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 the following countries, territories and jurisdictions:

Albania	Estonia	Luxembourg	Serbia[a]
Algeria	Ethiopia	Malaysia	Singapore
Argentina	Finland	Malta	Slovakia
Armenia	France	Mauritius	Slovenia
Australia	Georgia	Mexico	South Africa
Austria	Germany	Moldova	Spain
Azerbaijan	Ghana	Montenegro[a]	Sri Lanka
Bangladesh	Greece	Morocco	Sweden
Barbados	Hong Kong SAR	Mozambique	Switzerland
Belarus	Hungary	Netherlands	Syria
Belgium	Iceland	New Zealand	Tanzania
Bosnia &	India	North Macedonia	Thailand
Herzegovina[a]	Indonesia	Norway	Tajikistan[b]
Brazil	Ireland	Oman	Trinidad & Tobago
Bulgaria	Israel	Pakistan	Tunisia
Canada	Ivory Coast	Panama	Turkey
Chile	Japan	Philippines	UAE
China	Jordan	Poland	Uganda
Croatia	Kazakhstan	Portugal	UK
Cyprus	Kuwait	Qatar	Ukraine
Czech Rep.	Kyrgyzstan[b]	Romania	US
Congo	Rep. of Korea	Russia	Uzbekistan
Denmark	Latvia	San Marino	Venezuela
Ecuador	Lebanon	Saudi Arabia	Vietnam
Egypt	Lithuania	Senegal	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 had to 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	The standard corporate income tax (IRES) rate is 24 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 surtax applies to companies deemed to be 'dormant'. A 3.9 percent Regional Business Tax (IRAP) rate also applies to companies. The standard IRAP rate can be increased for financial/insurance companies (i.e. 5.57 percent for banks and other financial institutions and 6.82 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 aimed at funding listed bonds 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; if the royalty is for the use of industrial, commercial or scientific equipment, the 30 percent rate applies on 100 percent of the 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 the CFC section: (i) in case of direct or indirect controlling interests, when the controlled company has an effective tax rate that is lower than 50 percent of the tax rate that would apply if it were resident in Italy; (ii) in case of other equity interests, when the investee company is subject to a nominal tax rate that is lower than 50 percent of the Italian rate, or to a special regime that leads to the same result).

The resident shareholder may avoid full taxation by applying one of the following two safe-harbor rules: (i) the CFC safe-harbor rule (substantive economic activity test - see the CFC section), which leads to a 50 percent dividend exemption (and a foreign tax credit, in the case of controlling interests), (ii) the subject-to-tax rule, which leads to the standard 95 percent exemption.

Anti-hybrid rules apply – see the relevant section below.

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 the 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 as follows:

- If the shares sold are not listed and represent, during a 12-month observation period, more than 20 percent of the voting rights or 25 percent of the stated capital (*a qualifying share*), the capital gains realized by non-residents are subject to a 26 percent final WHT.
- If a resident company whose shares are sold is not listed and the shares sold during a 12-month observation period do not represent more than 20 percent of the voting rights or 25 percent of the stated capital (*a non-qualifying share*), the capital gains are subject to a 26 percent final WHT. However, residents of cooperative jurisdictions are exempt from taxation on these capital gains.
- If a resident company whose shares are sold is listed and the amount of shares sold during a 12-month observation period do not represent more than 2 percent of the voting rights or 5 percent of the stated capital (a non-qualifying share), the capital gain is exempt. By contrast, if the amount of shares sold during a 12-month observation period represents more than 2

percent of the voting rights or 5 percent of the stated capital (a qualifying share), the capital gains are subject to a 26 percent final WHT.

- If a double tax treaty applies, capital gains are usually not taxable in Italy (some exceptions apply with the USA and France).

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 checks, 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 an ownership tax referred to as IMU (*Imposta municipale unica*) 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.

40 percent of IMU on business assets (e.g. warehouse) is deductible for IRES purposes. IMU is not deductible for IRAP purposes.

Controlled Foreign Company rules

A controlled foreign company (CFC) is a foreign company in which (i) an Italian resident directly or indirectly, also through a trust company or other third party, holds the majority of votes or exercises a dominant influence or (ii) an Italian resident directly or indirectly has more than a 50 percent share in its profits, also through a trust company or other third party companies.

Further to statutory amendments, a company qualifies as a CFC if:

- it is subject to an effective tax rate that is lower than 50 percent of the effective tax that it would have incurred had it been an Italian resident, and
- more than one-third of its income is passive income (i.e. interest, dividends, royalties, capital gains on shares and revenues from financial leasing; revenues from insurance, banking and other financial activities; revenues from trading goods that are purchased from or sold to associated enterprises, with the addition of no or little economic value; and revenues from supplying services that are purchased from or provided to associated enterprises, with the addition of no or little economic value - whether the CFC is deemed to sell goods or supply services with little or no added value is determined on the basis of transfer pricing regulations).

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

An exemption from the CFC rules is available to companies that can prove that an actual business is carried on in the foreign jurisdiction through local personnel, equipment, other assets and premises (so-called substantive economic test). The taxpayer can prove that it qualifies for the exemption by providing evidence in an application for a tax ruling or during a tax assessment.

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 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 prepared transfer pricing documentation in accordance with the required standards, has communicated this to the tax authority with the tax return of the year 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.

