payment, to be identified by the director of the Italian Revenue Agency.

- **Business entertainment:** VAT on business entertainment costs is generally not recoverable.
- **Tour operators' margin scheme:** VAT cannot be reclaimed for goods and services supplied under this scheme.

- **Goods sold under one of the margin schemes for second-hand goods:** there are a number of schemes under which VAT is accounted for on the sales margin of goods but cannot be recovered on the purchase of those goods.

9.6.4 VAT recovery by non-registered persons established outside Italy

These persons can recover Italian VAT of EUR 50 or more.

Under EU procedures in place since 2010, claimants established in another EU Member State should file an electronic claim with the authorities of their Member State of residence. A non-EU business should recover VAT under the Thirteenth Council Directive (the refund is conditional upon the non-EU state granting comparable turnover tax advantages; currently, only the Norwegians, Swiss and Israelis can submit such claims).

There are strict conditions and deadlines for making claims. The claim period follows the calendar year and claims must be submitted by 30 September of the following year. The claim period can be shorter than a calendar year (a quarter) if the amount of VAT recoverable in that period is EUR 400 or more.

The Thirteenth Council Directive claim forms can be found on the Italian Revenue Agency's website:

www.agenziaentrate.it

9.7 International supplies of goods and services

9.7.1 Exports

Goods

If a seller in Italy sells goods to a customer who is registered for VAT in another EU Member State, and the sale involves removing those goods from Italy (by the seller or the customer) and sending them to that Member State, then the seller does not charge VAT and zero-rates the supply as an intra-EU supply. The seller must obtain the customer's VAT number in the other EU Member State and quote it on the invoice. The seller should also obtain evidence of the removal of the goods from Italy. If goods are sold to a customer who is not registered for VAT in another EU Member State, the seller will have to charge Italian VAT.

If the seller exports goods to a customer (business or private) outside the EU, then it does not charge VAT; however, as with intra-Community sales, the seller should make sure that in all cases it keeps proof of dispatch/delivery to support its zero-rating.

Upon the entry into force of the UCC, on 1 May 2016 the definition of 'exporter' changed. According to article 1(19) of Regulation (EU) No 2015/2446, an exporter is "*the person established in the customs territory of the Union who, at the time when the declaration is accepted, holds the contract with the consignee in the third country and has the power for determining that the goods are to be brought to a destination outside the customs territory of the Union*".

Services

If a supplier established in Italy provides services to a business customer established in another EU Member State or outside the EU, it makes a supply that is outside the scope of Italian VAT.

In order for the supplier not to charge VAT, the customer in the other EU Member State must have a VAT number, which must be quoted on the invoice.

The following services are subject to different 'place of supply' rules:

- services connected with immovable property (the definition of 'services connected with immovable property', given in Council Implementing Regulation (EU) No 1042/2013, has been in use since 1 January 2017);
- passenger transport;
- restaurant and catering services;
- short-term hiring or leasing of means of transport;
- admission (and services ancillary to admission) to cultural, artistic, sporting, scientific, educational, entertainment, or similar activities.

Habitual exporters

A resident company acquires the status of habitual exporter if it makes zero-rated supplies (exports, EU supplies, international services, etc.) that account for more than 10 percent of its total turnover.

A habitual exporter is entitled to purchase VAT-free services and goods (exceptions apply for immovable property and goods and services on which VAT cannot be recovered) up to the amount of the zero-rated supplies made in the previous calendar year or previous 12 months. Documentation obligations and procedures apply: in order to benefit from VAT-free treatment, the habitual exporter must send to the Italian Revenue Agency a 'declaration of intent' form and, after obtaining a transmission receipt, must provide its supplier with both the declaration of intent form and the transmission receipt.

The 'declaration of intent' form and instructions can be found on the following website:

www.agenziaentrate.it

9.7.2 Imports

When goods are imported into Italy from outside the EU, import VAT and customs duties may be due. These must be paid or guaranteed before the goods can be released by customs control authorities.

If certain services are bought in from outside Italy, the reverse charge mechanism must be applied. This is intended to eliminate any VAT advantage in buying those services from outside Italy.

Under the reverse charge mechanism, it is necessary to account for a notional amount of VAT as output tax in the VAT settlement covering the period in which the payment is made. This VAT is recovered as input tax in the same VAT settlement.

If all of the VAT can be recovered, the reverse charge has no cost effect and is a VAT compliance matter only. However, if there is a partial exemption there is likely to be a VAT cost, depending on the level of recovery allowed under the partial exemption method.

9.8 Invoices

9.8.1 Invoice details

An invoice should contain the following details.

- The date of issue.
- A progressive number that "unequivocally identifies the invoice" (since 1 January 2013 the VAT Act has ceased to require progressive numbering by calendar year). If the invoice adjusts an earlier invoice (in the case of a credit note, for example), unambiguous reference should be made to the original invoice, the supplier's VAT number, the customer's VAT number (if this is a taxable person) or tax code (if this is a private individual) and, in cases involving a taxable person established in another EU Member State, the VAT identification number issued by that Member State.

- For the supplier: company name - or name and surname - and residence or domicile; the company name - or name and surname - and residence or domicile of the tax representative (if any); the location of the fixed establishment (if any) of non-resident enterprises.
- The supplier's VAT number.
- For the purchaser: the company name - or name and surname - and residence or domicile; the company name - or name and surname - and residence or domicile of the tax representative (if any); the location of the fixed establishment (if any) of non-resident enterprises.
- The customer's VAT number (if this is a taxable person) or tax code (if this is a private individual) and, in cases involving a taxable person established in another EU Member State, the VAT identification number issued by that Member State.
- The quantity, quality and nature of the goods/ services supplied.
- The unit price (exclusive of any VAT) which is used to calculate the taxable amount.
- The market value of any goods sold at a discount, whether or not this value is used to calculate the taxable amount.
- The rate, amount of tax due and tax base rounded up to the nearest euro cent, along with an indication of the person who has issued the invoice (for self-billed invoices).
- For transactions that are not subject to VAT, the following wording should be used instead of indicating the amount of VAT due:
  - "*inversione contabile*" (reverse charge), for supplies of goods and services subject to the reverse charge mechanism, when the customer is VAT-registered in another Member State;
  - "*operazione non soggetta*", for supplies of goods and services for which the place of supply is outside the EC;
  - "*autofatturazione*" ("self-billed invoicing"), for invoices issued by the buyer of goods or services when this person is liable to pay VAT.

9.8.2 Simplified invoices

When the amount of the invoice is no higher than EUR 100 (although the threshold could be extended to EUR 400 by a future ministerial decree), or when a credit note is issued in compliance with article 26 of the Italian VAT Act, a simplified invoice may be issued. However, a simplified invoice is not allowed for:

- intra-Community supplies pursuant to article 41 of Law Decree no. 331/93;
- supplies whose place of supply is outside Italy and which are subject to reverse charge in another Member State.

9.8.3 E-invoicing

According to article 21(1) of the Italian VAT Act, e-invoices are those "*issued and received in any electronic format; the use of electronic invoicing is subject to the consent of the customer*".

The issuer of the invoice should ensure the authenticity of its origin, the integrity of its content and its readability from the moment of issue until the end of the retention period.

Authenticity of origin and integrity of content may be guaranteed through one of the following:

- business controls that create a reliable audit trail between the invoice and the supply of goods or services;
- the use of qualified or digital electronic signatures by the issuer;
- electronic data interchange systems;
- other technologies (chosen at the taxpayer's discretion) that can guarantee the authenticity of the origin and integrity of the data.

The Budget Law for 2018 provides that, as of 1 January 2019, e-invoicing will become mandatory for all B2B and B2C supplies of goods and services between parties established or VAT-registered in Italy (in the case of B2C, only if the customer expressly requests an invoice).

E-invoices will have to be issued:

- through the 'Sistema di Interscambio' system, which is the platform currently used to transmit e-invoices to public bodies and which will allow the Italian Revenue Agency to automatically collect details of e-invoices;
- in the 'FatturaPA' format, which is the only one currently admitted (although different formats based on European standards might be allowed in the future, if introduced by decree).

