DOING BUSINESS

IN ITALY

STUDIO TDL

1

Corporate and Legal Aspects

1. Corporate and Legal Aspects

1.1 Introduction

There are no limits on investments made in Italy by nationals of other EU Member States and such investments are treated in the same way as those made by Italian nationals.

Investments made by non-EU nationals are subject to reciprocity: a foreign national has the same rights as an Italian national if Italian nationals are allowed to carry out the same activities in the foreign country. Therefore, foreign nationals can enjoy the same rights that the national law of their own country allows Italian citizens in that country.

Authorisations, and compliance with other conditions, may be necessary for investments in certain industries and regulated sectors (e.g. telecommunications and banking/financial intermediation) through the incorporation or acquisition of a company.

1.2 Main Forms of Business Entity

1.2.1 General overview

Foreign investors who intend to invest or do business in Italy can select different kinds of legal entities that Italian law permits, depending on the company’s organisational model, its commercial objectives, the level of capital to be committed, the extent of liability, and the tax and accounting implications.

There are two main categories of legal entities:

- partnerships (*società di persone*);
- companies (*società di capitali*).

The most important difference between these is that the assets and liabilities of a partnership are only partially segregated from the assets and liabilities of their partners, while the assets and liabilities of companies are completely segregated.

A partnership can be set up with three different types:

- simple partnership (*società semplice*) – this partnership can be used to act only for limited kinds of business activities;
- general partnership (*società in nome collettivo*) – this partnership provides that all partners are jointly liable for all of the company's debts and obligations;
- limited partnership (*società in accomandita semplice*) – this partnership provides for two different category of quotaholders: "*soci accomandanti*" the liability of whom is limited to the extent of capital contribution, and "*soci accomandatari*" who are in charge of the governance of the company and they are jointly liable for all debts and obligations of the partnership. These kinds of partnerships do not have legal personality and the quotaholders (with the exception of *soci accomandanti*) have unlimited liability.

These companies can be set up with three different kinds of form, as provided by Italian law.

- A joint-stock company or an incorporated company (*società per azioni or S.p.A.*) – in which the capital stock is represented by shares.
- A limited liability company (*società a responsabilità limitata or S.r.l.*) – in which the capital stock is represented by quotas as opposed to shares.
- A partnership limited by shares (*società in accomandita per azioni or S.a.p.a.*) – this combines features of both limited partnerships, described above, and joint-stock companies. This is a company in which at least one quotaholder has unlimited liability, while the liability of the remaining quotaholders is limited to the extent of their capital subscriptions. If we exclude this difference, an S.a.p.a. is similar to an S.p.A for other aspects.

However the most common type of company set up in Italy by national or foreign investors is the limited liability company (S.r.l.) followed by the joint-stock/incorporated company (S.p.A.) when there are specific needs or circumstances such as the issue of bonds and listing on stock markets.

Joint-stock companies and limited liability companies

Joint-stock companies (S.p.A.s)

The two key features of an S.p.A. are the limited liability of all its members and the division of the capital into shares.

Corporate capital, shareholders and shares

For such a company to be set up, a minimum share capital of Euro 50,000 is required, of which at least 25 percent (amounting to Euro 12,500) must be provided when the company is originally set up.

Companies operating in specific fields, such as insurance or banking, require a higher amount of capital as laid down by specific laws.

One shareholder is sufficient: in this case the share capital must be paid up in full immediately during the setting-up stage of the company. There is no maximum number of shareholders. Shareholders of an S.p.A. can be either physical subjects or legal subjects and can be Italian or foreign.

The capital stock is divided into freely transferable and indivisible shares of equal value, conferring equal rights, both administrative, for example equal voting rights, and economic, for example the right to a share of net profits. The company by-law can set limits on the transferability of shares. In addition to ordinary shares, the company by-laws can provide for particular classes of shares granting special rights, also with regard to losses.

If permitted by the company by-laws, a shareholder can acquire shares instead of making a capital contribution with money, and can provide a capital contribution represented by assets, tangibles, including receivables, or intangibles, also called “contribution in nature”. If the contributions are made in nature, these have to be fully paid in at the time of subscription and the contributor must provide a sworn appraisal of the assets by a Court-appointed expert. Only in certain circumstances can a simplified procedure for contributions in kind – without a sworn appraisal – be admitted. The minimum requirement is that the overall value of the contribution in nature (tangible or non-tangible assets) has to be higher or equal to the aggregate increase in share capital.

The Company by laws can provide for the dematerialisation of the shares. “Dematerialization” represents a procedure by which shares are no longer represented in paper form but with an electronic registration with a bank or a financial intermediary that is legally authorized. Therefore, in such cases, in the event of a sale, there is no "physical" transfer of shares in paper form between the buyer and the seller; for example, the exchange of shares on the Stock Exchange by electronic means takes place in dematerialized form.

Governance

The traditional corporate governance model of an S.p.A. is based on the following.

a. A shareholders' meeting:

At least one shareholders' meeting must be held each year, to approve the company's annual financial statements. This meeting must be held no later than 120 days or, in exceptional circumstances explained in the financial statement, no later than 180 days after the close of the financial year.

Extraordinary shareholders' meetings must be held to approve matters such as amendments to the articles of the company by-laws, the winding-up of the company, and mergers or similar corporate reorganisations.

b. A governing body

The governing body is appointed by the shareholders' meeting and can consist of a **Board of Directors** or a **Sole Director**. It handles all matters and transactions, necessary or advisable, for realising the corporate object. Its management powers involve the duty to take all the necessary and appropriate steps in realising the corporate object and to ensure compliance with the law, including the drafting of the annual financial statements.

c. A supervisory board

This is the Board of Statutory Auditors (collegio sindacale) and audit firm. Both are appointed by the shareholders' meeting. The Board of Statutory Auditors is made up of three or five statutory auditors and two alternate auditors. Its main duty is to supervise compliance with the law and the articles of the company by-laws. It must also verify that the company's organisational, administrative and accounting structures are adequate and work properly. Accounting controls are the responsibility of the audit firm or, in some cases, the Board of Statutory Auditors.

Aside from the traditional governance system described above, there are two further systems available for S.p.A.s.

In the first (**the sistema monistico or one-tier model**), management and control lie respectively with a Board of Directors and a management control committee, the members of which are appointed by the board. The management of the company is the exclusive responsibility of the Board of Directors, whilst the management control committee supervises the adequacy of the company's organisational structure, internal control system and administrative and accounting system. The committee also performs any additional functions assigned to it by the Board of Directors. In particular, it liaises with the auditors or Board of Statutory Auditors with regard to accounting controls.

The second (**the modello dualistico or two-tier model**) provides for two corporate bodies: a management board and a supervisory board. The management of the company is entrusted exclusively to the management board, which must do everything necessary or advisable to realise the corporate object. The supervisory board is entrusted with the functions of the Board of Statutory Auditors and the functions that, in the traditional model, are the sole responsibility of the shareholders' meeting.

Neither model includes a Board of Statutory Auditors: accounting controls are entrusted to a registered auditor (or an audit firm).

However, the traditional one set above is the most common model applied.

Limited liability companies (S.r.l.s)

A limited liability company is most suitable for companies with few quotaholders (even a sole quotaholder) and slim management structures.

Corporate capital, quotaholders and quotas

The minimum capital stock for an S.r.l. is Euro 10,000 (this is lower for a simplified S.r.l. – see below) and at least 25 percent of it (Euro 2,500) must be paid-up at the moment the entity is set up.

The minimum capital of Euro 10,000 can also be built up over time ('progressive corporate capital') provided that the company allocates at least 20 percent of the year's net profits to the legal reserve every financial year.

The minimum number of quotaholders is one: in this case the corporate capital must be paid up in full immediately the company is set up. As with S.p.A.s, there are no restrictions on the number, residence or nationality of the quotaholders.

The corporate capital is divided into as many quotas as there are quotaholders. Quotas, unless indicated otherwise in the articles of the company by-laws, are freely transferable. Rights, both administrative and economic, belong to quotaholders in proportion to the size of their stake in the company, unless the company by-laws allow individual quotaholders special rights relating to the management of the company or the distribution of profits.

If expressly provided for by the company by-laws, capital contributions can also be made in kind. Unlike contributions to the capital of joint-stock companies, those made to an S.r.l. can also consist of services supplied by the quotaholder.

Governance

Unless stipulated otherwise in the articles of the company by-laws, the management of an S.r.l. must be entrusted to one or more quotaholders. Quotaholders not involved in the management of the company are entitled to receive information from the directors and to consult and inspect, also through trusted professionals, the company books and management documentation, and thus to monitor the directors' activities.

With the exception of specific cases provided for by law, an S.r.l. is not required to appoint a supervisory body. If the quotaholders decide to appoint one, or if this is required by law, the supervisory body can be a sole statutory auditor (sindaco unico) or a Board of Statutory Auditors (collegio sindacale).

When an S.r.l. has to appoint a supervisory body, the latter is entrusted not only with supervising compliance with the law and the company by-laws, but also with auditing the accounts, unless the company by laws or the law require the company to appoint a registered auditor or an audit firm.

Simplified S.r.l.s

In addition to the ordinary model, there is another type of S.r.l., a simplified limited liability company. Its capital stock cannot be lower than Euro 1 or higher than Euro 9,999.99. The capital must be fully paid in cash to the governing body the moment the company is set up. The quotaholders of a simplified S.r.l. can be just individuals, not companies or other legal entities. The company by-laws of this type of S.r.l. must be prepared according to a standard model prescribed by law.

In any case the level of Euro 10,000 of capital stock must be then reached in that earnings cannot be distributed as dividends to the quotaholders. Such earnings must be allocated to the capital reserve until the net equity of the company reaches this threshold.

There are no fees to the notary for the incorporation of this kind of company.

However, simplified s.r.l.s. are normally set up by young people that intend to start an activity through a company with limited liability status.

1.3 Other Forms of Business Entity

1.3.1 Branches and Representative offices

Foreign companies have the right to establish the following in Italy:

- one or more branches, and/or
- one or more representative offices

Branch

A branch is an extension of the foreign entity and is dependent, both administratively and financially, on its headquarters. It uses the same name and has the same legal form as the foreign company. It does not have its own internal governing body but is managed directly by the governing body of the foreign company, which appoints one or more permanent proxyholders.

Representative office

A representative office, which is not a legal entity of a foreign company in Italy, is a local office that promotes the company and its products/services and performs other non-business operations. From a fiscal perspective, if the representative office carries on a business activity, such as selling goods, providing services, etc., it is considered a permanent establishment.

A representative office is not required to keep books, publish financial statements or file income tax or VAT returns. It is, however, required to keep ordinary accounts in order to document those expenses (e.g. personnel costs, office equipment) to be covered by the foreign company's head office.

The establishment of a representative office must be registered with the Register of Trading Companies.

1.4 Set Up and Liquidation of a Business

1.4.1 The main steps to set up a company

The main steps to set up an Italian company are outlined below:

a. Drafting of the memorandum of association: this records essential information about the company (notarial deed).
b. Drafting of the Company by laws: these contain rules for the operation and governance of the company (notarial deed).
c. Registration with the local VAT office: the new company must apply for a VAT number and tax code as soon as it has been set up.
d. Acquisition of tax codes for the directors if the latter are foreign subjects.
e. Enrolment in the Register of Trading Companies: the company acquires legal status after registration.

1.4.2 Liquidation

The Italian Civil Code defines the reasons under which a company can be dissolved and liquidated.

a. It reaches the end of its duration, as established under its by-laws.
b. The purpose for which it was established has been achieved or can no longer be achieved.
c. The meeting of the shareholders/quotaholders can no longer operate or remains inactive.
d. Its capital falls below the legal minimum.
e. Its shareholders/quotaholders resolve to liquidate the company at an extraordinary general meeting (voluntary liquidation).
f. The company is unable to repay the stake of a departing shareholder/quotaholder.
g. Any other reason established in the company by-laws or by law.

Most of these grounds for liquidation are automatic; there is no need for it to be public knowledge and does not depend on a resolution or public record. When grounds arise, directors have a duty to ascertain the situation, record the event with the Register of Trading Companies, and call a meeting of the shareholders/quotaholders to appoint liquidators or remove the cause of liquidation.

Furthermore, the directors cannot engage in particularly risky operations and must just maintain the company's ordinary operations.

If there are grounds for winding up the company (e.g. loss of capital) and the directors or meeting of the shareholders/quotaholders fail to take action, the court will appoint liquidators at the request of the statutory auditors or individual shareholders/quotaholders.

The main function of liquidators is to pay off the company's creditors disposing of the company's assets. After having paid off all creditors, the final liquidation financial statements and a report are prepared specifying the amount, if any, of the proceeds from the liquidation available for distribution to each shareholder/quotaholder. If the company's funds are insufficient to repay its debts and liabilities, the liquidators can ask the shareholders/quotaholders to provide the necessary resources, in proportion to their interest in the company; in the event the shareholders/quotaholders do not provide the necessary resources, a bankruptcy procedure is opened. No repayment of capital or earnings can be made before liquidation is complete, unless the accounts show that such payments will not prevent the full repayment of the company's creditors, or unless the shareholders/quotaholders can provide for appropriate guarantees.

Liquidation status can be revoked at any time by means of a shareholder/quotaholder resolution and, where necessary, after the cause of liquidation has been removed.

The liquidation procedure ends with the distribution of any proceeds from the liquidation to the shareholders/quotaholders. The company is struck off the Register of Trading Companies (deregistration) immediately after and the books are filed with the Courts, which holds them for 10 years.

1.5. Merger and Acquisition - type of transactions

1.5.1 General overview

Generally, Merger and Acquisition transactions involving existing companies can be carried out through:

- share/quota deals involving the purchase of shares (S.p.A.) or quotas (S.r.l.);
- asset deals involving the purchase of some or all of the target's assets.

Share/quota deals and asset deals are not subject to general investment barriers, with the exception of the limits on foreign investments described above.

When the turnover of the undertakings involved in the acquisition exceeds certain thresholds, different in relation to the reference market, to avoid a concentration of market shares such as to harm the principle of free competition, prior notice of the transaction has to be given to the:

a. the Italian Competition Authority, and/or

b. the European Commission

While in most instances the choice between a share/quota deal and an asset deal will be driven by tax considerations (see below), there are several legal implications to be taken into account when structuring a transaction, and to be carefully addressed when drafting agreements.

1.5.1 Share/quota deals

In a share/quota deal, the purchaser takes over as shareholder/quotaholder of the target. The purchaser becomes the owner of the legal entity and acquires its assets as well as all existing and potential liabilities and debts. It also takes over all of the company's contracts, with all the relative rights and obligations.

The main benefit of a share/quota deal is that it involves fewer formalities than an asset deal and provides the business with greater certainty of continuity.

A change in the controlling interest of the target company does not result in a change of the employer's contract and (unlike a transfer of business) there are no express legal obligations to notify or consult with trade unions in advance of the share/quota deal.

Another major advantage of a share/quota deal, from the seller's point of view, is that all liabilities remain with the company and therefore pass onto the buyer upon a transfer of ownership.

If the transaction does not involve 100 percent of the corporate capital, it is advisable to enter into agreements with the shareholders/quotaholders to regulate the governance of the target.

1.5.3 Asset deals

In an asset deal, the purchaser acquires all the assets or certain business units of the target.

It is important to define the scope of the transaction (i.e. the assets, contracts, liabilities, workforces being transferred).

In asset deals, the following issues have to be considered.

- Despite any agreements between the parties that state otherwise, the purchaser and the seller become jointly liable to creditors for all the debts of the business unit shown in the accounting records.
- The purchaser takes over all contracts related to the business, without affecting the right of the counterparty to terminate the contracts on reasonable grounds.
- The seller is bound by a non-competition obligation for a period of five years after the transfer.

If the transfer involves a company with more than 15 employees, a special procedure involving the trade unions has to be followed (written notice must be sent to the Unions at least 25 days before the agreement is signed).

1.6 Corporate criminal liability (Legislative Decree no. 231/2001)

Legislative Decree no. 231/2001 includes corporate criminal liability for specific types of offences.

A company can be held responsible if the offence:

- is committed in the interests or to the advantage of the company, and
- is committed by persons who have an employee’s relationship with the company (directors, employees, etc.).

The crimes which can result in corporate criminal liability are detailed in the decree. These include:

- offences against the public administration, e.g. corruption or embezzlement;
- corporate crimes, e.g. falsification of financial statements or prospectuses;
- offences involving market abuse;
- money-laundering crimes;
- occupational health and safety crimes;
- environmental crimes;
- industrial crimes;
- cybernetic crimes;
- tax crimes;
- smuggling.

Liability can result in fines of up to Euro 1.5 million and for multiple crimes connected to the same underlying action, the fines can be increased threefold, to a maximum of Euro 4.6 million. Other penalties that can endanger the survival of the company include:

- suspension or revocation of authorisations, licences or concessions;
- exclusion from public financing, grants or subsidies;
- a permanent operating ban.

The company can be exempted from liability if it can prove that it has adopted and effectively implemented an Organisational, Management and Control Model that (i) is capable of preventing offences, (ii) details the key areas of risk, and (iii) is supplemented by suitable disciplinary and treasury management operating procedures.

Moreover, the company must have appointed a supervisory board, selecting its members from a pool of qualified persons who have a legal or accounting background and satisfy the requirements of independence, professionalism, ethical standards and expertise. Vested with independent powers, the duty of the supervisory board is to keep the Organisational, Management and Control Model up-to-date, monitor its effectiveness, and check that compliance is ensured.

2. Taxation of business income

2.1 Corporate taxes

2.1.1 Tax residence

A company or entity is tax resident in Italy if its registered office, place of management or main business is in Italy for more than half of the financial year. Resident companies are taxed on their worldwide income, while non-residents are only taxed on their Italian income.

2.1.2 Tax rates

The corporate income taxes applied in Italy are IRES, national income taxes, and IRAP, regional income taxes, The IRES rate is 24 percent, wheras for banks and other financial institutions, it is 27.5 percent.

The standard IRAP rate is 3.9 percent, but Italian regions can increase or decrease the standard rate by up to 0.92 percent.

2.1.3 Calculation of taxable income

For IRES purposes (national corporate tax)

Taxable income is calculated on the basis of the P&L account, drawn up according to Italian GAAP or IAS/IFRS GAAP, if applied, adjusting the result before taxes in accordance with tax law and regulations. The accrual's method is generally used, with certain exceptions, e.g. dividends and directors' fees are taxed upon receipt.

