

# DOING BUSINESS IN ITALY

INVESTMENT GUIDE 2018



ITA - Italian Trade Agency is the Governmental agency that supports the business development of our companies abroad and promotes the attraction of foreign investment in Italy.

Through its Foreign Direct Investment Unit, ITA facilitates the establishment and the development of foreign companies in Italy:

- promoting business opportunities
- helping foreign investors to establish or expand their operations
- supporting investors throughout the investment life cycle
- offering high-level tutoring services for existing strategic investments.

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## OUR SUPPORT TO FOREIGN INVESTORS



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# STARTING A BUSINESS IN ITALY

Several and different options are available in order to conduct business in Italy. A number of reforms have been made to streamline and simplify the procedures required to start and operate a business in Italy, for example by reducing the minimum capital requirements and the paid-in minimum capital requirement as well as by streamlining registration procedures.

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

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

Such opportunities are available both for **European and non-European citizens**.

- Individuals or legal persons from **EU** countries and countries included in the European Economic Area (Iceland, Liechtenstein, Norway) are treated as Italian nationals for the purpose of investing in a new/existing company, without limitations on their capacity to conduct a business.
- Individuals from countries **outside the EU** and the European Economic Area must have a valid residence permit or be citizen in a country where reciprocal treaties are applied.

All relevant information are available online at the Italian Foreign Office website:

[www.esteri.it/mae/it/ministero/servizi/stranieri/condizreciprocita](http://www.esteri.it/mae/it/ministero/servizi/stranieri/condizreciprocita)

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

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

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

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

- if the company is incorporated in an **EU country**: a certificate indicating the company's details and the legal representatives of the company issued by the foreign equivalent of the Register of Companies in Italy;

- if the company is incorporated in a **non-EU country**: a statement of the existence of the company issued by the Italian Embassy in the country where the company has its registered office.

In any case, documents in foreign languages must be translated into Italian by a sworn translator.

## **Tax issues**

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

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

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

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

## **2. Establishing an Italian branch of a foreign company**

The Italian **branch/secondary registered office** is not a separate legal entity and the parent company is responsible for its initiatives, although it is subject to taxation in the foreign country where the economic activity is carried out.

The definition of permanent establishment (PE) is provided by article 5 of the OECD model tax treaty and by article 162 of the Italian tax code (TUIR).

In particular, according to aforementioned articles, “the term permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

The term PE includes especially:

- a. a place of management;
- b. a branch;
- c. an office;
- d. a factory;
- e. a workshop, and
- f. a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.”

Therefore, the definition contains the following conditions:

- the existence of a “place of business”;
- this place of business must be “fixed”;
- the carrying on of the activity through this fixed place.

According to the above Law, due to the fact that a PE is not easily identifiable, the Italian Authorities (e.g. Revenue agency) can assume the presence of a hidden permanent establishment in Italy of a foreign company if some conditions occur (an office in Italy, Italian employees, Italian contracts, Italian managers).

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

The registration of a branch office **is governed by the Italian civil code** (Codice Civile).

In order to incorporate a branch, it will be necessary to:

1. draft the Minute of the shareholder's meeting (or of the Board of Directors Meeting according to the By-Laws) of the foreign parent company resolving:
  - a. to open a branch (including the address of the legal office of the new branch, the business activity that will be performed and the financial period of the Italian branch);
  - b. to appoint a legal representative or "preposto" (including his personal data);
  - c. to grant the legal representative with the required powers (power of attorney);
2. open an Italian fiscal code for the legal representative of the Italian branch ("preposto");
3. draft the act of incorporation in front of an Italian public Notary;
4. submit the incorporation act to the Chamber of Commerce;
5. submit the commencement activities declaration to the Italian Revenue Agency.

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

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

For all the aforementioned **documents it will be necessary to provide a certified translation in Italian**. Besides all the documents **need to be apostilled by a public Notary** of the country in which the parent company is located (or issued by a public authority).

In case of failure in the registration, directors or anyone acting in the name and on behalf of the company will have unlimited liability for all company contractual obligations.

The foreign company and its directors will be liable for company's obligations contracted in Italy in its name (except for European companies given the European principle of freedom of establishment).

The overall income of a permanent establishment in Italy of a company residing abroad is determined according to the rules governing the determination of the company's income, as if it were a company domiciled in Italy. As established by the OECD's attribution report, the procedure in order to allocate costs and revenues to a permanent establishment is a two-step process. During the first step, a functional and factual analysis is performed, in which the operations and responsibilities of a permanent establishment are determined so that the permanent establishment can be assessed for taxation as an independent, separate entity. During the second step, the arm's length profit of the permanent establishment is determined by means of a comparability analysis.

In order to better define the criteria adopted for the cost (and revenues) allocation between the parent company and the branch in Italy, it could be useful to draft a cost/revenue agreement. In this regard, it could be appropriate to consider the method recommended by the OECD guiding principles and guidelines used by the Italian tax authorities.

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

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

#### **Companies: main types**

There are two main types of companies in Italy:

- Società a responsabilità limitata (S.r.l.) – limited liability company;
- Società per Azioni (S.p.A.) – stockholding companies (company limited by shares).

The liability of the shareholders/quotaholders is limited to the amount of their contributions to the company.

The company's incorporation deed must be signed in front of a public notary and the company does not officially exist until it has been registered with the Business Register.

At least 25% of the capital must be paid in on the signing of the Articles of Association (the remainder may be paid later) although contributions in kind must be made in full.

Both types of companies can be incorporated (and, successively, the relevant corporate capital may entirely be held) by a sole shareholder/quotaholder. In this case, in order to benefit of the limited liability, the corporate capital must be fully paid-in.

Article 2328 and following of the Italian Civil Code (for S.p.A) and Article 2463 (for S.r.l.) list the information needed in order to incorporate a company in Italy.

The main differences between the two legal forms are related to:

- corporate Capital. The Law establishes different minimum thresholds for each kind of company;
- in the S.p.A. the capital consists of shares. The minimum share capital of a S.p.A. is equal to € 50,000.00;
- the amount of the share capital must be stated in the memorandum of association. Shares do not have to reflect shareholders' overall investment in the company;
- the shares are freely transferable. It is normal practice to issue physical share certificates although in listed companies it is also permissible for shares to be in the form of simple accounting records, defined as "dematerialized shares";

- the company limited by shares is the main type of trading company best suited to substantial investments with a large number of shareholders. It is also the compulsory type for those companies wishing to be listed on the stock exchange;
- in the S.r.l. the capital consists of quotas. The minimum capital of a S.r.l. is equal to €1;
- when setting up limited liability companies with capital equal to or greater than €10,000, at least 25% of the capital must be paid to the directors as previously indicated;
- when the value of the capital is between €1 and €10,000, contributions may only be in cash and must be paid up in full on subscription;
- the transfer of quotas may be limited and even prohibited; in which case, each shareholder will be entitled to withdraw from the company, obtaining a reimbursement for his/ her quotas;
- equity contributions. In both S.p.A. and S.r.l., the equity contribution can be made in cash as well as in kind subject to evaluation of an expert. Whereas, in the S.p.A. the expert is appointed by the Court, except in some specific cases, and the evaluation reviewed by the company's directors;
- voting rights and special rights. The voting rights in S.p.A. might not be proportional to the percentage of corporate capital subscribed by the shareholders and the by-laws can provide different typologies of shares;
- in the S.r.l. the voting rights are proportional to the percentage of corporate capital subscribed by the quotaholders. Even if the by-laws may reserve some special rights to some quotaholders (e.g. administrative rights or the right to the distribution of profits), no different categories of quotas are allowed;
- governance the S.p.A. can establish different governance models;
  - a. traditional system (shareholders' meeting, Board of Directors and Board of Statutory Auditors);
  - b. one tier system (Board of Directors and management control committee appointed among the members of the board) and two tier system (Management Board and a Supervisory Board).

