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DOING BUSINESS IN ITALY

INVESTMENT GUIDE

ITALY
THE EXTRAORDINARY
COMMONPLACE

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STARTING A BUSINESS IN ITALY

A number of reforms have been made recently to streamline and simplify the procedures required to start and operate a business in Italy, in particular by reducing both the minimum capital requirement and the paid-in minimum capital requirement and by streamlining registration procedures.

A business may be operated either as a sole trader or as a company. Both entities are governed by the Italian **civil code**.

A person may conduct a business either as an individual, or through the setting up of a new company or the purchase of shares in an existing company.

This is **open to Italian citizens and European and non-European nationals**.

- Natural or legal persons from EU countries and countries making up the European Economic Area (Iceland, Liechtenstein, Norway) are treated as Italian nationals, without limitations on their capacity to conduct a business.
- For those coming from countries **outside the EU** and the European Economic Area, natural individuals must have a valid residence permit or be nationals of a country where reciprocal arrangements apply.

The conditions applicable to non-Italian nationals and further details concerned with reciprocal arrangements are all available online at the Italian Foreign Office www.esteri.it/mae/it/ministero/servizi/stranieri/condizreciprocita.

In addition to the detailed information described above, there is also a link to the International treaties archive.

A **Notary** (“*Notaio*”) can complete all the **legal** procedures required for starting a business by overseeing all the **legal steps** necessary for incorporating a company and sending all the required documentation electronically to the **Business Register** (*Registro delle Imprese*).

1. Establishing a representative office in Italy (local office)

Representative offices -which are **not** legal entities of a foreign company in Italy- **are characterized by two factors**:

- a local **presence to promote the company** and its products/services **and to perform other non-business operations**;
- the local unit **does not require a permanent representation** (it does not represent the foreign company vis-a-vis third parties).

Local offices must be registered with the Economic and Administrative Index (**REA, Repertorio Economico Amministrativo**) **at the Chamber of Commerce, attaching**

the following documents:

- if the company is incorporated in an **EU country**: a certificate indicating the company details and the legal representatives of the company issued by the foreign equivalent of the Register of Companies in Italy, that must be translated into Italian by a sworn translator.
- if the company is incorporated in a **non-EU country**: a statement of the existence of the company issued by the Italian Embassy in the country where the company has its registered office.

TAX ISSUES

If the representative office is used only for the following purposes:

- storage, display or delivery of goods belonging to the foreign company;
- purchasing goods or obtaining information for the foreign company; or
- conducting preliminary activities assisting the business activities of the foreign company;

it would not be considered a permanent establishment from a tax perspective.

2. Establishing an Italian branch of a foreign company

An Italian **branch/secondary registered office** may be a representative of the foreign company's core business including a **permanent establishment in Italy** with decision-making powers.

This should be distinguished from the setting up of a completely new company used by the foreign party to conduct its business in Italy indirectly (which can be a subsidiary, "i^liale" in Italian, of an existing foreign company), and secondly, from the conduct of a business in Italy without a permanent establishment as described above.

The Italian branch office is not a separate legal entity and the **parent company** is **responsible** for its initiatives.

Details of the branch office must be registered with the Business Register (*Registro delle Imprese*).

The registration of a branch office is **governed by the Ital-**

ian civil code (*Codice Civile*).

The foreign entity **first needs to appoint a legal representative**.

The deed of appointment, the certificate of incorporation (memorandum of association), the articles of association and the registration details of the foreign company must be registered with the Business Register in the area in which the branch office is located.

Where foreign companies have more than one branch office in Italy, the publication requirements involving the filing of the above-mentioned documents only need to be satisfied for the first Italian branch.

All documentation must have been issued by a public authority with sworn translation into Italian.

These documents **must be filed with an Italian Notary** (or with a District Notarial Archive). The notary will draft a specific notarial deed with the documents listed above as annexes, to be registered by the Notary and filed with the Business Register.

If the branch office is not registered in this way, directors or anyone acting in the name and on behalf of the company will have unlimited liability for all company contractual obligations.

The foreign company and its directors will be liable for company obligations contracted in Italy in its name (except for European companies given that European principles of freedom of establishment apply).

TAX ISSUES

The **overall income** of a permanent establishment in Italy of a company residing abroad is determined according to the rules governing the determination of the company income, as if it were a company domiciled in Italy.

3. Setting up a company (independent company or subsidiary of a foreign company)

Italy offers a wide range of choice of legal forms for setting up companies depending on the company's organizational model, its commercial objectives, the level of capital to be committed, extent of liability and tax and accounting implications.

Companies: main types

There are four main types of companies in Italy:

- *Società a responsabilità limitata* (S.r.l.) – limited liability company;
- *Società a responsabilità limitata semplificata* (S.r.l.s.) – simplified limited liability company.
- *Società per Azioni* (S.p.A.) – stockholding companies (company limited by shares);
- *Società in accomandita per Azioni* (S.a.p.A) limited partnership ("partnership limited by shares")

Setting up a Società a Responsabilità Limitata - Limited liability company (S.r.l.)

This form of the limited liability company is the most widely used in Italy because of its **organizational flexibility** and **limited liability**.

- Although in the past it was intended for small companies, it is now also used for much larger and more active businesses.

Shareholders will not be personally liable for company obligations, even if acting in the name and on behalf of the company.

COMPANY FORMATION

To make the best use of the flexibility of the S.r.l., allowing shareholders to shape the company to be as well-adapted as possible to the pursuit of its specific objectives, it is important to pay attention to the preparation of the **Articles of Association**.

The articles of association must be drawn up by a notary, who is then required to file them with the Business Register.

The form of **management** is extremely flexible. Alternatives include appointing a Sole Managing Director, a Board of Directors, or even a form of management where Directors are not appointed as a board and where they can exercise their powers jointly or separately, or, depending on the corporate governance model, jointly and others separately. Special rights may be assigned to particular

shareholders, including administrative rights or the right to the distribution of profits.

SHARE CAPITAL

The **minimum share capital** of a limited liability company is **€1**.

- When setting up limited liability companies with **share capital equal to or greater than €10,000**, at least **25%** of the share capital must be **paid** to the directors on the signing of the Articles of Association (the remainder may be paid later) although contributions in kind must be made in full.
- When the value of the share capital is **between €1 and €10,000**, **contributions may only be in cash** and must be paid up in full on subscription.
- When its share capital on set up is less than €10,000, the company will be obliged to set aside a sum to be allocated to reserves representing at least one fifth of the profits shown in the Financial Statements. The obligation will not be met if the joint value of reserves and capital has reached €10,000.00.

The reserve can only be used for the allocation to share capital and to cover any losses with the obligation to restate it when it goes below the above threshold.

Even if the company has been set up with only one shareholder, the full amount of the share capital must be paid.

The **transfer of shares** may be limited and even prohibited; in which case, each shareholder will be entitled to withdraw from the company, obtaining a reimbursement for his/ her share.

Setting up a Società a Responsabilità Limitata Semplificata – Simplified limited liability company (S.r.l.s.)

The simplified limited liability company (S.r.l.s.) is a form of "S.r.l." recently introduced to encourage entrepreneurship.

The **shareholders** of an "S.r.l.s." may only be **individuals** (natural persons), not companies or other bodies. The S.r.l.s. may also be composed of a single shareholder. Unlike the "ordinary S.r.l." there is a minimum **share capital** of €1, up to a maximum of €9,999.99. The **capital** must be **fully paid in cash** to the administrative body at the time the company incorporation.

The **memorandum of association** must be drafted as a public deed by a **notary** in accordance with a standard model prescribed by law. Therefore, there are no "articles of association" in a technical sense; there are only standard clauses indicated in the fixed standard model (prescribed by law). **No notarial fees** are due to the notary.

Setting up a *Società per Azioni* - Stockholding company - company limited by shares - (S.p.A.)

The company limited by shares is the main type of trading company best suited to substantial investments with a large number of shareholders. It is also the compulsory type for those companies wishing to be listed on the stock exchange.

The two key features are the **limited liability** of all members and the **division** of the **share capital** into **shares**. A stockholding company will pay its expenses and debts with its own assets, i.e. with its own capital and economic resources. Shareholders are not liable for the debts with their personal property or funds. Consequently, in the event of financial difficulties and therefore of "insolvency", the company may fail, but the shareholders or sole shareholder cannot be made bankrupt on that basis and may only lose the value of their shares and thus the money they have invested in the company. With regard to the **audit** of the accounts, the deed of incorporation must provide for the appointment of a Board of Auditors ("Collegio Sindacale"), an audit firm ("società di revisione") or an auditor ("revisore"). It oversees the administration of the company and ensures compliance with the law and the articles of association. The control exerted by the Statutory Auditors relates to

the substance as well as the form of the administration although they do not have the power to investigate the merits of the directors' management or their market valuations.

COMPANY FORMATION

A stockholding company will be formed on the basis of a **public deed** drawn up by a **notary**. The latter will be required to record the deed and register the company at the Business Register in whose area the Company's Registered Office is located.

The Company's existence will only be recognized if it is registered with the Business Register.

The notary will be required to upload the Deed of Formation and other necessary or appropriate company documents in the competent office of the Business Register as part of the registration process.

SHARE CAPITAL

The **share capital** is divided into **shares** with a **minimum nominal value of €1 each**. The shares are **freely transferable**.

It is normal practice to issue physical share certificates although in listed companies it is also permissible for shares to be in the form of simple accounting records, defined as "dematerialized shares".

On formation, the stockholding company requires **minimum share capital of €50,000.00**, of which **at least 25%** (twenty five percent) (amounting to €12,500) to be **paid** to the directors. If the company has only **one shareholder** the share capital must be paid up in full immediately on formation. The amount of the share capital must be stated in the memorandum of association. Shares do not have to reflect shareholders' overall investment in the company.

Setting up a *Società in accomandita per azioni* partnership with shares (S.a.p.a.)

There are two categories of partners in a limited partnership:

- **general partners** who have the responsibility of **directors in law**, who have **unlimited personal liability** (*accomandatari*);
- **partners with limited liability** who are excluded from taking part in the administration and whose liability is restricted to their investment in the share capital (*accomandanti*).

As in the company limited by shares, investments are delineated by shares while, like a limited partnership, the management of the company is conducted by directors with unlimited liability (albeit secondary) for the company's obligations.

PARTNERSHIP: NATURE AND MAIN TYPES

The partnership does **not** have a **legal personality** although it is still a form of **company** (*società*) under Italian law.

A partnership is characterized by the **personal commitment** of each **partner** to their work as a whole within the partnership. The individual partners are personally **liable** for the liabilities of the company (including their private assets) and each acts for the whole business. Possibilities for imposing limitations on individual partners' liability are restricted.

The main types are:

- ***Società in nome collettivo*** (S.n.c.) (general or unlimited partnership); The company's **business name** must contain the name of at least one of the partners and an indication that it is an unlimited partnership. The **members** have **unlimited liability** for partnership obligations and there can be no agreement to the contrary. When seeking repayment of debts owed by the partnership, creditors must first enforce them against the partnership before applying to the members. The unlimited

partnership is subject to bankruptcy law with the contemporaneous bankruptcy of all partners. The partners generally have separately exercisable **powers of administration** and **representation**. If agreed, powers of administration may be reserved to some members only.

- ***Società in accomandita semplice*** (S.a.s.) (limited partnership)

The limited partnership has two categories of partners:

- **general partners** (*soci accomandatari*), who are responsible for the administration and management of the company and who have unlimited liability for the fulfillment of partnership obligations;
- **limited partners** (*soci accomandanti*), who are not directors and will be liable for partnership debts within the limits of the investment made in the partnership, subject to certain exceptions governed by law.

The partnership **name** (business name) must contain the name of at least one general partner and an indication that it is a limited partnership.

