

DOING BUSINESS IN ITALY 2010



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Doing Business in Italy

March 2010

Introduction

This publication has been prepared by the International Bureau of Fiscal Documentation (IBFD) on behalf of BDO Member Firms and their clients and prospective clients. Its aim is to provide the essential background information on the taxation aspects of setting up and running a business in this country. It is of use to anyone who is thinking of establishing a business in this country as a separate entity, as a branch of a foreign company or as a subsidiary of an existing foreign company. It also covers the essential background tax information for individuals considering coming to work or live permanently in this country.

This publication covers the most common forms of business entity and the taxation aspects of running or working for such a business. For individual taxpayers, the important taxes to which individuals are likely to be subject are dealt with in some detail. We have endeavoured to include the most important issues, but it is not feasible to discuss every subject in comprehensive detail within this format. If you would like to know more, please contact the BDO Member Firm(s) with which you normally deal. Your adviser will be able to provide you with information on any further issues and on the impact of any legislation and developments subsequent to the date indicated below.

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Italy

This chapter is based on information available up to 2 March 2010.

Introduction

Companies are subject to a corporate income tax and a regional tax on productive activities. Social security contributions are also due by companies. A VAT system is applied.

The currency is the euro (EUR).

1. Corporate Income Tax

1.1. Type of tax system

Italy applies a classical system of taxation of corporate profits. The former imputation system is abolished and replaced by a participation exemption for corporate shareholders (see 2.2.). Individuals may qualify for a partial exemption; otherwise, a final withholding tax is levied; for details, see Individual Taxation, 1.5.

1.2. Taxable persons

Corporate income tax is levied on:

- (1) the following companies:
 - joint-stock companies (S.p.A.);
 - limited liability companies (S.r.l.);
 - partnerships limited by shares; and
 - cooperative and mutual insurance companies; and
- (2) public and private entities (other than companies) and trusts, with or without legal personality, whether or not their sole or main business purpose is the exercising of business activities.

Partnerships (commercial and non-commercial) other than partnerships limited by shares are treated as transparent entities and are not subject to corporate income tax. Under certain conditions, limited liability companies and limited liability cooperatives owned by not more than 10 or 20 individuals, respectively, may opt to be treated as flow-through entities. In such a case, the income of the entity is attributed directly to the members.

Non-resident companies and entities of every kind (including partnerships) are subject to corporate income tax on income derived from Italy.

1.2.1. Residence

Resident companies are those which for the greater part of the tax year have had their legal seat, place of effective management or main business purpose in Italy. The place of incorporation is not relevant.

1.3. Taxable income

1.3.1. General

All income derived by companies subject to corporate income tax is considered business income. The taxable base is the worldwide income shown in the profit and loss account prepared for the relevant financial year according to company law rules and adjusted according to tax law provisions. Income subject to final withholding tax (see 1.6.2.) or to substitute tax (see 6.2.1.) is not taken into account in determining taxable income.

Taxable business income is determined on the accrual basis with certain exceptions (e.g. for dividends and directors' fees).

From 1 January 2008, companies drafting their financial statements according to International Accounting Standards (IAS) are subject to a specific tax regime, under which the accounting treatment under IAS becomes fully relevant for corporate income tax purposes. In particular, it is now stated that the criteria set forth by IAS for the qualification, timing accrual and classification of items of income and costs are relevant for corporate income tax purposes and prevail over any provisions of the tax law. The rules related to these new provisions will be specified in detail in a forthcoming ministerial decree.

1.3.1.1. Minimum tax on non-operating companies

“Non-operating” entities are taxed on a deemed minimum income. Resident companies, commercial partnerships and permanent establishments of non-resident entities are deemed to be non-operating if the total of their turnover (other than extraordinary turnover) and their increase in inventory is lower than the aggregate amount of:

- (1) 2% of the value of participations in resident and non-resident companies;
- (2) 6% (5% for commercial buildings (A/10 category), 4% for residential property and 1% for any real estate located in a municipality having a population of less than 1,000) of the value of real estate and ships owned or leased by the entity; and
- (3) 15% of the value of other business assets other than the assets in (2) owned or leased by the entity.

The values used are the ones resulting from the average of the tax year concerned and the 2 previous tax years.

The deemed income of a non-operating entity may not be lower than the sum of the following amounts:

- 1.50% of the value of the participations in (1);
- 4.75% of the value of real estate and ships in (2) (3% for residential property acquired in the relevant tax year and in the 2 preceding years, 4% for com-

mercial buildings (A/10 category) and 0.9% for any real estate located in a municipality having a population of less than 1,000); and

- 12% of the value of the business assets in (3).

Losses of previous years may be set off against the amount of actual income only to the extent it exceeds the deemed income.

The minimum tax does not restrict the powers of the tax authorities or the assessment of the actual income. The presumptive minimum taxable income can be rebutted only by submitting an advance ruling.

This special tax regime does not apply to:

- companies during their first tax year of activity;
- companies subject to bankruptcy proceedings;
- companies whose shares are listed on a regulated market (e.g. stock exchange), to their parent companies and to their subsidiaries;
- companies having more than 50 shareholders;
- companies that have had in the 2 years preceding the relevant one not less than 10 employees;
- companies having a total operating turnover higher than the value of the total assets in the balance sheet; or
- companies satisfying the parameters for the sector studies.

1.3.2. Exempt income

Interest on public bonds issued before 20 September 1986 is exempt from corporate income tax.

1.3.3. Deductions

As a general rule, costs and expenses may be deducted only if they are incurred for the production of income. This rule does not apply to certain deductible items, such as interest paid and social security contributions.

Effective for interest accrued in tax years starting on or after 1 January 2008, interest expenses, other than capitalized interest expenses, are fully deductible up to an amount equal to interest income accrued in the same tax period. Any excess over that amount is deductible to the extent of 30% of “gross operating income” (earnings before interest, taxes, depreciation and amortization, EBITDA). The EBITDA is calculated as the difference between (i) revenues and (ii) costs of production, excluding depreciation, amortization and financial leasing instalments. The relevant items are those resulting from the profit and loss account of the company. For companies drafting their financial statements pursuant to IAS, the corresponding items of the profit and loss account are taken into account.

Any excess of interest expenses over the above threshold (i.e. 30% of EBITDA) may be carried forward for deduction in the following tax periods to the extent that the net interest expenses (i.e. those exceeding interest income) accrued in such tax periods are less than 30% of EBITDA. Any excess of 30% of the EBITDA over net interest expenses realized from tax periods beginning on or after 1 January 2010 may be used to increase the relevant threshold for the following tax periods.

Interest that is not deductible under the new provisions is not recharacterized as a dividend distribution in the hands of the recipient. Therefore, it is fully taxable in the hands of the recipient even if it is not deductible in the hands of the paying company.

If a company has derived exempt interest or other income on public or private bonds acquired on or after 28 November 1984, interest paid is only deductible for the part that exceeds the exempt interest derived.

Royalties paid for patents, trademarks, know-how and similar rights are deductible. Royalties paid to non-resident affiliated companies are deductible to the extent they are paid on an arm’s length basis.

Dividends paid are not deductible.

No deduction is allowed for the costs of acquisition, maintenance, repair and operation of certain vehicles. As an exception, such costs are (i) fully deductible if the vehicles are used directly in, and absolutely necessary for, the business proper of the company and (ii) partially deductible when put at the disposal of employees. In the latter case, such costs are deductible up to the amount that is taxable as a fringe benefit in the hands of the employee. Additional limitations apply for the deductibility of depreciation (see 1.3.5.).

From 1 January 2008, entertainment expenses are entirely deductible, provided that they are (i) inherent to the business activity, (ii) duly supported with documentary evidence and (iii) their amount is appropriate, according to criteria set by a ministerial decree. Previously, such expenses were deductible for one third of their amount.

Most indirect taxes (e.g. stamp duties and registration tax) and VAT (if not creditable) are deductible. For the regional tax on productive activities (IRAP), see 3.1.4.

1.3.4. Valuation of inventory

Inventory is generally valued at the lower of the cost price and the fair market value, for both tax and accounting purposes. However, companies may elect to adopt another system of inventory valuation provided it does not result in a valuation lower than that the LIFO method would result in. Companies that use the FIFO method for accounting purposes may use it also for income tax purposes.

1.3.5. Depreciation and amortization

Depreciation of tangible assets is permitted on a straight-line basis. In particular, depreciation is determined by applying the coefficients established by the Minister of Finance to the cost price, reduced by half for the first tax year. These coefficients are established for categories of similar assets based upon a normal period of wear and tear in the various production sectors (rates for buildings vary between 3% and 7%, for machinery and equipment between 20% and 25%). Land is not depreciable.

Tangible property with an acquisition cost less than EUR 516.46 may be written off in the current year.

From 1 January 2008, it is no longer allowed to double the yearly depreciation allowance in the first 3 years following the acquisition of an asset, nor to increase the amount of the depreciation allowance in the case of intensive utilization of the asset.

Depreciation of vehicles is allowed only if used exclusively for the business proper.

Costs incurred to acquire patent rights and know-how are deductible in yearly instalments of up to one half of the cost. Costs incurred to acquire trademarks can be depreciated by up to one eighteenth of their value for each tax year. Goodwill may be depreciated up to one eighteenth of its value for each tax year, but only if it is recorded in the balance sheet (this requirement does not apply to companies drafting their financial statements according to IAS).

1.3.6. Reserves and provisions

Up to 0.5% of total accounts from trade receivables not covered by insurance at the end of the tax year may be deducted or set aside as a provision for bad debts until the provision reaches 5%. Losses due to bad debts, if evidenced by accurate proof or if resulting from bankruptcy or other receivership proceedings, are deductible insofar as they cannot be covered by the reserve.

A provision may be made up to the amount of the net loss resulting from revaluation of assets and liabilities denominated in foreign currencies at the exchange rates at the end of the tax year.

Specific laws from time to time authorize the creation of reserves for specific purposes, the most common being for the revaluation of assets. Such reserves are normally taxed when distributed to the shareholders.

1.4. Capital gains

Capital gains relating to assets used in business activity must be included in business income if they have been realized on alienation or as indemnity for loss or damage of the property. If the property has been held for at least 3 years, capital gains may be included, at the company's option, in their entirety for the year in which they are realized or in equal instalments for the current and following tax years, but not beyond the fourth year.

Gains (and losses) on motor vehicles whose depreciation is limited (see 1.3.5.) are taxable or deductible, as the case may be, up to the ratio between the depreciation deductible for tax purposes and the total depreciation.