The **S.r.l.** provides different forms of management that include appointing a Sole Managing Director, a Board of Directors, or even a form of management where Directors are not appointed as a board and where they can exercise their powers jointly or separately, or, depending on the corporate governance model, jointly and others separately.

In addition, the two following subcategories are provided by the Italian civil code:

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

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

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

The **shareholders** of an “S.r.l.s.” may only be individuals (natural persons), not companies or other bodies. The S.r.l.s. may also be composed of a single shareholder.

Unlike the “ordinary S.r.l.” there is a minimum share capital of €1, up to a maximum of €9,999.99.

The capital must be fully paid in cash to the administrative body at the time the company incorporation.

The incorporation deed must be drafted as a public deed by a notary in accordance with a standard model prescribed by law. Therefore, there are no “articles of association” in a technical sense; there are only standard clauses indicated in the fixed standard model (prescribed by law).

No notarial fees are due to the notary.

### Partnership with shares (Società in accomandita per azioni - S.a.p.A)

There are two categories of partners in a limited partnership:

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

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

In addition to the companies, other entities can be established.

### Partnership: nature and main types

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

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

The main types are:

- **Società in nome collettivo** (S.n.c.) (general or unlimited partnership).

The company’s **business name** must contain the name of at least one of the partners and an indication that it is an unlimited partnership.

The **members** have **unlimited liability** for partnership obligations and there can be no agreement to the contrary. When seeking repayment of debts owed by the partnership, creditors must first enforce them against the partnership before applying to the members. The unlimited partnership is subject to bankruptcy law with the contemporaneous bankruptcy of all partners.

The partners generally have separately exercisable **powers of administration** and **representation**. If agreed, powers of administration may be reserved to some members only.

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

The limited partnership has two categories of partners:

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

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

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

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

	S.p.A.	S.r.l. - S.r.l.s.	S.n.c.	S.a.s.
<b>Type of company</b>	Medium-sized and large companies / listed companies	Small and medium-sized companies with a limited number of shareholders	Partnerships set up to conduct commercial and non-commercial activities	Partnerships set up to conduct commercial and non-commercial activities
<b>Minimum share capital</b>	€50,000	€1	No minimum	No minimum
<b>Liability for company obligations</b>	Limited to the company assets	Limited to the company assets	Unlimited for all shareholders	Unlimited for general partners Limited for sleeping partners
<b>Board of Statutory Auditors/ Auditor</b>	Compulsory	Optional / Compulsory according to art. 2477 c.c.	N/A	N/A

#### 4. Purchase of assets

As an alternative to the previous options, a foreign enterprise may acquire an existing business.

A purchase of a business is realized when it concerns a complex of assets (material and juridical items) functionally connected to each other and likely to become an instrument for carrying out a business activity.

The purchase of a business is generally a single transaction and it can only be carried on by means of public notarial deed or a private deed certified by a notary.

The transaction may involve the entire organization, different businesses owned by the same vendor or a single business unit.

Except as otherwise agreed, the transfer of a business involves what follows:

- in case of a commercial undertaking, within five years from the sale, the seller is barred from starting up a new business whose objects, location or other features is likely to divert the customers;
- the transfer of receivables and debts related to the transferred company, resulting from the compulsory accounting books;
- the succession in contracts for the exercise of the business activity which are not of a personal nature.

## **5. Accounting and audit requirements**

### **Accounting requirements**

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

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

Accounting records may be kept directly by the business at their premises, or by third parties outside the company offices.

There are two main compulsory accounting systems available depending on the company's features and the amount of income declared in the previous year: one ordinary and one simplified (suitable for small entities with a simple organization).

The ordinary accounting scheme is compulsory:

- for company providing services with a turnover exceeding EUR 400,000 yearly;
- for the other companies with a turnover exceeding EUR 700,000 yearly.

The following registers and corporate books can be compulsory on the basis of the size and of the activity performed:

- the journal;
- the general ledger;
- the VAT registers;
- the inventory register;
- the shareholders/quotaholders meeting books;
- the BoD meeting book (if applicable);
- the Board of Auditors meeting book (if applicable).

Books and records of accounts are kept according to the provisions of the Italian Civil Code and the tax regulations.

Accounting books can also be kept electronically.

Companies with share capital are also required to prepare their annual Financial Statements and to file them with the Companies Register, within 30 days from its approval by shareholders.

In addition to the ordinary FS form provided by the Civil Code, a short form and a reduction in the amount of the information required are established for “small” and “micro” companies.

Partnerships, instead, are required to draw up an annual report indicating profit and loss for tax purposes, although there is no filing obligation with the Register of Companies.

Annual accounts must be presented to and approved by the shareholders’ annual general meeting within 120 days from the company’s financial year end (180 days in specific situations and under certain conditions).

Audit requirement

**Auditing** is required for:

- 1) S.p.A.;
- 2) S.r.l. exceeding two of the following limits for 2 consecutive years;
  - total assets of EUR 4,400,000;
  - sales and services revenues of EUR 8,800,000;
  - average number of employees during the year 50;
  - or, if the S.r.l. controls a company subject to statutory audit;
- 3) all companies drawing up consolidated Financial Statements;
- 4) listed companies;
- 5) banks, stock broking companies, fund management companies, regulated financial institutions.

The audit of the financial statements (“revisione legale dei conti”) shall be performed in accordance to the **Italian Law** and the Italian **auditing standards**.

In Italy, the statutory audit can be assigned to a Board of Statutory Auditors (“Collegio Sindacale”), a sole auditor (“Sindaco Unico”), an audit firm (“società di revisione”) or an external auditor (“revisore”).

Under some conditions the audit can be performed by the “Collegio Sindacale” which may be in charge of both Supervisory activities, including the compliance with the law and the Articles of Association, and on the **statutory audit** of the **financial statements**.

Alternatively, the statutory audit on the financial statements (including the quarterly checks on the accounts) can be assigned to an audit firm or an external auditor.

The assignment to two different bodies is compulsory for listed companies and companies required to prepare consolidated financial statements.

### Term of the audit assignment

The auditors are appointed for a 3 year-term for non-listed companies and for a 9 year-term for listed companies.

The audit firm cannot be appointed for more than one 9-year term, while the external auditor cannot be appointed for more than 7 years. The audit firm engagement as well as the external auditor one should guarantee a cooling-off period of 4 years.

## **6. Dissolution and liquidation of business entities**

The **dissolution** of a company follows a four-step **process**, as follows:

- determining and acknowledging the motivation for winding up the company;
- carrying out of the liquidation activities, including the appointing of a liquidator;
- cancellation of the company from the Business Register;
- filing of corporate books at the Business Register.

Reasons for dissolution are common to all types of companies and are provided by article no. 2484 of the Italian civil code:

- the duration term has expired;
- the company purpose is finally realized, or, ascertained impossibility of its realization, unless the shareholder's meeting is convened without delay to resolve upon the necessary amendments to the company's bylaws;
- it's impossible for the company to operate or the shareholder's meeting is inactive for a prolonged period of time;
- the corporate capital is reduced below the minimum required by the law;
- for other reasons provided by the Law;
- the shareholder's meeting resolves upon the termination of the company;
- other reasons for winding up may be provided for in the incorporation deed and in the Articles of Association.

The directors without delay shall ascertain the occurrence of a reason for the dissolution and shall proceed with the required actions.

When the directors omit the required actions, the court, upon request from a shareholder or director or statutory auditor, shall ascertain the occurrence of the reason for the termination.

Until the appointment of the liquidators, the directors maintain their powers to manage the company, for the sole purpose of the conservation of the corporate assets' integrity and value.

The appointment of the liquidators and the dissolution of the relevant powers shall be entered in the Companies Register at the care of the liquidators.

Particular provisions are stated for:

- the drafting of the interim financial statements during the liquidation period and for the final financial statements at the end of the procedure;
- for the submission of the tax returns and related payments in case of corporate or indirect taxes.

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

Once the final liquidation FS is approved, the liquidators shall ask the cancellation of the company from the Companies Register.