If a limited partner's name is included in the partnership name, he or she will have unlimited liability, jointly and severally with the general partners, for partnership debts.

Limited partners cannot perform acts of administration or negotiate or do business in the name of the partnership, except when granted a special power of attorney for specific business activities. Any limited partner who disregards this prohibition will take on unlimited liability for all partnership debts and may be excluded from the partnership itself.

COMPANIES: NATURE AND MAIN TYPES

	S.p.A.	S.r.l. - S.r.l.s.	S.n.c.	S.a.s.
Type of company	Medium-sized and large companies / listed companies	Small and medium-sized companies with a limited number of shareholders	Partnerships set up to conduct commercial and non-commercial activities	Partnerships set up to conduct commercial and non-commercial activities
Minimum share capital	€50,000	€1	No minimum	No minimum
Liability for company obligations	Limited to the company assets	Limited to the company assets	Unlimited for all shareholders	Unlimited for general partners Limited for sleeping partners
Board of Statutory Auditors/ Audit	Compulsory	Optional / Compulsory according to art. 2477 c.c.	Not provided for	Not provided for

4. Buying assets

Alternatively, a foreign enterprise may wish to purchase assets directly.

Sometimes what is being bought is an **entity** encompassing a complex of **assets** (movable and immovable property, equipment, trademarks, patents, etc.) intended for business activities.

By law, the purchase of an enterprise can only be effected by means of **public notarial deed** or a **private deed certified by a notary**.

The sale of a business is generally a single transaction which would permit the continuation of the business by a third party.

The transaction may involve the entire organization, several businesses owned by the same vendor or a single business division. The business can be sold as a going concern although in such a case the express consent of the transferor is required. Otherwise it may be that only the business assets or division are sold and not the enterprise as a whole.

Anyone selling a business will be barred from starting up a new one within five years from the sale whose objects, location or other features mean that it is likely to be confused by customers with the one sold.

Except as otherwise agreed, the buyer will be entitled to run the company's entire business not including elements of a personal nature.

5. Accounting and audit requirements

Accounting requirements

All companies, be they companies with share capital or partnerships, are required to keep **books** and **records of accounts**, as well as keep in order all original documents sent and received for each concern.

The accounting documents must be **kept for no less than ten years**.

- Companies with share capital are also required to prepare their annual Financial Statements and to file them with the Register of Companies, within 30 days from its approval by shareholders.
- Partnerships are required to draw up an annual report indicating profit and loss for tax purposes, although there is no filing obligation with the Register of Companies.

PREPARATION AND KEEPING OF ACCOUNTING RECORDS

Accounting records may be kept directly by the business at their premises, or by other persons at their respective offices.

There are two main compulsory accounting systems available depending on the company's characteristics and the amount of income declared in the previous year: one ordinary and one simplified (suitable for small entities with a simple organization). The businessperson (whether an individual or a company) is required to keep the **books** and **records of accounts** according to the provisions of the Italian Civil Code and the tax regulations.

Accounting books can also be kept electronically.

Audit requirement

Auditing is required for:

1. S.p.A.;
2. S.r.l. exceeding two of the following limits in 2 consecutive years:
 - total assets of: EUR 4,400,000;
 - sales and services revenues of: EUR 8,800,000;
 - average number of employees during the year: 50.
 Or, should the S.r.l. control a company subject to statutory audit;
3. All companies drawing up consolidated Financial Statements;
4. Listed companies;
5. Banks, stock broking companies, fund management companies, regulated financial institutions.

The audit of the financial statements ("*revisione legale dei conti*") shall be performed in accordance to the **Italian Law** (Art. 2409 bis of the Italian Civil Code) and the **auditing standards** issued by the Italian Institute of Chartered Accountant (**CNDCEC, Consiglio Nazionale dei Dottori Commercialisti ed Esperti Contabili**) which equate with the International Standards on Auditing (ISAs) issued by the International Federation of Accountants (IFAC).

In addition, before being applicable, the Italian auditing standards need to be approved by the Italian Stock Exchange Authority, **CONSOB** (*Commissione Nazionale per le Società e la Borsa*).

Conduct of the audit

In Italy, an audit can be performed by the Board of Statutory Auditors ("*Collegio Sindacale*") which may be in charge of both **supervision of compliance** with the law and the Articles of Association and with the **statutory audit of the financial statements**.

However, the two tasks can be also split and assigned to two different bodies: the supervision can be given to the *Collegio Sindacale* and the audit of the financial statements (including the quarterly checks on the accounts) can be given to an audit firm or an auditor.

The separation of these two tasks is compulsory for listed companies and companies required to prepare consolidated financial statements.

Term of the audit engagement

The auditors are appointed for a 3 year-term for non-listed companies and for a 9 year-term for listed companies. The audit firm cannot be appointed for more than one 9-year term.

6. Trademarks

It is possible to obtain **legal protection** of a **trademark** in Italy in order to distinguish goods and services of one organization from those of another and to create an identity, a strong connection between the brand and the company. Registering a trademark prevents others using the same sign in commercial activities in the relevant territory.

ITALIAN APPLICATION

It is possible to apply for **protection** of a trademark in Italy, **limited in geographic area and specific product class**. A trademark's owner has the right to its exclusive use and can prevent third parties from using an identical or similar mark for identical or similar products or services if it is likely to cause confusion. If the trademark also has a famous reputation, then this right is extended also to dissimilar services or products.

Trademark registration applications can be made at the Italian office of trademarks and patents.

Ufficio Italiano Brevetti e Marchi.

www.uibm.gov.it

EUROPEAN APPLICATION

It is possible to request trademark protection throughout the European Union (from Italy), meaning that a trademark can be registered, transferred, withdrawn, invalidated or expire and its use can be protected throughout the whole EU Community.

Registration of an EU trademark can be applied for at the Office for the Harmonization in the Internal Market (OHIM, based in Alicante, Spain).

Office for the Harmonization in the Internal Market
<https://oami.europa.eu/>

Any natural or legal person from any country in the world may file an application for an EU trademark.

The applications can be filed either directly at the OHIM or at any of the national patent and trademark offices of the 27 Member States of the European Community or the Benelux Trade Mark Office.

7. Dissolution and liquidation of business entities

The **dissolution** of a company limited by shares follows a three- step **process**, as follows:

- determining and acknowledging the motivation for winding up the company.
- carrying out of the liquidation activities.
- cancellation of the company from the Register of Companies.

Reasons for dissolution are common to all types of companies, for example: the expiration of the legal duration of the company, achievement of the company's objectives or the impossibility of achieving them, or to reflect the will of the shareholders to do so. Other reasons for winding up may be provided for in the incorporation deed and in the Articles of Association.

There are some reasons for dissolution that are particular to specific company types. For companies limited by shares, winding up can be triggered by:

- the company's impossibility to function;
- the repeated lack of action by its shareholders;

- the company's being declared invalid;
- the reduction of its share capital below the legal minimum;
- being unable to pay off the stake of a shareholder who has withdrawn from the company, following a resolution passed by the shareholders' meeting; or
- other reasons mentioned in the incorporation deed and in the Articles of Association.

Except for situations when the winding up of the company takes place on its natural expiry date and for the reasons stated in its incorporation deed, the winding up becomes **effective** only from the **date of the publication** in the Register of Companies (*Registro delle Imprese*) of the Directors' statement setting out the reasons for the liquidation, or from the publication date of the shareholders' resolution for the liquidation of the company, passed at the shareholders' meeting.

Additional notes on the Business Register and the Notaries

The **Business Register** (*Registro delle Imprese*) is part of an extensive information system containing details of entrepreneurs, Italian companies and subsidiaries of foreign companies.

The objective of the Register is to publish consistent and reliable quality information, making it available to all businesses operating in Italy.

The Business Register is managed by the **Chambers of Commerce**.

It is a single system of publication for the whole of Italy although it is administered through provincial offices. Italian provinces are based around the most important towns.

A search of the Business Register database (www.registroimprese.it/) will provide sufficient details to confirm the existence of an enterprise.

Following registration and the payment of fees, a more thorough search can be conducted and **Office Copies** ("*Visura*") downloaded.

An Office Copy is a document providing official confirmation that the company exists including details of Financial

Statements and a log of historical events.

The Business Register is the public record of companies across all sectors and includes company data relating to creation, modification, financial statements, representation powers, change of shareholders, and dissolution.

A **Notary** in Italy has the **position of a public officer** and has authority to act in company matters generally. Notaries are **independent professionals** the quality of whose work is safeguarded by important guarantees, and is subject to public oversight.

They are also required by law to take out public-liability insurance with a minimum coverage currently of €3,000,000. The National Council of Notaries has also made provision for a guarantee fund, financed directly by notaries themselves, giving clients the possibility of redress in the case of losses resulting from the fraudulent or negligent conduct of public notaries not covered by insurance.

Approximately five thousand Italian notaries can be found online at the following URL:

Consiglio Nazionale del Notariato
www.notariato.it/en/trova-notaio

As with other professionals, notaries are legally bound to carry out checks on their clients, including non-Italian nationals, by completing formalities required by money-laundering laws.

Details of these procedures can be found on the website of the State Treasury

www.dt.tesoro.it/it/prevenzione_reati_ynanziari/anti-ri-ciclaggio/normativa_riferimento.html

HIRING & MANAGING STAFF IN ITALY

In the last 15 years as a result of several reforms, regulation of the Italian labor market has undergone a substantial overhaul, the latest of which is the "Jobs Act" approved by the **Renzi Government** in December 2014 which introduced four key initiatives:

a **new form of permanent employment contract** with increasing protection related to the tenure (*contratto a tutele crescenti*); **reshaping of temporary contracts**; **new rules on dismissals with more flexible**; and the redesigning of unemployment benefits.

The "Jobs Act" is a comprehensive reform package, which includes:

- relaxed employment protection legislation on employment contracts, by linking the level of protection with tenure;
- a simplified and organic regulation of certain types of contracts and employment relationships, including a more flexible regulation of employee's duties and tasks, in order to meet temporary and permanent employers' needs, and the introduction of new rules on distance control of plants and working places;
- a new unemployment benefit scheme, with more stringent requirements in order to activate benefits;
- a renewed active labor market policy system, through more effective employment incentives and improved employment services, to enhance demand and labor supply

matching;

- a revision of wage supplement scheme for redundant workers;
- the establishment of a single inspection agency to coordinate activity and avoid multiple controls in the same plant.

Additional provisions were adopted in the 2015 Stability Law, which provides a **three-year cut in employers' social contributions** (up to € 8,060 a year), and removes the costs of the local tax surcharge (IRAP) for newly hired permanent workers.

1. Main sources of the employment law

Basic rules regarding rights and obligations of employer-employee relationship in Italy can be found in the **Constitution**, the **Civil Code** (*"Codice Civile"*) which includes a special section on employment matters, and the **Workers' Statute** (*"Statuto dei Lavoratori"*), i.e. Law no. 300/1970 as modified by subsequent legislation. Terms and conditions of employment are also fixed by **national collective agreements** ("NCAs", *Contratti collettivi*) signed periodically between the trade unions and the employer's associations of the same industry.

These collective bargaining contracts normally regulate the working conditions and establish the minimum wage and salary scales for each particular sector.

2. Start of employment

Employment contracts are governed by the general rules set out in the **Civil Code**.

Given the existence of a large number of NCAs and their extensive use by the employers, employment agreements in Italy normally consist of simple **hiring letters** which refer to the **items required by the law** including, the identity of the parties, place of work, employment start date, trial period (if any), duration of the employment (in case of fixed-term employment) and enrollment, employee's duties) and to the **provisions** contained in the **applicable NCAs**.

Individual employment contracts also specify the employee's **"category"** as established by the Civil Code, under article 2095.