In general, costs and expenses recorded in the P&L account can be deducted for tax purposes. However, the following are never deductible:

- generic risk provisions or provisions not specified under tax law;
- costs/expenses related to prior years.

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Taxation of Business Income

For IRAP purposes (regional tax)

Taxable income is calculated on the basis of the P&L account, with certain adjustments, starting from **added value**. For instance, bad debt provisions and interest expenses (including interest on lease payments) are generally non-deductible.

The labour costs of employees on a permanent contract are fully deductible for IRAP purposes. The labour costs of temporary employees are partially deductible (70 percent of the costs) if certain conditions are met.

IAS adopters must base their calculation on the corresponding items of their IAS/IFRS income statement.

IRAP itself is not an allowed expense; however, 10 percent of the IRAP payment is deductible for IRES purposes, provided that the company has incurred interest expenses during the specific financial year. Furthermore, IRAP paid on any non-deductible labour costs is deductible from the IRES base.

Special rules apply to banks and insurance companies.

For partnerships

Italian partnerships are tax-transparent and are not included in the list of taxpayers subject to CIT ("corporate income taxes"). Income is allocated to partners whether or not it is actually paid.

The income of an Italian partnership that is allocated to non-resident partners is always taxed in Italy as business income, even if the non-resident partner has no permanent establishment in Italy.

The partnership itself is liable for IRAP.

2.1.4 Tax treatment of (inbound) dividends and capital gains/losses

Dividends

Domestic dividends are considered non-taxable under IRES purposes for ninety-five percent. For IAS/IFRS adopters, the only exemption of the general rule, as explained before, dividends received on shares that are **held for trading** are fully taxable.

Domestic dividends and capital gains on shares are not included in the IRAP base.

Ninety-five percent of foreign dividends are also exempt from IRES if the distributor is (a) non-resident in a low-tax jurisdiction and (b) not allowed to deduct the dividend distribution.

One hundred percent of dividends received by a resident taxpayer from an affiliate located or operating in a CFC ("controlled foreign corporation") low-tax jurisdiction is subject to IRES in Italy, whether the dividends are received directly, or indirectly through a controlled company located in Italy or in a jurisdiction that is not a CFC low-tax jurisdiction.

Dividends are deemed to arise in a low-tax jurisdiction and are therefore 100 percent taxable to the resident shareholder if:

- in the case of direct or indirect controlling interests, the controlled company has an effective tax rate that is lower than 50 percent of the tax rate that would apply if it were resident in Italy;
- in the case of other equity interests, the investee company is subject to a nominal tax rate that is lower than 50 percent of the domestic rate (or to a special regime that leads to the same result).

The resident shareholder/quotaholder can avoid full taxation if one of the following two safe-harbour rules applies.

- The taxpayer is able to prove that an actual business is carried out in the foreign jurisdiction through local personnel, equipment, other assets and premises. This leads to a 50 percent dividend exemption (and a foreign tax credit in the case of controlling interests).
- The taxpayer is able to prove that the investment in the foreign entity does not shift income to a low-tax jurisdiction (subject-to-tax requirements). This leads to the standard 95 percent exemption.

The taxpayer can submit an application for a tax ruling to understand whether the above safe-harbour rules can apply.
With regard to the dividends paid to non-residents please see the following caption 5.4.1.

Capital gains earned by resident companies on the transfer of shares/quotas

Under the Participation Exemption regime, 95 percent of capital gains earned by a resident company from the transfer of shares/quotas, equivalent financial instruments and equity interests in partnerships are tax-exempt, and 100 percent of capital losses earned from the transfer of shares/quotas are non-deductible, if the following requirements are met.

- The seller has held the shares/quotas uninterruptedly since at least the first day of the 12th month preceding that of their transfer (LIFO is used in the case of shares/ quotas issued by the same company and purchased at different times).
- The shares/quotas are booked under fixed assets in the first financial statements approved after their purchase.
- The shares/quotas are in a company which has been resident in a cooperative jurisdiction since the first year of their possession.
- The shares/quotas are in a company which, in the three years before the sale, has engaged in actual business.

If these requirements are not met, IRES (no IRAP) is due upfront and cannot be paid in instalments.
Normally write-offs, losses and step-ups in the tax basis of shares/quotas are not tax relevant.

Capital gains on the sale of business assets
Capital gains on the sale of business assets can be taxed upfront or over a maximum of five years, starting from the year in which the gain is realised (in the second case the assets must have been held for at least three years before disposal). These gains are subject to both IRES and IRAP; however, when realised on the transfer of a business concern, or a branch of business, they are only subject to IRES and are exempt from IRAP.

2.1.5 Main Deductions

Several deductible business expenses are specified in tax law and described below. The items **(by no means a comprehensive list)** are deductible for both IRES and IRAP purposes, unless otherwise stated.

Depreciation of tangible assets

The depreciation of income-producing assets is based on their purchase or manufacturing cost, which can include interest on funds borrowed to purchase the assets. That interest must be capitalised until the asset is put to use.

Depreciation, relevant for taxes, should start from the date an asset is first used. It should be charged on a straight-line basis over the estimated useful life of the asset, determined using Ministry of Finance tables provided for each sector of industry and each category of assets.

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

If the purchase cost of the asset is not higher than Euro 516.46, it can be fully deducted in the year of purchase.

Amortisation of intangible assets

Patents and know-how: up to 50 percent of the cost of the asset can be deducted in each financial year.

Goodwill and trademarks: up to 5.55 percent of the cost of the asset can be deducted in each financial year; the minimum amortisation period is 18 years. The amortisation of goodwill and trademarks is deductible irrespective of how they are recorded in the company's accounts; therefore, it can also be deducted by IAS/IFRS adopters, the goodwill and trademarks of which are not amortised, and they should be tested for impairment at least once every fiscal year.

Licences and other rights: amortisation is deductible on a straight-line basis over the useful life of the asset, as determined by the underlying contract or by law.

Repairs and maintenance

For IRES purposes only: Ordinary repair and maintenance costs are deductible to an extent of 5 percent of the gross value of the depreciable tangible assets at the beginning of the financial year. Any remaining costs can be deducted over the following five financial years.

Fully deductible for IRAP purposes.

Entertainment expenses

Entertainment expenses are deductible if they meet specific criteria that differentiate them from advertising and marketing costs, and they are business-related, reasonable and properly documented.

Free gifts costing not more than Euro 50 each are immediately and fully deductible.

Municipal property tax (IMU)

One hundred percent of IMU, for buildings related to the business, is deductible for IRES purposes. IMU cannot be deducted for IRAP purposes.

Interest expense

For IRES purposes only: Net interest expenses (the portion of interest expenses exceeding interest income) can be deducted to the extent of 30 percent of EBITDA (gross operating income). EBITDA is the difference between the value of production (item A of the P&L account, as defined by the Italian Civil Code) and the cost of production (item B of the P&L account, as defined by the Italian Civil Code), excluding depreciation, amortisation, and finance lease payments for business assets. The base to calculate the EBITDA is the tax bases of these items, calculated in accordance with tax rules. IAS adopters must base their calculation on the corresponding items of their IAS/IFRS income statement. Any portion of interest expenses that exceeds 30 percent of EBITDA can be carried forward indefinitely and deducted in subsequent financial years against any prior excess interest income, or against EBITDA to the extent that the net interest expenses accrued in those subsequent years is less than 30 percent of EBITDA. If, in a given financial year, 30 percent of EBITDA is higher than net interest expenses, the surplus can be carried forward over the following five years (before the amendments, excess EBITDA could be carried forward indefinitely) and used to increase the EBITDA available in subsequent years. The EBITDA excess capacity must be offset on a FIFO basis.

Within a domestic tax group (a group where the tax consolidation has been applied), a company can offset the portion of its interest expense (accrued since it joined the tax group) that exceeds 30 percent of its EBITDA against the 30 percent of EBITDA that another company in the tax group has not used to deduct its own interest expense.

Fully non-deductible for IRAP purposes.

Inventory

Inventory can be valued using any reasonable costing method, such as FIFO, LIFO or weighted average cost; however, it cannot be valued at less than its LIFO value. A write-down of inventory to its market value is deductible only when the average unit cost of the goods in the inventory is higher than their average market value during the last month of the financial year. Any other write-down is generally deductible only when the loss is realised. Work in progress and finished goods should be valued at production cost, inclusive of production overheads. Special rules apply to the valuation of long-term contracts.

Provision for bad debts

A provision for bad debts is allowed each year, up to 0.5 percent of the nominal value of a receivable that is not covered by any form of guarantee. However, if the total provision for bad debts exceeds 5 percent of the aggregate nominal value of the trade receivables shown in the annual financial statements, deductions of provisions are not allowed. Provisions are deductible for IRES purposes only.

The partial or total write-off of a receivable is allowed only if insolvency proceedings have started or when it can be proved that no amount is recoverable.

Credit losses are deductible in either of the following cases:

- If they are substantiated by certain and precise details.
- If the debtor is going through insolvency proceedings or has an agreed restructuring plan.

Credit losses can also be deducted when substantiated by foreign insolvency proceedings equivalent to Italian proceedings. Whether the customers are going through Italian insolvency proceedings or equivalent foreign proceedings, if the nominal value of the debt is not higher than Euro 2,500 (or Euro 5,000 in the case of companies with turnover of Euro 100 million or more) and the debt has been overdue for at least six months, the rule on when they can be deducted is the same: credit losses are deductible in the financial year in which they are recognised in the accounts, even if this is after the year in which the debtor goes into insolvency or the credit losses are substantiated by certain and precise details. However, from the financial year in which these must be derecognised in accordance with the relevant accounting standards, such credit losses cannot be deducted.

Fully non-deductible for IRAP purposes.

2.1.6 Tax losses

For IRES purposes only, companies may carry forward tax losses indefinitely and use them to offset up to 80 percent of the taxable income of any subsequent year. However, the 80 percent limit does not apply to tax losses incurred in the first three years of business, which can be offset against 100 percent of the taxable income of any future year until they are used up.

Carrying forward is not allowed when both of the following apply:

- The majority of the shares/quotas carrying voting rights at ordinary shareholders'/quotaholders' meetings are, even temporarily, transferred to third parties.
- The company's main activity is no longer the actual business that it pursued in the financial years when it incurred the losses (this change is significant if it occurs in the financial year of the transfer or the two previous or subsequent years).

There can also be limits on losses carried forward when a company has been involved in a merger or demerger. However, there are safe-harbour rules (a business vitality test).

If these originate during a consolidation period, tax losses can be transferred to the parent of a tax group to offset income produced by the parent or other group companies. The parent can carry forward group losses in accordance with the general rules (the losses can be used to offset up to 80 percent of the taxable income of each year, or up to 100 percent if incurred in the first three years of business).

2.1.7 Tax calendar for 2023

COMPLIANCE	DEADLINE
Withholding Tax Certification	March 16th 2023 (electronic filing + sending to each subject)
Annual fee corporate books	March 16th 2023
Annual VAT Return	May 2nd 2023
1st advance payment FY2023 of IMU	June 16th 2023
Payment of:- IRES / IRAP balance FY2021- IRES / IRAP 1st advance payment FY2023- Chamber of Commerce Annual Fee FY2023	June 30th 2022 (or August 22nd 2023 adding 0,4% of Interest)
770 Model (Communication of withholding tax payments)	October 31st 2023
2nd advance payment FY2023 of IRES / IRAP	November 30th 2023
Income Tax Return (IRES) + Regional Tax Return (IRAP)	November 30th 2023
2nd advance payment FY2023 of IMU	December 18th 2023
VAT Advance Payment (for the calendar year 2023)	December 27th 2023
Printing of Corporate Books (for the calendar year 2022)	February 28th 2024
VAT Calculation and Payment of monthly VAT	By the 16th of the following month
Stamp duty on e-invoices	quarterly amount exceeds 250 euro: May 31st 2023 (for Q1/2023)October 02nd 2023 (for Q2/2023)November 30th 2023 (for Q3/2023)February 28th 2024 (for Q4/2023)
Periodical VAT Report ("Liquidazione IVA periodica")	May 31st 2023 (for Q1/2023)October 02nd 2023 (for Q2/2023)November 30th 2023 (for Q3/2023)February 28th 2024 (for Q4/2023)
Intrastat Declaration	By the 25th of the following month
Payment of F24 form (WHT tax on consultants / agents fees)	By the 16th of the month following the invoice payment

2.2 Tax consolidation

For IRES purposes only, both domestic and worldwide consolidation is available in Italy.

Domestic tax consolidation

An Italian company and one or more of its Italian subsidiaries can adopt domestic tax consolidation, if the following conditions are fulfilled:

- The parent must directly or indirectly:
    1. hold the majority of the voting rights at the subsidiary's shareholders'/quotaholders' meeting;
    2. hold more than 50% of the subsidiary's capital stock;
- be entitled to more than 50% of the profits of the subsidiary.
- The parent and the subsidiaries must have the same financial year.
- The parent and each participating subsidiary must opt for tax consolidation.
- The decision to opt for domestic tax consolidation must be indicated in the tax return filed for the first financial year of consolidation.
- Each subsidiary must opt to be domiciled for tax purposes at the domicile of the parent company.

Domestic tax consolidation lasts for three financial years and has various implications, some of which are listed below.

- Each company calculates its own tax base in accordance with ordinary IRES rules.
- The parent company calculates the consolidated tax base.
- The parent makes the periodic and final tax payments and can carry forward any net tax losses.
- Tax losses incurred by the consolidated companies during consolidation can be offset against the income of other consolidated companies. Eventual tax losses incurred before the consolidation can be offset only against the income of the company that has incurred them.
- The option is binding for three years and automatically renewed for another three years unless the participants opt out.

Worldwide tax consolidation

An Italian company can opt for worldwide tax consolidation with its non-resident subsidiaries provided that the Italian company is:

- listed on a regulated market, or
- controlled by the government, by a government entity, or by Italian-resident individuals who do not directly or indirectly control other resident or non-resident companies.

Eligible non-resident subsidiaries are those in which the resident parent directly or indirectly holds more than 50 percent of the stated capital, voting rights and rights to profits. All the following conditions must also be fulfilled:

- All non-resident subsidiaries must join the tax group (all-in or all-out).
- The parent company and the subsidiaries must have the same financial year.
- The financial statements of the consolidated entities must be audited.
- The non-resident subsidiaries must give written consent for the auditing of their financial statements and a written undertaking to cooperate with the parent company in determining the consolidated taxable income.

Worldwide tax consolidation is subject to approval by the Italian Revenue Agency, issued in the form of a ruling. This form of tax consolidation is valid for at least five years and automatically renewed for another three years unless the participants opt out.

Under the worldwide consolidation regime, the income of each non-resident subsidiary, determined in accordance with IRES rules (except for certain adjustments), is allocated to the parent company in proportion to its share in the profits of the subsidiary. Losses incurred before a company elects to join the tax group cannot be offset against income generated while the tax group is in place.

2.3 Main Incentives

The main incentives in accordance with the current rules is reported below. Every year, the Italian Government when issuing the annual budget law, can update and modify the current rules.

Patent Box

This is an incentive for income deriving from the use of copyrighted software, industrial patents, trademarks (later excluded for options exercised after 31 December 2016), designs and models, as well as legally protectable processes, formulas and information relating to experiences acquired in the industrial, commercial or scientific fields. It allows all the holders of business income, irrespective of the legal nature, size and production sector to which they belong, including permanent establishments in Italy of residents in countries with which an agreement is in force to avoid double taxation and with which the exchange of information is effective, the partial tax exemption of the proceeds deriving from the exploitation of the aforementioned intangible assets.

Companies subject to bankruptcy, compulsory administrative liquidation, and extraordinary administration procedures of large companies in crisis are excluded; in the latter case, however, the benefit is due if the procedure is aimed at the continuation of its economic activity.

Furthermore, taxpayers who determine income with methods other than the analytical one (flat rate regime, tonnage tax, agricultural companies that calculate income on a cadastral basis, etc.) cannot access the subsidy system.

Following the option for the patent box regime, a portion of the income deriving from the use of intangible assets does not contribute to forming total income, as it is excluded for 50% of the relative amount.

In detail, for the purposes of personal income tax/IRES and IRAP, a decrease must be made, and for its calculation, it is necessary to:

- identify the eligible income deriving from the direct or indirect use of the intangible asset;
- calculate the “nexus ratio”, given by the ratio between research and development costs and the overall costs relating to the asset;

- make the product between the subsidized income and the nexus ratio to obtain the portion of the subsidized income. Therefore, this does not contribute to forming business income for 50% of the relative amount (the exclusion percentage, for the tax period subsequent to the one in progress at 31 December 2014 and the one in progress at 31 December 2015, was set, respectively, at 30 and 40%).

Furthermore, capital gains deriving from the sale of intangible assets does not contribute to forming total income, provided that at least 90% of the consideration is reinvested, before the end of the second tax period following the one in which the sale took place, in the maintenance or development of other intangible assets.

R&D tax credit

The tax credit for investments in R&D, technological innovation and other innovations is applicable up to 31 December 2031.

The tax credit can be taken by all enterprises resident in Italy, including Italian permanent establishments of foreign entities, irrespective of their legal form, economic sector, size and tax regime, provided these:

- are not involved in insolvency proceedings
- are not subject to specific bans
- comply with industry rules on occupational health and safety
- fulfil their obligations to pay their workers' national insurance contributions.

The eligible costs are those incurred in the following activities:

- Fundamental research, industrial research and experimental development in areas of science or technology.
- Technological innovation in areas – other than science and technology – that could contribute to the development of new or substantially enhanced products or production processes.
- Aesthetic and other designs created – with a view to planning and producing new products and samples – by firms operating in various product sectors – textiles, fashion, footwear, eyewear, gold, furniture and furnishings, ceramics.

The size of the tax credit varies according to the type of activity:

- For research and development activities, the tax credit is 10 percent, with an annual cap of Euro 5 million.
- For technology innovation activities, the tax credit is:
  - → 10 percent for technological innovation, with an annual cap of Euro 2 million;
  - → 10 percent for digital innovation, with an annual cap of Euro 2 million;
  - → 10 percent for ecological transition, with an annual cap of Euro 2 million.
- For design and aesthetic ideation activities, the tax credit is 10 percent, with an annual cap of Euro 2 million.