When the liquidation, the assets distribution or the deposit at the bank (of the sums due to the shareholders not collected) are accomplished, the corporate registers shall be filed and kept for ten years at the Companies Register.

## 7. Additional notes on the Business Register and the Notaries

The **Business Register** or Companies Register (Registro delle Imprese) is part of an extensive information system containing all the main information relating to companies (name, statute, management, headquarters, etc.) and all the subsequent events that have occurred to them after registration (for example changes to the statute and to company officers, changes in registered address, liquidation, insolvency proceedings, etc.).

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

It is a single system of publication for the entire Country although it is managed through provincial offices.

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

Indeed, information not included in the Business Register cannot be used against third parties, unless it is possible to prove that the latter had knowledge of such facts.

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

Following registration and the payment of fees, a more detailed search can be conducted and **Company report** ("Visura"), available both in Italian and English language, downloaded.

In Italy many acts need to be drafted in front a Public Notary, who is a public officer.

Notaries are independent professionals the quality of whose work is safeguarded by important guarantees and is subject to public oversight.

A list of Italian notaries can be found online at the following URL:

**Consiglio Nazionale del Notariato** [www.notariato.it/en/trova-notaio](http://www.notariato.it/en/trova-notaio)

As for other professionals, notaries are legally obliged to carry out checks on their clients, including non-Italian nationals, by completing formalities required by money laundering laws and beneficial owner identification.

# HIRING AND MANAGING STAFF

In the current decade, Italy has implemented a number of substantial reforms of labor market aiming at the creation of a modern, competitive and non-discretionary environment based on which:

- since 2015, reinstatement has been substantially limited to cases of discrimination proven by the concerned employees and the indemnity possibly due is not discretionary for the judge;
- according to the new reform, should the dismissal be declared unfair, the employee may be entitled to an indemnity amounting to 2 month's salary per each year of seniority, up to 24 months maximum;
- however, the new law on dismissal encourages the parties to find a prompt and amicable out of court settlement to the disputes. As a matter of fact, should the employee accept an offer of 1 month per year of seniority, up to a maximum of 12 months, a substantial tax exemption applies;
- the court litigation has dramatically fallen (approx. 70% reduction of court cases concerning dismissals and end of fixed term);
- the length of first degree employment Court litigation: 1-1.2 years on average at Italian level; 7 months at the Court of Milan;

## 1. Main sources of the employment law

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

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

## 2. Start of employment

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

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

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

There are four categories of employees:

- executives ("Dirigenti");
- middle managers ("Quadri");
- white collar employees ("Impiegati");
- blue collar employees ("Operai").

Despite the fact that national collective agreements normally define general principles that regulate the employment relationship of Dirigenti, general and specific conditions are often negotiated through individual agreements. Quadri are defined as employees who, while not top executives, are continuously engaged in duties that contribute significantly to promoting the company's growth and achieving its goals. According to a limited number of collective agreements, employers are required to insure quadri against claims for civil liability brought by third parties as a result of negligence in their duties.

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

Italian law does not prescribe any particular form for employment contracts generally; they may be communicated orally, although most contracts are evidenced in writing. That said, some specific provisions as well as specific information concerning the employment relationship are required by law to be written down (for example: trial period, non-compete clause, fixed-term, if any). Also, certain types of contracts are required by law to be in writing (for example: part-time contracts).

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

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

### 3. Employment relationship

#### Formal fulfillment

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

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

#### Trial period

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

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

However, the probation period is commonly set in the relevant NCAs depending on the category of the employ. During the trial period, either party may freely terminate the working relationship at any time, without any notice, obligation or payment of the relevant indemnity in lieu.

## Pay

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

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

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

There are **no statutory bonuses**. NCAs may provide for some such as the collective performance bonus ("premi di risultato") or individual performance bonuses. There are **no statutory allowances**, although NCAs provide for transportation allowances or indemnities for certain working arrangements such as on-call work.

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

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

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

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

## Working hours

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

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

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

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

## Holidays and vacations

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

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

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

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

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

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

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

## Sick leave

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

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

During sickness, the contract is suspended and the employees' seniority is protected. Employees cannot be dismissed before the end of a minimum period prescribed by the applicable collective agreement. After that period, an employer may terminate the contract.

## **Maternity leave**

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

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

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

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

## **Other leaves**

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

## **Contract amendments**

The parties cannot modify the individual contract terms and conditions, unless the relevant amendments provide for a more favorable treatment of the employee. The Jobs Act has amended the provision regarding the change of an employee's task and duties. Unless agreed otherwise with employers, employees are entitled to maintain their salary - with the exception of task-related indemnities - even if their tasks are reduced.

## **Non-competition clause**

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

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

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

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

## **Teleworking**

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

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

## Smart working

Smart working is considered as “a way of implementing an employment relationship” carried out in part at the premises of the company and partly at a different location, without a fixed workplace, but within a maximum duration limit of the daily and weekly work hours established by law and the collective bargaining agreement. Such a way of implementing the employment relationship must be established by written agreement between the parties, also through organization by phases, cycles and objectives, with the possible use of technological means to carry out the work activity.

## Temporary lay-off

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

### COMPULSORY HIRING OF DISABLED WORKERS

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

Companies in breach of these obligations are subject to administrative sanctions. In order to encourage the compliance, employers can enter into conventions with the competent authorities for the hiring of disabled workers. Companies that are experiencing financial or business difficulties can apply for a temporary suspension of this obligation.

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

## 4. Employment of foreign workers

### EU/EEA and Swiss nationals

According to the principle of free movement of persons, goods, services and capital, **EU (European Union)** and **EEA (European Economic Area) nationals** can be employed in Italy without any authorization by the Italian authorities.

Should an EU national choose to work in Italy for a period in excess of 3 months, he/she should apply for a so called "Stay card" ("**Carta di Soggiorno**"), which is normally issued by the local State Police office ("**Questura**") upon a simple request. This permit is renewable. Swiss citizens have the same right of entry, residence and access to work applicable as EU countries nationals.

## Non EU/EEA nationals - the quota system

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

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

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

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

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

## Authorization (nulla osta) request

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

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

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

Once all the checks have been made by both Labor authority ("Direzione Territoriale del Lavoro") and local State Police office ("Questura"), the authorization ("**nulla osta**"), may be delivered to the applicant employer. The whole procedure should take **40 days** from the application.

## Visa issuance

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

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

## Stay permit (permesso di soggiorno) issuance

**Within eight days** of his/her arrival, the foreign worker must sign the **stay contract** presented by the employer at the ISD and simultaneously apply for the stay permit ("**Permesso di soggiorno**") for working purposes. The stay permit will be issued by the Questura. The stay permit has the same duration as the employment contract with a **maximum of 2 years** and it is **renewable**.

### Exemptions - extra-quotas entries

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

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

Despite the lack of explicit quantitative limitations, the admission of workers in these categories is still subject to the authorization ("nulla osta") granted by the territorial ISD, even if admission procedure has been further simplified for specific categories.

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

### Visa for investors

Italian law provides for a special, easier and quicker procedure for foreign individual that intend to invest in Italy. This new visa opens the door to the recognition of a two-year residence permit, renewable for another three years, provided that the foreign investor (not EU citizen) demonstrates that he intends to:

- buy Italian government bonds for at least 2 million or
- invest in the capital of an Italian company (at least 1 million euros) or in a startup (minimum 500 thousand euros).

The investment must, in any case, be maintained for at least two years.

Alternatively this procedure will be applicable in case of relevant philanthropic donations in cultural assets, immigrant management, education and research, for a minimum of one million.

This rule is aimed at facilitating the release of VISAS to potential investors and allows the stay, for periods of more than three months with no application of the quota system.

The investor must file the request to a specific Committee that was set up for this purpose by the Ministry of Economic Development. In the committee sit, among the others, representatives of Viminale, Farnesina, Uif, Security Guard, Revenue and Ice Agency.

In particular, the Committee will evaluate the documents with which the investor must demonstrate that she/he is the holder or beneficiary of the amounts to be invested and the certification of the legality of the funds, as well as the absence of definitive penal convictions or any other pending charges.

