





# Preface

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

Every care has been taken to ensure that the information presented in this publication is correct and reflects the situation at 30 September 2010. Its purpose is to provide general guidelines on investing or doing business in Italy. However, the reader should be aware that the general framework of the legislation and the detailed regulations underpinning it are subject to frequent changes. Therefore, before taking specific decisions, further advice should be sought. If there is a significant lapse of time between determining a strategy and its implementation, any advice obtained which is critical to the strategy should be confirmed.

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# 1. Country overview

Italy, with a population of nearly 60 million inhabitants, is divided into 20 regions. Five of these regions (Valle d'Aosta, Trentino-Alto Adige, Friuli-Venezia Giulia, Sicily and Sardinia) have special autonomous status that enables them to enact certain local legislation.

The country is further subdivided into 110 provinces and more than 8,000 municipalities.

Rome, located in the Lazio region, is the largest Italian city (more than 2.7 million inhabitants). Milan in Lombardy (1.3 million inhabitants), Naples in Campania (one million inhabitants), Turin in Piedmont (0.9 million inhabitants) and Palermo in Sicily (0.7 million inhabitants) are the other largest Italian cities.

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

The majority of the Italian population (66 percent) falls within the age group 15-64. The percentage of people older than 65 is rising and currently stands at 20 percent while the remaining 14 percent of the population falls within the age group 0-14.

## 1.1 Transportation network

### Airports



Italy has approximately 130 airports, handling over 91 million passengers and 750 thousand tons of freight per year.

One of the major international airports, Leonardo Da Vinci near Rome, handles more than 35 million passengers.

### Railways



473 million passengers and 87 million tons of freight travel by rail each year.

It is one of the safest railway networks in Europe and boasts 16,356 km of track. With the UK it is the third largest behind Germany and France, and represents 10.7 percent of the entire EU network.

High-speed rail already connects the main Italian cities and is being extended further.

## Harbours



There are approximately 30 major ports, handling 85 million passengers per year and offering 280 km of docking areas.

Port traffic: 550,000 ships.

148 ports distributed along 7,400 km of coastline handle 463 million tons of freight per year.

## Roads



The national road network includes 53,000 km of motorways and main roads, representing approximately 16.2 percent of the entire EU network.

The national motorway network extends for some 6,600 km and is fourth in the EU by outreach.

## 1.2 Snapshot of the Italian economy

### 1.2.1 Main macro-economic indicators for Italy: 2005-2010

Main economic indicators						
	2005	2006	2007	2008	2009	2010(e)
GDP (EUR bln)	1,245	1,271	1,288	1,271	1,207	1,219
GDP (YoY changes)	0.8%	2.1%	1.4%	-1.3%	-5.1%	1.00%
Unemployment rate (% labour force)	7.7%	6.8%	6.2%	6.7%	7.8%	8.4%
Average nominal wages inflation	2.7%	3.4%	2.8%	3.4%	3.2%	2.2%
Labour cost per hour (EUR)	19.5	20.0	20.6	21.3	21.9	22.4
Consumer price index	2.2%	2.2%	2.0%	3.5%	0.8%	1.5%
Export of goods (% change)	2.0%	6.5%	3.9%	-3.9%	-19.1%	6.4%
Import of goods (% change)	2.7%	6.2%	3.3%	-4.3%	-14.6%	5.2%

Source: Economist Intelligence Unit

### 1.2.2 Key industries overview

The Italian economy is characterised by 4.4 million highly dynamic firms operating in many diversified industries. The vast majority of these are small and medium-sized enterprises (SMEs), while approximately 3,400 firms only are considered large companies with more than 250 employees. While the presence of a vast majority of SMEs is a common feature of many European economies, a peculiarity of Italian industry is the presence of a large number of micro-firms: approximately 95 percent of companies have less than nine employees, 3 percent of companies have 10 to 19 employees and approximately 79,000 companies employ more than 20 people (source: *ISTAT*). Italy can be geographically split into an industrially developed northern region, dominated by private companies, and the less developed south, with a high rate of unemployment.

The service sector is a major contributor to the Italian economy. It accounts for approximately 73 percent of GDP and is also the fastest growing segment. Tourism, retail and financial services represent a significant part of the sector.

The industrial sector accounts for approximately 25 percent of GDP with the remainder contributed by agriculture (source: *L'Italia in cifre*, ISTAT, 2010). Motor vehicles, fashion and luxury goods, life science, aerospace, chemicals, information and communication technology, logistics, renewable energy, and precision machinery are among the most important sectors of Italian manufacturing.

Some of the key Italian sectors are described below.

## *Tourism*

With more than 33,000 hotels and 400,000 employees, the tourism sector is one of the driving forces of the Italian economy. Thanks to Italy's remarkable artistic, historic and cultural heritage, combined with its internationally acclaimed excellence in terms of wine, food and the natural environment, the country offers enormous potential for growth and exceptional investment opportunities.

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

## *Automotive*

This sector is a star performer in the Italian manufacturing arena, thanks especially to the presence of large car-manufacturing companies (such as Fiat, Ferrari, Alfa Romeo, Lancia, Lamborghini, and Maserati) and other motor-vehicle manufacturers (Aprilia, Ducati, and Piaggio) which create a significant allied economy among SMEs.

The sector also makes a significant national contribution to R&D, and has an important role in introducing new technologies onto the international scene. One indicator of the importance of this sector is the massive participation of companies, universities and research centres in related public procurement programmes.

## *Fashion and luxury*

With revenues of EUR 48 billion, 70,000 companies and 700,000 workers, Italy has the most active fashion and luxury industry in the world and, without doubt, it represents one of the most economically influential sectors of the Italian economy.

Besides a few large players (e.g. Armani, Gucci, Prada, Dolce & Gabbana, Cavalli, and Bulgari, but also firms such as Ferrari and Ferretti) the market is characterised by a large number of SMEs often operating in market niches (Kiton, Canali, Marinella, Brioni, etc.). These companies are rich in the creativity and technological skill which are the strategic factors in the worldwide prestige of Italian fashion.

## *Life sciences*

Italy has a long and well established tradition of production and research in the life sciences sector. Today it stands at third place in Europe with a turnover of EUR 15 billion and a workforce of over 85,000, and it demonstrates a strong commitment to innovation (over EUR 1 billion spent annually on R&D, mainly in biotechnologies for use in the health sector).

Company expenditure on R&D is constantly rising, as is the number of new entrepreneurial biotechnology initiatives, frequently the result of academic spin-offs or the activities of major foreign companies present in Italy.

Over 400 pharmaceutical and biotechnological companies operate in Italy, both national companies like Recordati, Zambon, Schiapparelli, Angelini, Bracco, Sifi, and Sigma-Tau, and local subsidiaries of foreign groups like GlaxoSmith&Kline and Novartis.

## *Information and communication technology*

Italy's ICT market is the fourth largest in Europe, and is worth EUR 64 billion. The mobile wireless market in particular is among the most advanced in the world, with 70 million active SIM cards and 21 million UMTS users registered. In the microelectronics sector some firms such as STMicroelectronics, together with their semiconductor design centres, are important examples of Italy's good standing in this industry.

## *Chemical*

The Italian chemical industry has a production figure of approximately EUR 48 billion and is characterised by the stable presence of many leading foreign companies. The quality of research and widely recognised scientific expertise are an important attraction, especially in fine chemistry and specialised chemistry. Manufacturing companies show a good mix of sizes: medium-sized and large Italian companies (including ENI, RadiciGroup, and Montefibre) account for 23 percent of production, multinationals (e.g. BASF, Bayer, Air Liquide, and Linde) for 32 percent, and SMEs for 45 percent.

## *Aerospace*

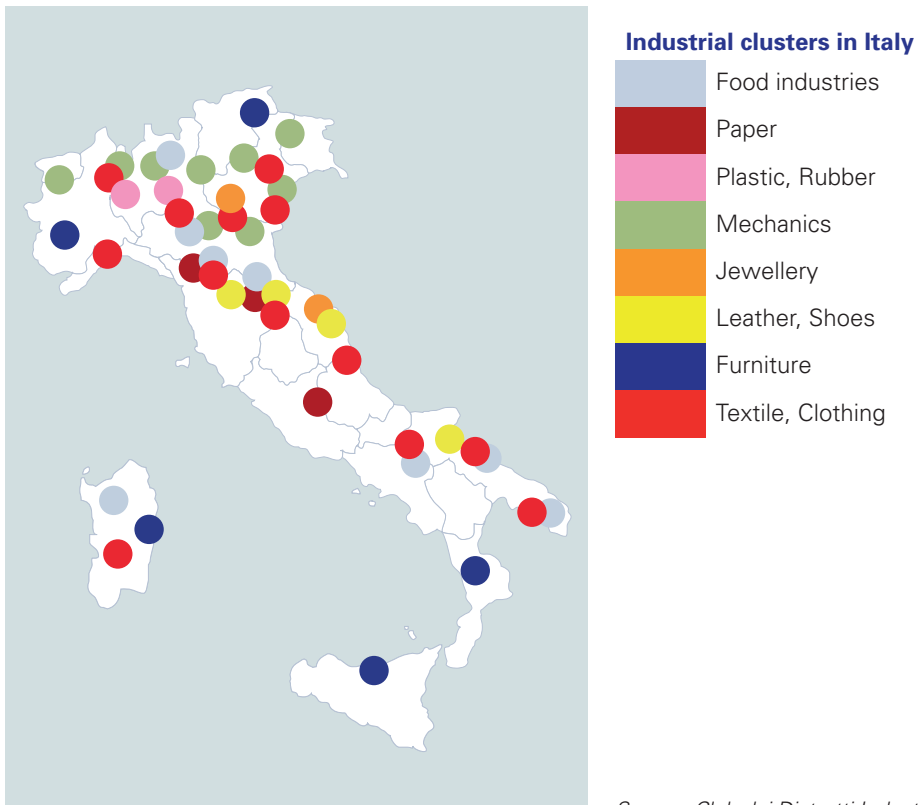
Excellence in research and elevated levels of productivity are features of the Italian aerospace industry. Italy is a world leader in helicopter manufacture, a European leader in flight-training planes, and a principal performer in the development of new concepts: unmanned aerial vehicles (UAV) and vertical take-off and landing planes (VTOL). Italy is also a leading player in important international cooperation agreements (Finmeccanica, Agusta, and Alenia) and has an aggregate annual turnover of over EUR 10 billion, 40,000 workers and R&D spending of EUR 1.3 billion.

## *Renewable energy*

Italy ranks third in Europe in the field of wind energy and large investments are planned over the next few years. The photovoltaic industry is growing rapidly and should grow further in the near future. Attractive feed-in tariffs and favourable climatic conditions are the main drivers of this industry. A nominal objective of 2,000 MWp installed by 2015 is currently under discussion. Investments from European groups are increasing, especially in southern regions such as Apulia and Calabria.

### 1.2.3 The roles of industrial clusters

Industrial clusters are a strategic feature of the Italian industrial system and in some industries are the backbone of 'Made in Italy' and the essence of the manufacturing sector. The last 15 years have seen a progressive and marked growth in the number of clusters, favoured by national and regional legislation and by the average small size of Italian companies, which pushes them to create organic and geographically close conglomerates of players within the same supply chain/industry. The most important clusters operate across various industries and namely, textiles and fashion: 45; food: 32; mechanics and metals: 30; and shoes and leather: 28.





## 1.2.4 Typical issues facing Italian medium-sized companies

### *Broad variety of legal forms*

Italian law offers a variety of legal forms (e.g. corporations, partnerships), which are subject to specific tax rules and corporate laws.

The legal form of a medium-sized company may reflect the development stage of a business, in that partnerships are typically used for very small or family run businesses and are converted into corporations when they grow larger or new shareholders arrive. Changes in Italian tax regulations and the degree of personal risk assumed by shareholders/owners also have an impact on the choice of legal form.

### *Separation of operating and holding companies*

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

### *Main shareholder/owner involved in the business*

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

### *Requirements for audited financial statements*

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

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

### *Language*

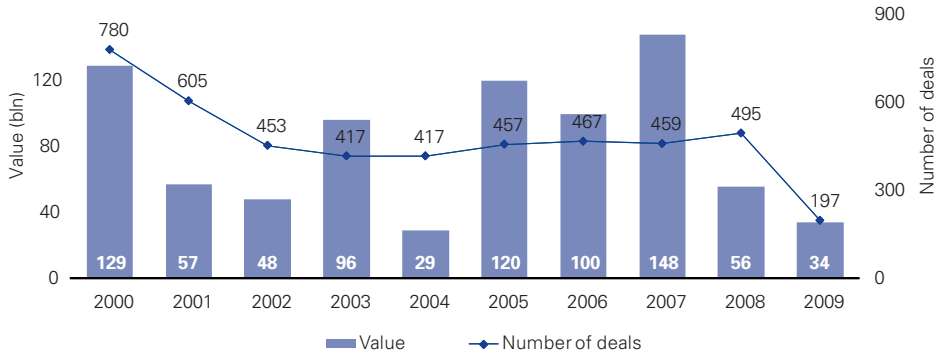
Financial, legal and tax information is generally prepared in Italian and based on Italian GAAP. A potential investor should consider that the financial information may differ if reported under the GAAP of other jurisdictions.

### *Employee issues*

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

## 1.3 Private investment in Italian companies

### Italian mergers and acquisitions from 2000 to 2009: value and number of transactions

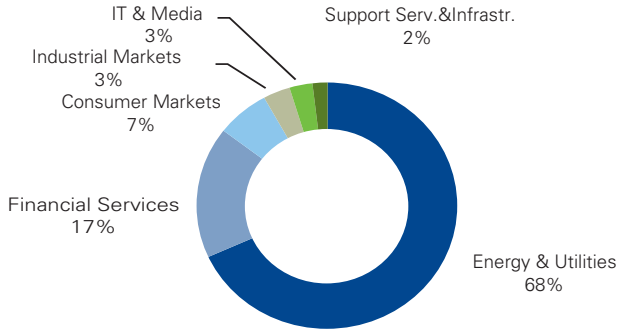


Source: KPMG Corporate Finance

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

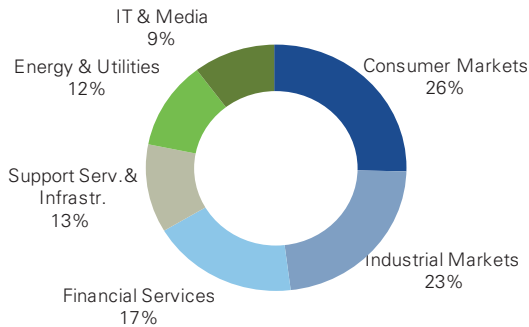
Until 2008 the average performance of investments in Italian assets was rising and was consistently higher than the European and USA markets. Energy and Utilities and Financial Services are the industries which reported the highest overall deal size in 2009, with EUR 23.4 billion and EUR 5.7 billion respectively. Consumer Markets and Industrial Markets are the sectors with the highest number of transactions, with 50 and 45 deals respectively.

**2009 M&A values by industry (target company)**



Source: KPMG Corporate Finance

**2009 M&A number of deals by industry (target company)**



Source: KPMG Corporate Finance

## 2. Incentives for investors

### 2.1 Overview

A wide range of opportunities is available for new investments and for expanding and strengthening existing ones. There are three different sources of incentives: European, national and regional. In some cases, incentives are offered without distinction to both Italian and foreign entities based in Italy.

The incentives provided by the European Union and Italian central and local government aim to enhance regional development and competitiveness by supporting local business activities, reinforcing existing ones or helping start-up initiatives by promoting and integrating research, innovation and training programmes.

The European Incentives Plan for 2007-2013 is aimed at increasing growth and employment within the EU Member States and operates with a specific focus on regions. The plan's priorities include areas such as knowledge and innovation, transport, environmental protection, human resources, competitiveness and modernisation of the economy.

In order to increase effectiveness, the Italian government has combined its national incentive plans with the European one. From 2007 to 2013, approximately EUR 125 billion will be available to support investments in Italy, with a strong concentration in the southern regions.

Implementation is through the National Strategic Reference Framework and the National Operational Programmes and Regional Operational Programmes, and the following EU Structural Funds are involved:

**The European Regional Development Fund (ERDF)** - Its aim is to finance infrastructures and manufacturing plants to create and safeguard sustainable jobs. The ERDF is especially addressed to SMEs and provides various financing facilities, including venture capital, debt and guarantee funds, etc.

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

**The European Social Fund (ESF)** - The ESF aims to strengthen economic and social cohesion by improving employment and job opportunities, establishing the following priorities:

- increasing flexibility of workers, enterprises and entrepreneurs
- enhancing access to the labour market
- promoting the social inclusion of disadvantaged people
- enhancing networking between higher education, research and business
- promoting and mainstreaming innovative social activities at both international and interregional level
- strengthening the effectiveness of the public administration and services (only in the south of Italy).

These European funds have three different objectives:

- **Convergence:** aligning conditions for growth and employment in the least developed Member States and regions (in Italy the eligible regions are Sicily, Campania, Apulia and Calabria - and Basilicata as a 'phasing-out' region)
- **Regional competitiveness and employment:** fostering economic and social development, and promoting innovation, entrepreneurship, environmental protection and the development of labour markets even in regions not covered by the Convergence objective (in Italy the eligible regions are all the other regions not included in the Convergence objective)
- **European territorial cooperation:** which is aimed at strengthening cross-border, transnational and inter-regional cooperation in the fields of urban development, rural and coastal development, development of economic relationships and networking of SMEs.