The eligible costs have to be certified by a technical report. In addition, the company must obtain a certificate from an auditor, stating that the eligible expenses have actually been incurred and correspond to the company's accounting records.

The tax credit can only be used in three equal annual instalments, from the year following the one in which it was accrued.

Allowance for corporate equity (ACE)

This benefit consists of a deduction from the total IRES base of an amount corresponding to the notional interest, 1.3 percent for FY 2020, on the increase in equity since 31 December 2010 plus 15 percent on the increase in equity from 01.01.2021 to 31.12.2021. ACE applies after the calculation of the total net income, already net of any tax losses. If the amount of notional interest exceeds the total net income, the surplus can be carried forward, in full and indefinitely, to subsequent financial years, to be deducted from the first available taxable income.

Start ups

Other tax incentives have been defined by the Italian government for companies and subjects that invest in innovative start-ups or SMEs and directly for innovative start-ups or SMEs.

2.4 Withholding taxes

2.4.1 Dividends paid to non-residents

A withholding tax must be applied to dividends paid by joint stock companies to their non-resident shareholders. These are the provisions of Article 27, paragraph 3 of Presidential Decree no. 600/73. The withholding tax is applied at 26% on the entire dividend. Non-resident entities are entitled to a refund, up to 11/26 of the withholding tax, of the tax that they demonstrate that they have definitively paid abroad on the same profits.

The payment of dividends from Italian entities received by foreign entities resident in the European Community is peculiar. In this case, in fact, under Article 27, paragraph 3-ter of Presidential Decree no. 600/73, withholding tax must be applied at a rate of 1,20%. This withholding tax must be applied to profits paid to companies and entities subject to corporate income tax:

- Residents in the member states of the European Union and in the states adhering to the Agreement on the European Economic Area;
- Those included in the white-list referred to in Ministerial Decree dated 4.9.96.

The application of the 1.2% withholding tax is an alternative to the application of the Parent-Subsidiary Directive. The possibility of applying the rate of 1,20% on the dividend outside Italy does not affect:

- Natural persons;
- Partnerships;
- Associations or trusts

Parent-Subsidiary Directive

In accordance with the Parent-Subsidiary Directive, no withholding tax is applied on dividends paid to a qualifying EU parent company that has owned at least 10 percent of the Italian subsidiary's equity for an uninterrupted period of at least one year before payment of the dividends. Within the dividend payment date, the beneficial owner has to submit a form to the payer in order to benefit directly from the exemption. The form includes a certificate of residence signed by the foreign tax authorities and a declaration by the recipient that the minimum holding period has been respected.

2.4.2 Interest and royalties paid to non-residents

Interest

The interest paid to non-residents provides for the payment of 26% of withholding tax. The regular rate can be reduced up to 0% under the DTTs.

Specific exemptions/reductions are applied to the following situation

- exemption from withholding tax on interest deriving from medium and long-term loans, as these are provided by credit institutions established in EU Member States;
- exemption from withholding tax on interest on bonds and similar securities issued by joint stock companies with shares traded on regulated markets or EU/EEA multilateral trading company systems;
- withholding tax reduced to 5% on interest paid to non-residents provided that the interest is intended to finance the interest payment and other income on bonds issued by recipients.

Royalties

On royalties paid by a resident taxpayer (including a permanent establishment in Italy of a non-resident) to a non-resident taxpayer, the withholding tax applied is 30%. If the non-resident recipient of the royalties has acquired them for a consideration, the tax base is reduced to 75% of the gross amount of the royalties. There is no withholding tax on royalty payments to Italian permanent establishments of non-resident entities. The withholding tax can be reduced or eliminated under DTTs or the Interest and Royalties Directive.

2.5 Permanent establishments

Definition of permanent establishment

A permanent establishment, for IRES and IRAP purposes, is a fixed place of business through which the business of a non-resident enterprise is carried out in Italy.

It is presumed that a permanent establishment exists, unless the taxpayer gives evidence to the contrary and if there is a:

- headquarters, or a
- branch, or an
- office (not mere representation), or a
- workplace and / or laboratory, or a
- place of extraction of natural resources, or a
- stable construction site.

There is the exemption to the application of the definition of permanent establishment if there exists:

- an installation for the sole purpose of storage, display or delivery of goods or merchandise belonging to the company, or the,
- availability of goods or merchandise belonging to the company stored for the sole purpose of storage, display or delivery, or the,
- availability of goods or merchandise belonging to the company stored for the sole purpose of processing by another company, or the,
- availability of a fixed place of business used solely for the purpose of purchasing goods or merchandise or collecting information for the company, or the,
- availability of a fixed place of business used solely for the purpose of carrying out any other activity for the company, or the,
- availability of a fixed place of business used solely for the purposes of the combined exercise of the activities mentioned in letters a) to e).

Italian law regulating permanent establishments has a specific anti-fragmentation rule. In the event of a tax inspection, the tax authority, in order to identify the possible existence of a permanent establishment, analyses all activities made in Italy by all the companies belonging to the group, also through entities that are not formally set up or identified; the tax inspector considers integrated business processes and functions and the combination of activities.

Determination of taxable income

An Italian permanent establishment of a foreign company is subject to both IRES and IRAP on income from business in Italy. The taxable income is calculated in accordance with the rules applicable to resident companies.

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

The attribution of profit to the permanent establishment follows the concept that the profits are profits that the permanent establishment could be expected to make if it were a separate and independent entity.

2.6 Other corporate aspects

2.6.1 Branch exemption

For companies that have permanent establishments abroad, our legal system provides for the adoption of a favourable tax regime that allows for the exemption of profits and losses attributable to them (the so-called "branch exemption"). This exemption mechanism is not automatic. In order to be able to exercise it, the establishment of the company must be defined, but the important aspect of this mechanism is irrevocability. A different matter, however, for those already existing, as the option can be exercised within the second tax period following the one in progress at the date of entry into force of the provisions on branch exemption, with effect from the tax period in progress to that of its exercise. The exemption of profits and losses is done through the "all in-all out" principle (all branches have to be considered or not considered).

This optional regime ceases with the closure, either by liquidation or by sale, of all existing branches. If other permanent organisations are to be set up to apply the same regime, a new option should be activated.

2.6.2 Foreign tax credit

The tax credit for income produced abroad is due on condition that the taxes have been paid abroad definitively on such income: taxes paid abroad are to be considered final if they have become "non-repeatable", i.e. not "susceptible to modification in favour of the taxpayer".

The credit should be claimed in the tax return for the year in which the foreign income is declared, on condition that the foreign tax payment is definitive before the deadline for submission of the tax return. Should the foreign income be partially exempt, the creditable foreign tax is reduced proportionally.

More favourable conditions can be available under DTTs.

When business income is earned through foreign permanent establishments, or when a non-resident company is included in a worldwide tax consolidation arrangement, any surplus credit can be carried back for up to eight years and offset against IRES on the same type of income from the same country. If there is not enough IRES for this, the surplus credit can be carried forward for up to eight years.

Moreover, foreign tax credits are now granted for all types of foreign income tax payments, whether or not they fall within the definition of foreign income tax payments found in the relevant DTT with Italy. Uncertain cases should be cleared in advance with the Italian Revenue Agency.

2.6.3 Foreign partnerships

Under Italian tax law, non-resident entities (whether partnerships or corporations) are never considered to be transparent entities. Therefore, for Italian tax purposes, a foreign partnership is always similar to a corporation. In the event income is earned from Italy, it will be subject to IRES.

However, the Italian income attributed to the non-resident partnership is not heaped together and treated as business income but is calculated in accordance with the rules established for each category of income (capital income, real estate income, etc.). Only if the non-resident partnership has a permanent establishment in Italy will the income generated by the permanent establishment be considered and calculated as business income.

2.6.4 Capital gains earned by non-resident companies on the transfer of shares/quotas held in an Italian company

Capital gains obtained by a non-resident company with no permanent establishment in Italy on the transfer of shares/quotas in resident companies are taxable in Italy. In the following list all case studies are explained:

- In the event of the application of a DTT, capital gains is taxable in the seller's country of residence and not in Italy.
- In the event the shares/quotas sold are not listed and represent more than 20% of the voting rights or 25% of the share capital, and DTTs are not applied, the capital gains of the non-resident entities is subject to 26% withholding tax.
- If a resident entity is not listed and the shares/quotas sold do not represent more than 20% of the voting rights or 25% of the share capital, the capital gains is subject to 26% withholding tax. However, residents of cooperative jurisdictions are exempt from taxation on these capital gains.
- If a resident company is listed and the amount of shares sold does not represent more than 2% of the voting rights or 5% of the share capital, the capital gains is not considered as taxable income in Italy. Conversely, if the amount of shares sold represents more than 2% of the voting rights or 5% of the share capital, and a DTT is not applied, the capital gains is subject to 26% withholding tax.

2.6.5 .Double Tax Treaties (DTT)

Italy has stipulated bilateral conventions with numerous foreign countries, both EU and non-EU, to avoid double taxation on income and assets. These establish how the taxation process must be divided between the two contracting States, regulating the tax treatment of the individual categories of income. These Agreements provide, depending on the types concerned, the possibility that both States levy a tax on the same income (concurrent taxation) or sometimes exclusive taxation by a State. The general rule is that the provisions of the DTTs prevail over the domestic law unless these are more favourable to taxpayers.

2.7 Anti-avoidance measures

2.7.1 General anti-avoidance rule

The definition applies to all income taxes and indirect taxes, except customs duties. Abuse of law arises when all the following factors are in play:

- The transaction, or several interconnected transactions, has no economic substance.
- An undue tax advantage is obtained, even without breaking any tax rule.
- The tax advantage is the essential effect and scope of the transaction.

The concept of abuse of law applies only when a transaction cannot be assessed under a specific anti-avoidance measure. If an abusive transaction is discovered by the Italian Revenue Agency, it will be disallowed for tax purposes and the tax benefits will be denied. Transactions cannot be defined as abusive if they are justified by business reasons. It is up to the Italian Revenue Agency to prove that a transaction is abusive, while the taxpayer has to demonstrate that there is a business purpose.

In the event fines are applied, there are no criminal penalties, but only administrative sanctions.

2.7.2 Specific anti-avoidance rules

Apart from the generic definition of anti-avoidance rules, there are some other specific cases, imposed by law, tax-authority practice and case law, shown in the following list:

a. The rules on dormant companies
b. The rules on the tax residence of foreign companies/entities and foreign trusts
c. CFC rules
d. Transfer pricing rules
e. Beneficial owner rules
f. Rules on the reclassification of shareholder loans
g. Hybrid mismatch rules.

a) The rules on dormant companies

Italian companies, partnerships and permanent establishments of non-resident enterprises are treated as dormant if their taxable income falls below levels commensurate with the nature and book value of their assets, or in other words, if they fail the test of vitality. In such cases, if an entity has been defined as dormant, a minimum level of taxable income is deemed to have been realised for IRES and IRAP purposes and an increase of 10.5% of regular IRES % (34.5% instead 24%) is applied.

In any case, dormant companies cannot apply the presumption of minimum taxable income, providing evidence of the circumstances that have caused the failure of the vitality test to the tax authority. To this end, a company can either obtain a ruling from the Revenue Agency, confirming the circumstances, or give a separate indication of the circumstances in its annual tax return.

Dormant companies can carry forward their tax losses and offset them against any portion of taxable income that exceeds the minimum level.

A company is also deemed to be dormant from the sixth financial year if it has reported one of the following.

- Tax losses for five consecutive financial years.
- Tax losses in four financial years and taxable income lower than the minimum deemed income of dormant companies in the fifth year.

b) Rules on the tax residence of foreign companies/entities and foreign trusts

Foreign companies/entities

Foreign companies/entities that own a controlling interest in an Italian company are deemed to be tax resident in Italy in either of the following cases:

- The foreign company/entity is, in turn, directly or indirectly controlled by an Italian individual or entity.
- The majority of the members of the Board of Directors of the foreign company/entity are Italian residents.

Unless there is evidence to the contrary, legal presumption of residence in Italy for foreign companies that meet at least one of the two requisites is obtained. In particular, for companies that:

a. Are controlled, even indirectly, by subjects residing in the Italian territory;
b. Are administered by an administrative body made up mainly of subjects residing in the territory of the State.

Foreign trusts

Unless there is evidence to the contrary, foreign trusts are deemed to be Italian residents if both of the following apply:

- These are not established in a cooperative jurisdiction.
- At least one of the settlors and at least one of the beneficiaries is resident in Italy.

Italian tax residence is also triggered if an Italian resident transfers real estate or property rights to a trust that has been set up in a country that is not a cooperative jurisdiction.

Moving tax residence to Italy: tax basis of assets and liabilities

If a non-resident entrepreneur or enterprise changes residence and moves to Italy from a cooperative jurisdiction, the Italian tax basis of the business assets and liabilities will be the current market value. If the move is from a country that is not a cooperative jurisdiction, the current market value must be determined in agreement with the tax authorities, via the international ruling procedure. If no agreement is reached or requested, the tax basis is the purchase cost, book value or market value: for assets it is the lowest of these, for liabilities it is the highest.

Moving tax residence outside Italy

If an Italian company moves abroad, this is treated as a deemed disposal of the company's assets. The assets are deemed to be realised at their market value and any corresponding capital gain is subject to income tax in Italy, unless the assets are allocated to a permanent establishment in Italy.

Resident companies that transfer their registered office to an EU/EEA cooperative jurisdiction have to pay the tax on the deemed gain in five annual instalments. However, any of the following events terminates the instalment regime.

- The company transfers its residence from a qualifying country to another jurisdiction that is not a qualifying country.
- The company is liquidated and wound up.
- The company undergoes a merger or a demerger that entails the transfer of the company's business to a jurisdiction that is not a qualifying country.

c) Controlled foreign company rules (CFC rules)

The regulations relating to the so-called "Controlled Foreign Companies Legislation" (hereinafter referred to as "CFC"), include the proposal to make the profits taxable for resident subjects produced by foreign companies:

- that benefit from reduced taxation and are holders of passive income in the foreign State;
- irrespective of the actual distribution of profits as a dividend.

Definition of a CFC

The enterprises, companies and non-resident entities in which it is held are considered "subsidiaries", directly or indirectly, through one or more subsidiaries or through a trust company or a third party:

- the majority of voting rights in the ordinary shareholders' meeting (control by right or in fact);
- profit sharing exceeding 50%.
- *The CFC rule is applicable if:*
- the controlled foreign company is subject to an effective taxation of less than half that would have been applied if it had been resident in Italy (1st condition);
- over 1/3 of the proceeds made by the foreign subsidiary are classifiable among so-called "Passive income" (2nd condition).

Effects of the CFC rules

Under the CFC rules, the CFC's income is taxed to the shareholder/quotaholder resident in Italy. The income, subject to tax in Italy, is calculated in accordance with Italian rules, and taxation is separate.

Safe-harbour rules

Taxation for transparency (CFC Rules) is inapplicable in the event that the controlling resident entity is able to demonstrate the exercise of an actual economic activity by the non-resident controlled subject through the use of personnel, equipment, assets and premises.

d) Transfer pricing rules

Please see the dedicated section.

e) Beneficial owner rules

Certain domestic rules require the payee to be the beneficial owner of the income in order to benefit from withholding tax exemption or a reduced tax rate. It can happen, in other cases, that the Italian Revenue Agency often imposes this condition. In practice, assessments of foreign entities, aimed at disallowing interest, royalties or even dividend exemptions, are frequent.

Italian tax law does not provide a definition of beneficial owner. However, the Italian Revenue Agency has clarified that, in order to identify the beneficial owner of income, it may be necessary to look at the economic and contractual details of a transaction, consider whether the structure is appropriate, and even examine the capacity to manage financial risks.

In dealing with the application of DTT benefits, the Italian Revenue Agency has also clarified that an intermediary in charge of passing on income to other persons is not its beneficial owner. In such cases, the intermediary is not entitled to exploit the asset generating the income and is prohibited from using the funds received on the current account for purposes other than passing on the income. In other cases, the Revenue Agency requires the beneficiary to have an adequate structure, in terms of financial and management resources, and an adequate level of legal and economic substance. For instance, an entity with a light structure, no actual business and, de facto, no decision-making power, can be considered as a conduit company and not as the beneficial owner of interest.

The evaluation of beneficial ownership is particularly complex with respect to holding companies, the activities of which generally do not require a significant physical presence.

f) Rules on the reclassification of shareholder/quotaholder loans

The Italian Revenue Agency has clarified that foreign shareholder/quotaholder loans can sometimes be redefined as contributions of capital, with the consequence that the interest payments made by the Italian borrower cannot be deducted. This happens if, for example, 'considering the borrower's financial situation, the investment should not have been made in that form' or if, in the contract, one or more of the following features point to a mismatch between the form of the debt and its substance:

- The repayments of the principal and payments of interest are deferred until those due to third-party lenders have been settled.
- The financial indicators defined in the financial covenants, which set out the terms of default, do not include, in the definitions of debt and interest, the shareholder loan and shareholder interest, respectively.
- The payments of interest and repayments of capital are subject to the same restrictions as dividends, capital reductions and reductions in capital reserves.

e) Hybrid mismatches rules

Starting from 2020 for calendar-year companies, a new set of provisions has been introduced to target so-called hybrid mismatches. The new rules essentially deal with mismatches arising within the same group of companies (and relative permanent establishments) and caused by (i) payments related to financial instruments, (ii) other types of payments, such as those related to intangible assets, and (iii) hybrid entities. In brief, hybrid mismatches arise in the following circumstances:

- An entity makes a payment, incurs an expense or realises a tax loss.
- That entity is linked to another, which is tax-resident in a different country.
- At least one entity is subject to corporate tax in an EU Member State.
- The tax laws of the two countries adopt a different definition and tax treatment for (a) the legal instrument or relationship by which the payment is made, the expense is incurred, or the tax loss is realised, or (b) the entity that makes the payment, or (c) the entity that receives the payment.

As a result of the legal mismatch, the following tax situations can arise:

- The same payment can be deducted in both countries (double deduction).
- The payment can be deducted in the country of the payer but not included in the tax base in the country of the recipient (deduction and non-inclusion).
- The payment can be tax-exempt in one country but not included in the tax base in the other country (non-taxation and non-inclusion).