There are four categories of employees:

- Executives ("*Dirigenti*");
- Middle managers ("*Quadri*");
- White collar employees ("*Impiegati*");
- Blue collar employees ("*Operai*").

Despite the fact that national collective agreements normally define general principles that regulate the employment relationship of **Dirigenti**, general and specific conditions are often negotiated through individual agreements.

Quadri are defined as employees who, while not top executives, are continuously engaged in duties that contribute significantly to promoting the company's growth and achieving its goals. According to a limited number of collective agreements, employers are required to insure **quadri** against claims for civil liability brought by third parties as a result of negligence in their duties.

At the **start** of the employment relationship, the employer must inform the employee of the main **terms and conditions** of his/her contract.

Italian law does not prescribe any particular form for employment contracts generally; they may be communicated

orally, although most contracts are evidenced **in writing**. That said, some **specific provisions** as well as specific information concerning the employment relationship are required by law to be **written down** (for example: trial period, non-compete clause, fixed-term, if any). Also, certain types of contracts are required by law to be in writing (for example: part-time contracts).

Employment contracts can be made in any **language**, provided that both parties are able to fully understand the content of any provision therein.

The age of majority is 18 years old in Italy. The **minimum age** required for validly entering into an employment relationship is 16 years old with the parents' consent (15 years old for apprenticeships contracts).

3. Employment relationship

FORMAL FULFILLMENT

At the establishment of any employment relationship, the employer must notify the competent public employment service ("*Centro per l'Impiego*") at least 24 hours prior to commencement. This notification also fulfills the obligation to notify the relevant social security institutions (i.e. **INPS** and **INAIL**).

If provided for by law, an employer must also stipulate insurance policies against risks and damage suffered by third parties caused by employees fulfilling their employment duties.

TRIAL PERIOD

The **statutory trial periods** are the following:

- **3 months**, for employees not assigned to managing functions;
- **6 months**, for all other employees.

However, the probation period is commonly set in the relevant NCAs depending on the category of the employee.

During the trial period, either party may freely terminate the working relationship at any time, without any notice, obligation or payment of the relevant indemnity in lieu.

PAY

Italian law does not give a statutory definition of "wages" and "salary".

For income tax and social security purposes, any compensation granted to the employee within the scope of the employment relationship, including compensation in kind, is considered wages (this does not include a few limited exceptions, such as expenses reimbursement).

There is **no statutory minimum wage** in Italy. Minimum wages for each contractual level are usually set out by sector in the relevant national collective agreements (NCAs). A minimum wage is being introduced for workers not currently covered by NCAs, although they account for less than 3% of the total workforce.

There are **no statutory bonuses**. NCAs may provide for some such as the collective performance bonus ("*premi di risultato*") or individual performance bonuses.

There are **no statutory allowances**, although NCAs provide for transportation allowances or indemnities for certain working arrangements such as on-call work.

Under Italian law, compensation is granted in **thirteen (13) monthly installments**. The additional 13th installment ("*tredecimesima*") is paid out each year along with the December salary.

Some NCAs provide for a 14th monthly installment, normally paid in June.

The NCAs also normally set the payment date and the calculation basis of the contractual items (e.g. notice period, compensation during illness).

Employers frequently grant certain employees with **fringe benefits** (for example: a company car and mobile phone to top/middle management and sales positions, luncheon vouchers and internal or external training and education). Employers are required to fund **severance payments** for all employees ("*Trattamento di Fine Rapporto - TFR*"), amounting to 1/13.5 of the annual overall compensation, payable on termination of employment for any reason.

WORKING HOURS

Maximum statutory daily hours	13 hours
Statutory weekly hours	40 hours (on yearly basis)
Maximum statutory weekly hours	48 hours (generally on a four month basis, but NCAs can set the reference period up to 12 months)

Executives are not subject to the rules governing working hours. Some NCAs provide for a working week of less than 40 hours. Employees must be granted **at least one weekly rest day** (normally Sunday).

Exceptional and temporary business activities may need employees working on weekly rest days or legal holidays.

Overtime work is considered to be the hours worked exceeding the 40 hours per week and may not exceed 8 hours on a weekly basis and 250 hours on a yearly basis. NCAs set specific additional rates to be applied overtime work, and can also replace overpay with additional rest days.

HOLIDAYS AND VACATIONS

Public holidays	Date
New year's day	1 st January
Epiphany day	6 th January
Easter Monday	Variable
Liberation day	25 th April
Labor day	1 st May
Republic day	2 nd June
Assumption day	15 th August
All Saints' day	1 st November
Immaculate conception	8 th December
Christmas day	25 th December
St. Stephen's day	26 th December

A local saint's day (variable on the local tradition of each city) is also considered a public holiday for the relevant territory.

Public holidays that fall on the weekend do not entitle absence from work on the nearest weekday, but employees are entitled to their normal pay.

Statutory annual vacations amount to **4 weeks**.

The employer normally decides when workers can take vacation based on company and production interests and taking into account (where possible) employees' needs. NCAs normally provide for, in addition to the statutory minimum, a further period of paid vacation that it is increased with seniority service.

The law states that at least two weeks have to be taken in the same year. Up to two weeks of unused vacation may be postponed, but it must be taken within 18 months following the accrual year.

Employees are entitled to pay in lieu of unused vacation upon employment termination.

SICK LEAVE

Employees are entitled to **3 days' paid sick leave charged to the employer**.

Pay replacement benefits are provided by social security institute from the 4th day of illness to the 180th day. Certain NCAs require employers to top up social security benefits to 100% of salary.

During sickness, the contract is suspended and the employees' seniority is protected.

Employees cannot be dismissed before the end of a minimum period prescribed by the applicable collective agreement. After that period, an employer may terminate the contract.

MATERNITY LEAVE

Pregnant female employees are entitled to **5 months' maternity leave**, from the second month prior to the due date to the third month after birth.

The last 3 months can be extended to 7 months in specific cases.

Pay replacement benefits are provided by social security. Any work that might be considered harmful is forbidden

during pregnancy.

During maternity leave the employment is suspended and seniority is protected.

OTHER LEAVES

There are other leaves provided for by law – for example: adoption leave, paternity leave, parental leave and short-term leaves, such as wedding leave or leave linked to public and jury duties, family circumstances or education.

CONTRACT AMENDMENTS

The parties cannot modify the individual contract terms and conditions, unless the relevant amendments provide for a more favorable treatment of the employee.

The Jobs Act has amended the provision regarding the change of an employee's task and duties. Unless agreed otherwise with employers, employees are entitled to maintain their salary – with the exception of task-related indemnities – even if their tasks are reduced.

NON-COMPETITION CLAUSE

According to Article 2125 of the Civil Code, **written non-compete covenants** are allowed provided that:

- adequate compensation is granted to the employee;
- duration of the agreement does not exceed 3 years for normal employees and 5 years for executives; and
- it is circumscribed from a business and territorial standpoint.

Italian law does not provide specific criteria with regard to identifying adequate compensation and the scope of activity or territory.

Therefore, in case of disputes, such criteria are determined by the Court on a case by case basis.

TELEWORKING

Teleworking must be voluntarily agreed with the employee.

Teleworkers are entitled to the same rights as employees performing the same tasks and duties at the company's premises, including with respect to training and career opportunities.

The general regulatory framework concerning employees working from home can mostly be found in several NCAs. More specific rules may be agreed at local and/or company level.

TEMPORARY LAY-OFF

In the event of a **temporary crisis**, the employer may use the "redundancy fund" ("*Cassa Integrazione Guadagni*", CIG) which is a **collective suspension from work** of the blue and/or white collar employees, allowing the latter to continue receiving up to 80% of the normal wage charged on a special fund held by the social security institute.

COMPULSORY HIRING OF DISABLED WORKERS

Headcount	Obligation
15 to 35 employees	Company must hire at least 1 disabled worker
From 36 to 50 employees	Company must hire at least 2 disabled workers
51 employees and over	Disabled employees must represent at least 7% of the workforce

Companies in breach of these obligations are subject to administrative sanctions. In order to encourage the compliance, employers can enter into conventions with the competent authorities for the hiring of disabled workers.

Companies that are experiencing financial or business difficulties can apply for a temporary suspension of this obligation.

Companies staffed with more than 35 employees which, due to the nature of their business (e.g. dangerous and strenuous works), cannot fulfill their quota may be eligible for a partial exemption from this obligation.

4. Employment of foreign workers

EU/EEA AND SWISS NATIONALS

According to the principle of free movement of persons, goods, services and capital, **EU (European Union)** and

EEA (European Economic Area) nationals can be employed in Italy without any authorization by the Italian authorities.

Should an EU national choose to work in Italy for a period in excess of 3 months, he/she should apply for a so called "Stay card" ("*Carta di Soggiorno*"), which is normally issued by the local State Police office ("*Questura*") upon a simple request. This permit is renewable.

Swiss citizens have the same right of entry, residence and access to work applicable as EU countries nationals.

NON EU/EEA NATIONALS - THE QUOTA SYSTEM

The admission of non-EU foreign workers is subject to a mechanism of quantitative **selectivity** based on **quotas** for new entries on a **yearly basis**.

They are meant to regulate the admission of third country nationals and their access to Italian labor market, by combining a purely quantitative selectivity with some elements of qualitative selectivity.

The determination of annual quotas of new inflows is established by the government, which sets the quota through a Prime Minister Decree (known as "*Decreto Flussi*"). The quota decree is published in the Official Journal and starts some days after the implementation phase.

The whole **implementation process** of the quota system is basically made up of **three main steps**:

- Authorization requests presented by employers to the Immigration Single Desk (ISD);
- Visa request by prospective migrants in their country of origin;
- Request and delivery of the stay permit for working purposes.

AUTHORIZATION (NULLA OSTA) REQUEST

Employers have to request authorization to hire a foreign worker living abroad to the ISD.

In the application file the applicant employer is expected to submit a so called "Stay contract" ("*Contratto di soggiorno*") in which she/he commits him/herself to guarantee adequate **lodging** for the requested worker and to fund **travel costs** for his/her repatriation in case of expulsion

before the expiry of the contract.

In addition, the contract has to include the **work contract's details** that must comply with existing collective contracts for the specific sector/occupation in which the requested worker will be employed.

Once all the checks have been made by both Labor authority ("Direzione Territoriale del Lavoro") and local State Police office ("Questura"), the authorization ("*nulla osta*"), may be delivered to the applicant employer.

The whole procedure should take **40 days** from the application.

VISA ISSUANCE

Once the *nulla osta* is delivered to the employer, he/she sends it on to the individual foreign worker to be recruited who must present him/herself at the Italian diplomatic representation in his/her country of origin, and requests a **visa for working purposes**.

The *nulla osta* will have a **6 month-validity**, and during this period the visa may be issued.

STAY PERMIT (PERMESSO DI SOGGIORNO) ISSUANCE

Within **eight days** of his/her arrival, the foreign worker must sign the **stay contract** presented by the employer at the ISD and simultaneously apply for the stay permit ("*Permesso di soggiorno*") for working purposes. The stay permit will be issued by the *Questura*.

The stay permit has the same duration as the employment contract with a **maximum of 2 years** and it is **renewable**.

EXEMPTIONS – EXTRA-QUOTAS ENTRIES

The admission of some categories of workers is explicitly exempt from the quantitative limits set through the quota system.

In particular, **specific professional profiles** can be admitted without any quantitative cap to regulate their inflow (for example: **managers** or **highly skilled staff members** of **multinational/foreign companies**, university lecturers and professors, translators and interpreters, professional nurses, etc.).

Despite the lack of explicit quantitative limitations, the ad-

mission of workers in these categories is still subject to the authorization ("*nulla osta*") granted by the territorial ISD, even if admission procedure have been further simplified for specific categories.

Stay permits have a maximum duration of two years, in case of fixed term contracts, or **unlimited duration** in case of **open-ended contracts**.

