



cutting through complexity

Italian Latest Topics

Global Japanese Practice

KPMG in Italy

September 2014





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イタリア最新トピックス

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**KPMGイタリア
グローバル・ジャパニーズ・
プラクティス**

KPMG's Global Japanese Practice (GJP) is a network of professionals dedicated to assisting Japanese companies to succeed in their overseas business.

KPMG has one of the largest Japanese Practice networks with more than 60 Japanese speaking staff in major cities in EMA, coupled with over 70,000 local professional staff many of whom have particular experience with Japanese companies. KPMG Italy also has over 3,000 local professionals located in 28 offices to cover the whole of Italy and Japanese speaking staff in GJP. We organize the team which can deliver high quality services to Japanese clients by selecting resources from our Italian offices.

Our network has been trying to provide our best service to our Japanese clients in this region, and we are striving to provide excellent client support continuously.

Wah Meng Gan
Partner, Head of GJP in Italy

KPMGのグローバル・ジャパニーズ・プラクティスとは、日本企業の海外ビジネスの成功のために、在外日系企業を支援すべく組織されたプロフェッショナル・ネットワークを総称したものです。

KPMGは欧州において60名以上の日本語対応可能なスタッフを擁する大規模なジャパニーズ・プラクティスを展開しており、実際にサービスを提供する7万人以上の現地プロフェッショナル・スタッフの多くも日系企業に対する業務経験を有しております。ここイタリアにおいても、グローバルジャパニーズプラクティスにて日本人スタッフを有し、28事務所の3,000人以上の現地プロフェッショナル・スタッフを有しております。我々は、このようなイタリアの現地プロフェッショナル・スタッフの中から適切な人材を選任し、日系企業のお客様に最高のサービスをご提供できるチームを編成することをお約束いたします。

私どものネットワークは日系企業のクライアントにベストなサービスを提供するように努力し続けてまいりましたが、今後とも私どもは、常にクライアントにご満足頂けるサービスの提供に全力で努めてまいりたく存じますので、宜しくお願い申し上げます。

グローバル・ジャパニーズ・プラクティスイタリア責任者

ワーメンガン

Coverage of Japanese speaking professionals (as of July 2014)

UK	London
Germany	Dusseldorf
	Frankfurt
	Hamburg
	Munich
	Berlin
France	Paris
Netherlands	Amsterdam
Italy	Milan
Belgium	Brussels
Ireland	Dublin
Switzerland	Zurich
Spain	Barcelona
Hungary	Budapest
Czech	Prague
Poland	Warsaw
Turkey	Istanbul
Russia	Moscow
UAE	Abu Dhabi
South Africa	Johannesburg



日本語対応可能なプロフェッショナルの状況 (2014年7月時点)

英国	ロンドン
ドイツ	デュッセルドルフ フランクフルト ハンブルグ ミュンヘン ベルリン
フランス	パリ
オランダ	アムステルダム
イタリア	ミラノ
ベルギー	ブリュッセル
アイルランド	ダブリン
スイス	チューリッヒ
スペイン	バルセロナ
ハンガリー	ブダペスト
チェコ	プラハ
ポーランド	ワルシャワ
トルコ	イスタンブール
ロシア	モスクワ
UAE	アブダビ
南アフリカ	ヨハネスブルク



KPMG in Italy is the leading professional services provider in the country and its service lines include audit, tax, legal, accounting and advisory. The service lines are organized across industries, as specific sector knowledge allows us to address the complexities our clients face and deliver a comprehensive service.

The Network has earned an unparalleled reputation for quality. With a deep-rooted presence across Italy, we pride ourselves on our ability to provide local expertise and access to a truly global network.

Audit

The audit firm, **KPMG S.p.A.**, was set up over fifty years ago and today is considered one of the leading employers for university graduates. A career as an auditor in KPMG provides professionals with an excellent grounding for their careers whether they continue within the firm or move into business. The firm has 28 offices across Italy striving to serve from the largest listed companies to the small, medium sized family enterprises, the essence of the Italian economy. **KPMG S.p.A.** is a member of the public register held by the Italian Stock Exchanges Regulator (Consob), the professional register of Auditors and the Association of Italian Auditors (Assirevi).



Audit of financial statements and attestation services

Other professional services

- Review of financial statements
- Analysis of financial information required for listings, public tenders and other capital transactions
- Assistance with filing of financial information
- Analysis of administrative/accounting procedures and assessment of internal control systems
- Assistance in the transition to International Financial Reporting Standards (IFRS)
- Agreed-upon procedures
- Assistance with the preparation of charts of accounts and special purpose financial information
- Accounting assistance in organizing profitability and financial planning studies

KPMGイタリアは監査、税務、法務、会計、アドバイザリー業務を提供するイタリアで主要なプロフェッショナルファームの一つです。我々のサービスラインはクライアントが直面する様々な問題に対処する専門性を有し、横断的に組織され、かつ、包括的サービスを提供しております。

我々のネットワークは提供されるサービスの品質に対しクライアントから比類なき評価を得ております。我々の存在はマーケットにて深く浸透し、我々は高い専門性を有し、また、グローバルネットワークに関与する能力を有していることを誇りに思っております。

監査部門

KPMG S.p.A.は50年以上前に設立した監査法人であり、大卒者にとっての主要な就職先企業の一つとして考えられており、KPMGにおける監査人としてのキャリアは、将来のキャリアアップにつながる専門性の素地を構築するものとなっております。KPMGイタリアは28の事務所を有し、上場企業からイタリアのマーケットでの中核となる中小零細企業、同族会社を問わず、真摯にサービスを提供しております。**KPMG S.p.A.**はイタリア証券取引所の正会員であり、イタリア会計士協会に登録された監査法人である。

財務諸表監査および監査報告書の作成

監査関連サービス

- 財務諸表監査
- 上場、競争入札、資本取引等で必要となる財務情報の分析
- 財務情報の提出支援
- 管理会計手続の分析、内部統制評価
- IFRS移行支援
- 合意した内容に基づく手続
- 会計規則およびその他財務情報の作成支援
- 事業計画の作成支援



Tax and Legal

KStudio Associato is the tax and legal firm in Italy providing our clients with innovative and expert advice. The tax service line helps organizations and individuals optimize their tax structure, reduce their tax burden while achieving the highest standards of compliance. The legal service line is made up of lawyers who are highly experienced advising our clients on a comprehensive range of legal matters.

Legal Services

- Merger and acquisition
- Legal due diligence
- Corporate and commercial
- Company restructuring and insolvency
- Corporate governance
- Competition and EU law
- Compliance projects
- Banking and insurance law
- Administrative law
- Labor law
- Litigation

Tax services

- Merger and acquisition
- Tax due diligence
- Tax consultancy on direct and indirect taxes and VAT
- Local and international tax planning
- International Executive Services
- Customs consultancy and support
- Transfer Pricing

Accounting services

KPMG Fides Servizi e Amministrazione S.p.A. completes the offering of KPMG in Italy. This firm provides assistance in accounting and personnel management. We also offer professionals who act as temporary financial management or accounting staff for our clients. The services offered may take the form of outsourcing or co-sourcing of the clients' accounting and administration departments.

Accounting Services

- Administrative and accounting management and related regulatory requirements
- Personnel administration
- Securitization services
- Temporary assistance for the finance function
- Representation of non-Italian resident entities for VAT and insurance purposes
- Telematic administration of tax returns and digital filing

税務法務部門

KStudio Associato はクライアントに対して税務および法務に関連する革新的および専門的アドバイスを提供しております。税務サービスラインは、厳格にコンプライアンスを遵守し、節税に繋がる税務ストラクチャリングを行うことを支援しております。法務サービスは、法律の懸案事項に対して包括的アドバイスを提供する高度な経験を有する弁護士により構成されております。

法務サービス

- 企業買収
- 法務デューディリジェンス
- 企業法務支援
- リストラクチャリング・破産手続支援
- 競争法・EU法支援
- コンプライナンスプロジェクト
- 銀行法・保険法支援
- 行政法支援
- 労働法支援
- 訴訟関連支援

税務サービス

- 企業買収支援
- 税務デューディリジェンス
- 直接税、間接税、VATの税務相談
- 国内税務・国際税務プランニング
- 個人所得税サービス
- 関税相談・関税支援
- 移転価格税制支援

会計部門

KPMG Fides Servizi e Amministrazione S.p.A. は会計および人事関連業務を支援するKPMGのメンバーファームです。また、クライアントに対して財務責任者や会計スタッフとして専門家を一時的に派遣することも行っており、そして、クライアントの会計や管理業務に対してアウトソーシングまたはコーソーシングの形態にて業務提供も行ってまいります。

会計サービス

- 管理業務および会計業務
- 人事関連業務
- 証券化サービス
- 財務部門に対する臨時支援業務
- VAT独立代理人サービス
- 電子送信サービス

Advisory

The Advisory firm, **KPMG Advisory S.p.A.**, has developed a reputation as the number one advisor to CFOs and top financial management in organizations. We support businesses as they grow organically or through acquisition. We assist them as they restructure their organization or financing arrangements. We help them to become more efficient and comply with regulation as demands of the Authorities and stakeholders rise. One of the principal attributes of our advisory firm is the capacity to innovate and provide cutting edge services in a rapidly changing world. Our mission is to be pro-active in this process and to measure our results in terms of the effectiveness of our advice and improvements in efficiency. Through Nolan Norton we are able to offer highly specialized services and assist organizations in developing their information systems strategy.

Transactions & Restructuring

- Corporate Finance
- Restructuring

Risk Consulting

- Accounting Advisory Services
- Forensic
- Internal Audit Services
- Financial Risk Management

Management Consulting

- Business Effectiveness & Performance Services
- Cost & Process Optimization
- Financial Management
- People & Change
- Program & Project Management

- Transaction Services

- Actuarial Services
- Regulatory Compliance Services
- Sustainability Services

- IT Solutions: ERP, Business Intelligence, Technology Integration, Identity & Access Management
- IT Services: Strategy & Governance, Security, Risk & Compliance

アドバイザー部門

KPMG Advisory S.p.A., はCFOや財務管理責任者からナンバーワンのアドバイザーファームであるとの評価を受けております。我々は、クライアントの有機的な成長又は買収を通じて企業を支援し、また、クライアントのリストラクチャリングや資金調達の支援を致します。私たちは、企業がより効率的に、かつ、当局や利害関係人が求める法令順守の適合化を支援致します。我々の有為性は技術革新能力であり、また、急速に変化する世界で最先端のサービスを提供することにあります。我々の使命は、我々のアドバイスの有効性および効率性改善の観点からプロセスに積極的に関与し、そして、結果につき評価を受けることです。我々は、ノーラン・ノートンを通じて専門性の高いサービスを提供し、組織の情報システム戦略の開発を支援するでもあります。

トランザクション&リストラクチャリング

- コーポレートファイナンスサービス
- リストラクチャリングサービス

リスクコンサルティング

- 会計アドバイザーサービス
- 不正調査、不祥事調査
- 内部監査サービス
- 財務リスクマネジメントサービス

マネジメントコンサルティング

- 事業効率化サービス
- コスト・プロセスの最適化サービス
- 財務マネジメント
- 人材組織改革サービス
- プロジェクトマネジメントサービス

- トランザクションサービス

- アクチュアリーサービス
- 法令順守関連サービス
- サステナビリティサービス

- ITソリューションズ:
ERP, ビジネスインテリジェンス, テクノロジーインテグレーション, アイデンティティアクセスマネジメントサービス
- ITサービス:
戦略および統制、セキュリティー, リスクコンプライアンスサービス



Full name:	Wah Meng Gan	ワーメンガン
Current KPMG firm and office	KPMG S.p.A (Audit) Milan	KPMGイタリア ミラノ事務所 (監査部門)
Professional Qualifications	<ul style="list-style-type: none"> ● FCCA Fellow of the Association of Chartered Certified Accountants(UK) ● Revisore Contabile (Italian registered auditor) 	<ul style="list-style-type: none"> ● 英国勅許会計士 ● イタリア公認会計士
Career history:	<ul style="list-style-type: none"> ● Joined the Milan office in 1983 ● Partner since 1997 ● Previously, partner-in-charge of audit in the Milan office 	<ul style="list-style-type: none"> ● 1983年ミラノ事務所入所 ● 1997年よりパートナー ● ミラノ事務所の監査部門の前責任パートナー
Areas of experience:	<ul style="list-style-type: none"> ● Head of Global Japanese Practice in Italy ● Head of Global China Practice in Italy ● Formerly Head of Consumer Markets sector in Italy ● Experience in audit and acquisitions 	<ul style="list-style-type: none"> ● イタリアGJPの責任者 ● イタリア中国デスクの責任者 ● 前コンシューマー・マーケット部門の責任者 ● 監査及び買収における豊富な経験を有す



Full name:	Giuseppe Moretti	ジュゼッペ モレッティ
Current KPMG firm and office	KStudio Associato (Tax) Milan	KPMGイタリア ミラノ事務所 (税務部門)
Professional Qualifications	<ul style="list-style-type: none"> ● Member of the Institute of Chartered Accountants in Italy 	<ul style="list-style-type: none"> ● イタリア税理士
Career history:	<ul style="list-style-type: none"> ● Partner since 2006. ● Giuseppe has over 15 years of experience in tax and 10 years experience in M&A. ● Italian contact tax partner for Japanese clients 	<ul style="list-style-type: none"> ● 2006年よりパートナー。 ● 15年以上にわたり税務、10年にわたりM&Aの経験を有し、イタリアにおける日系企業の税務コンタクトパートナーである。
Areas of experience:	<ul style="list-style-type: none"> ● Giuseppe is heading the M&A Tax Practice in Italy, has a strong experience in M&A Tax, inbound and outbound investments particularly with large groups and private equity firms. ● Experience in setting up investments into Italy for foreign companies including Japanese corporations, international tax issues, permanent establishment issues 	<ul style="list-style-type: none"> ● イタリアのM & A税務部門の責任者であり、特に大企業やプライベートエクイティによるイタリア国内及び国外投資に関する税務に豊富な経験を有する。 ● 日系企業を含めた外国企業のイタリア投資に係る国際税務問題、PE問題にも豊富な経験を有する。



Full name:	Sabrina Pugliese	サブリーナプグリエーゼ
Current KPMG firm and office	KStudio Associato (Legal) Milan	KPMGイタリア ミラノ事務所 (法務部門)
Professional Qualifications	<ul style="list-style-type: none"> • J.D. 1993, LUISS Rome • Member of the Italian Bar Association and of the International Bar Association 	<ul style="list-style-type: none"> • イタリア弁護士
Career history:	<ul style="list-style-type: none"> • Partner at KstudioAssociato since 2007 • Before joining KStudioAssociato in 1996, she worked in law firms in Rome, Bologna and London. 	<ul style="list-style-type: none"> • ローマ、ボローニャ及びロンドンの法律事務所で勤務の後、1996年にKPMGに入所し、2007年よりパートナー
Areas of experience:	<ul style="list-style-type: none"> • Experience in domestic and cross-border Europe, South America, Japan and South Africa M&A projects. • M&A projects for private equity and corporate (industrial, energy, consumer market) • “Special situation”: insolvency, restructuring project for “distressed” companies • Compliance projects (industrial and financial areas) 	<ul style="list-style-type: none"> • イタリア国内のほか、ヨーロッパ・南アメリカ・日本・南アフリカ等のクロスボーダーM&A案件の経験を有する。 • プライベートエクイティのほか、製造業、エネルギー産業、消費者産業のM&Aに経験を有する。 • 破産・リストラクチャリング • 製造、金融に係るコンプライアンスプロジェクト



Full name:	Tomonori Tsuda	津田 智規
Current KPMG firm and office	KPMG S.p.A (Audit) Milan	KPMGイタリア ミラノ事務所 (監査部門)
Career history:	<ul style="list-style-type: none"> • Joined KPMG Tax Corporation (Japan) in 2004 • Secondment to KPMG Italy (Milan office) since October 2013 	<ul style="list-style-type: none"> • 2004年にKPMG税理士法人に入所 • 2013年10月よりイタリアのミラノ事務所に駐在
Areas of experience:	<ul style="list-style-type: none"> • Provide Japanese clients with audit, tax and advisory services / assistance in Italy • Provided tax advisory services with particular focus on M&A / Reorganizations and advising clients on the tax structures recommended for setting up funds outside Japan and in the investment of various assets in Japan • Provided tax compliance and accounting services to Japanese and foreign clients. 	<ul style="list-style-type: none"> • イタリアでは、日系企業に対する監査、税務、アドバイザー業務に関するアドバイス・支援を提供。 • 日本では、買収・組織再編および対日投資を目的とする外国籍ファンドに対する税務ストラクチャリングのアドバイスを提供。また、税務申告および会計サービスを日系・外資系企業に提供。

Country Update in Italy Summary

イタリアのアップデート サマリー

SPAs

- SPAs are required to have a board of statutory auditors (*collegio sindacale*) control, formed of three or five statutory auditors and two alternative auditors. The member of statutory auditors cannot be chosen between employees/managers of the company (or from a group company) and has to be chosen between persons with specific requirements (e.g. lawyers, accountants, labor consultants and professors). The main duty of the board of statutory auditors is to supervise compliance with the law and the article of association. They also have to verify that the company's organization and administrative and accounting structures are adequate and work properly.
- The financial statements of SPAs must be audited by the external auditor (such as an audit firm or an individual accountant registered in the register of auditors).
- However, the by-laws of non-listed companies that are not bound to prepare consolidated financial statements may entrust this duty to the board of statutory auditors.

SRLs

- SRLs are not required to appoint a board of statutory auditors (*collegio sindacale*) or sole-auditor (*sindaco unico*). However, it's mandatory to appoint a board of statutory auditors or sole-auditor, when the company falls under certain conditions provided by the law:
 - the company is requested to draw up the consolidated balance sheet; or
 - the company controls a company subjected to legally required audit of the financial statements; or
 - for two consecutive financial years the company exceeds two of the following limits:
 - total balance sheet assets: Euro 4,400,000
 - turnover – goods and services: Euro 8,800,000
 - average number of employees during the financial year: 50.
- If the above conditions are met, the company can decide to have the legal audit performed by an external auditor (such as an audit firm or an individual accountant registered in the register of auditors) instead of appointing a board of statutory auditors or sole-auditor.

Branches

- The Italian branch is not mandatory to perform the legal audit.

SPAs（株式会社）

- SPA(株式会社)は、3名または5名の正監査役および2名の補欠監査役から構成される監査役会 (collegio sindacale / コレジオシンダカーレ) の設置が義務づけられている。当該監査役は法人の従業員および役員から選任することは認められず、弁護士、会計士、税理士、労務士、教授等の専門職業登録者から選任することが求められる。監査役会の主要業務は、関連法令および定款を順守した会社運営がなされているかを監督することである。また、経営体制、管理体制、会計体制が適切に履行されていることを検証する義務がある(業務監査および会計監査)。
- SPAの財務諸表は、外部監査法人等(監査法人または会計士協会に登録されている者)の監査を受けなければならない。
- しかしながら、連結財務諸表を有さず、定款等に一切の定めがない非上場会社であるSPAの場合は、上記法定監査を外部監査法人に代わって監査役会が行うことが認められている。

SRLs（有限会社）

- SRL(有限会社)は、監査役会 (collegio sindacale / コレジオシンダカーレ) または一人監査役会の設置(sindaco unico / シンダコウニコ) の設置義務はない。法令に定める以下の要件に抵触する場合は、監査役会または一人監査役会の設置の設置が義務づけられる。
 - 法人が連結財務諸表の作成が義務付けられている場合、
 - 法人が法定監査が義務付けられている法人を支配している場合、
 - 2期連続した事業年度にて以下の二つの要件に抵触する場合
 - 総資産額が4,400,000ユーロを超える
 - 売上高が8,800,000ユーロを超える
 - 従業員が年平均50名を超える
- 仮に上記要件に抵触する場合は、監査役会または一人監査役会の設置を行わず、外部監査法人等(監査法人または会計士協会に登録されている者)の法定監査を受ける方法が認められている。

Branches（イタリア支店）

- 外国法人のイタリア支店は法定監査の実施業務はない。

Italy

- Goodwill

Under Italian GAAP, goodwill is normally amortised over 5 years. The amortization period can be extended if it is justifiable and the justification is disclosed.

- Leases

Under a finance lease, Italian GAAP does not require the lessee to recognise lease assets and liability for future lease payments, as it is accounted for as an operating lease. Italian GAAP requires the application of IFRS only on consolidation.

- Intangible Assets

Italian GAAP allows the company to choose not to capitalize development costs. In addition, advertising, promotion, start-up, cost of issuing shares, relocation or organizing costs can be capitalized under certain conditions.

- Revenue recognition for long-term construction contracts

Italian GAAP allows two approaches, a method similar to the percentage of completion method and a method similar to completed contract.