Gains on the alienation of shares, financial instruments assimilated to shares and interests in resident companies or partnerships are exempt from tax for 95% of their amount under the participation exemption regime. The exemption applies, provided (i) the participation has been held at least from the first day of the 12th month preceding the alienation (the LIFO method applies), (ii) the participation is classified as a financial asset in the first balance sheet closed after the acquisition and (iii) at least since the beginning of the third financial year preceding the alienation the participated company has been engaged in a business activity.

If the above conditions are not met, the disposal generates gross receipts, which are taxable as ordinary income.

1.5. Losses

1.5.1. Ordinary losses

Net losses may be carried forward for 5 years insofar as they cannot be set off against the net taxable profits of the current year. However, if a loss is derived in the first 3 tax years from the beginning of the company's business activity, it may be carried forward indefinitely, provided that the losses are generated in an actually new activity (i.e. an activity that was not previously carried on by another person (even unrelated)). Losses may not be carried back.

Losses may not be carried forward if:

- the majority of the voting rights of the company is transferred; and
- in the tax year in which the transfer occurs or in any of the two preceding or following periods, the activity of the company is changed from the one originating the losses.

This limitation however does not apply if the loss-making company has had in the tax year preceding the transfer at least ten employees and produced an amount of gross receipts and incurred costs for employment higher than 40% of the average of the 2 preceding tax years.

See also 1.3.1.1.

1.5.2. Capital losses

Capital gains are included in ordinary taxable income and losses are correspondingly treated as described in 1.5.1. Capital losses on assets that qualify for the participation exemption (see 1.4.) are not deductible for tax purposes; however, the holding period that triggers non-deductibility is 12 months rather than 18 months.

Capital losses realized on the sale of securities and financial instruments that do not qualify for the participation exemption are not deductible up to the amount equal to 95% of dividends received on such securities and financial instruments in the 36 months prior to the sale. The provision applies only on shares and similar instruments held for less than 36 months and provided that the issuer is not resident in a tax haven jurisdiction (see 7.1.) and does carry out a commercial activity.

1.6. Rates

1.6.1. Income and capital gains

From tax year 2008, the general corporate income tax rate is 27.5% (previously 33%). The rate is 33% for companies that had in the previous financial year revenues higher than EUR 25 million and carry on certain types of activities in the fields of energy production and supply. Companies that produce electricity from biomass, wind power or solar power are not subject to the 33% rate.

1.6.2. Withholding taxes

Dividends paid by resident companies to other resident companies are not subject to withholding tax.

Interest paid to resident companies is subject to withholding tax at various rates, as follows:

- 0% for interest on bonds issued by the state of Italy, as well as by Italian banks and by companies listed on the Italian Stock Exchange with a maturity of at least 18 months;
- 12.5% for interest on bonds issued by non-listed companies with a maturity of at least 18 months, provided that, at the date of issue, the interest rate was not higher than (a) 200% of the official discount rate, in the case of bonds listed on an EU-regulated market or (b) 166% of the official discount rate, in the case of other bonds and for interest on loans; and
- 27% for interest on other bonds with a maturity of less than 18 months, as well as on bank or post office deposits and current accounts.

The tax withheld is creditable against the recipient's income tax liability.

Royalties paid by resident companies to other resident companies are not subject to withholding tax.

See 6.3. for withholding tax rates on payments to non-resident companies.

1.7. Incentives

1.7.1. Accelerated depreciation

The accelerated depreciation regime was repealed with effect from tax year 2008.

1.7.2. Regional and other incentives

Companies located in particular depressed areas in the south of Italy (i.e. Abruzzo, Basilicata, Calabria, Campania, Molise, Puglia, Sardinia and Sicily) are entitled to a tax credit in relation to their investments made in financial years 2007 until 2013 in new business assets (e.g. plant, machinery, equipment, software and patents on new technologies or on new production systems). However, the tax credit is not available for companies carrying out financial and insurance activities, fishing activities or belonging to the coal, steel or synthetic fibres industries.

From 1 July 2009, a tax incentive for investments in industrial assets has been introduced for entities generating business income, in the form of a deduction from the taxable income, equal to 50% of the value of the investments, to be made in the tax return relative to the 2010 tax period.

The main features of the tax incentive are the following:

- qualifying assets are machinery and equipment;
- the assets may be purchased or acquired by financial leasing in the period running between 1 July 2009 and 31 June 2010; and
- the incentive is revoked if the assets are transferred to third parties, or used for purposes unconnected to

the business activity, before the second tax period following the purchase.

Further, from financial years 2007 until 2009, a 10% tax credit is granted in relation to research and development costs incurred by companies. The tax credit is increased to 15% if the costs relate to an agreement signed by the company with a university or a public research institute. The total amount of the costs, on which the tax credit is calculated, cannot exceed EUR 15 million per year per company.

1.7.3. Tonnage tax

Following the example of other European countries, Italy has introduced a tonnage tax regime. Eligible taxpayers must opt for the tonnage tax regime within 3 months from the beginning of the first tax year; the option is irrevocable for 10 financial years and can be renewed.

Under this regime, taxable income will be determined by applying daily coefficients with reference to the tonnage and age of the relevant ship. Capital gains and losses on the ships for which the tonnage tax is applicable are included in the income so determined. However, if the sale concerns a ship which was already owned by the taxpayer in the tax year before the first application of the tonnage tax regime, an amount equal to the difference between the consideration received and the historic cost, net of depreciation taken, will be added to taxable income.

1.8. Administration

1.8.1. Taxable period

The tax year for corporate income tax purposes is the financial year of the company, as determined by law or articles of incorporation. If the financial year is not so determined, or if it is longer than 2 years, the tax year is the calendar year.

1.8.2. Tax returns and assessment

The system is based on self-assessment. Companies must file their corporate income tax return electronically within 7 months of the end of the financial year.

1.8.3. Payment of tax

Corporate income tax is normally paid as two advance payments for the current tax year, based on the tax paid for the preceding tax year, the balance being payable at the time the tax return is filed. Any excess tax paid may either be carried forward or refunded.

1.8.4. Rulings

If there is uncertainty regarding the correct interpretation of tax provisions, a taxpayer may obtain a private ruling by filing a written request with the tax authorities. The tax authorities must issue a written and reasoned reply within 120 days. A reply is only binding on the tax

authorities for the case presented and in respect of the requesting taxpayer. If no reply is given within 120 days, it is assumed that the tax authorities agree with the interpretation of, or the tax treatment proposed by, the requesting taxpayer and no penalties can be applied.

Special ruling procedures are provided with respect to the deductibility of advertisement and entertainment expenses (see 1.3.3.), multinational companies (see 6.2.3.), anti-avoidance provisions (see 7.) and non-operating companies (see 1.3.1.1.).

2. Groups of Companies

2.1. Group treatment

Both domestic and worldwide consolidation is available.

2.1.1. Domestic consolidation

The option for domestic consolidation must be exercised by the controlling company and the controlled companies included in the consolidation. Resident companies that are granted a partial or total exemption from corporate income tax cannot be part of a group. A non-resident company may only exercise the option as controlling company and provided that (i) it is resident in a tax treaty country, and (ii) it carries on a business activity through a permanent establishment in Italy in whose books the participation is recorded. Once exercised, the option is irrevocable for a period of 3 tax years. Specific rules are introduced in the case of interruption of the consolidation regime and where the option is not renewed at the end of the 3-year period.

A company is controlled by another company if the latter has directly or indirectly the majority of voting rights in the general shareholders' meeting of the former and directly or indirectly holds more than 50% of the shares of the former company and is entitled to more than 50% of the profits of the former.

In order to exercise the option, the following conditions must be met:

- identity of the tax year of the consolidated controlled companies with the one of the controlling company;
- joint exercise of the option by all the consolidated companies;
- election of domicile at the seat of the controlling company for notification purposes; and
- communication to the tax authorities within the twentieth day of the sixth month of the financial year to which the consolidation applies.

The effect of the domestic consolidation is that, with certain adjustments, all taxable income of the controlled companies is aggregated and taxed at the level of the controlling company.

Losses incurred before the exercise of the option are ring-fenced at the level of the company that incurred them.

From tax year 2008, certain benefits deriving from tax consolidation are repealed. In particular:

- dividends paid by companies within the consolidation group are no longer fully exempt (i.e. 5% of their amount is included in the taxable income of the receiving company); and
- the transfer of capital assets between companies within the group is no longer neutral for tax purposes.

However, with regard to the interest deduction (see 1.3.3.), from tax year 2008, if a company joins domestic consolidation, any interest expenses exceeding the 30% of EBITDA limit may be offset against the taxable income of another company within the consolidation group, provided that the latter company has not reached the 30% of EBITDA limit itself. The offset is available only with regard to the interest expenses accrued after the inclusion in the consolidation group. The same rules apply with respect to the carry-forward regime of excess interest. From 25 June 2008, banks and insurance companies included in the a group are allowed to deduct interest expenses up to an amount equal to interest expenses payable to entities outside the group.

2.1.2. Worldwide consolidation

The option for worldwide consolidation may be exercised by a resident controlling company provided the following conditions are met:

- inclusion of all the controlled entities in the tax consolidation (all in, all out principle);
- joint exercise of the option by the consolidated entities;
- audit of the financial statements of the consolidated entities; and
- a statement issued by each controlled entity where several obligations are assumed.

An advance ruling must be requested from the tax authorities during the first tax year to which the consolidation should apply. The request must contain all the information necessary to verify the existence of the required conditions. Once the option is exercised, it is irrevocable for 5 tax years. If renewed, the option is irrevocable for 3 tax years.

A non-resident company is controlled by an Italian company if the latter has directly or indirectly the majority of voting rights in the general shareholders' meeting of the former and directly or indirectly holds shares, interests, voting rights and participations in profits exceeding 50%. This requirement must be met at the end of the tax year of the controlling company.

The effect of the worldwide consolidation is that the income of the controlled companies is imputed to the controlling company in proportion to its profit entitlement and to the profit entitlement of the other resident controlled companies. The imputation takes place at the end of the tax year of the non-resident controlled entities. The income resulting from the certified financial statements of the non-resident companies is, however, recalculated under the Italian rules, with certain simplifications. Losses incurred before the exercise of the option are not taken into account for tax purposes. Dividends distributed by group companies are not included in the taxable income of the recipient, while capital gains or losses on transfers of assets between group companies

are taken into account in an amount that is proportional to the difference between the profit entitlement in the alienating company and the profit entitlement in the receiving company (if lower). In such a case the tax value of the assets for the receiving company is equal to the tax value it had in the hands of the alienating company increased by the taxable capital gain.