A specific Decree released by the Ministry of Economic Development in July 2017 ([http://www.sviluppoeconomico.gov.it/images/stories/normativa/decreto\\_interministeriale\\_21\\_luglio\\_2017\\_ingresso\\_e\\_soggiorno\\_investitori.pdf](http://www.sviluppoeconomico.gov.it/images/stories/normativa/decreto_interministeriale_21_luglio_2017_ingresso_e_soggiorno_investitori.pdf)) defines the procedure for the establishment of such requirements by the Committee to which the following documentation (via the online platform) must be submitted:

1. a copy of a valid travel document with an expiration date of at least three months more than the length of the required visa;
2. documentation by which the applicant proves to be the beneficial owner and beneficiary of the amounts to be invested and that these amounts are available and transferable to Italy;
3. certification attesting to the legal origin of the funds constituted by:
  - a. a statement made by the requesting party indicating the source from which the funds originate;
  - b. certification of non-existence of definitive criminal convictions and pending charges issued by the competent authorities of countries other than Italy where, during the 10 years prior to the submission of the application and after the age of 18 years, the applicant has stayed for a period of more than 12 consecutive months;
4. a statement with which the applicant undertakes to use the funds within three months of entering into Italy for the investment or donation and maintaining the investment for at least two years. The statement must be filed together with a description of the characteristics and recipients of the investment or donation.

For information you can also visit <https://investorvisa.mise.gov.it/index.php/en/>

## **5. Specific types of contracts**

### **Part-time contract**

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

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

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

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

### **Fixed-term contract (legislative decree no.81/2015)**

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

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

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

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

### "On call" jobs ("lavoro a chiamata o intermittente" legislative decree no.81/2015)

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

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

### Apprenticeship ("apprendistato", legislative decree no.81/2015)

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

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

### Staff supply contract ("contratto di somministrazione di lavoro")

**Temporary** contracts, on fixed-term or open-end basis, can only be agreed with qualified **employment agencies**. Workers must benefit from the same legal and economic conditions available to employees of the user company. Employers may not use staff supply contracts to replace workers on strike or to replace employees temporarily laid-off or involved in collective dismissals in the previous few months.

## 6. End of employment

### General principles

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

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

Just cause means a very serious breach (e.g. theft, serious insubordination) or any other employees behavior that seriously undermines the trust relationship on which employment relationship is based. Justified grounds means either:

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

### Termination of fixed-term contracts

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

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

## Resignations

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

## Notice and termination payments

Upon termination of employment relationship, employees are entitled to:

- the payment of deferred wages (TFR);
- the payment of some minor termination indemnities (payment in lieu of unused holidays and leave, accrued pro-rata 1<sup>^</sup> and 14<sup>^</sup> monthly installments and so on);
- a **notice period** of termination, the duration of which varies according to the employees' seniority and professional level and as established by national collective agreements.

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

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

## Unfair dismissals

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

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

### (a) Dismissals before enforcement of Jobs Act

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

1. if the reasons for the dismissal are considered totally **unlawful**: reinstatement and payment of a compensation equivalent to maximum 12 months for non-worked period (plus social security contributions). The employee may waive the right to reinstatement, opting to receive an additional compensation equal to 15 monthly wages;

2. if the reasons for the dismissal are considered **concrete**, but insufficient to justify the dismissal: payment to the dismissed employee of an indemnity ranging from 12 and 24 monthly wages of the last annual salary.

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

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

### (b) Dismissals after enforcement of Jobs Act

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

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

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

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

### Dismissal of executives

Though similar principles apply, **dismissal of executives** is not regulated by the same statutory provisions governing termination of lower-level employees. Given the high level engagement, **fairness** of an executives' dismissal is normally assessed unless it is shown to be a violation of correctness and good faith principles. The High Court (Corte di Cassazione) has indeed repeatedly confirmed that concept of "fairness" of an executive's termination does not coincide with the notion of "just cause" and "justified reason" (applicable to normal employees), but that it includes any reasonable ground for termination not limited to a breach of the correctness and good faith rules which underpin an employment relationship.

## 7. Collective dismissals

### The union procedure

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

The collective dismissal applies to all employees, including executives.

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

The notice must include the following information:

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

### UNFAIR COLLECTIVE DISMISSALS

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

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

### 8. Workplace safety in Italy

A Consolidated **Act on Workplace Safety** (Legislative Decree no. 81/2008) unifies all legal provisions regarding health and safety in the workplace and is enforceable in all sectors. The Act provides an exhaustive explanation of the **rules** on safety, including **the powers, responsibilities and functions** that may be delegated.

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

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

### 9. Labor proceedings

#### Ordinary proceeding

Special provisions of the Italian Code of Civil Procedure (Art. 409) apply to labor proceedings and provide for **special and quick resolution** of individual disputes. A first instance decision is normally issued within 12 months, on average.

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

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

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

#### "Fornero" special proceeding

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

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

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

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

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

## 10. Employee representation bodies & Employee participation Overview

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

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

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

### Rights and obligations

Both types of works council, RSA and RSU, are involved in **collective bargaining** and the verification of the correct application of laws and collective agreements. They exercise **information** and **consultation** rights, as laid down both by collective bargaining and by law. They should be consulted on issues such as overtime levels, employment policy, hiring policy or corporate restructuring.

## 11. Social security and assistance system

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

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

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

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

## 12. Employment incentives

Employers can benefit for a number of incentives aimed at the sustainable inclusion of young people, female workers over 50, disadvantages workers and disable workers in the employment markets. Employment incentives are also granted in relation to unemployed and workers who have been drawing of the wage fund guarantees. Incentives correspond to a partial exemption or total exemption from social security contributions.

## 13. Productivity bonus

Productivity bonus paid by the employer in the framework of a collective agreement executed with the trade unions are subject to a reduced taxation equal to 10%. The bonus must be applied for the whole eligible workforce (or homogeneous category of them) grounded on objective, fair, predetermined, and materially valuable performing criteria.

The productivity bonus amount cannot exceed EUR 3,000 per year or, alternatively, EUR 4,000 per year in case of equal involvement of the employees within the company's structure.

# IP REGULATION

Italian Law sets forth a specific regulation for Industrial Property rights under Decree no. 30 of February 10, 2005, as converted and amended by Law no. 27 of March 24, 2012 (i.e. “Industrial Property Code”, hereinafter “IPC”).

Such rights can represent an important asset of the business value; therefore, with reference to each category of rights, the law grants the entitled subjects with the faculty to obtain a specific protection.

The most relevant IP rights’ categories are:

1. Trademarks;
2. Patents;
3. Designs and Models.

## 1. Trademarks

Through the protection granted by the registered trademark, the manufacturer, the distributor or the retailer can distinguish their products or services from those of all other traders, consequently increasing commercial reputation, trustworthiness by the consumers and economic value of the firm. In fact, the protection arising from the registration procedure prevents all third parties in the relevant territory from using in the course of the trade the same sign or a similar sign for equal or similar goods or services if, in case of mere similarity, there exists a likelihood of confusion by the consumers, including the likelihood of association.

Italian application can be submitted with reference to a limited geographic area and a specific class of goods or services. With the exception of some restrictions pursuant to article 7 of IPC, fall under the trademark regulation all signs that are susceptible of being graphically represented, with particular regard to words, including names of persons, drawings, letters, numbers, sounds, the shape of the product or the packaging design thereof, chromatic combinations or tonalities, provided they are suitable to be used in order to distinguish goods or services of a company from goods or services of other companies. In order to register a trademark, the following requirements shall be met: (i) novelty – article 12 of IPC, (ii) distinctive character – article 13 of IPC, (iii) lawfulness – article 14 of IPC.