- Retirement benefit

Italian GAAP requires obligatory severance payment (Trattamento di Fine Rapporto: TFR) be calculated as undiscounted vested benefits and be accounted for as liability as such.

イタリア

- のれん
イタリアGAAPでは、一般的に5年で償却される。ただし、それが正当化され、かつ、その理由を開示する限りにおいて、償却期間を延長することもできる。
- リース会計
イタリアGAAPはファイナンス・リースに係るリース資産及び負債を認識することを求めておらず、オペレーティング・リースのように処理される。連結においてのみIFRSを適用することが求められる。
- 無形固定資産
イタリアGAAPでは、開発費を資産計上しないことができる。さらに、広告宣伝費、開業費、新株発行費、移転費用及び設立費用を一定の条件の下で資産化することも可能。
- 長期請負工事の収益認識
イタリアGAAPでは、工事進行基準、工事完成基準それぞれに類似した2つの方法による会計処理が認められている。
- 退職給付会計
イタリアGAAPでは、退職金(Trattamento di Fine Rapporto: TFR)につき、割引前の確定給付額を負債として計上することが求められる。

Italy

- Financial Instruments

Generally the basic accounting for financial instruments significantly differs from IAS39. Particularly, with reference to:

- hedge accounting
- derecognition, and
- classification of financial assets and financial liabilities

- Joint arrangement structured through a separate vehicle

In the consolidated financial statements, Italian GAAP allows two approaches to be applied: equity method or proportionate consolidation.

Under IFRS 11, the accounting treatment depends on the substance of the arrangement:

- if the parties have rights to the assets and obligations for the liabilities relating to the arrangement (joint operation): line by-line accounting of the underlying assets and liabilities
- if the parties have rights to the net assets of the arrangement: equity method

イタリア

● 金融商品会計

イタリアGAAPでは、一般的に基本的な金融商品会計がIAS39と大きく異なるが、特に以下の項目について差異が存在する；

- ヘッジ会計
- 認識の中止
- 金融資産及び金融負債の分類

● 独立したビークルを有するジョイント・アレンジメント

イタリアGAAPでは、連結財務諸表に関し持分法ないし比例連結法の2種類の選択適用が認められる。

IFRS第11号に基づき、その契約等の実質に応じて以下のように決定される。

- 共同支配事業(『ジョイントオペレーション』)(資産に対する権利および負債に対する義務を有する)に該当する場合は、権利・義務に応じて対応する資産・負債・収益・費用等を認識する。
- 共同支配企業(『ジョイントベンチャー』)(純資産に対する権利を有する)に該当する場合は、持分法が適用する。

- **Tendency of Italian tax authorities to challenge the tax audit**

In the last few years, the Italian tax authorities have become more aggressive during tax inspections in general. In particular, they have been challenging companies having domestic and cross-border transactions and applying to the tax natural treatments under the reorganization/acquisition. To make them easily point out the huge tax adjustments to the company, they are now focusing the tax matter of “permanent establishment”, “transfer pricing” and “corporate reorganization and acquisition of the company”. Tons of foreign companies have been carried out the tax inspection and huge tax amounts were made to be adjusted by the Italian tax authorities without rational and theoretical proofs. The taxpayer has been required to pay more attentions to their structure and transaction including the flow and prices in order for them to justify their tax position with the assistance performed by tax adviser.

During recent years a number of extra tax bills have been enhanced in Italy. Main changes refer to:

- **Tax losses**

Losses are now carried forward in definitively and can be used up to 80% of pre-tax profit. Losses in the first 3 years are used up to 100%. Limitations are applicable in case of mergers and demergers.

- **Notional interest deduction**

Notional interest deduction is applicable to increased equity in respect to 2010 Net Equity (4% for FY2014, 4.5% for FY 2015 and 4.75% for FY2016). Anti-avoidance rules and limitations are applicable.

- **Non operating companies rules and companies with losses**

In addition to minimum revenue test, companies with the tax losses in the last 3 years are deemed to be non-operating. Minimum tax is applicable at a rate of 38% (IRES) + 3,5% IRAP (up to 4.42%). . There is a limitation on the VAT offsetting.

- **IRAP deduction**

With effect from tax year 2012, the IRAP paid on non-deductible employment expenses is deductible from the corporate income tax base.

● イタリア税務当局による税務調査の動向

近年、イタリアの課税当局は税務調査を積極的に執行している、特に国内外取引や組織再編・買収時に税務上は課税が生じない取引を有する法人に対して積極的な税務調査を行っている。課税当局が容易に追徴税額を伴う税務調整を求めるために、恒久的施設、移転価格、国内外組織再編や買収時の税務関連事項に関し税務調査を執行する傾向がある。多くの外国法人（現地法人を含む）にて税務調査が行われ、合理的かつ理論的な裏付けがないまま、多額の追徴税額を受ける事案が散見される。納税者は専門家のアドバイスに基づき、税務ストラクチャリング、商流や価格設定に関しより留意することが求められている。

近年、大規模な税制改正が施行された。主な税制改正点は以下の通りである。

● 繰越欠損金

繰越欠損金の繰越可能期間が5年間から無期限へと変更された。一方で、繰越欠損金は課税所得の80%までのみが控除可能である。新設法人の事業開始後3事業年度に生じた繰越欠損金は課税所得の全額まで控除可能である。なお、繰越欠損金に関する制限は合併等においても適用される。

● みなし利子控除

2010年度の純資産額からの増加分に対して4%（2015年度は4.5%、2016年度は4.75%）のみなし利子控除が認められる。租税回避防止規定の適用対象であることに留意が必要である。

● 欠損等法人課税

課税最低限所得テストに基づき、直近3事業年度で連続して繰越欠損金が生じている法人は実質的に経済活動がないとみなされる可能性がある。該当法人は想定課税所得に対して38%の法人税率及び3.5%（最大税率4.42%）の法人地方税が適用される。また、VATの税額控除にも一定の制限が設けられている。

● 地方法人税（IRAP）損金算入制度

2012年より地方法人税（IRAP）上で損金不算入として取り扱われる人件費に係る税額相当額を法人税（IRES）から控除することが可能である。

- **Withholding Tax on interest, dividends and securities, capital gains on shares for individuals**

Withholding and Substitute tax are applicable to individuals and non-Italian residents at a rate of 26%. Other special taxation to reduce the withholding tax rate such as the EU Parent-Subsidiary Directive and Double Tax Treaty should be applicable in certain cases.

- **VAT Tax Rate**

The increase of the standard VAT rate, from 21% to 22%, had been effective from 01 October 2013.

- **Wealth Tax on overseas real estate and financial assets**

A wealth tax on financial assets/properties held abroad by individuals resident in Italy has been introduced. An amount of Euro 34.20 (Euro 100 for company) is taxed on each bank account with an average balance greater than Euro 5,000 per year (no average for company). The tax rate for other financial assets is 0.2% per year according to the value of financial assets (the maximum amount for company is Euro 14,000 for fiscal year 2014).

The tax rate for properties is 0.4% for principal residence and/or 0.76% for other property per year on the value of the property.

- **Tobin Tax**

The new financial transaction tax "Italian FTT" has been introduced with technical instruction as a Ministerial degree of 21 February 2013. In General the transfer of ownership of the shares issued by Italian companies excluding the quotes of limited liability companies made as of 1 March 2013 and the certain financial instruments made as of 1 July 2013 are subject to the Italian FTT. FTT rates and Taxable basis are as follows.

- Basic Rate: 0.2% (in 2013: 0.22%) - reduced by 50% if the transfer is made through regulated markets and multilateral trading facilities
- The taxable basis: Equity Transaction Value
- The tax payment due: the 16th day of the subsequent month of its transfer

● 個人・非居住者の配当・利子・譲渡益の源泉所得税

個人および非居住者が收受する配当・利子・譲渡益につき、一律26%の源泉税率が適用される。なお、一定の場合には源泉所得税率を軽減するようなEU親子会社指令または租税条約が適用される。

● VAT課税標準税率

VATの課税標準税率は2013年10月1日より21%から22%に変更された。

● 外国不動産および金融資産に対する富裕税

税務居住者が有する海外金融資産・不動産に対して富裕税が導入されている。年間平均残高(法人の場合には残高)が5,000ユーロを超える銀行口座につき34.20ユーロが課せられる(法人は100ユーロ)。その他海外金融資産については資産価値に対して0.2%(法人の場合は14,000ユーロの上限あり)が課され、海外不動産については資産価値(購入価格)に対して0.4%(居住用)、0.76%(その他不動産)が課される。

● 金融取引税

2013年2月21日内閣府令の詳解に基づきイタリアにおいて金融取引税が導入された。2013年3月以降のSRLを除くSPAの株式譲渡および2013年7月以降の一定の金融商品の譲渡につき金融取引税が課税される。税率等は以下の通りである。

- 標準税率：0.2% (2013年のみ0.22%) / 市場および国際流通市場にて譲渡されるものは0.1% (2013年のみ0.11%)
- 課税標準額：取引価格
- 納期限：譲渡取引日の翌月16日

General

- On 29 September 2010 the Italian Tax Authorities issued the instructions for the preparation of the transfer pricing documentation. The documentation is comprised of Masterfile and Country Specific Documentation.
- Different requirements are applied, depending on organisational structures of the Italian taxpayers.

Watch-Out

- Documentation is not mandatory but it would provide taxpayers with protection from penalties. Italian taxpayers could avoid the imposition of general administrative tax penalties, which range from 100% to 200% of the additional tax assessed.
- The taxpayers need to communicate with the Italian Tax Authorities the existence of transfer pricing documentation every year in tax return.
- For small-to-medium companies (less than Euro 50 millions in turnover), however, the economic analysis needs to be updated only every three years as long as the other facts and circumstances regarding the transaction(s) have not been changed.
- Masterfile and Country Specific Documentation must be prepared in Italian.

概要

- 2010年9月29日、イタリア税務当局は移転価格文書化方針を正式に発表した。移転価格文書には、マスターファイル及び現地文書化の2種類がある。
- 会社グループの組織構造によって、要求される移転価格文書の範囲は異なる。

留意点

- 移転価格文書化は義務ではないが、文書化によって税務調査時の移転価格に係るペナルティを免除することができる。移転価格に係るペナルティは、納税調整金額の100%～200%と多額である。
- 毎年の税務申告時に、税務当局に対して移転価格文書の有無を伝達する必要がある。
- 中小企業(年間売上が5千万ユーロ未満)に対しては、簡易な更新制度という優遇措置がある。
- マスターファイルも現地文書化もイタリア語で準備する必要がある。

From 20 May 2014, a new Labor Law (Law no. 78/2014) was issued in Italy, the key features are:

Fixed-term contracts

- With their employees employers can enter into fixed-term contracts with a maximum duration of 36 months without having to specify the reasons for choosing this type of contract.
- The maximum length of the fixed term must not exceed 36 months, including extensions and renewals. It is not necessary to give reasons for any extensions and renewals.
- The maximum number of possible extensions is five (5).
- Employees hired on fixed-term contracts for a period of more than six (6) months are entitled to be hired on open-ended contracts when their contracts expire. This right must be expressly indicated in the contract.
- The total number of employees on fixed-term contracts must not exceed 20% of those on open-ended contracts on 1 January of the year of recruitment. This limit does not apply in certain cases (e.g. in the event of a start-up company).
- Any employer who currently has in force fixed-term contracts that exceed the aforesaid percentage, must comply with the limit by 31 December 2014.
- Should this limit not be respected, certain fines are applicable for each worker. These are equal to:
 - 20% of the worker's salary for each month or part of it exceeding 15 days, if there is only one (1) worker employed in violation of the limit;
 - 50% of the worker's salary for each month or part of a month exceeding 15 days, if the number of workers employed in violation of the limit is more than one (1).

Apprenticeships

- Apprenticeship contracts must briefly state the individual training program as also defined on the basis of the relevant national collective bargaining agreement.
- Employers with fifty (50) employees or more can hire apprentices only if they have hired 20% of their apprentices on open-ended contracts over the last 36 months.

2014年5月20日に労働市場法改正案が成立した。主な内容は以下の通りである。

● 有期雇用契約

- 雇用主は有期雇用契約を選択する特別な理由がない場合においても、最大36ヶ月の期間にかかる有期雇用契約を締結することが可能である。
- 有期雇用契約の契約期間は延長及び更新を実施しても最大36ヶ月を超えることはできない。尚、延長及び更新については、その理由について述べる義務はない。
- 延長を行使する回数は最大5回までとされている。
- 6ヶ月以上の有期雇用契約で雇われた労働者は、契約失効時において無期限契約雇用者に変更できる権利を有する。契約書においてかかる権利を明記しなければならない。
- 有期雇用契約者の総数は、毎年1月1日時点の無期限雇用契約者の総数の20%を超えることはできない。但し、新設法人など一定の場合にはその限りでない。
- 上記20%の制限を超えて有期雇用契約書を有する事業者は、2014年12月31日までに制限に応じなければならない。
- 制限規定を順守しないときは、以下の場合に応じた罰則金が科される。
 - 制限超過人数が1人以内場合には、その労働者の月々(15日を越える月を含む)の給与総額の20%相当額
 - 制限超過人数が1人を超える場合には、その超過労働者の月々(15日を越える月を含む)の給与総額の50%相当額

● 見習(実習生)雇用契約

- 見習(実習生)雇用契約では、包括的国家労働協定書の関連規定に定義された個人の研修プログラムであることを簡潔に宣言しなければならない。
- 過去36ヶ月の間に、無期限契約者として20%相当の実習生を雇っている場合に限り、50人以上の実習生を雇用することができる。

Corporate criminal liability

- Legislative Decree 231/2001 (the Decree) states that a company can be held responsible for any offence committed or any attempt to commit offences, in the interests or to the advantage of the company itself, by the following subjects:
 - (i) directors and employees with representation, administration and direction responsibilities in the company or with de facto control and direction responsibilities; (ii) directors and employees subject to the direction and supervision of the subjects previously mentioned.
- The company is always convicted when the defendants are directors, representatives or managers with financial or functional responsibilities within the organization, unless certain causes of exemption can be proved by the company.
- For crimes committed by employees or managers with no financial or functional ability, the Public Prosecutor's Office must prove the company responsibility, as in the case of gross negligence or willful misconduct of directors, representatives or managers with financial or functional responsibilities.
- According to the Decree, the parent company can be declared criminally liable for offences committed by its subsidiaries, even if they are not located within the Italian territory.
- To prove the parent company's responsibility have to be verified specific criteria, such as:
 - (i) at least abstractly, it has benefited from the crime committed by its subsidiary; (ii) the subsidiary has operated under the parent company guidance and coordination.

Burden of proof

- The Decree states that the company will not be indicted if it proves that:
 - (i) it preemptively adopted, efficiently implemented and regularly updated an organizational and management model that is adequate to identify and prevent crimes of the same type of the ones committed; (ii) it assigned to an established supervisory board ("Organismo di Vigilanza") – with autonomous proposal and control powers – the task to monitor the implementation and the respect of the models adopted and to update them; (iii) the defendants intentionally violated the models; (iv) the supervisory board and the people responsible for management and control activities acted with diligence.
- The proof refers to pre-existent conditions, before the crime occurred, and it is subject to cross-examination and challenge from the Public Prosecutor's Office.

Sanctions

- The sanctions provided for the Decree are the following:
 - (i) Monetary, from a minimum of Euro 25.823 up to a maximum of Euro 1.549.371; (ii) Disciplinary: for a specified period (for a minimum of 3 months up to a maximum of two years, or permanent in case of multiple offences): (a) disqualification from business activities; (b) suspension and revocation of authorizations, licenses and concessions; (iii) injunctions not to deal with the public administration; (c) revocation of capital grants or subsidized financing and/or injunctions not to apply for them; (d) prohibition to advertise good and services; (iv) profit forfeiture and judgment publication.
- Disciplinary sanctions can be avoided with:
 - (i) the voluntary compensation for damages resulting from crimes; (ii) the improvement of the company system of internal controls, before the end of the investigations (i.e. the trial);

企業刑事責任

- 政令231/2001(法令)は、会社が享受した利益または便宜につき、以下の者により会社が傾倒した不法行為あるいは不法行為への企てに関して責任を負うと定めている。
 - 取締役、代理権限者、管理および運営の権限を有する従業員、事実上の権限を有する従業員
 - 取締役、管理および監督下にある従業員
- 会社が免責事由を疎明できない限り、被告が組織内で財務および機能的な責任を有する取締役、管理者、マネージャーである場合には、会社が有罪判決を受ける。
- 上述した者以外の者が関与した企業犯罪の場合は、検察庁は、上述した者による重過失または故意であるとし、企業責任がある事を疎明しなければならない。
- 法令に因れば、親会社がイタリアの非居住者であっても、会社が傾倒した不法行為に対して刑事的に責任を負う義務がある。
- 親会社の責任を証明するために、例えば以下のような要件を充足していることを立証しなければならない。
 - 子会社が傾倒した不法行為から便益を享受していること
 - 子会社が親会社統治により事業活動がなされていること

立証責任

- 法令は、以下のような疎明をすれば会社が起訴されないと述べられている。
 - 会社が、関連する犯罪を特定し及び防止することに十分な組織的かつ管理的モデルを機先を制し採用し効果的に実行され、定期的に更新している場合。
 - 会社が、履行状況および採用および更新されたモデルが尊重されているかを監視し、自律的な提案が可能であり、かつ、制御権限を有する監視委員会を配置している場合。
 - 被告が社内的にモデル違反した場合。
 - 監視委員会と人員が不断の努力で管理および運営を行っている場合。
- 立証は犯罪が発生する前の状況を言及し、反対尋問および検察からの異議申立から構成される。

制裁

- 法令に基づく制裁は下記の通りである。
 - 罰金：25.823ユーロから1.549.371ユーロ
 - 懲罰：3カ月から2年または多重不法行為の場合は永久に以下のような懲罰を受ける。
 - 事業活動の資格剥奪、
 - 許認可、ライセンス、免許の停止及び取消
 - 行政執行の禁止命令
 - 資本補助、奨励金等の申請取消
 - 商品等の広告の禁止
 - 利益の没収および判決の公表
- 懲罰的制裁のうち、犯罪から発生する損害に対する任意補償および調査終了前の内部統治制度の改善することは回避可能である。

On June 2014 a new Company Law (Law Decree no. 91/2014) was issued in Italy.

Traditional audit function for SRLs

- SRLs are no longer required to have a traditional audit function if their quota capital is equal to the minimum share capital required for SPAs.

The new rules for SPAs

- The minimum share capital required for incorporating a joint-stock company (SPA) is €50 thousand instead of €120 thousand.

Social Security Treaty

- The Japanese worker in Italy has to pay social security contribution cost in Italy, on the other hand, the worker usually also pays it in Japan. So, the company and the worker can save social security contribution cost if the treaty is in force.
- The Social Security Treaty has been signed between Italy and Japan on February 6th 2009 in order to avoid to pay double social security contribution cost in both countries. Japanese Parliament had already approved it in July 2009, but Italian Parliament has not ratified it yet.

New Regulation of immigration procedure

- New Italian Regulation about immigration procedures related to the getting of the permit to stay.
- When an Extra-UE citizen (for those aged between 16 and 65 years old) enters Italy on and after March 10th 2012 who asks a permit to stay lasting at least one year, they will have to sign the Integration agreement with Italian Government Authorities.
- This agreement requires them of a mutual commitment to participate in the economic, social and cultural life. Under the point based system for the permits to stay defined in this agreement, they are required to obtain at least 30 points within two years. For instance, the way to obtain the point is attending a five/ten hours civic training session, proving the Italian language skill, signing / registering an housing contract and etc.

会社法の改正

2014年6月に会社法改正案が成立した。主な内容は以下の通りである。

SRL(有限会社)の監査役設置機能

- SRLは出資金額がSPAの最低資本金額と同額以上の場合においても、一点の条件に抵触しない限り監査役設置機能を求められないこととなった。

SPA(株式会社)の新制度

- SPAの設立に係る最低資本金額は120千ユーロから50千ユーロに改正されることとなった。

日伊社会保障協定

- 現在、駐在員はイタリア源泉所得に対してイタリアで社会保険料の納付義務がある一方、日本でも通常は社会保険料を継続して支払っており、二重払いが生じている。このため、社会保障協定により日系企業の駐在員の社会保険料負担が軽減できるというメリットがある。
- 2009年2月6日、日本、イタリア両政府は社会保険料の二重払いを防ぐための社会保障協定に署名した。2009年7月、日本の参議院本会議で承認されたため、今後イタリア政府の手続が終了すれば発効する見込みであるが未だ手続きが完了していない。

イミグレーション手続

- 滞在許可証の取得手続に関して新制度が導入された。2012年3月10日以降に1年以上滞在することを前提として入国するEU域外の外国人(16歳から65歳)はイタリア政府と一定の文書を締結することとなった。
- 当該文書では、イタリアの経済、社会、文化と融合することを同意し、ポイント付与方式により2年以内に最低でも30ポイントの取得が求められる。ポイント取得の方法としては、5時間から10時間の講習会に参加する、イタリア語のレベル、アパート等の賃貸借契約を結ぶ等がある。

Country Update in Italy

Italian Corporation Taxes

イタリアのアップデート イタリア法人税制

- **Introduction**

Companies are subject to a corporate income tax (“IRES”) and a regional tax (“IRAP”) on productive activities. A value added tax (“VAT”) system is also applied.