2.2. Intercorporate dividends

Dividends received by resident companies from other resident companies are exempt from tax for 95% of their amount.

For foreign dividends, see 6.1.1.; for outbound dividends, see 6.2.1. and 6.3.1.

3. Other Taxes on Income

3.1. Regional tax on productive activities

The regional tax on productive activities (IRAP) was introduced in 1998 and replaced a number of taxes, among which the local income tax and the extraordinary tax on net assets.

3.1.1. Taxable persons

With respect to resident corporate taxpayers, IRAP applies to companies (see 1.2.), public and private entities and commercial and non-commercial partnerships.

3.1.2. Taxable base

IRAP is levied on the net value of the production derived in each Italian region. However, from tax year 2008, the taxable base for IRAP is determined by reference to the accounting results of the company without regard to the adjustments that are required for corporate income tax purposes. For companies drafting their financial statements according to IAS, the corresponding items of the profit and loss accounts are taken into account.

For commercial and manufacturing enterprises, the taxable base is the difference between the value of the production in the tax year (i.e. gross proceeds plus the increase in inventory plus work in progress) and the costs of production (i.e. the costs of raw and other materials, the costs of services, depreciation of tangible and intangible assets, the decrease in inventory of raw and other materials, provisions for risks and miscellaneous costs). The costs of personnel (except costs for employees engaged in research and development and for qualifying additional employees), losses on bad debts and interest paid are, in general, not deductible.

The following types of costs of labour may be deducted: social security contributions, certain costs for qualifying new employees, the costs of personnel involved in research and development activities, premiums of injury insurances of employees and, for companies other than banks, insurance companies and companies active in certain industries (such as transportation and utilities), an amount of EUR 5,000 for each employee with a perma-

nent employment contract (an additional EUR 10,000 is deductible for those employed in less developed regions; see 1.7.2.).

For non-operating companies, IRAP base is equal to the minimum income determined as explained in 1.3.1.1., increased by employment costs and interest expenses. Special rules apply to small and medium-sized enterprises.

Taxpayers carrying on business activities in more than one region by employing personnel in each region for more than 3 months, must apportion their taxable base among the regions on the basis of the remuneration paid to personnel employed in each region.

3.1.3. Rates

The standard rate is 3.9%. Regional authorities may increase or decrease the standard rate by up to 0.9176 percentage point.

3.1.4. Deductibility

IRAP is now deductible up to 10% of its amount. The partial IRAP deduction was introduced at the end of 2008, and the flat rate amount of 10% reflects the costs of personnel and interest that are not deductible for IRAP purposes. A claim for refund may be filed for the preceding tax years within the ordinary 48-month period from the payment date.

4. Taxes on Payroll

4.1. Payroll tax

There is no payroll tax.

4.2. Social security contributions

Employers must withhold social security contributions due by the employee (part of the social security contributions for the employee is due directly by the employer). The amount of social security contributions depends on the type and size of the business and the rank of the employee.

The aggregate contributions range from approximately 40% to approximately 45% of the aggregate remuneration accrued in the relevant year. The aggregate contributions are normally borne by the employer for 80% to 85% of their amount; the rest is borne by the employee and must be withheld by the employer.

Social security contributions are deductible for corporate income tax purposes.

5. Taxes on Capital

5.1. Net worth tax

There is no net worth tax.

5.2. Real estate tax

The municipal tax on immovable property is levied on the possession of immovable property (buildings, development land, rural land) located in Italy. The taxable base is the imputed income as determined by the immovable property registry, multiplied by a certain coefficient equal to 100 for residential property and to 50 for business property (with some exceptions).

The rate ranges from 0.4% to 0.7% depending on the municipality. This tax is not deductible for corporate income tax purposes.

6. International Aspects

6.1. Resident companies

For the concept of residence, see 1.2.1.

6.1.1. Foreign income and capital gains

A resident company is subject to corporate income tax on its worldwide income. There are no special rules for the taxation of foreign business income and foreign capital gains; the rules described in 1.3. and 1.4. generally apply.

Foreign dividends are treated in the same manner as domestic dividends (see 2.2.). The 95% exemption is subject to the condition that the dividends have not been fully or partially deducted in the state of source and are not distributed directly or indirectly by a company resident in a state or territory included in the CFC black list (see 7.4.), unless, in the latter case, a ruling has been obtained that the holding of the shares in the CFC does not achieve the localization of income in a state having a privileged tax regime.

Capital gains on shares in non-resident companies are treated in the same manner as domestic gains (see 1.4.). The exemption is subject to the condition that at least since the beginning of the third financial year preceding the alienation the participated company has not been a resident of a state or territory included in the CFC black list (see 7.4.), unless a ruling has been obtained that the holding of the shares in the CFC does not achieve the localization of income in a state having a privileged tax regime.

The regional tax on productive activities (see 3.1.) is levied only on the net value of production derived in Italy; the net value of production derived abroad is excluded from the taxable base. The net value of the production derived abroad is determined on the basis of labour cost incurred in respect of foreign installations and the total cost of labour.

6.1.2. Foreign capital

There is no net worth tax. Immovable property located abroad is not subject to the municipal tax on immovable property.

6.1.3. Double taxation relief

To avoid international double taxation an ordinary foreign tax credit is granted. The credit is calculated on a per-country basis.

In general, tax credit covers only direct foreign taxes, i.e. withholding taxes and taxes on business income. However, taxes definitively paid abroad on income included in the worldwide consolidation (see 2.1.2.) may be credited against the Italian corporate income tax up to the amount of Italian tax corresponding to the foreign income. In this respect, foreign income is computed first and a per-entity limitation applies. Furthermore, taxes paid in the foreign country upon distribution of profits may also be credited against the Italian tax, up to the amount of tax due in Italy on such profits. Excess foreign tax credits relating to the income of a foreign permanent establishment or a non-resident company included in the worldwide consolidation may be carried back and forward for 8 tax years.

The tax credit must be claimed in the tax return for the year in which the foreign tax is paid. If not, the right to the tax credit is lost.

6.2. Non-resident companies

Non-resident companies are those which for the greater part of the tax year do not have their legal seat, place of effective management or main business purpose in Italy.

In addition, a foreign company may be regarded as a resident of Italy if it controls an Italian company (i.e. may exercise "dominant influence") and:

- is controlled (subject to dominant influence) by an Italian resident person (company or individual); or
- is managed by a management board or other governing body composed for the majority of Italian resident persons (companies or individuals).

Non-resident companies are subject to Italian tax only on income derived from Italy.

Non-resident companies are also subject to the regional tax on productive activities, provided that they maintain a permanent establishment in Italy for at least 3 months. The computation of the regional tax on productive activities follows the rules for resident companies (see 3.1.).

6.2.1. Taxes on income and capital gains

Business income is taxable in Italy only if derived through a permanent establishment. If a permanent establishment exists, all Italian-source income is taxable under a force-of-attraction principle. Income is taxed according to the same rules as those applicable to resident companies.

If a non-resident company does not have a permanent establishment it is taxed separately on any source of income. Income and capital gains from immovable property are taxable if the property is situated in Italy. However, such capital gains are subject to the corporate income tax only if the sale takes place within 5 years from the purchase or construction of the immovable property.

If the amount of participation sold during a 12-month period does not exceed 2% of the voting rights or 5% of the capital in the case of participations in listed companies, the capital gain is not regarded as Italian-source income. An exemption applies also on such capital gains realized by entities resident in a country with which Italy has an adequate exchange-of-information system. If the amount of participation sold during a 12-month period does not exceed 20% of the voting rights or 25% of the capital in the case of non-listed participations, the capital gains are subject to a 12.5% substitute tax (these participations are referred to as “non-qualified participations”). If the amount of participation sold during a 12-month period exceeds the above percentages (2%, 5%, 20% and 25%) at least once in the 12-month period, the gain is included in the taxable income for 49.72% of its amount (50.28% is exempt). In such a case, capital losses are deductible for the same percentage (otherwise fully deductible). In the case of the 12.5% tax, capital losses are deductible from capital gains realized in the same financial year.

Dividend, interest and royalties paid by Italian resident companies to non-resident companies without a permanent establishment in Italy are normally subject to a final withholding tax (see 6.3.).

6.2.2. Taxes on capital

There is no net worth tax. Non-resident companies owning immovable property in Italy are subject to the municipal tax on immovable property (see 5.2.).

6.2.3. Administration

The Italian tax liability of non-resident companies is in general satisfied by way of final withholding tax or through the application of a substitute tax by resident authorized intermediaries. If this is not the case (e.g. income and capital gains from immovable property) the non-resident company must file a tax return and appoint a tax representative in Italy. The assessment procedures are the same as for resident companies (see 1.8.).

Multinational companies may request a ruling from the Italian tax authorities with particular reference to transfer pricing and the payment of dividends, interest and royalties. A ruling is binding on both parties for 3 tax years. The Italian tax authorities send a copy of the ruling to the competent authorities of the state of residence or establishment of the taxpayer(s) involved in the ruling.

6.3. Withholding taxes

6.3.1. Dividends

In general, dividends distributed to non-residents are subject to a final withholding tax of 27%. For dividends on saving shares (e.g. shares without voting rights), the rate of withholding tax is 12.5%.

However, a reduced rate of 1.375% applies to distributions of profits that have been realized in tax periods starting on or after 1 January 2008, provided that the beneficial owner of the dividends is a company or an entity (i) subject to corporate income tax and (ii) resi-

dent in an EEA country that allows an adequate exchange of information with Italian tax authorities.

Where the 27% withholding tax rate applies, if it can be shown that tax has been paid on the same dividends in the recipient's country of residence, a refund up to four ninths of the withholding tax may be claimed.

Under the domestic law implementing the EU Parent-Subsidiary Directive (90/435), no withholding tax is levied on dividends paid to a parent company in another EU Member State if both the parent and the subsidiary are qualifying companies under the Directive and the parent has held at least 10% (15% before 2009) of the capital of the subsidiary continuously for at least 1 year.

6.3.2. Interest

In general, interest payments to non-resident companies are subject to a final withholding tax at the rates applicable to interest paid to residents (see 1.6.2.). However, no withholding tax applies on interest paid to non-resident companies on (i) deposit accounts and current accounts with banks and post offices and (ii) bonds issued by the state, banks or listed companies if the beneficial owner is resident in a country with which Italy has an adequate exchange-of-information system.

Non-exempt interest on deposit and current accounts and bonds is subject to a 27% withholding tax. For bond interest the rate is reduced to 12.5% if the bonds have a maturity of at least 18 months and, at the date of issue, the interest rate was not higher than (a) 200% of the official discount rate, in the case of bonds listed on an EU-regulated market or (b) 166% of the official discount rate, in the case of other bonds. Interest on public and private bonds issued before 1 January 1997 may be subject to other rates.