Should e-invoices not comply with the above conditions, they will be considered as not having been issued and high penalties (e.g. for domestic VATable supplies, from 90 percent to 180 percent of the VAT in question) will apply.

Moreover, as of 1 July 2018 e-invoicing will become mandatory for B2B supplies of:

- gasoline or diesel fuel intended for use as motor fuel;
- services rendered by subcontractors under a contract with public bodies.

Electronic invoicing is already compulsory for supplies to public authorities and administrations.

9.8.4 Split-payment system

Since 1 January 2015 sales to public authorities and administrations have been governed by a special 'split-payment' regime, under which suppliers continue to charge Italian VAT (where due, and unless the reverse charge mechanism applies) to public bodies. The public bodies, however, 'split' the payment of the invoice: they pay the taxable amount to the suppliers, and the VAT to a blocked VAT bank account of the Treasury. A Ministerial Decree of 23 January 2015 clarified the payment procedure, including the conditions and time frames involved.

From 1 July 2017, the split-payment regime was extended to supplies of goods and services rendered to certain Italian public bodies, their subsidiaries, and corporations listed on the FTSE MIB Italian Stock Exchange (*Borsa Italiana*), provided that these corporations are registered for Italian VAT purposes.

From 1 January 2018, the split-payment regime was further extended to supplies of goods and services rendered to additional categories of public bodies (such as public economic bodies, special companies, foundations, etc.) and their subsidiaries.

To understand if a client belongs to one of the categories covered by the split-payment rule, the supplier (including self-employed people, e.g. professionals) should check the lists issued annually by the Italian Ministry of Finance at the following link:

http://www1.finanze.gov.it/finanze2/split_payment/public/#/#testata

9.8.5. Self-billing

Self-billing is allowed. However, the supplier remains responsible for issuing the invoice. Furthermore, if the issuer is resident in a black-list state, the supplier (who must have been in business for at least five years and must not have undergone a VAT assessment by the Revenue Agency in the previous five years) must notify the Revenue Agency of the arrangement beforehand.

9.9 Transfers of business

If a business is sold as a going concern, VAT is not due. In principle the transaction is subject to registration tax and certain conditions must be satisfied; for example, the purchaser must intend to use the assets to carry on the same kind of business carried on by the seller.

9.10 Opting for VAT

Italian VAT law grants a general exemption for real-estate transactions, with certain exceptions. However, in the case of industrial real estate, it is possible to opt - in the transfer deed - for the transaction to be taxed. In this case, the reverse charge procedure applies.

In the same way, it is possible to opt for taxation, on a unit-by-unit basis, of leased industrial real estate. Again, this form of taxation must be opted for in the leasing agreement.

9.11 Head office and branch transactions

In sales of **goods**, the local branch and its foreign head office are treated as separate entities for VAT purposes; therefore, no transactions are disregarded.

In the case of **services**, and in light of the ECJ judgment in the FCE Bank case (C-210/04), the Italian Revenue Agency has clarified that transactions between a head office and its branch are disregarded for VAT purposes, on condition that the branch has no decision-making powers. However, due to the changes introduced by the 2018 Budget Law - which, among other things, has implemented the ECJ judgment in Case C-7/13 (Skandia America Corp.) - head office to branch charges will no longer be disregarded for VAT purposes when the head office or the branch belongs to a VAT group in Italy or another jurisdiction (see also section 9.4. above).

9.12 Bad debts

In principle, VAT relief can be claimed for bad debts if they are due to a customer's bankruptcy or insolvency (when foreclosure procedures are unsuccessful).

Output VAT unpaid by customers who are undergoing bankruptcy and similar procedures is recoverable only **at the end** of the procedure.

According to article 26(12) of the Italian VAT Act, a foreclosure procedure is deemed as having been unsuccessful when:

a) though ordered, the seizure of a debtor's assets in the possession of third parties cannot be carried out because there are no assets or receivables to seize;

b) though ordered, a seizure of moveable goods cannot be carried out because goods are missing or because the debtor cannot be found;

c) after three unsuccessful attempts to sell the goods at public auction, the foreclosure procedure is terminated due to excessive costs.

In its judgment of 23 November 2017, in Case C-246/16 (Di Maura), the ECJ pointed out that "*a Member State may not make the reduction of the VAT taxable amount in the event of total or partial non-payment subject to the condition that insolvency proceedings have been unsuccessful when such proceedings may last longer than ten years*". This statement was issued with specific reference to the Italian system, which appears to conflict with the VAT Directive. However, the Italian Revenue Agency has not issued any guidelines to implement this judgment.

9.13 Anti-avoidance

Since October 2015 there has been a general 'abuse of law' rule, which also applies to VAT. Please refer to section 5.1.11 for more information.

In addition to this general rule, a rule to combat missing trader intra-Community fraud (also known as carousel fraud) in Italy establishes that the purchaser has joint liability for VAT not paid by the seller. This anti-fraud rule only applies to a limited series of goods (cars, motorcycles, mobile phones, computers, new and used tyres and tyre flaps, livestock, and fresh meat), and is only triggered when the price of the goods is lower than their market value.

Under other anti-avoidance rules, the fair market value becomes the tax basis in certain partially-exempt transactions between related parties.

9.14 Penalty regime

The VAT penalty regime can be categorised according to the type of violation committed by the taxpayer.

Legislative Decree no. 158/2015, published in the Italian Official Gazette on 7 October 2015, amended some of the following administrative penalties with effect from 1 January 2016.

Violations associated with the VAT return

Failure to submit an annual VAT return: the penalty ranges from 120 to 240 percent of the amount that should have been declared in the return. If VAT is not due on any of the taxpayer's transactions, the penalty ranges from EUR 250 to EUR 2,000.

Submission of an inaccurate VAT return: the penalty ranges from 90 to 180 percent of the VAT not shown or of the excess VAT credit declared.

Failure to record transactions

Failure to record transactions subject to VAT: the penalty ranges from 90 to 180 percent of the VAT due.

Failure to record transactions that are VAT-exempt or non-taxable: the penalty ranges from 5 to 10 percent of the unrecorded amount. The same penalty also applies in the event of failure to invoice certain 'out-of-scope' transactions. The penalty cannot be lower than EUR 500 per violation.

Failure to record VAT-exempt or non-taxable transactions, which does not result in corporate income tax violations: the penalty ranges from EUR 250 to EUR 2,000.

If the supplier of goods or services fails to issue an invoice, or the invoice contains a mistake, the purchaser is liable to a penalty equal to 100 percent of the VAT if he fails to put the (non-issued or incorrect) invoice in order. Doing so involves specific formalities.

There are reduced penalties for violations of domestic reverse charge procedures, when VAT has actually been paid by one of the parties. In this case, the penalty ranges from EUR 250 to EUR 10,000.

Violations associated with exports

Penalties apply when a taxpayer does not comply with various rules allowing VAT to be collected on exports. In principle, the penalties are proportional to the amount of VAT that could potentially be collected.

Other violations

There are fixed penalties for taxpayers who commit violations such as submitting a VAT return that does not comply with the official format, failing to submit certain VAT communications, or failing to keep VAT records. The size of the penalty depends on the type of violation.

Failure to make payments / making underpayments

The penalty is 30 percent of the unpaid amount, plus interest of 4 percent on the unpaid amount.

It is a criminal offence to fail to pay the VAT declared in an annual tax return by the deadline for the advance payment of the following year. This rule is triggered if the amount of VAT is higher than EUR 250,000 (the taxpayer can be given a prison sentence ranging from six months to two years).

The same applies to taxpayers who offset more than EUR 50,000 in non-existent or undue VAT credits against tax payments.

General rules

Where the law imposes a range of penalties, the actual amount is established by the Revenue Agency at the time of assessment.

When determining the amount, the Revenue Agency considers the severity of the violation, in light of the taxpayer's behaviour and social and economic situation.