Peculiar categories of trademarks are:

- Shape trademark: is a three-dimensional trademark corresponding to the product shape, provided that such shape meets the requirements of distinctiveness and unobjectionable content (unless, according to article 9 of IPC, the shape is the one resulting from the nature of the goods considered or if the shape is that necessary to obtain a technical result or if it gives substantial value to the goods to which refers);
- Collective trademark: according to article 11 of IPC, persons whose function is to guarantee the origin, the nature or the quality of certain products or services may obtain the registration of collective trademarks and have the right of allowing the use of such trademarks to producers or traders.

Trademark registration applications can be submitted to the Italian Office of Patents and Trademarks.

Ufficio Italiano Brevetti e Marchi [www.uibm.gov.it](http://www.uibm.gov.it)

EU application grants the claimant the possibility to gain the protection arising from the EU trade mark, which, beside all other features required by the European regulation, shall have a unitary character and, consequently, equal effect throughout the Union, unless otherwise provided. It is important to underline that the regulation has recently been amended with Reg. (EU) 2015/2424 taking force as from October 1st, 2017.

EU trademark registration application can be submitted to the competent EUIPO (European Union Intellectual Property Office) [www.euipo.europa.eu](http://www.euipo.europa.eu)

## **2. Patents**

Patent provides the owner with a legal mean to prevent others from exploiting the protected invention. Therefore, patent is a very important commercial tool for companies, allowing them to return on the investment in research and development that led to the creation of that new technology.

Actually, patents represent a potential way to protect intangible assets' value, though the decision to file the application for an invention is a strategic choice which deserves to be carefully evaluated, since a patent may be difficult and expensive to obtain and to manage later on.

Italian application can be submitted by the author of the invention, nonetheless when an industrial invention is made in the performance or fulfillment of a contract or of an employment relationship (under which the inventive activity is contemplated and remunerated), the rights related to the invention activity belong to the employer (i.e. property rights – article 62 of IPC), without prejudice to the right for the inventor to be acknowledged as the author (i.e. moral rights – article 63 of IPC).

According to article 45 of IPC, patents may be granted for inventions in all technical sectors which (i) are new, (ii) imply an inventive activity, (iii) are suitable for industrial application and (iv) are lawful. Pursuant to article 82 of ICP utility models, conferring particular effectiveness or ease of application or use of machinery or parts thereof, instruments, tools or objects of general use, are patentable as well.

The duration of a patent for an industrial invention is equal to twenty years as from the date of the filing of the application and may not be renewed nor extended (article 60 of IPC).

Patents applications can be filed to the Italian Office for Patents and Trademarks.

Ufficio Italiano Brevetti e Marchi [www.uibm.gov.it](http://www.uibm.gov.it)

The European Patent (regulated by the 16th Edition, June 2016 of the EPO Convention) is a special form of protection for industrial inventions or utility models which enables the applicant to obtain a patent valid within the territory of the specifically elected European Patent Organization Member States through a unified and centralized procedure of filing, examination and granting. A European patent shall confer on its proprietor from the date on which the mention of its grant is published in the European Patent Bulletin, in each Contracting State in respect of which it is granted, the same rights as would be conferred by a national patent granted in that State.

The application shall be filed to the EPO (European Patent Office) in one of its official languages (English, French or German) [www.epo.org](http://www.epo.org)

The European Unitary Patent (regulated by Reg. (UE) 1257/2012) system will be in force starting from the second half of 2018 together with the Unitary Court. Such unitary patent, issued by EPO, will offer owner a protection for up to 26 EU participating Member States through a sole application at the European Office and the payment of a comprehensive fee.

### 3. Designs and Models

The design or model protection has a crucial relevance in respect of a wide range of products in industry, fashion and handicraft.

Italian application for the registration of designs (bi-dimensional) and models (three-dimensional) is filed by the author, unless designs or models are created by employees and to the extent that the task is included among their duties; in such case, the employer, without prejudice to the employee's right to be acknowledged as the author and to have his name entered in the certificate of registration (article 38 of IPC), can obtain the registration.

Registrations as designs and models may be granted to the appearance of the whole or a part of the product, resulting in particular from the features of the lines, contours, colors, shape, texture or materials of the product or its ornamentation. The registration certificate is issued under the following conditions: (i) novelty – article 32 of IPC, (ii) individual character – article 33 of IPC, (iii) lawfulness – article 33 bis of IPC.

The duration of the registration is equal to five years starting from the date of the filing of the application, nonetheless the owner may obtain an extension of the duration for additional periods of five years until a maximum of twenty-five years.

The application to obtain a registered model or design can be filed to any Italian Chamber of Commerce or, alternatively, to the Italian Office for Patents and Trademarks.

[www.uibm.gov.it](http://www UIBM.gov.it)

The European application can be filed to EUIPO (European Union Intellectual Property Office) and grants the applicant the faculty to exercise exclusive rights within the territory of all EU Member States. Conditions for registration are the same provided under the national law. [www.euipo.europa.eu](http://www.euipo.europa.eu)

#### **4. Software and Database**

Software can be protected by referring to Copyright Law (Law no. 633/1941), with particular regard to articles 64 bis to 64 quarter, since the law does not set forth any particular protection to be granted to such programs under IPC; nonetheless in some peculiar cases it could be recognized the patentability, provided that the software solves a technical issue. In any case, even though the protection under Copyright Law arises automatically from the creation and no type of administrative fulfillment is needed, to furnish the author of an indisputable proof, a program already published can be registered in the Public Register of Software.

The copyright on the program has a duration equal to the author's whole life plus 70 years after his/her death. In case of assignment of the economic rights, the duration will be calculated considering the life of the author independently from the buyer.

Database can be protected by referring to Italian Law on copyright as well pursuant to articles 64 quinquies and 64 sexies. Therefore, related rights of the author arise automatically on the creation and are not conditioned upon any formal requirement such as registration.

The exclusive right of the maker, who is not necessarily the author, shall come into being on the completion of the database, and shall expire 15 years from January 1 of the year following the date of the said completion.

# TAXATION IN ITALY

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

- Corporate Income Tax (IRES);
- Regional Tax on Productive Activities (IRAP);
- Value Added Tax (IVA);
- Personal Income Tax (IRPEF);
- Inheritance and Gift Tax;
- Local taxes: National Tax on Real Estate (e.g. IMU, etc.);
- Registration tax and other indirect taxes on property transfers.

## 1. Corporate income tax (i.e. IRES - Imposta sui Redditi delle Società)

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

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

The **tax rate has been reduced from 27,5% to 24% starting from January 1st, 2017** and it is applied on the taxable income (tax assessment basis). The relevant payments are made up of two initial payments on accounts and one balance payment.

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

Withholding taxes are generally fully deductible from IRES. If the sum of the payments on account and withholding taxes exceed the tax payable, such excess may be carried forward and deducted from the tax payable relating the following tax period, reimbursed or used to offset any other tax and social security debts.

### Entities liable for tax

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

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

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

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

## **Tax assessment basis**

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

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

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

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

## **Deductibility of expenses**

In order to calculate the taxable income, it has to be taken into consideration that there is a wide range of expenses that can be deducted from the profit as indicated in the profit and loss accounts. Some of those expenses are fully deductible, some of them are partially deductible and others are not deductible.

As a general principle, all the **expenses incurred to carry out the company activity** are eligible to be fully deducted from the profit. However, if some of these costs are incurred both for company and for private purposes, the percentage of deductibility is less than 100%. Only the costs booked in the P&L statement can be deducted for tax purposes.