The main types of incentives (both European and national) can be classified as follows:

- **Grants for capital investments:** financial aid is granted in two or three tranches and paid directly to the company, after the presentation of documentary evidence of the costs of the capital investment
- **Grants to cover expenses:** these benefits are granted to companies to cover specific management or transaction costs
- **Grants to cover interest expenses:** this financial support is intended to reduce (below the market rate) the interest rate payable by the recipient for the funding received
- **Tax credits:** available when new investments in tangible or intangible assets are made or employment levels are increased
- **Equity injections:** given to companies operating in the industrial and service sectors for the establishment of new plants, and expansions and upgrades of specific business activities
- **Loan guarantees:** issued to lenders in order to allow the borrower to obtain medium- or long-term loans.

## 2.2 Main incentives offered by central government

### 2.2.1 Contratto di Programma

This is an agreement between one or more public bodies (regions, provinces or municipalities) to undertake major projects, including industrial ones, and to develop infrastructure. A *contratto di programma* is promoted by a 'proponent entity', which is responsible for the overall coherence of the technical and industrial project.

The total investment costs of an industrial project should not be less than EUR 40 million, excluding the cost of infrastructure. The investment programme proposed by the 'proponent entity' must not be less than EUR 25 million, whilst the investment programmes proposed by each beneficiary other than the proposer must not be less than EUR 1.5 million.

Investment programmes are eligible if they regard the economic activities listed in the following sections of the 2002 ISTAT classification:

- Sections C (mining and quarrying) and D (manufacturing)
- Section E (production and distribution of electricity and heat).

Each investment programme must be implemented through production units located in identified areas. There are two main types of programme:

### *A) Industrial investment programmes*

The following types of programmes are eligible:

- creation of new industrial units
- expansion of existing industrial units
- diversification of production
- substantial changes to production processes.

### *B) Innovation and R&D programmes*

Incentives may be granted for innovation and R&D programmes through the following:

- equity contributions
- free grants to reduce interest expenses
- a combination of both.

The amount of benefits, compared to the eligible costs, is calculated as the Gross Grant Equivalent ('GGE').

The benefits granted under a *contratto di programma*:

- for industrial investment programmes, must remain within the maximum aid intensity (by size of company and by eligible area) established by the Regional Aid Map 2007-2013, approved by the European Commission and published on the following website: [http://ec.europa.eu/community\\_law/state\\_aids/comp-2007/n324-07.pdf](http://ec.europa.eu/community_law/state_aids/comp-2007/n324-07.pdf)
- for R&D programmes, are:
  - 50 percent of GGE for industrial research costs
  - 25 percent of GGE for experimental development costs.

The benefits are increased by up to 10 percentage points for medium-sized companies and up to 20 percentage points for small companies.

## 2.2.2 Localisation agreements

Localisation agreements, established by the Inter-Ministerial Economic Planning Committee (*Comitato Interministeriale per la Programmazione Economica*), offer foreign investors a range of financial, administrative and procedural support to attract industrial investment to southern Italy. They include:

- simplified authorisation procedures
- incentives based on the type and location of the investment
- continuing support - from the Ministry of Economic Development (*Ministero dello Sviluppo Economico*) and **Invitalia (governmental agency for the promotion of inward investments and business development)** - in every phase of the procedure
- a commitment by local authorities to create and/or improve infrastructures and services in the selected area.

The recipients of these kinds of incentives are:

- large or medium-sized foreign companies
- large or medium-sized Italian subsidiaries of foreign groups
- large or medium-sized Italian companies that transferred their headquarters abroad before 17 March 2005 and are willing to reinvest in Italy.

The investment programmes are available for the following sectors: manufacturing, renewable energy production, business services and tourism. Eligible investments are those in new plants, or in the expansion, modernisation, restructuring, conversion, reactivation or relocation of existing plants.

The eligible regions are Abruzzo, Molise, Campania, Basilicata, Apulia, Calabria, Sicily and Sardinia.

Investors must apply simultaneously to:

- *Invitalia*
- The Ministry of Economic Development
- the selected regions.

### 2.2.3 The National Programme for Research and Competitiveness

This is the most extensive programme of incentives supporting research, innovation and business development in the Convergence regions (Campania, Apulia, Calabria and Sicily) and it is funded by the European Union (the total amount of allocated resources exceeds EUR 6 billion). The programme has two main targets.

The first target – **Support for Structural Changes** – includes incentives for scientific networks and firms, with the aim of promoting substantial changes in the business sectors of the Convergence regions, by starting and/or consolidating science and technology-based businesses. The target areas of activity include the following:

- science/technology parks focused on production systems and the promotion of new business initiatives
- technology/production parks focused on enhancing competitiveness in the system
- networks focused on strengthening the scientific and technological potential of the Convergence regions
- upgrading of facilities and equipment in science and technology
- cooperation in the fields of science and production.

To achieve these objectives, **Law no. 297/99** offers grants to companies that invest in a variety of industrial research projects aimed at improving or developing products, production processes or services. Assistance is also available for programmes supporting infrastructure and services in the industrial research sector. A new Investment Fund for Research and Technological Development (*'FIRST'*) is awaiting activation.

The second target - **Supporting Innovation** - is to increase investment in innovation and development, increase the competitiveness and attractiveness of the Convergence regions, and strengthen the ability of companies to adapt their strategies to ever-changing business

scenarios. It includes the following objectives:

- strengthening of the production system
- improvement of the capital market
- streamlined measures for sustainable business development and information technology.

**Industria 2015** is the plan that sets out the action necessary to develop the national production system and enhance its competitiveness. It includes the following: Industrial Innovation Projects, Enterprise Networks, and the Business Financing Fund.

- **Industrial Innovation Projects:** measures that encourage the development of specific and highly innovative types of products and services in areas that are considered strategic to the development of the country, such as energy saving, sustainable mobility, new life technologies, new technologies for 'Made in Italy', and innovative technologies to manage, preserve and exploit Italy's cultural heritage. Firms are able to choose the type and form of financial support that best suits their programmes.
- **Enterprise Networks:** contractual forms of cooperation between enterprises, and especially SMEs, aiming to increase their critical mass and achieve greater bargaining power without the need to merge or come under the control of a third party.
- **Business Financing Fund:** its purpose is to facilitate the access of companies, especially SMEs, to credit and capital. The Fund participates in transactions proposed by banks and/or financial intermediaries to mitigate credit risk.

## 2.3 Main incentives offered by the regions

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

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

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

Regional programmes are also implemented for the specific purpose of benefitting from the **European Regional Development Fund (ERDF)** and the **European Social Fund (ESF)**.



### 2.3.1 The ERDF Regional Programme

The ERDF Regional Programme 2007-2013 funds initiatives to bring the Italian regions closer to the Lisbon and Gothenburg objectives of growth of expenditure on research and development, creation of knowledge-sharing, and widespread conditions of sustainable development. It defines, among other things:

- the action plan to be implemented
- the four main targets (which may vary slightly by region):
  - industrial research and technology transfer
  - business innovation and development
  - energy saving and sustainable development
  - enhancement of cultural and environmental resources
- the institutions and organizations responsible for the administration of the funds and monitoring.

### 2.3.2 The ESF Regional Programme

The ESF Regional Programme defines, among other things:

- the action plan to be implemented
- the main priorities (which may vary slightly by region):
  - adapting the labour force to market conditions
  - access to employment for the largest possible number of people
  - an inclusive society providing the opportunities and resources necessary for full participation in social, economic and cultural life
  - an improved system of education and training to reduce early school leaving and increase the skills of workers
- the institutions and organizations responsible for the administration of the funds and monitoring.

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## 3. Company law and regulatory background

### 3.1 Company law

#### 3.1.1 General overview

Partnerships (*società di persone*) and companies (*società di capitali*) represent the two main categories of legal entities which may be incorporated under Italian law. The most important difference between them is that partnerships' assets and liabilities are only partially segregated from the assets and liabilities of their members, while companies' assets and liabilities are completely segregated.

A partnership may be set up in three different forms, as a: simple partnership (*società semplice*), general partnership (*società in nome collettivo*), or limited partnership (*società in accomandita semplice*).

Similarly, three different kinds of companies may be incorporated under Italian law: stock companies (*società per azioni* or *SpA*), limited liability companies (*società a responsabilità limitata* or *Srl*) and partnerships limited by shares (*società in accomandita per azioni*).

Following is a brief outline of the two main kinds of Italian companies: the stock company and the limited liability company. Their main features and differences are described, as well the corporate governance of listed companies, the Italian Civil Code rules on the establishment of a branch in Italy, the liquidation procedure, and the main rules on groups.

#### 3.1.2 Stock companies and limited liability companies

The basic principle governing both types of companies is that only the company is liable with its assets for its obligations: the liability of the shareholders/quotaholders is therefore limited to the amount paid in, or to be paid in, as corporate capital. This is different from a partnership, where partners are in principle liable without limit for the partnership's obligations.

##### 3.1.2.1 Stock company (SpA)

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

If permitted by the company's articles of association, the capital contribution may also be represented by assets (either tangible, including receivables, or intangible). Contributions in kind must be fully paid in at the time of subscription and the contributor must provide - in accordance with article 2343 of the Italian Civil Code - a sworn appraisal prepared by a court-appointed expert. In no event can the overall value of the contribution be less than the aggregate increase in share capital.

Shareholders of an SpA can be either natural or juridical persons, and Italian or foreign. At least one shareholders' meeting must be held each year, to approve the company's annual financial statements, no later than 120 days or, in exceptional circumstances, no later than 180 days after the close of the financial year.

Extraordinary shareholders' meetings must be held to approve matters such as amendments to the articles of association, the winding-up of the company (including the appointment of liquidators, their substitution and their powers), and mergers or similar corporate reorganizations; whereas ordinary meetings approve matters connected with the ordinary course of the company's business.

The management of the company is assigned to directors, who handle all matters and transactions necessary or advisable for the attainment of the corporate purpose. The management may lie with a sole director or a board of directors; in the latter case, the number of directors is established by the articles of association. Their management powers involve a duty to take all necessary and appropriate steps to attain the corporate purpose, as well as to ensure compliance with the law, including the preparation of the draft annual financial statements.

SpAs must also appoint a board of statutory auditors (*collegio sindacale*), formed of three or five statutory auditors and two alternate auditors. The main duty of the board of statutory auditors - as set out in article 2403 of the Italian Civil Code - is to supervise compliance with the law and the articles of association. They also have to verify that the company's organization and administrative and accounting structures are adequate and work properly. Accounting controls are the responsibility of the board of statutory auditors or an audit firm.

Besides the governance system described above, two further systems are available for SpAs.

In the first (so-called *sistema monistico* or one-tier model, taken from Anglo-Saxon culture), management and control lie with a board of directors and a committee appointed from amongst the members of the board itself. The management of the company is the exclusive responsibility of the board of directors, whilst the management control committee supervises the adequacy of the company's organizational structure, internal control system and administrative and accounting system, as well as its capacity to represent the acts of management correctly. The committee also performs any additional function assigned to it by the board of directors and, in particular, liaises with the auditors or board of statutory auditors with regard to controls on the accounts.

The second (so-called *modello dualistic* or two-tier model) provides for two corporate bodies: a management board and a supervisory board. The management of the company is entrusted exclusively to the management board, which must do everything necessary or advisable for the attainment of the corporate purpose. The supervisory board is entrusted with the functions of the board of statutory auditors and with those functions reserved, in the traditional model, to the shareholders' meeting.

Neither model includes a board of statutory auditors: accounting controls are carried out by an audit firm.

### 3.1.2.2 Limited liability company (Srl)

A limited liability company is suitable for companies with few quotaholders (even a sole quotaholder) and slim management structures. The corporate capital is divided into as many quotas as the number of quotaholders; the quotas, unless indicated otherwise in the company's articles of association, are freely transferable by *inter vivos* and *mortis causa* acts. The rights, both administrative and economic, belong to quotaholders proportionally to the size of their interests in the company, unless the articles of association allow individual quotaholders special rights relating to the management of the company or the distribution of profits, in accordance with article 2468 of the Italian Civil Code.

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

The articles of association can allow the company to issue securities (*titoli di debito*), establishing the applicable limits, procedures and majorities necessary for the adoption of the relevant resolution. These securities can be underwritten only by financial institutions and there are limits on their circulation.

Article 2475 of the Italian Civil Code establishes that, unless otherwise provided for in the company's articles of association, the management of a limited liability company must be entrusted to one or more quotaholders. Those quotaholders that are not involved in the management of the company are entitled to receive information from the directors and to consult and inspect, also through trusted professionals, the company's books and management documentation, and thus to monitor the directors' activities.

Pursuant to article 2477 of the Italian Civil Code, a limited liability company is not required to appoint a board of statutory auditors, unless:

- the corporate capital of the company exceeds the minimum established for stock companies (EUR 120,000.00);
- expressly required by the company's articles of association;
- for two consecutive financial years certain levels are exceeded (total assets, sales, average number of employees).

Notwithstanding the above, when a limited liability company is required to appoint a board of statutory auditors, they are entrusted not only with the function of supervising compliance with the law and the articles of association, as provided for by article 2403 of the Italian Civil Code, but also with the task of auditing the accounts, unless specified otherwise by the articles of association.

### 3.1.3 Corporate governance of listed companies

Listed companies are subject to supervision by *Consob*, the public authority responsible for regulating the Italian securities market in order to protect investors and guarantee transparency.

The financial statements of listed companies must be audited by an independent auditing company, registered with the Ministry of Justice and meeting the technical standards required by law.

Directors must include executive and independent non-executive members and have specific duties, the most important of which are to:

- provide accurate and fair information to the public
- draft the company's offering prospectus when required by law
- provide disclosure in the event of extraordinary corporate transactions
- disclose price-sensitive information pursuant to the law
- draft the information documents and comply with all other formalities involved in public offerings of shares, takeover bids and public exchange offers
- disclose any information regarding transactions carried out by the managers and other parties having access to price-sensitive information.

*Consob* checks this information and may inspect the companies and ask for clarifications and further information from their management. *Consob* can also issue penalties to companies that do not provide the public with adequate information.

### 3.1.4 Branches

In accordance with article 2508 of the Italian Civil Code, foreign companies have the right to establish one or more branches in Italy.

A branch is an extension of the foreign entity and depends - both administratively and economically - on its headquarters. It uses the same name and legal form as the foreign company: it does not have its own internal governing body but is managed directly by the governing body of the foreign company, which appoints one or more permanent legal representatives (*preposto/i*), entrusted with the powers to manage and represent the branch before third parties.

It does not have its own capital and is not required to draw up annual financial statements: a copy of the financial statements of the headquarters must be filed at the Trade Register (in the original language, accompanied by a sworn Italian translation).

An annual report is required only in order to prepare the Italian income tax return. To facilitate record-keeping and the preparation of its annual report, an Italian branch usually keeps the accounting books required by article 2214 of the Italian Civil Code, in particular the general ledger (*libro giornale*) and the inventory book (*libro inventari*).

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

The branch is subject to Italian laws and regulations. The setting-up of a branch must be recorded in the Trade Register, together with the appointment of the legal representative, the description of his powers, details of the registered office, the activities, etc.

### 3.1.5 Liquidation

Article 2487 of the Italian Civil Code provides that the directors of a company must call a shareholders' meeting to approve the winding-up of the company and appoint liquidators if the corporate object has been achieved, or it has become impossible to achieve it, or the share capital has dropped below the minimum required by law. The shareholders' meeting also determines the powers of the liquidators, with specific reference to the transfer of the company's business, business divisions, or individual assets or rights; and the action required to realize the business value.

If the company's funds are insufficient to repay debts and liabilities, the liquidators may ask the shareholders to provide the necessary resources, proportionally to their share of the company's capital. No repayment of capital or earnings can be made to shareholders before completion of liquidation, unless the accounts show that such payments do not affect the full satisfaction of the company's creditors, or unless the shareholders arrange appropriate guarantees.

The liquidators prepare interim accounts during the liquidation, describing how the liquidation is progressing, the prospects, and the GAAP adopted. Upon completion of the process, final financial statements are prepared and, after they are approved, the company is struck off the Trade Register.

Liquidation status may be revoked at any time by means of a shareholders' resolution and, where required, after elimination of the cause of liquidation.

### 3.1.6 Group of companies

According to article 2359 of the Italian Civil Code a company is considered to be 'controlled' - directly or indirectly - if:

- another company holds the majority of votes at the ordinary meeting of the shareholders
- another company has sufficient votes to exercise a dominant influence at the ordinary meeting of the shareholders
- it is under the dominant influence of another company by virtue of contracts.

A company is considered to be an 'associated' company if another company exercises a considerable (but not dominant) influence, by holding one-fifth of the votes at the ordinary meeting of the shareholders or, if the company is listed, one-tenth of those votes.

These circumstances do not imply the existence of a 'group of companies', but only that a company is subject to the direction and coordination of another one, as defined by articles 2497 *et seq* of the Italian Civil Code. Furthermore, this regulation is applicable to companies that direct or coordinate another one by virtue of a contract or specific clauses in their articles of association.

All companies that direct and coordinate others must file this information at the Trade Register. Those that are directed and coordinated must declare their status in their corporate deeds and letterhead. Both must respect special accounting requirements, evidencing their financial relationships, ownership structure, and the effects of the direction and coordination.

## 3.2 Regulatory background

### 3.2.1 Italian competition regulations

Rules on competition are established at different levels, the first of which is the general rule on 'fair' business behaviour set out by the Italian Civil Code. Secondly, the Italian Civil Code establishes a limited number of exceptions, such as non-competition agreements concluded upon termination of an employment contract or a transfer of a going concern. A third set of rules, based on articles 81 and 82 of the EC Treaty, establishes the legal framework of control over competition matters and the Italian Competition Authority (*Autorità Garante della Concorrenza e del Mercato*). This Authority operates according to the EU principles established by the EU Commission and Court of Justice and monitors the following matters:

- business agreements and practices which may have an adverse impact on competition
- business combinations that may give rise to market dominance
- state aid.

It has the power to determine the conditions on which business combinations must be realized, to stop them if they may lead to a dominant position on the market, and to issue fines and sanctions.

#### *Authorities supervising certain industries*

Various public authorities have supervisory and regulatory powers over companies operating in specific fields.

