Italy
Country Profile

EU Tax Centre

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Key tax factors for efficient cross-border business and investment involving Italy

EU Member State Yes

Double Tax Treaties With:

Albania Algeria Argentina Armenia Australia Austria Azerbaijan Bangladesh Belarus Belgium Bosnia Herzegovina[b] Brazil Bulgaria Canada Chile China Croatia Cyprus Czech Rep. Congo Denmark Ecuador Egypt Estonia Ethiopia	Finland France Georgia Germany Ghana Greece Hong Kong Hungary Iceland India Indonesia Rep. of Ireland Israel Ivory Coast Japan Jordan Kazakhstan Kuwait Kyrgyzstan [a] Rep. of Korea Latvia Lebanon Lithuania	Luxembourg Macedonia Malaysia Malta Mauritius Mexico Moldova Montenegro[b] Morocco Mozambique Netherlands New Zealand Norway Oman Pakistan Philippines Poland Portugal Qatar Romania Russia San Marino Saudi Arabia Senegal Serbia[b]	Singapore Slovakia Slovenia South Africa Spain Sri Lanka Sweden Switzerland Syria Tanzania Thailand Tajikistan [a] Trinidad & Tobago Tunisia Turkey Turkmenistan [a] UAE Uganda UK Ukraine US Uzbekistan Venezuela Vietnam Zambia.

Notes: from the Italy Ministry of Finance's website, updated on January 25, 2017
(a) Treaty signed with former USSR applies.
(b) Treaty signed with former Yugoslavia applies.

Forms of doing business	Joint-stock company (S.p.A.) and Limited liability company (S.r.l)
Legal entity capital requirements	Minimum capital requirement of EUR 50,000 for S.p.A. and EUR 10,000 for S.r.l (an S.r.l. may have capital of less than EUR 10,000, and more than EUR 1, provided that contributions are made only in cash and fully paid up).
Residence and tax system	A company or entity, including a trust, is resident in Italy if, for the greater part of the fiscal year, its registered office, place of management, or main business purpose is in Italy. Foreign companies owning a controlling interest in Italian companies are deemed to be resident in Italy, unless otherwise proven, if they are controlled by an Italian resident company or individual, or, alternatively, if they are managed by a board of directors the majority of which are Italian resident individuals. Resident companies are taxed on their worldwide income, while non-residents are only taxed on their Italian source income, as provided in the domestic tax law. A non-resident company is also deemed to be resident in Italy (unless evidence to the contrary is provided) if its assets mainly comprise of units of Italian closed-end real estate investment funds and if it is directly or indirectly controlled (subject to relevant influence) by an Italian resident person (company or individual). Undertakings for collective investment (CIVs) set up in Italy are resident in Italy for tax purposes and are liable to corporate income tax (IRES). Under certain conditions, however, they are exempt.
Compliance requirements for CIT purposes	The fiscal year consists of the year or management period of the company, determined by Law or by the articles of association; if there are no specific provisions, then the fiscal year is equal to the calendar year. A tax return has to be filed within the last day of the ninth month following the end of the fiscal year. Two advance payments are due by June 30 and November 30; the balance must be paid by June 30 of the following year.
Tax rate	As of January 1, 2017, the standard corporate income tax rate is 24 percent (previously 27.5 percent); qualifying banks and financial institutions, except qualifying investment fund management companies, are subject to a 3.5 percent surtax (leading to a 27.5 corporate income tax rate). A 3.9 percent Regional Income Tax (IRAP) rate also applies to corporates. The standard

IRAP rate can be increased for financial/insurance companies (i.e. 4.65 percent for banks and 5.9 percent for insurance companies). Rates may vary by region.

Withholding tax rates

On dividends paid to non-resident companies

26 percent (1.2 percent for dividends to EU companies, 0 percent if the EU Parent-Subsidiary Directive applies).

On interest paid to non-resident companies

26 percent (0 percent if the EU Interest and Royalties Directive applies).

On patent royalties and certain copyright royalties paid to non-resident companies

30 percent (generally applied to 75 percent of the gross royalty). No WHT if the EU Interest and Royalties Directive applies.

On fees for technical services

No

On other payments

No, in general.

However, a 30 percent WHT applies to professional services if the recipient is a non-resident (including a non-resident company), unless the professional services are carried out abroad.

Branch withholding tax

No

Holding rules

Dividend received from resident/non-resident subsidiaries?

Exemption (95 percent). The exemption does not apply, i.e. the income is 100 percent taxable, if the dividends are derived from holdings in entities set up in a low-tax jurisdiction (unless the CFC rule applies or the resident shareholder is able to demonstrate, for instance through an advance ruling request, compliance with the 'subject to tax' safe harbor rule - see CFC section).