Briefly, the new hybrid mismatch rules established the following:

- If the Italian entity is the recipient and the payment is deducted by the paying entity, deduction is not allowed.
- If the Italian entity is the payer, the deduction is not allowed unless the tax inclusion of the payment in the other jurisdiction is proven.

The new rules targeting hybrid mismatches are very complex, as they also target particular situations such as imported mismatches, reverse hybrids and dual-residence mismatches.

Anti-reverse hybrid mismatches rules will enter into force in 2022.

3

VAT

3. VAT

3.1 Introduction

3.1.1 National Legislation

Italian Legislation follows EU Directive 2006/112 (recast of the sixth directive):

- Presidential Decree no. 633/1972
- Law Decree no. 331/1993 (Intra-Community exchanges)
- Law Decree no. 41/1995 (Margin scheme)

3.1.2 Offices in charge of VAT management

Resident operators
VAT is managed by the "Agenzia delle Entrate" (competent office based on the registered address), that administers all taxes (except customs duties that are handled by the Customs Authorities).

Non-resident operators
VAT is managed by the "Centro Operativo di Pescara", the tax office in charge of managing all matters relating to VAT (also refunds) to non-identified operators and Direct Identification.

3.2 Scope

Article 1 of Presidential Decree no. 633/1972 (Taxable transactions) states that: "*Value Added Tax is applied on supplies of goods and services carried out in the territory of the State in the exercise of business or in the exercise of arts and professions and on imports by anyone.*"

In order to consider a transaction “relevant” for VAT purposes in Italy, there are three requirements that have to be met:

- Objective – the supply of goods or services;
- Subjective - carried out in the exercise of the enterprise, art or profession;
- Territorial - carried out on the territory of the State.

VAT is due on any taxable supply of goods or services made in Italy by a taxable subject in the course of their business. Supply means all forms of supply but does not normally include anything done for anything other than a financial consideration.

However, there are certain transactions without financial consideration that are considered to be supplies, e.g. conditional sales, lease contracts with a binding transfer of ownership clause, the private use of business assets (or, more generally, their use for purposes other than those of the business), free-of-charge disposals, and supplies of services (where the value exceeds Euro 50) for private use.

VAT is also due on all imports.

For VAT purposes, the financial year is always the calendar year.

3.3 Rates

The standard rate is 22 percent, but there are reduced VAT rates (4%, 5% or 10%) for certain goods and services, as well as zero rates, exemptions for others and transaction subject to internal “reverse charge”.

10 percent VAT rate

- Certain foods (including takeaways and home - delivery supplies of ready meals and meals that have been baked, roasted, fried or otherwise prepared);
- Domestic fuel and power;
- Public transport;
- Certain pharmaceutical products (including medical devices based on substances normally used for medical treatment, for disease prevention and for medical and veterinary treatment, and classifiable under heading 3004 of the EU Common Customs Tariff);

- Water;
- Hotel accommodation;
- Services of writers and composers;
- Social housing;
- Renewable energy;
- Etc.

5 percent VAT rate

- *Services provided by cooperative companies and their consortia: medical, social-care, educational, home- care, outpatient, community services and the like;*
- *Authorised water passenger transport services operating in urban areas;*
- *Certain goods needed to tackle the Covid-19 outbreak;*
- *Etc.*

Zero-rated supplies

- Exports and EU supplies
- The supply, modification, repair, maintenance, chartering and hiring of sea-going vessels and aircraft used for international traffic
- International transport services
- Services directly connected with exports or imports
- Work on goods to be delivered outside Italy
- Etc

VAT-exempt supplies

- Financial services
- Insurance services
- Tax-collection services
- Lotteries, betting, and other games of chance
- Certain transactions involving residential property
- Postal services
- Cultural services
- Certain real-estate transactions.
- Until 31 December 2022: Covid-19 diagnostic medical devices and services closely linked to those devices; Covid-19 vaccines, authorized by the EU Commission or by Member States, and services closely linked to those vaccines
- Etc.

Internal reverse charge transactions

- supplies of investment gold and certain gold materials;
- certain services rendered in the construction sector;
- the supply of cleaning, demolition, plant installation and building completion services;
- certain supplies of services performed by way of contracts and subcontracts;
- supplies of games consoles, tablets, PCs and laptops, as well as supplies of integrated circuit devices, such as microprocessors and central processing units, effected prior to their installation in products intended for the end consumer;
- supplies of gas and electricity to a taxable dealer;

3.4 Registration

3.4.1 Italian entities

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

3.4.2 Non-Italian entities

The registration rules that apply to Italian entities also apply to non-Italian entities that make taxable supplies in Italy that are not subject to the reverse charge mechanism.

VAT registration in Italy can be done through either the Direct Identification procedure (available only to EU-established companies and to Norwegian companies) or the appointment of a VAT representative. The direct identification form and instructions, as well as the form and instructions for appointing a VAT representative, can be found on the Revenue Agency's website: www.agenziaentrate.gov.it

For 'Distance Selling B2C', in order to facilitate traders, two optional special schemes are operative as an alternative to opening a direct VAT position or through a representative in Italy:

- **One Stop Shop (OSS)**

This allows the tax due in other Member States to be declared and paid in a single Member State (State of identification for VAT purposes), without the need to identify oneself in each of the latter Member States (the State of identification then remits the tax to the pertinent States). This was introduced to facilitate mainly intra-Community distance sales 'above the threshold' (in Italy Euro 10,000.00), which are therefore subject to tax in the Member State of arrival of the goods.

- **Import One Stop Shop (IOSS)**

This allows the importation (release for free circulation) of low-value goods (< Euro 150.00 Euro) into the European Community without paying VAT. It was introduced to facilitate distance sales of goods imported from third countries into the European Community of modest value (intrinsic value not exceeding Euro 150.00).

The form and instructions for OSS as well as for IOSS can be found on the Revenue Agency's website: www.agenziaentrate.gov.it

3.5 VAT grouping

3.5.1 VAT grouping rules

VAT group members must be taxable subjects (not necessarily companies) established in Italy. A VAT group can be set up between Italian subsidiaries of a foreign entity, as long as the foreign entity is based in a country (EU or non-EU) that has an exchange of information agreement with Italy. Permanent establishments or head offices of Italian permanent establishments located abroad are not eligible to join. Companies that are in the process of being wound up or that are subject to bankruptcy or asset-seizure procedures through the courts are also excluded.

To form a VAT group, taxable subjects must have financial, economic and organizational links.

Therefore, passive holding companies, the sole activity of which is the ownership of shares, are ineligible to join. Mixed holding companies, which not only own shares but provide additional services to their subsidiaries, can instead join the VAT group.

The financial link is based on control and must have existed since 1 July of the calendar year preceding that in which the VAT group becomes effective. The subject exercising control must be an Italian resident or be based in a country that has an exchange of information agreement with Italy.

The economic link is activity-based. All members must have the same core business, or their activities must be complementary/interdependent or benefit the other members in some way. The main business purpose of the companies, as emerging from their deed of incorporation, must be taken into account, whilst the ATECO code is irrelevant.

The organisational link is based on the legal coordination between the decision-makers.

The option is binding for three years and automatically renewed annually thereafter until revoked. If one member revokes the option, the whole group is dissolved. The timing of the revocation determines the date on which the group is dissolved. Any member that ceases to have the necessary links, or to meet the other necessary conditions, ceases to be a member.

3.5.2 Consolidated VAT regime

As an alternative to the VAT grouping regime, the consolidated VAT regime remains in force.

Under this regime, members may pool their VAT positions to offset their respective VAT debts and credits, even if each group member has its own VAT number. When this happens, intra-group transactions are not disregarded in Italy, because the members remain separate VAT subjects.

Entities are eligible to join the VAT group if 50 percent or more of their shares/quotas are held by the consolidating entity. The minimum holding period should be observed from 1 July of the calendar year preceding that in which the option is exercised.

3.6 VAT Returns

3.6.1 Annual and periodical returns

All registered companies are required to submit VAT returns annually. Annual VAT returns must be filed between 1st February and 30th April of the following year.
VAT reporting obligations include the quarterly reporting of VAT settlements, by the end of the second month after the relevant quarter.

3.6.2 VAT payments

Periodic VAT payments are made using the F24 form, exclusively online. Payment deadlines vary depending on the type of taxpayer.

- Monthly taxpayers: the settlement and payment of any VAT payable must be made by the 16th day of the following month;
- Quarterly taxpayers: settlement and payment of the tax must be made by the 16th day of the second month following each of the first three calendar quarters (16 May, 20 August and 16 November). The payment for the last quarter is to be made in the annual adjustment by 16 March of the following year.

3.6.3 VAT refund or VAT compensation

Under certain conditions, a refund of excess input VAT can be claimed through the annual VAT return or, subject to additional conditions, on a quarterly basis (except for the last quarter of the year) or alternatively asked for compensation with other taxes to be paid.

Taxpayers are due to submit guarantees in order to obtain VAT refunds for amount more than Euro 30,000.00.

3.6.4 Direct VAT recovery by non-registered subjects established outside Italy

Under EU procedures, claimants established in another EU Member State should file an electronic claim with the authorities of their Member State of residence. A non-EU business should recover VAT under the so-called Thirteenth Council Directive; however, the refund is conditional upon the non-EU state granting comparable turnover tax advantages and currently only Norwegians, Swiss and Israelis can submit such claims.

There are strict conditions and deadlines for making claims. The claim period follows the calendar year and claims must be submitted by 30 September of the following year.

The Thirteenth Council Directive claim forms can be found on the Italian Revenue Agency's website: www.agenziaentrate.gov.it

3.6.5 Intrastat

In Italy, European sales listings and statistical report forms (Intrastat) have been combined. These are normally referred to collectively as Intrastat returns. There is one return for outbound supplies of goods and another return for outbound supplies of services. The Intrastat returns for inbound supplies - one for goods and one for services - are no longer due for tax purposes, but are required for statistical purposes.

Intrastat returns can be submitted on a monthly or quarterly basis, depending on levels of EU transactions over the previous four quarters.

Monthly returns for intra-EU **sales** of goods and services should be submitted when these transactions are equal to or higher than Euro 50,000 in at least one of the four previous quarters. However, the statistical section of the monthly Intrastat return for intra-EU sales must be filled in only if the sales are equal to or higher than Euro 100,000 in one of the previous four quarters.

Monthly returns for intra-EU **purchases** of goods and services should be submitted, for statistical purposes, when these transactions are equal to or higher than Euro 200,000 for goods and Euro 100,000 for services in at least one of the four previous quarters.

The Intrastat forms can be found on the following website: www.adm.gov.it

3.7 VAT deductibility

In general, input VAT incurred by taxpayers to purchase goods and services used within their business activity is recoverable.

3.7.1 Time limit for VAT deductibility

Input VAT incurred on purchase invoices and customs bills can be recovered, at the latest, by the deadline for submission of the annual VAT return for the year in which the VAT becomes payable, i.e. when the tax point is triggered.

The Revenue Agency clarifies that the right of VAT recovery is triggered in the calendar year when the following two conditions are both met:

- the tax point is triggered and the VAT becomes chargeable.
- the customer receives a valid VAT invoice.

3.7.2 Unrecoverable or partially recoverable VAT

There are certain items for which VAT is unrecoverable or only partially recoverable. Some examples are given below:

- Exempt supplies: where VAT relates to both taxable and exempt supplies, it must be apportioned.
- Non-business (including private) activities: where VAT relates to both business and non-business activities, it must be apportioned.

- Vehicles (excluding commercial vehicles): the VAT recovery rate is limited to 40 percent for expenditure on cars not wholly used for business purposes. The limit covers any expenditure on cars: the purchase of the vehicle (including assembly contracts and the like), intra-Community purchases, imports, leasing or hire, modifications, repair or maintenance, fuel, etc.
- Business entertainment: VAT on business entertainment costs is generally non-recoverable.
- Tour operators' margin scheme: VAT cannot be reclaimed for goods and services supplied under this scheme.
- Goods sold under one of the margin schemes for second-hand goods: there are a number of schemes under which VAT is accounted for on the sales margin of goods but cannot be recovered on the purchase of those goods.

3.8 International supplies of goods and services

3.8.1 Intra-EU sales/Exports outside the EU

Goods

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

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

Services

If a supplier established in Italy provides services to a business customer established in another EU Member State or outside the EU, it makes a supply that is outside the scope of Italian VAT. In order for the supplier to not charge VAT, the customer in the other EU Member State must have a VAT number(evidence on VIES system), which must be quoted on the invoice.

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

- services connected with immovable property
- passenger transport
- restaurant and catering services
- short-term hiring or leasing of means of transport
- admission (and services ancillary to admission) to cultural, artistic, sporting, scientific, educational, entertainment, or similar events.

Habitual exporters

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

An habitual exporter is entitled to purchase VAT-free services and goods (exceptions apply for immovable property and goods and services on which VAT cannot be recovered) up to the amount of the zero-rated supplies made in the previous calendar year or previous 12 months.

Specific formalities must be put in place in order to benefit from this facilitation.

3.8.2 Imports

When goods are imported into Italy from outside the EU, import VAT and customs duties can be due. These must be paid or guaranteed before the goods can be released by Customs control authorities.

3.8.3 Simplification schemes

Certain simplification schemes may apply as follows.

- **Triangulation**

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

- **Call-off stock**

  When a foreign company stores stock at the Italian customer's premises and the goods remain under its control, the customer will account for VAT on the supply as an acquisition at the moment it removes the goods from the premises.

- **Supply and installation**

  If a company supplies goods and installs or assembles them in Italy, the transaction qualifies as a domestic supply (i.e. not as a cross-border transaction) and its customer must account for acquisition tax in Italy. The company must be registered for VAT in another EU Member State and the goods must be shipped from within the EU.

- **Domestic reverse charge**

  In general, the obligation to account for VAT must be shifted to the customer if (i) the customer is established in Italy and registered there for Italian VAT purposes, and (ii) the supplier is a non-established entity. This rule is applied, for example, in the following cases:

  - Customers established and VAT-registered in Italy are liable to account for Italian VAT under the compulsory reverse charge mechanism when domestic supplies of goods and services are made by suppliers established in other Member States; for this purpose, customers must complete the invoices issued by their suppliers by adding, among other details, the Italian VAT rate and the amount of Italian VAT to be paid.
  - For domestic supplies of goods and services made by non-EU suppliers, Italian customers must issue a self-billed invoice, charging Italian VAT to themselves.

3.9 Invoices

3.9.1 Invoice details

An invoice should contain the following details:

- The date of issue:
- immediate invoice: invoices should be issued within 12 days of the tax point. If the invoice is not issued at the tax point, it should include, in addition to the invoice date, a reference to the tax point date;
- Deferred invoice: this concerns the supply of goods the delivery or dispatch of which is evidenced by a transport document (DDT) or another equivalent document or the provision of services identifiable by appropriate documentation, effected in the same calendar month to the same party. It should be issued within the 15th day of the month following the month in which the transaction was effected.
- A progressive number that 'unequivocally identifies the invoice' (progressive numbering by calendar year is no longer required).
- For the supplier: the company name, or name and surname, and residence or domicile; the company name, or name and surname, and residence or domicile of the tax representative (if any); the location of the fixed establishment (if any) of non-resident enterprises.
- The supplier's VAT number.
- For the purchaser: the company name, or name and surname, and residence or domicile; the company name, or name and surname, and residence or domicile of the tax representative (if any); the location of the fixed establishment (if any) of non-resident enterprises.
- The customer's VAT number (if this is a taxable subject) or tax code (if this is a private individual) and, in cases involving a taxable subject established in another EU Member State, the VAT identification number issued by that Member State.
- The quantity, quality and nature of the goods/services supplied.
- The tax point date of the supply of goods or services or the date on which the financial consideration has been wholly or partly paid.

- The unit price (exclusive of any VAT) which is used to calculate the taxable amount.
- The market value of any goods sold at a discount, whether or not this value is used to calculate the taxable amount.
- The rate, amount of tax due and tax base rounded up to the nearest Euro cent.
- For transactions that are not subject to VAT, the invoice must include the law of reference allowing the VAT exemption.

3.9.2 E-invoicing

E-invoicing is mandatory for all B2B and B2C supplies of goods and services between parties established or resident in Italy (in the case of B2C, only if the customer expressly requests an invoice).

E-invoices must be issued:

- through the SDI, which is the platform originally used to transmit e-invoices to public bodies and which allows the Italian Revenue Agency to automatically collect details of e-invoices;
- in 'XML' format, which is the only one currently admitted, although different formats based on European standards might be allowed for the future.

If e-invoices do not fulfil the above conditions, these are considered as not having been issued and there are high penalties (e.g. for domestic taxable supplies, from 90 percent to 180 percent of the VAT in question).

From 1st July 2022 the data relating to transactions for the supply of goods and services:

- made to subjects not established in the territory of the State (EU and non-EU), and
- received from subjects not established in the territory of the State (EU and non-EU),

are also transmitted electronically using the SDI according to the electronic invoice format.

The implementing measures for mandatory e-invoicing and the relative technical specifications and clarifications can be found on the Italian Revenue Agency's website: www.agenziaentrate.gov.it

3.9.3 Split-payment system

Sales to public authorities and administrations are governed by a special split-payment regime when suppliers charge Italian VAT (where due, and unless the reverse charge mechanism applies) to public bodies. The public bodies 'split' the payment of the invoice: they pay the taxable amount to the suppliers, and the VAT to a blocked VAT bank account of the Treasury.

The split-payment regime also covers:

- supplies of goods and services rendered to certain Italian public bodies, their subsidiaries, and corporations listed on the FTSE MIB Italian Stock Exchange (Borsa Italiana), provided that these corporations are registered for Italian VAT purposes;
- supplies of goods and services rendered to additional categories of public bodies (such as public economic bodies, special companies, foundations, etc.) and their subsidiaries.

To understand if a client belongs to one of the categories covered by the split-payment rule, the supplier should check the lists issued annually by the Italian Ministry of Finance at the link: https://www1.finanze.gov.it/finanze/split_payment/public/#/archivio

Public authorities and administrations are not included in the above lists and reference must be made to the index found on the website www.indicepa.gov.it

3.10 Electronic reporting of daily receipts by retailers

It is mandatory for all retailers to purchase and activate a special electronic cash register called a '*registratore telematico*', approved by the tax authorities, in order to electronically record and report their daily receipts to the tax authorities.