The **Banking Authority** supervises the activities and organization of banks and financial institutions listed in the register indicated by article 107 of the Italian Banking Law, monitoring their management and compliance with the applicable laws and regulations.

It examines the documentation and statistics sent to it by the above bodies, and carries out inspections of banks and other financial institutions.

Another part of the Banking Authority's role is to protect transparency in all financial and banking transactions, also in order to improve relations with end customers.

The **Insurance Authority** was set up by Law no. 576/1982, in order to supervise insurance companies and all other parties governed by insurance law, including agents and insurance brokers.

The Authority monitors and regulates the market and operators, also by making the

necessary inspections and issuing fines where appropriate. Its mission includes protecting end customers, supervising the text of contracts, reviewing claims, and verifying the fair conduct of insurance companies.

The **Energy Authority** was set up by Law no. 481/1995 in order to regulate and supervise the electricity and gas markets. The Authority is empowered to:

- fix maximum tariffs for services, in order to ensure certainty and transparency to the benefit of end customers
- define guidelines for the production and supply of energy and gas, set quality standards, check compliance, and establish the refunds to be made to end customers where applicable
- verify that said guidelines are actually observed and impose penalties
- verify that competition laws and regulations are observed by the companies operating in the electricity and gas markets, and inform the relevant authority in the event of violations
- examine claims and petitions filed by end customers, promoting settlements with operators where appropriate or ordering operators to modify their service provision.

### 3.2.2 Securities offers and prospectus approval

In line with EU directives, issuers offering securities must produce a prospectus in order to ensure that investors receive all the relevant information. The prospectus must be approved by *Consob*, the public authority responsible for regulating the Italian securities market; and the information provided in the prospectus must be complete, coherent and understandable. Once approved, the prospectus can also circulate in other EU Member States for local offering.

The prospectus must contain full details of the offer and information about the issuer, including corporate governance, any shareholders' agreements, the key performance indicators of the business and, in general, any factors, either internal or external to the issuer, which may have an impact on the terms of the offer.

Specific rules are set for takeover bids for listed companies: if, as a result of acquisition, one or more investors acquire over 30 percent of the capital, a takeover bid must be addressed to all the other shareholders for the purpose of acquiring 100 percent of the capital. There are further rules if one or more investors own more than 90 percent of a listed company or own between 30 percent and 50 percent of the capital and increase their interest.

There are squeeze-out rules for investors owning over 98 percent of the share capital as a consequence of a take-over bid.

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## 4. Accounting and reporting

### 4.1 Legal framework and regulations

Accounting and reporting are mainly regulated by the following laws and regulations:

- the Italian Civil Code
- Italian Tax Codes
- Italian Accounting Standards (local GAAP)
- International Accounting Standards/International Financial Reporting Standards, where applicable.

### 4.2 Requirements

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

As of January 2009 accounting books can also be kept on digital supports. Specific provisions are in place to guarantee the true date of entries. All books and records, even if computerised, must be kept for at least ten years after the date of the last entry, together with all related business correspondence.

### 4.3 Compulsory bookkeeping

#### 4.3.1 The general ledger

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

The general ledger must be consecutively numbered on each page, also showing the fiscal year (e.g. 2009/1, 2009/2, 2009/3,...). Stamp duty (currently EUR 14.62) is due at the beginning of each set of 100 pages.

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

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

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

To summarise, the following details should appear:

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

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

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

### **4.3.2 The inventory ledger**

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

### **4.3.3 Business correspondence**

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

## **4.4 The language of accounting records**

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

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

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

## **4.5 Keeping accounting records abroad**

The Italian Civil Code and tax rules do not expressly prohibit a company from keeping its accounting records and compulsory accounting books outside Italy. However, the Italian Ministry of Finance has clarified (in Tax Ruling 167/E of 2000) how the accounting records of Italian companies belonging to multinationals groups should be kept abroad. Essentially, the accounts may be recorded and processed, in real time, using an electronic data processing

(EDP) system located abroad, connected to the Italian subsidiary via telephone/satellite.

The subsequent printing of the accounting books has to take place on the subsidiary's premises in Italy, where the data, books and supporting documentation must also be kept. It must also be possible to print the accounting data already registered at any moment and in real time at the Italian company's premises.

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

The Italian tax authorities have also clarified (in Circular no. 45 of 19 October 2005) that invoices may be stored abroad in a digital system only on the following conditions:

- there must be a reciprocity agreement between the two states with regard to indirect taxation
- the Italian company must ensure automatic access to the archive at any moment from its registered office.

## 4.6 The financial statements

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

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

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

Special rules on the format of financial statements are provided for companies operating in specific sectors.

## 4.7 International accounting standards (IAS/IFRS)

### *Full IFRSs*

*Listed companies:* With Italy being a member of the European Union, Italian listed companies have been required to prepare their consolidated financial statements in accordance with IFRSs since 2005. Italian companies preparing their financial statements in accordance with IFRSs are required to use IFRSs "as adopted by the EU". The EU endorsement mechanism means that there is a time lag between when an IFRS is issued by the IASB and its availability for use by Italian companies. Listed companies have been required to use IFRSs in their individual/separate financial statements since 2006.

Insurance companies are required to prepare their individual/separate financial statements in accordance with IFRSs only if they are listed companies and are not required to prepare consolidated financial statements.

Issuers of financial instruments widely distributed among the public, banks, financial institutions, insurance companies and other Italian companies whose securities are admitted to trading on a regulated market or that have applied for an admission to such a market, have been required to prepare their consolidated financial statements in accordance with IFRSs since 2005. With regard to their individual/separate financial statements, they have been required to adopt IFRS since 2006.

*Unlisted companies:* Unlisted companies, that have to prepare consolidated financial statements under the Italian Civil Code, can adopt IFRSs in the preparation of their consolidated and individual/separate financial statements.

Subsidiaries of companies that prepare consolidated financial statements in accordance with IFRSs are permitted but not required to adopt IFRSs in the preparation of their consolidated and individual/separate financial statements, except for very small entities as defined below.

Under the Italian Civil Code, very small entities are allowed to prepare their financial statements in a short format. Very small entities are companies whose securities are not admitted to trading on a regulated market and that are within certain size criteria. Such entities are not allowed to adopt IFRSs in the preparation of their financial statements.

### *IFRS for SMEs*

An option or requirement to apply the IFRS for SMEs instead of Italian GAAP currently is not available to Italian companies and is not expected to be introduced in the near future.

### *Local accounting standard setter*

The local accounting standard setter in Italy is the Organismo Italiano di contabilità (OIC). The OIC issues standards governing financial statements under Italian GAAP and provides responses to the IASB's and other international bodies' consultations. The OIC also issues operational guidance about the application of IFRSs.

### *Enforcement of IFRSs*

The authority responsible for the enforcement of accounting and financial reporting requirements of listed companies in Italy is the CONSOB.

Banks and financial institutions are monitored by the Bank of Italy (BoI). The main responsibility of the BoI is monitoring the financial stability and systematic risks of the financial services sector in Italy. The BoI also has the power to question accounting issues and related disclosures. Insurance companies are monitored by the ISVAP which has similar powers and roles to those of the BoI.

Audit companies and auditors are under the supervision of the CONSOB which monitors them through inspections of their quality assurance processes and audit documentation on selected engagements.

In the case of non-compliance, the regulators, i.e., the CONSOB, the Bol and the ISVAP, can impose sanctions on preparers and auditors in the form of fines and other measures.

## 4.7.1 Differences between local GAAP and IFRS

Local GAAP and IFRS are not aligned on many different aspects, varying in degree of relative importance, and both sets of principles are subject to unpredictable regulatory changes. Therefore, should it be necessary to study these differences in any depth, this should be done at the time the information is needed and only under expert guidance. The table which follows is intended solely for illustration of sample notions which could be of interest and therefore cannot be considered exhaustive.

LOCAL GAAP	IFRS
<b>GENERAL</b>	
<p>Statement of cash flows is highly recommended but not required.</p> <p>The format of the components of the financial statements is prescribed by the Company law.</p> <p>Extraordinary items are disclosed on the face of the income statements.</p> <p>Restatement of comparative is not allowed. The effects of changes in accounting policies and corrections of errors are included in the income statements of the current year.</p> <p>In addition to actions attributable to equity holders, net equity changes only in consequence of the profit or loss of the period.</p>	<p>Statement of cash flows is required.</p> <p>IFRS does not prescribe a standard format of components of the financial statements.</p> <p>No extraordinary items are presented in the income statements.</p> <p>Change in accounting policies and correction of errors could lead to a restatement of comparatives.</p> <p>In addition to actions attributable to equity holders, net equity changes in consequence of profit or loss of the period and also for income or expense recognized directly in equity (other comprehensive income).</p>
<b>CONSOLIDATION</b>	
<p>The existence of currently exercisable potential voting rights are not taken into consideration in order to identify subsidiaries and associates.</p> <p>Special purposes entities (SPEs) are not included in the consolidation due to the absence of participating interest.</p> <p>Minority interests are not part of net equity.</p>	<p>For identification of subsidiaries and associates, the existence of currently exercisable potential voting rights is taken into consideration.</p> <p>SPEs are consolidated where the substance of the relationship indicates control.</p> <p>Minority interests, i.e. non controlling interests, are part of net equity.</p>
<b>ASSETS</b>	
<b>Acquired intangible assets</b>	
<p>All intangible fixed assets are amortised and for some of them the maximum useful life is five years. It is permitted, with certain restrictions, to capitalise start-up costs (i.e. training), advertising costs and cost of issuing shares.</p> <p>Goodwill arising from a business combination is amortised over its useful life (useful life longer than five years must be justified)</p> <p>Revaluations are not permitted unless authorised by special laws.</p>	<p>If the criteria for capitalisation are satisfied, intangible assets must be amortised over their estimated useful life. Costs of issuing shares are recognised as deduction from equity.</p> <p>Goodwill arising from a business combination and intangible assets with an indefinite useful life are not amortised but subject to impairment test at least annually.</p> <p>Revaluations are possible only in a very few cases.</p>

## INTERNALLY GENERATED INTANGIBLE ASSETS

Similar to IFRS, except that there is the option to capitalise and amortise development costs if the conditions are satisfied.

Research costs are expensed when incurred. Development costs are capitalised and amortised when rigorous criteria are satisfied.

### Property, plant and equipment

These must be stated at historical cost.

Revaluations are not permitted unless authorised by special laws.

They are measured using either the cost model or the revaluation model. When the revaluation model is used, the entire category of assets has to be revaluated with sufficient regularity.

### Leases (as lessee)

All leases are accounted in the financial statements as operating lease. Disclosures are required by law with reference to finance lease.

Finance lease are accounted in the financial statements on the basis of substance rather than form.

### Investment properties

These must be stated at cost and depreciated over their useful life. Depreciation is not mandatory. Fair value is not permitted.

They must be stated at depreciated cost or at fair value. If fair value is used, variations are recognised in profit or loss.

### Inventories

Similar to IFRS; however, LIFO is admitted.

Stated at the lower of cost and net realizable value. The cost is based on the FIFO method or weighted average cost. The LIFO method is not admitted.

## Financial assets (measurement and derecognition)

Long-term investments are accounted for at cost less other than temporary impairment losses.

Short-term investments are accounted for at lower of cost and market value.

Loans and receivables are accounted for at nominal amount less any impairment losses.

No guidance for derecognition. Generally based on loss of legal ownership.

Measurement of financial assets depends on their classification:

- at amortised cost (held to maturity, loan and receivables)

- at fair value through equity (available for sales)

- at fair value through profit and loss (financial assets not included in the above mentioned categories)

Derecognition of financial assets is mainly based on the transfer of risk and rewards.

## Hedging derivatives instruments

Specific guidance only for hedging derivatives on foreign exchange rates.

In general, hedging derivatives are not booked in the financial statements, but disclosures are required.

All derivative instruments are measured at fair value. Change in fair value is recognised in income statements except for effective cash flow hedges, where the changes are deferred in equity until effect of the underlying transaction is recognised in the income statement.

## LIABILITIES AND EQUITY

### Financial liabilities and equity instruments (classification)

Classification is based on legal form of financial instruments.

Preference shares are ever included within equity.

Convertible debt is always recognised as a financial liability.

Purchased own shares are showed as assets investment and a non distributable reserve in equity must be created.

Classification depends on substance of the issuer's obligations.

Mandatorily redeemable preference shares are classified as financial liabilities.

Proceeds received as a result of issuing a convertible debt is allocated between equity and financial liability

Purchased own shares are recognised as deduction from equity.

### Restructuring provision

A restructuring provision is recognised at the moment of the board of directors' resolution.

A restructuring provision must be made if a detailed plan has been announced or if implementation of the plan has actually started.

## INCOME STATEMENTS

### Revenue

No detailed standard on revenue recognition exists. Revenue is generally recognised when ownership is transferred or when revenue is legally enforceable.

Based on several criteria, which require the recognition of revenue when risks and rewards have been transferred and the revenue can be measured reliably.

### Employee benefits – pension costs (defined benefit plans)

No general guidance for pension cost. No actuarial calculation is applied on the obligation for severance pay (i.e. TFR-trattamento di fine rapporto).

Obligation for a defined benefit plan is estimated using an actuarial calculation (projected unit credit method)

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

### 4.8.1 Year-end accounts

	Task	Description	Deadline
1.	Approval of the annual financial statements	The shareholders approve the year-end accounts (including notes) by adopting a specific resolution during a general meeting convened in accordance with the company's articles of association.	Within 120 days of the fiscal year-end (180 days in special circumstances).

2.	Filing of the year-end accounts	The annual financial statements (including the notes) and the minutes of the shareholders' meeting must be filed in electronic format at the local Trade Register.	Within 30 days of the shareholders' approval.
3.	Updating of the inventory ledger	The inventory ledger must be updated by adding details of the assets and liabilities shown in the annual financial statements.	Within three months of the annual income tax return filing date.

## 4.8.2 Tax returns and tax payments

	Task	Description	Deadline
1.	Filing of the preliminary VAT return for the previous calendar year.	The preliminary VAT return for the previous calendar year must be filed. No delays are allowed.	28 February
2.	Issuing of certificates for taxes withheld at source.	A certificate showing the amount subject to tax at source and the related tax withheld, must be sent by recorded delivery letter to each local payee (e.g. agents, professionals, employees) and to each non-resident entity which has received payments of royalties, interest or dividends.	28 February
3.	Payment of the annual duty on accounting records.	A duty of EUR 309.87 has to be paid.	16 March
4.	Payment of any remaining VAT unpaid during the previous calendar year at the monthly due dates.	The difference between output and input VAT is payable on the 16th of each subsequent month. Delayed payments are subject to fines.	16 March
5.	Payment of the balance for income taxes (IRES+IRAP) for the fiscal year ending 31 December.	The income taxes payable are net of the advances due by the 20th of the sixth month and by the end of the 11th month of the previous fiscal year.	16 June
6.	Payment of the annual duty for registration at the Trade Register.	The payment is due on the same date as the payment of the balance of income taxes; the amount is decided by the Chamber of Commerce and published in advance.	16 June
7.	Filing of the annual withholding tax return ( <i>mod.770</i> ).	The 770 return must be filed electronically.	31 July
8.	Filing of the annual VAT return and income tax return for the fiscal year ending 31 December ( <i>mod.UNICO</i> ).	The <i>Unico</i> return must be filed electronically.	30 September
9.	Payment of the advance VAT due for December.	The advance due is 8 percent of the VAT payable in December.	27 December



## 4.9 Failure to keep accounting books and records properly

Failure to keep accounting records is punished by fines ranging from EUR 1,032.00 to EUR 7,746.00, which are doubled if the unpaid corporate taxes or VAT amount to more than EUR 51,645.69 during any tax year.

If the company fails to keep accounting books and records for the purpose of concealing profits or turnover, the legal representative is liable to criminal prosecution.

On incorporation of a company the tax authorities must be informed about the place where the accounting books and records are kept and are accessible for tax inspection. Any subsequent changes must also be notified accordingly.

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

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## 5. Taxation of business income

### 5.1 Corporations

#### 5.1.1 Tax residence

A company or entity is tax resident in Italy if its registered office, place of management or main business is in Italy for the greater part of the fiscal year.

Resident companies are taxed on their worldwide income, while non-residents are only taxed on their Italian-source income, as identified by domestic tax law.

Unless otherwise proven, foreign companies owning controlling interests in Italian companies are deemed to be residents of Italy if:

- they are controlled by an Italian resident person (company or individual); or
- they are managed by a board of directors, the majority of whom are Italian resident individuals.

#### 5.1.2 Rates

The rate of national corporate income tax (IRES) is 27.5 percent.

The standard rate of regional tax on productive activities (IRAP) is 3.9 percent but the tax basis is normally different from that used to calculate IRES. Italian regions are entitled to increase the standard rate of IRAP by up to 1 percent.

The compound tax rate is therefore approximately 31.4 percent, whilst the effective rate can be very different.

#### 5.1.3 Determination of taxable income

##### *Corporate income tax (IRES)*

A company's taxable income for IRES purposes is determined on the basis of the profit and loss account of the company, drawn up according to Italian GAAP or IAS/IFRS and adjusted in accordance with tax law and applicable regulations. To be allowed for tax purposes, expenses must be (i) certain - in the sense that they definitely exist, (ii) objectively quantifiable at the end of the tax year, and (iii) recorded in the company's accounting records.

The accruals basis is generally followed, with certain exceptions (e.g. dividends and directors' fees are taxed upon receipt). In general, costs and expenses must be recorded in the profit and loss account in order to be deductible for tax purposes. However:

- generic risk provisions or provisions not listed by tax law (such as that for inventory obsolescence) are not allowed
- costs/expenses related to prior years (so-called *sopravvenienze passive*) are disallowed.

Special rules apply to banks and insurance companies.