5. Specific types of contracts

PART-TIME CONTRACT

Part-time employment contracts must be **in writing** and specify the **hours of work** (e.g. by day, week, month and year).

Pay and other entitlements of part-time employees are normally pro-rated to those applicable to full-timers in the same job entitlement.

Ancillary clauses to part-time contract can be added, which allow employer a wider **flexibility**:

- "elastic clauses" (*clausole elastiche*) which permit an employer to increase working time,
- "flexible clauses" (*clausole flessibili*) which permit an employer to vary working hours during the day.

FIXED-TERM CONTRACT (LEGISLATIVE DECREE NO. 368/2001)

Companies can hire employees on a **fixed-term contract** for arrangements limited by time.

Fixed-term contracts can last **up to 36 months**, including any extension.

Quantitative limits are normally set by the NCAs; alternatively, the law states that the overall number of fixed-term contracts may **not exceed the 20%** threshold of the workforce hired on permanent basis.

Fixed-term contracts cannot be used to replace workers in strike or to replace employees temporarily laid-off or involved in collective dismissals in the past few months.

"ON CALL" JOBS ("LAVORO A CHIAMATA O INTERMITTENTE", LEGISLATIVE DECREE NO. 276/2003)

"On call" job contracts provide that an employee declares his/her availability to work over a certain period of time, during which he/she can be called in – even for a few days only – with short-term notice.

The individual contract may provide that the employee is bound to work if called by the employer. In this case, in addition to the normal remuneration paid for the working activity currently carried out, the employee is eligible to an additional 20% of the wage set by the NCAs. This contract must be drafted in writing.

APPRENTICESHIP ("APPRENDISTATO", LEGISLATIVE DECREE NO. 276/2003)

Apprenticeship is an open end contract with a **vocational training content**.

The employer can hire apprentices within certain quantitative thresholds depending on the number of employees hired and is required to ensure that the apprentice acquires professional skills and qualification.

TEMPORARY AGENCIES CONTRACTS ("CONTRATTO DI SOMMINISTRAZIONE DI LAVORO")

Temporary contracts, on fixed-term or open end basis, can only be agreed with qualified **employment agencies**. Workers must benefit from the same legal and economic conditions available to employees of the user company. Employers may not use staff supply contracts to replace workers on strike or to replace employees temporarily laid-off or involved in collective dismissals in the previous few months. The overall number of temporary contracts may not exceed the 20% of the workforce hired on permanent basis, unless collective bargaining set different threshold.

6. End of employment

GENERAL PRINCIPLES

Dismissal should always be provided by **written notice**. **Individual dismissals** of employees are subject to certain restrictions.

Open ended contracts can be terminated **without any compensation** or additional sanction where there is **just cause** ("*giusta causa*") or objective or subjective **justified grounds** ("*giustificato motivo*").

Just cause means a very serious breach (e.g. theft, serious insubordination) or any other employee's behavior that seriously undermines the trust relationship on which employment relationship is based.

Justified grounds means either:

- *subjective* justified grounds, consisting of a less serious breach of the employee (e.g. failure to follow important instructions, willful misconduct, repeated unjustified absences from work);
- *objective* justified grounds, consisting of an objective reason related to the employer's need to reorganize its production activities or workforce setting.

TERMINATION OF FIXED-TERM CONTRACTS

If one of the parties terminates the contract before its expiration date and without just cause, the other party may be awarded a proper compensation.

In the event of early termination by the employer, compensation would customarily amount to that which the employee would have accrued up to the contract expiration date.

RESIGNATIONS

Generally resignations do not need to take any specific form, however most collective agreements require that this be in writing. According to certain NCAs, in case of resignation, the length of the notice period may be shorter than in the case of dismissal.

NOTICE AND TERMINATION PAYMENTS

Upon termination of employment relationship, employees are entitled to:

- the payment of deferred wages (TFR);
- the payment of some minor termination indemnities (payment in lieu of unused holidays and leave, accrued pro-rata 13th and 14th monthly installment and so on);
- a **notice period** of termination, the duration of which varies according to the employees' seniority and professional level and as established by national collective agreements.

The **payments** under points (i) and (ii) above are **always due** in the case of dismissal, while the notice period (or the relevant indemnity in lieu) would not be due in the case of dismissal for just cause.

With respect to point (iii) above, it is worth noting that the employer is anyway entitled to **exempt** the employee **from working during the notice period**. In such case, the employee would be entitled to receive the corresponding indemnity in lieu, which would be equal to the normal salary (plus social security contributions) that would have been due during the notice period.

UNFAIR DISMISSALS

Jobs Act has introduced a new regime for individual and collective unfair dismissal, remarkably reducing the instances of reinstatement and establishing a transparent framework for possible disputes.

The new provisions apply to:

- employees hired on an open ended basis from 7th March 2015;
- employees hired before 7th March 2015 on a fixed-term basis whose contracts were converted into an open ended contract after 7th March 2015;
- apprentices hired before 7th March 2015 whose contracts were converted into an open ended contract after 7th March 2015.

(a) Dismissals before enforcement of Jobs Act

Should the dismissal be deemed unfair by a Court, the employer would be required to do either of the following two actions:

- if the reasons for the dismissal are considered totally **unlawful**: reinstatement and payment of a compensation equivalent to maximum 12 months for non-worked period (plus social security contributions). The employee may waive the right to reinstatement, opting to receive an additional compensation equal to 15 monthly wages;
- if the reasons for the dismissal are considered **concrete**, but insufficient to justify the dismissal: payment to the dismissed employee of an indemnity ranging from 12 and 24 monthly wages of the last annual salary.

Employees of small firms (less than 15 employees) are entitled to receive a compensation ranging from 2.5 to 6 months wages.

In case of discriminatory and void (e.g. oral) dismissals, regardless from the number of employees, point (i) above applies.

(b) Dismissals after enforcement of Jobs Act

In the event of termination for economic or disciplinary reasons the Court finds to be unfair, employees are entitled to an **indemnity** equal to 2 monthly wages for each year of employment, with a minimum of 4 months up to a maximum of 24 months.

The Court may require reinstatement of the employee only in the case of void and discriminatory termination or should the Court find that the allegation for dismissal on subjective reasons was not based on fact.

In smaller firms (less than 15 employees) the indemnities will be halved and cannot in any case exceed 6 months wages. Reinstatement is foreseen only for void and discriminatory dismissals.

In order to prevent possible disputes, a fast and convenient **extra-judicial settlement procedure** has been established, allowing the employer to offer the worker an indemnity equal to 1 month's wage per year of service, for a minimum amount equivalent to 2 months wages up to a maximum of 18 months wages. Acceptance of this transaction prevents any further appeal by the employee. The sum paid is not subject to social security contribution or to fiscal taxation.

DISMISSAL OF EXECUTIVES

Though similar principles apply, **dismissal of executives** is not regulated by the same statutory provisions governing termination of lower-level employees.

Given the high level engagement, **fairness** of an executives' dismissal is normally **assessed** unless it is shown to be a violation of correctness and good faith principles. The High Court (*Corte di Cassazione*) has indeed repeatedly confirmed that concept of "fairness" of an executive's ter-

mination does not coincide with the notion of "just cause" and "justified reason" (applicable to normal employees), but that it includes any reasonable ground for termination not limited to a breach of the correctness and good faith rules which underpin an employment relationship.

7. Collective dismissals

THE UNION PROCEDURE

Pursuant to Art. 24 of Law no. 223/1991, a mandatory procedure must be started whenever an employer staffed with more than 15 employees intends to **dismiss 5 or more employees** in the same business unit, **within a timeframe of 120 days**, due to a **reduction/ reorganization/closure** of the company's business.

The collective dismissal applies to all employees, including executives.

The procedure begins with the employer submitting a **written notice** to the works councils (if any) or to the Trade Unions to inform them of its intention to carry out a collective dismissal.

The notice must have to include the following information:

- the **reasons** for the collective dismissal;
- the technical, organizational and productive circumstances for which such dismissal cannot be avoided;
- the **number** of concerned **employees**, their duties and characteristics;
- the **date** on which the dismissal shall be implemented;
- the measures, if any, that will be taken in order to reduce the **social impact** of the dismissal.

UNFAIR DISMISSALS

Regime	Action	Consequence
Old regime (before enforcement of the Jobs Act)	Void dismissal (e.g. oral)	Reinstatement (or payment of indemnity in lieu)
	Breach of the mandatory procedure	Payment of an indemnity ranging from 12 to 24 months' salary
	Non-compliance with the selection criteria	Reinstatement (or payment of the relevant indemnity in lieu)
New regime (after enforcement of the Jobs Act)	Void dismissal (e.g. oral)	Reinstatement (or payment of indemnity in lieu)
	Breach of the mandatory procedure and/or non-compliance with the selection criteria	Payment of an indemnity equal to 2 months' salary per each year of service, with a minimum of 4 and a maximum of 24 months

Note that the same collective dismissal, employers may face different outcomes, depending on the date the employee has been hired.

8. Workplace safety

The Constitution and the Civil Code impose a general obligation on employers to safeguard the physical integrity and moral personality of their employees.

A consolidated **Act on Workplace Safety** (Legislative Decree no. 81/2008) unifies all legal provisions regarding health and safety in the workplace and is enforceable in all sectors.

The Act provides an exhaustive explanation of the **rules** on safety, including the **powers, responsibilities** and **functions** that may be delegated.

Employees are entitled to elect a representative to deal with health and safety related matters, and to be trained on the peculiar risks to which the company is exposed.

9. Labor proceedings

ORDINARY PROCEEDING

Special provisions of the Italian Code of Civil Procedure (Art. 409) apply to labor proceedings and provide for **special and quick resolution of individual disputes**.

The main features of the special procedure of individual labor disputes are the following:

- a quick proceedings compared with an ordinary civil proceedings;
- a mandatory conciliation attempt by the Judge prior to the hearing stage;
- wide powers granted to labor Courts, including the faculty to introduce on its own initiative new evidence and to order one of the parties to pay sanctions, indemnities and compensation during the proceedings for the amount that has already ascertained to be due;
- prohibition on changing the parties' initial pleading.

Judgment in the first instance may be challenged before the Court of Appeal, further appeal may be made to the Supreme Court.

"FORNERO" SPECIAL PROCEEDING

The Fornero reform (Law no. 92/2012) introduced an even **faster procedure** restricted to **unfair dismissal disputes** in companies with more than 15 employees.

Judges are in this case obliged to schedule the first hearing within 40 days of the complaint.

The judge, within 10 days of the first hearing must issue a judgment to reject or uphold the claim. The judgment is immediately enforceable.

The parties may appeal this judgment to the Court of Appeal, which may in turn be challenged before the Supreme Court.

The "Fornero" procedure does not apply to workers engaged under the new "Jobs Act regime".

10. Employee representation bodies & Employee participation

OVERVIEW

The **sources** of Italian regulatory system for employee representation bodies are twofold: legal and contractual.

With regards to **legal sources**, the basic right to establish and join a Trade Union association in the workplace or perform Union activity, is granted to all workers and is protected by a network of anti-discriminatory provisions (Articles 14-17 of Law no. 300/70, i.e. "Workers' Statute"). "**Rappresentanze Sindacali Unitarie**" (hereinafter **RSU**) were established by national agreement in 1993 and reformed in 2014. RSUs are formed by a general **election among the workforce**. The Unions compete in the election and are represented in proportion to the votes they have received.

Alternatively to take part in the election of **RSU**, a union can establish its own **Rappresentanza Sindacale Unitaria (RSA)**.

RIGHTS AND OBLIGATIONS

Both types of works council, RSA and RSU, are involved in **collective bargaining** and the verification of the correct application of laws and collective agreements.