Other types of interest paid to non-resident companies, including interest on loans, are subject to withholding tax at a 12.5% rate (27% if paid to a resident of a country or territory outside the European Union with a preferred tax regime).

Under the domestic law implementing the provisions of the EU Interest and Royalties Directive (2003/49), outbound interest and royalties are exempt from any Italian tax, provided that the recipient is an associated company of the paying company and is resident in another Member State or such a company's permanent establishment situated in another Member State. Two companies are “associated companies” if (a) one of them holds directly at least 25% of the voting rights of the other or (b) a third EU company holds directly at least 25% of the voting rights of the two companies. The relevant companies must have a legal form listed in the Annex of the Directive and be subject to a corporate income tax. A 1-year holding period is required.

6.3.3. Royalties

Royalties paid to non-resident companies are subject to a 30% withholding tax, which is generally applied to 75% of the gross amount of the payment, resulting in an effective rate of 22.5%.

For the EU Interest and Royalties Directive, see 6.3.2.

6.3.4. Other

Income from currency swaps and remuneration from securities lending contracts are exempt if paid to a resident in a qualifying country (see 6.3.2.); otherwise the income is subject to a 12.5% final withholding tax.

Income and other proceeds from derivative contracts concluded on an Italian or foreign regulated stock market are exempt in the hands of non-residents.

No branch profits tax is levied in Italy.

6.3.5. Withholding tax rates chart

The following chart contains the withholding tax rates that are applicable to dividend, interest and royalty payments by Italian companies to non-residents under the tax treaties currently in force. Where, in a particular case, a treaty rate is higher than the domestic rate, the latter is applicable.

In general, a reduced treaty rate may be applied at source if the appropriate residence certificate has been presented to the withholding agent making the payment.

	Dividends Individuals, companies (%)	Qualifying companies ³ (%)	Interest ¹ (%)	Royalties ² (%)
Domestic Rates				
<i>Companies:</i>	1.375/ 12.5/27	0	0/12.5/27	30
<i>Individuals:</i>	12.5/27		0/12.5/27	30
Treaty Rates				
<i>Treaty With:</i>				
Albania	10	10	0/5 ⁴	5
Algeria	15	15	0/15 ⁴	5/15 ⁵
Argentina	15	15	0/20 ⁴	10/18 ⁶
Armenia	10	5 ⁷	0/10 ⁸	7
Australia	15	15	10	10
Austria	15	15	0/10 ⁴	0/10 ⁹
Bangladesh	15	10 ¹⁰	0/10/15 ¹¹	10
Belarus	15	5	0/8 ⁴	6
Belgium	15	15	15	5
Bosnia and Herzegovina ¹²	10	10	10	10
Brazil	15	15	15	15/25 ¹³
Bulgaria	10	10	0	5
Canada	15	15	0/15 ⁴	0/10 ⁵
China (People's Rep.)	10	10	10	10
Croatia	15	15	0/10 ⁴	5
Cyprus	15	15	10	0
Czech Republic	15	15	0	0/5 ⁶
Denmark	15	0 ¹⁴	0/10 ⁴	0/5 ¹⁵
Ecuador	15	15	0/10 ⁴	5
Egypt	- ¹⁶	- ¹⁶	0/25 ⁴	15
Estonia	15	5 ¹⁰	10	5/10 ¹⁷
Finland	15	10 ¹⁸	0/15 ⁴	0/5 ⁵
France	15	5 ¹⁹	0/10 ²⁰	0/5 ⁵
Georgia	10	5	0	0
Germany	15	10	0/10 ²⁰	0/5 ⁶
Ghana	15	5 ¹⁰	10	10

	Dividends Individuals, companies (%)	Qualifying companies ³ (%)	Interest ¹ (%)	Royalties ² (%)
Greece	15	15	0/10 ⁴	0/5 ⁶
Hungary	10	10	0	0
Iceland	15	5 ¹⁹	0	5
India	25	15 ¹⁰	0/15 ⁴	20
Indonesia	15	10	0/10 ⁴	10/15 ²¹
Ireland	15	15	10	0
Israel	15	10	10	0/10 ⁵
Ivory Coast	15	15	15	10
Japan	15	10	10	10
Kazakhstan	15	5 ¹⁰	0/10 ⁴	10
Korea (Rep.)	15	10	0/10 ⁴	10
Kuwait	0/5 ²²	0/5 ²²	0	10
Latvia	15	5 ¹⁰	10	5/10 ¹⁷
Lithuania	15	5 ¹⁰	0/10 ⁴	5/10 ¹⁷
Luxembourg	15	15	0/10 ⁴	10
Macedonia	15	5	0/10 ⁴	0
Malaysia	10	10	15	15
Malta	15	15	0/10 ⁴	0/10 ⁶
Mauritius	15	5	- ¹⁶	15
Mexico	15	15	0/15 ⁴	0/15 ⁵
Montenegro ¹²	10	10	10	10
Morocco	15	10	10	5/10 ⁵
Mozambique	15	15	0/10 ⁴	10
Netherlands	15	5/10 ²³	0/10 ⁴	5
New Zealand	15	15	0/10 ⁴	10
Norway	15	15	0/15 ⁴	5
Oman	10	5 ²⁴	0/5 ⁴	10
Pakistan	25	15	30	30
Philippines	15	15	0/10/15 ²⁵	25
Poland	10	10	0/10 ⁴	10
Portugal	15	15	0/15 ⁴	12
Romania	10	10	0/10 ⁴	10
Russia	10	5 ²⁶	10	0
Saudi Arabia	10	5 ¹⁴	0/5 ⁴	10
Senegal	15	15	15	15
Serbia ¹²	10	10	10	10
Singapore	10	10	12.5	15/20 ²⁷
Slovak Republic	15	15	0	0/5 ⁶
Slovenia ¹²	10	10	10	10
South Africa	15	5	0/10 ⁴	6
Spain	15	15	0/12 ⁴	4/8 ⁵
Sri Lanka	15	15	0/10	10/15 ⁶
Sweden	15	10 ²⁸	0/15 ⁴	5
Switzerland	15	15	12.5	5
Syria	10	5	0/10 ²⁹	18
Tanzania	10	10	15	15
Thailand	20	15	0/10/- ³⁰	5/15 ⁵
Trinidad and Tobago	20	10	10	0/5 ⁶
Tunisia	15	15	0/12 ⁴	5/12/16 ³¹
Turkey	15	15	15	10
Ukraine	15	5 ³²	0/10 ⁴	7
United Arab Emirates	15	5	0	10
United Kingdom	15	5 ³³	0/10 ²⁰	8
United States	15	5 ¹⁴	0/10	0/5/8 ³⁴
Uzbekistan	10	10	0/5 ⁴	5
Venezuela	10	10	0/10 ⁴	7/10 ⁶
Vietnam	15	5/10 ³⁵	0/10 ⁴	7.5/10 ³⁶
Zambia	15	5	10	10

1. Many treaties provide for an exemption for certain types of interest, e.g. interest paid to the state, local authorities, the

- central bank, export credit institutions or in relation to sales on credit. Such exemptions are not considered in this column.
2. The rates apply to gross royalties paid (and not to 75%, as in non-treaty situations).
 3. In general, the ownership of at least 25% of the capital in the Italian company is required for these reduced rates.
 4. The 0% rate applies, inter alia, to interest paid by public bodies.
 5. The lower rate applies to copyright royalties, excluding films, etc.
 6. The lower rate applies to copyright royalties, including films, etc.
 7. The lower rate applies if the Armenian company has owned directly at least 10% of the capital (totalling at least USD 100,000 or the equivalent in other currency) of the Italian company paying the dividends for at least 12 months preceding the date the dividends were declared.
 8. The zero rate applies to interest paid by a public body and to interest from bank loans in general.
 9. The higher rate applies if the Austrian company owns directly more than 50% of the capital in the Italian company.
 10. The rate applies if the foreign company owns at least 10% of the capital in the Italian company.
 11. The 0% rate applies to interest on public bonds. The 10% rate applies to interest derived by a bank or other financial institution (including an insurance company).
 12. The treaty concluded between Italy and the former Yugoslavia.
 13. The higher rate applies to trademarks.
 14. The rate applies if the foreign company has owned at least 25% of the capital (or the voting stock, as the case may be) in the Italian company for at least 12 months.
 15. The lower rate applies to copyrights of literary, artistic or scientific work, excluding royalties for software and films, etc.
 16. The domestic rate applies; there is no reduction under the treaty.
 17. The lower rate applies to equipment leasing.
 18. The rate applies if the Finnish company owns directly more than 50% of the capital in the Italian company.
 19. The rate applies if the recipient company has owned at least 10% of the capital in the Italian company for at least 12 months.
 20. The lower rate applies to interest on public bonds and trade credits, and to interest arising from the sale of equipment.
 21. The lower rate applies to equipment leasing and know-how.
 22. The higher rate applies if the Kuwaiti resident holds 75% or more of the capital in the Italian company.
 23. The 5% rate applies if the Netherlands company has owned more than 50% of the voting rights in the Italian company for at least 12 months. The 10% rate applies if it has so owned more than 10%.
 24. The rate applies if the Omani company owns directly at least 15% of the capital in the Italian company.
 25. The 0% rate applies to interest on public bonds. The 10% rate applies to interest on other bonds.
 26. The rate applies if the Russian company owns directly at least 10% of the capital in the Italian company and the value of the holding exceeds USD 100,000.
 27. The higher rate applies to copyright royalties, including films, etc.
 28. The rate applies if the Swedish company owns directly at least 51% of the capital in the Italian company.
 29. The lower rate applies to interest on any loan granted by a bank.
 30. The 0% rate applies to interest on public bonds. The 10% rate applies if the Thai company is a financial institution (including an insurance company) and the Italian enterprise engages in an industrial undertaking. In some cases, there is no limitation under the treaty.
 31. The 5% rate applies to copyright royalties, excluding films, etc. The 16% rate applies to trademarks, films, etc., and equipment leasing.

32. The rate applies if the Ukrainian company owns at least 20% of the capital in the Italian company.
33. The rate applies if the UK company controls at least 10% of the voting power in the Italian company.
34. The zero rate applies to copyrights royalties, excluding films, etc. The 5% rate applies to royalties for the use of, or the right to use, computer software and industrial, commercial or scientific equipment.
35. The 5% rate applies if the Vietnamese company owns directly at least 70% of the capital in the Italian company. The 10% rate applies if the direct holding is at least 25%.
36. The lower rate applies to royalties for technical services.