## IRAP

A company's taxable income for IRAP purposes is determined exclusively on the basis of its profit and loss account, as approved by the shareholders, with certain adjustments. For instance, the costs of personnel (except those engaged in R&D), losses on bad debts and interest expenses (including those on leasing payments) are, in general, non-deductible.

For IAS/IFRS users the corresponding items of the profit and loss account are considered. The IRAP tax itself is not an allowed expense; however, for IRES purposes, starting from the tax year in progress on 31 December 2008, 10 percent of the IRAP paid is deductible. This amount should, in principle, correspond to the tax paid on interest and personnel expenses (disallowed items).

Special rules apply to banks and insurance companies.

## Allowed deductions

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

### Depreciation of tangible assets

The depreciation of income-producing assets is based on their acquisition or manufacturing cost, and may include interest capitalised until utilization begins.

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

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

If it does not exceed EUR 516.00, the purchase cost of assets may be fully deducted in the period of acquisition.

### Amortization of intangible assets

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

**Goodwill and trademarks:** up to 5.55 percent of the cost of the asset can be deducted in each tax year (the minimum amortization period is 18 years). The amortization of goodwill and trademarks is deductible regardless of how they are recorded in the company's accounts, and thus by IAS/IFRS users also, whose goodwill and trademarks are subject to the impairment test rather than to amortization.

The amortization of the cost of **licences and other rights** is deductible on a straight-line basis over the useful life of the licence as determined by the underlying contract or by law.

### *Repairs and maintenance*

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

### *Entertainment expenses*

Entertainment expenses are deductible in full if they meet specific criteria that differentiate them from advertising and marketing. Free gifts not costing more than EUR 50.00 each are immediately and fully deductible.

Special provisions apply to pharmaceutical companies. Examples include the limited deduction of conference costs, and the unavailability of a deduction for costs of goods and services offered directly or indirectly to doctors, veterinarians or pharmacists in order to promote the sale of drugs or pharmaceutical goods.

### *Research and development expenses*

R&D expenses are deductible in the tax year in which they are incurred or, at the taxpayer's option, in equal instalments in the same year and over the next four. In the latter case, the choice made in the first year is binding on the taxpayer.

A tax credit was available to companies engaging in industrial research and pre-competitive development activities, from the tax year following that in progress as at 31 December 2006, up to the end of the tax year in progress as at 31 December 2009 (e.g. 2007-2009 for entities whose fiscal year ends on 31 December). The credit amounted to 10 percent of the R&D expenses, rising to 40 percent if the expenses derived from service contracts with universities and public research institutes. The qualifying R&D expenses borne by the taxpayer were capped at EUR 50 million per year. So far, the R&D tax credit programme has not been extended.

### *Inventory*

For income tax purposes, inventory can be valued using any reasonable costing method, such as the first-in first-out (FIFO), last-in first-out (LIFO) or average weighted cost method, provided that the value is at least equal to the LIFO one. A write-down of inventory to market value is deductible only when the average unit cost of the goods in the inventory is higher than the average market value during the last month of the tax year. Any other write-down is generally deductible only when the loss is realized, that is, when the goods have been sold or destroyed, in which case formal procedures must be followed. Work in progress and finished goods should be valued at production cost, inclusive of overheads attributable to production. Special rules apply to the valuation of long-term contracts.

### *Allowance for bad debts*

A provision for bad debts is allowed each year if (i) the amount does not exceed 0.5 percent of the outstanding receivables, and (ii) the reserve does not cumulatively exceed 5 percent of the outstanding receivables. This provision is deductible for IRPEG purposes only. Special rules are applicable to banks, financial institutions and insurance companies.

The partial or total write-off of an individual receivable is allowed only if insolvency proceedings have started or when it can be proved that no recovery whatsoever is possible.

### *Dormant companies*

Italian resident companies, partnerships and permanent establishments of non-resident entities might be considered dormant or non-operating if certain parameters are met (taxable income is lower than specified levels, commensurate with the nature and book value of the company's assets). In such cases a minimum tax is applied for both national and local income tax purposes (IRES and IRAP). Safe harbour rules apply to: companies that, even indirectly, control or are controlled by publicly traded companies; companies during their first year of activity; companies subject to bankruptcy proceedings, etc.; or companies that have obtained an advance ruling. Tax losses incurred when a company is deemed to be dormant cannot be carried forward.

#### **5.1.4 Tax losses**

Tax losses are only relevant (i.e. can be used to offset taxable income) for IRES purposes and can be carried forward for five years (not carried back).

Losses incurred in the first three tax years of the company's business activity can be carried forward indefinitely, provided that they originate from a brand new activity.

There are limits on loss carryforward if:

- the majority of the shares granting voting rights at the ordinary shareholders' meetings are transferred to or acquired by third parties, even if for a temporary period only; and
- the main activity changes from that actually carried out in the tax years when the losses were incurred. Such a change is relevant if it occurs in the tax year when the transfer was made or in the two previous or subsequent years.

In addition, limits may apply to loss carryforward when the company has been part of a legal merger or demerger.

However, safe harbour rules are provided (a business vitality test based on certain economic indicators).

#### **5.1.5 Tax treatment of dividends and capital gains/losses**

##### *Dividends*

Domestic dividends are 95 percent exempt from tax for IRES purposes (while dividends, as well as capital gains on shares, are not included in the IRAP base).

Foreign dividends are likewise 95 percent exempt (see also section 5.1.11) if the tax residence of the distributing company is in a 'white-list' jurisdiction (acceptable level of taxation and with an exchange of information agreement with Italy) and the distributing company is not allowed to deduct the dividends distributed.

### *Capital gains (transfer of shares)*

Capital gains on the transfer of shares (or quotas), equivalent financial instruments, and equity interests in partnerships, are 95 percent tax exempt if:

- there is an uninterrupted holding period of 12 months before the transfer (FIFO is used in the case of shares issued by the same company and purchased at different times)
- the shares (or quotas, or interest) are booked under fixed assets in the first financial statements approved after their purchase
- the shares are in a company which, during the three years before the transfer, conducted an actual business activity and was resident in a 'white-list' country (or an advance ruling is obtained, confirming that the company directly produced most of its taxable income in a 'white-list' country).

If the gains do not meet these requirements, IRES (no IRAP) is due upfront (no optional spread of payment is available).

Write-offs, losses and step-ups of shares are normally disregarded for tax purposes; however, special laws were issued in the past, allowing step-ups against payment of substitute tax.

Capital gains realized on shares in non-resident companies are normally treated in the same manner, except when 'black-list' countries are involved - see section 5.1.11.

### *Capital gains (business assets)*

Capital gains on the sale of business assets may be either taxed upfront or over a maximum of five years, commencing from the year in which the gain is realized. In this second case, however, the assets must have been held for at least three years before disposal. These gains are subject to both IRES and IRAP, with the exception of those realized on the transfer of a business concern, or a branch thereof, which are only subject to IRES (exempt from IRAP).

## **5.1.6 Withholding taxes**

### *Dividends paid to non-residents*

Dividends paid to non-resident shareholders are generally subject to a withholding tax of 27 percent. A partial refund of up to four-ninths of the withholding tax paid can be claimed by recipients who can demonstrate, using appropriate documentation issued by the foreign tax authorities, that a final tax on the same dividend has been paid. Consequently, regardless of tax treaty provisions, the withholding tax may be reduced to 15 percent (27 percent - 12 percent). A 12.5 percent withholding tax is applied on savings shares (with no four-ninths tax credit refund available).

The above rates may be reduced under tax treaty provisions.

Under the provisions of the EU Parent-Subsidiary Directive, no withholding tax is levied on dividends paid to a qualifying EU parent company, owning at least 10 percent of the Italian subsidiary for one year before payment.

Should the EU Parent-Subsidiary Directive be unavailable, dividends paid to companies that are resident and taxed in an EU/EEA ('European Economic Area') 'white-list' country (i.e. a

country on the list to be issued by the Ministry of Finance) will be subject to a reduced 1.375 percent domestic withholding tax (the same level of taxation applied to dividends paid to domestic parent companies).

### *Interest and royalties paid to non-resident recipients*

**Interest:** generally a 12.5 percent withholding tax is provided (for interest payments to 'black-list' countries, see section 5.1.11). This rate may be reduced under tax treaty provisions. The EC Interest and Royalties Directive 2003/49/EC, as implemented in Italy, precludes any taxation at source on interest (and royalty) payments to qualifying affiliated/associated EU companies, with effect from 1 January 2004. Special rules apply to interest on bonds and bank deposits.

**Royalties:** generally a 30 percent withholding tax is applied on 75 percent of the gross payment (i.e. 22.5 percent). This rate may be reduced under tax treaty provisions and the EU Directive (see above).

## 5.1.7 Tax consolidation

Both domestic and worldwide consolidation is available.

Once exercised, the option for domestic consolidation is irrevocable for a period of three fiscal years and allows the taxable income and losses of the participating companies to be sheltered, tax loss carryforwards to be shared (but only those originating after opting for consolidation), and interest expense deductions to be carried forward (see section 5.1.9). Dividend payments between participants are 95 percent exempt and transfers of business assets are taxable in the ordinary way. Claw-back rules apply if the consolidation regime is interrupted early and even if the option is not renewed at the end of the three years. Non-resident 'tax-treaty companies' with 'Permanent Establishments' (PE) located in Italy can be part of a (domestic) tax consolidation group only as controlling companies.

The option for worldwide consolidation may be exercised only on certain conditions and, once exercised, is irrevocable for five fiscal years. If renewed, the option is irrevocable for three fiscal years.

## 5.1.8 Consortium relief

The taxable income or tax loss of a qualifying Italian company can, by election, be attributed to resident corporate shareholders proportionally to their dividend rights (and irrespective of whether a dividend is actually paid). Companies with shareholders holding at least 10 percent but not more than 50 percent of the dividend rights qualify for election.

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

The option is irrevocable for three fiscal years and can be renewed for periods of three years.

Companies opting for tax consolidation and companies that have issued financial instruments carrying different profit rights do not qualify for the relief.

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

### 5.1.9 Deduction of interest expenses

The thin capitalisation rules applying up to 2007 have been replaced by earning stripping rules that allow net interest expenses (interest expenses exceeding interest income) to be deducted to the extent of 30 percent of the EBITDA computed, with certain adjustments, from the profit and loss account.

The expenses that are non-deductible in the year can be carried forward indefinitely and deducted according to the same criteria (i.e. up to 30 percent of each year's EBITDA). Starting from the third tax year following 31 December 2007 (i.e. 2010 for calendar-year taxpayers), the portion of EBITDA not used up in the deduction of interest expenses and financial charges pertaining to a tax year may also be added to the EBITDA of subsequent tax years.

Within a domestic tax group, the EBITDA of all the participating members can be pooled for deduction purposes (on certain conditions non-resident companies can also be included 'virtually' in the domestic tax group).

### 5.1.10 General anti-avoidance tax rules

General anti-avoidance tax legislation provides that transactions executed for no valid business reason, and aimed at circumventing tax obligations or obtaining illegitimate tax reductions or reimbursements, maybe disallowed for tax purposes. In particular, this legislation regards:

- transformations, mergers and demergers, voluntary liquidations and distributions of reserves not formed by retained earnings
- contributions, transfers and leases of business units
- transfers of receivables
- transfers of tax credits
- the transactions indicated in Directive 90/434/EEC (mergers, demergers, spin-offs, and exchanges of shares with EU companies)
- changes of tax residence
- operations, including evaluations, regarding shares and foreign currencies
- transfers of goods/services within a tax group (tax consolidation)
- interest/royalties paid between EU companies directly or indirectly controlled by a non-EU resident shareholder
- penalties paid to related parties not resident in a 'white-list' jurisdiction.

### 5.1.11 Specific anti-avoidance tax measures

Italian tax law contains a number of separate provisions designed to prevent tax avoidance by Italian companies through entities located in tax havens. These measures regard:

- a - the tax deduction of costs and expenses



- b - the tax residence of foreign companies and entities, including trusts
- c - outbound interest payments
- d - CFCs
- e - the participation exemption on capital gains
- f - the participation exemption on inbound dividends

Transactions or relationships between domestic companies and entities located abroad are subject to certain restrictions depending on whether or not the tax system of the foreign jurisdiction is classified as a privileged tax regime (i.e. a tax regime providing a noticeably lower level of taxation than Italy, an inadequate exchange of information, or other similar criteria).

The above system was previously based on 'black lists', which are being phased out in favour of two new 'white lists'. Under this new approach, transactions/relationships with countries not appearing on the new 'white lists' will still be subject to tax restrictions. The two lists will be drawn up by the Ministry of Finance and will be based on the following criteria:

- effective exchange of information (for issues a), b) and c) above)
- effective exchange of information and an imperceptibly lower level of taxation (for issues d), e) and f) above).

The new provisions will apply from the tax year subsequent to that in which the relevant Ministerial Decree (i.e. the new 'white lists') is published in the Official Gazette. After publication of the Decree a five-year transitional period is envisaged in order to regulate any uncertain situations, e.g. countries not included in either list.

### *Tax deduction of costs and expenses (transactions with countries offering privileged tax regimes)*

Costs and expenses arising from transactions with related or unrelated companies or undertakings resident or located in countries (other than EU/EEA Member States) not included in a 'white-list' jurisdiction or territory are deductible only if separate evidence of them is given in the income tax return and, upon request of the authorities, the resident taxpayer can demonstrate one of the following:

- that the counterpart carries out an actual industrial or commercial activity in the jurisdiction where it is based (economic substance)
- that there are sound business reasons behind the transaction and the transaction has actually taken place.

An advance tax ruling can be requested in order to secure the deduction.

### *Tax residence of foreign companies and entities, including trusts*

Foreign companies and entities that own a controlling interest in an Italian resident company are deemed to be resident in Italy for tax purposes if a) an Italian resident individual or entity is, either directly or indirectly, the ultimate shareholder or, b) the majority of the members of the board of directors are Italian residents.

Unless proved otherwise, foreign trusts are deemed to be Italian residents if:

- they are not established in a 'white-list' country; and
- at least one of the settlors and at least one of the beneficiaries is resident in Italy.

Italian tax residence is also triggered if - after the trust is set up in a country not on the 'white list' - an Italian resident (i.e. settlor) transfers real estate or attached property rights to the trust.

### *Outbound interest payments*

A 27 percent withholding tax applies to interest paid to lenders resident in a country or territory not included in a 'white list'.

### *Controlled Foreign Company (CFC)*

An Italian resident taxpayer may be subject to tax on profits realized abroad by:

- 'controlled' entities (those in which the Italian resident directly or indirectly - also through fiduciary companies or third parties - holds the majority of votes or exercises a 'dominant influence'); and
- 'associated' entities (those in which the Italian resident directly or indirectly - even through fiduciary companies or third parties - holds the right to more than 20 percent of the profits or, in the case of listed entities, 10 percent); if
- such entities are resident or established (reference is made to permanent establishments of controlled foreign entities) in a state or territory which offers a privileged tax regime (i.e. tax haven) as identified in a 'black list'. As described above, a 'white list' (based on the criteria of an **effective exchange of information and imperceptibly lower level of taxation**) should be issued in the future and the CFC rules should then be applied to entities resident/established in states/territories that are **not** included.

Controlled entities located in EU Member States could also be affected by these provisions if the effective level of taxation of the foreign entity's income is lower than 50 percent of the Italian corporate taxation that would be levied on the same income if the foreign entity were tax resident in Italy, and the foreign entity's revenues are mainly passive or originate from related-party transactions.

**Safe harbour rules:** the Italian taxpayer must be able to prove **one** of the following:

- a) that the foreign entity predominantly carries on an actual trading business as its main activity in the market of the 'black-list' state or territory in which it is located (**business vitality test**). This test is not passed if more than 50 percent of the foreign entity's revenues are generated by the management or holding of, or investment in, securities and shares, or lending and other financing activities, the trading or licensing of intellectual property rights, or services (of whatever nature, even financial) provided to related parties (controlled, controlling or subject to control by the same entity that controls the service provider);
- b) that holding the interest in the foreign entity shifts the income to a 'black-list' state or territory (**subject to tax test**: at least 75 percent of the income of the foreign entity is

subject to tax in a state or territory that is not on the 'black list').

With specific regard to controlled EU entities, the CFC income can only be avoided if the taxpayer can prove (a tax ruling is mandatory) that the foreign entity **is not an artificial structure aimed at achieving an undue tax advantage**.

The income subject to tax in Italy is computed by applying the Italian rules in the case of a controlled foreign entity; in the case of an associated entity it can also be determined by applying given coefficients to the book value of certain assets. The accounts of the foreign entity should be duly certified by an independent audit firm. Taxation is applied separately (i.e. available tax loss carryforwards cannot shelter the CFC income).

Dividends originally paid by a non-EU entity passing only the business vitality test are subject to full taxation in the hands of the ultimate Italian resident recipient (i.e. no participation exemption), while those paid by an entity passing the subject to tax test qualify for the (95 percent) exemption.

### *Participation exemption on capital gains (transfer of shares)*

Capital gains realized on the disposal of shares in foreign entities are treated just like domestic gains. In addition, the 95 percent exemption is also conditional upon a three-year period of residency in a 'white-list' country.

### *Participation exemption on inbound dividends*

Dividends paid by countries that will not be included in the 'white list' (i.e. that are included in the 'black list' today) are generally taxable at the full corporate income tax rate unless a ruling has been obtained (subject to tax test).

**Anti-hybrid rules:** the 95 percent dividend exemption is granted on condition that the payment is not tax deductible by the non-resident payer (as declared by the payer).

## **5.1.12 Foreign tax credits**

Taxes paid on foreign source income are credited up to the amount of IRES due, which corresponds to the ratio of foreign income to total income (net of any tax loss carryforward). The limit applies per country (baskets).