IRES: The general corporate income tax rate is 27.5%. From tax year 2011, the rate is 38% for companies that, in the previous financial year, had (i) revenues exceeding EURO 10 Million, (ii) a taxable income higher than EURO 1 Million, and (iii) carry on certain types of activities in the fields of energy production and supply. Non-operating entities are subject to a 38% corporate tax rate.

For resident companies, all income derived by companies subject to corporate income tax is considered business income. The taxable base is the worldwide income shown in the profit and loss account prepared for the relevant financial year according to company law rules and adjusted according to tax law provisions.

For non-resident companies, all Italian source income is taxable. Income is taxed according to the same rules as those applicable to resident companies.

IRAP: The standard rate is 3.5% from FY2014. Regional authorities may increase or decrease the standard rate by up to 1%. The taxable income for IRAP is determined exclusively on the basis of its profit and loss account with certain adjustment. For instance, the costs of personal (except costs for employees engaged in R&D and for qualifying additional employees), losses on bad debts and interest paid are, in general, not deductible.

VAT: From 01 October 2013 the general rate is 22%, reduced rates of 10% and 4% are applicable in certain cases.

- **Tendency of Italian tax authorities to challenge the tax audit**

In the last few years, the Italian tax authorities have become more aggressive during tax inspections in general. In particular, they have been challenging companies having domestic and cross-border transactions and applying to the tax natural treatments under the reorganization/acquisition. To make them easily point out the huge tax adjustments to the company, they are now focusing the tax matter of “permanent establishment”, “transfer pricing” and “corporate reorganization and acquisition of the company”. Tons of foreign companies have been carried out the tax inspection and huge tax amounts were made to be adjusted by the Italian tax authorities without rational and theoretical proofs. The taxpayer has been required to pay more attentions to their structure and transaction including the flow and prices in order for them to justify their tax position with the assistance performed by tax adviser.

● イタリア法人税制の概要

イタリア法人はその事業活動に対し法人税（IRES）および地方法人税（IRAP）が課される。また、付加価値税（VAT）の適用もある。

法人税（IRES）：法人税率は27.5%である。2011年度より、前年度の収益が10百万ユーロを超える法人、課税所得が1百万ユーロを超える法人、エネルギー関連事業法人には38%が適用される。また、一定の要件を満たす休眠会社に対しても38%が適用される。

内国法人は稼得する収益の全てが事業所得とみなされる。課税所得の範囲は全世界所得課税であり、会社法令に則して作成された財務諸表の当期損益に税務調整を加えた金額が課税所得となる。

外国法人（非居住者）は国内源泉所得のみが課税対象であり、内国法人が適用されるルールと同一のルールが適用される。

地方法人税（IRAP）：地方法人税の標準税率は3.5%である。地方自治体の裁量にて1%の税率を標準税率3.5%に加減算される。地方法人税（IRAP）の課税所得は、法人税（IRES）同様に会社法令に則して作成された財務諸表の当期損益に税務調整を加えた金額である。例えば、人件費（研究開発に従事する者の人件費や特定要件を満たす新規雇用者の人件費を除く）、貸倒損失、支払利息は一般的に控除することが認められていない。

付加価値税（VAT）：VATの課税標準税率は2013年10月1日より21%から22%に変更された。一部取引については、10%又は4%の税率が適用される。

● イタリア税務当局による税務調査の動向

近年、イタリアの課税当局は税務調査を積極的に執行している、特に国内外取引や組織再編・買収時に税務上は課税が生じない取引を有する法人に対して積極的な税務調査を行っている。課税当局が容易に追徴税額を伴う税務調整を求めるために、恒久的施設、移転価格、国内外組織再編や買収時の税務関連事項に関し税務調査を執行する傾向がある。多くの外国法人（現地法人を含む）にて税務調査が行われ、合理的かつ理論的な裏付けがないまま、多額の追徴税額を受ける事案が散見される。納税者は専門家のアドバイスに基づき、税務ストラクチャリング、商流や価格設定に関しより留意することが求められている。

- **Major Deductions**

- **Thin Capitalisation Rules**

The Thin Capitalisation Rules applying up to 2007 have been replaced by the Earning Stripping Rules.

- **Earning Stripping Rules**

Interest expenses, other than capitalized interest expenses, are fully deductible up to an amount equal to interest income accrued in the same tax period. Any excess over that amount is deductible to the extent of 30% of the EBITDA. Any excess of interest expenses over the above threshold (i.e. 30% of EBITDA) may be carried forward for deduction in the following tax periods.

- **Notional Interest Deduction**

With effect from tax year 2011, companies are entitled to deduct from their corporate income tax base a national yield on the following qualifying equity increases: (i) contribution in cash; and (ii) undistributed profits. For the tax year 2014 – 2016, the notional yield is 4%, 4.5% and 4.75% of the equity increase.

- **IRAP deduction**

With effect from tax year 2012, the IRAP paid on non-deductible employment expenses is deductible from the corporate income tax base.

- **Depreciation and amortization**

Depreciation of tangible assets is permitted on a straight line basis. The coefficients are established for categories of similar assets based upon a normal period of wear and tear in the various production sectors (rates for buildings vary between 3% and 7%, for machinery and equipment between 20% and 25%). Cost incurred to acquire trademarks can be depreciated by up to one eighteenth of their value for each tax year. Goodwill may be depreciated up to one eighteenth of its value for each tax year, but only if it is recorded in the balance sheet.

イタリアの法人税制

● 主要な損金算入制度

● 過少資本税制

2007年まで過少資本税制が導入されていたが、現在は、過大支払利子損金不算入制度に移行しており、過少資本税制はない。

● 過大支払利子損金不算入制度

資本化利息以外の支払利息は発生事業年度に控除可能であるが、その範囲はEBITDAの30%相当額が限度額である。EBITDAの30%を超える控除未済金額は翌事業年度以降に繰越可能である。

● みなし利息制度

2011年よりみなし利息制度が導入され、現金出資額および未配当利益剰余金の資本増加額に一定利率を乗じて算出した金額を控除することが可能である。2014年の利率は4%（2015年度は4.5%、2016年度は4.75%）のみなし利子控除が認められる。

● 地方法人税（IRAP）損金算入制度

2012年より地方法人税（IRAP）上で損金不算入として取り扱われる人件費に係る税額相当額を法人税（IRES）から控除することが可能である。

● 減価償却費等

固定資産の減価償却方法は定額法である。生産分野に応じて想定される標準的減耗期間に基づき、類似資産別に償却率が設定されている（建物であれば3%と7%の範囲、製造設備であれば20%と25%の範囲）。商標権取得費用は評価額に基づき18年で償却可能であり、営業権も同様に評価額に基づき18年で償却可能であるが資産計上されている場合に限られる。

- **Major Deductions**

- **Reserves and provisions**

Up to 0.5% of total accounts from trade receivables not covered by insurance at the end of the tax year may be deducted or set aside as a provision for bad debts until the provision reaches 5%.

Losses due to bad debts, if evidenced by accurate proof or if resulting from bankruptcy or other receivership proceedings, are deductible insofar as they cannot be covered by the reserve. From FY 2014 losses are deductible when the receivables are deleted in the balance sheet according to ITA Gaap or IFRS.

The company can write off the receivables if the following facts have occurred. (i) The payment has been 6 months overdue; and (ii) the receivables are less than EURO 5,000 [for the transaction of over EURO150 Million] or EURO 2,500.

- **Tax Losses**

Losses may be carried forward indefinitely. However, the losses cannot be used to offset more than 80% of the taxable income in any tax year.

A specific rule applies to losses accrued during the first 3 years of business. These losses, including losses incurred before tax year 2011, may be carried forward without limitations and set off in full against the taxable income of any subsequent tax year, provided that the losses originate from a new activity.

- **Participating Exemption Regime**

Gains on the alienation of shares, financial instruments assimilated to shares and interests in resident companies or partnerships are exempt from tax for 95% of their amount under the participation exemption regime. The exemption applies, provided (i) the participation has been held at least from the first day of the 12th month preceding the alienation, (ii) the participation is classified as a financial asset in the first balance sheet closed after the acquisition and (iii) at least since the beginning of the third financial year preceding the alienation the participated company has been engaged in a business activity.

イタリアの法人税制

- **主な損金算入制度**
- **引当金計上**

事業年度末に保険等でカバーされない売掛債権額の0.5%相当額までは損金算入可能であり、5%相当額まで貸倒引当金計上が認められる。貸倒損失に関しては、引当金にてカバーされない範囲に限り、疎明書類があるもの又は破産手続ならびに当該手続きに類するものから生じた損失は損金算入することが可能である。

2014年度よりイタリアGAAP又はIFRSのルールに基づいて貸倒損失に振り返られるものについては、上記の疎明書類があるもの又は破産手続ならびに当該手続きに類するものに限らず損金算入が認められている。

支払が6か月遅滞しており、当該債権金額が5,000ユーロ未満（150百万ユーロ以上の取引高の場合）又は2,500ユーロ未満である場合には貸倒損失計上が認められる。

- **繰越欠損金**

繰越欠損金は無期限繰越が可能である。しかしながら、単年度所得と控除可能な繰越欠損金はその年度所得の80%相当額までである。

設立後3事業年度内に生じた欠損金に関しては特別な定めがある。2011年より前に生じた欠損金は新規事業から生じた損失である限りは無期限繰越が可能であり、単年度所得から全額を控除することが可能である。

- **資本参加免税**

株式、内国法人株式およびパートナーシップ持分を有する金融商品の譲渡益は資本参加免税が適用される場合はその譲渡益の95%相当額が益金不算入となる。当該資本参加免税は、少なくとも12か月以上保有され、また、取得事業年度に投資有価証券として計上され、かつ、譲渡事業年度の前3事業年度から投資先が事業活動を行っていることが要件である。

- **Interoperate dividends**

Dividends received by resident companies and branches from other resident companies are exempt from tax for 95% of their amounts. For commercial and manufacturing enterprises, dividends are not subject to the regional tax on productive activities.

- **Transfer Pricing**

In 2010 the new provisions on transfer pricing documentation requirements have been introduced. In particular, according to the new provisions, the preparation of the supporting documentation on how the corporate transfer prices were set is not mandatory. However, taxpayers submitting the supporting documentations to the tax authorities enjoy a penalty protection system, i.e. they are not subject to penalties if the tax assessment results in a transfer pricing adjustment. Penalties on transfer pricing adjustments range from 100% to 200% of the higher tax assessed.

イタリアの法人税制

- **受取配当等の益金不算入制度**

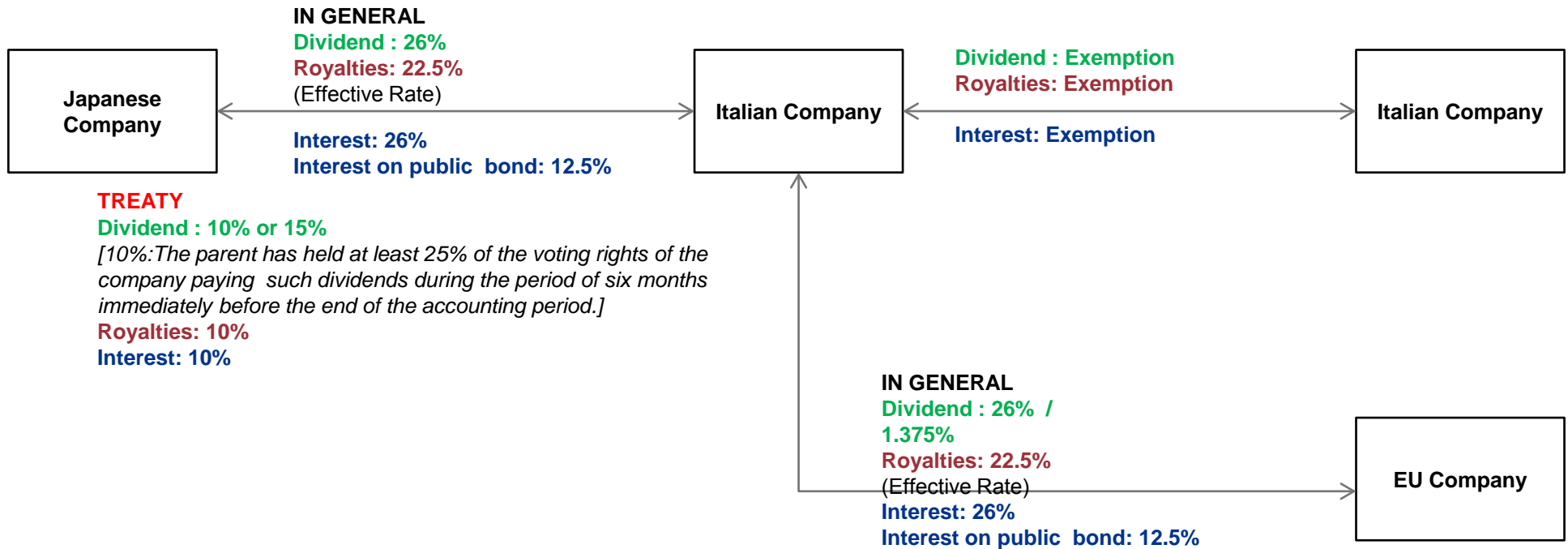
内国法人等が收受する配当等の95%相当額は益金不算入となる。商業および製造業が收受する配当は地方法人税の課税対象外である。

- **移転価格税制**

2010年に移転価格税制の文書化制度が導入されている。文書化は義務ではないが、税務調査を通じて移転価格税制上の追徴課税が生じた場合には、文書化を行っていれば追徴に伴うペナルティーを避けることが可能である。通常、ペナルティーは追徴税額の100%から200%の範囲で課される。

Italian Corporation Taxes

- The diagram of Withholding tax



UNDER the domestic law implementing the EU Parent – Subsidiary Directive

Dividend : Exemption

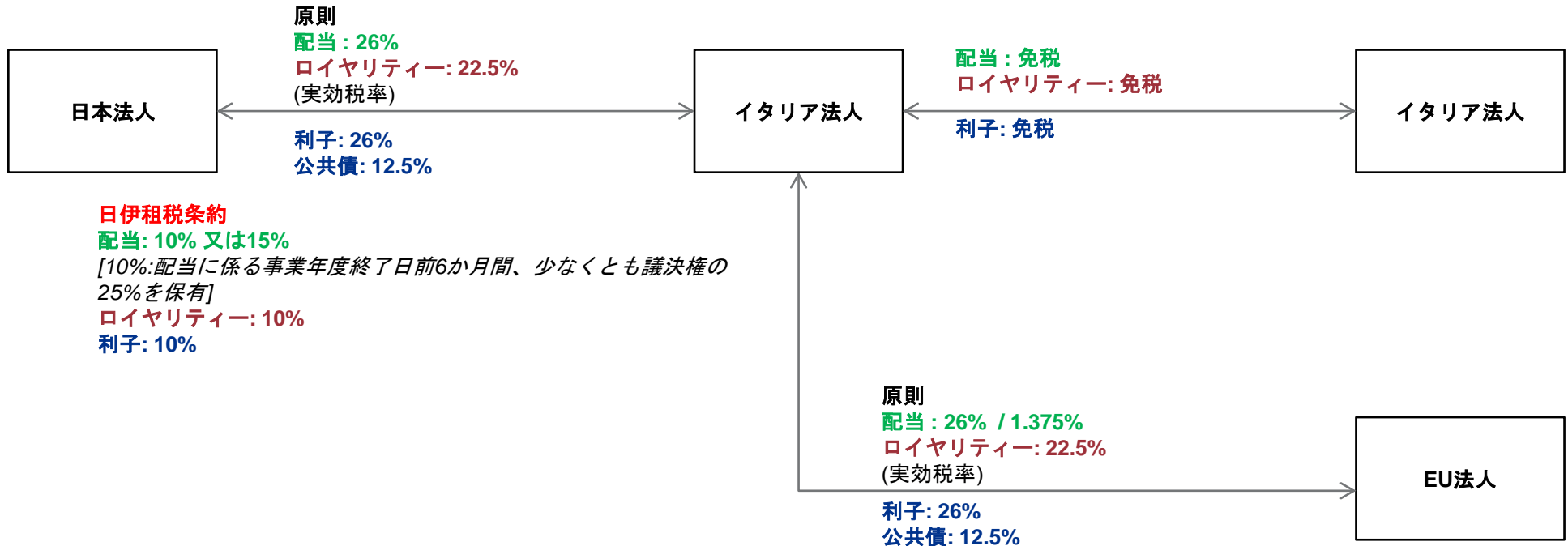
[The parent has held at least 10% of the capital of the subsidiary continuously for at least 1 year]

Royalties and Interest: Exemption

[One of associated companies in EU holds directly at 25% of the voting rights of the other company OR a third EU company holds directly at least 25% of the voting rights of the two companies.]

イタリアの法人税制

● 源泉所得税



日伊租税条約

配当: 10% 又は 15%

[10%: 配当に係る事業年度終了日前6か月間、少なくとも議決権の25%を保有]

ロイヤリティー: 10%

利息: 10%

原則

配当: 26% / 1.375%

ロイヤリティー: 22.5%

(実効税率)

利息: 26%

公共債: 12.5%

EU親子会社指令

配当: 免税

[親会社が最低1年間、子会社株式の10%の株式を継続保有]

ロイヤリティーおよび 利息: 免税

[EU加盟国の親法人が議決権を直接少なくとも25%を保有または関連会社がロイヤリティーまたは利息に関連する法人の議決権を直接少なくとも25%を保有]

- **Miscellaneous Indirect taxes**

- **Capital duty**

In general, a registration tax is due on contributions of cash and assets in exchange of shares. In the case of cash contributions and contributions in assets other than immovable property, the tax is levied as a lump sum of EURO 200. The tax on contributions of immovable property (if it is out of scope of VAT) is proportional; the registration tax is usually 4% plus mortgage and cadastral taxes at a rate of 3% of the value of the property (9% plus mortgage and cadastral taxes of €100 in total in certain cases).

- **Transfer tax**

If the transaction is subject to VAT or VAT exempt, the transfer of commercial real estate assets is subject to a registration tax of €200 and to mortgage and cadastral taxes at 4% of the market value of the asset.

If the transaction is out of scope of VAT, the registration tax at 9% of market value will apply (plus mortgage and cadastral taxes of €100 in total). The transfer of shares, bonds and similar securities based on contracts executed in Italy before a public notary are subject to a lump sum registration tax of EURO 200. This tax is also payable where a contract executed abroad or with different formalities is presented to an Italian registration office or an Italian court.

- **Real estate tax**

The unified municipal tax is generally levied at a rate of 0.76%. The taxable base is determined by multiplying the value of the land according to the immovable property registry by certain coefficients. This tax is partially deductible for corporate income tax purposes (i.e. 20% for FY 2014).

- **Tobin Tax**

The new financial transaction tax "Italian FTT" has been introduced with technical instruction as a Ministerial degree of 21 February 2013. In General the transfer of ownership of the shares issued by Italian companies excluding the quotes of limited liability companies made as of 1 March 2013 and the certain financial instruments made as of 1 July 2013 are subject to the Italian FTT. FTT rates and Taxable basis are as follows.