7. Anti-Avoidance

7.1. General

The tax authorities may disallow the tax advantages obtained through any act or transaction carried out without valid economic reasons and for the purposes of circumventing obligations or prohibitions contained in Italian law and of obtaining a tax saving. This applies only if the tax advantage results from:

- mergers, divisions, transformations and liquidations and distributions to shareholders of reserves not consisting of profits;
- contributions to companies and transactions for the transfer or utilization of business assets;
- transfers of debt claims and tax credits;
- EU mergers, divisions, transfers of assets and exchanges of shares;
- transactions concerning securities and financial instruments;
- transfers of assets between companies within the same consolidated tax group;
- payments of interest and royalties eligible for the exemption under the EU Interest and Royalties Directive (see 6.3.2.), if made to a person directly or indirectly controlled by one or more persons established outside the European Union; or
- transactions between resident entities and their affiliates resident in tax havens and concerning the payment of an amount under a penalty clause.

Anti-tax haven legislation applies to prevent the use of tax haven jurisdictions. In particular, costs and expenses are not deductible if they arise from transactions with companies resident in a non-EU Member State with a preferred tax regime. A list of states and territories with a preferred tax regime has been issued. The deduction is allowed if the resident company can prove that the non-resident company actually and mostly carries on a business activity or that the transactions have a business purpose and have in fact been concluded.

Taxpayers may ask for advance rulings on the applicability of these anti-avoidance provisions.

7.2. Transfer pricing

Business income of a resident enterprise arising (i) from transactions with non-residents that, either directly or indirectly, exercise a dominant influence, (ii) from transactions where the resident enterprise (directly or indirectly) controls non-resident companies and (iii) from transactions between resident and non-resident compa-

nies that are under the common control of a third company, is assessed on the basis of the “normal value” of the goods transferred, services rendered or services received if an *increase* in taxable income derives therefrom. The provision also applies if a *decrease* in taxable income derives therefrom, but only if the mutual agreement procedure provided in double tax treaties is used. A circular of the Minister of Finance indicates the different methods of valuation (arm’s length principle) to be used for each type of transaction. For rulings on transfer pricing issues, see 6.2.3.

7.3. Thin capitalization

From tax year 2008, the thin capitalization rules and the equity pro rata are repealed. In substitution for them, a new regime applies to interest accrued in tax years starting on or after 1 January 2008. For details, see 1.3.3.

7.4. Controlled foreign company

According to the controlled foreign company (CFC) legislation, profits of a non-resident entity are deemed to be profits of an Italian resident (individual or company) if:

- the resident controls, directly or indirectly, the non-resident entity; and
- the non-resident entity is resident in a tax haven, as defined in a black list containing 71 countries and territories.

An entity is deemed to be controlled if:

- a person holds, directly or indirectly, the majority of the votes at the shareholders’ meeting;
- a person holds, directly or indirectly, sufficient votes to exert a decisive influence in the shareholders’ meeting; or
- the entity is under the dominant influence of another person due to a special contractual relationship.

The profits of the foreign controlled entity are taxed at the resident’s average tax rate (not lower than 27%).

The application of the CFC rules can be avoided if the resident individual proves that (1) the non-resident entity predominantly carries on an actual business in the market of the country where it is located or (2) the participation in the non-resident entity does not achieve the localization of income in tax haven countries or territories.

As regards condition (1) above:

- with respect to banking, financial and insurance activities, the condition is deemed to be met when the main portion of the respective sources, investments and proceeds originate in the state or territory where the foreign company is localized;
- the condition is never met when more than 50% of the foreign company’s proceeds is derived from (i) the management, holding or investment of securities, shares, receivables or other financial assets, (ii) the transfer or grant of the right to use intangible rights on industrial, literary or artistic property, or (iii) the supply of services, including financial services, for the group (passive income for CFC purposes).

From 1 July 2009, the scope of application of the CFC rules has been extended to controlled companies localized in states or territories different from those included in the black list above (e.g. also EU companies), if both of the following conditions are met:

- the controlled foreign company is subject to an actual taxation that is more than 50% lower than the tax that would have been levied if it was resident in Italy; and
- more than 50% of the proceeds of the controlled foreign company consists of passive income for CFC purposes.

These provisions do not apply if the Italian controlling entity proves that the localization abroad does not constitute an artificial scheme aimed at achieving undue tax advantages. To this end, the Italian resident has to apply for a ruling of the Italian tax authorities.

In addition to controlled companies, the CFC rules apply to “related entities”, i.e. those which are resident in a country included in the CFC black list (see above) and in which the Italian resident holds, directly or indirectly, a profit entitlement exceeding 20% (10% in the case of listed companies). Unlike in the case of controlled companies, the rule does not apply to profits derived through permanent establishments of the non-resident company, located in a low-tax jurisdiction. Under the rule, the profits of the non-resident related company flow proportionally through to the Italian resident taxpayer, which will be liable to tax in Italy on the higher of the profits of the related foreign company as determined in its books or a deemed income to be determined on the basis of coefficients of return.

8. Value Added Tax

8.1. General

Italy applies a VAT system under which tax is levied on the supply of goods and services and on importation of goods.

8.2. Taxable persons

Individuals and companies are taxable if they carry on a business or profession or an artistic activity. Importers are taxable regardless of their activity.

8.3. Taxable transactions

VAT is levied at all levels of the supply of goods and services that takes place in Italy and on acquisitions from other EU Member States. VAT is also levied on the importation of goods from outside the European Union.

8.4. Taxable amount

The taxable amount for VAT is the consideration received for goods and services. For imported goods, the taxable value is the value for purposes of customs duty increased by the customs duty. In computing tax liability, the tax paid on purchases of goods and services

may be deducted, so that, in effect, only the value added is taxed.

8.5. Exemptions

The most important exemptions without the right to deduct input VAT include financial services, insurance and reinsurance, activities related to shares, bonds and other securities and medical services.

Exemption with the right to deduct input VAT (zero rating) applies to exports of goods, certain supplies made in connection with international air and sea transport and certain services related to transportation of goods and persons.

8.6. Rates

The general rate is 20%. Reduced rates of 10% and 4% apply in certain cases.

8.7. Non-residents

VAT is due by all persons, irrespective of their residence, that make taxable supplies in Italy. Non-residents that have no permanent establishment in Italy may appoint a representative to exercise their rights and fulfil their obligation under the VAT law.

Residents of other EU Member States may directly exercise their rights and fulfil their obligations in Italy. Provided a declaration to the competent authority containing certain information is submitted before effecting any taxable transactions in Italy, the competent authority will provide a VAT number to the non-resident. (The regime is extended also to residents of non-EU states with which Italy has concluded an agreement on mutual assistance in respect of indirect taxes, but no such agreements have been concluded so far.)

Taxable persons resident outside the European Union may claim a refund only if their country of residence grants a similar refund to Italian taxable persons.

9. Miscellaneous Indirect Taxes

9.1. Capital duty

In general, a registration tax is due on contributions of cash and assets in exchange of shares. In the case of cash contributions and contributions in assets other than immovable property, the tax is levied as a lump sum of EUR 168. The tax on contributions of immovable property is proportional; the rate is usually 7% (15% for agricultural land) of the value of the property as indicated in the transfer deed.

In principle, no registration tax is due on transactions subject to VAT.

9.2. Transfer tax

9.2.1. Immovable property

A registration tax is usually levied on the transfer of immovable property located in Italy. The rates vary according to the property transferred. The standard rate is 7% (15% for agricultural land). However, if the transaction is subject to VAT, the registration tax is a lump sum of EUR 168.

In addition, mortgage and cadastral taxes are levied on the transfer of immovable property, normally at a total rate of 3% (4% in the case of commercial property). However, other than in the case of commercial property, if the transaction is subject to VAT, the mortgage and cadastral taxes are levied at a total lump sum of EUR 168.

9.2.2. Shares, bonds and other securities

From tax year 2008, the stamp duty on the transfer of shares, bonds and similar securities has been repealed. Transfers of such securities based on contracts executed in Italy before a public notary are now subject to a lump-sum registration tax of EUR 168. This tax is also payable where a contract executed abroad or with different formalities is presented to an Italian registration office or an Italian court.

Italy

This chapter is based on information available up to 2 March 2010.

Introduction

Individuals are subject to individual income tax and, in case they derive business or professional income, to a regional tax on productive activities. Social security contributions are due by employees and the self-employed. For VAT and miscellaneous indirect taxes, see Corporate Taxation, 8. and 9., respectively.

The currency is the euro (EUR).

1. Income Tax

1.1. Taxable persons

Resident individuals are subject to individual income tax on their worldwide income. Non-residents are taxable on their income arising in Italy (see 6.3.).

Resident individuals are those who for the greater part of the tax year:

- are registered in the Italian civil registry; or
- have a residence or domicile in Italy, as defined in the Civil Code.

“Residence” is the place of habitual abode; “domicile” is the place where an individual has established his principal centre of business and interests (centre of vital interests).

An anti-avoidance provision applies to Italian nationals who claim to be residents of tax havens. Accordingly, an Italian national is deemed to be resident in Italy if he emigrates to a country considered to be a tax haven, i.e. a country not included in the white list to be published in a forthcoming ministerial decree, even if his name is removed from the Italian civil registry. This is a rebuttable presumption: the burden of proof that actual residence is outside Italy is shifted to the taxpayer. For the purposes of the earlier regime, the Ministry of Finance has published a list of countries considered to be tax havens. Until the issuance of the ministerial decree, this presumption applies to individuals moving their residence to the countries included in that (black) list.

Spouses are taxed separately on their earned income. Furthermore, each spouse is taxed on half the income of minor children, as well as on half the income generated (i) by the assets owned in common by reason of the marital status and (ii) by the assets forming part of the so-called *fondo patrimoniale*, i.e. a special estate and property fund set up to cover the needs of the family.

Income from general or limited partnerships resident in Italy is attributed to each partner in proportion to his share in the profits, without regard to the actual receipt thereof. Individuals may opt to have partnership income taxed at the rate of 27.5% (the same as corporate tax).

Once the income so taxed is withdrawn from the partnership, it is subject to tax at the ordinary progressive rates (see 1.9.1.), and the 27.5% tax is applied as a tax credit. Under certain conditions, limited liability companies and limited liability cooperatives owned by not more than 10 or 20 individuals, respectively, may opt to be treated as flow-through entities. In such a case, the income of the entity is attributed directly to the members.

1.2. Taxable income

1.2.1. General

Resident individuals are subject to individual income tax on their worldwide income, which falls under any of the following categories:

- income from immovable property;
- income from capital;
- income from employment;
- professional income;
- business income; and
- miscellaneous income, including capital gains.