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

- **depreciation:** they are deductible pursuant to a Ministerial decree (Min. Decree 31.12.1988) which establishes the different percentages of annual deductible depreciation for specific assets;
- **cost of labor:** all the costs related to wages, social and health contributions paid by the company are deductible;
- **other taxes:** apart from IRAP (deductible only up to 10% of the amount paid), other taxes are deductible in the fiscal year they have been paid;
- **provisions:** most provisions cannot be deducted for tax purposes since they are not relevant from a tax perspective;
- **telephone costs:** 80% of their amount is deductible;
- **costs related to cars:** if a car is used exclusively for business purposes, the costs are entirely deductible, otherwise they can be deducted in different percentages (70% or 20%) depending on the user and the conditions for use;
- **gifts:** they are entirely deductible if their value is less than EUR 50 each (gross VAT);
- **entertainment expenses:** deductible within the following limits:
  - 1.5% of the annual sales (for annual sales below EUR 10 million)
  - 0.6% of the annual sales (for annual sales within EUR 10 million and EUR 50 million)
  - 0.4% of the annual sales (for annual sales of more than EUR 10 million)

## Controlled foreign company (CFC)

According to Article 167 of Italian Tax Code (ITC) the income realized through a company, or other entities, resident, or established in countries with a privileged tax status, controlled directly or indirectly by a resident person (individual, company, etc.), is subject to CFC rules. The same rules are also applied to the permanent establishment (PE) of the subsidiary located in the countries previously mentioned.

The income gained by a mentioned company, entities, or PE, is attributed directly to the resident taxpayer, in proportion to the participation held, regardless of its distribution.

The same article 167 of ITC establishes that all the countries in which the nominal tax rate is lower than 50% that the tax rate applicable in Italy are qualified as **countries with a privileged tax status**.

However, the CFC rules are not applied if: (i) the taxpayer shows that the controlled entity carries out a real business, (ii) where a positive advance ruling is given by the tax authorities, intended to prove that specific conditions required by the Law are satisfied.

The point (i) is not applicable when the subsidiary's income is made up of passive income (dividends, royalty, etc.), for more than 50% or of revenues related to services provided to the parent company, controlled company or other related parties, included financial services.

The CFC income is computed according to the Italian tax Laws and is subject to separately taxation in tax return, with the application of a medium tax rate not lower than the Italian corporate tax rate, equal to 24%. From the tax due the taxes paid abroad are deductible.

The dividends subsequently distributed by the subsidiary will be treated as exempted up to the taxed income.

CFC rules also apply to controlled entities established in EU countries or SEE or in other countries without a privileged tax status, if the following conditions are met:

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

Advanced ruling for exemption by CFC rules is available.

## Transfer pricing

**Transfer pricing rules** in line with OECD Guidelines are applicable in Italy. In particular, the rules apply to:

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

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

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

**The inter-company transactions** subject to Transfer pricing rules are taxable/deductible on the basis of the **Arm's Length principle**, which is the principle recommended by the OECD Guidelines, according to which the intercompany prices negotiated should be the same as those agreed between independent parties operating in conditions of free competition and under comparable circumstances.

There are no **legal obligations** in terms of **documenting the price policy** used within the international group; however, it is advisable for the Italian Company to have the proper documentation that can explain the transfer pricing method adopted within the group. Avoiding transfer pricing issues is also possible by using one of the means provided by the tax authorities, such as:

- advanced pricing agreement (APA);
- safe harbors;
- International standard ruling.

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

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

In relation to the above documents, the Italian regulations make explicit reference to the **OECD Guidelines**, and the documentation requirements broadly replicate the recommendations of the **EU Code of Conduct** on transfer pricing documentation for associated enterprises in the EU – the "European Union Transfer Pricing Documentation" or "**EU TPD**". This includes the Master File and Country File document, although with some points of difference, towards a more comprehensive informative package.

## Dividends

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

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

Dividends paid to companies based in member states of the European Union (EU) and in members of the European Economic Area (EEA) that allow a suitable exchange of information with Italy, are subject to a 1,20% withholding tax rate at source.

## Participation exemption

**Capital gains** on the transfer of shareholdings, under certain conditions, are **95% exempt** from taxation.

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

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

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

Capital losses on shares that met the abovementioned conditions are not deductible

## Deducibility of interest payable

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

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

On the other hand, any excess of the above ROL can be carried forward in later periods in order to offset any excess of interest payable.

## Tax transparency option

The tax transparency is a tax regime by which the **company** is not taxed on the PBT realized, but the PBT is **attributed to each shareholder**, in proportion to their share in the profits.

Such an option can be used if formally chosen by all the shareholders.

The requirements for exercising the option are as follows:

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

These conditions must be met from the very first day of the tax period of the subsidiary in which the option is exercised and remain in force until the end of the option period. The option lasts for 3 fiscal year. Under certain conditions, this regime may also be applied if one or more shareholders are non-resident. In the event of the distribution of dividends, consisting of profit smatured during the periods included in the period under the transparency regime, those dividends will not be taxed.

This system is also applicable to limited liability company or cooperatives provided that:

- all the shareholders are individuals, up to 10 for a limited liability company or 20 for cooperative companies;
- the subsidiary has an income not exceeding EUR 7,500,000;
- the company does not have participations within the participation exemption requirements.

## **Domestic and world tax consolidation**

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

### **Domestic tax consolidation**

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

The regime consists in the **consolidation of the taxable income**, calculated separately by each company, irrespective of the percentages of participation of the different companies which take part to the consolidation.

For this purpose, the holding company must:

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

Any excess interest payable and non-deductible assimilated costs borne by a subject who takes part in the consolidated balance sheet can be deducted from the group's overall income if and within the limits in which the other participants submit a declaration of large-scale gross earnings for the same taxation period that is not fully used for deduction. These rules can be applied to excesses carried forward, excluding any excess borne prior to entering the national consolidated balance sheet that must be used for the sole purposes of each company elected for this regime. The option is exercised by forwarding suitable notification to the Tax Authorities.

Companies belonging to the group and using IRES rate reductions may not exercise the option.

The following conditions must also be met:

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

### **World tax consolidation**

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

The following conditions must be met:

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

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

## 2. Withholding taxes

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

### Dividends

Dividend income received by individuals not carrying out business activities is subject to personal income tax (IRPEF) as follows:

- tax computed and paid by the taxpayer on a specific percentage of the dividend amount, if related to **qualified participations**;
- 26% substitutive final tax withheld at source for the total amount, if related to **non-qualified participations**.

More precisely, for the dividends received by individuals related to qualified participation, three different percentages apply:

- 58,14% for dividends generated with profits gained from January 1st, 2017 to December 31st 2017;
- 49,72% for dividends generated with profits gained from January 1st, 2008 to December 31st,2016;
- 40,00% for dividends generated with profits gained by December 31st,2007.

As per Budget Law 2018, the above rules are applicable to dividend from qualified participations generated with profits gained within 2017 and in case the distribution resolution is adopted within December 31st 2022. Dividends deriving from subsequent gains/resolutions are subject to substitutive tax at 26% regardless of the type of participation (qualified/non-qualified).

**Qualified participations** are participations entitling to:

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

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

Dividend paid to **non-residents** (other than EU companies) are subject to a 26% final withholding tax. Reduced rates and reimbursement may apply (leading to a 15% effective tax rate), provided that certain conditions are met. Dividends paid to **EU companies** are subject to a 1,20% final withholding tax.

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

### Interests

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

Interests on bonds and other financial assets are subject to 26% advance or final withholding tax according to various conditions.

Interests paid to **non-residents** are subject to the same rates applied to resident individuals; the withholding tax is applied on a final basis. Interest paid to non-residents on deposit accounts with banks and post offices is exempt. Payments to **associated EU Companies** are exempt under the EC Interest and Royalties Directive, provided that certain conditions are met.

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

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

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

### Entities subject to IRAP

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

In particular, the following entities are subject to IRAP:

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

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

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

## Tax assessment basis and rates

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

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

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

- **positive** components, consisting of the income from sales or provision of services, variations in stocks (if positive) and other operating income and revenues, and
- **negative** components, consisting solely of the cost of purchasing goods and services, the cost incurred for using third party goods, variations in stocks (if negative), depreciation, and amortization of fixed assets and sundry management charges.

Employment costs, costs deriving from the provision of temporary self-employed work and financial charges are not deductible for IRAP purposes. Therefore, such a special deduction has been applied in relation to the cost referring to those employees who have a timeless contract in place.

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

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

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

VAT is a general tax on consumption applied on the “**value added**” on goods and services, in particular tax is due on the increase in value of goods or services in the different phases of production and trade, until it reaches the final consumer who suffers the full cost of the tax.