For foreign dividends, the 95 percent exemption is only available on condition that the distributing entity was not able to deduct the dividends from its taxable income. As of 2016, under European Law no. 122/2016, dividends from an EU subsidiary that meets the conditions set out under the EU Parent-Subsidiary Directive, are exempt to the extent that they are not deductible for corporate tax purposes by the subsidiary (previously, exemption applied only if the proceeds were fully non-deductible for the subsidiary).

Capital gains

Capital gains realized by resident companies from the sale of shares are included in taxable income. Exemption (95 percent) is available subject to participation exemption conditions.

Capital gains from the transfer of shares in Italian companies by a non-resident company (with no permanent establishment in Italy) are taxable in Italy. If the shares sold during a 12-month period are not listed and represent more than 20 percent of the voting rights or 25 percent of the stated capital ('qualifying' shares), only 49.72 percent of the gain is included in taxable income and taxed at the general 27.5 percentage rate (50.28 percent is exempt). The same percentage of capital losses is deductible. If the resident company is not listed and the shares sold during a 12-month period do not represent more than 20 percent of the voting rights or 25 percent of the stated capital ('non-qualifying' shares), the capital gains are subject to a 26 percent final substitute tax. Residents of white-list countries are exempt from taxation on these capital gains.

If the resident company is listed and the amount of shares sold during a 12-month period does not represent more than 2 percent of the voting rights or 5 percent of the stated capital ('non-qualifying' shares), the capital gain is not regarded as Italian-source income. By contrast, if the shares are listed and 'qualifying', 49.72 percent of the capital gain is included in taxable income and taxed at the general 27.5 percentage rate (50.28 percent is exempt).

The above percentages (i.e. 49.72 and 50.28) are expected to be revised shortly to reflect the reduction in the corporate income tax rate (from 27.5 to 24 percent). If a double tax treaty applies, capital gains are usually taxable only in the seller's country of residence.

Tax losses

Tax losses can be carried forward and offset up to an amount equal to 80 percent of taxable income of each of the following fiscal years. However, the 80 percent limit does not apply to tax losses incurred in the first 3 years of business, which can be offset against 100 percent of the taxable income.

Carry forward is not allowed when both of the following apply: (i) the majority of the shares carrying voting rights at ordinary shareholders' meetings are, even temporarily, transferred to third parties, and (ii) the company's main activity is no longer the actual business that it pursued in the tax years when it incurred the losses (this change is significant if it occurs in the tax year of the transfer or the two previous or subsequent years). There are, however, certain safe harbor rules (i.e., business vitality tests).

There may also be specific limits on loss carryforwards (i.e. (i) up to the net asset value of the company, and (ii) conditional upon a business vitality test) when a company has been involved in a merger or demerger.

There is no limit on the amount of tax losses that can be transferred to the parent of a tax group and offset against the income of other group entities, if losses originate during the consolidation period (and not before). The parent can carry forward group losses in accordance with the general rules (up to 80 percent of the taxable income of each year, or up to 100 percent if incurred in the first 3 years).

As of the 2017 financial year, certain start-up companies that are at least 20 percent owned by a listed entity are allowed to transfer to the latter the full amount of tax losses incurred in the first 3 years of activity. A consideration should be paid for the transfer, although it is not taxable at the level of the transferor.

Tax consolidation rules/Group relief rules

Yes

Registration duties

EUR 200 (flat amount).

Transfer duties

On the transfer of shares

Financial transaction tax (0.2 percent), usually applicable to purchase of shares issued by resident entities; is not applicable if the transaction occurs between related entities (parties are in a control relation or under common control).

On the transfer of land and buildings

Registration tax:

- 12 percent on transfer of land;

- 9 percent the transfer of real estate assets;

- 2 percent on transfer of immovable properties qualifying as first dwelling;

Cadastral and mortgage taxes (imposte ipotecarie e catastali) apply at the fixed amount of EUR 200 on transfers of residential real estate (the fixed amount is EUR 50 for certain residential real estate transfers, which are exempt from VAT). Cadastral and mortgage taxes are payable on transfers of business real estate at a total rate of 4 percent (1 percent and 3 percent, respectively).

A registration tax of EUR 200 is payable in both cases.

Stamp duties

Stamp duties (imposta di bollo) are levied on certain documents, contracts and registers (e.g. bank cheques, statements of accounts, bills, written contracts, judicial acts, accountancy books). No stamp duty is payable on the transfer of shares.

Real estate taxes

Resident companies are subject to IMU (Imposta municipale propria) in respect of their immovable property (buildings, developable land, rural land) located in Italy. IMU is based on the cadastral value of the immovable property, which is confirmed by the tax authority. The standard IMU rate is 0.76 percent.

However, each Municipality has the right to make upward or downward adjustments to the base rate by a maximum of 0.3 percent. A Municipality can also decide to reduce the base rate down to 0.4 percent where an immovable property is owned by taxpayers subject to IRES.