The aggregate taxable income is calculated by adding the net income of each category; only losses arising from carrying on a business or exercising an art or profession may be deducted. Exempt income and income subject to a final withholding tax are not taken into account in determining aggregate income. Capital gains on the disposal of shares and other securities and on the transfer or redemption of debts or debt claims may be subject to a substitute tax that replaces the individual income tax.

Payments on termination of an employment and capital gains on the disposal of a business may, at the taxpayer's option, be taxed separately. Under the separate taxation, the taxable base for the termination payments is computed by deducting EUR 309.87 per working year from the termination payment received. The tax rate applicable to the taxable base is the average of the income tax rates applicable to an income of reference which is computed as follows:

$$\frac{\text{net termination payment}}{\text{number of working years}} \times 12$$

The average of the income tax rates applicable to the income of reference may be determined by using the following method of calculation:

$$\frac{\text{income tax on the income of reference}}{\text{income of reference}} \times 100$$

1.2.2. Exempt income

The following items of income received by a resident individual are not subject to tax:

- some contributions or premiums related to a work relationship (see 1.3.1.);
- some benefits in kind related to a work relationship (see 1.3.2.); and
- some capital gains on immovable property (see 1.6.2.).

1.3. Employment income

1.3.1. Salary

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

Taxable income from employment does not, however, include:

- mandatory social security contributions paid by employers and employees; or
- contributions, up to EUR 3,615.20, for medical assistance made to entities or funds whose sole purpose is social welfare in accordance with the provisions of labour contracts or agreements.

No deductions for expenses are allowed from employment income.

As a general rule, all reimbursements by the employer are taxable for the employee, with the exception of the refund of travelling expenses, subject to certain limits and conditions.

For termination payments, see 1.2.1.

1.3.2. Benefits in kind

As a general rule, benefits in kind are taxable in the hands of the employee if their amount exceeds, in the tax period, EUR 258.23. Benefits in kind include those received by family members of the employee and the right to obtain them from third parties.

Benefits in kind are deemed to constitute income equal to their market value, with some exceptions. Where a car or motorcycle is made available by an employer to an employee, the taxable benefit is equal to 50% of the amount determined on the basis of published tables assuming a yearly use of 15,000 km. With respect to a low-interest loan to an employee from an employer or through financing agreements with a third-party lender, the taxable benefit is equal to an amount corresponding to 50% of the difference between the legal rate of interest and the actual rate of interest in force at the end of each year.

The following are not included in the taxable income:

- food served in canteens or equivalent services (up to a daily ceiling);
- transportation between home and work, even if contracted out to third parties;
- the value of services provided by the employer for the benefit of all employees for education, recrea-

tion, health and religious purposes and social assistance;

- the value of the shares offered to all employees up to EUR 2,065.83, provided that the shares are not repurchased by the employer or otherwise transferred within 3 years (if so transferred, the exempt value is taxable in the period in which the transfer occurs). The exemption also applies to shares issued by resident or non-resident companies controlling, or controlled by, or controlled by the same person controlling, the employer;
- in the case of shares assigned to employees before 25 June 2008, the difference between the value of the shares on the assignment date and the price paid by the employee, provided that the amount paid by the employee be at least equal to the fair market value of the shares on the date on which the shares were offered, and subject to the conditions that (i) the option cannot be exercised before 3 years have elapsed since the offer, (ii) the employee maintains for at least 5 years shares representing at least the difference between the fair market value of the shares at the time of exercise and the price paid by the employee, and (iii) at the time of exercise the shares are listed on a regulated market. The exemption does not apply if the shares held by the employee represent more than 10% of the voting rights or of the capital of the issuing company. The exemption also applies to shares issued by resident or non-resident companies controlling, or controlled by, or controlled by the same person controlling, the employer.

1.3.3. Pension income

Pensions are generally taxed as employment income (see 1.3.1.). However, periodical payments made by pension funds on the basis of private insurance policies, and accrued from 1 September 2007, are subject to separate taxation at a flat rate of 15% on the gross payment; the rate is reduced by 0.3 percentage points per each year that the taxpayer's participation in the pension plan exceeded 15 years, down to a minimum rate of 9%.

For deduction of pension premiums, see 1.7.1. For tax credits granted to those who earn pension income, see 1.7.3.

1.3.4. Directors' remuneration

Remuneration paid to the members of the board of directors and the supervisory board is taxed as employment income (see 1.3.). It is taxed as professional income (see 1.4.) if the functions carried out by the director or supervisor are typical of their professional activity.

1.4. Business and professional income

Professional income is derived from habitual independent activities other than business activities, e.g. from exercising an art or a profession. Taxable income is the difference between any fees received and related expenses, including:

- hotel, restaurant and entertainment expenses, deductible up to 2% of the fees received in the tax year; and
- depreciation on fixed assets used for the profession. Depreciation on vehicles that for the greater part of the tax year are not used exclusively for a profession is only allowed up to 50% of the costs recognized for tax purposes.

Business income is generally taxed at the progressive rates of individual income tax. Individuals have the option to segregate their business income from other income and have it taxed at a rate of 27.5% (the same as corporate tax). Once the income so taxed is withdrawn from the business, it is subject to tax at the ordinary progressive rates (see 1.9.1.), and the 27.5% tax is applied as a tax credit.

Individuals who set up a new business or professional activity may opt for their income (if their proceeds are not more than EUR 30,987.41 for services and EUR 61,974.83 for other activities) to be subject to a 10% substitute tax, if certain requirements are met. The incentive is available for the first 3 years of activity. Individuals already carrying out small activities (generally, proceeds not more than EUR 30,000 and without employees) may opt for a 20% substitute tax. No time limitation applies.

1.5. Investment income

1.5.1. Dividends

Dividends derived by individual shareholders who hold the participation in a business capacity are tax exempt for 50.28%; conversely 49.72% of the dividends is subject to income tax. Individual shareholders not holding the participation in a business capacity are also entitled to this partial exemption if they own more than 2% of the voting power or 5% of the capital in listed companies, or more than 20% of the voting power or 25% of the capital in other companies (substantial participation). Otherwise, dividends derived by individuals are fully subject to a final withholding tax at a rate of 12.5%. No expenses are deductible from dividends in determining the taxable base.

1.5.2. Interest

Interest from domestic and foreign sources is generally subject to a final withholding tax (see 1.9.2.). The term “interest” for individual income tax purposes has a broad meaning: it includes the proceeds from zero bonds and deep discount and similar instruments. No expenses are deductible from interest in determining the taxable base.

1.5.3. Royalties

Income derived from royalties on copyrights, patents, trademarks, know-how and similar rights is taxable as professional income (see 1.4.) if received by the author or inventor and as miscellaneous income if received by other persons. A flat 25% deduction for expenses is allowed from the gross amount if the recipient is the

author or inventor or if the assets producing the royalty income were acquired for consideration.

1.5.4. Income from immovable property

As a rule, income from immovable property is determined on the basis of the cadastral value by applying the schedule of estimated values established for each category and class or, with respect to buildings with a special or particular purpose, by a direct estimate under the cadastral law. A deduction up to the cadastral value may be claimed from the aggregate taxable income derived from owner-occupied dwellings. If the dwelling is let, the taxable base is the higher of (a) its cadastral value or (b) its rental value reduced by the maintenance expenses up to a maximum of 15% of the rental value. A further flat deduction of 30% of the taxable income as determined above is provided for rentals of dwellings located in major cities, if rents are those that have been agreed upon between the landlords’ and tenants’ associations.

1.6. Capital gains

1.6.1. Business gains

Capital gains derived in the course of a business or profession are taxable as ordinary income of those categories.

Capital gains, including goodwill, derived from the disposal of a business owned for more than 5 years are taxed separately. The tax is calculated by applying to the amount received the rate applicable to half the aggregate net income of the taxpayer during the 2-year period prior to the year in which the amount is received. If in 1 of the 2 previous years there was no taxable income then the rate applicable to the aggregate net income of the other year must be used. The first tax rate in the scale must be used in the absence of taxable income in both of the 2 years.

1.6.2. Immovable property

Capital gains derived (other than in the course of a business or profession) by individuals on the disposal of immovable property situated in Italy are taxed as miscellaneous income. However, such gains are exempt from tax if the seller has held the property for more than 5 years. Gains on land zoned for construction do not qualify for this exemption. In the case of capital gains derived (other than in the course of a business or profession) by an individual taxpayer on the disposal of immovable property and land zoned for construction within a 5-year ownership period, the taxpayer may elect to be subject to a substitute tax at the rate of 20% instead of the normal progressive income tax. In the case of a sale of immovable property acquired by way of donation, the 5-year period starts from the date on which the donor purchased the property.

Capital gains on residential buildings that have been mainly used as the principal dwelling of the owner, or of a member of his family, are not subject to tax. Also,

capital gains on land and buildings acquired by way of inheritance are exempt.

1.6.3. Shares and other securities

Gains on the alienation of shares, financial instruments assimilated to shares and interests in resident companies or partnerships that are held by an individual in a business capacity are tax exempt for 50.28% (thus, 49.72% of the gains is subject to income tax), provided (i) the participation has been held at least from the first day of the 12th month preceding the alienation (the LIFO method applies), (ii) the participation is classified as financial assets in the first balance sheet closed after the acquisition and (iii) at least since the beginning of the third tax period preceding the alienation the participated company has been engaged in a business activity.

Individual shareholders not holding the participation in a business capacity are also entitled to this partial exemption if, in any 12-month period, they alienate more than 2% of the voting power or 5% of the capital in listed companies, or more than 20% of the voting power or 25% of the capital in other companies and provided the amount held has exceeded the above thresholds at least once in the 12-month period (substantial participation). Otherwise, capital gains derived by individuals are subject to a substitute tax at a rate of 12.5%.

From 25 June 2008, a new full exemption is granted with respect to capital gains realized by individuals on the disposal of participations (whether or not qualifying for the above-mentioned partial exemption) in companies and partnerships, other than the simple partnership, provided that (i) the participated entity has been established within the preceding 7-year period, (ii) the participation disposed of was held for at least 3 years and (iii) the capital gains realized are reinvested within 2 years from the disposal in another resident company or partnership operating in the same business sector and established within the preceding 3-year period. The amount of exempt capital gains is subject to limitations related to the costs incurred by the company or partnership to which the transferred participation refers to purchase or produce depreciable assets or to carry out research and development activities.

1.7. Personal deductions, allowances and credits

1.7.1. Deductions

While many personal deductions have been replaced by tax credits (see 1.7.3.3.), the following deductions are available.