- Basic Rate: 0.2% - reduced by 50% if the transfer is made through regulated markets and multilateral trading facilities
- The taxable basis: Equity Transaction Value
- The tax payment due: the 16th day of the subsequent month of its transfer

- その他間接税

- 資本税

一般的に株式付与に伴う現金または資産抛出には登録免許税が課税される。現金抛出または不動産以外の資産抛出の場合には200ユーロが登録免許税として課税される。不動産抛出の場合は、その不動産の評価額に対して4%の登録免許税と3%の当動産抵当・登記税が課される（一定の場合には9%の登録免許税と100ユーロの不動産抵当・登記税が課税される）。原則として付加価値税（VAT）の課税取引には資本税は課されない。

- 取得税

付加価値税（VAT）の課税取引の場合には、登録免許税として200ユーロと不動産の評価額に対して4%の不動産抵当・登記税が課税される。付加価値税（VAT）の不課税取引の場合は、不動産の評価額に対して9%の登録免許税が課税され、かつ不動産抵当・登記税が100ユーロ課税される。

イタリアの公証人の面前で締結された株式または社債等の譲渡の場合には登録免許税として200ユーロが課税される。当該登録免許税はイタリアの国外で締結等されイタリアの登記局に登録される場合またはイタリアの裁判所に提出される場合にも登録免許税として200ユーロが課税される。

- 固定資産税

原則0.76%が固定資産税の税率である。不動産登記簿に基づき土地の評価額に係数を乗じて課税標準額は算出される。当該税額の一部（2014年度は20%相当額）について法人税の計算上、損金算入が認められている。

- 金融取引税

2013年2月21日内閣府令の詳解に基づきイタリアにおいて金融取引税が導入された。2013年3月以降のSRLを除くSPAの株式譲渡および2013年7月以降の一定の金融商品の譲渡につき金融取引税が課税される。税率等は以下の通りである。

- 標準税率：0.2% / 市場および国際流通市場にて譲渡されるものは0.1%
- 課税標準額：取引価格
- 納期限：譲渡取引日の翌月16日

Country Update in Italy

M&A Transaction in Italy

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The Italian corporate tax is generally made up of IRES and IRAP

IRES (Corporate income tax)

- Tax rate: 27.5%
- Taxable income: worldwide income for resident companies; income produced in Italy for non-resident companies
- Taxable base: statutory profit / loss before tax increased / decreased by positive / negative adjustments in accordance with tax regulations
- Applicable to: Italian corporations; Italian branches of non-resident companies; non-resident companies producing income in Italy

IRAP (Regional income tax)

- Tax rate: at least 3.5% (up to 4.42%). [Banks and holdings: 4,2 (up to 5,12%). Insurance: 5.3% (up to 6,22%)]
- Taxable income: income produced in each Italian regions
- Taxable base: gross operating margin less certain costs (e.g. labour and interest)
- Applicable to: Italian corporations and Italian branches of non-resident companies

The transfer of assets / shares / business units may be also subject to certain transfer taxes such as:

VAT (Value Added Tax)

- Tax rate: ranging from 4% to 22%
- Applicable to: certain transfer of goods; certain rendering of services

Registration Tax

- Tax rate: at fixed amount; at proportional rates depending on the deal
- Applicable to: certain transfer of assets / shares / business units

Mortgage and Cadastral taxes

- Tax rate: at fixed amount; at proportional rates depending on the deal
- Applicable to: certain transfer of real estate assets

From a tax perspective, M&A transactions may be classified as:

Taxable transactions:

- Sale / Purchase of shares
- Sale / Purchase of business units

Tax-neutral transactions:

- Mergers / Demergers
- Contributions in kind of business units

Sale / Purchase of shares

At the level of the seller:

- Sale of shares in a resident / non-resident company by an Italian company / branch
 - The capital gain is subject to IRES in Italy at the rate of 1.375% if PEX applies, otherwise IRES is due at the standard rate of 27.5%. If shares were owned for at least 3 financial years prior to the transfer and PEX does not apply, the capital gain may be subject, upon election, to IRES in equal instalments over a period of up to 5 years
- Sale of shares in an Italian company by a non-resident company (no branch in Italy)
 - Qualified shares in listed / non-listed companies: the capital gain is 50.28% tax exempt. The difference is subject to IRES at the standard rate of 27.5%. DTTs may apply.
 - Non-qualified shares in listed companies: the capital gain is tax exempt in Italy
 - Non-qualified shares in non-listed companies: the capital gain is subject to a substitute tax at 26%

At the level of the purchaser:

- Shares are recognised at price paid for the acquisition for both accounting and tax purposes. No step-up in the accounting/tax asset values of the acquired company is allowed due to the transfer, being the acquisition structured as a share deal rather than an asset deal

The transfer is VAT exempt and subject to a registration tax of €200

Sale / Purchase of business units

At the level of the Italian seller (company / branch):

- The capital gain is subject to IRES at the standard rate of 27.5%. If the business unit was owned for at least 3 financial years prior to the transfer, the capital gain may be subject, upon election, to IRES in equal instalments over a period of up to 5 years

At the level of the purchaser:

- Any assets / liabilities acquired are accounted for at their fair market value up to the consideration paid for the transfer for both accounting and tax purposes. The difference between the consideration paid and the fair market value of any assets / liabilities acquired may be accounted for as goodwill and depreciated for both accounting and tax purposes

The transfer is outside the scope of VAT. However, the fair market value of any assets / liabilities acquired (including goodwill) is subject to registration tax at a standard rate of 3% (9% on real estate assets plus mortgage and cadastral taxes of €100)

Mergers / Demergers

At the level of the resulting Italian company

- No capital gains/losses may arise for tax purposes
- The tax value of assets / liabilities received remain the same those assets / liabilities had at the level of the receiving company and no step-up is allowed for tax purposes unless a substitutive tax is paid on the difference between the accounting values and the inherited tax value
- Specific rules apply to tax-deferred reserves, tax losses carried forward and non-deducted interest expenses carried forward

Mergers / Demergers are outside the scope of VAT and subject to a fixed registration tax of €200 as well as to mortgage and cadastral taxes at the fixed amount of €200 each if real estate assets are involved

PEX (Participation Exemption Regime)

Capital gains

- The capital gain realised from the disposal of shares held in an Italian / non-resident by an Italian company may be 95% IRES exempt if (i) shares have been held continuously for 12 entire calendar months prior to the disposal; (ii) shares are recorded as financial assets in the first financial statements of the parent company; (iii) the downstream company is a resident of a state or territory other than those listed by ministerial decree as tax havens and (iv) the downstream company performs a real business activity. The requirements under letters (iii) and (iv) must be met for an uninterrupted period of three years

Capital losses

- The capital loss realised under PEX regime is non-deductible for tax purposes. Write-offs and revaluations of shareholdings are always disregarded for tax purposes

Dividends

- Dividends received by an Italian company is 95% IRES exempt. The exemption applies to cash dividends as well as to distributions of dividend in kind
- Dividends paid by an Italian company to a non-resident company (no PE in Italy) are subject to the domestic WHT at 1.375% for EU resident or 26% for no EU resident, respectively. EU parent-company directive may apply.

Earning stripping rules

Interest expenses net of any positive interest are deductible for IRES purposes only up to 30% of EBITDA for the year (interest expenses are not deductible for IRAP tax purposes) . Any excess of interest expenses not fully deducted in that year as well as any excess of EBITDA not fully utilized to deduct interest expenses accrued in that year can be carried forward indefinitely

In case of Italian tax consolidation regime (i) any excess of interest expenses of a company can be used to offset the taxable income of other companies within the group up to the amount of 30% of their EBITDA for the year that has not been used to deduct its own interest expenses; (ii) under certain conditions, the EBITDA of non-resident companies may be taken into account, to the extent it exceeds the interest expenses accrued by the same companies

In case of mergers/demergers any excess of interest expenses carried forward can be used by the resulting companies if certain conditions are met

Depreciation of goodwill

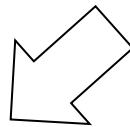
Goodwill may be depreciated for tax purposes only if it was acquired in a purchase of an existing business and a price was paid for it (e.g. goodwill arising from M&A tax-neutral transactions is not deductible for tax purposes unless it is stepped up by paying the substitute tax)

Depreciation for tax purposes is allowed in 18 years straight-line

In the case of companies accounting under IAS/IFRS, the depreciation of goodwill is allowed under the same rules even if the asset cannot be depreciated for accounting purposes

	Capital gain	Transfer taxes	Step-up of assets and deductibility of goodwill	PEX / Earning stripping rules
Mergers / Demergers / Contributions in kind of business units	n/a	Registration tax of € 200 mortgage and cadastral taxes of € 200 each if real estate assets are involved	Allowed only if a substitute tax is paid	Ordinary rules
Sale / Purchase of shares	Subject to IRES only PEX may apply	Registration tax of € 200	n/a	Ordinary rules
Sale / Purchase of business units	Subject to IRES only	Registration tax of 3% (9% on real estate assets plus mortgage and cadastral taxes of €100 if real estate asset is involved)	Allowed only up to the consideration paid for the purchase	Ordinary rules

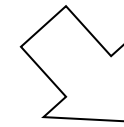
- Generally, **M&A transactions involving existing companies** can be carried out through the following structures



SHARE/QUOTA DEAL



**Purchase of shares (S.p.A.) or
purchase of quotas (S.r.l.)**



ASSET DEAL



**Purchase of certain or all of the
assets of the target**

- Share deals and asset deals could be subject to the **following authorizations**:

Entry barriers

- **No general Italian entry barriers for Japanese investments**
- Certain authorizations/requirements may be necessary in **some industries** and other **regulated sectors** (e.g. telecommunications and banking/financial intermediaries) both for the acquisition and the incorporation of a company

Antitrust clearing

- When the turnover of the undertakings involved in the acquisition exceeds certain thresholds, **prior notification to:**
 - **the Italian antitrust authority**
 - **the European Commission**

Thresholds

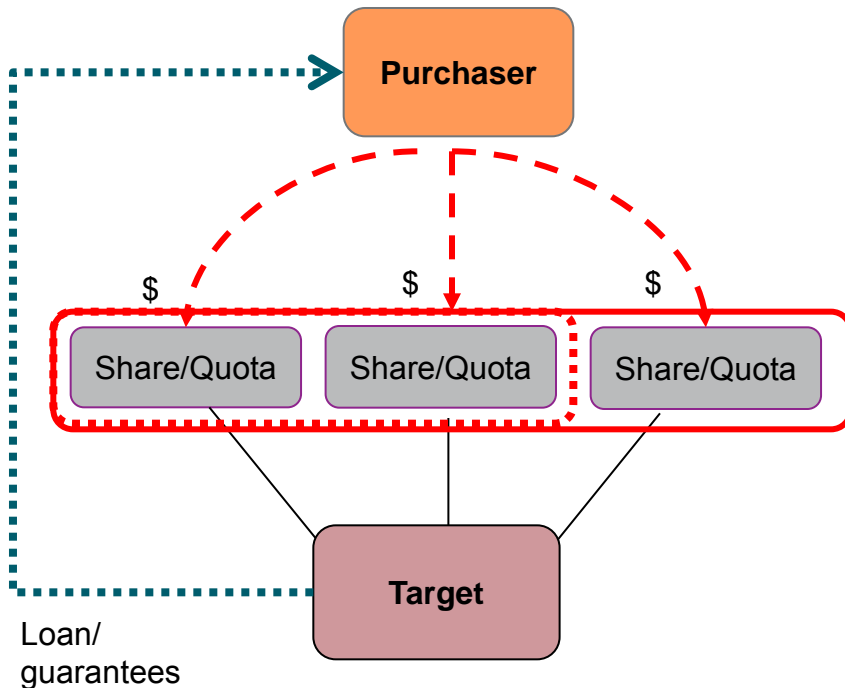
Italian Antitrust Authority

- Aggregate turnover in Italy of companies involved exceeds **489 million euro**; or
- Aggregate turnover in Italy of the company to be acquired exceeds **49 million euro**

European Commission

- Aggregate worldwide turnover of all the companies concerned exceeds **EUR 5 billion**; and
- Aggregate turnover in the EU of each of at least two of the companies concerned exceeds **EUR 250 million**, unless each of the undertakings concerned generates more than two thirds of its aggregate EU-wide turnover within a single Member State; or
- Other specific thresholds related to the turnover in the EU countries

Share deals



= object of the transaction

= financial assistance

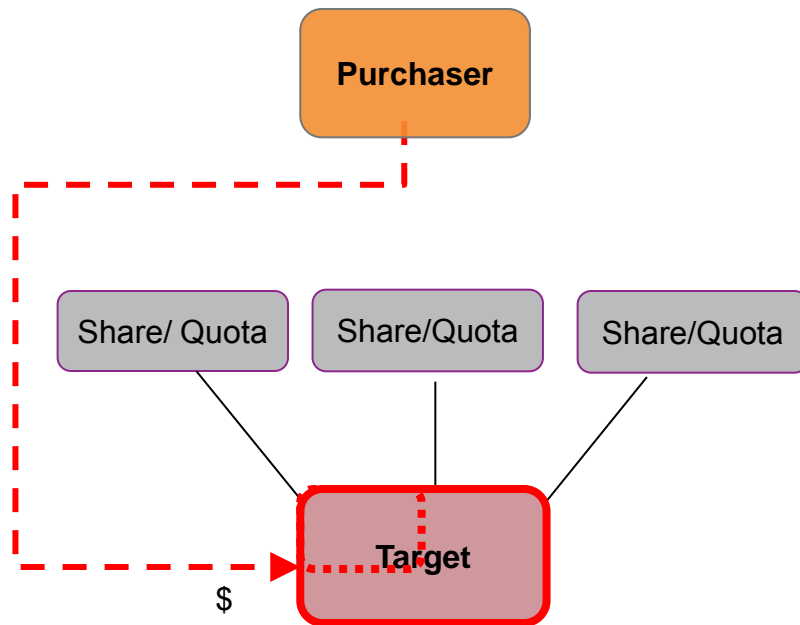
- The purchaser succeeds as shareholder of the target. It is important to assess all the financial/legal/tax issues regarding the target, through a **due diligence activity**
- **Shareholders agreement**: if the transaction does not lead 100% of the share capital, specific **agreements between the shareholders** regulating the **governance** of the target are advisable. The duration term of the shareholders agreement cannot exceed **five years**
- **Financial assistance**: the target can grant loans or provide guarantees for the purchase or subscription of its own shares. Financial assistance **cannot exceed the distributable profits and available reserves of the target**



Asset deals

- The purchaser acquires **all the assets or certain business units of the target**. It is important to **define the perimeter of the transaction** (e.g. the assets, contracts, liabilities, workforces transferred) and to assess its financial/legal/tax *status* through a **due diligence activity on the perimeter of the transaction**

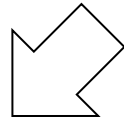
- In asset deals, the following issues have to be taken into consideration:

- **joint liability of the purchaser and the seller towards the creditors** (despite any different agreement between the parties) for **all the debts** of the business unit resulting from the accounting records
- **taking over in the contracts** (pertaining to the business) save the right for the counterpart to terminate the contracts in case of reasonable grounds
- **non competition** obligation of the seller, for a period of 5 years from the transfer
- in case the transfer involves a company in which are employed more than 15 employees a **specific procedure involving unions** has to be observed (written notice to be sent to the unions at least 25 days before the execution of the agreement)



  = object of the transaction

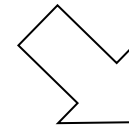
The most common types of **limited liability companies** are:



**Società per Azioni
(S.p.A.)**



- **Medium and large companies**
- **Significant levels of share capital**
- **Many shareholders**



**Società a Responsabilità Limitata
(S.r.l.)**



- **Small and medium companies**
- **More flexible corporate structure (freedom in functioning, organization and other features)**

Minimum share capital

€50,000; at least 25% of the capital must be paid at the date of incorporation

Shareholders

No limits with reference to the **minimum or maximum number of shareholders** (an S.p.A. can be formed also with just one shareholder: in this case, all the capital must be fully paid-up and certain information requirements shall be observed)

Shares

Categories of shares carrying different economic and administrative rights from ordinary shares can be issued: e.g. **preference shares** (e.g. with priority in the distribution of earnings or in the postponement of losses); **tracking shares** (shares carrying economic rights related to the results of a specific part of the company's business); **redeemable shares** (shares which can be redeemed by the company or the shareholders)

Bonds

Bonds (i.e. securities representing a debt the company has with the bondholders) can be issued up to a given amount (e.g. double of the share capital and reserves)

Hybrid financial instruments

They are financial instruments which may assign certain administrative and economic rights similar to those granted by an equity interest (excluding the right to vote at the general shareholders' meeting). They blend features of both **debt** and **equity**

Governance

The “**one-tier**” and “**two-tier**” models did not meet with much success in business practice and, therefore, are **not further examined in this presentation**

1. Traditional model

Shareholders’ meeting appoints:

- the **administrative body** (board or sole director)
- the **statutory auditors** (management control and, in some cases, audit accounting)
- the **external auditor** (auditing accounting, if this task is not assigned, where it is permitted, to the statutory auditors)

2. One tier

- Shareholders’ meeting appoints the **board of directors**
- The board of directors appoints, within itself, a **management control committee** (management control)
- The accounts are audited by an **external auditor**

3. Two tier

- Shareholders meeting appoints a **supervisory board** (management control)
- The supervisory board appoints the members of the **management board**
- The accounts are audited by an **external auditor**

Shareholders' meeting

The shareholders may meet in **ordinary or extraordinary session** (the difference concerns subject matters and legal requirements needed to take decisions)

Administrative body

Composed of a **sole director** or a **board of directors** (the directors may be shareholders or not); the board of directors can appoint one or more of its members as **managing directors**, granting them specific powers
No restriction to appoint as members of the administrative body foreigner citizens (when reciprocity conditions exist): Japan citizens can be appointed

Board of statutory auditors

Composed of **1 or 3/5 statutory auditors**, is the body responsible of the management control (to supervise the observance of the law and of the articles of association)
When the company does not draw up consolidated financial statement, the articles of association of non-listed companies can entrust the board of statutory auditors also with the audit of the accounts (in this case the external auditor is not appointed)

External auditor

Single auditor or auditing firm entrusted with the **audit of the accounts**

Minimum quota capital

€10,000; at least 25% of the capital must be paid at the moment of incorporation

Quotaholders

No limits with reference to the **minimum or maximum number of quotaholders** (an S.r.l. can be formed also with just one quotaholder: in this case, all the capital must be fully paid-up and the certain information requirements shall be observed)

Quotas

Each quotaholder holds **one quota**; the value (and the rights) of each quota is calculated **in proportion of the value of the contribution**. Generally quotas cannot grant different rights: the article of association can establish **special rights for certain quotaholders**

Bonds

Bonds ("*titoli di debito*") can be issued, under certain conditions determined in the articles of association

Governance

More flexibility than SpA as regards the organizational rules

**Quotaholders'
meeting**

Decisions can be taken **collectively** or through more **streamlined procedures**, when provided by the articles of association

Administrative body

If not differently provided by the articles of association, **directors must be chosen from the quotaholders**

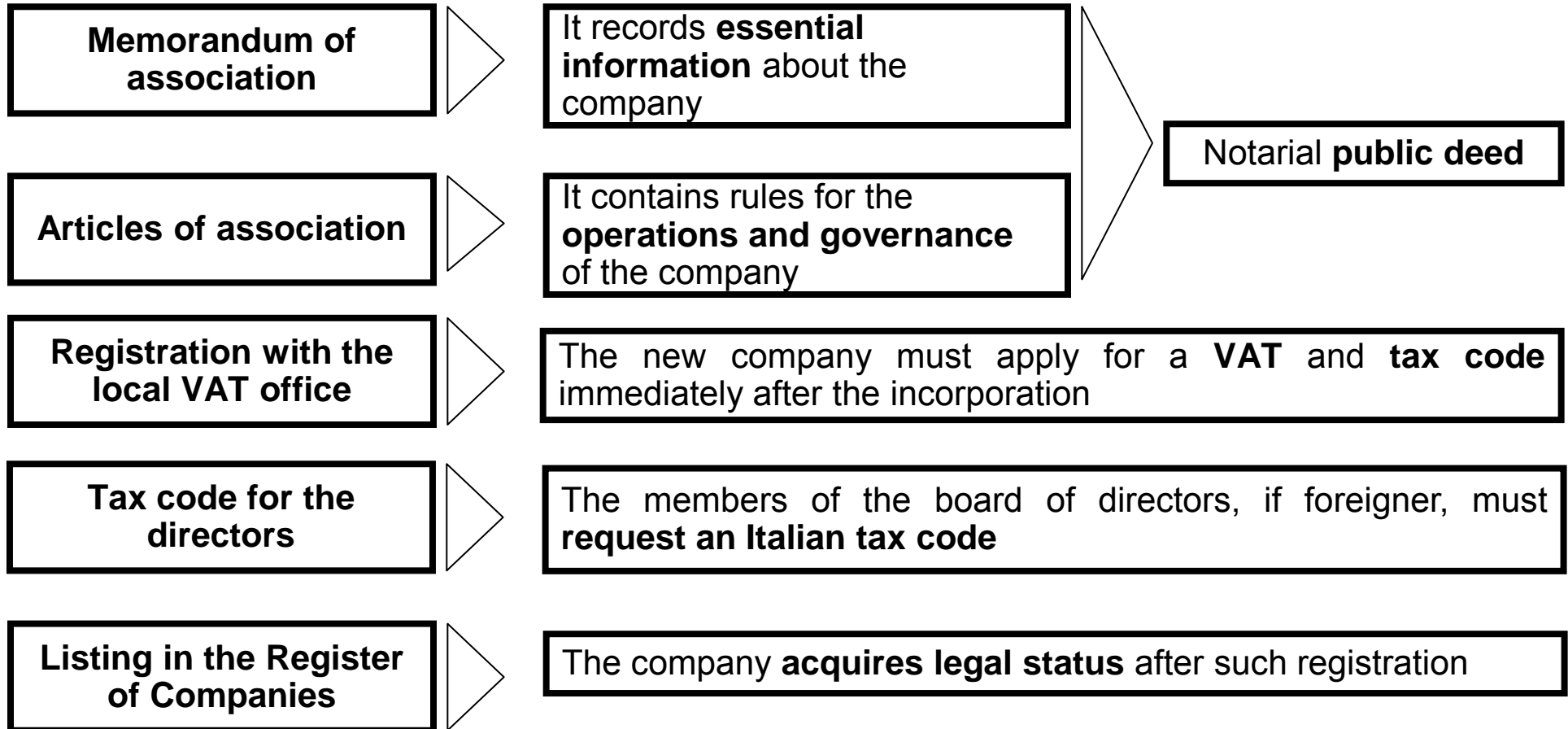
There may be a **sole director** or a **board** of directors, which can appoint **managing directors** with specific powers

**Board of statutory
auditors**

An S.r.l. is obliged to appoint it when: (i) **the company must issue a consolidated balance sheet**; (ii) **the company exceeds, for two consecutive accounting periods, certain thresholds**, (iii) **the company controls a company subject to the auditing**

**Supervision of the
quotaholders**

When there is no board of statutory auditors, **the quotaholders have wider powers** (inspection, intervention) They can always carry out checks on the company's activity



The process to constitute an Italian company may require from 1 to 3 weeks

Country Update in Italy Transfer Pricing Practice in Italy

イタリアアップデート 移転価格税制の動向

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- **Transfer pricing practice: recent trends of the tax audits in Italy (P76)**
- **How to deal with transfer pricing disputes: domestic versus international procedures (P85)**
- **Italian Transfer Pricing Documentation for Penalty Protection Regime (P87)**
- **International procedures to avoid/mitigate the risks deriving from a tax audit (P111)**
- **Mutual Agreement Procedures (P113)**
- **International Standard Ruling and Advance Pricing Arrangements (P135)**

Transfer pricing practice: recent trends of the tax audits in Italy

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- **Recent trends**
- **Choice of the taxpayers to be audited**
- **Tax audit**
 - **Tax audit and Proper Documentation**
 - **Tax audit and tax authorities approach**
 - **Tax authority's approach: experiences**

- **The increased number of tax investigations** carried out by both the Revenue Agency (ie; Regional Head Offices and Local Offices) *and Guardia di Finanza (Tax Police)* to companies belonging to multinational groups focused on international tax key topics, such as:
 - **transfer pricing** (all the intercompany transactions, including hidden transactions)
 - business restructuring (including business conversion, such as changes from distributor to agent)
 - undisclosed permanent establishments
 - customs and duties and VAT.
- The tax authorities paid less attention to topics such as the correct tax treatment of local sundry expenses and other costs (eg; entertainment, car expenses), etc..