Moreover, retailers must issue e-invoices through the SDI if customers request this.

3.11 Head office and branch transactions

In sales of **goods**, the local branch and its foreign head office are treated as separate entities for VAT purposes; therefore, no transactions are disregarded.

In the case of **services**, the Italian Revenue Agency has clarified that transactions between a head office and its branch are disregarded for VAT purposes, on condition that the branch has no decision-making powers.

Charges will no longer be disregarded for VAT purposes when the head office or the branch belongs to a VAT group in Italy or another jurisdiction.

3.12 Penalty regime

The VAT penalty regime varies according to the type of violation committed by the taxpayer:

VAT return violations

Failure to submit an annual VAT return: the penalty ranges from 120 to 240 percent of the amount that should have been declared in the return. If VAT is not due on any of the taxpayer's transactions, the penalty ranges from Euro 250 to Euro 2,000.

It is a criminal offence to fail to submit an annual VAT return with the aim of evading VAT. This rule is triggered if the amount of undeclared VAT is higher than Euro 50,000 and the taxpayer can be given a prison sentence ranging from two to five years (18 months to four years for violations committed before 24 December 2019).

Submission of an inaccurate annual VAT return: the penalty ranges from 90 to 180 percent of the VAT not shown or of the excess VAT credit declared.

It is a criminal offence to submit an inaccurate annual VAT return with the aim of evading VAT. This rule is triggered if the amount of undeclared VAT exceeds certain thresholds, and the taxpayer can be given a prison sentence ranging from two to four years and 6 months (one to three years for violations committed before 24 December 2019).

Even higher criminal penalties apply for filing a false VAT return by using invoices or other documents for non-existent transactions and/or by using other methods of deception.

Failure to record transactions

Failure to record transactions subject to VAT: the penalty ranges from 90 to 180 percent of the VAT due.

Failure to record transactions that are VAT-exempt or non-taxable: the penalty ranges from 5 to 10 percent of the unrecorded amount. The same penalty also applies in the event of failure to invoice certain out-of-scope transactions. The penalty cannot be lower than Euro 500 per violation.

Failure to record VAT-exempt or non-taxable transactions, which does not result in direct tax violations: the penalty ranges from Euro 250 to Euro 2,000.

Failure to apply the reverse-charge mechanism: the penalty ranges from Euro 500 to Euro 20,000. If the transactions are not posted in the accounting books, the penalty ranges from 5 to 10 percent of the taxable basis and cannot be lower than Euro 1,000.

If the supplier of goods or services fails to issue an invoice, or the invoice contains a mistake, the purchaser is liable to a penalty equal to 100 percent of the VAT if failing to put the (non-issued or incorrect) invoice in order. Doing so involves specific formalities.

There are reduced penalties for violations of domestic reverse charge procedures when VAT has actually been paid by one of the parties. In this case, the penalty ranges from Euro 250 to Euro 10,000.

The omitted/incomplete/late certification and transmission of daily payments is subject to a penalty equal to 90 percent of the VAT. However, if the omitted/incomplete/late transmission of daily payments has not impacted the VAT settlements (i.e. if, despite the incorrect or omitted reporting of the daily payments, the taxpayer has correctly remitted the VAT to the treasury on a timely basis) the penalty is Euro 100 for each transmission and the single-penalty system (‘cumulo giuridico’) is not applicable.

Export-related violations

Penalties apply when a taxpayer does not comply with various rules allowing VAT to be collected on exports. In principle, the penalties are proportional to the amount of VAT that could potentially be collected.

Other violations

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

Missing payments / Underpayments

The penalty is 30 percent of the unpaid amount (15 percent if the payment is made within 90 days), plus interest of 4 percent on the unpaid amount.

It is a criminal offence to fail to pay the VAT declared in an annual tax return by the deadline for the advance payment of the following year. This rule is triggered if the amount of VAT is higher than Euro 250,000 and the taxpayer can be given a prison sentence ranging from six months to two years.

The same applies to taxpayers who offset more than Euro 50,000 in non-existent or undue VAT credits against tax payments.

Voluntary disclosure

The taxpayer can reduce the above penalties (i.e. the penalties that would be due following an ordinary assessment) by using the voluntary disclosure system (ravvedimento operoso) within a certain time limit.

Anti-avoidance

There is a general abuse of law rule, which also applies to VAT. In addition to this general rule, a rule to combat missing trader intra-Community fraud (also known as carousel fraud) in Italy establishes that the purchaser has joint liability for VAT not paid by the seller. This anti-fraud rule only applies to a limited series of goods (cars, motorcycles, mobile phones, computers, new and used tyres and tyre flaps, livestock, and fresh meat) and is only triggered when the price of the goods is lower than their market value.

Customs and Excise and Import VAT

4. Customs and Excise and Import VAT

4.1 European Community law and the Customs system

Customs law is the best example of harmonized international tax law and is based on three fundamental concepts:

- The classification of goods. This is necessary in order to select and apply the relevant customs rules for each movement of goods and thus to quote the import duty.
- The origin of goods. For customs purposes, the origin of goods can be preferential or non-preferential (‘Made in’ labelling).
- The value of the transactions. According to the Union Customs Code (UCC), “*the primary basis for the customs value of goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the customs territory of the Union, adjusted, where necessary*”.

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

4.2 Customs declarations

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

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

4.3 Suspensive arrangements and Customs procedures with an economic impact (special procedures under the UCC)

The UCC provides for the following special procedures:

- transit, which comprises external and internal transit;
- storage, which comprises customs warehousing and free zones;
- specific use, which comprises temporary admission and end-use;
- processing, which comprises inward and outward processing.

Transit External transit

Under the external transit procedure, non-Union goods can be moved from one point to another within the customs territory of the Union without being subject to i) import duties, ii) other relevant charges, or iii) trade policy measures, insofar as they do not prohibit the entry or exit of goods into or from the customs territory of the Union.

Internal transit

Under the internal transit procedure, Union goods can be moved from one point to another within the customs territory of the Union and pass through a country or territory outside the customs territory without undergoing any change in their customs status.

Storage

Under the storage procedure, non-Union goods can be stored in the customs territory of the Union without being subject to any of the following: i) import duties, ii) other relevant charges, or iii) trade policy measures, insofar as they do not prohibit the entry or exit of goods into or from the customs territory of the Union.

Union goods can be placed under the customs warehousing or free zone procedure in accordance with EU legislation governing specific fields, or in order to benefit from a decision allowing for the repayment or remission of import duties.

Specific use Temporary admission

Under the temporary admission procedure, non-Union goods intended for re-export can be subject to specific use in the customs territory of the Union, with total or partial relief from import duties, and without being subject to: i) other relevant charges, or ii) trade policy measures, insofar as they do not prohibit the entry or exit of goods into or from the customs territory of the Union.

End-use

Under the end-use procedure, goods can be released for free movement under a duty exemption or at a reduced duty rate on account of their specific use.

Processing Inward processing

Under the inward processing procedure, non-Union goods can be used in the customs territory of the Union in one or more processing operations without being subject to any of the following: i) import duties, ii) other relevant charges, or iii) trade policy measures, insofar as they do not prohibit the entry or exit of goods into or from the customs territory of the Union.

The inward processing procedure can be used in cases other than repair and destruction only where, without prejudice to the use of production accessories, the goods subject to the procedure can be identified in the processed products.

Outward processing

Under the outward processing procedure, Union goods can be temporarily exported from the customs territory of the Union to undergo processing. The resulting processed products can be released for free movement with total or partial relief from import duties upon application by the holder of the authorization or any other person established in the customs territory of the Union, provided that this person has obtained the consent of the holder of the authorization and the conditions for the authorization have been met.

4.4 Export control and international sanctions

4.4.1 Export control: dual use

Dual-use items are finished or semi-finished products, equipment and machinery components - including software and technology - that are normally used for civilian purposes but can have military applications or can contribute to the proliferation of weapons of mass destruction.

Dual-use items are subject to special rules.

The EU therefore controls the export, transit and brokering of dual-use items that affect the development, production and trade of typically high-tech, advanced products across a wide-range of civil industries, e.g. energy, aerospace, defence and security, lasers and navigation, telecommunications, life sciences, chemical and pharmaceutical industries, material-processing equipment, electronics, semiconductor and computing industries, medical and automotive industries.

4.5 Excise duties

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

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

The authority responsible for the collection of excise duties in Italy is the Agenzia delle Dogane, the Italian Customs Authority.

Excise goods are subject to excise duties upon their production or import into the EU. Typically, excise duties are levied when goods are released for consumption. The goods are also considered as having been released for consumption when:

- stock shortages are higher than those established by law;
- they exit (even illegally) a duty-suspension arrangement;
- they are manufactured or imported (even illegally) outside a duty-suspension arrangement.

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

4.6 Import VAT

All imports into the EU are liable to VAT.

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

The following transactions are regarded as imports:

- The release of goods for free movement under a customs-duty suspension arrangement, if the goods are going to another EU Member State.
- Inward processing (temporary import): these operations are not regarded as imports for customs purposes but are liable to VAT in Italy if the goods are introduced into Italy for sale or domestic use.
- The temporary admission of goods for re- export without processing: these goods do not benefit from total exemption from import duties in accordance with EU law.
- The clearance for domestic use of goods originating from Mount Athos, the Canary Islands, or French overseas departments.
- Re-imports for temporary export (outward processing).
- The re-introduction of goods previously exported.

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

4.7 Relations with the Italian Customs Authority

The approach of the Italian Customs Authority has changed significantly over recent years. It has now modernised its procedures, also as a result of new EU legislation, which is binding on all Member States.

The completion of the internal market, the reduction of barriers to international trade and investment, and the greater need to ensure security and safety at the external borders of the Union have changed the role of customs authorities, giving them a leading role within the supply chain and – in their monitoring and management of international trade – making them a catalyst for change in the race by each country and its companies towards greater competitiveness.

Because of this new approach, very interesting customs-planning solutions are now possible, with the support of the authorities and a significant simplification of the global customs burden (formalities and duties).

4.8 The EU- UK Trade and Cooperation Agreement

From 1st January 2021, the UK is longer part of the customs territory of the European Union: this means that customs procedures and formalities now apply to trade between the UK and the EU.

The EU-UK Trade and Cooperation Agreement provides for zero tariffs and zero quotas on all trade in goods originating from the EU or the UK and complying with the appropriate rules of origin.

The agreement also includes provisions built upon WTO principles to facilitate trade and comply with non-tariff barriers (such as import and export licensing restrictions). It also includes a Technical Barriers to Trade (TBT) chapter about rules on technical regulations, conformity assessment, standardization, and marking and labelling of goods.

5

Accounting, Filing and Audit Requirements

5. Accounting, Filing and Audit Requirements

5.1 Requirements

In Italy the double-entry method of bookkeeping is used. Entries in the company books must be made in chronological order, without empty spaces or notes, and must not contain deletions; text can be crossed through in such a way that the letters remain legible only where strictly necessary. The general ledger must report all transactions on a daily basis.

The accounting books can also be kept on digital supports. There are specific provisions in place to guarantee the true date of entries. All books and records, even if they are digitalised, must be kept for at least 10 years after the date of the last entry, together with all related business correspondence.

Failure to properly keep accounting books and records properly

Failure to keep accounting records is punishable by fines ranging:

- from Euro 1,032 to Euro 7,746 for financial years up to and including the one in progress on 31 December 2016;
- from Euro 1,000 to Euro 8,000 for financial years starting on or after 1 January 2017.

Fines are doubled if unpaid corporate taxes or VAT amount to more than:

- Euro 51,645.69 in any financial year up to and including the one in progress on 31 December 2016;
- Euro 50,000 in financial years starting on or after 1 January 2017.

Ordinary fines are reduced by half (from Euro 500 to Euro 4,000) if the missing documentation is of little relevance for the purposes of the assessment and in any case where the missing documentation does not cause an obstacle to the assessment itself.

If the company fails to keep accounting books and records in an attempt to conceal profits or turnover, the legal representative is liable to criminal prosecution.

Upon the incorporation of a company, the tax authorities must be informed of where the accounting books and records are kept and can be accessed during tax inspections. Any subsequent changes must be reported.

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

5.2 Compulsory bookkeeping

5.2.1 The general ledger

All the transactions of an Italian company must be recorded in this ledger in detail and in chronological order. Each entry must show the following information:

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

The end of each page numbered and also showing the financial year (e.g. 2021/1, 2021/2, 2021/3, etc.), should show the aggregate debit/credit amount to be carried forward to the next page.

The general ledger must be kept on a daily basis and each entry in the general ledger must also be automatically recorded in the VAT registers.

Amounts in foreign currency are converted at the exchange rate at the date of the transaction.

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

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

5.2.2 The inventory ledger

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

5.2.3 Business correspondence

The company must keep copies of all documents (letters, invoices, telegrams) sent and received in connection with each transaction for 10 years. The copies must be stored in an orderly manner.

5.2.4 Electronic invoicing

All entities in Italy are obliged to adopt electronic invoicing; the obligation started for everyone (except the exempted) on 1 January 2019. Paper invoices no longer have any value and those who do not comply with the new provisions face penalties.

The electronic invoice is an invoice in digital format, which must be made according to precise standards (FatturaPA, in Xml), received and transmitted via the Interchange System (called "SDI"). This method of sending and receiving represents one of the two characteristics that differentiate it from the common paper invoice.

With regards to the invoicing process outgoing and incoming from abroad, in addition to the common paper received from and sent abroad, all entities obliged to make electronic invoices have to send the invoices and the self-invoices (document used to record VAT in accordance with the law in case of the invoice received from abroad) through the SDI, using electronic invoices.

5.3 The language of accounting records

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

However, according to the Italian Civil Code, books and accounting records can be used as elements of proof and put on record in court cases, and the law requires that Italian be used for legal documents in court proceedings. Considering that the records can be presented to the tax authorities/courts during assessments or litigation proceedings, it is thus advisable for them to be in Italian.

5.4 Keeping accounting records abroad

The Italian Civil Code and tax rules do not expressly prohibit a company from keeping its accounting records and compulsory accounting books outside Italy. Moreover, the Italian Ministry of Finance has clarified that the accounting records of Italian companies belonging to multinational groups can be kept abroad. The accounts can be recorded and processed, in real time, using an electronic data processing system located abroad, connected to the Italian subsidiary.

However, the accounting books must then be printed on the subsidiary's premises in Italy, where the data, books and supporting documentation must also be kept. It must also be possible to print registered accounting data at any moment and in real time at the Italian company's premises.

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

Invoices can be stored abroad in a digital system on condition that:

- there is a reciprocity agreement in place between the two states with regard to indirect taxation;
- the Italian company can ensure automatic access to the archive at all times from its registered office;
- the integrity and legibility of the data is ensured during the whole period of storage;
- all the documents and data stored in the digital system can be printed and downloaded onto another system.

5.5 The financial statements

The directors must draw up the financial statements after the end of the fiscal year. The financial statements is composed of a balance sheet, profit and loss account, explanatory notes and cash flow statement. The structure of all documents that compose the financial statements and the minimum information are clearly defined by the accounting standard adopted (Italian GAAP or IFRS GAAP; see below).

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

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

The Board of Directors must also draw up an annual report, which accompanies the financial statements. The law establishes the minimum content of this report.

Smaller companies can draw up simplified statutory financial statements, providing less information in the explanatory notes. Moreover, the cash flow statement and the Directors' report are not required. Smaller companies are those that, for two consecutive years, have not exceeded two of the following limits: total assets of Euro 4.4 million; revenues of Euro 8.8 million; an average of 50 employees per year.

Micro companies can draw up simplified statutory financial statements in the same way as smaller companies. The cash flow statement, explanatory notes and Directors' report are not required. Micro companies are those that, for two consecutive years, have not exceeded two of the following limits: total assets of Euro 175,000; revenues of Euro 300,000; an average of 5 employees per year.

Consolidated financial statements are mandatory for parent companies of groups, with the following exceptions.

- Small groups: when, for two consecutive tax periods, at least two of the following conditions are met: (i) the total aggregate book value of the assets does not exceed Euro 20 million; (ii) the total aggregate turnover does not exceed Euro 40 million; (iii) the average aggregate number of employees does not exceed 250. This exemption does not apply when the parent company or one of its subsidiaries is a public-interest entity (PIE).
- Special grounds for exclusion: when parent companies only hold companies whose consolidation is excluded by article 28 of Legislative Decree no. 127/1991, that is when: (i) parent companies only hold companies which, individually and globally, are irrelevant to the fair representation of the group results; (ii) the effective exercise of the rights of the parent company is subject to substantial and long-term restrictions; (iii) in exceptional cases, the parent company cannot obtain the necessary information on a timely basis, or without facing disproportionate expenses; (iv) shares or quotas are held exclusively for subsequent sale.
- Sub-holding companies: when i) Italian sub-holding companies are directly or indirectly held by EU companies that draw up consolidated financial statements subject to audit; ii) Italian sub-holding companies have not issued listed securities traded on Italian or European regulated markets; iii) consolidated financial statements are not requested at least six months before the end of the financial year by shareholders representing at least 5 percent of the capital of Italian sub-holding companies.

5.6 Italian Reporting Standards and International Financial Reporting Standards (IFRS) in Italy

5.6.1 Differences between local GAAP and IFRS

The following entities must adopt IFRS for their consolidated and individual financial statements:

- listed entities;
- issuers of financial instruments publicly traded within the EU;
- financial institutions;
- insurance companies;
- controlled companies by listed companies that cannot prepare the simplified statutory financial statements.

Unlisted entities can adopt IFRS to prepare their consolidated and individual financial statements provided they do not have the option of drawing up condensed annual financial statements as per article 2435-bis of the Italian Civil Code (companies whose securities are not listed on a regulated market may draw up condensed annual financial statements when, for three consecutive years, they have not exceeded two of the following limits: total assets of Euro 4.4 million; revenues of Euro 8.8 million from sales and services; an average of 50 employees per year).

Local GAAP and IFRS differ in many ways. The following table summarises the main differences; the information provided has to be considered non comprehensive.