They exercise **information** and **consultation** rights, as laid down both by collective bargaining and by law. They should be consulted on issues such as overtime levels, employment policy, hiring policy or corporate restructuring.

11. Social security and assistance system

The social security system provides **retirement, survivor and disability pensions**, as well as **healthcare, unemployment benefits and family allowances**.

Benefit amount is generally based on accrued social security contributions and length of service.

All employees and wage earners, including executives, project-work and self-employed workers are obliged to take part in the Italian social security scheme.

- **Social security contributions** are paid to Italian social security administration (so called "**INPS**"). Employees can join some pension funds (provided by NCAs) to increase social security benefits.
- The national **work accident insurance** institute (so called "**INAIL**") covers almost all employees for accidents at workplace and occupational diseases.

TAXATION IN ITALY

The **Italian tax system** is mainly based on the following taxes:

- Corporate income tax (IRES);
- Regional tax on productive activities (IRAP);
- Value Added Tax (IVA);
- Personal income tax (IRPEF);
- Inheritance and gift tax;
- Local taxes: national tax on real estate (eg. IMU, etc);
- Registration tax and other indirect taxes on property transfers.

1. Corporate income tax (IRES, Imposta sui Redditi delle Societe)

From January 1st 2004, all income produced by companies and institutions is subject to corporate income tax known as IRES.

IRES is payable on all **income** produced within the scope of the company.

The **24% tax rate** is applied on the taxable income (tax assessment basis) and has to be paid in two initial down payments and one balance payment.

The **tax period** is generally 12 months and corresponds to the calendar year.

Withholdings are generally fully deductible from tax. If the sum of the payments on account and the withholdings

exceed the tax payable, such excess may be deducted from the tax payable for the following tax period, reimbursed or used to offset any other tax and social security debts, at the taxpayers' excess.

PERSONS LIABLE FOR TAX

The following **entities** are liable to pay IRES:

- limited liability companies with share capital, cooperative companies and mutual insurance companies resident in Italy;
- public and private commercial institutions other than companies and trusts resident in Italy;
- public and private non-commercial institutions other than companies and trusts resident in Italy;
- non-resident companies and institutions, including trusts, with or without legal personality, in respect of the income produced in Italy or where there is a branch located in Italy.

Companies and institutions are considered to be **resident** when one of the following conditions is met for most of the tax period:

- the registered office is in Italy;
- the administrative office in Italy;
- the main object of the activities is in Italy.

TAX ASSESSMENT BASIS

The **profit taxable to corporation tax** (PCTCT) is determined on a **worldwide basis** by applying increases and reductions to profit as stated in statutory financial statements or annual accounts, prepared in accordance with Italian accounting standards.

From 2011, tax losses may be **carried forward** for an indefinite period of time but may be used to offset only 80% of PCTCT.

Income produced abroad contributes to the formation of the PCTCT; however, in order to avoid double taxation any foreign tax withheld at source on a definite basis may be deducted from the net Italian tax due with specific limitations.

There is no tax relief for foreign underlying tax. Specific anti-abuse rules have been provided for.

DEDUCTIBILITY OF EXPENSES

In determining taxable income, there is a wide range of expenses that can be deducted from the profit as indicated in the profit and loss accounts. Some of those expenses are 100% deductible, some of them are partially deductible and others are not deductible at all.

As a general principle, all the **expenses incurred in order to carry on the company activity** are eligible to be fully deducted from the profit.

However, if some of these costs are incurred both for company reasons and for private reasons, the percentage of deductibility is less than 100%.

Only the costs indicated in the P&L statement can be deducted for tax purposes.

The following list gives some examples of deductible costs and extent of their deductibility:

- **depreciation:** they are deductible pursuant to a decree (Min. Decree 31.12.1988) which establishes the different percentages of annual deductible depreciation for specific assets;
- **cost of labor:** all the costs related to wages, social and

health contributions paid by the company are deductible;

- **other taxes:** apart from IRAP (deductible only up to 10% of the amount paid), other taxes are deductible in the fiscal year they have been paid;
- **provisions:** most provisions cannot be deducted for tax purposes since they are not relevant under a tax perspective;
- **telephone costs:** they are deductible for 80% of their amount;
- **costs related to cars:** if a car is used exclusively for business purposes, the costs are entirely deductible, otherwise, they can be deducted in different percentages (70% to 80% - at 27,5%) depending on the user and the conditions for use;
- **gifts:** they are entirely deductible if their value is less than EUR 50 each (gross VAT);
- **entertainment expenses:** deductible within the following limits:
 - a. 1.3% of the annual sales (for annual sales below EUR 10 million)
 - b. 0.5% of the annual sales (for annual sales within EUR 10 million and EUR 50 million)
 - c. 0.1% of the annual sales (for annual sales of more than EUR 10 million)
- **costs for goods and services purchased** from companies residing in **tax havens** are deductible only if certain conditions are met. In any case, the relating amounts have to be indicated in the annual tax return.

CONTROLLED FOREIGN COMPANY (CFC)

The income produced by businesses, companies or other entities, resident or established in a **black list country**, which is controlled directly or indirectly by a resident person (individual, company, etc.), is attributed directly to the resident person, in proportion to the participation held. These rules also apply if the subsidiary has a permanent establishment in one of the countries previously mentioned. The above rules also apply to associated foreign companies, i.e. to participations exceeding 20% (10% if the company is listed). Taxable income is therefore determined according to specific rules.

CFC rules do not apply where a positive advance ruling is given by the revenue authorities, which is intended to

prove specific conditions are satisfied.

CFC rules also apply to controlled entities established in non-blacklist countries if:

- they are subject to tax rates less than 50% of the effective Italian tax rate; and
- more than 50% of the income earned is passive income (i.e. interests, dividends, royalties and services provided to related parties).

Advanced ruling for exemption is available.

TRANSFER PRICING

Transfer pricing rules in line with **OECD Guidelines** are applicable in Italy.

In particular, the rules apply to:

- a. foreign companies which control Italian enterprises they perform transactions with;
- b. Italian enterprises which control foreign companies they perform transactions with;
- c. Italian or foreign companies which control both entities (Italian enterprises and foreign companies) involved in the transaction.

"Foreign companies" is defined in practice as any kind of business entity, legally recognized in the foreign country, even if it has only one partner.

"Italian companies" is defined as companies with share capital, partnerships, sole traders and permanent establishments of foreign companies set up in Italy.

Inter-company transactions are to be **performed at armset up in**, which is the principle recommended by the OECD Guidelines, according to which the price is negotiated by independent entities.

There are **no legal obligations** in terms of **documenting the price policy** used within the business group, however, it is advisable to ensure documentation can prove the transfer pricing method adopted within the group. Avoiding transfer pricing issues is also possible by using one of the means provided by the tax authorities, such as:

- Advanced pricing agreement (APA);
- Safe harbors;
- International standard ruling.

An **annual tax return** must include the following information:

- the kind of control (see the above point a) b) c)) applicable to the company;
- the amount of the transaction relating to the operation subject to the Transfer pricing rules;
- if the company has the documentation to prove the transfer pricing method adopted within the group.

In relation to the above documents, the Italian regulations make explicit reference to the **OECD Guidelines** (namely, to the recent edition approved by the OECD Council on July 22nd, 2010), and the documentation requirements broadly replicate the recommendations of the **EU Code of Conduct** on transfer pricing documentation for associated enterprises in the EU – the *"European Union Transfer Pricing Documentation"* or **"EU TPD"**. This includes the Master File and Country File concepts, although with some points of difference, towards a more comprehensive informative package (please see the table at the end for a detailed list of the required documentation).

INTERNATIONAL RULING

Businesses with international activities may implement a suitable **international standard ruling procedure**, mainly with regard to the system of transfer prices, interest, dividends and royalties, in order to reach an agreement with the Inland Revenue, valid for three tax periods, without prejudice to any changes in the *"de facto"* and *"de jure"* circumstances resulting from the agreement signed.

INTERNATIONAL AGREEMENTS

Italy has established over 90 international **treaties** to **avoid the double taxation** of income produced in different countries (see below).

DIVIDENDS

Income of companies and associations subject to IRES is only **taxed when it is produced**. The company therefore

pays IRES permanently and shareholders are not entitled to any tax credit on the profits received.

Dividends received by Italian entities are subject to taxation as follows:

- dividend received from resident companies are taxed at 5% of their amount;
- dividend received from companies located in countries with a preferential tax system are fully taxable.

Dividends paid to companies based in member states of the European Union (EU) and in members of the European Economic Area (EEA) that allow a suitable exchange of information with Italy, are generally taxed at source (WHT) at a rate of 1.375%.

PARTICIPATION EXEMPTION

Capital gains on the transfer of company holdings, under certain conditions, are **95% exempt** from taxation. Capital losses are not deductible.

The legal **conditions** for exemption are the following:

- uninterrupted holding as from the first day of the 12th month preceding that of the transfer; holdings acquired more recently will be deemed to be transferred first (LIFO basis);
- classification of holdings as fixed asset investments as from the first balance sheet closed during the period of ownership;
- tax residence of the subsidiary in a country or territory other than those with a preferential tax system;
- exercise by the subsidiary of actual commercial activities; rritory other than those with a prefer

The conditions set out in paragraphs c) and d) must be met without interruption at least as from the beginning of the third tax period prior to one of the transfers.

DEDUCIBILITY OF INTEREST PAYABLE

Interest payable and assimilated charges other than capitalized costs can be deducted in each tax period, up to the limit of the interest receivable and assimilated revenue.

Any excess of interest payable can be deducted up to 30% of the EBITDA plus cost of financial leases. Any further excess cannot be deducted during the taxation period, but can be **carried forward** and eventually deducted in later periods, on the condition that the 30% of the ROL relevant to each financial year is higher than the difference between the total interest payable plus assimilated costs and the total of interest receivable and assimilated revenue. On the other hand, any excess of the above ROL can be carried forward in later periods in order to offset any excess of interest payable.

In order to apply the system described, **interest payable** and **interest receivable, assimilated costs and revenue from the following** are taken into consideration: mortgage contract; financial lease contracts; issue of bonds and similar and any other contract for financial reasons.

Implied **interest coming from debts** is excluded however, while interest receivable from payments of the same nature can be included.

TAX TRANSPARENCY OPTION

The tax transparency is a system by which the **company transparency is** is not taxed in respect of the company itself, but is **attributed to each shareholder**, irrespective of its actual distribution, in proportion to their share in the profits.

The system is **optional** and the option has to be exercised by all the shareholders.

The requirements for exercising the option are as follows:

- the shareholders must all be limited liabilities companies with share capital, cooperative companies or mutual insurance companies resident in Italy;
- each shareholder must hold a percentage of voting rights at the general meeting and profit-sharing of minimum 10% and maximum 50%.

These conditions must be met from the very first day of the tax period of the subsidiary in which the option is exercised and remain in force until the end of the option period.

The option period is a 3-year period.

Under certain conditions, this system may also be applied

if one or more shareholders are non-resident.

In the event of the distribution of dividends, consisting of profits acquired during the periods included in the period of validity of the option, dividends will not be taxed.

This system is also applicable to S.r.l. or cooperatives, provided that:

- all the shareholders are natural persons only, up to 10 for an S.r.l. or 20 for cooperative societies;
- the subsidiary has an income not exceeding EUR 7,500,000;
- the company does not have participations within the participation exemption requirements.

DOMESTIC AND WORLD TAX CONSOLIDATION

Companies belonging to the same group may opt for the consolidation of their company income.

Domestic tax consolidation

Domestic tax consolidation is an **optional system** arranged for a **3-year period**, to which company groups may have access. To exercise the option, the law provides for the controlling company to participate directly or indirectly in an amount exceeding 50% of the share capital and profits of the subsidiary for the year.