- The selection of the tax payer should be based on key elements such as: size, tax losses, business restructuring, transactions with black list countries. In particular loss making companies are subject to a very high risk of tax audit due to the presumption that the losses are generated by inappropriate transfer prices.
- Big tax payers (company with a turnover >€100 million) should be audited annually whilst smaller taxpayers every two, three years.
- Assessments can be carried out up to the end of the 5th calendar year following the fiscal year end (eg; FY ended 30 September 2013 could be assessed until the 31 December 2018). The terms are doubled (10 years) in case of criminal infringements.

- Audited FYs usually vary from 1 to 4 years. However, especially in case of transfer pricing adjustments, the assessment on one FY is extended to other FYs.
- Tax authorities frequently use a questionnaire to gather information in order to identify the taxpayer to be audited.
- The indication or not in the tax return of the availability of TP documentation for the penalty protection could be one of the elements, (beside the ones already mentioned such as size, extraordinary operations such as restructuring, tax losses) for the choice of the taxpayer to be audited, even if it is not the most important.
- The communication of the availability of the documentation should however be considered as an indicator of good faith, even if in practice it seems not to decrease the likelihood of a tax audit.

- Starting an audit, tax inspectors always ask for the TP documentation under the penalty protection standard ('Proper Documentation') that must be delivered promptly (within 10 days upon request).
- In the case the Proper Documentation is not available, tax inspectors:
 - would ask other TP documentation available (eg; Group Central Master File, etc.)and/or
 - would ask the taxpayer to provide:
 - the narrative sections of the Proper Documentation, and
 - an overview of the cross border transactions, indicating the counterparts, the amounts and the transfer pricing policy applied.

- In case the Proper Documentation or other Full Transfer Pricing Report including the economic analyses (eg; external search for comparables or internal CUPs analysis) are available, tax inspectors tend to confirm overall the approach taken by the taxpayer in terms of methodology used (ie; CUPs, TNMM, Pan-European search versus Italian search); but almost always they challenge some variables that can modify (in increase) the results achieved, such as:
 - selected comparable companies
 - selected profit level indicator (PLI)
 - Pan-European benchmark versus Italian benchmark (tax authorities strongly prefer local benchmark analysis).
- In some cases, or always when there are no Full TP Reports available, tax inspectors perform an autonomous benchmark analysis achieving always higher results than benchmark analysis performed by tax consultants.

- Methods most frequently used by tax inspectors to test the arm's length nature of intercompany transactions:
 - Comparable Uncontrolled Price method (CUP)
 - Transactional Net Margin Method (TNMM).
- Benchmark analysis using Gross Margin, instead of the Operating Margin as PLI, are in many cases challenged when the Operating Margin is negative or low.
- The TP adjustments made by the tax inspectors almost always derive from an adjustment to the median of the arm's length range revised in increase (modifying the comparables final set), even if the PLI (eg; the OM) of the company falls within the full arm's length range and often within the interquartile range.
- TP adjustments are relevant to Corporate Income Tax (IRES), and also to Regional Tax on Business Activities (IRAP), even if this latter extension has no been longer legitimated in the light of the amendments introduced in IRAP law for FYs since 2008.

- Tax inspectors are more focused on substantial rather than on formal aspects, in particular they pay high attention to the functional analysis in terms of truthfulness and preciseness; in many cases they interview the key employees.
- In the case the tax audit concerns the costs charged for management fees, taxpayers should demonstrate with supporting documentation that the services received have actually been rendered and generated a benefit to them. Such benefit is usually considered actual only if it is measurable (eg; by means of the increase of revenues or reduction of costs, that in some cases are not easily provable).
- If not already included in the TP documentation, when a taxpayer is involved in many types of transactions, tax inspectors, in the majority of cases, require the taxpayer to provide a segmentation of the profit and loss account in order to assess the arm's length nature transaction by transaction (an aggregate approach is indeed almost always challenged).

How to deal with transfer pricing disputes: domestic versus international procedures

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- When the conclusion of the tax inspection the Preliminary Tax Report (ie; PVC) is delivered to the company, or after the Official Notice of Assessment, the tax payer can:
 - accept and pay
 - or, apply for domestic procedures:
 - negotiation procedure with the tax authorities to try to find a settlement
 - tax litigation procedure
 - or, apply for international procedures (Mutual Agreement Procedures, MAPs).
- In order to mitigate the risk of a huge TP assessment and to avoid penalties, in 2010 Italy introduced the concept of Proper Documentation for penalty protection.

Italian Transfer Pricing Documentation for Penalty Protection Regime

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In 2010 the concept of Proper Transfer Pricing Documentation for the application of the penalty protection regime was introduced for the first time in Italy; and, as a consequence, in Article 1 of Decree No. 471 of 18 December 1997 (the Italian decree about tax penalties) paragraph 2-ter was introduced.

There is no obligation for documentation; the non-application of administrative penalties has been introduced as a 'premium' for those taxpayers that demonstrate their willingness to cooperate with the tax authorities.

Article 1 of Legislative Decree No. 471 of 18 December 1997, paragraph 2-ter

'In the case of adjustments under the arm's length principle of the transfer prices charged for transactions referred to in Article 110, paragraph 7 of Presidential Decree No 917 of 22 December 1986, resulting in a higher tax or in a difference in the tax credit, the penalty referred to in paragraph 2 shall not apply if, during the access to the premises, the inspection or the audit or any other investigation activity, the taxpayer delivers to the Tax Authorities the documentation provided for by a specific Decision of the Revenue Agency (Provvedimento) allowing a control that the transfer prices charged are consistent with the arm's length principle. The taxpayer holding the records under the Provvedimento shall notify the Tax Authorities according to the terms and conditions herein specified. Failing such notification, paragraph 2 shall apply.'

On September 29, 2010 the Italian Revenue Agency issued specific guidelines (*Provvedimento*) implementing the provision endorsed in Article 26 regarding the 'Transfer Pricing documentation' and the technical specification concerning its communication.

Recipients of the *Provvedimento*

■ Holding companies part of a multinational group

Companies resident for tax purposes in Italy not controlled by any other company that controls one or more non-resident companies.

■ Sub-holding companies part of a multinational group

Companies resident for tax purposes in Italy controlled by any other companies that controls one or more non-resident companies.

■ Subsidiaries part of a multinational group

Companies resident for tax purposes in Italy controlled by any other companies that do not control other non-resident companies.

■ Permanent establishments in Italy of non-resident companies

Even if not defined in the *Provvedimento*, this regards an entity with an autonomous taxable presence in Italy but legally part of that foreign enterprise (Article No. 162 of Presidential Decree No. 917/86 of Italian Tax Law and OECD Commentary on double taxation treaty).

In order to access the penalty protection regime the taxpayer should prepare Proper Documentation following specific conditions regarding:

- content of the documentation
- language and formal aspects
- terms for submission.

- **Holding companies**

Have to prepare a Masterfile and Country Specific Documentation.

- **Sub-holding companies**

Have to prepare a Masterfile referred to the sub-group at the top of which the sub-holding is placed and Country Specific Documentation.

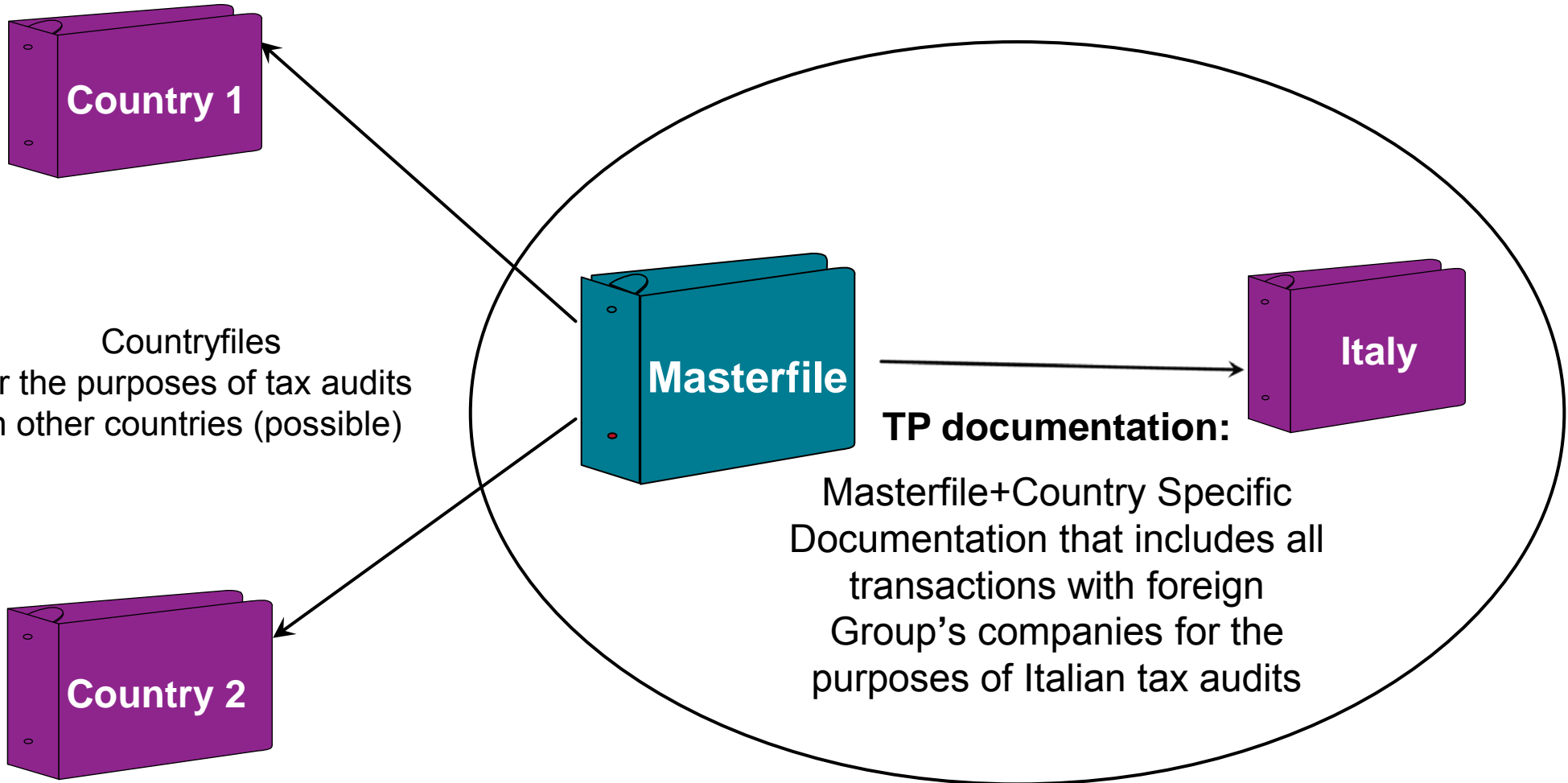
The Masterfile regarding the entire group can be adopted even if it is prepared by a taxpayer resident in another Member State of the European Union, and integrated by the sub-holding company.

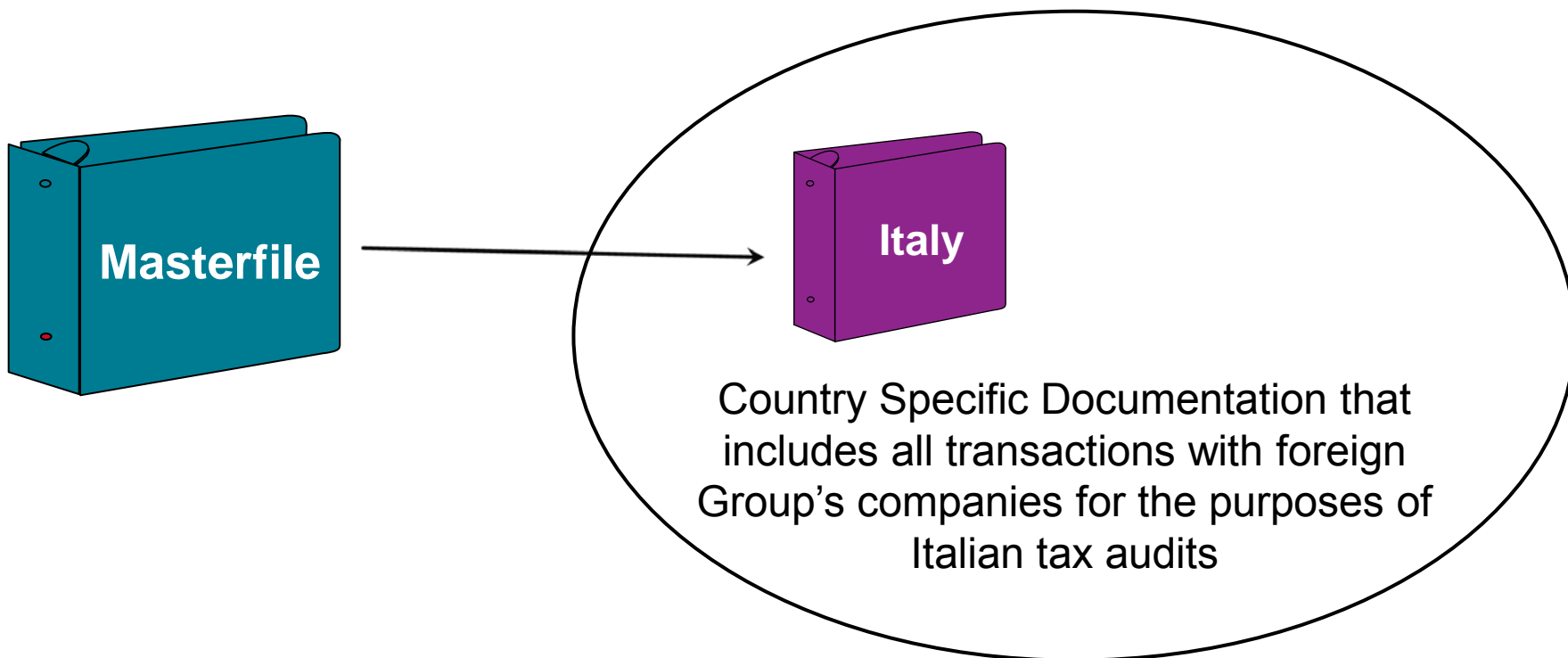
- **Subsidiaries**

Have to prepare Country Specific Documentation.

- **Permanent establishment**

The above applies depending on whether the non-resident taxpayer of which the permanent establishment is part qualifies as, respectively, holding, sub-holding or subsidiary part of a multinational group.





Masterfile

Contains information regarding the Multinational Group

Country Specific Documentation

Contains information regarding the company, the economic and transfer pricing analysis of the transactions

1. **A general description of the multinational group** (history, recent developments, business sectors in which it operates and overview of relevant markets of reference)
2. **Multinational group structure**
 - 2.1 Organizational Structure
 - 2.2 Operational Structure
3. **Business strategies pursued by Multinational Group**
4. **Transaction Flows**
5. **Intra-group transactions**
 - 5.1 Sale of tangible or intangible assets, provision of services, financial services transactions
 - 5.1.1 *Transaction type 1*
 - 5.1.2 *Transaction type 2*
 - 5.1.n *Transaction type n*

5.2 Intra-Group Services

5.2.1 Service type 1

5.2.2 Service type 2

5.2.n Service type n

5.3 Cost contribution arrangements

- 6. Functions performed, assets used and risks assumed**
- 7. Intangible assets**
- 8. Transfer Pricing policy of the Multinational Group**
- 9. Relationships with the tax administrations of the Member States of the European Union regarding the Advance Pricing Arrangements (APAs) and transfer pricing rulings**

1. **A general description of the enterprise** (history, recent evolution and general overview of the relevant markets of reference)
2. **Business Sectors**
 - 2.1 Sector 1
 - 2.2 Sector 2
 - 2.n Sector n
3. **Enterprise's organizational chart**
4. **General business strategies pursued by the enterprise and potential changes compared to the previous tax years**
5. **Controlled transactions** (sale of tangible or intangible goods, provision of services, financial services transactions)
 - 5.1 Type 1 transactions
 - 5.1.1 *Description of the transactions*

5.1.2 Comparability analysis

- a) Characteristics of property or services*
- b) Analysis of the functions performed, risks assumed and assets used*
- c) Contractual terms*
- d) Economic circumstances*
- e) Business strategies*

5.1.3 Selection of the transfer pricing method

- a) Description of the selected transfer pricing method and of the underlying reasons determining its consistency with the arm's length principle*
- b) Criteria for the application of the selected transfer pricing method*
- c) Results deriving from the application of the selected transfer pricing method*

5.n Type n transactions

6. **Intra-group transactions** (Cost Contribution Arrangements or ‘CCAs’ of which the enterprise is part)
 - 6.1 Participant, scope and terms
 - 6.2 Activities’ framework and projects covered
 - 6.3 Method used for the determination of the expected benefits for each participant, including expected results, partial outcomes and divergences
 - 6.4 Form and amount of each participant’s contribution to the arrangement, including methods and criteria to determine them accordingly
 - 6.5 Formalities, procedures and consequences arising from the entry and withdrawal from the CCA by associated participating enterprises, including the determination thereof
 - 6.6 Contractual arrangements concerning balancing payments or amendments to the CCA stemming from a change of circumstances
 - 6.7 Changes occurred during the validity period of CCA

Annex 1

Flowchart describing the transaction flows, including those falling out of the scope of the ordinary management activities.

Annex 2

Copy of written contracts on the basis of which the transactions referred to at points 5 and 6 are regulated.

Proper documentation for small and medium size enterprises

- Small and medium-size enterprises (turnover lower than €50 million) are entitled not to update the data referred to annually:
 - description of the selected transfer pricing method
 - criteria for the application of the selected transfer pricing method
 - results; but**every three years** in the case the comparability analysis is based on:
 - publicly available information sources
 - factors that do not incur substantial changes during the three year period.

Formal aspects

- The Masterfile and the Country Specific Documentation must be drafted in Italian. In the event the taxpayer submits the Masterfile regarding the entire multinational group it can be drafted in English.
- The Masterfile and the Country Specific Documentation must be signed on each page by the legal representative or by a delegate representing the taxpayer and officially signed on the last page by the same legal counsel or certified that the copy delivered to the tax authorities is consistent with the original document (electronic signature also accepted).
- Documentation should be presented in electronic format (temporarily, also on paper).