The penalties may be increased by 50 percent if the Revenue Agency ascertains that the taxpayer has committed similar violations in the last three years.

In an assessment, each violation committed by the taxpayer should trigger the corresponding penalty. However, there are mechanisms for calculating the penalties more leniently if the same violation is committed more than once in a tax year or over several years.

In addition to fines, there are other penalties such as the suspension of trading licences.

Voluntary amendment

The taxpayer can reduce the above penalties (i.e. the penalties that would be due following an ordinary assessment) by using the voluntary amendment system (*ravvedimento operoso*) within a certain time limit.

10. Customs and excise and import VAT

10.1 European Community law and the customs system

Customs law is the best example of harmonised international tax law.

In Italian as in international customs law, there are three fundamental concepts.

1. The classification of goods. This is necessary in order to select and apply the relevant customs rules for each movement of goods and thus to quote the import duty.
2. The origin of goods. For customs purposes, the origin of goods can be preferential or non-preferential ('made in' labelling).
3. The value of the transactions. According to article 70 of the Union Customs Code (the "UCC" - Regulation (EU) No. 952/2013 of the European Parliament and of the Council), "*the primary basis for the customs value of goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the customs territory of the Union, adjusted, where necessary*".

The current framework of customs law is a complex structure of national and Community rules, which accumulated as the European integration process developed.

10.2 Customs declarations

Community law stipulates that all goods intended to be placed under a customs procedure must be governed by a declaration for that procedure. The declarant indicates a wish to place goods originating in third countries under a given customs procedure and provides information about the transaction. For each product, the declarant must indicate the classification code, origin, value, quantity, consignor and consignee, and the customs procedure.

This basic information enables the customs authorities to determine the dutiable amount and must be supplemented with other information about the transaction.

The Union Customs Code

The UCC was adopted on 9 October 2013 and repealed the CCC (Council Regulation (EEC) No. 2913/92). It entered into force definitively on 1 May 2016, and consists of the:

i. UCC "Delegated Act" (Commission Delegated Regulation (EU) No. 2446/2015), which supplements certain non-essential elements of the UCC;

ii. UCC "Implementing Act" (Commission Implementing Regulation (EU) No. 2447/2015), which sets out uniform procedural rules for the implementation of the UCC;

iii. UCC "Transitional Delegated Act" (Commission Delegated Regulation (EU) No. 341/2016), providing for alternative means for the exchange and storage of customs information for as long as the UCC electronic systems are not operational;

iv. UCC "Work Programme", which took the form of a Commission Implementing Decision, setting out the planning of IT systems.

The UCC is part of the modernisation of customs procedures, and is the new framework regulation on customs rules and procedures throughout the EU.

The UCC and the Delegated Act and Implementing Act:

- streamline customs legislation and procedures;
- offer greater legal certainty and standardisation to businesses;
- increase clarity for customs officials throughout the EU;
- simplify customs rules and procedures and facilitate more efficient customs transactions in line with modern-day needs;
- complete the shift of customs procedures to a paperless and fully electronic environment;
- reinforce swifter customs procedures for compliant and trustworthy AEOs.

With the introduction of the UCC, Community law now requires the paperless exchange of information between different authorities and between authorities and economic operators: all data exchanges must take place using electronic data-processing techniques. This innovation, among others introduced by the Automated Export System (AES), marks a paradigm shift in customs law, making electronic data exchange the key factor in the relationship between companies and customs authorities.

Article 14(2) of the UCC stipulates that customs authorities must maintain a regular dialogue with economic operators, promoting transparency by making information about customs law, general administrative rulings and application forms available to the public - free of charge whenever possible. It adds that this objective may be pursued via the Internet. This is further proof of the total modernisation of customs regulations through the UCC, which also provides for ‘institutional’ exchanges via the Internet, with full legal recognition and no exceptions.

Moreover, article 16 of the UCC states that "*Member States shall cooperate with the Commission to develop, maintain and use electronic systems for the exchange of information between customs authorities and with the Commission and for the storage of such information, in accordance with the Code*".

10.2.1 Suspensive arrangements and customs procedures with an economic impact (special procedures under the UCC)

Under the new UCC, the suspensive arrangements laid down in the repealed CCC are replaced by the following special procedures:

(a) transit, which comprises external and internal transit;

(b) storage, which comprises customs warehousing and free zones;

(c) specific use, which comprises temporary admission and end-use;

(d) processing, which comprises inward and outward processing.

It should be noted that the “Processing under customs control” procedure has been included in the new inward processing procedure, “temporary admission” is covered by the new “specific use” procedure, and “free zones” are now governed by “customs warehousing” rules.

Transit

- **External transit**

Under the external transit procedure, non-Union goods may be moved from one point to another within the customs territory of the Union without being subject to i) import duties, ii) other charges provided for under other relevant provisions, or iii) trade policy measures, insofar as they do not prohibit the entry or exit of goods into or from the customs territory of the Union.

- **Internal transit**

Under the internal transit procedure, union goods may be moved from one point to another within the customs territory of the Union and pass through a country or territory outside the customs territory without undergoing any change in their customs status.

Storage

Under the storage procedure, non-Union goods may be stored in the customs territory of the Union without being subject to any of the following: i) import duties, ii) other charges provided for by other relevant provisions, or iii) trade policy measures, insofar as they do not prohibit the entry or exit of goods into or from the customs territory of the Union.

Union goods may be placed under the customs warehousing or free zone procedure in accordance with Union legislation governing specific fields, or in order to benefit from a decision allowing the repayment or remission of import duties.

Specific use

- **Temporary admission**

Under the temporary admission procedure, non-Union goods intended for re-export may be subject to specific use in the customs territory of the Union, with total or partial relief from import duties, and without being subject to: i) other charges provided for by other relevant provisions, or ii) trade policy measures, insofar as they do not prohibit the entry or exit of goods into or from the customs territory of the Union.

- End-use

Under the end-use procedure, goods may be released for free movement under a duty exemption or at a reduced duty rate on account of their specific use.

Processing

- **Inward processing**

Under the inward processing procedure, non-Union goods may be used in the customs territory of the Union in one or more processing operations without being subject to any of the following: i) import duties, ii) other charges provided for by other relevant provisions, or iii) trade policy measures, insofar as they do not prohibit the entry or exit of goods into or from the customs territory of the Union.

The inward processing procedure may be used in cases other than repair and destruction only where, without prejudice to the use of production accessories, the goods subject to the procedure can be identified in the processed products.

- **Outward processing**

Under the outward processing procedure, Union goods may be temporarily exported from the customs territory of the Union to undergo processing. The resulting processed products may be released for free movement with total or partial relief from import duties upon application by the holder of the authorisation or any other person established in the customs territory of the Union, provided that this person has obtained the consent of the holder of the authorisation and the conditions for the authorisation have been met.

10.2.2 Authorised Economic Operator (AEO)

An AEO is an economic operator that is established in EU customs territory and holds an AEO certificate issued by the customs authorities of a Member State, confirming that the operator meets all the parameters and conditions stated in articles 38 and 39 of the UCC and in the Delegated Act and Implementing Act.

All economic operators (manufacturers, importers, exporters, warehouse-keepers, operators authorised to carry out an activity in a free zone or in a free warehouse, transporters, forwarders, air freighters, terminal operators, shipping companies, customs agents and, more generally, all operators whose activity involves the application of customs legislation) established in the EU can apply for an AEO certificate.

The AEO certificate gives an economic operator the Community status of AEO for customs simplifications and/or security issues.

Advantages of the AEO certificate

The operator obtains various direct benefits, including:

- being recognised on the market as a safe and reliable partner;
- easier procedures for obtaining customs simplifications;
- more favourable treatment than other operators when it comes to physical and documentary customs inspections;
- priority treatment of consignments if selected for inspection;
- being able to choose the location of an inspection (the operator may opt for centralised customs clearance, provided for in article 179 of the UCC, which allows economic operators to centralise and supplement accounting, logistics and distribution functions, with consequent savings in administrative and transaction costs);
- reduced data requirements for submitting summary declarations.