The system consists of the **consolidation of the taxable income**, calculated separately by each company, which is totally **algebraic**, irrespective of the percentages of participation of the different companies.

For this purpose, the holding company must:

- submit the consolidated earnings return, calculating the overall global income based on the algebraic sum of the overall net income declared by each of the companies participating in the system, without making any consolidation adjustment;
- proceed with payment of the group taxation (IRES).

Any excess interest payable and non-deductible assimilated costs formed by a subject who takes part in the consolidated balance sheet can be deducted from the group's overall income if and within the limits in which the other

participants submit a declaration of large-scale gross earnings for the same taxation period that is not fully used for deduction. These rules can be applied to excesses carried forward, excluding any excess formed prior to entering the national consolidated balance sheet that must be used for the sole purposes of each company elected for this regime. The option is exercised by forwarding suitable notification to the Inland Revenue. Companies belonging to the group and using IRES rate reductions may not exercise the option.

The following **conditions** must also be met:

- residence in Italy of all companies participating in the "fiscal unit";
- all of the companies participating in the group must have the same year-end;
- election of domicile by each subsidiary with the controlling company.

World tax consolidation

World tax consolidation is an **optional system** with a **5-year period**, based on which a controlling company resident in Italy may consolidate the income made by all non-resident subsidiaries proportionately, for which the control requirement exists, based on the percentage of participation held in the subsidiaries.

The following conditions must be met:

- residence of the controlling company in Italy;
- all of the companies participating in the group must have the same year-end, unless not permitted by foreign legislation;
- inspection of the balance sheets of the controlling and subsidiary companies;
- compulsory consolidation of all foreign subsidiary companies;
- certification by non-resident subsidiaries of their consent to the audit of the balance sheet and undertaking to provide any collaboration required to establish the tax assessment basis and to comply with the requests of the Inland Revenue.

A suitable appeal should be made to the Inland Revenue to check the requirements for the valid exercise of the option.

2. Withholding taxes

Withholding taxes are applied to various payments. The following are the most important.

Tax treaties, where more favorable to the tax-payer, override statutory provisions.

DIVIDENDS

Dividend income received by partnerships or by individuals in relation to business activities is subject to tax at 49.72%.

Dividend income received by individuals not related to business activities is subject to:

- ordinary tax at 49.72%, if related to **qualified participations** (26%¹ advance withholding tax also applies to foreign source dividends);
- 26%¹ substitutive final tax withheld at source for the total amount, if related to non-qualified participations.

Qualified participations are participations entitling to:

- more than 2% of voting rights in an ordinary meeting or 5% of capital or corporate assets of quoted companies;
- more than 20% of voting rights in an ordinary meeting or 25% of capital or corporate assets of other companies.

Dividends of foreign source from **black list countries** are subject to ordinary tax on 100% of their amount. 26%¹ advance withholding tax applies.

Dividend paid to **non-residents** (other than EU companies) are subject to a 26%¹ final withholding tax. Reduced rates and reimbursement may apply (leading to a 15% effective tax rate), provided that certain conditions are met. Dividends paid to **EU companies** are subject to a 1.375% final withholding tax.

Payments to a **qualifying EU parent company** are exempt from withholding tax under the Parent-Subsidiary Directive, according to specific conditions.

INTERESTS

Interest on bank deposits and current accounts is subject to a 26%¹ substitutive final tax withheld at source. Other interest on loan, deposits and current accounts is also subject to a 26%¹ advance withholding tax.

Interest on bonds and other financial assets is subject to 26%¹ advance or final withholding tax according to various conditions.

Interest paid to **non-residents** is subject to the same rates applied to resident individuals; the withholding tax is applied on a final basis. Interest paid to non-residents on deposit accounts with banks and post offices is exempt.

Payments to **associated EU Companies** are exempt under the EC Interest and Royalties Directive, provided that certain conditions are met.

TAX TREATIES

The table in appendix (3.5) indicates the withholding taxes applied, on the basis of tax treaties, on payments of dividends, interests and royalties of an Italian taxpayer.

3. Regional tax on production activities (IRAP, Imposta Regionale sulle Attività Produttive)

The regional tax on production activities (IRAP) is a **local tax** collected by the Region where the **production activities** liable for tax are conducted.

If taxpayers perform their activities in establishments and offices situated on the territory of several regions, the distribution of the taxable income, and, therefore, of IRAP, is made **in proportion to the cost of the employees** working in the various regional establishments and offices.

PERSONS SUBJECT TO IRAP

IRAP is due to those regularly engaged in an **independently run activity** in the **production of goods or services** in the Region.

In particular, the following persons are subject to IRAP:

- entities subject to IRES: resident commercial companies and institutions, and non-resident companies and institutions of any type with or without legal status;
- joint-name partnerships, limited partnerships and those equivalent to simple partnerships practicing arts and professions and professional associations;
- agricultural producers receiving agricultural income (individuals or groups), except for those exempt from VAT;
- public and private non-commercial institutions and public administrations;
- individuals receiving company income; and individuals receiving income from self-employed work.

IRAP does not apply to mutual investment funds, pension funds, European economic interest groups (EEIG) and door-to-door salesmen.

For persons **not resident** in Italy, IRAP only applies when the activities are conducted over a period of at least three months through a permanent establishment.

TAX ASSESSMENT BASIS AND RATES

The **determination of the tax base** differs, depending on whether the taxpayer is a commercial company, an agricultural producer, public or private non-commercial institutions or public administration offices.

If the taxpayer performs different activities, the tax base on which the rate applies is made only by the sum of the positive figures. For example, if a taxpayer has a tax base of EUR 100,000 relating to a commercial company and is also an agricultural producer using a tax base equal to EUR -20,000, the rate will be applied to a tax base of EUR 100,000.

IRAP applies to the **net production value**, which is the difference between:

- **positive** components, consisting of the income from sales or provision of services, variations in stocks (if positive) and other operating income and revenues, and

- **negative** components, consisting solely of the cost of purchasing goods and services, the cost incurred for using third party goods, variations in stocks (if negative), depreciation, and amortization of fixed assets and sundry management charges.

Employment costs, costs deriving from the provision of temporary self-employed work, financial charges and exceptional charges of any kind are not deductible for IRAP purposes.

Costs related to employees and similar expenses to employees only for permanent workers are deductible for IRAP purposes; for those entities without costs related to employees and similar expenses to employees a tax credit equal to 10% of gross tax applies.

The **general rate** applied is equal to **3.9%**. In some regions this rate may be higher.

A **fixed deduction** is applied, determined by increments with reference to the taxable basis, plus a deduction for employees (subject to certain conditions).

Special rules apply to establish the taxable assessment basis of **specific entities** such as: banks, financial institutions and companies and insurance companies, and, in some cases, different rates are applied as well.

¹ Law Decree no. 98/2013 stated the new withholding tax rate applying on capital gains collected and interests accumulated starting from July 1st, 2013.

4. Value added tax (IVA, Imposta sul Valore Aggiunto)

VAT is applied on the “value added” to goods and services in the sense that, by means of a system of reimbursement of charges and deductions, tax is payable on the increase in value of goods or services in different phases of production and trade, until it reaches the final consumer who bears the full cost of the tax.

TAX ASSESSMENT BASIS AND RATES

There are three **conditions** that must be met for a transaction to be subject to VAT:

- objective condition: there must be a transfer of goods or provision of services;
- subjective condition: the operations must be carried out in running business or in practicing arts and professions;
- territorial condition: the operations must be carried out within Italy.

For VAT purposes, “Italy” is considered to be the territory of the Italian Republic, excluding the Communes of Livigno, Campione di Italia and the waters of Lake of Lugano on Italian territory.

VAT substantially applies to the following operations:

- transfer of goods made in Italy in running business or in practicing arts and professions;
- provision of services in Italy in running business or in practicing arts and professions;
- intra-EU purchases of goods from another EU member state in running businesses or in arts and professions;
- purchases made by foreign countries of some services carried out in Italy in running businesses or in practicing arts and professions;
- imports of goods from non-EU countries, made by anyone.

However, VAT does not apply to all the aforesaid operations conducted in the Italian territory. Some operations are, in fact, tax exempt, while others fall outside the scope of VAT.

The former are operations that respect the three conditions but are excluded by express provision of law, such as the sale of postage stamps and stamp duties, financial expenses, medical services, insurance operations, etc. The latter, while physically carried out in Italy, are considered by law as if they were not carried out in Italy and therefore not subject to VAT.

RATES APPLICABLE

The **ordinary rate** is 22%.

In addition to the ordinary rate, there are two **reduced rates**, 10% and 4%, and the “zero” rate which applies to certain so-called “**non taxable**” operations (exports of goods, provision of some international services or services relating to international trade, transfers of goods to another EU Member State, provision of some services connected to transfers of goods to another EU Member State).

The *Legge di Stabilità 2015* (Law n°190/2014) provides increases of the VAT rates starting from fiscal year 2016, as follows:

	2016	2017	2018
ordinary rate	from 22% to 24%	from 24% to 25%	from 25% to 25.5%
reduced rate	from 10% to 12%	from 12% to 13%	

The above increases of the VAT rates could be replaced, in whole or in part, by new regulatory measures that have the same effect on the Public Finances.

REGISTRATION FOR VAT PURPOSES

If a person (individual person, partnership, company with share capital or institution) intends to carry out an operation relevant for VAT purposes in running a business or in an art or profession, he/she/it is required to apply for an **Italian VAT number** before implementing the operation. VAT is applied through the **reverse charge mechanism** by the **recipient of the goods or services**.

If the foreign operator has a permanent establishment in Italy, he/she/it should apply for an Italian VAT number and comply to all legally required provisions, as if he/she/it were a national person.

If the foreign operator does not have a permanent establishment in Italy, he/she/it may also:

- appoint an **Italian VAT tax representative**, i.e. an individual person or institution resident in Italy, responsible for fulfilling the obligations and exercising the rights laid down by the regulations on VAT; or
- **identify itself directly for VAT purposes** in Italy, directly fulfilling the obligations and exercising the rights laid down by Italian regulations, if resident in one of the EU countries or in one of the non-EU countries with which Italy has reciprocal assistance agreements on indirect taxation.

The appointment of the tax representative or direct identification should follow a special procedure and should be notified to the other contracting party before making the first relevant operation for the purposes of Italian VAT.

In the event goods or services are supplied directly from abroad, the transaction shall be taxable in Italy through the reverse charge mechanism by the recipient (purchaser) if it is a taxable person in Italy for VAT purposes (so called **B2B transactions**).

However, notwithstanding the non-resident has been identified for VAT purposes, the Italian operator shall comply with all the obligations through the above mentioned reverse charge mechanism.

This scheme is applicable even if a foreign operator has a permanent establishment in Italy, when the goods or services have been provided by the non-resident entity.

Where goods or services are supplied directly from abroad to a final consumer (so called **B2C transactions**) applying for a VAT identification through their Italian VAT number (VAT Rep, Permanent establishment or direct identification) will be necessary.

† ! e VAT accounting of an operator could be handled under the special regime of “bookkeeping carried out by third parties” - so called “contabilità presso terzi” (according to article #, paragraph \$, of Presidential Decree nr. #%% f&\$ M&rch #). U nder this special regime, VAT due is calculated with reference to two months before, instead of the month immediately before (Ministerial Circular no. &o f #% ¶ne # #).

The **VAT position** of a person remains valid until the termination of all activities.

TAXPAYERS’ OBLIGATIONS

Italian regulations lay down very detailed rules on the following:

- procedure and timing for the issue of invoices;
- content of invoices;
- procedure for the registration of invoices issued and received;
- procedure for the issue of credit and debit notes;
- calculation of VAT payable;
- periods for settlements and payments of VAT;
- procedure for the completion and submission of VAT returns;
- procedure for the completion and submission of VAT communication of transactions with business entities located in countries with a privileged tax systems (Tax Haven or Black List Countries).

