Italy Country Profile

EU Tax Centre

June 2018

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

EU Member State Yes

Double Tax Treaties With:

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

Notes: from the Italy Ministry of Finance's website, updated on January 4, 2018
(a) Treaty signed with former Yugoslavia applies.
(b) Treaty signed with former USSR applies.

Most important 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 shareholders are all individuals and 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. Special laws sometimes introduce extensions to such deadlines (e.g. income tax returns for 2017 must be submitted by October 31, 2018 for calendar-year taxpayers). Two advance payments are due by June 30 and November 30 (or within six and eleven months of the end of the fiscal year, if the fiscal year is not the calendar year); the balance must be paid by June 30 of the following year (or by the end of the sixth month following the end of the fiscal year to which the payment refers). Again it is not unusual for special laws to extend the payment deadline on a temporary basis.

Corporate income tax rate

As of January 1, 2017, the standard corporate income tax (IRES) rate is 24 percent (previously 27.5 percent); qualifying banks and financial institutions, except qualifying investment fund management companies and securities investment companies, are subject to a 3.5 percent surtax (leading to a 27.5 corporate income tax rate). A 10.5 percent IRES surtax applies to corporations deemed to be 'dormant'. 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 (i.e. each region can increase rates by up to 0.92 percent).

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; certain other domestic WHT rate reductions apply - e.g. 12.5 percent WHT rate on interest from Treasury bonds; 5 percent WHT rate on interest on certain intra-group financing within the EU; 0 percent WHT rate on interest on qualifying bonds paid to 'white-list' investors, on interest on certain medium/long term cross-border loans and on interest on zero-balance cash pooling arrangements).

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, payments to foreign enterprises and individuals for artistic or professional services performed in Italy may be subject to a 30 percent WHT

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' (see CFC section for a definition) unless (i) income from the investments are subject to tax under CFC rules or (ii) 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). Moreover, as of 2018, a 50 percent exemption applies if the resident shareholder is able to prove that the foreign controlled company is actually engaged, as its main business, in industrial or trade activities in the low-tax jurisdiction where it is tax resident (CFC safe harbor rule or ‘business test’ - 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 and subject to standard IRES rate (no IRAP). Exemption (95 percent) is available subject to participation exemption conditions. If the entity participated in is resident in a low-tax jurisdiction (see CFC section), capital gains are subject to tax on 100 percent of their amount.

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 58.14 percent of the gain is included in taxable income and taxed at the general 24 percentage IRES rate (41.86 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', 58.14 percent of the capital gain is included in taxable income and taxed at the general 24 percentage IRES rate (41.86 percent is exempt).

	However, capital gains realized as of 2019 by non-resident companies or individuals on the sale of qualifying shares in resident listed or unlisted companies will be subject to a 26 percent final substitute tax (like those realized from the sale of non-qualifying, unlisted shares). 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; not applicable if the transaction occurs between related entities (parties in a control relationship or under common control) or consists of the purchase of shares of an S.r.l.

On the transfer of land and buildings

Registration tax:

- 12 percent on transfer of land;
- 9 percent on transfer of real estate assets;
- 2 percent on transfer of immovable properties qualifying as the main dwelling of a private individual.

A fixed amount of EUR 200 on transfer of business real estate whether subject to VAT or not.

Mortgage and cadastral taxes (imposte ipotecarie e catastali respectively) apply at the fixed amount of EUR 200 on transfers of residential real estate (the fixed amount is EUR 100 for certain residential real estate transfers, which are exempt from VAT). Mortgage and cadastral taxes are payable on transfers of business real estate, whether subject to VAT or not, at a total rate of 4 percent (3 percent and 1 percent, respectively) reduced to 2 percent (1.5 percent and 0.5 percent respectively) if either the purchaser or the seller or both are Italian closed-end real estate investment funds.

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 and non-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 as it was used in the past.

CFC rules are triggered if a resident company or individual controls an entity or business located in a non-EU/EEA low-tax jurisdiction (i.e. a State outside the EU/EEA, whose ordinary or special regime provides for a nominal tax rate lower than 50 percent of the Italian IRES + IRAP standard rate - currently lower than 13.95 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 a jurisdiction that is not deemed low-taxed per above (including 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 IRES rate.

Transfer pricing rules

General transfer pricing rules

Cross-border related-party transactions must be at arm's length as per the Italian transfer pricing rule, which was amended by replacing reference to the fair market value (*valore normale*) with a direct reference to the arm's length principle used in the OECD guidelines.