The operator also obtains the following indirect advantages:

- better relations with customs authorities (client coordinator);
- more timely shipments;
- better security and communication between the parties in the supply chain;
- customer loyalty;
- the prevention of problems since employees are known;
- fewer safety-related incidents;
- better planning;
- fewer thefts and losses.

10.2.3 Binding tariff information (BTI) and binding origin information (BOI)

These instruments of the European customs framework can be used by European operators to provide one another with customs classification and origin certainty.

BTI is used to obtain the correct tariff classification for goods that operators intend to import or export.

BOI, on the other hand, is a decision issued by a European customs authority about the actual origin of goods. Once issued, these decisions are binding on the authorities in all Member States in respect of imported or exported goods, provided that the goods and the circumstances determining the acquisition of origin are identical in every respect to the description in the BOI.

Applications for binding information must be made in writing either to the competent customs authority of the Member State or Member States in which the information is to be used, or to the competent customs authority of the Member State in which the applicant is established.

Under the CCC, BTI was valid for a period of six years from the date of issue, whereas BOI was valid for three years from the date of issue. Under the UCC, however, the validity period of both BTI and BOI is three years and they are binding not only on the customs authorities but on the applicant as well.

10.2.4 The Customs Decision System

On 2 October 2017, the European Commission launched an innovative Customs Decision System (CDS), to foster further harmonization between Member States and create an online environment for customs decisions.

The system can be accessed through the EU Trade Portal and should be used for specific types of applications to be filed by economic operators. The system will also hold post-application/decision information (e.g. on amendment, revocation, suspension or annulment of decisions).

Currently, the use of the CDS system is mandatory for decisions involving more than one Member State. When a decisions affects only one Member State, it can decide whether to allow the use of the CDS system or opt for a domestic system.

10.2.5 The Registered Exporter system (REX system)

On 1 January 2017, the step-by step introduction of the REX system began. This new system simplifies certification of origin of goods and will be applied in the Generalised System of Preferences (GSP), through which the EU unilaterally grants tariff preferences to developing countries, and in specific preferential trade agreements signed by the European Union with third countries (e.g. free trade agreement between the EU and Canada).

The most innovative change introduced by the REX system is the complete dematerialisation of the certification of origin, which is being replaced by an electronic statement to be issued only by registered exporters[33].

This major change means that:

- exporters based in GSP countries will have to register for REX purposes in order to make out a valid statement on origin in shipments between GSP countries and the EU;
- European and Canadian exporters will have to register for REX purposes in order to make out a valid statement on origin under the free trade agreement between the EU and Canada;
- European exporters will have to register for REX purposes in certain circumstances.

10.2.6 Dual use

Dual-use items are finished or semi-finished products, equipment and machinery components - including software and technology - that are normally used for civilian purposes but may have military applications, or may contribute to the proliferation of weapons of mass destruction. Dual-use items are subject to special rules.

The EU therefore controls the export, transit and brokering of dual-use items that affect the development, production and trade of typically high-tech, advanced products across a wide-range of civil industries - e.g. energy, aerospace, defence and security, lasers and navigation, telecommunications, life sciences, chemical and pharmaceutical industries, material-processing equipment, electronics, semiconductor and computing industries, medical and automotive industries.

33 The REX requirement is triggered by the exportation of goods whose total value is higher than EUR 6,000.

The export of dual-use goods and technologies is governed by a variety of standards, criteria and application procedures drawn up in accordance with national and international security requirements, such as Regulation (EC) No. 428/09, setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items

10.3 Excise duties

Excise duties are indirect taxes on the consumption of certain products:

- energy products
- alcohol and alcoholic beverages
- manufactured tobacco.

The authority responsible for the collection of excise duties in Italy is the Agenzia delle Dogane, the Italian Customs Authority.

Requirements and authorisation

Excise goods are subject to excise duties upon their production or import into the European Community. Typically, excise duties are levied when goods are released for consumption. The goods are also considered as having been released for consumption when:

- stock shortages are higher than those provided for by law;
- they exit (even illegally) a duty-suspension arrangement;
- they are manufactured or imported (even illegally) outside a duty-suspension arrangement.

For the circulation of excise goods, it is necessary to comply with certain formalities, including the lodging of specific documentation.

10.4 Import VAT

In a Community context, all imports are liable to VAT.

From an Italian perspective, VAT is owed when goods are introduced into Italy by the declarant. VAT must be paid by the owner of the goods or by the holder of the goods at the crossing of the customs border.

The following transactions are regarded as imports.

- The release of goods for free movement under a customs-duty suspension arrangement, if the goods are destined for another Member State of the European Community.
- Inward processing (temporary import). These operations are not regarded as imports for customs purposes, but are liable to VAT in Italy if the goods are introduced into Italy for sale or home use.
- The temporary admission of goods for re-export without processing; these goods do not benefit from total exemption from import duties in accordance with Community law.
- The clearance for home use of goods originating from Mount Athos, the Canary Islands, or French overseas departments.
- Re-imports for temporary export (outward processing).
- The re-introduction of goods previously exported.

The tax base for VAT on imports is calculated in accordance with Italian VAT law and customs law.

10.5 Relations with the Italian customs authorities

In the past, the Italian customs authorities were known for being very conservative. Since the introduction of the AES framework in 2007, their approach has changed significantly. They have now modernised their procedures, also as a result of new Community legislation, which is binding on all Member States.

The completion of the internal market, the reduction of barriers to international trade and investment, and the greater need to ensure security and safety at the external borders of the Union, have changed the role of customs authorities, giving them a leading role within the supply chain and - in their monitoring and management of international trade - making them a catalyst for greater competitiveness on the part of their countries and the companies located in them.

Because of this new approach, very interesting customs-planning solutions are now possible, with the support of the authorities and a significant simplification of the global customs burden (formalities and duties).

11. Tax audits

11.1 Statute of limitations

Under ordinary rules, a tax year becomes time-barred for CIT and VAT purposes on 31 December of the fourth year following that in which the tax return for that year is filed. Starting with assessments of FY 2016, a tax year will become time-barred on 31 December of the fifth year following that in which the tax return for that year is filed (e.g. for those taxpayers for whom the tax year follows the calendar year, FY 2015, the tax return for which is filed in 2016, will become time-barred on 31 December 2020, but FY 2016 will become time-barred on 31 December 2022). If the tax return is not filed, the statute of limitations is extended by one year for assessments of tax years up to and including FY 2015, and by two years for assessments of FY 2016 and beyond.

For assessments of tax years up to and including FY 2015, if tax inspectors detect a violation that could constitute a criminal tax offence, and inform the public prosecutor before the ordinary statute of limitations expires, the time limit doubles for assessment purposes (e.g. FY 2015 becomes time-barred on 31 December 2024). Starting with assessments of FY 2016, this extension will no longer apply (i.e. FY 2016 will become time-barred on 31 December 2022 even if tax inspectors detect a violation that could constitute a criminal tax offence).

For registration tax and other indirect taxes to which equivalent rules apply (e.g. cadastral and mortgage tax), the authorities can assess additional taxes within two or three years (based on the type of alleged violation) of the date the deed (e.g. a contract) is filed for registration. If the deed has not been filed for registration, authorities can assess taxes within five years of the day the deed was supposed to be registered.

11.2 Post-audit actions

A tax audit usually ends with tax inspectors issuing an audit report (referred to as the PVC - *processo verbale di constatazione*). The tax audit report is not in itself an immediate source of liabilities. Additional taxes, penalties and interest are applied upon authorities serving a formal notice of assessment before the statute of limitations expires. The tax authorities cannot serve the notice of assessment until 60 days after the issue date of the audit report. This is to allow the taxpayer time to file observations and comments on the audit, which the tax authorities should take into account when formulating the notice of assessment. The 60-day time limit does not apply to the taxpayer, who can file observations and comments before the notice of assessment is served.