In case of separation or divorce, periodic alimonies payable to the separated or divorced spouse, except those specifically referable to the maintenance of children, are fully deductible.

Medical expenses incurred in connection with the assistance to disabled persons are deductible.

A deduction is granted for social security and welfare contributions paid in accordance with the law or voluntarily paid to the mandatory pension plan. Moreover,

payments made to pension plans established in Italy or another EEA country that is included in the white list (see 1.1.) are deductible up to EUR 5,164.57. A deduction of up to 12% of the total income, and with a cap of EUR 5,164.67, is granted to entrepreneurs and self-employed individuals for contributions to qualifying pension schemes.

A deduction is also granted for health care contributions up to EUR 3,615.20 paid to qualifying health care plans.

The following donations are deductible:

- donations to certain qualifying religious organizations, up to EUR 1,032.91;
- donations to certain qualifying non-profit organizations, up to 10% of the total income and to a cap of EUR 70,000;
- donations made to universities and qualifying entities engaged in research.

1.7.2. Allowances

Personal allowances have been replaced by tax credits (see below).

1.7.3. Credits

1.7.3.1. Personal credits

From 1 January 2005, the system of personal allowances has been repealed and the tax credits system has been reinstated. Under this system, the following amount can be deducted from the tax due (rather than from the taxable income):

- For a dependent spouse not legally or actually separated:

Income (EUR)	Deduction (EUR)
up to 15,000	800 – 110 × total income/15,000
15,001 – 40,000	690
40,001 – 80,000	690 × (80,000 – total income)/40,000

The deductions are increased for taxpayers whose taxable income is between EUR 29,000 and 35,200 as follows:

Income (EUR)	Increase (EUR)
29,000 – 29,200	10
29,201 – 34,700	20
34,701 – 35,000	30
35,001 – 35,100	20
35,101 – 35,200	10

- For each child: EUR 800 (EUR 900 for those under 3 years) increased by EUR 220 for children with disabilities. In the case of more than three children, the amount is increased by EUR 200 for each child after the first. The actual allowance is obtained by multiplying the above amount by the following formula: $(95,000 - \text{total income})/95,000$. The amount of 95,000 is increased by 15,000 for each child after the first.
- For each dependent relative: $\text{EUR } 750 \times (80,000 - \text{total income})/80,000$.

The above credits apply only upon the condition that the children and other dependants do not have an annual income exceeding in the aggregate EUR 2,840.51 before deductions.

An additional lump-sum allowance of EUR 1,200 is granted to parents having at least four dependent children (half of the allowance is granted to each parent), also in the form of a tax credit.

1.7.3.2. Earned income credits

A tax credit is granted to taxpayers deriving income from employment or pension. The amount of the credit depends upon the level of the aggregate income of the taxpayer. It is available for income not higher than EUR 55,000. The maximum credit is EUR 1,840 for employment income and EUR 1,725 for pension income.

A tax credit is also available for persons earning income from self-employment or miscellaneous income. Such credit cannot be granted concurrently with the credit for income from employment. The credit is EUR 1,104 for income up to EUR 4,800. For income between EUR 4,801 and 55,000, the credit is calculated under the following formula:

$$\text{EUR } 1,104 \times [(55,000 - \text{total income})/50,200]$$

1.7.3.3. Credits for expenses

A credit equal to 19% of certain personal expenses is granted, including:

- expenses for surgery, medical specialists and dental prostheses for the amount exceeding EUR 129.11;
- interest paid on mortgage loans on owner-occupied dwellings, up to a maximum credit of EUR 4,000;
- private life and health insurance premiums, up to a maximum credit of EUR 1,291.14;
- payments made for the renting of the main dwelling, up to a maximum credit of EUR 495.80 or EUR 247.90 (EUR 300 or EUR 150 if rented under social housing programmes), depending on the total taxable income. In any event, the credit is allowed if the total taxable income does not exceed EUR 30,987.41;
- expenses for secondary and university education, not exceeding the amount of state tuition fees; and
- expense paid to a real estate intermediary, up to a maximum credit of EUR 1,000.

A tax credit is granted for certain expenses incurred for the refurbishment of the taxpayer's dwelling. The expenses in respect of which the credit is available are limited to EUR 36,000 per dwelling. The credit is equal to 36% of the expenses incurred. The credit must be spread over a period of either 5 or 10 years.

1.8. Losses

Losses incurred in a small business or in a profession may be set off against the aggregate income (see 1.2.1.) of the same tax year. The term "small business" means an enterprise with annual turnover less than EUR 185,924.48 (enterprises engaged in services) or EUR 516,456.90 (enterprises operating in other sectors). No carry-over is allowed.

Losses of a business other than a small business may be offset against other business income of the same year or be carried forward for 5 years. Losses incurred in the first 3 tax years of a business, however, may be carried forward indefinitely.

Other losses may not be deducted or carried over.

1.9. Rates

1.9.1. Income and capital gains

The following rates of individual income tax have been applicable since 2005:

Taxable income (EUR)	Rate (%)
up to 15,000	23
15,001 – 28,000	27
28,001 – 55,000	38
55,001 – 75,000	41
over 75,000	43

The above rates are increased by a regional surcharge varying between 0.9% and 1.4%, depending on the region. They may also be increased by a local surcharge varying between 0% and 0.8%, depending on the municipality.

1.9.2. Withholding taxes

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

Professional fees paid by companies, businesses and professionals are subject to an advance withholding tax at a rate of 20%.

Interest on loans is subject to a 12.5% advance withholding tax, which is creditable against the recipient's income tax liability.

A final withholding tax of 27% applies to:

- interest on current accounts with bank and post offices; and
- interest on bonds, issued by banks and listed and unlisted companies, with a maturity of less than 18 months.

A final withholding tax of 12.5% applies to:

- interest on state bonds;
- interest on bonds issued by banks and listed companies with a maturity of at least 18 months (in this case the withholding tax is replaced by a substitute tax of the same rate); and
- interest on bonds issued by non-listed companies with a maturity of at least 18 months, provided that, at the date of issue, the interest rate was not higher than (a) 200% of the official discount rate, in the case of bonds listed on an EU-regulated market or (b) 166% of the official discount rate, in the case of other bonds.

For dividends, see 1.5.1. For payments to non-residents, see 6.3.1.3.

1.10. Administration

1.10.1. Taxable period

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

1.10.2. Tax returns and assessment

Taxpayers who derive taxable income in excess of certain limits must file an annual tax return between 1 May and 31 July of the year following the tax year (30 September for electronic filing).

In principle, the self-assessment method is used. The tax office is authorized to issue assessments to taxpayers who have not filed a tax return or whose tax return has not been prepared in accordance with the law. In such cases, the tax office estimates the taxpayer's income on the basis of the information in its possession. Taxpayers and tax offices are allowed to compromise on the amount of tax and penalties due.

1.10.3. Payment of tax

Individuals must make two advance payments of income tax during the tax year. The balance of the tax due, based on the results shown in the annual tax return, must be paid by 16 June of the following year. Any excess tax is refundable.

1.10.4. Rulings

If there is uncertainty regarding the correct interpretation of tax provisions, a taxpayer may obtain a private ruling by filing a written request with the tax authorities. The tax authorities must issue a written and reasoned reply within 120 days. A reply is only binding on the tax authorities for the case presented and in respect of the requesting taxpayer. If no reply is given within 120 days, it is assumed that the tax authorities agree with the interpretation of, or the tax treatment proposed by, the requesting taxpayer and no penalties can be applied.

2. Other Taxes on Income

2.1. Regional tax on productive activities

For the regional tax on productive activities, see Corporate Taxation, 3.1. With respect to individuals, the tax only applies to those engaged in a business or profession.

3. Social Security Contributions

A complicated system of social insurance covering life insurance, health, maternity, disability, unemployment and family allowances is in operation for all employees. The contributions are withheld from the employees' sal-

aries. The contributions are generally approximately 10% of the total gross salary, depending on the type and size of the business and the rank of the employee.

A system of social insurance covering life and health insurance is also in operation for taxpayers engaged in a business or profession. The amount of contributions made varies according to earnings.

4. Taxes on Capital

4.1. Net wealth tax

There is no net wealth tax.

4.2. Real estate tax

The municipal tax on immovable property is levied on the possession of immovable property (buildings, development land, rural land) located in Italy. This tax is not levied on immovable property used as a resident taxpayer's primary home, other than certain luxury residences.

The taxable base is the imputed income as determined by the immovable property registry, multiplied by a certain coefficient equal to 100 for residential property and to 50 for business property (with some exceptions).

The rate ranges from 0.4% to 0.7% depending on the municipality. This tax is not deductible for income tax purposes.

5. Inheritance and Gift Taxes

Inheritance and gift taxes have been reintroduced with effect from 1 January 2007. Under the new legislation, the inheritance and gift tax applies as follows (per beneficiary):

- transfers to the spouse and of direct descendants or ascendants are subject to tax at a rate of 4% on the value of the inheritance or the gift exceeding EUR 1 million;
- transfers to brothers and sisters are subject to tax at a rate of 6% on the value of the inheritance or the gift exceeding EUR 100,000;
- transfers to all other relatives up to the fourth degree, or relatives-in-law up to the third degree, are subject to tax at a rate of 6% on the entire value of the inheritance or the gift;
- transfers to any other beneficiary are subject to tax at a rate of 8% on the entire value of the inheritance or the gift.

The transfer of a going concern within the family circle realized through a contribution of assets to a trust is exempt from inheritance and gift tax, provided that certain conditions are met.

6. International Aspects

6.1. Resident individuals

For the concept of residence, see 1.1.

6.1.1. Foreign income and capital gains

A resident individual is taxable on his worldwide income.

Foreign-source *income from immovable property* which is used in the course of a business or the construction or trade of which is the object of a business is deemed as business income and is subject to tax accordingly. In all other cases, income from immovable property is added to the taxable income of the resident owner for whom the taxable base is calculated by the rules of the country within which the property is located.

Dividends received by resident individuals from participations in non-resident companies are taxed as follows:

- (1) if the participation is not held in a business capacity and is not a substantial participation (see 1.5.1.), it is taxed by way of a 12.5% final tax withheld by the resident intermediary through which the payment is made (a 12.5% substitute tax applies on the income declared on the tax return if the payment is not made through such an intermediary);
- (2) if the participation is a substantial participation (see 1.5.1.) not held in a business capacity, only 49.72% of the income must be included in the taxable income of the recipient and is assessed to income tax at the ordinary graduated rates;
- (3) if the participation is held in a business capacity, only 49.72% of the income must be included in the taxable income assessed to income tax at the ordinary graduated rates.