Controlled Foreign Company rules

CFC income rules apply to controlled companies established in non-EU/EEA, low tax jurisdictions and, under specific conditions, also to controlled companies established in an EU/EEA Member State. There is no longer a 'black list' of jurisdictions and tax regimes contained in a specific Decree.

CFC rules are triggered if a resident controls a non-resident entity or business located in a low-tax jurisdiction (i.e. a State whose ordinary or special regime provides for a nominal tax rate lower than 50 percent of the Italian rate - currently 27.9 percent), unless safe harbor rules apply (i.e. (i) 'business test' or (ii) 'subject to tax test').

CFC rules are also triggered if the business or entity is located in an EU or EEA Member State, if (i) the CFC's effective tax rate is lower than half of the rate that would apply if the business or entity was located in Italy and (ii) its revenues are mainly passive (e.g. interest, royalties, dividends and income from intragroup services). In this case, the Italian taxpayer can avoid CFC income imputation if it can be proved that the CFC is not an artificial structure.

CFC income is computed according to domestic rules on business income and taxed at the level of the resident controlling shareholder, separate from other income and subject to the Italian standard corporate income tax rate.

Transfer pricing rules

General transfer pricing rules

Related party transactions must be at arm's length. Transfer pricing documentation is not mandatory; in case of a tax audit, penalties can be avoided if the taxpayer has drafted transfer pricing documentation in accordance with the required standards, and has communicated this to the tax authority. Further, the taxpayer needs to make such documentation available to the tax auditors within 10 days of the request. A unilateral Advance Pricing Agreement ("APA") procedure is provided for by Italian law. Transfer pricing rules are relevant both for IRES and IRAP purposes.

Documentation requirement?

Transfer pricing documentation is not mandatory; in case of a tax audit, penalties can be avoided if the taxpayer has drafted transfer pricing documentation in accordance with the required standards, has communicated this to the tax authority and makes such documentation available to the tax auditors within 10 days of the request. Ministerial Guidelines were issued in 2010.

Thin capitalization rules

Italian thin cap rule was repealed and since 2008 Italian tax law only provides an earnings stripping rule. Under applicable earnings stripping rules, the deductibility of net interest expenses is allowed up to 30 percent of the borrower's Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA). The excess can be carried forward (subject to the above conditions) with no time limitation. Any excess of EBITDA capacity can be used to increase the EBITDA capacity of the future tax periods. As of 2017, banks and financial companies can fully deduct interest expenses, while insurance companies and asset management companies can only deduct a maximum of 96 percent of their interest expense.

Within a tax group the EBITDA of all the members can be pooled for deduction purposes.

General Anti-Avoidance rules (GAAR)

In 2015, the former 'wide-scope' anti-avoidance rule contained in article 37-bis of Decree no. 600/73, which contained a ‘list’ of transactions potentially suspect of avoidance, was repealed and replaced by a new definition of 'abuse of law', effective from October 2015. The concepts of 'abuse of law' and 'tax avoidance' were merged and a definition of 'abuse of law' was given in the Taxpayers' Charter (i.e. Law no. 212/2000). Previously, the concept of 'tax avoidance' was defined by article 37-bis, while 'abuse of law' was defined only by case law, without any legal definition.

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

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

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

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

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

Specific Anti-Avoidance rules/Anti Treaty Shopping

There are anti-avoidance rules specifically applicable to cross-border transactions (i.e. full taxation of dividends arising in a "black-list" country; CFC rules; TP rules; beneficial ownership clause; deemed residency rule). The former anti-avoidance rule on non-deductibility of expenses from transactions

Provisions with "black-list" taxpayers has been repealed since fiscal year 2016.

According to art. 44 (2) a) of IITC, a financial instrument issued by a non-resident entity is deemed to be similar to shares for domestic tax purposes, and therefore deserves equal treatment (dividends are 95 percent exempt), if two conditions are fulfilled:

- remuneration is wholly represented by a portion of profits of the issuer;

- remuneration is not deductible in the State of residence of the issuer, and non-deductibility results from a declaration of the issuer or other certain and precise elements.

Advance Ruling system

Ordinary ruling and specific advance rulings (e.g. APAs). Since 2016, amendments have been introduced to the legal provisions regarding 'ordinary' rulings and international rulings. Moreover, a new form of ruling on substantial investments has been introduced.

IP / R&D incentives

Stability Law for 2015 has replaced the previous R&D incentive and introduced the following system, as further amended by the Stability Law for 2017.

From 2015 to 2020, an R&D tax credit is available to any enterprise irrespective of its legal form, business sector, accounting standards and size. The 2017 Stability Law clarified that, as of 2017, the credit is also available to resident companies and to Italian permanent establishments of non-resident companies which carry out R&D activities under contracts concluded with resident entities and entities resident in an EEA Member State or in a country which allows an adequate exchange of information with Italy (included in the Decree of September 4, 1996).