After a tax audit ends, the taxpayer can seek a settlement or compromise with the authorities, or, after the notice of assessment has been served, initiate litigation proceedings under one of the following procedures (this list is not exhaustive and merely represents those procedures applied most commonly).

Pre-hearing compromise

Either before or after the notice of assessment is served, the taxpayer can apply to negotiate with the tax authorities to see if there is room to reach a settlement. This is known as a "pre-hearing compromise" procedure. The pre-hearing compromise application is never binding (i.e. it does not oblige the parties to reach an agreement).

If a pre-hearing compromise is reached, the ordinary penalties for the purported violations are reduced to one-third of the tax adjustment agreed upon in compromise.

A pre-hearing compromise application submitted after the final notice of assessment has been served has the effect of extending the appeal deadline (ordinarily 60 days) by an additional 90 days (to 150 days in total). A taxpayer who files an application for a pre-hearing compromise before the notice of assessment is served, and who fails to reach a settlement, cannot file another application after the notice of assessment has been served. In this case, the 90-day extension is not granted.

Mediation

The taxpayer must launch advance mediation proceedings in response to all notices of assessment served after 1 January 2018 and involving sums of up to EUR 50,000 (for notices of assessment served up to the end of 2017, the threshold was EUR 20,000). Mediation is compulsory and an appeal is barred if no mediation attempt is made. If the mediation procedure is unsuccessful, the taxpayer may start litigation. If an agreement with the authorities is reached during the mediation procedure, penalties are reduced to 35 percent of the agreed level of adjustment.

Appeals before the tax court

If the taxpayer is unable to reach an acceptable agreement under the pre-hearing compromise procedure and the authorities serve a notice of assessment, the natural subsequent course of action is to file an appeal before the local tax court.

There are three levels of tax court in Italy: the local tax court, regional tax court, and supreme tax court. Decisions of the tax courts are provisionally executive, thus requiring provisional repayment to the party that wins the case at the first or second level of adjudication.

The appeal must be filed within 60 days of the date on which the notice of assessment is served. If a pre-hearing compromise is requested (and was not requested before the final notice of assessment), an additional 90 days will be granted to file the local court appeal (see above).

The appeal does not suspend provisional collection, which can start after 180 days, when the notice of assessment becomes enforceable. In any event, the taxpayer can submit an application to the local court to have collection suspended if certain conditions are met.

If, instead, the taxpayer accepts the notice of assessment without appeal by paying the amount demanded within 60 days, penalties are reduced to one-third of that amount.

Judicial conciliation (compromise after appeal)

After an appeal has been filed, the taxpayer (as well as the tax authorities) may still apply to start a partial or total judicial conciliation process.

If a compromise is reached before the local tax court hearing, penalties are reduced to 40 percent of the agreed level of adjustment. Under recent changes to the law, if the agreement is reached after the hearing before the local tax court, penalties are reduced to 50 percent.

Voluntary amendment (ravvedimento operoso)

After an audit has ended, but before the notice of assessment is served, the taxpayer can correct mistakes identified in the audit report by paying the corresponding tax. In this case, penalties are reduced to one-fifth of the minimum amount. If the voluntary disclosure application is filed before the audit ends, penalties are reduced to one-sixth.

11.3 International alternative dispute resolution procedures

In recent years, a large number of audits have focused on transfer pricing challenges. Within multinational groups, transfer pricing adjustments can result in double taxation. There are two instruments in place to remove double taxation: one is a MAP initiated under the European Arbitration Convention (typically activated when adjustments affect two or more European jurisdictions), the other is a similar procedure initiated under the applicable DTT (open to private individuals and non-European jurisdictions).

Procedures initiated under the Arbitration Convention give certainty of double taxation removal: if the competent authorities do not reach an agreement, a second arbitration phase begins, during which a decision on the final adjustment is always made. This is not the case under DTTs as, with the exception of the few conventions that contain arbitration clauses, the competent authorities must only endeavour to reach an agreement.

A relevant factor is how a MAP initiated under the Arbitration Convention interacts and conflicts with litigation before the Italian tax court. The competent Italian authorities take the view that when a local tax court delivers a decision, they are not obliged to accept the outcome of a MAP which is more favourable to the taxpayer. The taxpayer should therefore withdraw from the appeal before the tax court before the Arbitration Convention procedure ends.

Similarly, if, after the audit, a pre-hearing compromise is reached, the Italian authorities will not initiate any mutual agreement procedures.

12. How to invest in Italy

12.1 Types of transaction

12.1.1 Share deals

In a share deal (i.e. the acquisition of shares in a target company) the capital gain realised by a seller resident in Italy - the capital gain being the difference between the sale price and tax basis of the shares sold - may be partially exempt from tax, provided that the Participation Exemption requirements are met.

The buyer cannot obtain tax recognition of the amount paid for the shares over and above the underlying net book value of the target: in other words, the tax bases of the target's assets and liabilities remain unchanged after the acquisition. However, on certain conditions, the buyer can obtain tax recognition of the higher value of the intangible assets included in the underlying value of the shares acquired (and recognised in the consolidated financial statements) by paying a 16 percent substitute tax. Starting from the fiscal year running on 31 December 2017, these rules have been extended to the acquisition of shares in non-resident companies.

The tax basis of shares held in an Italian unlisted company on 1 January 2018 by a non-resident entity can be stepped up by paying an 8 percent tax (or at least the first instalment) by 30 June 2018 and by obtaining a certified appraisal by the same date.

Of the capital gain realised by a non-resident seller on a qualifying shareholding, 58.14 percent (49.72 percent for capital gains realized before 31 December 2017) is subject to IRES at 24 percent, with an effective tax leakage of 13.95 percent. A capital gain realised from 1 January 2019 will be subject in full to a 26 percent substitute tax. The above taxation of capital gains applies unless the seller is eligible for a DTT that stipulates otherwise.

The sale of shares is not subject to VAT but is generally subject to a fixed registration tax of EUR 200.

The transfer of shares in a company incorporated in Italy as an S.p.A. or S.a.p.a. is subject to a financial transaction tax (Tobin tax) at a standard 0.2 percent rate, on the value of the transaction. The tax rate is reduced to 0.1 percent for transfers that take place on regulated markets and multilateral trading systems. No financial transaction tax applies to the transfer of quotas in a company incorporated as an S.r.l.

The transaction value generally means the purchase price, the net balance of transactions involving the same financial instrument and concluded on the same day by the same party, the price contracted, or, failing that, the fair market value determined according to consolidated income tax rules.

There are certain exemptions from the financial transaction tax (e.g. shares transferred between related parties or share transfers related to restructuring operations as defined by article 4 of Council Directive 2008/7/EC).

12.1.2 Asset deals

An asset deal allows the buyer to acquire only the business unit actually needed, leaving the unwanted assets and liabilities behind. Consequently, an asset deal may be used where a target company has significant contingent tax liabilities, because it reduces the associated risk. Nevertheless, the buyer of a business unit (which qualifies as a going concern) is jointly liable with the seller for all tax liabilities and penalties incurred in the year of acquisition (up to the acquisition date) and the two previous years.

The liability of the buyer is, however, limited to the lower of (i) the value of the business unit acquired, and (ii) the tax liabilities of the seller already assessed by the tax authorities or under assessment in the year when the transaction takes effect or the two previous years. It is possible to obtain a clearance certificate from the Italian tax authorities, attesting the extent of the tax liabilities for which joint tax exposure exists. In this case, the buyer's liability is limited to the amount indicated in the certificate. If the certificate is not issued within 40 days of application, or does not indicate any tax liability, the buyer is freed from any tax risk associated with the business unit acquired. No liability limit applies if the transaction involves tax fraud. Tax fraud is assumed to have been committed if the transaction is made within six months of a tax infringement resulting in criminal penalties.

In an asset deal, the tax basis of the business unit acquired is its purchase price. The seller realises a taxable capital gain equal to the difference between the sale price and the tax basis of the business unit sold. The 24 percent (27.5 percent up to 31 December 2016) IRES charged on the capital gain can be spread over a five-year period if the business unit has been held by the seller for more than three years.