Regarding (2) and (3), the rules do not apply if the distributing company is able to deduct fully or partially the dividend paid in its state of residence, or if it is a state or territory included in the CFC black list (see Corporate Taxation, 7.4.), unless, in the latter case, a ruling has been obtained that the holding in the CFC does not achieve the localization of income in such a state or territory. If the rules do not apply, a 12.5% advance withholding tax applies on 100% of the income (reduced by the amount already subject to tax under CFC rules, if any) in the hands of the recipient. Unilateral relief provisions apply in the form of an ordinary tax credit: any foreign withholding tax may be credited against the Italian individual income tax due, up to the amount attributable to the foreign income. In the case of partially exempt income, the creditable foreign tax is reduced proportionally to the income taxable in Italy.

A circular letter issued by the Ministry of Finance has clarified that the 12.5% final or advance withholding tax mentioned above applies on the income effectively paid to the resident individual, i.e. as reduced by the withholding tax possibly levied by the state of residence of the paying company. If such withholding tax is higher than the one allowed under the applicable tax treaty and the resident individual holding a non-substantial participation receives a refund of the difference, this amount is treated as a dividend for tax purposes, whilst in case the resident individual holds a substantial participation, the 12.5% advance withholding tax is applied on the amount effectively received but 49.72% of the gross amount of the income will be included in the taxable income of the recipient, who will be granted a credit up to the maximum withholding tax allowed under the relevant treaty.

Foreign-source *interest* received through resident intermediaries, such as banks and other financial institutions, is subject to a final withholding tax (or an advance withholding tax in case of interest derived in the course of a business) at the following rates:

- 12.5% on interest on bonds and other securities with a maturity of at least 18 months; and
- 27% on interest on bonds and other securities with a maturity of less than 18 months.

When not received through a resident intermediary, the interest (other than interest derived in the course of a business) is subject to a substitute tax at the same rates as the withholding tax. Both in the case of the final withholding tax and the substitute tax, no foreign tax credit is granted. However, the taxpayer may opt to include the interest in his taxable income subject to the income tax rates (see 1.9.1.) and thus benefit from the foreign tax credit (see 6.1.3.). Foreign-source interest income derived in the course of a business is added to the taxable business income of the recipient.

Foreign-source *royalties* derived in the course of a business are added to the taxable business income of the recipient. Non-business royalties derived by residents may be classified as professional or miscellaneous income (see 1.4.).

Business and professional income earned abroad is included in the taxable income of those categories.

Capital gains on foreign-situs assets that are used in a business or profession are included in business/professional income. Foreign-source capital gains on shares and other securities derived by private individuals are treated in the same manner as domestic gains (see 1.6.3.), with the exception of capital gains realized on shareholdings in entities resident in a state or territory included in the CFC black list (see Corporate Taxation, 7.4.), which remain fully taxable unless a ruling has been obtained that the holding of the shares in the CFC does not achieve the localization of income in a state having a privileged tax regime. Further, where the shares of the non-resident company are listed on a stock exchange, the 12.5% substitutive tax apply according to the ordinary rules (see 1.6.3.).

6.1.2. Foreign capital

There is no net wealth tax. Immovable property located abroad is not subject to the municipal tax on immovable property.

6.1.3. Double taxation relief

International double taxation is avoided by an ordinary foreign tax credit. The mechanism is the same as for companies (see Corporate Taxation, 6.1.3.).

6.2. Expatriates

Income derived by employees from an activity permanently performed abroad is taxable on the basis of salaries determined annually by a decree of the Ministries of Labour and Social Security, instead of the salary actually received. This applies only if the activity per-

formed abroad is the exclusive object of the employment and the employee stays abroad for more than 183 days in the contractual year.

Employment or professional income derived by researchers who have been working abroad for at least 2 years and who start working in Italy between 1 January 2009 and 31 December 2014, and therefore become resident in Italy for tax purposes, will be exempt for 90% from income tax and fully exempt from the regional tax on productive activities. This regime only applies for 3 tax years.

6.3. Non-resident individuals

For the concept of residence, see 1.1.

6.3.1. Taxes on income and capital gains

Non-resident individuals are subject to individual income tax on income from Italian sources. The tax is computed in the same way as it is for resident individuals (see 1. and 2.). As a general rule, income tax is assessed on the aggregate income derived from Italy. However, investment income and professional income are subject to a final withholding tax or to a substitute tax. Where the withholding or substitute tax is not applied, the non-resident is, upon filing a tax return, subject to taxation at the ordinary income tax rates (see 1.9.1.).

6.3.1.1. Employment income

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.

6.3.1.2. Business and professional income

Income from a business carried on in Italy is only taxable if it is earned through a permanent establishment (see Corporate Taxation, 6.2.1.). Income from a profession carried on in Italy by a non-resident is subject to a 30% final withholding tax if the payer is a withholding agent. Income from a profession includes directors' fees paid by a resident company.

Non-residents are also subject to the regional tax on productive activities (see 2.1.) with respect to the net value of production derived from a business or profession carried on in Italy through a permanent establishment or a fixed base for at least 3 months.

6.3.1.3. Investment income

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

In general, *interest* payments to non-resident individuals are subject to a final withholding tax at the rates applicable to interest paid to residents (see 1.9.2.). However, a

27% rate applies to loan interest paid to individuals resident in a country or territory outside the European Union with a preferred tax regime (see Corporate Taxation, 7.1.).

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 quoted companies, and with a maturity of at least 18 months, is exempt if the beneficial owner is a resident of a country with which Italy has an adequate exchange of information system. In order to benefit from this exemption, the non-resident must deposit the bond with a resident bank or other approved intermediary.

Royalties paid to non-residents are subject to a 30% withholding tax, which is generally applied to 75% of the gross amount of the payment, resulting in an effective rate of 22.5%. 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 whole amount of the royalties (see 1.5.3.).

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

6.3.1.4. Capital gains

Capital gains arising from the disposal of immovable property are subject to individual income tax by way of self-assessment (see 1.10.2.). For capital gains derived from the disposal of a business, see 1.6.1. The exemption regarding gains on immovable property (see 1.6.2.) also applies to gains derived by non-resident individuals.

As a general rule, capital gains from the sale of shares or other securities are taxable in Italy if they are held in Italy. However, the following are exempt in the hands of non-residents:

- capital gains on the transfer of non-substantial participations (see 1.6.3.) in Italian listed companies;
- capital gains from the alienation or redemption of non-participating securities (e.g. bonds, investment fund units, deposit certificates and similar securities with the exception of those representing goods) and collective notes exchanged on Italian or foreign regulated markets;
- income from derivative contracts concluded and traded on Italian or foreign regulated markets; and
- capital gains and other proceeds from the alienation or redemption of debt claims, financial instruments and other contract concluded on Italian or foreign regulated markets which give right to payment dependent on an uncertain future event.

Moreover, capital gains, including income from derivative contracts but excluding gains from substantial participations (see 1.6.3.), realized by qualifying non-residents are exempt. Qualifying non-residents are those who are resident in a state with which Italy has concluded a tax treaty that contains an exchange of information clause and who are not resident in a country or territory outside the European Union with a preferred tax regime.

6.3.2. Taxes on capital

There is no net wealth tax. A non-resident individual may be subject to the municipal tax on immovable property in respect of immovable property located in Italy (see 4.2.).

6.3.3. Inheritance and gift taxes

The inheritance and gift taxes are levied without regard to the residence of the deceased/donor or the beneficiary

if the transfer is executed in Italy or if the assets are located in Italy.

6.3.4. Administration

Non-residents must file an annual tax return in respect of income from Italian sources, other than income subject to a final withholding tax or to the substitute tax. The procedure is the same as for resident individuals (see 1.10.).

Key Features

Last reviewed: 18 March 2010

A. Companies	
1. Resident companies	
<i>Corporate tax rates</i>	27.5% (IRES); 3.9% regional tax on productive activities (IRAP)
<i>Tax base</i>	worldwide
<i>Capital gains</i>	part of business income, exemptions available
<i>Unilateral double taxation relief</i>	yes, ordinary foreign tax credit
2. Non-resident companies	
<i>Corporate tax rates</i>	27.5% (IRES); 3.9% regional tax on productive activities (IRAP)
<i>Capital gains on sale of shares in resident companies</i>	part of business income taxable in the same way as for resident companies where there's a PE
Final withholding tax rates	
<i>Branch profits</i>	no
<i>Dividends</i>	27%; 12.5% in case of saving shares; 1.375% on profit distributions realized on or after 1 January 2008 provided that the beneficial owner of the dividends is a company or an entity (i) subject to corporate income tax and (ii) resident in an EEA country that allows an adequate exchange of information with Italian tax authorities
<i>Interest</i>	0% on government bonds and bonds issued by bank and listed company having a maturity of at least 18 months; 12.5% on loan interest; 27% in all other cases
<i>Royalties</i>	30%
<i>Fees (technical)</i>	0%
<i>Fees (management)</i>	0%
3. Specific issues	
<i>Participation relief</i>	inbound dividends: yes outbound dividends: yes
<i>Group treatment</i>	yes
<i>Incentives</i>	R&D investment in certain regions
<i>Anti-avoidance</i>	general rule; transfer pricing; thin capitalization; CFC

B. Individuals	
1. Resident individuals	
<i>Income tax rates</i>	progressive top rate 43% (over EUR 75,000)
<i>Capital gains</i>	12.5% substitute tax on non-qualifying participations 40% of the capital gains included in the taxable income
<i>Unilateral double taxation relief</i>	yes, ordinary tax credit
2. Non-resident individuals	
<i>Income tax rates</i>	progressive top rate 43% (over EUR 75,000)
<i>Capital gains on sale of shares in resident companies</i>	yes, if related to a qualifying participation
Final withholding tax rates	
<i>Employment income</i>	0%
<i>Dividends</i>	27% (12.5% in case of saving shares)
<i>Interest</i>	0% on government bonds and bonds issued by bank and listed company having a maturity of at least 18 months; 12.5% on loans; 27% in all other cases
<i>Royalties</i>	30%
<i>Fees (technical)</i>	30% (professional income, including director's fees)
<i>Fees (directors)</i>	30% (professional income, including director's fees)
C. Other direct taxes	
<i>Net wealth tax</i>	no
<i>Inheritance and gift taxes</i>	yes
D. Turnover taxes	
<i>VAT/GST (standard)</i>	20%
<i>VAT/GST (reduced)</i>	10%, 4%
<i>VAT/GST (increased)</i>	no
<i>Other</i>	no

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