LOCAL GAAP	IFRS GAAP
General: The standard format for financial statements is prescribed by the Italian Civil Code and cannot be modified. In the balance sheet, assets are: **1.** classified by nature, **2.** divided between fixed assets, current assets and other assets (accruals and deferrals). Liabilities are classified mainly by nature. Each balance sheet caption is split between the current portion (i.e. within 12 months) and the non-current portion (i.e. over 12 months). Costs in the income statement are presented by nature.	A standard format for financial statements is not prescribed. The GAAP require only a minimum content. A company presents its financial statement classified between current and non-current assets and liabilities. The statement of other comprehensive income is required. Costs in the income statements can be presented by nature or by function.
Consolidation – Definition of controlling: Controlled entities to be consolidated are defined as follows: companies in which the parent – directly or indirectly – has a majority of the votes that can be exercised in the ordinary shareholders' meeting; companies in which the parent – directly or indirectly – has sufficient votes to exercise a dominant influence in the ordinary shareholders' meeting; companies that are under the dominant influence of the parent by virtue of particular contractual obligations towards it. Potential voting rights **are not taken** into consideration in identifying subsidiaries and associates.	An investor controls an investee when the investor is exposed to (has rights to) variable returns from its involvement with the investee and has the ability to affect those returns through its power over the investee. Control involves power, exposure to variability of returns, and a linkage between the two. Potential voting rights **are taken** into consideration in identifying subsidiaries and associates.

Intangible assets All intangible fixed assets are amortised over their useful life. Start-up costs and the cost of issuing shares can be capitalised, with certain restrictions. Advertising costs are not capitalised unless they qualify as start-up and expansion costs. Goodwill arising from a business combination is amortised over its useful life, which cannot exceed 20 years. When a useful life cannot be determined, the amortisation period cannot be longer than 10 years. Revaluations are not allowed unless authorised by special laws. There is the option of capitalising and amortising development costs if certain conditions are satisfied.	The intangible assets, in relation to their nature, can have a definite useful life, and consequently they are amortised, or an indefinite useful life. In this case, they are not amortised but subject to an **impairment test** at least once a year. Start-up costs cannot be capitalised, and the costs of issuing shares/quotas are recognised as a deduction from equity. Advertising cannot be capitalised. Goodwill arising from a business combination is not amortised but subject to an **impairment test** at least once a year. Revaluations are possible in very few cases. Development costs are capitalised and amortised when rigorous criteria are satisfied.
Tangible Assets Property, plant and equipment are measured using the cost model. Revaluations are not permitted unless authorised by special laws.	Property, plant and equipment are measured using either the cost model or the revaluation model. When the revaluation model is used, the entire category of assets has to be regularly revaluated.
Leases All leases are acknowledged in the financial statements as operating leases. Disclosures are required by law for financial leases. The application of IAS 17 is required for the consolidated financial statements.	All leases, excluding short-term (less than 12 months) and low-value leases (less than 5 thousand USD), are acknowledged in the financial statements as right-of-use assets and lease liabilities.

Investment Properties Investment properties are measured using the cost model. The fair value model is not allowed.	Investment properties are measured using the cost model or fair value model. If the fair value is used, variations are acknowledged in the profit or loss.
Inventories The LIFO method is allowed.	The LIFO method is not allowed.
Financial assets (measurement and derecognition) Long-term investments are stated at acquisition or subscription cost, less any impairment. Short-term investments are acknowledged at the acquisition cost. These are valued at the lower of acquisition cost and market value. Loans and receivables are acknowledged at their amortised cost. Derecognition of financial assets is mainly based on the transfer of risks only.	Measurement of financial assets depends on their classification, which is based on the business model used to manage the assets and the cash flow characteristics of the asset. Therefore, the assets can be measured at: ■ amortised cost ■ fair value through equity ■ fair value through profit or loss. Derecognition of financial assets is mainly based on the transfer of risks and rewards.
Financial liabilities and equity instruments (classification) Classification is based on the legal form of the financial instruments.	Classification depends on the substance of the issuer's obligations.
Revenues Revenues are generally acknowledged when risks and rewards have been transferred to the customers.	Revenues are generally acknowledged when the control of goods and services has been transferred to the customers.
Employee benefits – pension costs (defined benefit plans) A defined benefit plan (e.g. TFR) is calculated as an undiscounted vested benefit and, as such, is accounted for as a liability.	The amount to be set aside for a defined benefit plan is estimated using an actuarial calculation.

5.7 Audit requirements for the statutory financial statement

5.7.1 Introduction

The audit of an Italian company can be:

- a legal requirement;
- prescribed by the company by-laws if there is no legal requirement;
- needed, even when not prescribed by law or by the company by-laws, to fulfil special requirements of the company or third parties.

When an audit is a legal requirement (i.e. a statutory audit), it must necessarily be conducted in compliance with Italian law.

When an audit is not a legal requirement but prescribed by the company by-laws, it is generally equivalent to a statutory audit.

An auditor is normally appointed for three financial years and can be an individual registered as an auditor of accounts (revisore legale) or an audit firm (società di revisione).

5.7.2 Joint-stock companies/Incorporated company (S.p.A.s)

Statutory auditing is a legal requirement for all S.p.A.s. Unless specified otherwise in the by-laws, statutory audits are conducted by a registered auditor of accounts or audit firm.

An S.p.A. that does not have to prepare consolidated accounts can entrust its statutory audits to a Board of Statutory Auditors (Collegio Sindacale), provided that the company is not:

- a PIE or an ESRI;
- a subsidiary, parent or sister company of a PIE or an ESRI.

5.7.3 Limited liability companies (S.r.l.s)

The appointment of an auditor of accounts is compulsory if the company:

- has to prepare consolidated accounts, or
- controls a company that is subject to statutory auditing, or
- has exceeded at least one of the following thresholds in two consecutive financial years:
  - → total assets: Euro 4 million
  - → turnover: Euro 4 million
  - → average number of employees: 20.

The quotaholders' meeting that approves the financial statements in which one of these thresholds is exceeded for the second consecutive year must appoint an auditor. This obligation ceases when, for three consecutive financial years, none of the thresholds is exceeded.

If not specified otherwise in the by-laws, the auditor is a single statutory auditor (sindaco unico) and, generally, that individual is responsible for checking compliance with the law (a task that in S.p.A.s is assigned to the Board of Statutory Auditors) and conducting statutory audits. However, statutory auditing can be entrusted to an auditor of accounts (revisore legale) instead.

To sum up, an S.r.l. can appoint, depending on the circumstances:

- just a supervisory body, to check legal compliance and conduct statutory audits; just an auditor of accounts/audit firm entrusted with statutory audits only;
- a supervisory body, to check legal compliance, and an auditor of accounts/audit firm, to carry out statutory audits

5.8 Year-end accounts timing

The ordinary duration of the fiscal year is 12 months, and the most common closing date is 31 December 202x; however, the possibility is envisaged that the closing date can be in the course of the year. In the case of a newly incorporated company, the duration of the first fiscal year can be extended up to 14 months.

The draft of the annual financial statements has to be prepared by the directors and approved by them at least 15 days before the meeting of shareholders/quotaholders to approve the final annual financial statements. In the event the company is subject to audit, the directors have to approve the draft of the financial statement at least 30 days before the meeting of shareholders/quotaholders, and the auditor has to prepare his audit report at least 15 days before the meeting of shareholders/quotaholders.

The shareholders/quotaholders' meeting has to approve the annual financial statements within 120 days of the year end (180 days in special circumstances).

The financial statements (including the notes) and the minutes of the shareholders' meeting must be filed in electronic format with the local Register of Trading Companies within 30 days of shareholder approval.

6

Transfer Pricing

6. Transfer Pricing

6.1 General rules

Transfer pricing rules apply to commercial transactions between a company resident in Italy (or the Italian permanent establishment of a company resident abroad) and non-resident associated companies (e.g. that directly or indirectly: control the Italian company; are controlled by it; are controlled by the same parent company as the Italian company).

The price agreed in business transactions between associate companies, according to Italian tax law and the OECD guidelines, must correspond to the price that would have been agreed between independent companies for identical or similar transactions on the free market.

The Italian Inland Revenue, in the context of a possible tax audit, is obliged to verify this corresponding price, and to increase income in the event that differences are found and therefore determine the higher taxable income.

6.2 Sanctions

The higher taxable income registered by the Inland Revenue is taxable for IRES and IRAP purposes and thus entails the payment:

- of the higher amount of IRES tax (of 24%) and IRAP (of 3.9%));
- of sanctions (an applicable rate of between 90% and 180% of the higher tax assessed)
- of interest calculated from the original due date of the tax payment according to the legal interest rate (1.25% for FY 2022).

6.3 Penalty protection

The Italian legislature has introduced 'penalty protection' and outlined the contents deemed appropriate for taking advantage of it.

The 'penalty protection' consists of the possibility of not applying the sanctions in connection with the adjustment of the normal value of the transfer prices charged, from which a higher tax or credit difference derives, if the taxpayer, during a tax audit, presents specific appropriate documentation to the tax officers allowing for verification of compliance with the normal value of the transfer prices charged.

6.4 Contents of TP Documentation Eligible for Penalty Protection

The specific content, methods of preparation and submission to the Italian Inland Revenue of the appropriate documentation for the purposes of penalty protection are contained in the Order dated 23 November 2020, and in the Circular dated 26 November 2021, issued by the Inland Revenue Agency.

The TP documentation consists of a:

1. Masterfile: containing the relevant information of the group in which the company operates
2. Country file: containing the information relating to the specific transactions between the company resident in Italy (or the Italian permanent establishment of a company resident abroad) and foreign subsidiaries.

Terms for preparation and submission of TP documentation:

- it must be prepared in Italian (the Masterfile can also be prepared in English).
- it must be prepared annually by the date of submission of the tax return for the tax year to which the TP documentation relates.
- it must be signed by the legal representative via a digital signature with a "time stamp" to be affixed by the date of submission of the tax return for the tax year to which the TP documentation relates.
- In the event of a tax audit, it must be delivered to the Inland Revenue Agency within 20 days of the request.

6.5 APA and MAP

In special cases, it is possible to proceed with the definition of **Advance Pricing Agreements (APAs)** between the taxpayer and the tax authorities under the transfer pricing rule. These have the following characteristics:

- they have a duration of five years (tax period during which they are concluded and the four subsequent tax periods);
- they have the purpose of identifying transfer pricing criteria in advance;
- they are subject to a variable fee based on the total turnover of the group (Euro 10,000 for turnover of less than Euro 100 million; Euro 30,000 for turnover between Euro 100 million and 750 million; Euro 50,000 for turnover exceeding 750 million)
- if the agreement follows on from other agreements concluded with the competent authorities of foreign States as a result of mutual agreement procedures under international double taxation treaties, the agreement can also be effective with respect to prior taxable periods not beyond, however, the taxable period in progress at the date the application is submitted.

The Mutual Agreement Procedure (MAP) is provided for under Article 25 of the OECD Model and the EU Directive 2017/2852.

In the context of the Transfer Price, through the MAP procedure, the tax administrations of the contracting countries liaise in order to settle international double taxation disputes.

It is activated by means of an application with the issue under dispute, to be submitted both to the Inland Revenue Agency and to the other competent Tax Authority, within 3 years from the date on which the order was issued by the Inland revenue or the Tax Authorities

7

Bankruptcy and Reorganization/ Debt Restructuring Procedures

7. Bankruptcy and Reorganization/Debt Restructuring Procedures

The Crisis and Insolvency Code has completely innovated the legislation relating to bankruptcy procedures. The Code, issued by the Legislative Decree n.14 of 2019, will be effective starting 16 May 2022, other than for alert instruments that will come into force starting from 2024.

7.1 Alert and crisis resolution procedure

The crisis alert and assisted settlement procedure are procedures aimed at anticipating the emergence of the latter, analysing the causes of the company's suffering and encouraging the reaching of an agreement with creditors. The activation of the alert procedure is the responsibility of the corporate control bodies and qualified public creditors (Revenue Agency, INPS and collection agent).

In order to identify the emergence of the crisis, some indicators of the crisis have been defined representing the imbalances of an income, equity or financial nature, evaluated taking into account the characteristics of the company and the activity carried out by the debtor, which are prepared by the National Council of Chartered Accountants and Accounting Experts.

For an entrepreneur who takes prompt action to prevent the crisis from worsening and who submits an application for access to a crisis or insolvency regulatory procedure, cumulative reward measures are acknowledged.

7.2 The tools for regulating the crisis

The instruments for an **out-of-court** regulation of the crisis provided for by the law are manifold.

In particular, these concern:

- **certified recovery plans: for entrepreneurs**, including non-commercial ones, in order to redress the company's debt exposure and ensure the rebalancing of the financial situation;
- **debt restructuring agreements:** provided for the entrepreneur other than the minor one with creditors representing at least 60% of the credits;
- **facilitated restructuring agreements:** provided for entrepreneurs with creditors representing 30% of the loans under certain conditions;
- **restructuring agreements with extended effectiveness:** these are restructuring agreements the effectiveness of which is also extended to non-adhering creditors belonging to the same category, identified by taking into account the homogeneity of legal positions and economic interests.
- **moratorium agreements:** these are concluded between an entrepreneur, even non-commercial, and creditors, with the aim of temporarily regulating the effects of the crisis. These concern the extension of credit maturities, the waiving aside of deeds or the suspension of executive and conservative actions and any other measure that, in any case, does not involve the waiving aside of credit.

7.3 The composition of the over-indebtedness crisis

The code of crisis and insolvency also contains the rules for the procedures for the settlement of the crisis of over-indebtedness.

In particular, these are procedures reserved for particular categories of subjects, which consist of:

- the consumer debt restructuring plan: this is a free proposal, even limited to the partial satisfaction of credits, containing a debt restructuring plan and a specific indication of times and methods for overcoming the over-indebtedness crisis;

- the minor arrangement: envisaged for the professional, the agricultural entrepreneur, innovative start-ups and any other debtor not subject to judicial liquidation, compulsory administrative liquidation and other liquidation procedures provided for by the Civil Code, by special laws for cases of crisis or insolvency only in the case in which the contribution of external resources is envisaged which appreciably increases the satisfaction of creditors;
- the controlled liquidation that can be activated with an appeal to the Court;
  - by the debtor in a state of over-indebtedness;
  - from a creditor even if individual enforcement procedures are pending;
  - by the public prosecutor, if the insolvency concerns the entrepreneur.

In the case of so-called family procedures, or when the over-indebtedness has a common origin and involves cohabiting family members or a family group, the reform provides for the presentation of a single project to resolve the crisis, even if the active and passive bodies remain separate.

7.4 The negotiated settlement of the crisis

The procedure can be accessed by the commercial and agricultural entrepreneur who is in conditions of capital or economic-financial imbalance rendering crisis or insolvency probable, by submitting an application to the territorially competent Chamber of Commerce, in order to appoint an independent expert in cases where it is reasonable to expect that the company can be saved.

With the appointment of an expert, the negotiated crisis settlement procedure is activated.

Upon the outcome of the negotiations, if a solution has been identified, the entrepreneur has several possibilities, such as concluding a contract with one or more creditors, concluding a moratorium agreement, concluding an agreement signed by the entrepreneur, creditors and the expert.

However, he can also request the approval of a debt restructuring agreement, prepare the certified recovery plan, make a proposal for a simplified arrangement to proceed with the liquidation of the assets or access, among other things, one of the procedures provided for by bankruptcy law.

During the negotiations, the entrepreneur maintains both the ordinary and extraordinary management of the company in order to avoid creating situations that are prejudicial to the economic and financial conditions of the business.

7.5 Judicial liquidation (so-called bankruptcy)

The debtor can enter into a bankruptcy procedure if:

- Considered an entrepreneur (either a company or an individual), whose main activity consists in the production or trade of goods and/or services. Agricultural entrepreneurs and public bodies are exempted.
- In order to be excluded from the bankruptcy procedure, the entrepreneur can demonstrate that, in the last 3 financial years prior to the request for bankruptcy (or from the start of the business activity if this dates back to a period shorter than 3 years), the yearly assets did not exceed Euro 300,000 and that, in the same period, the yearly gross income did not exceed Euro 200,000, and that the current amount of debts, considering also those not yet expired, does not exceed Euro 500,000;
- Becomes insolvent. The debtor is insolvent when unable to regularly pay debts by ordinary means

The declaration of bankruptcy (in the meaning of "*liquidazione giudiziale*") can be requested, alternatively, by the debtor, by one or more creditors or by the Public Prosecutor and will be stated by an order of the Court which has jurisdiction over the debtor's main place of business. The prerogatives vested upon the Court are, *inter alia*:

- the appointment of the Bankruptcy Judge (i.e.: Giudice Delegato), who has the responsibility of supervising the bankruptcy procedure;
- the appointment of the Official Receiver (i.e.: Curatore), who is responsible for managing the bankruptcy procedure and the debtor's assets, including liquidation of the latter; the Official Receiver is subject to the supervision of both the Bankruptcy Judge and the Creditors' Committee (i.e.: Comitato dei Creditori). This committee, made up of 3 or 5 members, has the duty to supervise the activity carried out by the Official Receiver as well as to authorize several actions and/or express its opinion when required by law or otherwise requested by the Court or the Bankruptcy Judge;

- the indication of the term within which the creditors must file their claims and the date, place and time of the creditors' meeting during which the Bankruptcy Judge examines the creditors' claims and the eligibility of the debtor's assets and liabilities.

The debtor is sanctioned with limitations on his/her civil rights and on his/her freedom to manage and dispose of assets. As far as the impact on the debtor's assets is concerned, it must be underlined that upon the declaration of opening the judicial liquidation, the debtor loses the right to freely manage or dispose of assets. Similarly, all payments made or received by the bankrupt entrepreneur following the declaration of opening the judicial liquidation shall not produce any effect.

As a general rule, the bankrupt entrepreneur shall be substituted by the Official Receiver in all pending proceedings related to the patrimonial rights involved in the judicial liquidation procedure.

Creditors can be mainly divided into 2 different classes:

- those secured by pledge, mortgage or privilege and allowed to claim repayment of principal, interest and costs with priority right on the distribution of the profits obtained after the sale of the secured assets, and
- ordinary creditors. Unlike secured creditors, ordinary creditors can only make claims on the sale/liquidation of the remaining assets, it being understood that if secured creditors are not satisfied in full, their residual claims can rank with unsecured creditors on the bankruptcy assets for the difference.