Essentially, in an asset deal the seller pays tax on the full capital gain realised while the buyer obtains tax recognition of the purchase price paid. Goodwill can be amortised for tax purposes over a minimum of 18 years (at an amortisation rate of 5.56 percent per year).

The disposal of a business unit is not subject to VAT, but is subject to registration tax at different rates, depending on the assets transferred (3 percent on goodwill, 0.5 percent on receivables, and 9 percent on real estate). Although registration tax should be split between the parties, it is often paid by the buyer under specific clauses in the sale and purchase agreement.

The fair market value of the transferred business unit is subject to assessment by the Registration Tax Office. Therefore, it is advisable to obtain an appraisal from an independent expert beforehand, to be used as documentary evidence in the event of a tax assessment.

A common way of structuring an asset deal is to hive off the target business unit into a NewCo in exchange for NewCo shares, and then sell the shares in the NewCo to the buyer. In this transaction:

- the contribution of the business unit to the NewCo is neutral for tax purposes (in other words, any capital gain made on the contribution in the statutory accounts is ignored for tax purposes and the NewCo will not obtain any step-up in the tax basis of the assets received);
- the tax basis and aging period of the business unit contributed to the NewCo will be rolled over to the shares in the NewCo;
- the subsequent sale of shares can be covered by the Participation Exemption, so that any capital gain is taxed at an effective rate of 1.2 percent (IRES of 24 percent on five percent of the capital gain, or 1.375 percent up to 31 December 2016).

From a buyer's perspective, the NewCo offers the option, as an alternative to the ordinary tax regime, of realigning the tax basis of the business unit with its book value, by paying a substitute tax on the step-up, at the following rates:

- 12 percent on the first EUR 5 million of the step-up;
- 14 percent on any amount between EUR 5 and EUR 10 million;
- 16 percent on any further amount.

The stepped-up assets are subject to ordinary tax rules on amortisation/depreciation. The substitute tax is paid in three instalments over three years.

An alternative substitute tax regime grants the possibility of applying a 16 percent substitute tax on:

- goodwill;
- brands or trademarks;
- other intangibles (with an indefinite useful life);
- controlling interests (if certain conditions are met).

This alternative substitute tax regime provides for accelerated amortisation. In this way, the cost of goodwill and brands can be amortised for tax purposes over five years (10 years for transactions completed up to FY 2015) instead of 18, regardless of the amortisation charged to the profit and loss account. The increased tax base cost is recognized from the second tax year following the transaction.

The contribution of a business unit is not subject to VAT. A fixed registration tax of EUR 200 is due.

Contributions of going concerns followed by a sale of shares/quotas used to be recast by the tax authorities as transfers of assets (article 176 deals). This led to claims for registration tax, ranging from 3 percent to 9 percent, as opposed to the fixed €200 tax due on transfers of shares/quotas. The 2018 Budget Law clarifies that step transactions from 2018 onwards can be challenged only through the general anti-abuse rules. There is uncertainty about the impact of this change in law on existing litigation.

12.1.3 Mergers

The merger of two or more companies is tax-neutral and does not lead to the realisation or distribution of capital gains or losses. The tax neutrality of this transaction implies that:

- all the assets and liabilities of the absorbed companies are taken over by the surviving company on a tax-neutral basis, i.e. without any step-up in their tax basis;
- any merger difference (merger surplus/deficit) is disregarded for tax purposes (i.e. is not taxable/ deductible);
- all the rights and obligations (including taxes) of the absorbed companies are transferred to the company resulting from the merger, starting from the date on which the merger takes effect.

The tax-deferred reserves of the merged companies are included in the taxable income of the company resulting from the merger, unless the reserves are reinstated in its balance sheet. However, reserves that are taxable only upon distribution are taxable if and to the extent that:

- the merger surplus is distributed; or
- the increase in share capital exceeding the sum of the share capital of the companies participating in the merger is repaid to the shareholders.

While a merger is generally a tax-neutral event, the tax recognition of excess merger costs can be obtained under the substitute tax regime.

The remaining tax losses (and interest carryforwards) of the companies involved in the merger are subject to the following tests.

- **Business vitality test:** the profit and loss account of the company whose losses are to be carried forward must show, for the financial year prior to the merger resolution, revenues and labour costs higher than 40 percent of the average values of the two previous financial years.
- **Net equity test:** the tax loss carryforwards must be within the limit of the statutory net equity of the entity before the merger (disregarding any contributions obtained in the two years preceding the merger).

For tax losses, these limits do not apply in the event of a merger between entities that are part of the same tax group.

Since 1 January 2017 it has also been possible to carry forward any surplus ACE, subject to the business vitality test and net equity test.

The tax effects of the merger can be backdated to the beginning of the tax year in which the merger takes place. In this scenario, the business vitality and net equity test must also be applied to the tax losses, interest carryforwards and surplus ACE accrued in the interim period.

A merger is not subject to VAT. In general, each merger is subject to a fixed registration tax of EUR 200.

Mergers may be scrutinised for anti-avoidance purposes.

12.1.4 Demergers

As a general rule, demergers are tax-neutral. A demerged company can freely choose which assets and liabilities to contribute to the beneficiary.

The tax neutrality of this transaction has the following implications.

- Demerger differences (i.e. demerger deficits/ surpluses) are disregarded for tax purposes (i.e. are not taxable/deductible). Therefore, demerged and beneficiary companies are not subject to corporate tax on any capital gains realised on the transferred assets.
- Starting from the effective date of the demerger, certain tax items (e.g. tax deferrals on capital gains realised in previous years, tax loss carryforwards) are transferred from the demerged company to the beneficiary in proportion to the net equity transferred. If, however, certain privileges and obligations (e.g. provisions for accelerated depreciation) are attached to particular assets or liabilities transferred to a specific company, they must be attributed to that company.

In order to preserve the tax neutrality of reserves subject to tax deferral and included in the net equity of the demerged company, the beneficiary company must create such reserves after the demerger, in proportion to the increase in its own net equity as a result of the transaction. Tax loss carryforwards of the demerged company can be transferred to the beneficiary company in proportion to the net equity transferred to it, provided that - as in mergers - the business vitality test and net equity test are carried out.

Since 1 January 2017, it has also been possible to carry forward any surplus ACE and interest carryforwards, subject to the business vitality test and net equity test.

While a demerger is generally a tax-neutral event, a step-up in the assets resulting from the merger can be obtained subject to certain conditions.

Demergers are not subject to VAT. A fixed registration tax of EUR 200 is due.

Especially when real estate was transferred, the Italian tax authorities used to recast a demerger followed by the disposal of shares in the beneficiary company (two separate transactions usually subject to a fixed registration tax of EUR 200 each) as a sale of a going concern, and demand additional proportional registration tax. The 2018 Budget Law clarifies that step transactions from 2018 onwards can be challenged only through the general anti-abuse rules (there is uncertainty about the impact of this change in law on existing litigation).

12.2 Listing a company in Italy - overview

Companies registered in Italy may list their shares on one of the markets managed by *Borsa Italiana*. These markets can also be accessed by non-Italian companies through a primary listing, if the company is not yet listed, or a dual or secondary listing if the company is listed on its national or other stock market. In the latter case, specific regulations apply to the foreign company. EU directives on financial markets and the admission of financial instruments to public trading have been endorsed by the Italian parliament and are fully applicable in Italy, e.g. the Prospectus Directive and the Markets in Financial Instruments Directive (MiFID II) entered into force on 3 January 2018.

The main markets available in Italy for the listing of shares are the following.