## Tax assessment basis and rates

The transactions are subject to VAT if the following requirements are met:

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

- territorial requirement: the operations must be carried out within the Italian territory.

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

VAT substantially applies to the following operations:

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

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

The transactions VAT exempt are operations in compliance with the three above requirements, but they are excluded from VAT application by express provision of law, such as financial expenses, medical services, insurance premiums, etc. While the operations out of VAT scope are not compliant at least with one of the requirements.

### Applicable rates

The ordinary rate is 22%.

In addition to the ordinary rate, there are three reduced rates, 10%, 5% and 4%, and the “zero” rate which applies to certain so-called “non taxable” operations (exports of goods, provision of some international services or services relating to the international trade, transfers of goods to another EU Member State, provision of some services connected to transfers of goods to another EU Member State).

The Budget Law 2018 provides for an increase of the VAT rates starting from the fiscal year 2019, as follows:

	2019	2020	2021
ordinary rate	from 22% to 24,2%	from 24,2% to 24,9%	from 24,9% to 25%
reduced rate	from 10% to 11,5%	from 11,5% to 13%	

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

### Registration for vat purposes

If a person (individual person, partnership, company with share capital or institution) intends to carry out an operation relevant for VAT purposes while running a business or practicing an art or

profession, he/she/it is required to apply for an Italian VAT number before implementing the operation. VAT is applied through the **reverse charge mechanism** by the **recipient of the goods or services**.

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

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

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

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

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

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

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

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

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

### Taxpayers' obligations

Italian regulations lay down very detailed rules on the following:

- procedure and timing for the issue of invoices;
- content of invoices;
- procedure for the registration of invoices issued and received;
- procedure for the issue of credit and debit notes;
- calculation of VAT payable ;

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The VAT accounting of an operator could be handled under the special regime of "bookkeeping carried out by third parties" - so called *contabilità presso terzi*" (according to article 1, paragraph 3, of the Italian Presidential Decree no. 100 of March 23rd, 1998).

- periods for settlements and payments of VAT;
- procedure for the completion and submission of VAT returns;
- procedure for the completion and submission of Communication of VAT settlements return;
- procedure for the completion and submission of the Communication of data of the invoices received.

## **Other vat systems**

### **Customs warehouses and VAT warehouses**

Special rules establish the conditions for creating and using:

- “customs warehouses” where products are kept **without paying custom duties and VAT** until they are removed from the warehouse;
- “VAT warehouses” where products are kept **without paying VAT**.

### **Special VAT systems**

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

### **Group VAT settlement**

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

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

IMU is the **municipal tax** charged on the **ownership** of **buildings, buildable areas** and **agricultural lands** situated within the Italian territory, intended for any use, including property used to performing business activities.

The holder of the property rights, or the real right such as usufruct, use, residence, emphyteusis, or surface right, is required to pay the municipal tax.

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

The **tax basis is computed as follow**:

- for **buildings**, it is equal to the value obtained multiplying the cadastral rent increase of 5% for a different multiplier (from 55 up to 160), based on the cadastral class;
- for **building land**, it is equal to the commercial value of the land as at January 1st in the FY;
- for **agricultural land**, it is equal to the cadastral income increased by 25% and multiplied by 135.

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Under this special regime, VAT due is calculated with reference to two months before, instead of the month immediately before (Ministerial Circular no. 29 of June 10th, 1991).

### Exemptions for IMU purposes:

- the **buildings** used as first house by the Taxpayer;
- according to the Law 208/2015, starting from FY 2016 the agricultural land, cultivated, owned and run by farmers and professional agricultural entrepreneurs.

Please note that, under certain condition, verified by the municipality, or certified by the owner, 50% of the tax base of buildings unusable and uninhabitable is considered as IMU exempt until the buildings is reusable.

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

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

The tax amount due is paid in two installments on June 16th and December 16th of each FY.

In the FY 2016 a new Tax on Municipal Indivisible Services (**TASI**), charged on the **ownership of buildings and buildable areas**, was introduced.

TASI is applied on the same IMU tax base, with a rate that varies from 0,1% to 0,25%, and tax amount due is paid in two installments on June 16th and December 16th of each FY. Please note that the sum of IMU and TASI rate cannot be higher than the maximum IMU tax rate, equal to Euro 1,06%.

## 6. Registration tax

The Presidential Decree no. 131/1986 provides a list of documents subject to compulsorily registration and documents that, in the **event of use**, may be registered voluntarily.

In particular with reference to the documents related to **real estate**, or **assets** drawn up in Italy, **corporate transaction papers** and documents stipulated abroad that have the purpose of **constituting** or **transferring real rights in intangible assets or companies** located in Italy, the **lease** or **rent** of such assets must be registered.

The law provides for a different expiry date with reference to the mandatory registration of each documents listed, while for the documents subject to registration "**in the event of use**", no expiry date is provided.

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

Tax is computed by the competent tax office by applying a tax rate determined by the value set out in the registered document, or by the service contained therein. All applicable rates are stated in the rates sheet attached to the Presidential Decree no. 131/86.

The applicable rate varies from 0.5% to 15%, with reference to the type of the relevant document for registration tax purposes, with a minimum payable of EUR 67. However, for the same type of documents a fixed tax equal to EUR 200 is due.

Please note that also on the documents relating to the sale of assets and provision of services subject to VAT (including non-taxable provisions due to the lack of territorial premises, as well as exempt provisions), a fixed tax equal to EUR 200 is always due.

A notable exception is the leasing of instrumental assets which, despite being subject to VAT, is subject to proportional registration tax (1%).

The tax must be **paid** to the **Tax Authorities at the time of registration**. Public officials who have drawn up, received or authenticated the document, those subjects for whom the registration is completed (contracting parties or assignees) and real estate agents are all liable for the payment of taxes.

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

This tax is **personal** and progressive.

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

### **Persons liable for tax**

The following **subjects** are liable for tax:

- natural persons resident in the Italian territory with reference to the entire income owned;
- natural persons not resident within the Italian territory only with reference to the income produced in Italy.

According to the Italian Law, Italian residents are natural persons who, for most of the tax period, meet at least one of the following conditions:

- they are registered in the registers of the population resident in the national territory;
- they are domiciled in Italy (domicile to be understood as the center of interests, including moral and company interests);
- they are resident in Italy (habitual abode).

### **Tax assessment basis**

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

The relevant categories include:

- land income, relating to land and buildings located in the Italian territory;
- capital gain;
- income from employment;
- income from self-employed;
- company income;
- sundry income, included income earned from not usual activity of business, arts or professions.

Once the gross income has been determined, any deduction provided by law is applied in order to reduce the tax base.

Deductions are usually equal to 19% of the charges listed in the Italian Tax Code incurred by taxpayer.

The **gross tax** is computed by applying the increasing **rates on the income increases** of the net overall income.

The **rates** currently in force (2018) are as follows:

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

### Regional and municipal IRPEF surtax

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

- a **regional** surtax between 1.73% and 3.33% (established by the regional government on a yearly basis),
- a **municipal** surtax comprising of a first rate established each year by the state and applied throughout the national territory and a second rate not exceeding 0.8% p.a. established by the individual municipality (under some circumstances the rate could rise by a further 0.3%).

### Tax on income of non-residents

The personal Income Tax (IRPEF) is applied to resident and non-resident individuals. Resident individuals are taxed on a world-wide basis, while non-resident individuals are taxed on the income produced in Italy on a territorial basis.

The following income is deemed to be produced in Italy:

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

The Tax base is equal to the aggregate amount of the overall income produced in Italy as indicated above, excluding exempt income and income subject to withholding tax, or final withholding tax.

It should also be noted that, the income as indicated above, produced in Italy by non-resident companies and other entities, including trusts, with or without legal personality, are subject to corporate tax (IRES).