The judicial liquidation can affect existing contracts executed by the bankrupt debtor in different ways.

As a general rule, the performance of any agreement, not yet carried out as a whole or in part by any of the parties, shall be deemed suspended up to the date on which the Official Receiver, upon authorization of the Creditors' Committee, declares either continuing such agreement in lieu of the bankrupt debtor, or terminating it. Several exceptions to this general rule are expressly provided for by law.

The proposal for the adjustment of creditors' claims (in the meaning of concordato) is an agreement between the bankrupt entrepreneur and the creditors, which is not only aimed at bringing the judicial liquidation to a close, but it is also intended to reorganize and recover the undertaking, without the need to initiate the liquidation of the existing assets.

The creditors are divided into different classes and their satisfaction of their claims can take place by any means, including the transfer of assets, the assumption of liabilities and the use of financial instruments, such as the allocation to creditors of shares, quotas or bonds, even convertible. Full payment of the secured creditors is not required. On the contrary, such creditors can be partially paid provided that, by means of the plan of reimbursement, they can be satisfied in the same way they would have been, had the secured assets been sold.

Without prejudice to the abovementioned, the proposal shall grant the unsecured creditors the payment of at least 20 % of the amount of their credit.

7.6 The arrangement with creditors (Concordato Preventivo)

The arrangement with creditors is divided into business continuity and settlement arrangement.

The first in particular provides for its inadmissibility if the professional in charge certifies that the debtor’s proposal ensures the satisfaction of unsecured creditors to an extent not less than 20% of the total amount of the credits.

The second, on the other hand, is characterized by the diversity of purpose, as it is aimed at the liquidation and conservation of assets.

7.7 Discharging (Esdebitazione)

For subjects who do not have access to bankruptcy procedures, the debit still applies.

The Crisis and Insolvency Code, however, provides for a legal charge which applies in the event of a minor insolvency, and which does not require a specific provision by the judge.

They can then access the following:

- although only once and with the obligation to pay the debt within four years from the decree if benefits arise such as to allow creditors to be satisfied for at least 10%
- deserving debtors who are unable to offer creditors any direct, indirect, or future benefit.

7.8 The Crisis of Business Groups

Specific rules are dedicated, then, to the crisis of business groups. In particular, several companies belonging to the same group, in a state of crisis and with their own centre of interest in Italy, are allowed to propose the following question:

- access to the arrangement with creditors (with a single recovery plan or with several connected recovery plans)
- and to the approval of debt restructuring agreements by filing a single appeal.

The autonomy of the respective active and passive bodies remains unaffected.

If the companies have their own centre of interest in different judicial districts, the identification of the competent court must be made taking into account the company or body that exercises management and coordination activities or the company which, on the basis of the last financial statements, has the greatest debt exposure.

8

Taxation of Individual Income

8. Taxation of individual Income

8.1 General rules

8.1.1 Liability

The individual is liable to Italian income taxes on the bases of tax residency status for taxation purposes and on the source of income.

8.1.2 Tax residents of Italy

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

An individual is considered to be an Italian resident for tax purposes, subject to tax treaty provisions, if at least one of the following conditions is met for the greater part of the financial year (i.e. for 183 days or more in a calendar year).

- The individual is registered in the ‘Anagrafe’ (the Office of Records of the Resident Population in Italy).
- The individual has a residence in Italy as defined in the Italian Civil Code.
- The individual has a domicile in Italy, as defined in the Italian Civil Code.
- A person’s ‘residence’ is the place of habitual abode; the ‘domicile’ is the place established as the main center of business and interests (center of vital interests).

Satisfying at least one of the above conditions is sufficient for an individual to be deemed an Italian tax resident.

Spouses are taxed separately on their earned income. Furthermore, each spouse is taxed on half the income of minors and on half the income generated by (i) jointly-owned marital assets and (ii) family assets.

8.1.3 Non-residents

Individuals who are not resident in Italy for tax purposes, are subject to Italian income tax only on income generated in Italy (i.e. employment income related to the work activity performed in Italy, real estate property).

8.1.4 Types of personal taxes

Taxable income is subject to IRPEF. In addition, regional and municipal taxes are levied; these vary according to the place of residence and the regulations issued by the regional and municipal authorities.

Individuals who are resident in Italy are subject to property/stamp duties (IVIE and IVAFE) on real estate and financial products held outside Italy.

8.2 Taxable income

8.2.1 Categories

Resident individuals are subject to IRPEF on the following worldwide income:

- income from immovable property
- income from capital
- income from self-employment (professional income)
- income from employment
- business income
- miscellaneous income, including capital gains.

The aggregate taxable income is calculated by adding together the income of each category; only losses arising from a business, trade or profession can be deducted.

Tax allowances differ according to the type of income. Losses arising from a business, trade or profession can be carried forward for a maximum of five years and offset against income of the same kind. The profits and losses included in aggregate income are calculated separately for each income category in accordance with statutory rules, based upon the net total of all sources in the same category.

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

Employment income

Salary

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

There are no deductions from employment income for work-related expenses.

Broadly speaking, all reimbursements by the employer are taxable to the employee, with the exception of refunds of travelling expenses, subject to certain terms and conditions.

Payments made upon termination of employment are taxed separately up to a limit of Euro 1 million; however, at the taxpayer’s request these can also be taxed under the ordinary taxation system. Above Euro 1 million, progressive tax rates apply

Pension income

There are no special provisions for pensions. Pensions and allowances regarded as equivalent to a pension are treated as income from employment. However, certain annuities from qualifying pension plans are treated as income from capital and are, therefore, subject to a substitute tax of 26 percent.

For income deriving from complementary pension funds, the tax treatment differs considerably:

- Periodical payments made by pension funds (including those derived from TFR payments and tax-deductible employee contributions) are subject to separate taxation at a maximum flat rate of 15 percent, varying in accordance with the years accrued.
- The financial component of annuities is treated as income from capital and subject to 20 percent substitute tax. Where the fund invests in Italian bonds or government bonds of cooperative jurisdictions, the substitute tax is 20 percent, but the tax base is reduced to 62.5 percent.
- The capital component of annuities is not subject to tax.

Directors' remuneration

Remuneration paid to the members of a Board of Directors or supervisory board is taxed as employment income. If the functions carried out by a director or supervisory board member are typical of their professional activity, the remuneration is taxed as professional income (see below).

Remuneration paid to the members of a Board of Directors or supervisory board who are not tax residents of Italy is subject to final WHT of 30 percent.

8.2.3 Business and professional income

Business income is that derived from running a business. It is generally taxed at the progressive rates of IRPEF. The income of general and limited partnerships, regardless of its source and the purpose of the partnership, is considered to be business income and is calculated in accordance with the rules governing such income. The partners of a partnership engaging in trade can opt to have partnership income taxed at the corporate tax rate of 24 percent. Once the income, taxed as such, is distributed to the partners, it is subject to a tax rate of 26%.

Professional income is that derived from a trade or profession and is the difference between the fees received during the financial year (in cash or in kind, including profit shares) and the expenses incurred in practising that trade or profession during the same period. The income is subject to tax at the ordinary progressive rates.

Investment income

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

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

Investment income includes:

- interest from loans, deposits and current accounts
- dividends and other distributions
- royalties
- other

Please refer to section 4.2 for the taxation rules on investment income.

8.3 Tax-exempt items and personal deductions

8.3.1 Tax-exempt income

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

Social welfare

Mandatory social security contributions paid by the taxpayer are deductible from taxable income.

Voluntary contributions made to pension funds (i.e. a company's pension fund), even if paid abroad, are tax deductible (or tax-exempt when they are made by the employer) up to an amount of Euro 5,164.57.

Medical insurance

Contributions of up to Euro 3,615.20, paid into the Italian National Health Service funds (Fondi integrativi al Servizio Sanitario Nazionale) for medical assistance, by both the employer and the employee, are not taxable.

Benefits in kind and reimbursements of business expenses

Reimbursements of business expenses incurred by an employee are not considered taxable remuneration if the expenses can be proven with original receipts.

Reimbursements for the following are not included in taxable income:

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

If a company car or motorcycle is made available to an employee, the taxable benefit is 30 percent of the amount calculated on the basis of published tables and an assumed annual mileage of 15,000 km. This rule is applied to company cars granted before 1 July 2020. After that date, the percentage depends on the pollution class of the car.

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

8.3.2 Deductions

Various allowances of differing amounts are granted for dependent family members, provided that the family member's income and taxpayer's income do not exceed certain amounts.

8.4 Tax rates

8.4.1 General rules

The following rates of IRPEF apply.

TAXABLE	RATE ON EXCESS
Euro	Percent
0 - 15,000	23
15,001 - 28,000	25
28,001 - 50,000	35
Over 50,001	43

In addition to IRPEF, regional tax and municipal tax are due on the same taxable income. The tax rates depend on the region and the municipality in which the individual is domiciled. Regional taxes range from 1.23 percent to 3.33 percent, depending on the region. Municipal taxes usually range from 0.0 percent to 0.9 percent.

8.4.2 Separately taxed items

Taxation of investment income and capital gains

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

Italian dividends

Private individuals are taxed at 26% final WHT on 100% of the dividend.

Foreign dividends

Private individuals are taxed at 26% final WHT on 100% of the dividend, net of the tax paid abroad.

Capital gains

Under Italian tax law, capital gains is treated as miscellaneous income.

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

Since 1 January 2020, the tax rate has been 26 per cent.

Interest

Interest income in general, is taxable. There are, however, different taxation rules for financial instruments, according to the source of the interest. Interest income from bonds issued by government or similar entities, whether Italian or foreign (provided that the foreign entities are in a cooperative jurisdiction), is subject to a final WHT of 12.5 percent.

Interest income and income from other securities issued by banks or companies listed on the stock exchange is subject to a final WHT of 26 percent. Interest on bank and postal current accounts is subject to a final WHT of 26 percent. Taxpayers may choose to tax interest at progressive tax rates.

Royalties

Royalties income includes that derived from the third-party use of IP (patents, industrial inventions, trademarks and know-how).

Royalties are treated as professional income if received by an author or inventor, or as miscellaneous income if received by individuals other than the author or inventor. A flat rate of 25 percent of expenses can be deducted from gross royalties where certain conditions are met (the deduction is increased to 40 percent if the beneficiary is under 35 years of age).

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

Income from immovable property

In general, income from the ownership of land and buildings is a notional amount based on a cadastral system. In the case of property that is rented out, the tax basis is the higher of the notional cadastral income and the actual income, net of directly attributable expenses of up to 5 percent of gross income (i.e. the actual net income cannot be lower than 95 percent of gross income).

If the immovable property is rented out to an individual for residential purposes, the landlord can opt for a flat-rate tax (cedolare secca) of 21 percent (or 10 percent for houses in municipalities with high-density populations) instead of the ordinary progressive tax rates. The tax base is 100 percent of the rental income stipulated in the rental contract.

Owner-occupied homes are deemed to produce taxable income for the owner. However, the notional income of an owner-occupied dwelling is not subject to tax.

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

Principal residence: gains and losses

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

Capital gains realised on the sale of real estate purchased more than five years previously, is not taxed.

Capital gains realised on the sale of real estate outside Italy is taxable in Italy under the above rules if the owner is considered to be an Italian tax resident, subject to the DTT provisions.

Taxation of investment capital gains

Capital gains realised on the sale of financial investments is taxable as miscellaneous income. The tax base is generally the difference between the proceeds and the cost (including the transaction costs) and the tax rate is 26 percent.

8.5 Administrative and filing requirements

8.5.1 Withholding taxes

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

8.5.2 Deadlines

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

Income tax is generally due by 30 June of the subsequent year and before the Italian tax return filing deadline; however, the Italian Revenue Office can accept delayed payments with interest and penalties, if applicable. The 730 tax return must be filed by 30 September of the subsequent year, whereas the filing deadline for the Redditi PF return is 30 November.

The deadlines can be extended further by the Italian government.

8.5.3 Foreign asset monitoring

Irrespective of their obligation to file a return ("Redditi PF"), all individuals who are tax residents of Italy must declare their foreign assets.

Tax residents are required to report all assets held outside Italy on the RW Form, which is filed as part of the return ("Redditi PF"). Such assets include real estate, financial investments, bank accounts, precious metals, artwork, luxury automobiles and yachts. This requirement applies not only to income-producing assets, but also to assets capable of producing future income or gains.

Payment of tax

Income taxes must be paid as described below:

- By 30 June of each year the taxpayer must pay the balance for the previous calendar year and the first advance payment for the current year. The first advance payment amounts to 40 percent of the difference between the net tax amount and WHT and other tax credits.
- By 30 November of each year the taxpayer must pay the second instalment, equal to the remaining 60 percent of the difference between the net tax amount and WHT and other tax credits.
- A 30 percent advance payment for the additional municipal income tax must be paid together with the balance of taxes due for the previous year.

8.5.5 Penalties

If the tax return is filed between one and 90 days after the deadline, a penalty of Euro 25.80 is due.

If any tax is due, the following penalties for delayed payments apply and depends on the number of days that pass following the deadline before the payment is carried out: from 0,1% to 3,75% if the payment is carried out after 90 days following the deadline but within the deadline for the presentation of the following year's income tax return.

Higher penalties are due in the event of any further delay in payment.

Additionally, legal interest is applied.

Tax returns filed more than 90 days after the deadline are considered as omitted tax returns and are subject to penalties of between 120 percent and 240 percent of the tax due.

Inaccurate tax returns (which report less taxable income than assessed or higher credits/deductions than assessed) are subject to penalties of between 90 percent and 180 percent of the additional tax due. In some circumstances, criminal penalties can be imposed.

8.6 Other taxes

8.6.1 Taxes on foreign assets

Foreign financial products held outside Italy are subject to IVAFE. For bank accounts, postal accounts and savings accounts, the tax is fixed at Euro 34.20 per account, if the annual average balance is higher than Euro 5,000. Other foreign financial products are subject to a tax rate of 0.2 percent of the value at the end of the financial year or at the end of possession, in proportion to the percentage of ownership and days of possession.

Foreign real estate is subject to IVIE. The tax amounts to 0.76 percent of the purchase price or, in some cases, of the foreign cadastral income, in proportion to the percentage of ownership and days of possession. If the property in question is used as the principal residence, then the tax rate is reduced to 0.4 percent.

8.6.2 Municipal property tax (IMU)

IMU is levied on those who own immovable property (buildings, development land, rural land) located in Italy.

The tax base is the notional cadastral income attributed by the immovable property registry, multiplied by 1.05 and then by 160 for residential property.

The tax rate is 0.76 percent for buildings not used as the main dwelling. The municipal council can increase or decrease the tax rates. This tax is not deductible for income tax purposes.

8.6.3 6.3.Gift and inheritance tax

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

- Four percent for beneficiaries directly related to the donor or the testator, i.e. spouse and children. An exemption is given for the first Euro 1 million of assets and cash transferred to each beneficiary (the threshold rises to Euro 1,500,000 for disabled beneficiaries).
- Six percent for siblings of the donor or the testator. An exemption is given for the first Euro 100,000 of assets and cash transferred to each beneficiary.
- Six percent for other relatives, with no tax exemptions.
- Eight percent for beneficiaries not related to the donor or the testator, with no tax exemptions.

When real estate is inherited or gifted, cadastal tax (“imposta catastale”) and mortgage tax (“imposta ipotecaria”) apply at the rates of 1 percent and 2 percent respectively. If the real estate is the principal dwelling, the cadastal tax (“imposta catastale”) and mortgage tax (“imposta ipotecaria”) are substituted by a fixed tax of Euro 200.

8.7 International aspects

8.7.1 Expatriates

Income derived by resident employees from an activity permanently performed abroad is taxable on the basis of notional salaries determined annually by a decree of the Ministry of Employment and Social Security. This applies only if (i) the activity performed abroad is the exclusive object of the employment, (ii) the activity is not occasional, and (iii) the employee stays abroad for more than 183 days of the year.

The notional salaries are normally used as the basis for paying Italian social security contributions when an Italian employee is seconded to a non-social security treaty country. Italian employers must levy WHT on the monthly notional salary for their Italian employees working abroad and all the benefits linked to the foreign employment are deemed to be included in the notional salary. It may be possible for an Italian employee seconded abroad to be subject to double taxation (in Italy and in the host country).

However, double taxation can be avoided or reduced through the tax credit mechanism.

These rules do not apply to Italian employees who are seconded abroad and cease to be Italian tax residents.

8.7.2 Double taxation relief

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

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

If foreign income is derived from more than one country, the foreign tax credit is applied separately on a per-country basis.

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

No credit is granted if an individual fails to file a tax return or report income generated abroad in the tax return. No tax-sparing clause is available at the domestic level.

8.7.3 Specifics of non-resident taxation

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

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

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

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

Income from a business carried out in Italy is only taxable if it is earned through a permanent establishment. Income from a profession practiced in Italy by a non-resident is subject to a 30 percent final WHT if the payer is a withholding agent.

Income from a profession includes directors' fees paid by a resident company.

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

Dividends are subject to a final WHT of 26 percent unless a lower rate applies under a tax treaty. If tax has also been paid on the dividends in the recipient's country of residence, a refund is available up to the percentage stipulated in the relevant tax treaty.

In general, interest payments to non-resident individuals are subject to a final WHT at the rates applicable to interest paid to residents. However, a 26 percent rate applies to loan interest paid to individuals who are resident in a country or territory that is outside the EU and has a preferential tax regime.

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

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

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

Capital gains arising from the disposal of immovable property (in Italy) is subject to IRPEF through self-assessment.

As a general rule, capital gains from the sale of shares in Italian companies or other securities is taxable in Italy, unless a DTT applies.

8.7.4 Special flat-tax regime for new residents

High net worth individuals who become new residents of Italy may opt for a favourable tax regime, allowing them to pay a fixed tax of Euro 100,000 for themselves and Euro 25,000 for their relatives. The following types of foreign income are eligible:

- rental income
- capital income
- employment income
- self-employment income
- corporate income (with or without a permanent establishment)
- other income.

The law also offers an exemption from monitoring obligations (RW Form filing – see 7.5.3) and related wealth tax payments.

Ordinary taxes will only be applied to:

- capital gains from qualifying shareholdings, realised in the first five financial years;
- Italian income.