- **Mercato Telematico Azionario - MTA:** this is *Borsa Italiana*'s main market, designed for medium-sized and large companies seeking to raise financial resources to fund a growth project. The MTA is a regulated market subject to stringent requirements in line with the expectations of professional and private investors. Within the MTA market, the STAR segment is dedicated to mid-capital companies that voluntarily comply with exceptional standards of liquidity, information transparency and corporate governance.
  The MTA mainly supports companies in raising domestic and international financing from institutional and professional investors on one side and retail investors on the other side, and has always registered high liquidity performances. Companies are admitted to the MTA on the basis of both formal and substantive requirements.
  Among the formal requirements are a market capitalisation of at least of EUR 40 million and a free float of at least of 25 percent (35 percent in the case of STAR companies). The substantive requirements include a sound and clear strategy, a good competitive advantage, a balanced financial structure, managerial autonomy and all of the factors that help to improve the company's ability to create value for investors. The adoption of the *Codice di Autodisciplina* (Corporate Governance Code) is recommended to all companies listed on the MTA on a "comply or explain" basis.
  STAR companies must comply with specific governance requirements. The companies listed on the MTA and the MIV are represented by the FTSE Italia index series, which is reviewed on a quarterly basis to ensure that companies are always included in the index that can most appropriately represent them.
  MTA companies are included in indices according to their characteristics: the top 40 companies in terms of size and liquidity are included in the FTSE MIB index. STAR companies, in addition to being included in the MTA indices, also have their own specific index.
  Within the MTA market is the STAR segment, dedicated to middle-sized companies with a market capitalisation of less than EUR 1 billion, which voluntarily adhere to and comply with the following strict requirements:
  - high transparency and high disclosure;
  - high liquidity (minimum free float of 35 percent);
  - corporate governance requirements in line with international standards.
- **AIM Italia**: this is the *Borsa Italiana* market devoted to Italian SMEs with high growth potential. The market was born on 1 March 2012 from the merger of the AIM Italia and MAC markets, to streamline the offer of markets devoted to SMEs and propose a single market for Italy's more dynamic and competitive SMEs, with a formula that leverages the know-how obtained from more than 15 years of experience of the British AIM on one side and the specific needs of the Italian entrepreneurial system on the other. It is designed to offer a faster and more flexible procedure to listing whilst protecting investors, thanks to an efficient regulatory system that meets the needs of small businesses and specialised investors. To gain admission, it is not necessary to publish a prospectus under the Prospectus Directive, and subsequently it is not necessary to publish quarterly management reports.
  Companies applying to AIM Italia must appoint a nominated adviser from an approved register held by *Borsa Italiana*. The nominated advisor is responsible for guiding and advising the company on its responsibilities under AIM Italia rules during the admission process and on its continuing obligations in its subsequent life as a publicly quoted company.
  AIM Italia offers companies a unique combination of advantages.
  - AIM Italia enables smaller-sized companies to access the market in a shorter space of time and at a lower cost than through the main market, ensuring transparency and liquidity for investors in the meantime.

- International visibility: AIM Italia gives companies access to a highly global market, allowing them to benefit from international visibility and enjoy the credibility of the British AIM and the markets of *Borsa Italiana*.
- Shorter admission procedure: AIM Italia is designed to offer both a simplified listing process and post-listing formalities modelled on the structure of SMEs.
- The nominated adviser, who supports a company during the admission phase and throughout its time on the market, and is of central importance.
- Easier admission requirements than for the primary market: AIM Italia sets fewer admission criteria in terms of market capitalisation and floating (with a minimum rate of 10 percent). There are no particular corporate governance requirements and no specific economic and financial requirements.

- **Borsa Italiana Equity MTF:** this includes the Global Equity Market (GEM), which substituted the MTA-International segment and is dedicated to the trading of shares of non-Italian issuers already traded on regulated markets in EU Member States or in other OECD member countries.

The following table illustrates the main admission and ongoing requirements for MTA and AIM Italia.

	MTA	AIM ITALIA
Listing requirements		
Free float	25 percent	10 percent
Audited financial statements	3	1 (if existing)
GAAP	International	Italian or international / USA
Investors	Institutional / Retail	Institutional
Other documents	Prospectus / Management Information System / Business Plan / Quota Management Admission Test	Admission document
Market cap	Min. EUR 40 million	No formal requirements
Board of directors (independent directors)	Recommended (Corporate Governance Code)	No formal requirements
Internal audit committee	Recommended (Corporate Governance Code)	No formal requirements
Remuneration committee	Recommended (Corporate Governance Code)	No formal requirements
Incentives to top management	Recommended (Corporate Governance Code)	No formal requirements
Investor relator	Recommended	Not mandatory
Website	Mandatory	Mandatory
Main advisor	Sponsor / Global coordinator	Nominated advisor

	MTA	AIM ITALIA
Key continuing obligations		
Corporate governance	Comply or explain	Optional
Specialist	Optional (liquidity provider)	Mandatory (liquidity provider)
Disclosure	Price-sensitive information and M&A (TUF and CONSOB Rules on Issuers)	Price-sensitive and extraordinary operations
Takeover code		Public take-over bid
Related parties	Procedures and reporting requirements	Easy procedures and disclosure obligations
Quarterly data	First-quarter, second-quarter and third-quarter report within 45 days of the quarter end	No
Half-year data	Within 60 days of the half-year end	Within 3 months of the half-year end
Annual report	Within 120 days of the year end	Publication within 6 months of the year end

Glossary

All English translations of Italian rules in Investment in Italy are unofficial KPMG translations.

Term	DEFINITION
2016 Stability Law	Law no. 208/2015
2017 Budget Law	Law no. 232/2016
2018 Budget Law	Law no. 205/2017
ACE	**Allowance for Corporate Equity**
AEO	**Authorised Economic Operator**
AES	**Automated Export System** Ensures that exports started in one Member State can be concluded in another without the same information having to be submitted.
Anagrafe	The Office of Records of the Resident Population in Italy
APA	**Advance Pricing Agreement** An arrangement with the Italian tax authorities that determines, in advance of controlled transactions, an appropriate set of criteria for the determination of the transfer pricing for those transactions (OECD 2010 Transfer Pricing Guidelines definition).
B2B	**Business-to-Business**
B2C	**Business-to-Consumer**
BEPS	**Base Erosion and Profit Shifting** Refers to tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations, resulting in little or no overall corporate tax being paid (OECD definition).
BEPS Reports	The 15 reports issued by the OECD on 5 October 2015, which contain measures aimed at tackling BEPS. The final reports are available at the following link: http://www.oecd.org/tax/beps-2015-final-reports.htm
BOI	**Binding Origin Information** Origin information that is binding on the administrations of all EU Member States when certain conditions are met.
Borsa Italiana	*Borsa Italiana* S.p.A. - Italy's main stock exchange.
BTI	**Binding Tariff Information** Tariff information that is binding on the administrations of all EU Member States when certain conditions are met.
Capital Markets Union	A union envisaged by the European Commission as a way of mobilising capital in Europe.
CbC	Country-by-country