Extent and condition of validity

The Proper Documentation must be drafted on a yearly basis with respect to the transactions carried out by the taxpayer falling within the scope of paragraph 7 of Article 110 and it must be available for each of the taxable periods subject to audit according to the ordinary provision

Communication of the availability of the proper documentation

Taxpayers should communicate the Italian Revenue Agency the availability of the Proper Documentation in the yearly Annual Tax Return ticking a specific box, in order to communicate their willingness to opt for the penalty protection regime and that the Proper Documentation is already prepared and available on request.

Submission

- The submission of the Proper Documentation to the tax authorities must be executed within 10 days upon request.
- In the case supplementary information is needed during an audit it must be provided either within 7 days upon request or over a longer time period depending on the complexity of the transactions under analysis, to the extent that the above period is consistent with the time of the audit.
- Once these terms are elapsed, the tax authorities are not bound by the application of the penalty protection regime.

Extent and condition of validity

- Once the Proper Documentation is submitted, the tax authorities evaluate:
 - compliance with the formal structure endorsed by the *Provvedimento*
 - consistency with the reality of the information provided in the documentation.
- When the above conditions do not occur, the filing of the documentation does not bind the tax authorities to the application of the penalty protection regime (that however applies exclusively with reference to adjustment relevant to violation of Article 110, paragraph 7).
- Omissions or partial inaccuracies that do not hamper either the activity carried out by the auditors or the accuracy of the outcome of such analysis do not impede the application of penalty protection regime.
- In the case of negative judgment by the of tax authorities on the documentation, the taxpayer can ask a new opinion from the competent Regional Tax Office (if worth up to €10 million) or from the Central Office of the Tax Agency (over than €10 million).

Main features and differences between the Proper Documentation for the penalty protection and OECD Standard Report

Choice between Proper Documentation and OECD Standard	
PROPER DOCUMENTATION (Penalty Protection)	OECD STANDARD REPORT
Optional	Optional
Technical validity in order to defend the TP policy in case of tax audit	Technical validity in order to defend the TP policy in case of tax audit
If recognized appropriate, validity for penalty protection regime	No validity for penalty protection regime
More information disclosures (documentation of all the intra-group transactions)	Less information disclosures (not necessary to document all transactions)
Optimization of the TP policy (as all the transactions are documented)	
Binding formal requirements (content framework, language...)	More flexibility in the content framework and language

Choice between Proper Documentation and OECD Standard Report

PROPER DOCUMENTATION (<i>Provvedimento</i>)	OECDSTANDARD REPORT
<p>The burden of proof is shifted onto the Tax authorities for all the intercompany transactions</p>	<p>The burden of proof is shifted onto the Tax authorities only for the documented transactions</p>
<p>From a criminal perspective the good faith of the company's directors is clearly attested</p>	
<p>Large companies (turnover > 50 mln euros) must update the data for the economic analysis every year</p>	<p>Update of the data for the economic analysis every three years</p>

Choice between Proper Documentation and OECD Standard Report

PROPER DOCUMENTATION (<i>Provvedimento</i>)	OECDSTANDARD REPORT
The documentation of certain transactions could be difficult	Could be a convenient choice in the case of large tax losses available or in the case the documentation of certain transactions is difficult
Advance communication of the availability of the documentation in the income tax return	No specific communication requirements
Once the availability has been communicated in the income tax return, in the case of tax audit the documentation must be delivered within ten days	No delivery obligation

International procedures to avoid/mitigate the risks deriving from a tax audit

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. This information should not be passed on without appropriate professional advice and a thorough examination of the particular situation

- **Mutual Agreement Procedures**
 - **Definition**
 - **Institutional players**
 - **DTC_MAP and AC_MAP**
- **International Standard Ruling and Advance Pricing Agreements**
 - **International Standard Ruling**
 - **Definition**
 - **Advance Pricing Agreement**
 - **Definition**
 - **Main steps**
 - **Recent development**

Mutual Agreement Procedures

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. This information should not be passed on without appropriate professional advice and a thorough examination of the particular situation

Definition

- There are currently different international procedures in order **to mitigate international double taxation** possibly arising from transfer pricing adjustment on taxable income.
- Such procedures are mainly aimed at causing the tax authorities of the States of the controlled companies involved in the transfer pricing adjustments to reach an agreement among themselves, or to apply an arbitration decision to apply corresponding adjustments of income at group level.
- Double taxation arising from the adjustment under transfer pricing rules is one of the most frequent issues addressed in **Mutual Agreement Procedures (MAPs)**, especially because evaluations of compliance with arm's length conditions in transactions between associated enterprises are particularly complex and technical.

Definition (continued)

- The Mutual Agreement Procedure involves direct consultation between the tax administrations of the Contracting States, which discuss with each other through their 'competent authorities' in order to reach an agreement on the relevant issue.
- A MAP is an instrument used to resolve international disputes in cases where a party resident in one of the two Contracting States believes that the measures adopted by one or both the tax administration render or will render it liable to taxation that does not comply with terms of the convention.

Institutional players

The bodies in charge of managing and negotiating mutual agreement procedures are:

- the **Ministry of Economy and Finance (Department of Finance)**, as the competent authority for Italy, represents the State in its internal dealings with the taxpayer and external dealings with the other State involved in the process, ensures that tax conventions are applied in good faith, and works with the other Contracting State to reach solutions based on equity and transparency
- the **Revenue Agency** supplies the competent Italian authority with the technical support and assistance in the course of all MAP enquiries, ensuring maximum consistency between the technical positions adopted in this process and those expressed in other contexts, especially interpretations of the law, inspections, and dispute prevention.

Sources of law

The Mutual Agreement procedure differs according to the source of law used to activate it.

These sources of law are:

- the conventions for the avoidance of double taxation (DTC) between Italy and Member States (the '**Bilateral Conventions**'). The Bilateral Conventions include the mutual agreement procedure governed by Article 25 of the OECD Model
- Convention 90/436/EEC of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (the '**Arbitration Convention**') (**AC**) resident in the European Union. In order to apply the Arbitration Convention, reference should be made to the recommendations contained in the '*Code of Conduct for the effective implementation of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises*' adopted by the Council of the European Union on 22 December 2009 (the '*Code of Conduct*').

Mutual agreement procedure under bilateral convention

- DTC-MAP covers all those cases generating the juridical or economic double taxation of natural or juridical persons or other entities covered by the convention (the double taxation does not have to have occurred already, it is sufficient for the taxpayer to believe that the measure applied to him will result in double taxation).
- There is no type of submission fee for a request to initiate a MAP case.
- The competent authorities have no obligation to eliminate the reported double taxation. They merely have a duty of diligence to '*do their best*' to reach an agreement that eliminates the taxation not in accordance with the provision of the convention.

Content of the request (Italian Ministerial Circular 21/E of 2012)

As a general rule, the request to initiate a MAP case should be submitted by the taxpayer in his country of residence and should preferably contain the following information:

- the details of the taxpayer (name, address and tax code)
- the domicile of the taxpayer or any local agent to whom communications from the tax authorities must be delivered
- the facts and circumstances with an indication of the tax periods in which double taxation has arisen or could arise
- a description of any administrative/legal steps taken in Italy
- any remedies adopted in the other Contracting States to eliminate the double taxation
- a copy of the tax notices that have or could bring about taxation not in accordance with the provision of the Bilateral Convention
- any further supporting documentation that could facilitate the enquiries of the competent authorities involved in the mutual agreement procedure.

Submission of the request

- In each particular case reference must be made to the relevant Bilateral Convention.
- Even though the OECD Model establishes that the case must be presented within three years of the first notification of the action resulting in taxation not in accordance with the provisions of the convention, most Bilateral Conventions signed by Italy set a shorter limit (generally two years).

Interplay with domestic litigation

- According to Article 25 of the OECD Model, MAP can be initiated by a taxpayer 'irrespective of the remedies provided by the domestic law'.
- Most of the Conventions signed by Italy state that '*initiation of a MAP case is not an alternative to domestic litigation, which must, in any event, be initiated (...)*'.
- MAP cases run side-by-side with juridical proceedings initiated under domestic litigation and it is advisable to commence domestic litigation to prevent the tax becoming final in Italy whilst the MAP is pending.
- MAP is not considered admissible by the Italian tax authorities if negotiation/settlement procedures (ie; '*Accertamento con adesione*' or '*Conciliazione giudiziale*') are concluded.

Interplay with domestic litigation (continued)

- Domestic litigation running parallel with a MAP raises the possibility of one of the following situations:
 - the competent authorities come to an agreement eliminating double taxation without a domestic final judgment having yet been pronounced: the taxpayer, as a necessary precondition for the performance of the mutual agreement, has to accept the agreement and simultaneously withdraw any domestic appeal. Otherwise the taxpayer can reject the agreement and continue the domestic litigation proceedings

CONVERSELY

- a domestic litigation judgment becomes final before a mutual agreement is reached: the Italian competent authority has to inform the other competent authority of the outcome of the domestic proceedings. If the judgment does not eliminate the double taxation, this phenomenon will persist unless the foreign competent authority adapts itself to the decision of the Italian Tax Court (*'unilateral relief'*).
- The taxpayer should evaluate whether to apply for the suspension of the tax proceedings, whilst the mutual agreement procedure is pending. If no agreement is reached between the competent authorities, the domestic tax proceedings suspended upon initiation of the MAP will be reactivated.

Suspension of tax collection

- There are no ad hoc remedies.
- The taxpayer can still benefit from the ordinary measures - such as the suspension of tax collection by the tax authorities or courts - governed respectively by paragraph 1, Article 39 of Presidential Decree No. 602 of 1973 and Article 47 of Legislative Decree No. 546 of 31 December 1992.

Arbitration clause

- Considering that it is possible that the request submitted to the competent authorities of the Contracting States is not settled, in 2008 a change was introduced to Article 25 of the OECD Model.
- The new paragraph 5 of Article 25 now provides for a compulsory **arbitration phase**:
 - if no agreement is reached within two years by the two States involved in the mutual agreement procedures
 - that can avoid any hypothesis of double taxation
 - that is binding for the tax authorities but not for the taxpayer.

Arbitration clause (continued)

- At the moment 13 conventions between Italy and other Contracting States, negotiated before the inclusion of paragraph 5, include an arbitration clause. In particular:
 - Armenia, Canada, Croatia, Georgia, Ghana, Jordan, Kazakhstan, Lebanon, Moldova, Slovenia, the United States, Uganda, Uzbekistan.
- This clause generally allows arbitration to start **only with the consent of both States and the taxpayer**, and is not a prior requirement (mandatory arbitration) for Contracting States to start arbitration if a friendly solution to a dispute cannot be found.

Mutual Agreement Procedure under Arbitration Convention

- EU Arbitration Convention 90/43/EC can apply when international double taxation arises as consequence of transfer pricing adjustment on the income of a company resident of one EU Contracting State.
- According to Circular No. 21/E, **the only Italian rules legitimizing access to an AC MAP are the rules on transfer pricing set out in Article 110 (7) and Article 9 of the Italian Income Tax Code.**
- Arbitration Convention procedure imposes on the tax authorities of the States concerned **the obligation** to reach an agreement and is consequently a more effective remedy in the case of **transfer pricing assessment.**

Admissibility

The MAP under arbitration procedure is considered admissible provided that:

- double taxation is the consequence of transfer pricing adjustments. Application based on double taxation arising from income adjustments not based on transfer pricing would not be accepted by the Italian tax authorities
- no criminal charges are inflicted in connection with the case
- no '*Accertamento con adesione*' procedure or '*Conciliazione giudiziale*' are concluded.

Submission

- Subjects entitled to submit an AC MAP request to the competent Italian authority:
 - resident enterprises, about dealings with associated enterprises established in another Member State of the European Union
 - permanent establishments in Italy of enterprises resident in another Member State.
- The case must be presented to the Ministry of Economy and Finance on plain white paper sent by recorded delivery post with return receipt within three years of the first notification of the action which results or is likely to result in double taxation.
- There is no type of submission fee for a request to initiate a MAP case.

Content of the request (Circular 21/E)

In accordance with the Code of Conduct, the application must contain the following minimum information:

- identification details
- details of the relevant facts and circumstances of the case (including details of the economic and business relations between the two enterprises and the other parties to the relevant transactions)
- an indication of the tax periods concerned
- copies of the papers (tax assessment notice, preliminary notice of assessment) giving rise to the double taxation, or possibly giving rise to it
- details of any appeals and litigation procedures initiated by the enterprise or other parties to the relevant transactions and any court decisions concerning the case

Content of the request (Circular 21/E) (continued)

- explanations by the enterprise of why it thinks that the principles set out in Article 4 of the Arbitration Convention have not been observed (eg; description of the intercompany transactions adjusted by the tax authorities and the method used by the enterprise to determine the transfer prices)
- an undertaking that the enterprise will respond as completely and quickly as possible to all reasonable and appropriate requests made by a competent authority and will make documentation available to the competent authorities
- any additional information requested within two months of receipt of the taxpayer's request
- an indication - where appropriate - that the transactions are properly documented.

Interplay with domestic litigation

- MAP under the Arbitration Convention is proposed as an alternative to domestic litigation, **with an obligation to arrive at result.**
- There is no longer an alternative between domestic and international litigation, in the sense that there is nothing further to dispute.
- In this context, settlement, mediation and conciliation are designed to close the tax position irrespective of international litigation.
- As Italy is one of the jurisdictions that do not permit their administrative authorities to derogate from a judicial decision, if a decision has been issued, arbitration is not possible. Arbitration can only be attempted if the associated enterprise has allowed the deadline for appeal to expire or has withdrawn any such appeal before a decision was delivered.

Interplay with domestic litigation

- If the taxpayer submits a request to initiate a MAP case and is simultaneously involved in domestic litigation in order to challenge the notice of assessment, and despite the findings that have resulted in double taxation, this litigation does not prevent the MAP case from starting or the competent authorities from beginning to make contact.
- The taxpayer is still entitled to appeal to the domestic courts if such an appeal regards matters other than those addressed in the MAP.

If the taxpayer submits a request to initiate a MAP case and is simultaneously involved in domestic litigation one of the following cases could occur:

- conclusion of a MAP agreement before a decision has been issued by the judicial body (remote case): the taxpayer can accept the outcome of the agreement or can reject it contending with the decision
or
- a decision is issued by the judicial body before the conclusion of a MAP procedure: if the decision issued by the judicial body does not eliminate the double taxation this phenomenon will persist unless the foreign competent authority signs a friendly agreement conforming to the decision of the national juridical body
or
- withdrawal of the appeal. In the view of the Italian tax authorities the arbitration can be carried out only when the terms for appealing a notice of assessment have expired, or when the litigation is withdrawn before a judgment is delivered. In this latter hypothesis, the two year term for the initiation of the arbitration referred to above runs from the date of withdrawal of the tax litigation.

Suspension of the tax collection

- When a mutual agreement procedure and possible arbitration phase are pending, the Revenue Agency may authorise the suspension of tax collection or enforcement of higher taxes levied under Article 110(7) of the Italian Income Tax Code, with interest and penalties.
- The suspension procedure is strictly linked to the admissibility of the request to initiate a MAP under the Arbitration Convention.
- It is up to the competent tax office to evaluate whether it should demand an appropriate guarantee to secure the tax debt.
- If the taxpayer is simultaneously pursuing litigation to challenge the same findings at issue in the mutual agreement procedure, suspension of collection will be allowed on condition that the taxpayer abandons this litigation.

International Standard Ruling and Advance Pricing Agreements

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- The international standard ruling is part of the tax compliance policy which aims to improve cooperation and dialogue between taxpayers and the tax administration.
- It provides legal certainty to both of the parties preventing legal disputes and reducing the risk of international double taxation.
- The recent introduction of bilateral and multilateral agreements aims at the complete reduction of the risk of double taxation.
- The international standard ruling is addressed to enterprises with international activity which intend to agree in advance with the Italian tax administration:
 - the method for calculating the arm's length value of the transactions carried out with related parties, as provided by paragraph 7 of Article 110 of Italian Tax Code ('ITC') - **Advance Pricing Agreement**
 - the application of the provisions of the law concerning income paid to or received from non-resident entities in specific cases
 - the application of the provisions of the law concerning the attribution of profits or losses to permanent establishments.

Definition

Agreement between the taxpayer and the tax administration which make it possible in advance and for a set period of time to determine the method for calculating the arm's length value referable to the transaction covered by the agreement (as foreseen by the OECD Guidelines, chapter IV).

- unilateral APA : involves one tax administration
- bilateral/multilateral APA: involves tax administrations of two or more than two countries.

The international standard ruling is comparable to a unilateral APA in that it constitutes an agreement which binds the taxpayer and the Italian tax administration.

Characteristics of the agreement

- Life span of 3 years starting from the year of its conclusion.
- Renewable for 3 additional years.
- Interaction (Relationship) between APA and tax audits.
- The average duration for conclusion of unilateral APA is 16 months without considering the time for preparing the procedure.
- Tax authority cannot carry out tax audits on the topics covered by the APA, except to verify the correct application of the agreement.

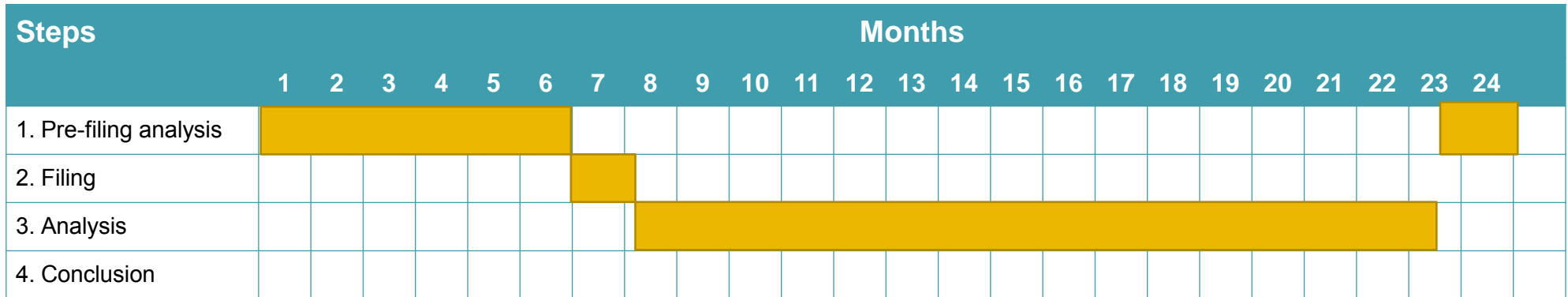
Advantages

- The procedure does not require a participation fee.

Choice between unilateral and bilateral APA	
Unilateral APA	Bilateral APA
Higher efficiency in obtaining the procedure	
	Higher reduction of risks (coverage extended to more countries)
Higher chance of successful conclusion	
	Lower chance of 'extreme' results
Greater involvement of the taxpayer	
	Once obtained for certain subsidiaries, provides indirect benefits to the subsidiaries operating in other countries
Once obtained, it is the most effective way to manage changes in frameworks or manage additional transaction flows	

Main steps - Unilateral APA

- In Italy the average duration for the conclusion of unilateral APA is 16 months
- The conclusion of APA foresees the following steps:



1. ANALYSIS AND PRE-FILING

1.a Preparation of a TP Study (functional analysis, economic analysis, etc.)

1.b Pre-Filing meeting

2. FILING

2.a Preparation of the unilateral APA application

2.b Presentation of the APA application to the tax administration

3. ANALYSIS AND PROCEDURES

3.a Meeting with the Ruling Office

3.b Corporate interviews

3.c Additional technical analysis

4. CONCLUSION

4.a Finalizing the APA agreement

5. MAINTENANCE AND RENEWAL

5.a Annual maintenance

5.b Three-year renewal

1. Pre-filing analysis

- Prior meeting with the International Ruling Office on request of the taxpayer.
- Non-formal elements with respect to the ruling procedure.
- Opportunity to act on anonymous basis.
- General issues.
- Increase of the meetings in the period 2009-2011.

2. Pre-filing analysis

- Access to the ruling procedure on a voluntary basis.
- Not subject to the payment of an accession fee.
- Sent by registered letter with return receipt on unstamped paper in unsealed envelope to the Ruling Office.

Subjective requirements

- Enterprise with international activity (distinguishing between resident and non-resident subjects).