The credit is claimed in the tax return filed for the year when the foreign income is declared and the foreign tax paid is definitive. Should that income be partially exempt (as, for example, foreign dividends) the foreign tax is reduced proportionally. More favourable conditions may be available under double tax treaty provisions.

Excess foreign tax credits may be carried forward or backward for eight years.

Specific rules apply in the case of domestic/worldwide tax consolidation.

Many of the tax treaties in force with Italy still include 'matching credit' or 'tax sparing' clauses, which allow Italian investors to credit notional foreign taxes, irrespective of the actual or lower payments in the country of source (due, for instance, to local tax incentives).

### 5.1.13 Tax rulings

Taxpayers can request ordinary tax rulings to clarify which tax provisions and interpretations should be applied in cases that appear uncertain.

Other tax rulings are available with regard to specific tax law provisions, including :

- general anti-avoidance rules
- anti-tax haven legislation
- CFC legislation
- disposal of tax credits
- participation exemption regime on inbound dividends
- participation exemption regime on capital gains
- worldwide tax consolidation
- advertising and entertainment expenses
- minimum tax on dormant companies.

The taxpayer must file a written query with the tax authorities, who must reply within 120 days. If they do not, it is understood that they implicitly agree with the taxpayer's interpretation. However, the reply is only binding on the tax authorities in the case presented and with respect to that applicant.

**Advance Pricing Agreements:** APAs are also available and are binding for three years.

### 5.1.14 Transfer pricing

#### *General principles*

Italian transfer pricing regulations are included in the corporate income tax rules. The regulations are based on the 1979 version of the OECD Transfer Pricing Guidelines although, in practice, the principles outlined in the 1995 version are generally recognised and applied by the Italian tax authorities in tax audits and rulings.

The transfer pricing regulations are based upon the 'fair value principle' (basically the arm's length principle), whereby the conditions applied in an intra-group transaction should be comparable with those that would be applied between unrelated entities in comparable transactions. The tax authorities may apply this rule automatically if taxable income is thereby increased; conversely, a reduction of taxable income is only possible under double tax treaties.

Testing for arm's length conditions is based on methods reflecting those identified by the OECD in its Transfer Pricing Guidelines. However, Italian law expressly provides for the comparable uncontrolled price ("CUP") method, which is therefore generally used and indicated by the Italian tax authorities as the preferred method to be applied whenever possible. Other recommended methods, to be applied only in the absence of suitable CUPs, are the 'traditional' ones (i.e. the Resale Price Method or "RPM" and the Cost Plus Method or "CPLM"). The 'non-traditional' methods (including the Profit Split Method and other profit-based methods) are accepted only in exceptional circumstances and to the extent that it is

not possible to apply the traditional methods. Non-traditional methods may also be used to support the traditional methods, whenever the latter do not produce satisfactory results.

Transfer pricing regulations in Italy only apply to cross-border transactions between related entities (i.e. entities which directly or indirectly control the Italian company or are controlled by it or are under common control). Application of the transfer pricing rules to domestic transactions is in principle excluded although, as shown by recent case law, the fair value principle is also extended and applied to transactions between Italian related parties, in certain circumstances.

### *Documentation issues*

Italian tax law does not establish specific documentation requirements for transfer pricing purposes. However, if the taxpayer is able to provide transfer pricing documentation, no penalties should be applied in case of assessment.

Nevertheless, appropriate transfer pricing documentation is generally recommended, as it helps to support the position of the taxpayer vis-à-vis the tax authorities in an audit. In this regard, the burden of proof lies with the tax administration, which, in tax audits resulting in adjustments to transfer prices, has to give evidence of the criteria on which the transfer pricing adjustments are based. In practice, however, a lack of documentation makes it easier for the tax authorities to justify a tax assessment and adjustments and, therefore, shifts the burden of proof to the taxpayer, which must demonstrate that the tax authorities' approach is incorrect.

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

For certain transactions, such as intra-group services, the general Italian tax rules require proof that the services are actually pertinent to the business, i.e. that the company receiving the services obtains - or can reasonably expect to obtain - an advantage from them, in consideration of its ordinary business activity. This circumstance must be demonstrated by appropriate (additional) documentation, which must be shown to the Italian tax inspectors in a tax audit. The Italian tax authorities have recently been taking a very aggressive approach to Italian companies that are members of multinational groups and that deduct intra-group charges for services, usually disallowing the deduction if the charges are not appropriately documented.

## *Penalties*

No penalties should apply if the taxpayer provides transfer pricing documentation in case of assessment. Alternatively, standard corporate income tax penalties, ranging from 100 to 200 percent of the additional tax, can be applied where higher taxable profits have emerged as a result of a transfer pricing adjustment. The taxpayer may, however, be able to reduce the penalty if it can reach an agreement with the tax authorities before the case is taken to court.

In certain circumstances criminal penalties may also apply.

## *International rulings*

The international ruling scheme (see also section 5.1.13 above), recently introduced in Italy, is reserved for enterprises doing international business, namely:

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

A ruling serves to:

- define in advance the methods to be used in calculating the arm's length value of transactions subject to transfer pricing regulations
- clarify how to apply specific rules, including treaty rules, regarding the payment or receipt, to or by non-residents, of dividends, interest or royalties, as well as other income components
- clarify how to apply specific rules, including treaty rules, regarding the allocation of gains or losses between permanent establishments.

The ruling procedure starts with an application, to be filed with the Revenue Office in Milan or in Rome, depending on the fiscal domicile of the applicant. The application must include all documents demonstrating that the applicant is eligible for the procedure.

The procedure should be completed in 180 days but in practice - especially for rulings regarding transfer pricing matters - takes much longer, as several meetings and double checks with the taxpayer are generally required. During the procedure, and in order to collect the information needed for the inquiry, the Revenue Office will be given access to the different sites where the company or permanent establishment conducts its activity. The Revenue Office may also seek the international cooperation of foreign tax administrations. In this case, the deadline for completion of the procedure may be postponed until the information requested from the foreign tax administration is obtained.

The proceedings end with the taxpayer and the director of the relevant Revenue Office signing an agreement, which is binding for three years. The Italian tax authorities must refrain from any tax assessment of the matters regulated by the agreement.

Should an agreement not be reached, a written report will be drawn up.

Partial or total violation of the agreement leads to its cancellation. Furthermore, should there be any material changes in the facts or law, the agreement will be rescinded. Therefore, the taxpayer is asked to inform the Revenue Office periodically of any changes and to give it free access to the company.

Before the ruling expires, the taxpayer can submit an application to renew the agreement. Modification of the agreement and its renewal can both imply an inquiry or further debate between the Revenue Office and the taxpayer.

With regard to a transfer pricing ruling, it will be necessary to illustrate the criteria and the methods to be used in calculating the arm's length values of the transactions in question, also indicating why they are considered to be in accordance with the law. The relevant documentation will also have to be produced. If the ruling regards other matters, the taxpayer must indicate in its application which of the legally available solutions it advocates, and explain why it considers this solution to be in accordance with the law.

## 5.2 Partnerships

### 5.2.1 Determination of taxable income

Income produced by non-corporate entities resident in Italy, such as partnerships, is attributed for tax purposes to each partner in proportion to his percentage of ownership even if no actual distribution takes place (i.e. they are treated as fiscally transparent). The ordinary rules for the computation of business income are used to determine the partnership's taxable income.

The partnership itself is only subject to IRAP.

## 5.3 Permanent establishments

### 5.3.1 Definition of permanent establishment

The 2004 Italian tax reform introduced the concept of PE, which is essentially that described by the OECD Model Tax Convention.

### 5.3.2 Determination of taxable income

An Italian PE of a foreign entity is subject to both IRES and IRAP on income from business in Italy. The taxable income is calculated in accordance with the same rules applicable to resident corporations.

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

Under domestic law, the branch may also attract income produced by a foreign entity in Italy and only deemed to pertain to the branch (force of attraction rules), unless the foreign entity qualifies for tax treaty protection (usually treaties concluded by Italy include attributable income limitation clauses).

## 5.4 EU directives, regulations and agreements relating to direct taxation

The following EU provisions on direct taxation have been adopted by Italy.

On 3 August 1985 the European Economic Interest Grouping - EEIG Regulation (No 2137/1985) entered into force.

On 8 October 2004 the European Company Statute (Regulation No 2157/2002) entered into force. Directive 2001/86/EC, supplementing the European Company Statute with regard to the involvement of employees, was implemented by Legislative Decree no. 188 of 19 August 2005. On 18 August 2006 the European Cooperative Society Statute (Regulation No 1435/2003) entered into force. Directive 2003/72/EC, supplementing the European Cooperative Society Statute with regard to the involvement of employees, was implemented by Legislative Decree no. 48 of 6 February 2007.

The Interest and Royalties Directive (2003/49/EC) was implemented by Legislative Decree no. 143 of 30 May 2005.

The Savings Directive (2003/48/EC) was implemented by Legislative Decree no. 84 of 18 April 2005.

The EU-Swiss Savings Agreement entered into force on 1 July 2005.

The Mutual Assistance Directive, as amended by Directive 2003/93/EC, was implemented by Legislative Decree no. 215 of 19 September 2005.

The Parent-Subsidiary Directive, as amended by Directive 2003/123/EC, was implemented by Legislative Decree no. 49 of 6 February 2007.

The Merger Directive, as amended by Directive 2005/19/EC, was implemented by Legislative Decree no. 199 of 6 November 2007.

On 21 May 2008, the Italian government passed a Legislative Decree implementing the Directive on cross-border mergers of limited liability companies.

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## 6. Taxation of individual income

### 6.1 General rules

#### 6.1.1 Introduction

A person's liability to Italian tax is determined by their residence status for taxation purposes and by their source of income.

The tax year-end is 31 December.

#### 6.1.2 Italian tax residents

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

An individual is considered to be an Italian resident for tax purposes, subject to tax treaty provisions, if one of the following conditions is met:

- the individual is registered in the Office of Records of the Resident Population for the greater part of the tax year
- the individual stays in Italy for the greater part of the tax year
- the individual's centre of business or economic interests is in Italy for the greater part of the tax year.

If one of these three conditions obtains for the greater part of the tax year, even discontinuously, the individual qualifies as an Italian tax resident.

Spouses are taxed separately on their earned income and each spouse is taxed on half the income from community property and on half the income of minors.

#### 6.1.3 Non-Italian tax residents

Individuals who are non-residents of Italy are subject to tax only on certain categories of income from Italian sources.

#### 6.1.4 Types of personal taxes

Taxable income is subject to personal income tax (IRPEF). In addition to IRPEF, a regional tax and a municipal tax are levied, which vary according to the regulations issued by the regional and municipal authorities.

### 6.2 Taxable income

#### 6.2.1 Categories

Taxable income consists of the following six categories:

- 1 Income from land and buildings

- 2 Income from capital
- 3 Income from employment
- 4 Income from independent work
- 5 Business income
- 6 Miscellaneous income

The aggregate taxable income is calculated by adding the net income of each category. Losses arising from a business, trade or profession can be carried forward for a maximum of five years to offset income of the same kind. The profits and losses includible in aggregate income are calculated separately for each income category in accordance with the statutory rules, based upon the net total of all sources in the same category.

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

## 6.2.2 Employment income

### *Salary*

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

Payments on termination of employment are subject to a particular taxation regime known as separate taxation; however, at the taxpayer's option they can also be taxed under the ordinary taxation system.

### *Benefits in kind*

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

Benefits in kind are deemed to constitute income equal to their market value. Special provisions apply to vehicles at the disposal of employees and to loans made to employees at special rates (see below).

### *Pension income*

There are no special provisions for pensions. According to the law, all pensions and allowances regarded as equivalent to a pension are income from employment. However, the financial component of annuities from qualified pension plans is treated as income from capital and subject to a 12.5 percent substitute tax.

### *Directors' remuneration*

Remuneration paid to the members of a board of directors or supervisory board is taxed as

employment income. It is taxed as professional income (see below) if the functions carried out by the director or supervisor are typical of their professional activity.

### 6.2.3 Business and professional income

Business income is that derived from running a business. It is generally taxed at the progressive rates of individual income tax. The income of general and limited partnerships, regardless of its source and the purpose of the partnership, is considered to be business income and is calculated in accordance with the rules governing such income. Individuals may opt to have partnership income taxed at the rate of 27.5 percent (the corporate tax rate). Once the income so taxed is distributed to the partners, it is subject to tax at the ordinary progressive rates, and the 27.5 percent tax paid by the partnership can be claimed by the partners as a tax credit. Professional income is that derived from a trade or profession and is the difference between the fees received during the tax year (in cash or in kind, including profit shares) and the expenses incurred in practising that trade or profession during the same period.

### 6.2.4 Investment income

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

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

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

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

## 6.3 Tax-exempt items and personal deductions

### 6.3.1 Tax-exempt income

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

## *Social welfare*

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

Voluntary social security and welfare contributions, even if paid abroad, are tax deductible to the amount of EUR 5,164.57.

## *Medical insurance*

Contributions of up to EUR 3,615.20, paid to National Health Service funds (*Fondi integrativi al Servizio Sanitario Nazionale*) for medical assistance, are not taxable.

## *Benefits in kind and reimbursement of business expenses*

The reimbursement of business expenses incurred by an employee is not considered taxable remuneration if the expenses are proven by the original receipts.

The following business expenses are not included in taxable income:

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

If a company car or motorcycle is made available to an employee, the taxable benefit is 50 percent of the amount calculated on the basis of published tables and an assumed annual mileage of 15,000 km.

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

## **6.3.2 Deductions**

The 'no-tax area', which operated as a deduction from gross income in 2005 and 2006, was replaced in 2007 by a new system of deductions from gross tax, varying by type of income, such as employment, self-employment, or pension income. These deductions are progressively reduced until at income levels of over EUR 55,000.00 they no longer apply.

### *Family deductions*

The deductions for family dependents are allowed as deductions from gross tax. The basic deduction for a spouse with income of less than EUR 2,840.51 is EUR 800.00; however, this amount is progressively reduced for incomes of up to EUR 15,000.00. For incomes ranging from EUR 15,000.00 to EUR 40,000.00 the basic deduction is EUR 690.00. For incomes higher than EUR 40,000.00 the EUR 690.00 deduction is progressively reduced until it reaches EUR 0 for income of over EUR 80,000.00. The basic deduction for a child is EUR 800.00.

This is increased by:

- EUR 100.00 for each child younger than three
- EUR 200.00 for each child if there are three or more children in the family
- EUR 220.00 for each disabled child (pursuant to Law no. 104/92).

These amounts decrease as income rises:

- for taxpayers with one child, the deduction no longer applies for income of over EUR 95,000.00
- for taxpayers with two children, the deduction is not available for income of over EUR 110,000.00
- for three children, the deduction is not available for income of over EUR 125,000.00.

A further deduction is available for individuals with four or more dependent children. The deduction is EUR 1,200.00, regardless of their income.

Since 1 January 2007, the above deductions have also been available to non-residents; however, they must be able to prove their family relationships by means of a local family relationship certificate.

### *Other deductions*

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

- medical expenses exceeding EUR 129.11, incurred by the taxpayer, his/her spouse or other dependents, including fees charged by specialists
- voluntary life insurance premiums and accident premiums, not exceeding EUR 1,291.14 (and provided that certain conditions are met)
- interest paid to banks resident in the EU on mortgage loans secured by property in Italy, up to a maximum of EUR 4,000.00 per year (if the spouses share ownership of the property the deduction is calculated in proportion to their respective percentages of ownership)
- interest paid to banks resident in the EU in connection with agricultural loans, up to the declared income from the land
- funeral expenses, up to a maximum of EUR 1,549.37
- high school tuition and university fees, not in excess of the tuition fees payable to state schools and universities
- expenses paid to a real estate agent, up to a maximum of EUR 1,000.00
- grants for particular public objectives.

A tax credit is granted for the costs of certain home renovations. The eligible expenses are limited to EUR 36,000.00 per dwelling. The tax credit is equal to 36 percent of the expenses and must be spread over five or 10 years.

## 6.4 Tax rates

### 6.4.1 General rules

The 2010 graduated income tax rates are as follows:

Taxable income	Total tax on income below bracket	Rate on excess
EUR	EUR	Percent
0 - 15,000		23
15,001 - 28,000	3,450	27
28,001 - 55,000	6,960	38
55,001 - 75,000	17,220	41
Over 75,000	25,420	43

The above tax rates do not include regional tax and municipal tax. The regional tax rate is decided by the region in which the individual is domiciled.

Generally, regional tax is charged at progressive rates ranging from 0.9 percent to 1.4 percent. Municipal tax of up to 0.8 percent has to be added to these percentages and is decided by the Italian municipality in which the individual is domiciled.

### 6.4.2 Separately taxed items

#### *Taxation of investment income and capital gains*

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

#### *Italian dividends*

Recipient	Non-qualifying shareholding	Qualifying shareholding
Private individual (dividend taxed as income from capital)	12.5% final withholding tax on 100% dividend	Progressive taxation on 49.72% of the dividend

#### *Foreign dividends*

Recipient	Non-qualifying shareholding	Qualifying shareholding
Private individual (dividend taxed as income from capital)	12.5% final withholding tax on the net dividend	Progressive taxation on 49.72% of the dividend, if it derives from a 'white-list' company (100% if the shareholding is in a 'black-list' company)

## Capital gains

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

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

The taxation is levied in two different ways.

- capital gains from disposal of a non-qualifying shareholding<sup>1</sup>: these are subject to a 12.5 percent substitute tax to be paid through the income tax return
- capital gains from disposal of a qualifying shareholding<sup>2</sup>: 49.72 percent of the capital gain is taxable at the progressive IRPEF rates.

## Interest

Generally, interest income is taxable. There are, however, very different taxation rules for financial instruments, according to the source of the interest. In particular, interest income from government bonds issued up to 21 September 1986 is tax exempt, while interest income from government bonds issued after 21 September 1986, and before 24 September 1987, is subject to a final withholding tax of 6.25 percent. Interest income from government bonds issued after 24 September 1987 is subject to a final withholding tax of 12.5 percent.