Limitation to interest deduction

Net interest expense (i.e. interest expense net of interest income) is deductible only up to an amount equal to 30 percent of earnings before interest, tax, depreciation and amortization (EBITDA). EBITDA must be quantified on the basis of the relevant values from a corporate income tax perspective i.e. reflecting the corporate income tax adjustments applied to the EBITDA computed from an accounting perspective (the former rules were based on accounting EBITDA).

Any excess of interest income not utilized in a year (where interest expense is lower than interest income) can be carried forward indefinitely.

Any excess of 30 percent EBITDA not utilized in a year (where net interest expense is lower than 30 percent of EBITDA) can be carried forward for five years (whereas the former rule provided for a carry-forward without a time limit).

The offset of net interest expense against 30 percent EBITDA follows the first in, first out (FIFO) rule: interest expense must first be offset against 30 percent of the current EBITDA, and any excess interest expense may be offset against any excess of 30 percent EBITDA from previous fiscal years.

Any excess of 30 percent EBITDA existing as at December 31, 2018 (computed under the former rule) can be offset only against interest expense related to financial arrangements concluded before June 17, 2016 (and not subsequently extended or renegotiated).

Within a tax group, unused excess interest expenses of a member may be used under certain circumstances to offset the taxable income of another member.

General Anti-Avoidance rules (GAAR)

The definition of 'abuse of law' is provided in the Taxpayers' Charter (i.e. Law no. 212/2000). 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 "low-tax jurisdiction"; CFC rules; TP rules; beneficial ownership clause; deemed residency rule, etc.).

Anti-hybrid rules

Anti-hybrid rules essentially deal with mismatches arising within the same group of companies (and related permanent establishments) and caused not just by payments related to financial instruments but also by other types of payments (e.g. those related to intangible assets) or by hybrid entities. In brief, the rules address the following situations:

(i) hybrid mismatches leading to a double deduction (DD) or to a deduction without inclusion (DNI);

(ii) reverse-hybrid mismatches;

(iii) dual-resident entities.

In the case of DD hybrid mismatches, the investor’s country may deny deduction first (and the payer’s country can only deny deduction when it does not). In the case of DNI hybrids, the payer’s country may deny deduction first (and the beneficiary’s country can only tax income when it does not). The legal provisions exclude collective investment vehicles set up in Italy from the scope of the rules preventing reverse hybrids mismatches caused by a special tax regime that a jurisdiction grants to an entity or income. Before issuing a formal notice of assessment in connection with any one of the above situations, the tax authorities must ask the taxpayer for clarification and explain why they are doing so.

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

R&D tax credit

An enterprise qualifies for the R&D tax credit if: (i) it invests at least EUR 30,000 per year in certain forms of R&D, and (ii) its total R&D spending in a given year exceeds the average amount spent on corresponding forms of R&D over the three tax years preceding that in progress on December 31, 2015 (2012, 2013 and 2014 for calendar-year taxpayers).

The tax credit is in general 25 percent of the difference in spending, increased to 50 percent for certain R&D costs only (mainly the cost of employees assigned to R&D, or costs arising from contracts with universities, research bodies, start-ups established in Italy, and innovative SMEs) and is capped at EUR 10 million per year for each beneficiary.

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.

From 2017, the credit is also available to Italian resident companies, which carry out R&D activities on behalf of entities resident in an EEA Member State or in a country which allows an adequate exchange of information with Italy.

Patent box

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 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 five 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

Notional interest deduction incentive referred to as ACE (Allowance for Corporate Equity) has been repealed as of January 1, 2019.

Mini IRES

Starting from the fiscal year following that in progress on December 31, 2018 (i.e. from January 1, 2019 for calendar-year taxpayers), a lower corporate income tax (IRES) rate of 15 percent, instead of the ordinary rate of 24 percent, could apply to a portion of the total taxable income for those who invest in new assets and hire personnel. The portion of the profit subject to the lower rate is determined under an intricate mechanism with a cap at the lower of between: (i) profits set aside to reserves and not distributed, (ii) depreciation of new investments plus the increases of labor costs.

Capex tax incentive

A 'hyper' (enhanced) depreciation for tax purposes applies to investments made in tangible assets used in the technological and digital development of enterprises.

The incentive results in the cost of tangible assets being increased for tax depreciation purposes by:

- 170 percent for investments of up to EUR 2.5 million;
- 100 percent for investments ranging from EUR 2.5 million to EUR 10 million;
- 50 percent for investments ranging from EUR 10 million to EUR 20 million.

Tax credit on training activities

The tax credit for training under the Industry 4.0 plan, which was initially in force only for 2018, has been extended to 2019 with some amendments. Provided certain conditions are met, the credit is a given percentage applied on 100 percent or 40 percent of the labor cost of trained (pupils) or training (teachers) employees respectively on Industry 4.0 related topics. Such percentages are based on the size of the company as follows:

- 50 percent of eligible costs for small businesses, with a maximum credit of EUR 300,000 per year;
- 40 percent of eligible costs for medium-sized companies, with a maximum credit of EUR 300,000 per year; and
- 30 percent of eligible costs for large companies, with a maximum credit of EUR 200,000 per year.

VAT

The standard rate is 22 percent. Reduced rates are 4, 5 and 10 percent.

Other relevant points of attention

None.

Source: Italian tax law and local tax administration guidelines, updated 2019.

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