OTHER VAT SYSTEMS

Customs warehouses and VAT warehouses

Special rules establish the conditions for create and use:

- “customs warehouses” where products are held **without payment of custom duties and VAT** until they are removed from the warehouse;
- “VAT warehouses” where products are held **without payment of VAT** only.

Special VAT systems

There are several special VAT systems that apply to anyone operating in particular sectors (e.g. agriculture, publishing, travelling, tourism, etc.).

Group VAT settlement

Groups of national companies are able to make group VAT payments, offsetting the VAT debits and credits of the various companies. In certain circumstances an EU holding is also eligible for the above indicated procedure with reference to its Italian subsidiaries.

5. Municipal tax on property (IMU, Imposta Municipale Unica) and other local taxes

IMU is the **municipal tax** charged on the **possession of buildings, buildable areas and agricultural lands** situated within the Italian territory, intended for any use, including property used in performing company activities. The owner of the property or holder of the real right of usufruct, use, residence, emphyteusis or taxable area thereof is required to pay the municipal tax.

In case of a financial lease, the lessee of a real estate is subject to the tax.

The **tax assessment basis** is represented:

- for **buildings**, by the value obtained multiplying the cadastral rent increased by 5% by a different multiplier (from 55 up to 160) based on the cadastral category;
- for **building land**, by the commercial value of the land as at the 1st of January in the year of taxation;
- for **agricultural land**, by the value obtained multiplying the cadastral income revalued by 25%, by 75 in case of agricultural land, cultivated, owned and run by farmers and professional agricultural entrepreneurs, and by 135 in all other cases.

The tax is usually calculated by applying the **basic rate of 0.76%** to the tax assessment basis.

Each municipality, as part of its own statutory authority, may **vary** such rate by a **maximum of 0.3%** (increase or decrease), to determine a range between 0.46% and 1.06%.

6. Registration tax

A tax must be paid for **documents** that must be **compulsorily registered** and documents that are **registered voluntarily**.

Documents referring to **real estate or assets** drawn up in Italy, **corporate transaction papers** and documents stipulated abroad that have the purpose of **constituting or transferring real rights in intangible assets or companies** located in Italy, the **lease or rent** of such assets must be registered. The timing in which a document must be registered depends on whether the document is subject to registration “**within a specified period**” or whether it is subject to registration only “**in the event of use**”.

All the other documents can be voluntarily submitted for registration by anyone with an interest in doing so.

Tax is liquidated by the competent tax office by applying a tax rate determined by the value set out in the registered document, or by the service contained therein. All applicable rates are stated in the rates sheet attached to the Presidential Decree 131/86.

The applicable **rate** varies from 0.5% to 12%, depending on the type of the relevant document, with a minimum payable of EUR 200.

For documents relating to the sale of assets and provision of services subject to VAT (including non-taxable provisions due to the lack of territorial premises, as well as exempt provisions), the tax is always applied as a fixed amount.

Exceptions are the leasing of instrumental assets which, despite being subject to VAT, pay registration tax proportionally (1%).

The tax must be **paid** to the **Inland Revenue at the time of registration**. Public officials who have drawn up, received or authenticated the document, persons in whose interest the registration is completed (contracting parties or assignees) and real estate agents are all liable for the payment of taxes.

The tax is also applied on the transfer of boats, as a fixed amount, according to the type and size of the boat.

7. Personal income tax (IRPEF, Imposta sul Reddito delle Persone Fisiche)

This tax is **personal** and progressive.

The requirement for this tax is the possession of **income**, in cash or in kind, falling into one of the categories stipulated by law. The **tax period** corresponds to the calendar year.

PERSONS LIABLE FOR TAX

The following **persons** are liable to tax:

- natural persons resident on Italian territory in respect of the entire income owned;
- natural persons not resident on Italian territory solely for the income produced in Italy.

Italian residents include natural persons who, for most of the tax period, meet at least one of the following conditions:

- they are registered in the registers of the population resident on the national territory;
- they are domiciled in Italy (domicile to be understood as the principal office for business and interests, including moral and company interests);
- they are resident in Italy (regular residence).

TAX ASSESSMENT BASIS

Tax is applied to the **overall income**, i.e. the sum of the income of each category, minus any losses deriving from the practice of arts or professions and/or commercial businesses.

The relevant categories include:

- land income, relating to land and buildings situated on the Italian territory;
- capital income;
- income from employment;
- income from self-employed;

- company income;
- sundry income, not acquired from the exercise of business, arts or professions.

Once the gross overall income has been determined, any deductions stipulated by law are applied.

The **gross tax** is calculated by applying the increasing **rates by income increments** to the net overall income.

The **rates** currently in force (2015) are as follows:

Income	Rates
Up to EUR 15,000	23%
From EUR 15,001 to EUR 28,000	27%
From EUR 28,001 to EUR 55,000	38%
From EUR 55,001 to EUR 75,000	41%
Over EUR 75,000	43%

For tax calculation purposes, **tax deductions** are available to reduce overall taxable income.

Deductions are usually equal to 19% of the charges borne, reducing the gross taxation applicable.

Until fiscal year 2016 an additional 3% tax will apply to income exceeding EUR 300,000.

REGIONAL AND MUNICIPAL IRPEF SURCHARGES

In addition to the tax calculated, two additional payments have to be made to the local authorities (Region and Municipality) in which the taxpayer is resident:

- a **regional** of between 1.23% and 3.33% (established by the regional government on a yearly basis),
- a **municipal** surcharge comprising of a first rate established each year by the state and applied throughout the national territory and a second rate not exceeding 0.8% p.a. established by the individual municipality (under some circumstances the rate could rise further by a further 0.3%).

EXPATRIATES BENEFITING FROM THE DEDICATED ITALIAN SPECIAL TAX REGIME

An important development is likely to take place in 2015 affecting **internationally mobile personnel** in Italy. Pursuant to the EU infringement procedure n. 2027 of 25 April 2013, Italy amended its approach to personal tax of non-resident taxpayers **who earn at least 75% of their income in Italy**.

The Italian Government is committed to adopt a new scheme under which expatriates (non-residents taxpayers), residents in the EU or EEA (European Economic Area), will benefit from full deductions and allowances on their taxable income (so-called “**Schumacher-rule**”).

Under the new provision, non-resident taxpayers who respect this rule will be treated the same as Italian residents in respect of their tax calculations.

TAX ON INCOME OF NON-RESIDENTS

IRPEF applies to resident and non-resident individuals. Resident individuals are taxed on a world-wide basis, while non-resident individuals are taxed on the income produced in Italy on a territorial basis.

The following incomes are deemed to be produced in Italy:

- income from land and buildings;
- income from capital paid by the State, by resident persons (entities or individuals) or by permanent establishment in Italy of foreign entities, except interest and other income derived from bank/post deposits and current accounts;
- income from employment produced in Italy;
- income from independent work derived from activities performed in Italy;
- business income derived from activities performed in Italy through a permanent establishment;
- other income derived from activities performed/assets located in Italy and capital gains derived from the sale of participation in resident entities (exceptions: e.g. non-substantial participations in listed companies);
- income from participation in transparent Italian entities (e.g. partnerships).

Tax is assessed on the aggregate amount of the incomes in-

dicated above (deductions and tax reductions may apply). Non-resident companies and other entities, including trusts, with or without legal personality are subject to corporation tax (IRES, *Imposta sul Reddito delle Società*).

Tax is assessed on the income produced in Italy, except for exempt incomes and incomes subject to final withholding tax or substitutive tax.

For corporation tax purposes (IRES), the incomes indicated above are deemed to be produced in Italy; for non-resident companies and other entities, the business income includes capital gains and capital losses relating to assets used in commercial activities performed in Italy (even if not realized through permanent establishments), dividends derived from resident entities, other income derived from activities performed/assets located in Italy and capital gains derived from the sale of participation in resident entities.

Tax treaties, where more favorable to the tax-payer, override statutory provisions.

8. Tax obligations

Throughout the year, the taxpayer is required to comply with a series of **obligations** that vary, by type and by date, depending on the category of taxpayer and the type of tax that applies. It is important to note that almost all tax returns and fiscal communications must be sent by **electronic filing only**.

COMPLIANCES RELATING TO DIRECT TAXATION

Both IRPEF and IRES taxpayers have to complete an **annual return** to be able to self-assess and pay taxes in full for the applicable tax year and the tax payments on account for the current year at the time the return is prepared.

The tax return must be drawn up using a standard form approved by the tax authorities on a yearly basis.

Individuals and partnerships must file an annual tax return by the end of September of the following tax year, while **limited liability companies** must file the tax return within

nine (9) months of the end of the relevant tax period (usually matching the balance sheet date).

The tax **payments** are divided into **two payments on account** payable during the course of the tax year, and a **balance** to be paid at the same time as payment of the first payment on account is due for the following year (the 16th day of the sixth month following the end of the relevant tax period, with the possibility of postponing to 16th day of the seventh month by paying 0.4% interest).

IRAP

For **IRAP** purposes, an annual return has to be drawn up and submitted by the same deadline as the income return.

VAT

An **annual Value Added Tax return** relating to a calendar year must also be filed, before the end of September of the following tax year: it must contain the total of incoming and outgoing operations, tax due, deductions, payments made, tax due as settlement or difference as credit.

The taxpayer must also send a VAT concise return each year (“*Comunicazione annuale dati IVA*”).

Effective from the calendar year 2016, the VAT concise return will no longer be required but the annual VAT return will have to be filed by the end of February of the following year.

In general, **settlement** is effected on a **monthly, quarterly or infra-yearly** basis.

Taxpayers who must make monthly payments must pay any amounts due by the 16th day of the month following the one to which the settlement relates or, in the case of quarterly settlement, by the 16th day of the second month following the end of the quarter.

For the last yearly quarter, the payment deadline is 16th March.

All credits will be deducted from the settlement in the following month or quarter.

By 27th December, the taxpayer is asked to provide a payment on account as the last settlement of the year.

OFFSETTING

It is possible to **offset credits and debits** relating to the **same tax** (traditional offsetting) or credits and debits deriving from **different taxes and social security contributions** (horizontal offsetting).

IMU

As of today, the IMU (municipal tax on property) return has to be prepared and submitted in the event of change of taxable status by both previous and new taxable persons. The filing must be made no later than June 30 of the year following the change. The return is effective for the following years as well, provided that no change in the disclosed information and elements entailing adjustment of the tax due occur.

The tax is payable in two annual installments: 16th June and 16th December.

Appendix

INTERNATIONAL TAX TREATIES - WITHHOLDING TAXES

Withholding taxes applied, on the basis of tax treaties, on payments of dividends, interests and royalties of an Italian taxpayer.