CbC Report	Document that MNEs must submit to the tax authorities in compliance with the CbC Reporting obligations.
CCC	**Community Customs Code** - Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code
CCIP	**Community Customs Implementing Provisions** - Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code
CCNL	**Contratto Collettivo Nazionale di Lavoro** - National Collective Bargaining Agreement
CFC List of Low-Tax Jurisdictions	For the purposes of applying CFC rules, the jurisdictions listed in the Ministerial Decree of 21 November 2001. After amendments made by the Ministerial Decrees of 30 March 2015 and 18 November 2015, the following countries were listed: Alderney (Channel Islands), Andorra, Anguilla, Aruba, Barbados, Barbuda, Belize, Bermuda, British Virgin Islands, Brunei, Cayman Islands, Commonwealth of the Bahamas, Cook Islands, Djibouti (formerly Afars and Issas), French Polynesia, Gibraltar, Grenada, Guatemala, Guernsey (Channel Islands), Herm (Channel Islands), Isle of Man, Jersey (Channel Islands), Kiribati (formerly the Gilbert Islands), Lebanon, Liberia, Liechtenstein, Macau, Maldives, Marshall Islands, Montserrat, Nauru, Netherlands Antilles, New Caledonia, Niue, Oman, Saint Helena, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sark (Channel Islands), Seychelles, Solomon, Tonga, Turks and Caicos Islands, Tuvalu (formerly the Ellice Islands), US Virgin Islands, and Vanuatu. • Bahrain, with the exception of oil exploration, extraction and refining companies. • United Arab Emirates, with the exclusion of companies operating in the oil and petrochemical industries and subject to tax. • Monaco, with the exception of companies that make at least 25 percent of their turnover outside the Principality. This list was repealed from 2016.
CFC low-tax jurisdiction	As of the tax year following that in progress on 31 December 2015, low-tax jurisdictions are states or territories - other than EU and EEA Member States - whose tax regimes (ordinary or special) offer a nominal level of taxation that is less than half the level of corporate taxation in Italy, i.e. whose nominal rate is less than half the IRES + IRAP rate.
CIT	**Corporate Income Tax** (in Italy this is IRES).
CONSOB	***Commissione Nazione per le Società e la Borsa*** - National Commission for Companies and the Stock Exchange
Convergence Regions	Italian regions with a GDP per capita of less than 75 percent of the average GDP of the EU-25, i.e. Campania, Apulia, Calabria and Sicily.
Cooperative jurisdiction	A jurisdiction that is on the List of Cooperative Jurisdictions (see below).
Delega Fiscale	Law no. 23 of 11 March 2014 Sets the principles to be followed in simplifying and streamlining the Italian tax legislative framework.
DTT	**Double Tax Treaty**
EBITDA	**Earnings before interest, taxes, depreciation and amortisation**

EC	**European Community**
EEA	**European Economic Area** The EEA includes EU countries and also Iceland, Liechtenstein and Norway.
EFSI	**European Fund for Strategic Investments**
EIAH	**European Investment Advisory Hub** A joint initiative between the European Commission and the European Investment Bank constituting a single access point for advisory and technical assistance services to strengthen Europe's investment and business environment.
EIB	**European Investment Bank**
EIF	**European Investment Fund**
ERDF	**European Regional Development Fund**
ESF	**European Social Fund**
ETR	**Effective Tax Rate**
EU	**European Union**
FIFO	**First-in first-out** (accounting method)
FY	**Financial year**
GAAP	**Generally Applied Accounting Principles**
GDP	**Gross Domestic Product**
IAS	**International Accounting Standards**
IFRS	**International Financial Reporting Standards** - the set of accounting standards in place since 2001, which replaced IAS.
INAIL	***Istituto Nazionale per l'Assicurazione contro gli Infortuni sul Lavoro*** - National Institute for Accidents at Work
INPS	***Istituto Nazionale della Previdenziale Sociale*** National Institute of Social Security
Interest and Royalties Directive	Council Directive 2003/49/EC of 3 June 2003
Intrastat	The system for collecting statistics on the movement of goods and services between EU Member States.
IoT	**Internet of Things**
IP	**Intellectual Property**
IRAP	***Imposta regionale sulle attività produttive***: a regional business tax
IRES	***Imposta sul reddito delle società***: corporation tax
IRI	***Imposta sul reddito imprenditoriale***: a tax on entrepreneurial income
IRPEF	***Imposta sul reddito delle persone fisiche***: personal income tax
ISTAT	***Istituto Nazionale di Statistica*** - Italian National Institute of Statistics
Italian Digital Agenda	This comprises the body of initiatives and measures taken by Italy to implement the Digital Agenda for Europe.

ITC	**Income Tax Code** (TUIR - Testo Unico Imposte sui Redditi or Presidential Decree no. 917/1896)
IVAFE	***Imposta sul valore delle attività finanziarie detenute all'estero*** - tax on the value of financial assets held abroad.
IVIE	***Imposta sul valore degli immobili situati all'estero*** - tax on the value of real estate held abroad.
Jobs Act	Comprised of Law Decree no. 34 of 20 March 2014 and Law no. 183 of 10 December 2014, this aimed to reform the Italian labour market and make it more competitive.
Juncker Plan	The European Commission's Investment Plan for Europe announced by European Commission President Jean-Claude Juncker in November 2014.
LIFO	**Last-in first-out** (accounting method)
List of Cooperative Jurisdictions	A list of countries that allow an adequate exchange of information with Italy. The list - contained in the Ministerial Decree of 4 September 1996, as subsequently amended - currently names 134 countries: Albania, Alderney, Algeria, Andorra, Anguilla, Argentina, Armenia, Aruba, Australia, Austria, Azerbaijan, Bangladesh, Barbados, Belarus, Belgium, Belize, Bermuda, Bosnia and Herzegovina, Brazil, British Virgin Island, Bulgaria, Cameroon, Canada, Cayman Islands, Chile, China (People's Rep.), Colombia, Congo (Rep.), Cook Islands, Costa Rica, Croatia, Curaçao, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Ethiopia, Faroe Islands, Finland, France, Georgia, Germany, Ghana, Gibraltar, Greece, Greenland, Guernsey, Herm, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Ivory Coast, Japan, Jersey, Jordan, Kazakhstan, Korea (Rep.), Kuwait, Kyrgyzstan, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malaysia, Malta, Mauritius, Mexico, Moldova, Monaco, Montenegro, Montserrat, Morocco, Mozambique, Nauru, Netherlands, New Zealand, Nigeria, Niue, Norway, Oman, Pakistan, Philippines, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Vincent and Grenadine, Samoa, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, St. Maarten, Sweden, Switzerland, Syria, Taiwan, Tajikistan, Tanzania, Thailand, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Turks and Caicos Islands, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Vatican City State, Venezuela, Vietnam and Zambia.
M&A	**Mergers and acquisitions**
MAP	**Mutual agreement procedure**
MNE	**Multinational enterprise**
NewCo	**New company**
Non-qualifying share/ shareholding	An equity interest, or equivalent rights to acquire equity, representing less than 20 percent (2 percent in the case of a listed company) of the voting rights that can be exercised at the ordinary shareholders' meeting or less than a 25 percent interest in the capital (5 percent in the case of a listed company).
Nulla Osta	Clearance certificate
OECD Model Tax Convention	An agreement between the members of the OECD (Organisation for Economic Cooperation and Development) that lays down guidelines for negotiation of Conventions to avoid double taxation on income.
OECD Transfer Pricing Guidelines	These provide guidance on the application of the arm's length principle.

OIC	***Organismo Italiano di Contabilità*** - Italian Accounting Body
P&L	**Profit and loss**
Parent-Subsidiary Directive	Council Directive 90/435/EEC of 23 July 1990, amended by Council Directives 2003/123/EC and 2011/96/EU of 30 November 2011 (recast).
Participation Exemption	The tax exemption for qualifying dividends and capital gains realised on disposals of shares or quotas, equivalent financial instruments and equity shares in partnerships.
Patent Box	A regime under which a certain percentage of income deriving from the licensing or direct use of eligible IP is excluded from the tax base.
Qualifying share/ shareholding	A substantial equity interest, i.e. one exceeding the thresholds for a non-qualifying shareholding (as defined above).
Quota/quotas	An equity interest in an Italian S.r.l. company.
R&D	**Research and development**
REIF	**Real Estate Investment Fund**
SMEs	**Small and Medium-Sized Enterprises**
SPV	**Special Purpose Vehicle**

TAX RETURNS:	
730 tax return	The income tax return that must be completed by natural persons who are employees, pensioners, members of co-operatives and taxpayers with fixed-term contracts.
770 tax return	The annual withholding tax return.
Redditi PF tax return	The income tax return for individuals
Redditi SC tax return	The income tax return for corporates
TFR	***Trattamento di Fine Rapporto*** - end-of-service allowance
TOB	**Takeover Bid**
TUF	**The Consolidated Law on Finance** (Legislative Decree no. 58/1998)
UCC	**Union Customs Code** - Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code.
VAT Act	Presidential Decree no. 633/1972
VAT Directive	Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax
WHT	Withholding tax
YoY	Year on Year

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