The R&D tax credit is 50 percent of the enterprise's extra spending on R&D, measured against its average spending of the three tax periods preceding that in progress on December 31, 2015 (i.e. 2012, 2013 and 2014 for calendar-year taxpayers). There are specific rules for enterprises that have been in business for less than three years. There is a minimum spending requirement of at least EUR 30,000 per year and a maximum credit of EUR 20,000,000 per year (previously the thresholds were EUR 50,000 and EUR 2,500,000 respectively).

Eligible activities include fundamental research, industrial research and experimental development, according to the classification found in the 'Community Framework for State Aid for Research and Development and Innovation'. R&D does not include any routine or periodic changes made to products, production lines, manufacturing processes, existing services or other 'operations in progress', even if such changes are improvements.

To calculate the tax credit, an enterprise can take the costs of the following.

a) Highly qualified staff engaged in eligible R&D activities.

b) Depreciation charges on instruments and laboratory tools (calculated on the basis of the depreciation rates published in the Ministerial Decree of December 31, 1988) costing EUR 2,000 or more per unit (net of VAT).

c) R&D conducted in collaboration with universities, public research institutes (and equivalent bodies) and innovative start-ups regulated by article 25 of Legislative Decree no. 179/2012 (converted into Law no. 221/2012).

d) Technical expertise, industrial and biotechnological patents, semiconductor topography rights or plant variety rights, even if acquired from external sources.

The tax credit:

- must be indicated in the tax return;

- is included in neither the corporate income tax (IRES) nor the regional business tax (IRAP) base;

- is not relevant for the purpose of determining the deductible percentage of interest expenses and general expenses in accordance with articles 61 and 109(5) of the Italian Income Tax Code;

- may be used to offset income/regional taxes and social security contributions.

With effect from the 2015 tax year resident taxpayers deriving business income and foreign entities resident in a treaty country that allows an adequate exchange of information may opt for a new **patent box regime** if carrying on R&D activities. Under the new regime, 50 percent of income deriving from the exploitation or the direct use of a qualifying IP (software protected by copyrights, patents, trademarks, designs, models, processes, secret formulas and industrial, commercial or scientific knowledge) will not be included in taxable income for corporate income tax (IRES) and IRAP purposes. However, the exemption was reduced to 30 percent for tax year 2015 and to 40 percent for tax year 2016. Capital gains arising from the sale of IPs not included in taxable income if at least 90 percent of the proceeds reinvested within the following two tax years in R&D activities. The election applies, irrevocably, for 5 years and is renewable. When income is attributable to direct use of the intangibles, its amount will have to be agreed with the tax authorities through the international tax ruling procedure. The eligible portion of the tax base is given by the ratio of the R&D costs incurred in maintaining and developing the intangible asset to the total costs of producing that asset (in compliance with the OECD "nexus approach").

The 2016 Budget Law clarified that if two or more qualifying intangibles belonging to the same taxpayer (even if not in the same IP category, e.g. a patent and software) are complementary, so that the realization of a product or process depends on their joint use, these intangibles represent one individual asset for Patent Box purposes.

Other incentives	ACE (Allowance for Corporate Equity). Starting from fiscal year 2011 companies will be entitled to a reduction from their taxable profit of an amount equal to the notional return of the new equity. The notional return of the new equity is set on an annual basis by the Ministry of Finance. The notional return rate was 4.75 percent in 2016, is 2.3 percent in 2017 and will be 2.7 percent in 2018. "New equity" is defined as the equity increase resulting from the comparison between the equity at year-end with that resulting from the 2010 financial statements, net of the annual profits for 2010. Special anti-tax avoidance measures apply if equity injections are made from outside Italy. The new equity only counts if derived from capital contributions in cash, as well as by profits allocated into distributable reserves, and may be decreased by distributions of equity and profit. The notional return exceeding the taxable income may be carried forward for use in subsequent tax periods. Therefore, if the notional yield is higher in a given year than the company's net taxable income, the company will declare no income in that year and will carry forward the excess of notional yield to the following years (without time limitations). Alternatively, the company may obtain a tax credit equal to the IRES rate multiplied by the amount of the excess; such credit can be used to offset the IRAP due in five equal annual installments. As a result of the 2017 Budget Law (Law n. 232/2016), as of 2016 for taxpayers, other than banks and insurance companies, the qualifying net equity increase is the net of the increase of securities and financial instruments, other than participations, as compared to the amount held on December 31, 2010.
VAT	The standard rate is 22 percent. Reduced rates are 10 and 4 percent. Since 2016, a new 5 percent rate has been introduced.
Other relevant points of attention	None

Source: Italian tax law and local tax administration guidelines, updated 2017.

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