Since 1997, interest income from government bonds has been subject to a substitute tax of 12.5 percent.

Finally, interest income and income from other securities issued by banks or companies listed on the stock exchange are subject to a final withholding tax of 12.5 percent or 27 percent, depending on the maturity dates of the bonds, as follows:

- less than 18 months: 27 percent
- more than 18 months: 12.5 percent.

Interest on bank and postal current accounts is subject to a final withholding tax of 27 percent.

## Royalties

Royalty income includes that derived from the third-party use of intellectual property, patents, industrial inventions, trademarks and know-how. Royalties are treated as income from a profession if derived by an author or inventor, or as miscellaneous income if derived by individuals other than an author or inventor. A flat 25 percent of expenses may be deducted from the gross royalty if the assets producing the royalty income were acquired for a consideration.

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

1 A 'non-qualifying shareholding' is an equity interest, or equivalent rights to acquire equity, representing less than 20 percent (2 percent in the case of a listed company) of the voting rights that can be exercised at the ordinary shareholders' meeting or less than a 25 percent interest in the capital (5 percent in the case of a listed company).

2 A 'qualifying shareholding' is an equity interest exceeding the thresholds indicated in the above footnote.

## *Income from immovable property*

In general, income from the ownership of land and buildings is a notional amount based on a cadastral system. In the case of property that is rented out, the taxable basis is the higher of the notional cadastral income and the actual income, net of directly attributable expenses of up to 15 percent of the gross income (i.e. the actual net income cannot be lower than 85 percent of the gross income).

Owner-occupied homes are deemed to produce taxable income for the owner. However, the notional income of the owner-occupied dwelling is not subject to tax because a deduction equal to the notional income is available. The income attributable to the owner-occupied dwelling is not taken into account for the purposes of computing eligibility for personal and other allowances.

Notional income from other houses that are owned in addition to the principal dwelling of the owner or his family, is increased by one third.

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

## *Principal residence: gains and losses*

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

A capital gain realized on the sale of real estate purchased more than five years previously is not taxed.

Capital gains realized on real estate outside Italy are taxable in Italy under the above rules if the owner is considered to be an Italian tax resident.

## **6.5 Administrative and filing requirements**

### **6.5.1 Withholding taxes**

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



## 6.5.2 Deadlines

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

Income tax is generally due by **16 June** of the subsequent year; however, the Italian Revenue can accept delayed payments with interest. The Italian income tax return must be filed between 1 May and 30 June; this deadline is extended to **31 July** if the tax return is filed electronically. The deadline may be extended further by the Italian government.

## 6.5.3 Anti-money laundering rules

Regardless of their obligation to file an income tax return, all Italian tax resident individuals must be compliant with exchange control regulations in Italy and consider whether they also have to declare their foreign investments and/or transfers of cash and shares to and from abroad.

Exchange control reporting is required if an Italian tax resident individual transfers cash or shares in excess of EUR 10,000.00 (or the equivalent amount in foreign currency) to or from Italy. An Italian tax resident individual may be exempt from this formality if the payments are made through an authorised broker resident in Italy, as that entity will comply with the reporting obligation on his behalf.

An Italian tax resident individual is also required to report any foreign investments higher than EUR 10,000.00 (or the equivalent amount in foreign currency) held outside Italy; and any transfers to and from Italy which have had an impact during the calendar year on his foreign investments. Such items must be reported through Section RW of the Italian tax resident individual's tax return. There are severe penalties for failure to complete this section of the tax return.

## 6.5.4 Payment of tax

Income taxes have to be paid as described below.

- by 16 June of each year the taxpayer must pay the balance for the previous calendar year and the first advance payment for the current year. The first advance payment amounts to 39.6 percent of the taxes paid for the previous calendar year
- by 30 November of each year the taxpayer must pay the second instalment, equal to the remaining 59.4 percent of the taxes due for the previous year.

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

## 6.5.5 Penalties

If the tax return is filed between one and 90 days after the deadline, a penalty of EUR 21.52 is due. A much higher penalty is applicable when the late tax return includes a foreign investment return (section RW referred to in 6.5.3 above).

If any tax is due, the following penalties for delayed payments are applicable:

- a penalty equal to 2.5 percent of the unpaid income tax is due, plus interest of 3 percent per year, calculated on a daily basis from the date the tax should have been paid to the

date the tax is paid, if the taxpayer voluntarily discloses the violation no later than 30 days after the payment deadline

- a penalty equal to 3 percent of the unpaid income tax is due, plus interest of 3 percent per year, calculated on a daily basis from the date the tax should have been paid to the date the tax is paid (this is valid only if the taxpayer files a voluntary disclosure prior to undergoing assessment) provided the voluntary disclosure and payment take place within the deadline for filing the following year's income tax return.

Tax returns filed more than 90 days after the deadline are considered as omitted tax returns and are subject to penalties of between 120 percent and 240 percent of the tax due. In some circumstances, criminal penalties may be imposed.

For unpaid or underpaid income taxes, a penalty equal to 30 percent of the unpaid tax is applied, plus interest of 3 percent per year, calculated on a daily basis from the due date to the payment date.

## 6.6 Other taxes

### 6.6.1 Net wealth tax

There is no net wealth tax in Italy.

### 6.6.2 Real estate tax

A municipal tax on immovable property (ICI) is levied on the possession of immovable property (buildings, development land, rural land) located in Italy. Since 29 May 2008 this tax is no longer levied on immovable property used as a resident taxpayer's primary home, except in the case of certain luxury residences.

The taxable base is the notional cadastral income attributed by the immovable property registry, multiplied by 100 for residential property and by 50 for business property (with some exceptions).

Depending on the municipality, the tax rates range from 0.4 percent to 0.7 percent of the value of the buildings and land, plus any improvements. This tax is not deductible for income tax purposes.

### 6.6.3 Gift and inheritance tax

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

- 4 percent for beneficiaries directly related to the donor (i.e. spouse and children) or the bequeather. An exemption is given for the first EUR 1,000,000.00 of assets and cash transferred to each beneficiary
- 6 percent for brothers or sisters of the donor or the bequeather. An exemption is given for the first EUR 100,000.00 of the assets and cash transferred to each beneficiary

- 6 percent for other relatives, with no tax exemptions
- 8 percent for beneficiaries not related to the donor or the bequeather, with no tax exemptions.

When real estate is inherited or gifted, cadastral tax and mortgage tax are applicable at the rates of 1 percent and 2 percent respectively. If the real estate is represented by the principal dwelling, the cadastral and mortgage taxes are substituted by a fixed tax of EUR 168.00.

## 6.7 International aspects

### 6.7.1 Expatriates

Individuals will be taxed on a notional salary if they are tax resident in Italy but are employed and live outside Italy for the greater part of the tax year.

The notional salary is established each year in a decree issued by the Italian Ministry of Labour and Social Security, and is normally used as a basis for paying Italian social security contributions when an Italian employee is seconded to a non-social security treaty country. Italian employers have to levy withholding taxes on the monthly notional salary for their Italian employees working abroad and all the benefits linked to the foreign employment are deemed to be included in the notional salary. Consequently, it may be possible that an Italian employee seconded abroad is subject to double taxation (in Italy and in the host country). However, double taxation can be avoided through the tax credit mechanism.

These rules do not apply to Italian employees who are seconded abroad and who are no longer Italian tax residents.

### 6.7.2 Double taxation relief

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

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

If foreign income is derived from more than one country, the foreign tax credit is applied separately with respect to each country (i.e. on a per country basis).

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

No credit is granted in the event of failure to file a tax return or to report income produced abroad in the tax return. No tax-sparing clause is available at the domestic level.

### 6.7.3 Specifics of non-resident taxation

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

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

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

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

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

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

**Dividends** are subject to a final withholding tax of 27 percent (12.5 percent in the case of saving shares, e.g. shares without voting rights) unless a lower rate applies under a tax treaty. If tax was also paid on the dividends in the recipient's country of residence, a refund equal to four-ninths of the Italian withholding tax may be claimed.

In general, **interest** payments to non-resident individuals are subject to a final withholding tax at the rates applicable to interest paid to residents. However, a 27 percent rate applies to loan interest paid to individuals resident in a country or territory outside the European Union with a preferential tax regime.

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

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

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

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

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

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## 7. Labour law and immigration

### 7.1 Labour law

#### 7.1.1 Conditions of employment

##### *Collective labour agreements*

In Italy there are associations representing employers and trade unions representing employees.

The National Collective Labour Agreements (“CCNLs”) between the above parties govern employment relationships and the consequent rights and obligations.

These agreements are the compulsory standard reference for everyone employed in a particular industry, even if they are not members of a trade union. Case law, for instance, recognises that the CCNLs establish the minimum salary and minimum terms of employment for each employee; in no case may an employment agreement establish working conditions less favourable than those defined by the relevant CCNL.

##### *Wages and salaries*

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

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

An employer can pay additional amounts on top of the minimum basic salary, called *superminimi assorbibili* or *anticipi su futuri aumenti contrattuali* (i.e. advance payments on future contractual increases).

An employee’s salary is normally paid in 13 monthly instalments (the extra one in December). However, many CCNLs (including that for the trade sector) also provide for the payment of a 14th monthly instalment, generally paid in June. Internal company agreements may provide for even more instalments.

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

##### *Other conditions (fixed-term or indefinite agreements, trial period, working hours, holidays, maternity leave, TFR, etc.)*

##### *Fixed-term or indefinite agreements*

Italian labour law allows both fixed-term and indefinite employment agreements.

The cases in which it is possible to offer a fixed-term contract are established by law and may also vary according to the different CCNLs. As a general rule, an employment agreement can

be fixed-term only on specific technical, production or organizational grounds or when it is temporarily necessary to replace workers. Otherwise, a fixed-term agreement is considered as invalid and the employment relationship is regarded as indefinite.

The CCNL establishes the percentage of employees that may be hired on a fixed-term contract.

### *Trial period*

The parties may opt for a trial period. The maximum length is established by the CCNLs and may not exceed six months.

A trial period has to be agreed in writing before the start of employment; otherwise the trial period is null and void and the relationship is considered as an indefinite employment agreement, running from the start of work.

During the trial period both the employer and the employee can terminate the employment relationship at any time (without any notice and without any indemnity).

### *Working hours*

Working hours are established by the CCNLs and cannot normally exceed 40 hours per week for employees.

There is a statutory minimum overtime rate, equal to the ordinary rate plus a certain percentage (approximately 15 percent).

Special rates apply for night work.

### *Holidays*

As a general rule, holiday rights cannot be waived.

The holiday allowance is determined by the CCNL for each category of employee and cannot be less than four weeks per year. At least two weeks of holiday per year have to be taken.

The employer and the employee have to agree on the holiday period. Employees are entitled to take at least two weeks of holiday per year during periods of their own choice.

### *Maternity leave*

There are strict rules on maternity leave and terminating employment relationships with pregnant women; these have to be very carefully observed.

Under Italian labour law there is compulsory maternity leave. Female employees may not work for two months before and three months after the expected date of birth. Alternatively, the woman can decide to stop working one month before the expected date of birth and return four months after the birth of her child. In this case the worker has to submit an application to her employer and also to the National Institute of Social Security (INPS), with a medical certificate stating that this arrangement will not harm the mother or the child.

Compulsory maternity leave may start earlier or be extended if there are serious health issues or tiring duties.

Italian labour law forbids employers from terminating the employment of a pregnant woman from the start of pregnancy until the child is one year old. Dismissal is considered void in this period.

However, termination of employment during this period is valid in certain exceptional circumstances:

- proven gross misconduct of the employee, involving immediate termination of the working relationship without any notice period
- closure of the company
- expiry date of a fixed-term contract.

### *Leaving indemnity*

Regardless of the circumstances in which a work relationship ends, the employee is entitled to receive a leaving indemnity ("TFR"), which is approximately equal to his monthly salary multiplied by the number of years of work (revalued each year according to specific accounting rules).

Therefore, the employer has to set aside a TFR provision each year for the employees.

Alternatively, the employee may ask his employer to pay his TFR into a pension fund.

## **7.1.2 Individual and collective termination of employment agreements**

### *Termination of an individual employment agreement - individual dismissals*

#### *Employees*

The dismissal of an employee is valid only when there is a **true and just cause** (gross misconduct of the employee, involving the immediate termination of the working relationship without any notice period) or a **justified reason** (less serious misconduct of an employee, or business reasons such as the company's winding-up, reorganization, etc.). In the case of dismissal for a justified reason a notice period must be given.

If the dismissal of an employee is not based on one of the above grounds, and the employee obtains a declaratory judgment of unlawful dismissal, the economic consequences depend on the size of the employer:

- Employers with more than 15 employees working in the production unit, or 60 employees nationwide, are obliged to take back the employee and pay him the remuneration that he would have earned from the date of dismissal to the date that he goes back and, in any case, not less than five months' pay. If the employee does not wish to go back, he is entitled to ask the employer to pay an indemnity equivalent to 15 monthly salaries instead (plus his remuneration from the date of dismissal, which in any case, is not less than five months' pay)
- Employers with less than 15 employees are not obliged to take back the dismissed employee. They can confirm the dismissal and pay an indemnity ranging from two and a half to six monthly salaries.



**Notice period.** When an employee is dismissed for a **justified reason**, the employer must give the employee notice, the length of which is established by the CCNL according to the employee's job title and years of work.

If there is **true and just cause**, the employment relationship can be terminated immediately.

### *Executives*

The rules described above are not applicable to executives. CCNLs for executives (which are different for each sector) generally state that there must be good grounds for the dismissal of an executive. Therefore, an executive may contest his dismissal and seek damages if the dismissal is not supported by any valid reason.

CCNLs for executives in the trade sector state that an executive who has been unfairly dismissed has the right to receive an additional indemnity of 18 months' salary (plus other indemnities based on the executive's age), plus the notice period.

**Notice period.** CCNLs for executives specify that the length of the notice period (from six to 12 months) depends on the seniority of the executive.

### *Redundancy procedures - collective dismissals*

A collective dismissal is when an employer with more than 15 employees intends to dismiss more than five employees within 120 days.

When a company intends to start a collective dismissal, it must follow a particular redundancy procedure. This procedure also applies when a company is closed down. Law no. 223 of 23 July 1991 establishes the steps to be taken:

- The company must give advance written notice to its internal union representatives and to the trade unions of its intention to start the redundancy procedure
- The written notice must also be sent to the local office of the Ministry of Labour and include a copy of the receipt for the payment made to the Social Security Office (*INPS - Istituto Nazionale della Previdenza Sociale*) to start the collective dismissal procedure
- Within seven days of receiving the notice, the trade unions can request a meeting with the company's management in order to examine the reasons for the decision and evaluate possible alternative solutions. This first phase expires within 45 days of receipt of the notice
- Should the two parties not come to an agreement, another attempt has to be made by the manager of the local office of the Ministry of Labour. This phase expires within 30 days of the date of the notice given by the company to that authority, informing it of the results of the consultation with the trade unions and the reasons for the negative outcome
- Once an agreement with the trade unions has been reached, or the procedure has been completed, the company's management has to inform the employees of their dismissal in writing, in accordance with the terms and conditions communicated beforehand to the trade unions.

On receipt of their dismissal indemnity the employees normally sign an official settlement agreement at the Provincial Office of the Ministry of Labour (*Direzione Provinciale del Lavoro*). This is to avoid any future disputes and claims against the company.

The trade unions usually ask for additional amounts, which may range from six to 24 monthly salaries (or even more).

The sole purpose of the sum distributed to the employees as a dismissal indemnity is to avoid any disputes and claims against the company before the judicial authorities.

The company will also have to pay the dismissed employees all the other indemnities provided for by Italian law and by their CCNL, such as an indemnity in lieu of notice, TFR, additional monthly instalments, and outstanding holiday leave. Such payments cannot be considered or treated as a leaving incentive.

This procedure applies to all employees, excluding executives.

## **7.1.3 Social security and pension system in Italy**

### *7.1.3.1 Social security system (social cost, accident coverage, unemployment, sickness, maternity)*

A state-run system of social security operates in Italy, covering illness, maternity, unemployment, pensions, disability and family allowances.

This system is financed by contributions from employees and employers, calculated as a percentage of the employee's gross remuneration.

Because these contributions represent a relatively high surcharge on labour costs they are of paramount importance in determining operational business costs.

The employer's part of the social security contributions is in the range of 29 percent to 32 percent of the gross salary, while the employee contributes approximately 10 percent. Similar percentages apply to executives although contributions can be made through various types of specialised funds.

In Italy it is compulsory to pay national insurance contributions to INAIL (National Institute for Accidents at Work) for coverage against the risks of accidents at work or occupational diseases. The cost of this insurance ranges from 0.4 percent to 3 percent of the gross salary.

### *7.1.3.2 Pension treatment*

Italian law provides for two different types of pension: old-age pensions and seniority pensions.

#### *Old-age pensions*

Employees registered with the Italian Social Security Institute INPS are entitled to an old-age pension provided that they meet the following requirements:

- they have paid social security contributions for at least 20 years
- they are 65 years old (men) or 60 years old (women).

The right to an old-age pension is subject to termination of employment.

### *Seniority pensions*

Employees registered with the Italian Social Security Institute INPS are entitled to a seniority pension when they have fulfilled one of the following requirements:

- they are 58 years old and have paid social security contributions for at least 35 years (the amount of contributions and the age limit will be raised to 36 years and 61 years respectively)
- they have paid more than 40 years of contributions, regardless of their age.

## 7.2 Immigration

### 7.2.1 EU citizens

Entry requirements, immigration procedures and working activity are regulated by the Schengen Agreements, which made it possible to build a common area of free movement between the signatory states and eliminate border controls. EU citizens holding a regular passport can travel in Italy and are exempt from entry-visa requirements.