Country	Dividends		Interest	Royalties
	Individuals, companies	Qualifying, companies		
Albania	10	10	0/5	5
Algeria	15	15	0/15	5/15
Argentina	15	15	0/20	10/18
Armenia	10	5	0/10	7
Australia	15	15	10	10
Austria	15	15	0/10	0/10
Azerbaijan	10	10	0/10	5/10
Bangladesh	15	10	0/10/15	10
Belarus	15	5	0/8	6
Belgium	15	15	5	5
Bosnia and Herzegovina	10	10	10	10
Brazil	15	15	15	15/25
Bulgaria	10	10	0	5
Canada	15	5	0/10	5/10
China (People's Rep.)	10	10	0/10	10
Congo	15	8	-	0/10
Croatia	15	15	0/10	5
Cyprus	15	15	10	0
Czech Republic	15	15	0	0/5
Denmark	15	0	0/10	0/5
Ecuador	15	15	0/10	5
Egypt	-	-	0/25	15
Estonia	15	5	0/10	5/10
Ethiopia	10	10	0/10	0/20
Finland	15	10	0/15	-/1
France	15	5	0/10	0/5
Georgia	10	5	0	0
Germany	15	10	0/10	0/5
Ghana	15	5	10	10
Greece	15	15	0/10	0/5
Hungary	10	10	0	0
Iceland	15	5	0	5
India	25	15	0/15	20
Indonesia	15	10	0/10	10/15
Ireland	15	15	10	0
Israel	15	10	10	0/10
Ivory Coast	15	15	0/15	10
Japan	15	10	10	10
Jordan	10	10	0/10	0/10
Kazakhstan	15	5	0/10	10
Kyrgyzstan	15	15	0	0
Korea (Rep.)	15	10	0/10	10
Kuwait	0/5	0/5	0	10
Latvia	15	5	10	5/10
Lebanon	15	5	-	-
Lithuania	15	5	0/10	5/10
Luxembourg	15	15	0/10	10

Country	Dividends		Interest	Royalties
	Individuals, companies	Qualifying, companies		
Macedonia (FYR)	15	5	0/10	0
Malaysia	10	10	0/15	15
Malta	15	15	0/10	0/10
Mauritius	15	5	0	15
Mexico	15	15	0/15	0/15
Moldova	15	5	5	5
Montenegro	10	10	10	10
Morocco	15	5	0/10	5/10
Mozambique	15	15	0/10	10
Netherlands	15	5/10	0/10	5
New Zealand	15	15	0/10	10
Norway	15	15	0/15	5
Oman	10	5	0/5	10
Pakistan	25	15	30	30
Philippines	15	15	0/10/15	25
Poland	10	10	0/10	10
Portugal	15	15	0/15	12
Qatar	15	5	0/5	5
Romania	10	10	0/10	10
Russia	10	5	10	0
San Marino	15	5	0/13	0/10
Saudi Arabia	10	5	0/5	10
Senegal	15	15	0/15	15
Serbia	10	10	10	10
Singapore	10	10	12.5	15/20
Slovak Republic	15	15	0	0/5
Slovenia	15	5	0/10	5
South Africa	15	5	0/10	6
Spain	15	15	0/12	4/8
Sri Lanka	15	15	0/10	10/15
Sweden	15	10	0/15	5
Switzerland	15	15	12.5	5
Syria	10	5	0/10	18
Tanzania	10	10	15	15
Thailand	20	15	0/10	5/15
Trinidad and Tobago	20	10	10	0/5
Tunisia	15	15	0/12	5/12/16
Turkey	15	15	15	10
Turkmenistan	15	15	0	0
Uganda	15	15	0/15	0/10
Ukraine	15	5	0/10	7
United Arab Emirates	15	5	0	10
United Kingdom	15	5	0/10	8
United States	15	5	0/10	0/5/8
Uzbekistan	10	10	0/5	5
Venezuela	10	10	0/10	7/10
Vietnam	15	5/10	0/10	7.5/10
Zambia	15	5	0/10	10

FINANCIAL & TAX INCENTIVES IN ITALY

The Italian Government recently introduced several changes to tax laws relevant to foreign companies, in particular a new research & development tax credit and a new patent box regime.

It also introduced new incentives for investments in manufacturing and R&D – notably the “Development Contract”.

1. Incentives for investments in manufacturing and research & development

These incentives are based on the activity, the size and the location of the company and can be grants or soft loans. All incentives are in line with EU rules and it is the business's responsibility to ensure that any incentive applied for must receive prior EU approval or be subject to subsequent investigation.

DEVELOPMENT CONTRACT (CONTRATTO DI SVILUPPO)

A Development Contract is an agreement between the Ministry of Economic Development (MISE, *Ministero dello Sviluppo Economico*), the Italian agency in charge of incentives, *Invitalia*, and one (“lead”) or more (“other”) companies implementing investments in:

- **manufacturing;**

- **food processing and commercialization of agricultural products;**
- **tourism;**
- environmental protection, energy efficiency and co-generation projects.

Incentives are available for companies implementing projects to:

- **set-up a new** manufacturing plant (greenfield);
- **expand** an existing one (expansion);
- **diversify** the existing production by developing new products (colocation);
- **change** the production process of an existing production unit (modernization).

Investment programs must total more than:

- **€20 million;**
- €7.5 million for food processing.

In addition, companies may also ask for subsidies financing **research & development expenditures**, related to the main development project.

Incentives depend on the **size** of the companies and on the precise **location** of the project:

- **a maximum** amount of **25%** of the total investment for “large companies” (see the definition below), in the

Southern regions: Campania, Apulia, Basilicata, Calabria, Sicily;

- the percentage is **45%** for “small enterprises” and 35% for “medium enterprises”;
- projects implemented in some specific areas in the **North-ern regions** can benefit from a maximum amount of 10%.

Aid is also provided in the form of **capital grants or loans** with very favorable terms, or a combination of both.

Subsidized companies must **provide** a financial **contribution** of at least **25%** of the eligible costs.

NB: EU definition of Small and Medium-sized Enterprises (SME)

The main factors determining whether a company is an SME are:

- number of employees, and either turnover or balance sheet total.

Company category	Employees	Turnover	or	Balance sheet total
Medium-sized	< 250	≤ € 50 m		≤ € 43 m
Small	< 50	≤ € 10 m		≤ € 10 m
Micro	< 10	≤ € 2 m		≤ € 2 m

These ceilings apply to the figures for individual firms only. A firm that is part of larger group would need to include employee/turnover/balance sheet data for the group too.

2. Research & Development Tax Credit, (Credito d'imposta per attività di ricerca e sviluppo)

On December 2014, the Italian Parliament approved the budget law for 2015 (*Legge di Stabilità 2015*) (effective from 1st January 2015) and the introduction of a new research & development tax credit.

A decree of the Ministry indicating the implementing provisions is still pending and therefore it will be necessary to wait for it before operational guidelines are available.

According to these new provisions, for the tax years ranging from 2015 to 2019, resident companies performing qualified R&D activities can benefit from a tax credit calculated on qualified expenditures incurred.

Eligible R&D activities include **fundamental research, industrial research and experimental development**, in accordance with the classification found in the ‘Community Framework for State Aid for Research and Development and Innovation’ developed by the European Union.

<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52006XC1230%2801%29>

The tax credit is determined as **25%** (or 50%) applied on the **exceeding** qualified expenditures in R&D activities calculated as the **difference** between the **expenses incurred in the year** (in which the tax credit is requested) and the **average of the 3 previous years**.

The tax credit percentage is:

- **25%** for depreciation of **laboratory equipment** and for **technical expertise** related to industrial or biotech intellectual property;
- **50%** for costs related to **‘highly qualified’ personnel** and **R&D activities outsourced** to universities, public research institutes (and equivalent bodies) or “innovative start-ups” regulated by article 25 of Legislative Decree no. 179/2012 (converted into Law no. 221/2012).

The tax credit requires qualifying R&D costs of at least €30,000 per year.

The costs incurred for research and development are required to be recorded separately in the accounting records and approved by a certified auditor.

The R&D tax credit **cannot exceed €5 million per year**.

The tax credit is not relevant for the taxable base for corporate income tax (IRES) or IRAP purposes.

3. Patent Box

The 2015 budget law (*“Legge di stabilità”*) also introduces a **patent box** regime. The new regime is applicable from the tax period following the one in course on 31 December 2014 (and therefore from the tax period 2015 for entities with a calendar year end).

The regime can be accessed by all entities that satisfy all the following conditions:

- they carry out **business activities in Italy** and produce business income (*“reddito di impresa”*),
- they carry out **R&D activities**, either **directly** or **through research agreements** with university or other research entities,
- they **license out** eligible **intangible assets** (see below for definition) or **use** such assets in **manufacturing processes** or **provide services** using one of such assets or, ultimately, intend to **sell** the eligible assets.

Foreign entities carrying out business activities in Italy through a permanent establishment can also benefit from the regime, provided that they are resident in a country that has a double tax treaty in force with Italy and with which the exchange information is operating (*“effettivo scambio di informazioni”*).

When licensing out eligible intangible assets, the patent box regime provides for the **exclusion from both profit charge-able** to corporate income tax (IRES at 24%) and local income tax (IRAP at 3.9%) of an amount of income equal to:

Royalties deriving from the licensing	X	R&D costs incurred for the maintenance, increase and development of the eligible assets	:	Overall costs incurred for the production of the eligible assets	X	Percentage of excluded income
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The **percentage** of excluded income is equal to 30% and 40% for the tax year 2015 and 2016 respectively (assuming a calendar year end) and will be **50%** as of 2017.

In the event of direct use, the patent box regime provides for the exclusion from both profit chargeable to corporate income tax (IRES at 24%) and local income tax (IRAP at 3.9%) of an amount of income to be agreed with the Italian tax Authorities, through an advanced pricing agreement (APA), in accordance with the procedure set by law.

Upon sale of the eligible assets, capital gains realized are entirely exempt from taxation provided that at least 90 percent of the proceeds received are reinvested into research & development activities of other eligible assets by the end of the second tax period following the one of the sale.

The Italian patent box regime is applicable to any kind of **patent**, to certain **brands** “functionally similar to patents”, as well as to **processes, formulas and know-how** related to industrial, commercial or scientific fields that can be **legally protected** (it is not necessary that the intangible assets have been previously registered, it is sufficient that they can *potentially* be legally protected under current legislation).

Also, income deriving from the exploitation of **copyright** appears to be included.

In accordance with the technical memorandum to the 2015 Finance Bill, **brands** “functionally similar to patents” should be those brands that require expenses on R&D in order to be developed or maintained.

Commercial trademarks remain out of the scope of the patent box.

The new regime is **optional** and, once selected, it is irrevocable and has effect for the subsequent five fiscal periods.

After the first five fiscal periods, it is possible to renew the option.

Additionally, an advanced pricing agreement procedure shall be agreed with the Italian tax authorities in accordance with art. 8 of DL 269/2003 when eligible assets are licensed or sold to entities that:

- directly or indirectly control the licensing entity;
- are controlled by the licensing entity;
- are controlled by the same entity that controls the licensing entity.

4. Aid to Economic Growth (ACE, Aiuto alla Crescita Economica)

The Aid to economic growth (ACE) is a benefit for companies and aims to promote the **recapitalization of companies**, addressing Italian resident corporations, cooperatives and business entities, as well as permanent establishments of non-residents.

From an operating standpoint, ACE allows the **deduction** from the overall taxable income of an amount correspondent to the **notional return** of the **new equity capital**, set to 4.5% for 2015 and 4.75% for 2016.

For companies listed on regulated markets, the law has provided an increase of the ACE calculation base by 40%. This additional facilitation is valid only for the first three tax years in which the company is listed.

Any taxpayer whose taxable income is lower than the deductible ACE may not enjoy this benefit, but may carry the unused benefit surplus forward to the following tax year.

5. Tax credit for qualifying investments aimed at energy savings

The “*Legge di Stabilità 2015*” provides for a deduction for taxpayers who invest to improve **energy efficiency** of existing buildings in the Italian territory.

The deduction is applicable to the gross tax due by an individual or a corporation for an amount of **65%** of **costs** effectively born by the taxpayer in the time period between 6 June, 2013 and 31 December, 2015.

The deduction is granted on the condition that the intervention conforms to the standards prescribed and is **certified** by a qualified professional, who is held responsible by law.

In order to claim the allowance, taxpayers must also acquire the building's energy certificate, from the region or local authority, or, alternatively an “energy efficiency certificate” released by a certified professional.

The above documentation must be sent to **ENEA** (*Agenzia nazionale per le nuove tecnologie, l'energia e lo sviluppo economico sostenibile*, the national agency for new technologies, energy and economic development – www.enea.it) at least 90 days before the end of the renovation works.



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