Under certain circumstances, Italian tax authorities seek to apply the transfer pricing rule to domestic inter-company transactions as well.

A unilateral Advance Pricing Agreement (“APA”) procedure is provided for by Italian law and bilateral APAs are also possible.

Post-audit double taxation can be eliminated under mutual agreement procedures (MAPs). Moreover, corresponding downward adjustments resulting in lower taxable income will no longer be conditional on a MAP but would also be available: (i) after international audits whose results are shared by the cooperating countries; (ii) upon receipt of an application from the taxpayer (in accordance with rules to be defined by the Italian tax authorities) following a final transfer pricing adjustment by a country with which Italy has a tax treaty allowing an adequate exchange of information.

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.

Italy introduced the Country-by-Country Reporting (CbCR) obligation in compliance with the OECD BEPS Action 13 recommendations. A Ministerial Decree and a Regulation contain the CbCR implementing measures.

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 made reference to a 'list' of transactions potentially suspect of avoidance, was repealed and replaced by a new definition of 'abuse of law', effective as of October 2015. The concepts of 'abuse of law' (from above article 37-bis) and 'tax avoidance' (defined by case law) were merged and a new definition of 'abuse of law' was given in the Taxpayers' Charter (i.e. Law no. 212/2000).

This new definition is a broad one and no longer lists the transactions that are subject to the abuse of law rule. It applies to all income taxes and indirect taxes, except customs duties. Abuse of law arises when all the following elements are met:

(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 tax authorities, 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 reorganizations or management decisions to improve the structure or operations of a business or professional activity. The taxpayer is nevertheless able to choose from available tax regimes offered by the tax legislation even if these imply a different tax burden. It is up to the Italian tax authorities 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 Provisions/Anti-Hybrid rules

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 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

Up to 2020, an R&D tax credit is available to any enterprise (i.e. Italian resident companies and Italian permanent establishments of non-resident companies) irrespective of its legal form, business sector, accounting standards and size.

As of 2017, the credit is also available to enterprises which carry out R&D activities under contracts concluded with entities resident in an EEA Member State or in a country which allows an adequate exchange of information with Italy.

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. 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) Staff engaged in eligible R&D activities.

b) Depreciation charges on instruments and laboratory tools (calculated on the basis of approved depreciation rates) 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 under special provisions.
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 not taxed for IRES or IRAP purposes;
- does not increase the non-deductible percentage of interest expenses and general expenses applicable when exempt income is recorded;
- may be used to offset IRES and IRAP and social security contributions.

The enterprise must comply with certain supporting evidence obligations (e.g. accounting documentation certified by an auditor).

Italian resident taxpayers deriving business income and foreign entities resident in a treaty country that allows an adequate exchange of information with a permanent establishment in Italy may opt for a patent box regime if carrying on R&D activities. Under the regime, 50 percent of eligible income deriving from the exploitation or the direct use of qualifying IPs (software protected by copyrights, patents, designs, models, processes, secret formulas and industrial, commercial or scientific knowledge) is not be included in taxable income for IRES and IRAP purposes. Capital gains arising from the sale of IPs are not included in taxable income if at least 90 percent of the proceeds is reinvested within the following two tax years in R&D activities. The election applies, irrevocably, for 5 years and is renewable. The eligible portion of the tax base, which may benefit from the 50 percent exclusion, 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").

When income derives from the direct use of the intangibles, the amount on which the above exemption applies has to be agreed with the tax authorities through the international tax ruling procedure.

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

Notional interest deduction incentive referred to as ACE (Allowance for Corporate Equity). Italian companies are entitled to a deduction from their taxable profit of an amount equal to the notional return of qualifying new equity.

The notional return rate is set on an annual basis by the Ministry of Finance: as of 2018 it will be 1.5 percent.

"Qualifying new equity" is defined as the equity increase resulting from the comparison between the equity at a given year-end with that resulting from the 2010 statutory financial statements, net of the annual profits for 2010, and only counts if derived from capital contributions in cash and by profits allocated into distributable reserves. It may be decreased by distributions of equity and profit. The amount of the deduction exceeding the taxable income may be carried forward for use in subsequent tax periods (without time limits).

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. If the company undergoes a change in both the control and the business activity, the carry forward of the excess is subject to the same specific anti-abuse limitations and safe harbors that apply to tax loss carry forward (see Tax Losses section).

Special anti-tax avoidance measures apply to prohibit duplication of the benefit or the claim of this on certain passive investments.

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 2018.

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