#### *Residence*

Under European law EU citizens are free to reside in Italy if they stay less than 90 days. In this case they do not need to register at the town hall. If the individual remains in Italy for more than three months registration is necessary.

#### *Employment*

EU citizens are free to work in Italy and no special work permit is required.

An exception is made for the citizens of Romania and Bulgaria, who cannot work in specific industries (e.g. trade) without a work permit issued by the Italian prefecture.

### 7.2.2 Non-EU citizens

#### *Entry for business/tourism*

A non-EU citizen must have an entry visa in their passport. However, some foreign citizens entering Italy - such as Japanese or Americans - do not have to obtain a visa for tourism or business provided that they do not stay more than 90 days. In other cases entry visas are issued by Italian embassies and consulates in the country of origin or last residence. This kind of visa does not allow the person to work permanently in Italy.

#### *Entry for study*

A visa for study purposes can be requested at the Italian embassy in the foreigner's country of residence. Its validity is equal to the length of the student's course; however, it cannot exceed one year.

Study visas also allow the person to have a part-time job.

### *Entry for family reunification purposes*

This type of visa is granted when the applicant is a foreigner already residing in Italy and holds a residence card or permit of stay that is valid for not less than one year and is issued for employment purposes (including self-employment) or for religious reasons.

The visa will be granted only to the applicant's immediate relatives, such as a spouse or children.

This type of visa allows the holder to work.

### *Entry for work*

To work in Italy, a foreign national must hold a work visa. The number of foreign citizens who can be hired in Italy is based on annual entry quotas established each year by legislative decree.

However, the secondment of employees is generally excluded from the fixed quotas established by the Italian government, given that in this case companies engage highly qualified workers.

The main requirement for secondment is a relationship between the home company and the entity in Italy. Nevertheless, a work visa is still required for a seconded employee. The company to which the worker will be seconded must present an application to the local Immigration Office (*Prefettura Sportello Unico per l'Immigrazione*). The Immigration Office checks the working conditions and the documentation required and then issues the work authorisation, including a *Nulla Osta*. The working conditions cannot be less favourable than those established by the relevant CCNL.

Once the *Nulla Osta* is obtained, the foreign worker has to obtain a visa from the Italian diplomatic mission in his country of residence.

A foreign national who legally enters Italy for more than 90 days has to apply for a permit of stay within eight working days of arrival in Italy. Within the same period the worker and the Italian employer have to sign a 'stay contract' summarising the main employment conditions.

The paperwork for a permit of stay application must be submitted by post.

The permit of stay will indicate the same reasons for stay as those stated in the entry visa.

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## 8. VAT

### 8.1 Scope

VAT is due on any taxable supply of goods or services made in Italy by a taxable person in the course or furtherance of its business. Supply means all forms of supply but does not normally include anything done otherwise than for a consideration. However, certain transactions without consideration are deemed to be supplies, e.g. conditional sales, lease contracts containing a binding clause providing for the transfer of ownership, the private use of business assets (or, more generally, their use for purposes other than those of the business), disposals free of charge, and supplies of services (where the value exceeds EUR 25.82) for private use or for free.

VAT is also due on all imports.

### 8.2 Rates

The standard rate of VAT is 20 percent.

There is a reduced rate of 10 percent for some goods and services, including:

- certain foods
- domestic fuel and power
- public transport
- certain pharmaceutical products
- water
- hotel accommodation
- the services of writers and composers
- social housing
- power deriving from renewable sources.

In addition, there is a reduced rate of 4 percent for certain goods and services, including:

- basic foodstuffs
- books and newspapers
- a person's main dwelling
- certain pharmaceutical products
- medical equipment and aids for the handicapped.

The list of zero-rated supplies includes:

- exports and EU supplies
- the supply, modification, repair, maintenance, chartering and hiring of sea-going vessels and aircraft used for international traffic
- international transport services
- services directly connected with exports or imports
- work on goods to be delivered outside Italy.

The list of exemptions includes:

- finance
- insurance
- tax collection transactions
- lotteries, betting, and other games of chance
- certain transactions involving residential property
- postal services
- cultural services
- certain real-estate transactions.

NB: It is not possible to recover VAT on exempt supplies.

## 8.3 Registration

### 8.3.1 Italian entities

If a business makes taxable supplies in Italy it is required to register and account for Italian VAT. There is no VAT registration threshold in Italy.

### 8.3.2 Non-Italian entities

The registration rules that apply to Italian entities also apply to non-Italian entities making taxable supplies in Italy.

If a business is not registered for VAT in Italy and sells and delivers goods from another EU Member State to customers in Italy who are not VAT registered (distance sales), it is required to register and account for VAT in Italy (through the direct identification procedure, where possible, or through the appointment of a VAT representative) when the value of these sales exceeds EUR 35,000.00.

The direct identification form and instructions, and the form and instructions for appointing a VAT representative, can be found on the Italian tax authority's web site:

**[www.agenziaentrate.it](http://www.agenziaentrate.it)**

The penalty for failing to register on time for VAT ranges from EUR 516.00 to EUR 2,066.00.

Certain simplification schemes may apply as follows:

- Triangulation

If a business in one Member State (acting as an intermediate supplier to an Italian buyer) purchases goods from a business in a second EU Member State and the goods are then delivered directly from that second Member State to Italy, VAT can be accounted for by the Italian customer (if it is a VAT person).

- Call-off stock

If stock is stored at a customer's premises under its control the customer is liable to account for acquisition tax.

- Supply and installation

If a business supplies goods and installs or assembles them in Italy, its customer is liable to account for acquisition tax. The business must be registered for VAT in another EU Member State and the goods must be shipped from within the EU.

- Reverse charge

If a business not established in Italy supplies goods or services to an Italian established customer, the customer is liable to account for acquisition VAT. If a foreign entity is established in Italy, VAT must be charged by the supplier through its Italian fixed establishment as long as the Italian establishment intervenes in the supply only.

## 8.4 VAT grouping

Italian VAT grouping differs from what is ordinarily understood as a VAT group in other EU countries. In Italy companies in a group may opt for VAT grouping so that they are able to offset each company's VAT debts and credits. Thus, the payment and repayment positions of the group companies may be pooled even if each group member retains its own VAT number. Unlike what happens in other EU countries, intra-group transactions are not disregarded in Italy.

VAT repayment positions accrued by new VAT group members before they enter the group cannot be used to shelter VAT net payment positions of other members.

According to a recent interpretation of the rules by the Ministry of Finance, corporations resident in an EU Member State other than Italy may, if they are registered for VAT in Italy or have a fixed establishment in Italy, pool their Italian VAT position with one of the other companies in the group.

## 8.5 Returns

All registered businesses are required to submit VAT returns annually. VAT is paid on a monthly or quarterly basis and repayments are made on an annual basis (quarterly repayment claims are admitted in certain cases). An additional annual short-form return is required for certain taxpayers. Failure to file VAT returns and settle any outstanding payments on time may result in penalties of up to 240 percent of the outstanding amount of VAT.

In Italy the European Sales Listings (ESL) and statistical report forms (Intrastat) have been combined. They are normally referred to collectively as Intrastat returns. There are two separate returns: one for outbound supplies and the other for inbound supplies, for both goods and services.

Intrastat returns may be submitted on a monthly or quarterly basis, depending on the level of EU supplies in the previous four quarters.

Monthly returns should be submitted where supplies equal or exceed EUR 50,000.00 in each of the four previous quarters. The thresholds are computed for inbound and outbound supplies separately.

Failure to submit Intrastat returns on time may result in a penalty ranging from EUR 516.00 to EUR 1,032.00, plus an additional penalty (for statistical violations) ranging from EUR 516.00 to EUR 5,164.00.

The Intrastat forms can be found on the following web site:

**[www.agenziadogane.it](http://www.agenziadogane.it)**

## 8.6 VAT recovery

Non-registered persons, established outside Italy, can recover Italian VAT if the amount is not lower than EUR 50.00.

Under EU procedures in place from 2010, a claimant established in another EU Member State should file an electronic claim with the authorities of its Member State of residence. A non-EU business should recover the VAT under the 13th Directive (the refund is conditional upon the non-EU states granting comparable turnover tax advantages; currently, only the Norwegian, Swiss and Israelis can submit such claims).

There are strict conditions and time limits for making claims. The claim period covers the calendar year and claims must be submitted by 30 September of the following year. The claim period can be shorter than a calendar year (a quarter) if the amount of VAT recoverable in that period is not lower than EUR 400.00.

The 13th Directive claim forms can be found on the Italian tax authority's web site:

**[www.agenziaentrate.it](http://www.agenziaentrate.it)**

There are certain items on which VAT cannot be recovered or on which it is only partially recoverable. Some examples are given below:

- **Exempt supplies:** where VAT relates to both taxable and exempt supplies, it must be apportioned
- **Non-business (including private) activities:** where VAT relates to both business and non-business activities, it must be apportioned
- **Motor cars (excluding commercial vehicles):** the VAT recovery rate is limited to 40 percent for expenditure on cars not wholly used for business purposes. The limit covers any expenditure on cars: the purchase of the vehicle (including assembly contracts and the like), intra-Community acquisitions, importation, leasing or hire, modifications, repair or maintenance, lubricants, fuel, and suchlike.

The restriction does not apply if the vehicle falls in any of the following categories:

- the vehicle forms part of the taxable person's stock in trade in the exercise of his



activity;

- the vehicle is used as a taxi
  - the vehicle is used for instruction by a driving school
  - the vehicle is hired or leased out
  - the vehicle is used by sales representatives
- **Business entertainment:** VAT is generally not recoverable on business entertainment costs
  - **Tour operators' margin scheme:** VAT cannot be reclaimed for goods and services which fall under this scheme
  - Goods sold under one of the margin schemes for second-hand goods. There are a number of schemes whereby VAT is accounted for on the sales margin of the goods but cannot be recovered on the purchase of those goods.

## 8.7 International supplies of goods and services

### 8.7.1 Export

#### *Goods*

If a seller in Italy sells goods to a customer who is registered for VAT in another EU Member State and the sale involves the removal of those goods from Italy (by the seller or the customer) to that Member State, then the seller does not charge VAT and zero-rates the supply as an intra-EU dispatch. The seller must obtain the customer's VAT number in the other EU Member State and quote it on the invoice. The seller should also obtain evidence of the removal of the goods from Italy. If goods are sold to a customer who is not registered for VAT in another EU Member State, the seller will have to charge Italian VAT.

If the seller exports goods to a customer (business or private) outside the EU, then it does not charge VAT; however, as for intra-Community sales, the seller should make sure that in all cases it keeps proof of dispatch/delivery to support its zero rating.

#### *Services*

If a supplier established in Italy supplies services to a business customer established in another EU Member State, he makes - under the new 'VAT Package' rules - a supply which is outside the scope of Italian VAT. In order for the supplier not to charge VAT, the VAT number issued to the customer in the other EU Member State must be obtained and quoted on the invoice.

The following services are subject to different 'place of supply' rules:

- services connected with immovable property
- passenger transport
- restaurant and catering services
- hiring or leasing of means of transport
- cultural, artistic, sporting, scientific, educational, entertainment, or similar activities,

including the activities of the organizers of such activities and, where appropriate, the supply of ancillary services

### *Habitual exporters*

A resident company acquires the status of habitual exporter if it makes zero-rated supplies (exports, EU supplies, international services, etc.) that account for more than 10 percent of its total turnover.

A habitual exporter is entitled to purchase VAT-free services and goods (exceptions apply for immovable property and for goods and services on which VAT cannot be recovered) up to the amount of the zero-rated supplies made in the previous calendar year or previous 12 months. Documentation obligations and procedures apply (in order to benefit from VAT-free treatment, the habitual exporter is required to send its supplier a 'declaration of intent' form).

The supplier of a habitual exporter is required to submit an electronic monthly return to the Italian authorities, reporting the information contained in the declaration of intent. The deadline for submission is the 16th day of the following month.

The return and instructions can be found on the following web site:

**[www.agenziaentrate.it](http://www.agenziaentrate.it)**

## **8.7.2 Imports**

When goods are imported into Italy from outside the EU, import VAT and customs duty may be due. This has to be paid or secured before the goods are released from customs control.

If certain services are bought in from outside Italy, the reverse charge mechanism must be applied. This is intended to eliminate any VAT advantage in buying those services from outside Italy.

Under the reverse charge mechanism it is necessary to account for a notional amount of VAT as output tax in the VAT return covering the period in which the payment is made. This VAT is recovered as input tax in the same return.

If all of the VAT can be recovered, the reverse charge has no cost effect and is a VAT compliance matter only. However, if there is a partial exemption there is likely to be a VAT cost, depending on the level of recovery allowed under the partial exemption method.

## **8.8 Invoices**

A tax invoice should contain the following details:

- the date of issue
- a sequential invoice number by calendar year. If the invoice (such as a credit note) adjusts an earlier invoice, unambiguous reference should be made to the original invoice.

- the supplier's VAT number
- the customer's VAT number (always on intra-EU supplies when the customer is a taxable person). If VAT on a transaction will be accounted for by the customer and not the supplier because the reverse charge mechanism applies, then the invoice must explain the basis of the transaction or include a reference to the relevant provision of the Italian VAT law
- the supplier's name and address
- the customer's name and address
- the address of the permanent establishment
- the quantity, quality and nature of the goods/services supplied
- the taxable amount split by applicable rate
- unit price (exclusive of any VAT)
- the market value of the goods sold at a discount, whether or not this value is included in the calculation of the taxable amount
- the VAT rate
- the amount of VAT payable in euro (if VAT is not due, the provision of Italian law allowing this must be quoted)
- an indication of the person who issued the invoice (in case of self-billing).

Electronic invoices are allowed, provided that the customer's prior agreement is obtained and that Electronic Data Interchange (EDI) or an advanced digital signature is used to guarantee the authenticity of the invoice's origin and content.

Electronic invoicing is compulsory for supplies to public authorities and administrations.

Self-billing is allowed. However, the supplier remains responsible for the issue of the invoice. Furthermore, if the issuer is resident in a 'black-list' state the supplier (who must have been in business for at least five years and must not have undergone a VAT assessment by the tax authorities in the preceding five years) must notify the tax authorities of the arrangement beforehand.

## 8.9 Transfers of business

If a business is sold as a going concern then VAT is not due. The transaction is subject to registration tax. Certain conditions must be satisfied: for example, the purchaser must intend to use the assets to carry on the same kind of business carried on by the seller.

## 8.10 Opting for VAT

Italian VAT law grants a general exemption for real estate transactions, with certain exceptions. However, in the case of industrial real estate it is possible to opt - in the transfer deed - for the taxation of the transaction. In the same way, it is possible to opt for the taxation, on a unit-by-unit basis, of leased industrial real estate. Again, this form of taxation must be opted for in the leasing agreement.

The reverse charge procedure applies to the transfer of industrial real estate if the supplier has opted for VAT or the customer is a partially exempt business person.

## 8.11 Head-office and branch transactions

In light of the judgment in the FCE case (C-210/04), the Italian tax authorities have clarified that services rendered between a head office and its branch are disregarded for VAT purposes (on condition - as pointed out by the ECJ judges - that the branch has no decisional autonomy).

## 8.12 Bad debts

VAT relief can be claimed for bad debts only if they are due to a customer's bankruptcy or insolvency.

## 8.13 Anti-avoidance

There is no general anti-avoidance rule for VAT purposes; there are, however, certain specific anti-avoidance provisions.

According to the Italian Supreme Court, should a taxpayer make obviously uneconomic transactions in such a way that VAT is not due, the tax authorities are allowed to reclassify the transactions and claim VAT. Therefore, a taxpayer should always be in a position to prove the economic value of his transactions; otherwise they might appear to be made with the sole purpose of obtaining an undue tax advantage.

In this respect the Italian tax authorities have clarified that the principles set forth in the Halifax ECJ decision should also apply for Italian VAT purposes.

A rule to combat missing trader intra-Community fraud, also known as carousel fraud, is in force in Italy, establishing that the purchaser has joint liability for VAT not paid by the seller. This anti-fraud rule only applies to a limited series of goods (cars, motorcycles, mobile phones, computers, live stock, and fresh meat) and is only triggered when the price is lower than the market value.

Specific anti-avoidance provisions exist whereby the fair market value becomes the taxable basis in certain transactions between related parties which are partially exempt.

## 8.14 Penalty regime

The VAT penalty regime can be categorised according to the type of violation committed by the taxpayer, as described below.

### *Violations connected with the VAT return*

**Failure to submit an annual VAT return:** the penalty ranges from 120 to 240 percent of the amount that should have been declared in the return. If VAT is not due on any of the taxpayer's transactions, the penalty ranges from EUR 258.00 to EUR 2,065.00.

**Submission of an inaccurate VAT return:** the penalty ranges from 100 to 200 percent of the VAT not shown or of the excess VAT credit declared.

### *Failure to record transactions*

**Failure to record transactions subject to VAT (including EU acquisitions):** the penalty ranges from 100 to 200 percent of the VAT.

**Failure to record transactions that are VAT-exempt or non-taxable:** the penalty ranges from 5 to 10 percent of the unrecorded amount.

The penalty cannot be lower than EUR 516.00 per violation.

**Failure to record VAT-exempt or non-taxable transactions, which does not result in corporate income tax violations:** the penalty ranges from EUR 258.00 to EUR 2,065.00.

Where the supplier of goods or services fails to issue an invoice, or the invoice contains a mistake, the purchaser is subject to a penalty equal to 100 percent of the relevant VAT if he fails to regularise the (non-issued or incorrect) invoice. This regularisation involves specific formalities.

There are reduced penalties for violations of domestic reverse charge procedures, where VAT has actually been paid by one of the parties. In this case, the penalty is equal to 3 percent of the VAT incorrectly accounted for.

### *Violations connected with exports*

There are penalties if a taxpayer does not comply with various provisions allowing VAT to be collected on exports. In principle, the penalties are proportional to the theoretical VAT that could be collected.