Objective requirements

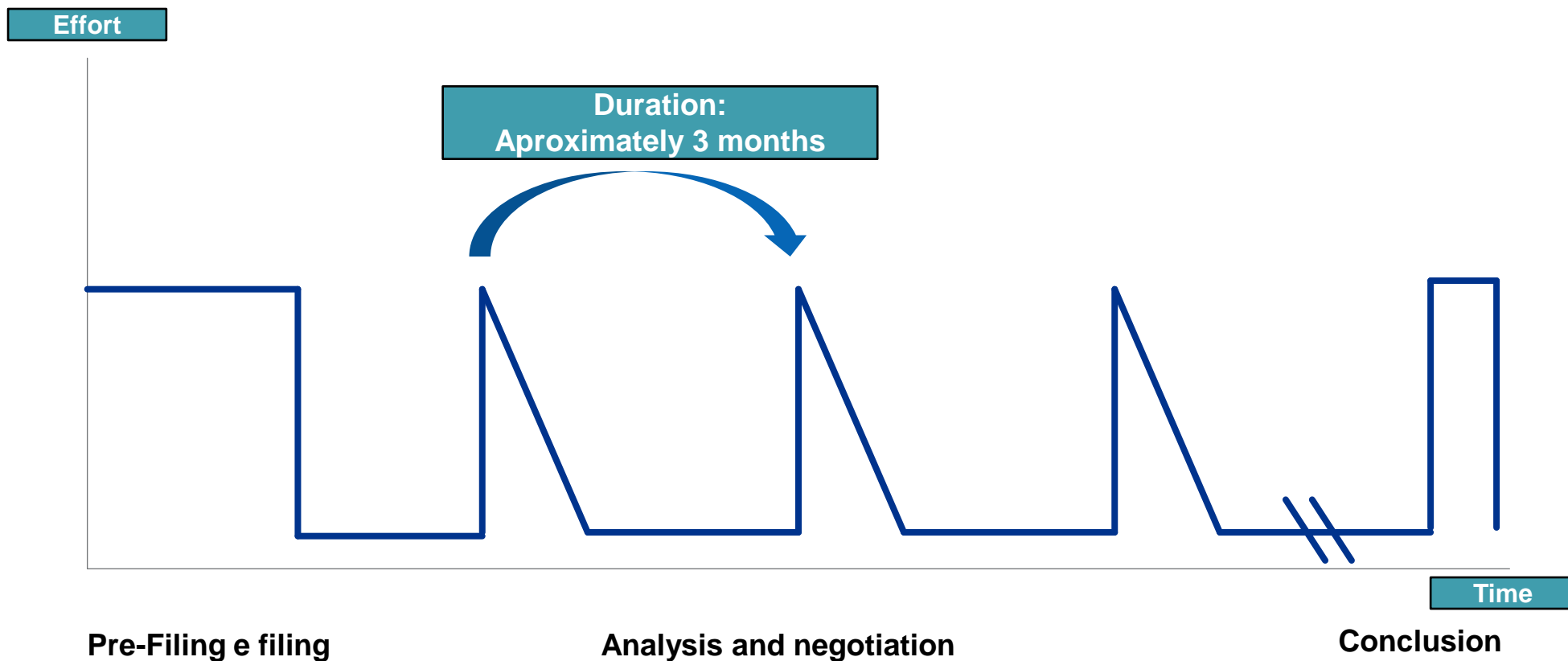
- Name of the enterprise, registered office or fiscal domicile, VAT registration, national address, documents giving evidence of the possession of the subjective requirements.
- Clear indication of the object of the ruling.
- The goods/services which are the object of the cross-border transactions.
- Types of transactions.
- Non-resident companies with which said transactions are carried.
- Criteria/methods used to determine the arm's length value of the intra-group transactions.

3. Procedural issues

- Meeting with the taxpayer scheduled by the Office within thirty days from the receipt of the application.
- Several meetings with the taxpayer during which any further documentation can be required.
- One or more visits to the premises where business is carried on and interviews.

4. Outcome of the procedure and effects of the agreement

- The procedure must be completed within 180 days of the date of the application was filed (formal term).
- Setting out the criteria and methods for calculating the normal value of the transactions or the criteria for application of the relevant legislation.
- Binding for both parties.
- In force for three years starting from the tax period in which it is signed.
- During the validity period controls that the terms of the agreement are complied.
- Submission of an application for renewal, at least ninety days before the validity period expires.



Economic analysis

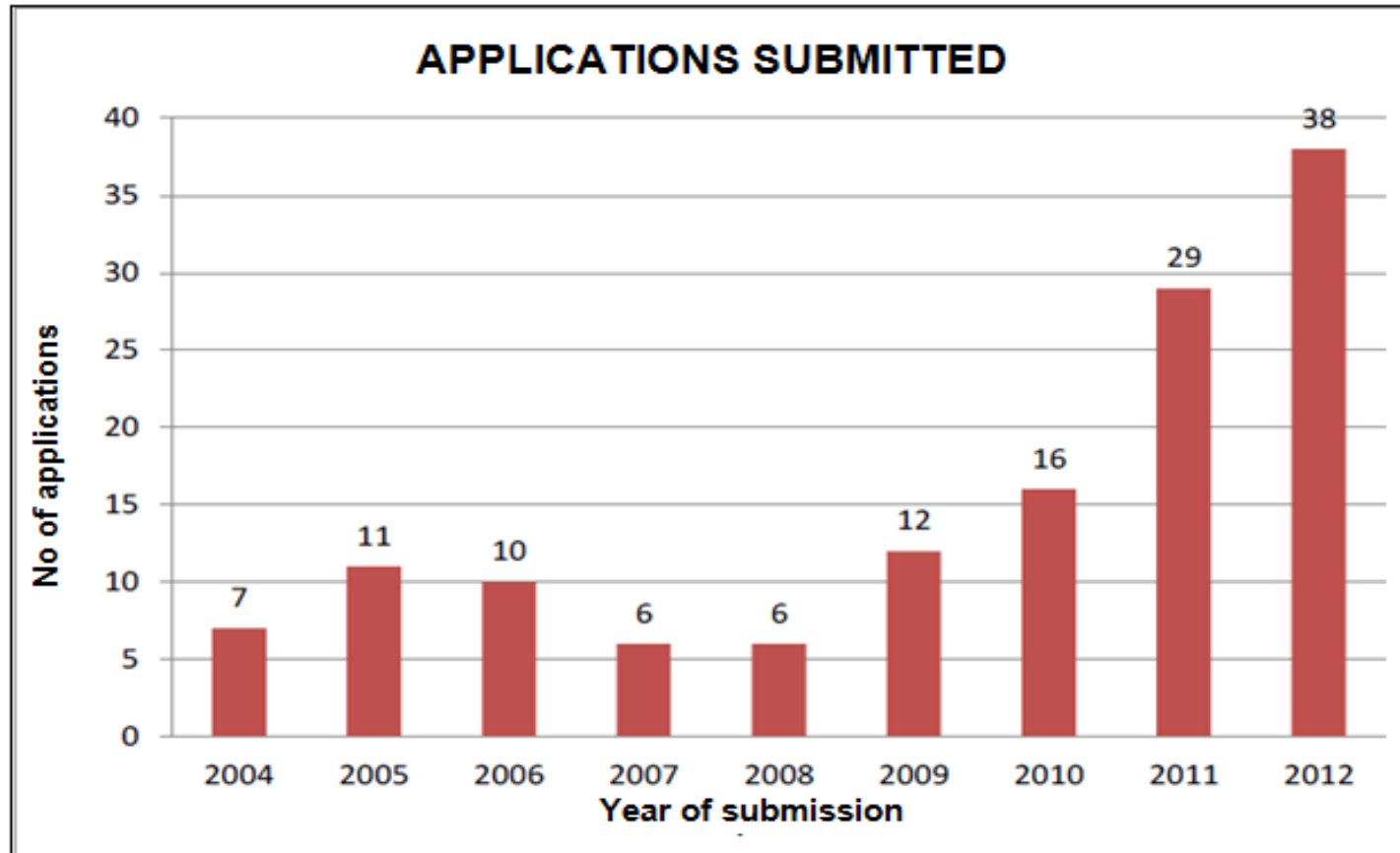
- The Ruling Office has a wide experience on economic analysis.
- Some differences exist with respect to the analysis carried out for the Proper Documentation.
- Timing of the economic analysis.
- Ruling is particularly useful for complex issues (eg; restructuring, location savings intangibles) that require non-standard economic analysis.

Interplay with the Ruling Office

- Indication of the taxpayer purposes: reasonable and transparent approach.
- The optimal level of disclosures: functions, financial data, value chain.

Management of the years prior to the conclusion of International ruling

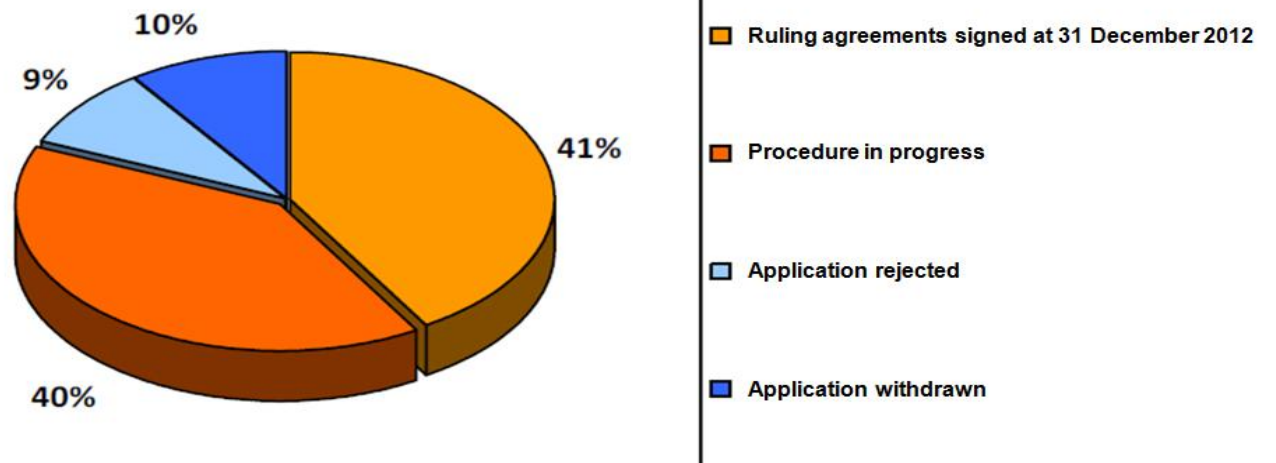
Increase in the last three-year (2010-2012) of the number of **applications submitted** (source: International Standard Ruling Report, II edition)



135 international ruling applications submitted during the period (2004-2012), of which:










- 56 procedures concluded with the agreement signed
- 54 procedures in progress
- 13 procedures concluded for the withdrawal by the taxpayer or by the tax authority

Main reasons: changes of objective or subjective requirements as a result of company restructuring



Unilateral APA **does not avoid completely** the risk of **international double taxation** of taxable incomes related to intercompany cross-border transactions.

In the period 2010-2012 21 applications of bilateral/multilateral APA were submitted and 19 are those in progress at 31 December 2012.

BILATERAL APA per <u>country</u>		
	FRANCIA	1
	GERMANIA	3
	GIAPPONE	2
	OLANDA	2
	REGNO UNITO	1
	SPAGNA	1
	STATI UNITI D'AMERICA	4
	SVEZIA	2
	SVIZZERA	3
	TOTAL APA	19

The majority of taxpayers submitting international ruling applications are:

- subjects of **medium/large size** (approximately **84%**).

The class of taxpayers who submitted an application for international ruling is rather wide in terms of business sectors:

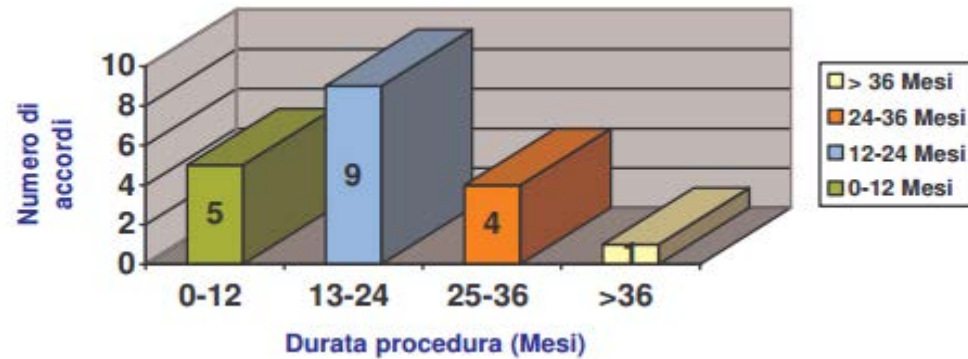
- **52%** are subjects performing **manufacturing activities**, among these **one third** is operating in highly specialized and high-tech sectors
- **48%** are subjects operating **in the trade or service sector**.

CLASSES OF TAXPAYERS BY TURNOVER		
Taxpayers' turnover	Number of taxpayers	%
Turnover < 100 M euros	10	15,38%
Turnover from 100 to 300 M euros	11	16,92%
Turnover > 300 M euros	44	67,69%
TOTAL	65	100,00%

- Average time taken to reach an agreement in the period 2004-2012: **16 months**.
- Physiological reasons that can lengthen the completion time:
 - delay in providing documentation on the part of the taxpayer
 - changes in the functional profile of the taxpayer
 - group’s reorganizations
 - time required for scheduling meetings with non-resident representatives of the company.

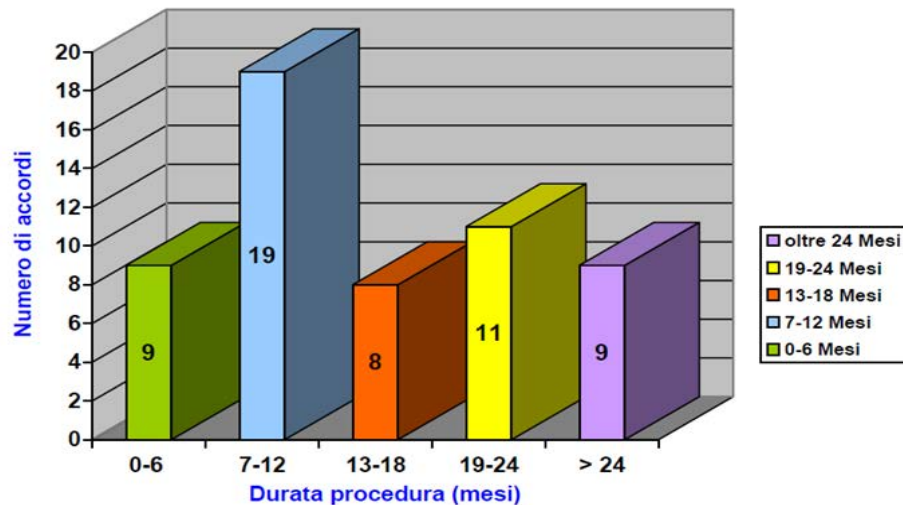
Months	No of signed agreements
<i>da 0 a 6</i>	9
<i>da 7 a 12</i>	19
<i>da 13 a 18</i>	8
<i>da 19 a 24</i>	11
<i>oltre 24</i>	9
Total agreements	56
AVERAGE TIME: 16 MONTHS	

Comparison between the data presented in the first and second bulletin with reference to the international ruling agreements signed.



2004-2009

- Average time taken to reach the agreement: 20 months.

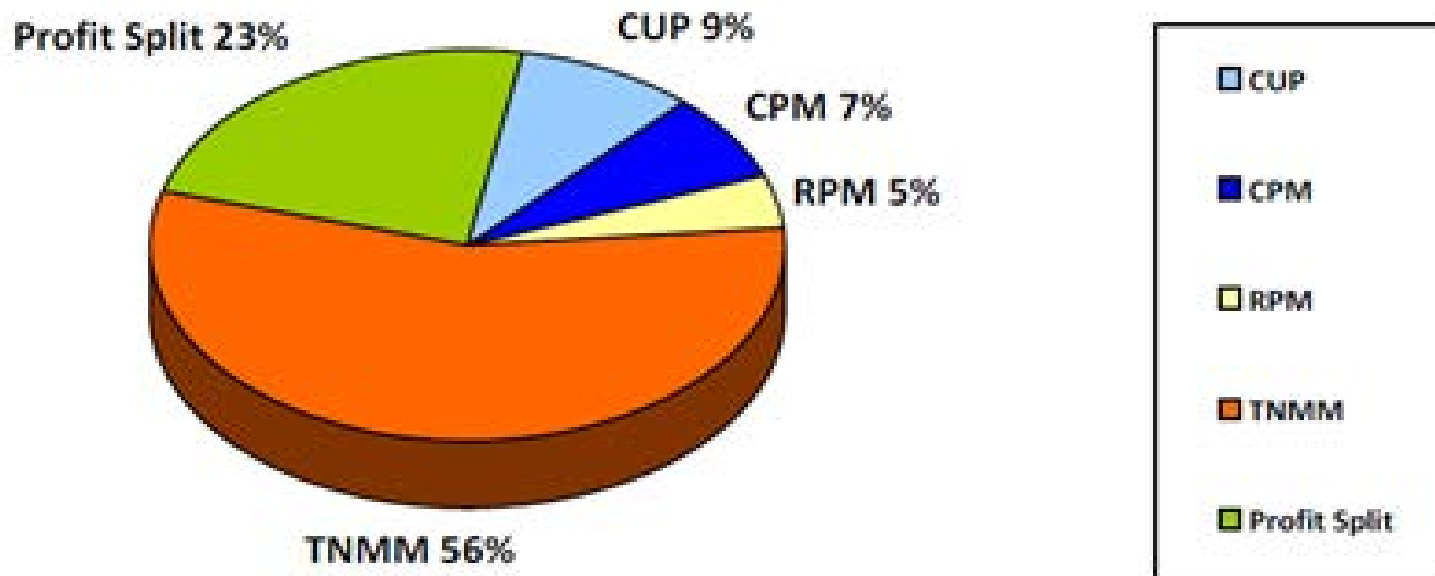


2010-2012

- Average time taken to reach the agreement: 14 months.

With reference to agreements concerning transfer prices, the methods use are:

- **79%** profit methods
- **21%** traditional methods.



Country Update in Italy M&A Market: Global and Italy Overview

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Global M&A Market Overview

2000 –2013: Number of completed transactions per year and equivalent value of the target companies from 2000 to 2013

N. of deals

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Americas	11.918	8.600	7.804	7.849	8.866	9.358	10.481	11.665	10.231	8.822	9.273	9.856	9.700	9.818
Europe	12.838	10.154	7.768	7.502	7.579	8.758	9.560	10.320	10.023	10.997	12.290	12.367	11.079	10.290
Asia Pacific	4.539	4.291	4.321	5.628	6.470	6.824	6.848	6.891	7.661	8.163	7.757	7.056	6.985	6.565
Africa & Middle East	618	401	200	269	296	361	439	447	591	528	668	686	777	714
Total	29.913	23.446	20.093	21.248	23.211	25.301	27.328	29.323	28.506	28.510	29.988	29.965	28.541	27.387

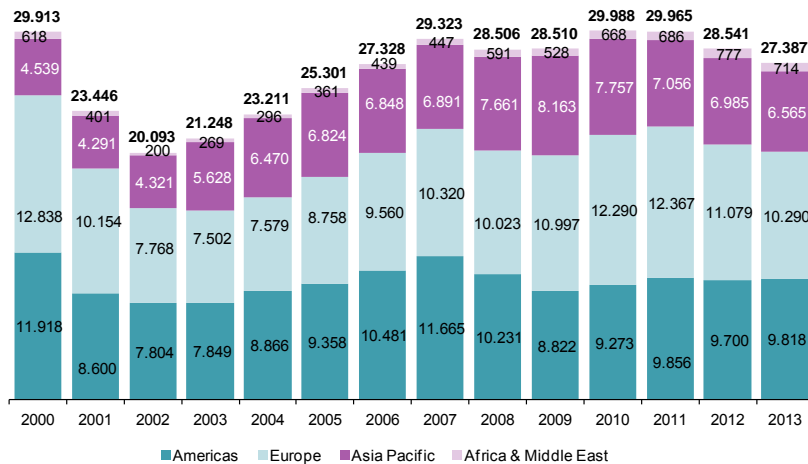
EUR bn

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Americas	2.222	1.481	708	457	699	827	1.238	1.454	756	658	689	794	823	761
Europe	1.399	646	535	442	428	756	877	977	756	367	371	527	390	428
Asia Pacific	394	323	205	174	178	268	275	338	264	194	290	341	304	256
Africa & Middle East	18	31	9	13	12	19	44	29	35	19	43	23	32	36
Total	4.033	2.481	1.457	1.086	1.318	1.870	2.433	2.797	1.811	1.239	1.393	1.685	1.549	1.482

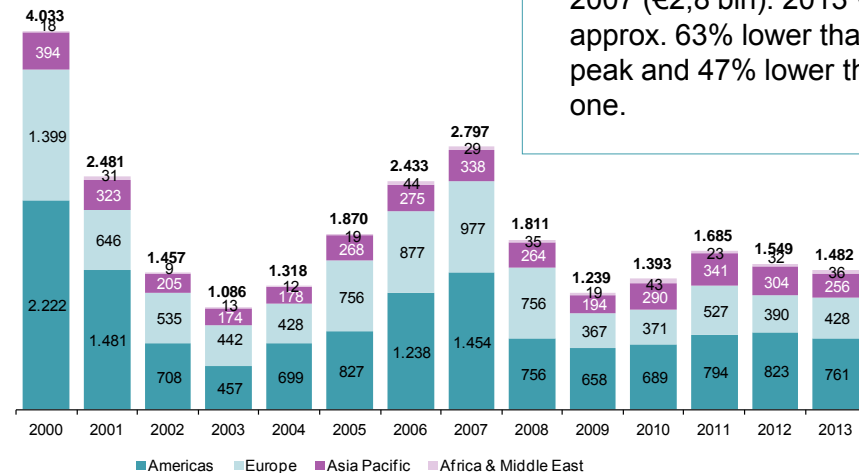
Outlook

- In terms of volume the Global M&A activity, after reaching a peak in 2000, has experienced a contraction between 2001 and 2005. In 2007 volumes reached back to previous peak levels. Between 2008 and 2013 volumes have been within a range of 28,5 and 27,5 thousand deals.
- In terms of deal value, peaks were recorded in 2000 (€4 bln) and in 2007 (€2,8 bln). 2013 values are approx. 63% lower than the 2000 peak and 47% lower than the 2007 one.