Inheritance and gift tax will be due on Italian assets only (and not on assets held abroad).

The regime has been available since FY 2017 and, once elected, runs for 15 years. It can be revoked at any time. The special arrangements terminate immediately if tax is not paid, or is only partially paid, by the tax payment deadline of every year.

The regime is subject to certain conditions as the applicant must:

- have been tax resident outside Italy for at least nine of the 10 previous financial years;
- become a resident of Italy under Italian tax law;
- opt for this regime through the Italian annual return.

The applicant can apply for a tax ruling from the Italian tax authorities in order to ensure that the requirements are satisfied. The tax ruling application can be submitted even before the individual moves to Italy.

8.7.5 Special tax regime for certain inbound workers

Since 2016, the Italian government has offered various tax breaks to certain workers who move to Italy. Basically, in the case of individuals who have transferred their residence to Italy since 1 January 2020, 70 percent of their employment or self-employment income is exempt from IRPEF. The exemption runs for five financial years, starting from the year in which the worker's residence is transferred to Italy. The exemption is increased to 90 percent for individuals who become resident in Abruzzo, Molise, Campania, Basilicata, Calabria, Sardinia or Sicily. Under certain conditions the relief can be extended for a further five years at 50 percent, if the individual has purchased property in Italy or has children who are minors.

The regime is applicable to individuals:

- who have not been resident in Italy in the two financial years preceding their transfer;
- who remain resident in Italy for at least two financial years;
- whose work is carried out mainly in Italy.

The regime applies only to Italian-source income. Moreover, this regime and the Euro 100,000 flat-tax regime are mutually exclusive.

9

Employment Law

9. Employment Law

9.1 Establishment of the Employment Relationship

Any company wishing to hire an employee in Italy must first have carried out the following activities or fulfil the following requirements:

- Undersign an **employment contract**, which contains, in paper or electronic format, all the information required under Italian labour law;
- Register the company with the **Centro per l'Impiego (Job Centre)** (hereinafter CPI), which is a territorial branch of the public employment agency system.
- Register the Company with **I.N.A.I.L.**, the National Institute for Compulsory Insurance against Accidents at Work.
- Register the Company with **I.N.P.S.**, the National Social Security Institute, which manages the liquidation and payment of pensions and other social security and welfare benefits.
- Register the company with the **Welfare Benefit Funds.** Most collective bargaining agreements stipulate those employees with certain contractual requirements, category or type of contract, must compulsorily be registered with health care funds.

9.2 The Employment Relationship

Investing in the Italian labour force means interfacing with a wide range of types of contract, relative to salaried but also self-employed relationships.

Italian law stipulates that full-time subordinate employment is limited to a maximum of 40 hours per week, to be worked over 5 or 6 working days. It is possible to work overtime but in the wake of restrictions laid down by law. It is possible to sign a part-time employment contract, both in open-ended and fixed-term contracts.

Here below is a review of the main types of contracts, and their essential elements:

a) Open-ended Employment Contract

This is the employment contract most commonly used by companies wishing to hire in Italy and, in accordance with Article 1 of Legislative Decree 81/2015, represents the common form of employment relationship.

The person hired under this contract is entitled to various legal institutions, the best known among which are: holidays, leave, T.F.R. (severance pay), sickness, maternity, etc.

Should the necessary conditions be met (residence of the employee, age, unemployment status, etc.), the employer can take advantage of various incentives provided by the State

b) Fixed-term Employment Contract

This type of contract provides for a term to be attached to the employment relationship. It is particularly useful for companies that have to cope with peaks in workload at particular and limited times or in the case of new hirings for particular types of activities.

The versatility of this contract ensures that companies have temporary labour at their disposal, while still acknowledging the same rights as open-ended employment.

Fixed-term employment is possible, without attaching any specific reason to the contract, for a maximum duration of 12 months. The term affixed to the contract can exceed this period, up to a maximum of 24 months, where there are specific reasons linked to the company's temporary needs, unrelated to ordinary business, or to replace other absent workers provided they are not on strike.

This type of contract provides for several limitations, such as:

- numerical limits: equal to 20% of the number of open-ended employees in force in the company on January 1st each year;
- hiring limits: it is not possible to hire fixed-term workers if there have been collective redundancies in the previous six months or where wage support measures are in place (e.g. furlough schemes);
- a maximum of 4 contract extensions are possible;
- contributions: there is an additional contribution to be paid by the employer of 1.4% of the taxable salary for social security purposes;
- constraints on new hirings: A person who has worked for a period of more than six months has the right of precedence in recruitments with open-ended contracts made within the following 12 months with reference to the tasks already performed.

d) Apprenticeship

Apprenticeship is a subordinate employment contract of indefinite duration with the aim of the training and employment of young people, which allows for the employer to benefit from an advantage in the payment of contributions and a reduction in the basic wage to be paid to the worker.

There are three different types of apprenticeship in Italy:

- Level 1 apprenticeship: reserved for students enrolled in secondary school, alongside ordinary academic teaching, aimed at an upper secondary school diploma, with a career path providing a more complete training;
- Level 2 apprenticeship: known as a ‘professionalising’ apprenticeship, it is the one most used by companies and provides a career path in the company aimed at achieving a specific professional qualification;
- Level 3 or ‘advanced training and research’ apprenticeship: this is reserved for students enrolled at universities or higher education institutions and is aimed at research activities or at obtaining an academic qualification.

There are also numerous advantages for those who decide to hire young people and the unemployed with an apprenticeship contract:

- the possibility of under-classifying the employee by up to a maximum of two levels below the tasks for which the contract is intended (lower basic pay);
- remuneration: the possibility of acknowledging a remuneration as a percentage of the final target level.
- personnel costs: those hired with apprenticeship contracts benefit from contribution and insurance relief.

d) Internship

An internship, more commonly known as a traineeship, is a form of placement of young people within a company and serves to train people by giving them a work experience.

Internships are divided into curricular and extra-curricular.

It is possible to hire internees for a minimum of 2 months and a maximum of 12, while still having to guarantee a participation allowance set by each Region. There are limits to the maximum number of internships that each company can sign up for.

e) The Supply of Contract Work

Contract work is an employment relationship whereby a company can employ staff not directly but through an employment agency registered in a special register kept at the National Agency for Active Employment Policies (ANPAL).

f) Self-Employment

- **Para-subordination: Coordinated and Continuous Collaboration (COCOCO)**

This is a particular form of self-employment that differs from the general model above because, despite the formal qualification as a self-employed worker, it has certain similarities with subordinate employment.

Self-employed work is understood as those services that take the form of the performance of a work or service for a client, for remuneration and without subordination.

In the absence of such subordination, one may be in the presence of a para-subordinate relationship which, however, can still be acknowledged as subordinate work if a series of indices identified over the years by case law are met, such as: inclusion in the organisation of the company, continuity of the service, absence of business risk, compliance with a working schedule predefined by the principal. The company that decides to sign a collaboration contract will have to comply with the same obligations typical of a subordinate employment relationship, albeit with some differences linked to the contribution system.

- **Occasional collaborations**
  Again, these are self-employment services, without any subordination to the principal. The fundamental characteristic of its occasional nature is that the service is to be performed only once and for a short period of time.

9.3 The Employment Contract

In Italian law, an employment contract must be signed before starting a working activity with a person. Depending on the type of activity to be carried out and the manner in which it is to be carried out, the type of contract to be concluded, whether subordinate or autonomous, must be identified.

9.4 Regulating the Employment Contract

The National Collective Labour Agreement

The National Collective Bargaining Agreement (C.C.N.L.), is a set of rules designed to regulate both the regulatory aspects of the relationship and those of an economic nature. The essential purposes of the collective agreement are:

- to determine the content of labour relations in the sector to which the company belongs (e.g. trade, industry, transport, etc.)
- to regulate relations between the signatories to the agreement.

By way of example, the C.C.N.L. defines the subdivision of employees into categories (blue collar workers, white collar workers, middle management and executives), into levels (the various categories can be subdivided into more than one level), the base salaries for each level, the number of months into which the annual salary is divided (13 or 14 months), trial periods, holidays and leave, notice days in the event of termination, treatment in the event of illness, maternity, accident, etc.

In Italy, as of 2021, there are 985 Collective Agreements registered. The most widespread are the C.C.N.L. for Commerce and the C.C.N.L. for the Engineering Industry.

9.5 Payroll and Labour Costs

Once the employment relationship has been established and the contractual conditions defined, the payroll must be processed, and the make-up of labour costs must be identified.

The Single Employment Ledger - Presence and Absence

Italian law requires that all data relating to the employment relationship and the presence and/or absence of workers be recorded in a special book, called the 'Libro Unico del Lavoro' (Single Employment Ledger) (hereinafter LUL). In practice, the LUL is made up of the employees' pay slips plus a sheet showing the hours of presence and/or absence for each working day (the whole thing can also be included in the employee's pay slip alone).

Salary variables

The gross monthly remuneration that is paid to the employee is determined between the contracting parties when the employment contract is concluded. In addition to free bargaining between the parties, the gross salary is derived from the minimum wage limitations laid down in the C.C.N.L. and, in some cases, in individual company contracts. The part of remuneration exceeding the minimum wage laid down in the C.C.N.L. is called 'superminimo'. Each C.C.N.L. provides for the number of monthly payments into which the gross annual remuneration is divided: normally 13th monthly payments (as in the C.C.N.L. for the Metalworking Industry), where the additional monthly payment is paid before the Christmas holidays, or 14 monthly payments (as in the C.C.N.L. for Commerce), where in addition to the 13th monthly payment an additional monthly payment is made in June each year. The accrual of the right to receive additional monthly payments is done on a monthly basis. By working a whole month, the employee accrues 1/12 of the additional monthly payment.

Social Contribution deductions

In addition to the company classification in the C.C.N.L. of reference, the classification that I.N.P.S. (National Social Security Institute) acknowledges the company at the time of registration is also very important. In fact, the application of different contribution rates derives from the social security classification, both for the company and the employee, which must be used in calculating the contributions to be paid.

Contributions are calculated not only on remuneration, but on all the emoluments paid to employees, such as, for example: bonuses, commissions, overtime, etc.

The rates to be applied on pay differ depending on the company sector and the classification assigned by INPS. Roughly, they are equal to:

- at the company's expense: 30%
- at the employee's expense: 9.19% plus 1% for salaries exceeding Euro 48,279.00 per year.

The employee also has the option of enrolling in a pension fund, paying a portion of his or her own contribution or accrued severance indemnity. Should the pension fund be the one provided for in the C.C.N.L., there is also a compulsory contribution payable by the Employer.

Withholding taxes

Taxes on employees are progressive according to the income received and are calculated directly in the pay slip by the employer as withholding agent. The taxes to be calculated are IRPEF (personal income tax), regional and municipal surcharges.

The taxable base on which the taxes are to be calculated (taxable income) is obtained by reducing the gross salary by the social security contributions withheld from the employee and applying the IRPEF brackets provided for by law.

Please refer to relative paragraph for the taxation of employee income.

INAIL - Insurance against accidents at work

Insurance against accidents at work is a cost entirely borne by the company and must be considered both in subordinate and para-subordinate employment relationships. Depending on the riskiness of the activity carried out by employees, the Institute communicates a risk rate with a percentage, which must be applied to the annual income of each employee in order to calculate the total premium due.

The T.F.R. - Severance Indemnity

The Trattamento di Fine Rapporto (T.F.R. - severance indemnity), which is an indirect additional element to remuneration, is a typical element of Italian law. The T.F.R. is accrued by the employee on a monthly basis and is paid to the employee upon termination of employment.

RECURRING COST ITEMS
RAL - gross annual salary (including all elements additional to salary, such as bonus, commission, fringe benefits, etc.)
I.N.P.S. social security contributions - The portion to be calculated as a cost is the one charged to the Company
Pension or supplementary health care funds
Insurance premium - INAIL
T.F.R.

9.6 Termination of the Employment Relationship

The termination of the employment relationship can occur for various reasons:

- resignation of the employee;
- dismissal;
- expiry of the term (for fixed-term employees);
- termination by mutual consent;
- death of the employee;

Collective agreements establish a period of time within which the contracting parties must give notice of termination of employment. This period constitutes the notice to be given to the other party, so as to allow the employee to seek new employment in the event of dismissal and the company to replace the employee in the event of resignation.

Resignation

The employee can resign from the employment contract without having to provide justification to the employer. He must respect the notice period established under the Collective Agreement.

Individual Dismissal

- Dismissal by the company can occur only in the presence of one of the following reasons:
- just cause, meaning all those situations that damage the bond of trust with the employee (e.g. threats, damaging company property, etc.);
- subjective justified reason, significant breach of contractual obligations (e.g. negligent conduct, poor performance, breach of contractual obligations, etc.);
- objective justification, for reasons inherent in the production activity, organisation of work and regular operation thereof. Dismissal is not valid if the employee can be redeployed to other work positions within the company.

Collective Dismissal

Collective dismissal provides for two distinct cases, both governed by Law 223/1991, i.e. 'staff reduction' and workers in 'Cassa Integrazione Guadagni Straordinaria' (extraordinary furlough scheme).

The first case occurs when the company employs at least 15 workers and intends to lay off at least five workers within a period of 120 days, in each production unit or in several production units within the territory of the same province, as a result of a reduction or transformation of business or work activity.

The second concerns employers that are benefiting from extraordinary wage supplementation instruments but are unable to guarantee the re-employment of all suspended workers and cannot use alternative measures. In this case, the application of the discipline is independent of the number of workers to be dismissed.

9.7 Compulsory and Complementary Social Security

Italian legislation provides for three different pillars of social security:

a) Public Welfare;
b) Group Pension Plans;
c) Private Pension Schemes.

Public Welfare

The current Italian pension system is based on a series of legislative measures that have changed in structure several times over the last 27 years. Since the 1995 reform (Law 335/1995), the method of calculating pensions has changed from the retributive to the contributory regime.

There is a substantial difference between the two regimes:

- In the **earnings-related regime**, the pension corresponds to a percentage of the employee's salary: it depends on the length of service and the wages received in the last period of working life, which tend to be the most favourable;
- In the **contributory scheme**, on the other hand, the amount of the pension depends on the amount of contributions paid by the employee over the entire working life.

To date, the social security framework has been completely redesigned as follows:

- Old-age pension: a minimum contribution period of 20 years and reaching 67 years of age for both female and male workers is required;
- Early retirement: irrespective of the age and provides that from 2022 to 2026 it will be possible to take early retirement with 42 years and 10 months of contributions for male workers and 41 years and 10 months for female workers.
- The pension calculation scheme envisages that the contribution-based method will also be extended to those who, up to 31 December 1995, have less than 18 years of contributions and to those who, on the same date, have a contribution period of 18 years or more.

Given the complexity and variety of the subject, it is appropriate to verify each specific situation.

Group Pension Plans

These are forms of aggregate participation based on category, company or collective bargaining agreements which, unlike the public welfare system, do not involve compulsory membership. Membership entails the periodic allocation of a voluntary contribution or of one's severance pay to funds defined on the basis of collective agreements or contracts.

Private Pension Schemes

This differs from the public welfare system in that it is voluntary and from the category complementary system in that it is a personal choice. Individual supplementary pensions allow workers to maintain their economic status after reaching retirement age by allocating further portions of their salary to funds or private entities.

9.8 Immigration

European citizens

European Union citizens have the right to reside in the national territory for a period not exceeding three months without any conditions or formalities, except for the possession of a valid identity document for expatriation. Presence on the State territory for a period exceeding three months must be declared and justified. In this case, in fact, it is necessary to apply for residency, i.e. to register at the registry office of the local municipal council of habitual residence, whatever the reason for the stay, within three months of entering Italy.

The employment of an EU worker follows the same ordinary procedures as for the employment of an Italian worker.

Non-European citizens

The visa, which the foreign citizen needs only for entry into Italy, is issued by the Italian embassy or consular offices of the foreign citizen's country of residence. Once in Italy, the foreign national must, within eight working days, apply for a residency permit, which is issued in Italy by the competent 'Questura' (Police Headquarters) depending on the province in which the foreign national is located.

A visa for the purpose of subordinate employment (open-ended, fixed-term, seasonal) is obtained only after having obtained clearance for employment from the Single Desk for

Immigration (Sui) that is competent for the province in which the work will be carried out.

The visa for reasons of self-employment can be requested in order to carry out a non-occasional activity in Italy of an industrial, professional, artisan or commercial nature, to establish a company or partnership and to hold corporate offices. In order to obtain it, it is necessary to possess the professional and moral requisites required by State law for Italian citizens to carry out the same type of activity.

The maximum number of foreign citizens who may enter Italy is defined annually by a special decree, known as the 'Decreto Flussi' (Flow Decree).

The duration of the residency permit is the same as that stipulated in the entry visa and cannot, in any case, exceed two years, for self-employment and for permanent employment.

The renewal of the residency permit must be requested at the competent Questura (police headquarters) in the province of residence at least 60 days prior to its expiry date, in order to verify that the conditions have been met.

9.9 Safety at Work

Any company that has shareholders, employees or self-employed workers must comply with all legal obligations in the field of safety at work. Here below is the list of the main obligations to be fulfilled to comply with what, the Italian reference legislation "Legislative Decree 81/08 smi" provides for in the field of Safety at work, staff to be appointed and documentation to be drawn up:

- **a.** Risk Assessment Document - DVR: this is a document that must be drawn up by the company to show an estimate of all potential hazards for workers during the performance of work activities.
- **b.** Emergency plan: The emergency plan is a document that complements the Risk Assessment and sets out the necessary measures that workers must put in place to minimize the risk in the event of an emergency. It is a memorandum of understanding between all workers and for people present in any capacity in a workplace, according to which when an emergency occurs, any work activity is interrupted and a rapid and orderly exodus to safe places is prepared.
- **c.** Carrying out of Fire Emergencies/ fire marshall: a person has to be named in charge

of fire prevention measures, firefighting and emergency management.

d. Occupational Doctor/ Company Physician: a Doctor has to be named who works with the employer for the purposes of risk assessment and appointed by it to carry out health surveillance.

e. Carrying out first aid: an employee is named as worker in charge of measures with regard to first aid and emergency medical care.

f. Safety Trainings: All employees and all those involved with responsibility in safety on workplace have to be informed and recurrently trained on the risks present, and on the prevention and protection measures to be taken.

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