### *Other violations*

There are fixed penalties for taxpayers who commit violations such as submitting a VAT return that does not match the official format, failing to submit certain VAT communications, or failing to keep VAT records. The size of the penalty depends on the type of violation.

### *Failure to make payments / Making underpayments*

The penalty is 30 percent of the unpaid amount, plus interest of 5 percent on the unpaid amount.

It is a criminal offence to fail to pay the VAT declared in the annual tax return by the deadline for the advance payment of the following year (currently 27 December). These rules are triggered if the amount of VAT is higher than EUR 50,000.00. The taxpayer can be given a prison sentence ranging from six months to two years.

The same applies to those taxpayers who offset inexistent or undue VAT credits against tax payments, to an amount higher than EUR 50,000.00 per year.

### *General rules*

Where the law imposes a range of penalties, the actual amount is established by the tax authorities at the time of assessment.

When determining the amount, the tax authorities consider the severity of the violation, in light of the taxpayer's behaviour and social and economic situation.

The penalties may be increased by 50 percent if the taxpayer has committed similar violations, definitively assessed, in the last three years.

In an assessment, each violation committed by the taxpayer should trigger the corresponding penalty. However, there are mechanisms for computing the penalties more leniently if the same violation is committed more than once in a tax year or over various years.

In addition to fines, there are additional penalties such as suspension of trading licences.

### *Voluntary disclosure and amendment*

The taxpayer can reduce the above penalties (i.e. the penalties that would be due in an ordinary assessment) by making a voluntary disclosure and amendment (*ravvedimento operoso*) within a defined term and in any case before assessment.

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## 9. Customs and excise and import VAT

### 9.1 European Community law and the customs system

Customs law is the best example of harmonised international tax law.

In Italian as in international customs law, there are three fundamental concepts:

- 1 Classification of goods. This is necessary in order to select and apply the relevant customs rules for each movement of goods and thus to quote the import duty
- 2 Origin of goods. For customs purposes, the origin of goods can be preferential or non-preferential ('made in' labelling)
- 3 Value of the transactions. According to article 29 of the Community Customs Code ("CCC" - Council Regulation (EEC) No 2913/92) the customs value of imported goods is based on the transaction value, which is the price actually paid or payable for the goods when sold for export to the customs territory of the Community.

The current framework of customs law is a complex structure of national and Community rules, which accumulated as the European integration process developed.

### 9.2 Customs declarations

Community law provides that all goods intended to be placed under a customs procedure are to be governed by a declaration for that procedure. The declarant indicates a wish to place goods originating in third countries under a given customs procedure and furnishes information about the transaction. For each product, the declarant must indicate the classification code, origin, value, quantity, consignor and consignee, and the customs procedure.

This basic information enables the customs authorities to determine the dutiable amount and must be supplemented with other information about the transaction concerned.

#### *The paperless scenario*

Since the introduction of the Modernised Customs Code ("MCC" - Regulation (EC) no. 450/2008), Community law requires paperless exchanges of information between different authorities and between authorities and economic operators, establishing that all data exchange must take place through electronic data processing techniques.

This innovation, among others anticipated by the Automatic Export System (AES), represents a paradigm shift in customs law: the key factor in the relationship between companies and customs authorities is now electronic data exchange.

Article 8 (2) of the MCC establishes that customs authorities must maintain a regular dialogue with economic operators. The same authorities must support transparency by making available to the public - free of charge whenever possible - information about customs law, general administrative resolutions, and request forms.

The provision adds that this aim can also be pursued via the Internet. This is further proof of the total modernisation of the customs regulations through the MCC, which also provides for 'institutional' exchanges via the Internet, with full legal recognition and with no exceptions.

Nevertheless, there is a general concern that the systems may not be fully functional, as happened with the AES, which did not function well at the outset. However, Article 10 of the MCC states that "Member States shall cooperate with the Commission in the establishment of an electronic system for the common registration and maintenance of records".

## 9.3 Excise duties

Excise duties are indirect taxes on the consumption of certain products:

- energy products
- alcohol and alcoholic beverages
- manufactured tobacco.

The authority responsible for the collection of excise duty is the *Agenzia delle Dogane*, which is the Italian Customs Authority.

### *Requirements and authorisation*

Excise goods are subject to excise duties upon their production or importation into the territory of the European Community.

Typically, excise duties are levied when the goods are released for consumption. The following are also considered as release for consumption:

- recording of shortages higher than those provided for by law
- departure (also irregular) from a suspensive arrangement
- manufacture or importation (also irregular) outside a suspensive arrangement.

For the circulation of excise goods, it is necessary to comply with certain formalities, including the lodging of specific documentation.

## 9.4 Import VAT

In a Community context, all imports are liable to VAT.

From an Italian perspective, VAT is owed when the goods are introduced into Italy by the declarant. VAT must be paid by the owner of the goods or by the holder of the goods at the crossing of the customs border.

The following operations are regarded as imports:

- release for free circulation under suspension of payment of customs duties, if the goods are destined for another Member State of the European Community
- inward processing (temporary importation). These operations are not regarded as



imports for customs purposes, but are liable to VAT in Italy if the goods are introduced into Italy for sale or for home use

- temporary admission of goods for re-export without processing; these goods do not benefit from total exemption from import duties in accordance with Community law
- clearance for home use of goods originating from Mount Athos, the Canary Islands, or French Overseas Departments
- re-importation for temporary export (outward processing)
- re-introduction of goods which were previously exported.

### *The taxable base for VAT purposes and the release of goods*

The taxable base for VAT on imports is calculated in accordance with Italian VAT law and customs law.

## **9.5 Relations with the Italian customs authorities**

In the past, the Italian customs authorities were known to be very conservative. Since the introduction of the AES framework in 2007 their approach has changed significantly. The authorities have modernised their procedures also thanks to the new Community legislation, which is binding on all Member States.

Due to this new approach, it is now possible to adopt very interesting customs planning solutions, with the support of the authorities and with a significant simplification of the global customs burden (formalities and duties).

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## 10. How to invest in Italy

### 10.1 Types of transaction

#### 10.1.1 Share deal

In a share deal (i.e. the acquisition of shares in a target company) the capital gain realized by an Italian resident seller may be partially exempt from tax, provided that the participation exemption requirements are met (see 5.1.5 above for details).

However, the buyer does not obtain tax recognition of the excess cost paid for the shares over the underlying net book value of the target. In other words, the tax values of the assets and liabilities of the target remain unchanged after the acquisition.

The sale of shares is not subject to VAT but is generally subject to a fixed registration tax of EUR 168.00.

#### 10.1.2 Asset deal

An asset deal allows the buyer to acquire only the business segment actually needed, leaving the unwanted assets and liabilities behind. Consequently, an asset deal may be used where a target company has significant contingent tax liabilities, because it reduces the connected risk. Nevertheless, the buyer of a business unit is jointly liable with the seller for all tax liabilities and penalties regarding the year of acquisition (up to the acquisition date) and the two previous years.

The liability of the buyer is, however, limited to the lower of (i) the value of the business unit acquired, or (ii) the tax liabilities of the seller already assessed by the tax authorities or under assessment at the date when the transaction takes effect. Moreover, the buyer may obtain a clearance certificate from the Italian tax authorities, attesting the extent of the tax liabilities for which joint tax exposure exists. In this case, the buyer's liability is limited to the amounts indicated in the certificate. If the certificate is not issued within 40 days of application, or does not indicate any tax liability, the buyer is freed from any tax risk regarding the business unit acquired. No liability limit applies if the transaction involves tax fraud. Tax fraud is assumed to have been committed if the transaction is made within six months of a tax infringement resulting in criminal penalties.

In an asset deal, the tax basis of the asset acquired is equal to the purchase price of the business unit. The seller will realize a taxable capital gain equal to the difference between the sale price and the tax basis of the business unit sold (the 27.5 percent IRES on the capital gain can be spread over a five-year period if the business unit has been held by the seller for more than three years).

Essentially, in an asset deal the seller is fully subject to tax on the capital gain realized while the buyer obtains tax recognition of the purchase price paid. Goodwill can be amortized for tax purposes over a minimum of 18 years.

The disposal of a business unit is not subject to VAT but is subject to registration tax at different rates depending on the assets transferred (3 percent on goodwill, 0.5 percent on receivables, and 7 percent on real estate). Although registration tax should be split between the parties it is often paid by the buyer, under specific clauses in the sale and purchase agreement.

The fair market value of the transferred business unit is subject to assessment by the registration tax office. Therefore, it is advisable to obtain an appraisal from an independent expert beforehand, to be used as documentary evidence in the event of tax assessment.

A common way of structuring an asset deal is to hive off the target business segment into a Newco in exchange for Newco shares, and then sell the shares in the Newco to the buyer. In this transaction:

- the contribution of the business segment to the Newco is neutral for tax purposes. In other words, any capital gain made on the contribution in the statutory accounts is ignored for tax purposes and the Newco will not obtain any step-up in the tax basis of the assets received
- the tax basis and the aging period of the business segment contributed to the Newco will be rolled over to the shares in the Newco
- the subsequent sale of shares can be covered by the participation exemption, so that any capital gain is taxed at an effective rate of 1.375 percent ( $27.5\% * 5\%$ ).

From a buyer's perspective, the Newco has the option to realign its tax basis to the statutory basis by paying a substitute tax on the step-up, at the following rates:

- 12 percent on the first EUR 5 million of the step-up
- 14 percent on any amount between EUR 5 and EUR 10 million
- 16 percent on any further amount.

The stepped-up assets are subject to ordinary amortization/depreciation tax rules. The substitute tax is paid in three instalments over three years.

An alternative substitute tax regime grants the possibility of applying a 16 percent substitute tax on:

- goodwill
- brands or trademarks
- other intangibles (with an indefinite useful life).

The alternative substitute tax regime provides for accelerated amortization. In this way, the cost of goodwill and brands can be amortized for tax purposes over nine years instead of 18 years, regardless of the amortization charged to the statutory profit and loss account.

The contribution of a business segment is not subject to VAT. Registration tax of EUR 168.00 is due.

Asset deals and contributions of business segments fall within the scope of the anti-avoidance provisions discussed in 5.1.5 above.

### 10.1.3 Merger

The merger of two or more companies is tax-neutral and does not lead to the realization or distribution of capital gains or losses. The tax neutrality of this transaction implies the following:

- all the assets and liabilities of the absorbed companies are taken over by the surviving company on a tax-neutral basis, i.e. without any step-up in their tax basis. Solely in the case of mergers between unrelated entities in existence for at least two years, is merger goodwill of up to EUR 5 million tax free
- any merger difference (merger surplus/deficit) is disregarded for tax purposes (i.e. is not taxable/deductible)
- all rights and obligations (including taxes) of the absorbed companies are transferred to the surviving company, starting from the date on which the merger takes effect.

The tax-deferred reserves of the merged companies are included in the taxable income of the company resulting from the merger, unless the reserves are reinstated in its balance sheet. However, reserves that are taxable only upon distribution are taxable if and to the extent that:

- the merger surplus is distributed; or
- the increase in share capital exceeding the sum of the share capital of the companies participating in the merger is repaid to the shareholders.

While a merger is generally a tax-neutral event, the tax recognition of the excess merger costs can be obtained under the substitute tax regime described in 10.1.2 above.

The survival of the tax losses (and of interest carryforwards - see 5.1.9) of the companies involved in the merger is subject to the following tests:

- **Business Vitality test:** the profit and loss account of the company whose losses are to be carried forward must show, for the financial year prior to the merger resolution, revenues and labour costs higher than 40 percent of the average values of the two prior financial years
- **Net equity test:** the tax loss carryforwards must be within the limit of the statutory net equity of the entity before the merger (disregarding any contributions obtained in the two years preceding the merger).

The tax effects of the merger can be backdated to the beginning of the tax year in which the merger takes place. In this scenario the vitality and net equity test must also be applied to the tax loss accrued in the interim period.

A merger is not subject to VAT. In general, each merger is subject to a flat registration tax of EUR 168.00.

Mergers fall within the scope of the anti-avoidance provisions discussed in 5.1.5 above.

## 10.1.4 Demerger

As a general rule, demergers are tax-neutral. The demerged company can freely choose which assets and liabilities to contribute to the beneficiary.

The tax neutrality of this transaction implies the following:

- demerger differences (i.e. demerger deficits/surpluses) are disregarded for tax purposes (i.e. are not taxable/deductible). Therefore, the demerged and beneficiary companies are not subject to corporate tax on any capital gains on the transferred assets. Certain differences were allowed for demergers implemented in 2007 and 2008
- starting from the effective date of the demerger, certain tax items (e.g. tax deferrals on capital gains realized in previous years, tax loss carryforwards) are transferred from the demerged company to the beneficiary in proportion to the net equity transferred. If, however, certain privileges and obligations (e.g. provisions for accelerated depreciation) are attached to particular assets or liabilities transferred to a specific company, they have to be attributed to that company.

In order to preserve the tax neutrality of reserves subject to tax deferral and included in the net equity of the demerged company, the beneficiary company must create such reserves after demerger, in proportion to the increase in its own net equity as a result of the transaction. Tax loss carryforwards of the demerged company can be transferred to the beneficiary company in proportion to the net equity transferred to it, provided that - as in mergers - the vitality test and net equity test are met.

While a demerger is generally a tax-neutral event, the step-up in the assets crystallising upon the merger can be obtained subject to certain conditions. Demergers fall within the scope of the anti-avoidance provisions discussed in 5.1.5. Demergers are not subject to VAT. Registration tax of EUR 168.00 is due.

## 10.2 Going listed in Italy - Overview

Companies registered in Italy may list their shares on one of the markets managed by *Borsa Italiana*. These markets can also be accessed by non-Italian companies through a primary listing, if the company is not yet listed, or a 'dual' or 'secondary' listing if the company is listed on its national or other stock market. In the latter case, specific regulations apply to the foreign company. EU directives on financial markets and the admission of financial instruments to public trading have been endorsed by the Italian Parliament and are fully applicable in Italy, e.g. the Prospectus Directive, and Markets in Financial Instruments Directive (MiFID).

The main markets available in Italy for the listing of shares are the following:

- **Mercato Telematico Azionario - MTA:** this is the main market in Italy. The MTA is divided into three segments: Standard, STAR and Blue Chip. Segments are differentiated principally by company size in terms of capitalisation (minimum market cap of EUR 40 million for STAR, and EUR 1 billion for Blue Chip) and by corporate governance requirements, which are more stringent for STAR. The MTA is a European

Union-regulated market under the supervision of *Consob*. The MTA currently counts approximately 300 companies. Companies wishing to list on the MTA must appoint a sponsor to assist them through the listing process and for one year after flotation. The sponsor is mainly responsible for assisting the company during the admission phase.

- **AIM Italia:** this market is dedicated primarily to SMEs. It was introduced recently (the rules and regulations were approved at the end of 2008), following the merger of *Borsa Italiana* with the London Stock Exchange (“LSE”), in order to replicate the successful experience of the AIM market managed by the LSE in the UK. *AIM Italia* is a multilateral trading facility as per the MiFID, is regulated by *Borsa Italiana* only, and therefore is not subject to supervision by *Consob*. Its admission requirements are relatively simple compared to the MTA. Companies applying to *AIM Italia* must appoint a nominated adviser (“Nomad”) from an approved register held by *Borsa Italiana*. The Nomad is responsible for guiding and advising the company on its responsibilities under the *AIM Italia* rules in the admission process and on its continuing obligations in its subsequent life as a publicly quoted company. Companies listed on *AIM Italia* must also maintain the services of a specialist who undertakes to support the liquidity of the company’s shares.
- **MAC:** this market is dedicated to small and very small companies. MAC is also regulated by *Borsa Italiana* only, and is not subject to supervision by *Consob*. The listing process is extremely simple and only specialised investors registered through *Borsa Italiana* can trade on it, while retail investors are excluded. It was launched in November 2007 and currently counts six listed companies. Companies wishing to list on MAC must appoint a sponsor to assist them through the listing process and for three years after the flotation, and they must maintain the services of a specialist.

The following table illustrates the main admission and ongoing requirements for the MTA, *AIM Italia* and MAC.

	MTA	AIM Italia	MAC
<b>Listing requirements</b>			
Free float	Minimum 25 percent.	No minimum percentage.	No minimum percentage.
Market capitalisation	Minimum EUR 40 million.	No minimum market cap.	No minimum market cap.
Track record	Latest three annual financial statements, audited; latest two prepared under IFRS.	Latest three annual financial statements, audited and prepared under IFRS.	Latest annual financial statements, audited.
Intermediaries	Obligation to have a sponsor.	Obligation to have a Nomad.	Obligation to have a sponsor and a specialist.
Type of admission document	Prospectus prepared in accordance with EU regulations.	Simplified version of a prospectus prepared under EU regulations.	Information schedule containing basic information regarding the company and its operations.
Approval of the admission documentation	Admission documentation must be approved by <i>Borsa Italiana</i> and <i>Consob</i> .	Admission documentation examined by the Nomad and approved by <i>Borsa Italiana</i> .	Approved by <i>Borsa Italiana</i> .
<b>Ongoing requirements</b>			
Intermediaries	STAR segment: obligation to have a specialist.	Obligation to have a Nomad and a specialist.	Obligation to have a specialist.
Price-sensitive information	All price-sensitive information must be given to the market.	All price-sensitive information must be given to the market.	Obligation to give <i>Borsa Italiana</i> specific information.
Financial information	Financial statements prepared in accordance with IFRS. Annual and half-year financial statements subject to audit/review respectively. Requirement to publish financial results for the 1 <sup>st</sup> and 3 <sup>rd</sup> quarters.	Financial statements prepared in accordance with IFRS. Annual financial statements subject to audit. Requirement to publish half-year financial results.	Annual financial statements subject to audit.

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