Number of Deals



Value (EUR bn)



Source: KPMG analysis on Thomson Financial data

Outlook for 2014

- Expectations on M&A activity trends for 2014 are moderately optimistic. The slow recovery of global economies and return to normality of the financial markets, after a period of high tensions partly related to the sovereign debt crisis in the Eurozone, along with operators' renewed confidence in the development of their business and availability of capital, should positively impact investment decisions.
- Furthermore, the consolidation process which is underway in several sectors including the technology, financial and pharmaceutical sectors, and resumption of privatisations in a number of countries enable us to reasonably foresee a rather buoyant M&A market in the current year.
- Transactions announced in these first six months of 2014 confirm a confident return to M&As as a tool for the growth and consolidation of businesses and markets.
- The top deal completed in 2014 in terms of value (USD 130,3 billion) was the deal with which Verizon Communications Inc acquired the residual 45% of Verizon Wireless Inc from its partner Vodafone Group Plc.

Italian M&A Market Overview

2000 – 2013: Number of completed transactions per year and equivalent value of the target companies from 2000 to 2013

N. of deals

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Italy / Italy	467	359	278	271	294	299	303	256	256	117	149	158	186	205
Italy / Abroad	182	135	85	72	32	70	91	121	123	42	47	62	63	70
Abroad / Italy	131	111	90	75	91	88	73	82	116	38	83	109	91	106
Total	780	605	453	418	417	457	467	459	495	197	279	329	340	381

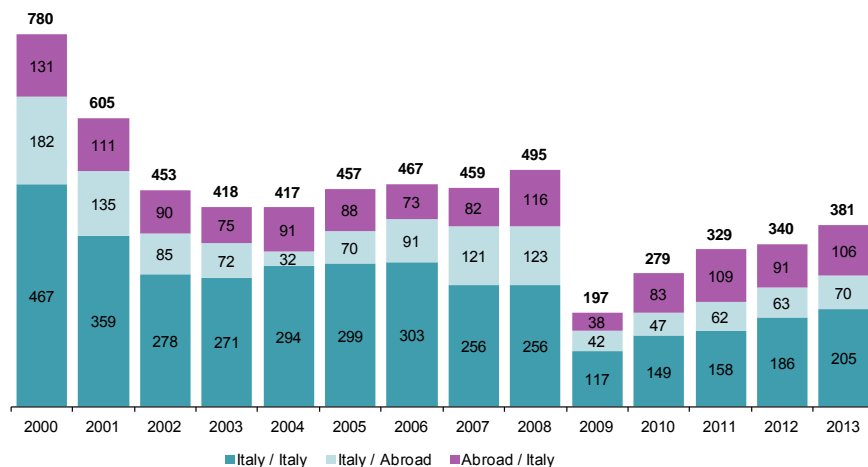
EUR bn

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Italy / Italy	70	30	29	73	18	63	63	60	24	13	7	7	17	14
Italy / Abroad	40	15	6	7	4	29	15	60	20	13	2	3	2	4
Abroad / Italy	19	12	13	16	7	28	22	28	12	7	10	18	7	13
Total	129	57	48	96	29	120	100	148	56	34	20	28	26	31

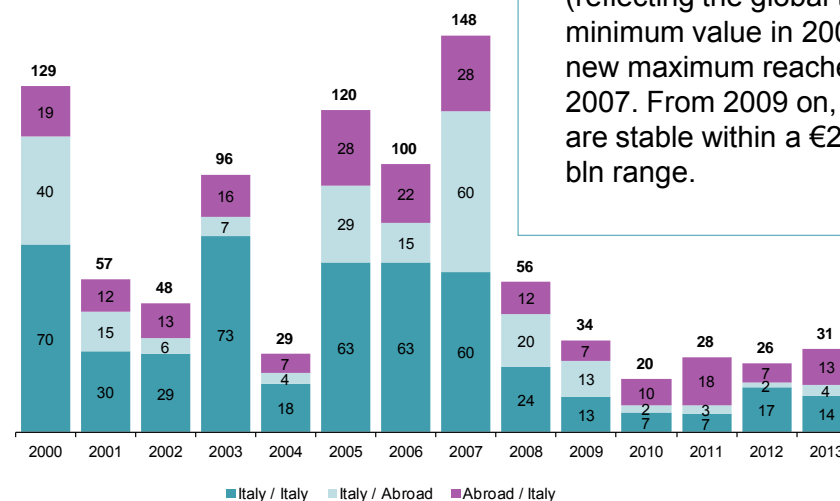
Outlook

- In terms of volumes the Italian M&A activity, after reaching a peak in 2000, has experienced a contraction/stabilization till 2008. From 2009 on, the Italian market has witnessed a drift from the global market trend and a slow recovery from 2010.
- In terms of values, the Italian market recorded a peak in 2000 (reflecting the global trend), a minimum value in 2004 and a new maximum reached in 2007. From 2009 on, values are stable within a €20 to €35 bln range.

Number of Deals



Value (EUR bn)



Source: KPMG analysis on Thomson Financial data

Overview

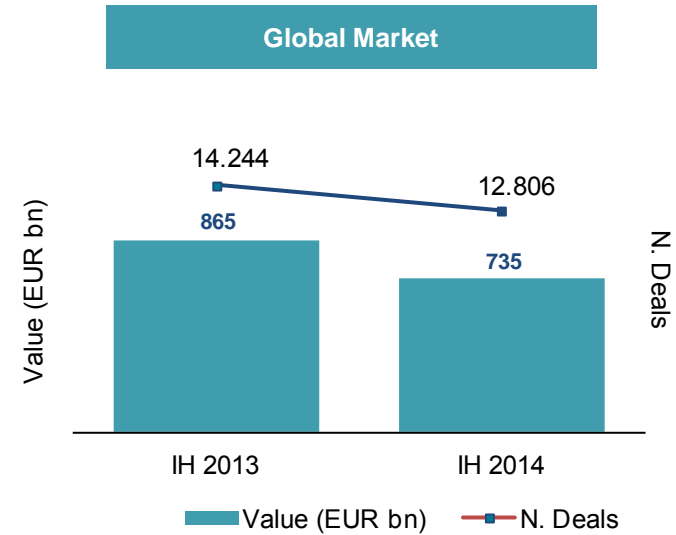
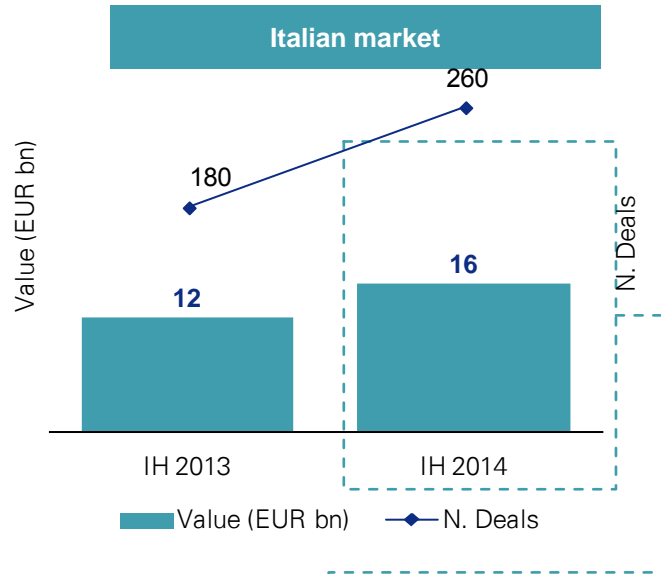
- The first signs of improvement in the main economic indicators and prospects for a moderate recovery in Italian economic activity should help strengthen confidence in Italy, supporting businesses' and financial operators' investment choices in 2013.
- The positive results achieved from mergers and acquisitions last year let us reasonably foresee a stronger rebound in M&A activity in Italy.
- The stability of the financial markets, which should be ensured also in the months to come after the European Central Bank's recent decisions to maintain official rates within or under the current levels for the medium term, and the foreign investors' strong capital flows should support further development of cross border transactions.

Main deals of 2014

- In the first six months of 2014 the Italian market has been characterized by a strong start. We can highlight some important deals:
 - the completion of Fiat's USA acquisition (started in 2009) of Chrysler. Through the acquisition of 41.5% of Chrysler Group LLC's capital, Fiat has gained full control of the US automobile group (value: € 2,7 billion);
 - the merger of Fondiaria-Sai, Milano Assicurazioni, Unipol Assicurazioni and Premafin which led to the birth of UnipolSai Assicurazioni SpA, whose shares made their debut on the Italian Stock Exchange on 6 January replacing the Fondiaria- Sai shares (value: €2,7 billion);
 - the acquisitions made by People's Bank of China of the 2,1% stake both in Eni and Enel for an overall consideration of about €3,1 billion (*);
 - Jazz Pharmaceuticals Plc's acquisition of 98% of Gentium SpA, Como-based biotech company listed on the Nasdaq, for €0,7 billion.

(*) value of the acquired stake until March 31, 2014

M&A Market: Global and Italian 1H 2014 Outlook

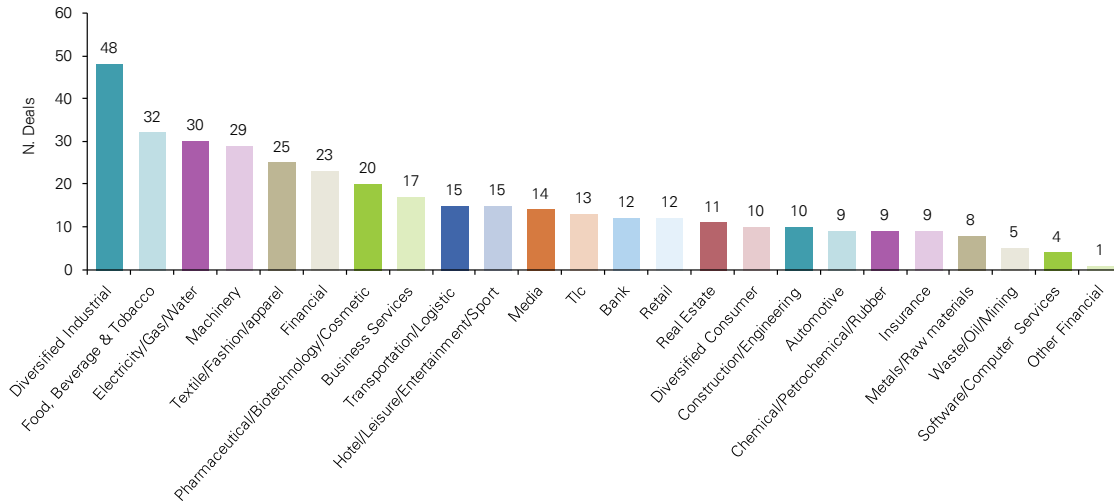


IH 2014				
	N. Deals		EUR bn	
Abroad / Italy	82	32%	5,1	32%
Italy / Abroad	43	17%	3,5	22%
Italy / Italy	135	52%	7,1	45%
Total	260		15,7	

Source: KPMG analysis on Thomson Financial data

Italian M&A Market Focus

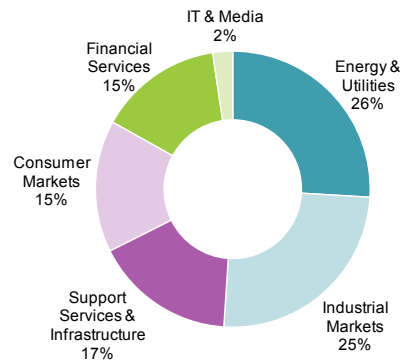
2013: M&A volume by Acquired company's sector



2013: Summary by macro sector (Volume)

Macro Sector - Target		
Sector	Total	%
Consumer Markets	114	29,9%
Industrial Markets	113	29,7%
Financial Services	45	11,8%
Support Services & Infrastructure	43	11,3%
Energy & Utilities	35	9,2%
IT & Media	31	8,1%
Total	381	

2013: Value by target industry (%)



Note:

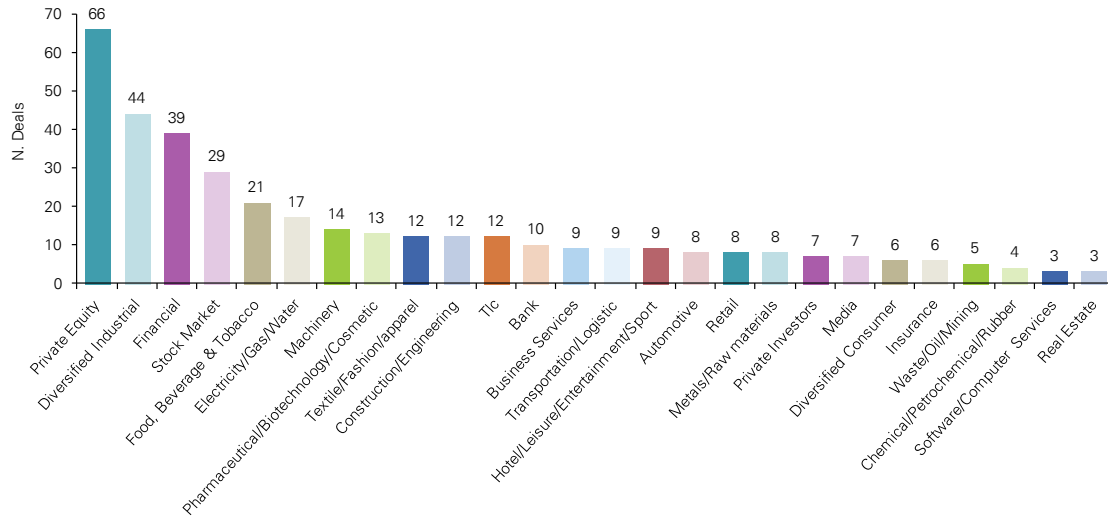
- Consumer Market = Diversified Consumer, Pharmaceutical/Biotechnology/ Cosmetic, Food, Bevs & Tobacco, Retail, Textile/ Fashion/apparel, Hotel/leisure/Entertainment/Sport.
- Energy & Utilities = Electricity/Gas/Water, Waste/Oil/Mining
- Financial Services = Insurance, Bank, Financial, Other financials, Wealth management, Private Equity.
- IT and Media = Media, Tlc, Software/Computer Services
- Industrial Market = Automotive, Chemical/Petrochemical/Rubber, Construction/Engineering, Diversified Industrials, Machinery, Metals/ Raw materials, Steel industry.
- Support Serv.&Infrastr. = Business Services, Real Estate, Transportation/Logistic

2013: Summary by macro sector (EUR bn)

Macro Sector - Target	
Energy & Utilities	8,0
Industrial Markets	7,8
Support Services & Infrastructure	5,1
Consumer Markets	4,8
Financial Services	4,5
IT & Media	0,7
Total	30,9

Source: KPMG analysis on Thomson Financial data

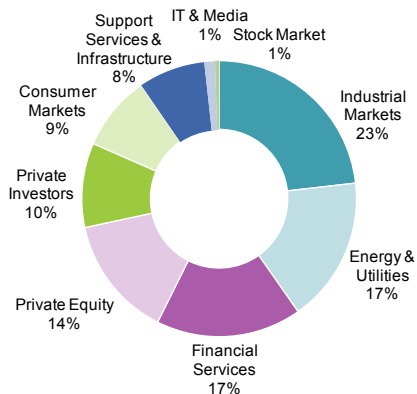
2013: M&A volume by Acquiring company's sector



2013: Summary by macro sector (Volume)

Macro Sector - Bidder		
Sector	Total	%
Industrial Markets	90	23,6%
Consumer Markets	69	18,1%
Private Equity	66	17,3%
Financial Services	55	14,4%
Private Investors	29	7,6%
Energy & Utilities	22	5,8%
IT & Media	22	5,8%
Support Services & Infrastructure	21	5,5%
Stock Market	7	1,8%
Total	381	100%

2013: Value by bidder industry (%)



Note:

- Consumer Market = Diversified Consumer, Pharmaceutical/Biotechnology/Cosmetic, Food, Bevs & Tobacco, Retail, Textile/Fashion/apparel, Hotel/leisure/Entertainment/Sport.
- Energy & Utilities = Electricity/Gas/Water, Waste/Oil/Mining
- Financial Services = Insurance, Bank, Financial, Other financials, Wealth management, Private Equity.
- IT and Media = Media, Tlc, Software/Computer Services
- Industrial Market = Automotive, Chemical/Petrochemical/Rubber, Construction/Engineering, Diversified Industrials, Machinery, Metals/Raw materials, Steel industry.
- Support Serv.&Infrastr. = Business Services, Real Estate, Transportation/Logistic

Source: KPMG analysis on Thomson Financial data

2013: Summary by macro sector (EUR bn)

Macro Sector - Bidder	
Industrial Markets	7,2
Energy & Utilities	5,3
Financial Services	5,3
Private Equity	4,4
Private Investors	3,1
Consumer Markets	2,7
Support Services & Infrastructure	2,4
IT & Media	0,4
Stock Market	0,1
Total	30,9

2013: top 10 transactions

Target	Country	Bidder	Country	Stake	EUR bn
ENI East Africa SpA (ENI Group)	Italy	CNPC China National Petroleum Corporation	China	28,6%	3,2
Gemina SpA	Italy	Atlantia SpA	Italy	100,0%	2,2
Loro Piana SpA	Italy	LVMH Moët Hennessy Louis Vuitton SA	France	80,0%	2,0
Avio SpA (BU 'Military and civil engines')	Italy	General Electric Corporation	USA	100,0%	1,9
Snam SpA	Italy	Stock Market	Italy	11,7%	1,5
Generali PPF Holding BV	Czech Republic	Assicurazioni Generali SpA	Italy	25,0%	1,3
Cerved Group SpA	Italy	CVC Capital Partners	UK	100,0%	1,1
CNH Global NV	Netherlands	Fiat Industrial SpA	Italy	12,0%	1,1
Impregilo SpA	Italy	Salini Costruttori SpA	Italy	62,3%	1,0
EcoRodovias Infraestrutura e Logística SA (Impregilo Group)	Italy	Primav Construções e Comércio SA, BTG Pactual	Brasil	29,2%	0,9
Total top 10					16,2
Total 2013					30,9
% on total 2013					52%

Source: KPMG analysis on Thomson Financial data

2012: top 10 transactions

Target	Country	Bidder	Country	Stake	€ bln
Sace SpA	Italy	Cassa Depositi e Prestiti SpA	Italy	100,0%	6,0
Snam SpA	Italy	Cassa Depositi e Prestiti SpA	Italy	30,0%	3,5
Transalpina di Energia (azionista di Edison SpA)	Italy	EDF Electricité de France SA	France	50,0%	1,7
Fintecna SpA	Italy	Cassa Depositi e Prestiti SpA	Italy	100,0%	1,6
Edipower SpA	Italy	Delmi SpA	Italy	70,0%	0,9
Grupo Costanera SA (Gruppo Atlantia SpA)	Chile/Italy	Canada Pension Plan Investment Board	Canada	50,0%	0,9
Ducati Motor Holding SpA	Italy	Automobili Lamborghini SpA (Audi AG - Gruppo Volkswagen)	Italy/Germany	100,0%	0,7
Valentino Fashion Group SpA	Italy	Mayhoola for Investment	Qatar	100,0%	0,7
UniCredit SpA	Italy	Pamplona Capital Management LLP	UK	3,0%	0,7
ISAB Srl	Italy	OAO Neftyanaya Kompaniya LUKOIL	Russia	20,0%	0,5
Total Top 10					17,2
Total 2012					25,7
% on Total 2012					67,0%

Source: KPMG analysis on Thomson Financial data



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