The income realized by non-resident companies is qualified as business income and includes:

- capital gains and capital losses relating to assets used in business activities performed in Italy (even if not realized through permanent establishments);
- dividends paid by resident entities;
- income derived from activities performed and assets located in Italy;
- capital gains derived from the sale of participation in resident entities;
- land income, relating to land and buildings located in the Italian territory.

It shall be pointed out that the tax treaties override statutory provisions, therefore the taxpayer could require the related application when they are more favorable.

### 8. Tax obligations

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

#### Compliances relating to direct taxation

According to the Italian Law, for Personal and Corporate Tax purposes, taxpayers have to complete an annual tax return in order to compute and pay taxes for the applicable fiscal year and in advance for the current fiscal year.

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

Individuals and partnerships must file an annual tax return by the end of September of the following tax year, while **limited liability companies** must file the tax return within nine (9) months of the end of the relevant tax period (usually matching the Financial Statement date).

The tax **payments** are due into **two instalments on account** and a **balance for the previous year**.

**The first payment on account for FY and balance related the previous FY must** be paid by the last day of the sixth month following the end of the relevant tax period. It is possible to postpone the payment by the last day of the seventh month with an additional payment of an interest rate equal to 0.4%.

The **second payment on account** must be due within the last day of the eleventh month following the end of the relevant tax period.

#### IRAP

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

## VAT

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

Starting from January 1st, 2017 the Taxpayers have to submit to the Italian Tax Authorities the following VAT Communications:

- quarterly communication of VAT settlements return – the relevant deadlines for each quarter are:
  - **1° quarter**: within the **31st of May**;
  - **2° quarter**: within the **16th of September** (only for 2018 – 1st October 2018);
  - **3° quarter**: within the **30th of November**;
  - **4° quarter**: within the **28th (or 29th) of February of the following year**.
  
- periodic communication of data of invoices received and issued in the course of the calendar year – the relevant deadlines are:
  - **1° quarter**: within the **31st of May**;
  - **2° quarter**: within the **16th of September** (only for 2018 – 1st October 2018);
  - **3° quarter**: within the **30th of November**;
  - **4° quarter**: within the **28th (or 29th) of February of the following year** (only for 2017 – 1st semester: within September 18th, 2017; 2nd semester: within April 6th – 2018).

In general, settlement is carried out on a monthly, quarterly or infra-yearly basis.

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

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

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

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

## Offsetting

It is possible to **offset credits and debits** relating to the same tax (traditional offsetting) or credits and debits deriving from different taxes and social security contributions (horizontal offsetting). However, The Italian tax law provides some limits referred to the offsetting of tax credit and under certain circumstances a certification of the tax return is also required by a qualified professional.

## IMU

The IMU (i.e. the Italian municipal tax on property) return has to be submitted to the municipal authority in case changes related to taxable status of buildings, buildable areas, agricultural lands and/or to the taxable status of the taxpayer liable to pay occur. In this last case the return has to be submitted by previous and new taxpayers. The filing must be made no later than June 30th of the year following the change. The return is effective for the following years as well, provided that no change in the disclosed information and elements entailing adjustment of the tax due occur.

The tax is payable in two annual installments, in advance on June 16th and balance on December 16th of every FY.

## 9. Ruling

### Ruling for non-resident companies

A new form of ruling is available for non-resident companies that intend to invest in Italy.

The new system, entered into force on October 7th, 2015 (Legislative Decree no. 147/2015) is aimed at providing a framework of certain and stable tax treatment, regarding their investment plan.

The investor, either resident or non-resident, shall forward its application to the Italian Tax Authorities by presenting a business plan, detailing the amount of the investment, the timing and implementation modalities, the expected number of new hires and the consequences of such investment on the Italian tax system.

The procedure applies to investments not lower than Euro 30 million.

### International ruling

In order to reach an agreement in advance with the Italian Tax Authority, “enterprises with international activity” may implement a suitable **international standard ruling procedure** valid for three tax periods, without prejudice to any change in the circumstances resulting from the agreement signed.

The standard ruling procedure mainly regards:

- the correct transfer pricing methodology applicable to the transactions carried out with related parties;
- the proper tax treatment with reference to dividends, interest, royalties or other income paid to or received from non-resident persons in specific cases;
- the proper application of the provisions of the law, including tax treaties, to specific cases related to the attribution of profits or losses to permanent establishments of non-resident enterprises in Italy as well as to permanent establishments abroad of resident enterprises.

### **International agreements**

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

# FINANCIAL & TAX INCENTIVES IN ITALY

## 1. R&D Tax Credit

As of 2015 a tax-credit benefit has been introduced for any research & development (“R&D”) investment activities carried out by companies, starting from the fiscal year following that ending 31 December 2014 and until the fiscal year ending 31 December 2020. Such benefit is given to all companies irrespectively from their legal status, their economic sector or accounting regime.

This tax-benefit is payable under condition that, during the fiscal year in which taxpayers intend to take advantage of the tax-credit, at least € 30,000 of R&D costs are incurred.

The main characteristic(s)/requirement(s) of the above specified R&D credit are the following:

- facilitate incremental R&D investments in respect to the supported average-costs during the period 2012-2014;
- facilitate personnel investments, “extra muros”, industrial sole right, equipment and laboratory tools;
- tax rate to determine to R&D tax-credit equal to 50%;
- maximum yearly amount of the tax-credit equal to MLN/€ 20 per taxpayer;
- credit to be used only to offset payments and starting from the fiscal year following that in which it was recognized.

Moreover, the benefit is:

- supplied as an automatic credit (subject to possible future verification); and
- subject to a certification if there is no accounting supervision (if the certification is needed, a further amount of € 5,000 is given for such activity).

## 2. Patent Box Tax Regime

- **Purpose:** Patent Box aims to promote investments in R&D related to intangible assets allowing an additional tax deduction from CIT arising from use or licensing of certain intangible assets.
- **Eligible intangible assets:** relevant IA are software protected by copyright; patents, business and technical industrial know how; other legally protected IP, such as designs and models.
- **Tax deduction:** the amount of maximum tax deduction is 50% starting from FY 2017 (30% for FY2015 and 40% for FY2016). This percentage is applied to the income linked to the use of the eligible intangible assets (or licensing).

The same tax deduction is also granted with reference to Regional Tax on Productive Activities.

Patent Box regime is also applicable to capital gain arising from selling of qualified IPs.

- **Beneficiary:** subjects involved for this tax regime are companies, non-resident taxpayers with a permanent establishment in Italy if they are resident in a country with which Italy has an effective tax information exchange agreement, individual entrepreneurs and other bodies carrying out business activities.

- **Tax ruling:** depending on the use of the eligible assets (“direct” for production or “indirect” by licensing) holders of IP rights are required to improve a tax ruling with the Italian Tax Authority. Indeed, in case of direct use this procedure is mandatory for determining the amount of benefited income arising from the direct exploitation of the eligible assets.
- **Validity:** the election shall be exercised annually and it is irrevocable for 5 years.

### 3. Notional Interest Deduction (Aiuto alla Crescita Economica – D.L. N. 201/2011)

The NID regime was introduced in Italy in 2011 to mitigate the difference in the tax treatment applied to companies funded with debt versus companies funded with equity and, in general, to encourage Italian businesses to strengthen their equity structure. While companies leveraged with debt would generally deduct accrued interest expenses, NID allows Italian companies and Italian branches of foreign companies funded with equity to deduct a notional expense computed as a percentage of the equity increases occurred after FY 2010. Such amount represents a tax deduction for CIT purposes (not IRAP).

From an operating standpoint, ACE allows the deduction from the overall taxable income of an amount correspondent to the notional return of the new equity capital according to the following rules:

- each year equity increases shall be computed compared to the equity as at 31.12.2010;
- for FYs 2011, 2012 and 2013 deduction was calculated as 3% of the equity increases. FY 2014’s rate was 4%, 4.5% for FY 2015 and 4.75% for FY 2016. FY 2017 and 2018’s rates are, respectively, 1.6% and 1.5%;
- equity increases are triggered, mainly, by cash contributions and profits carried forward as well as renounce of credits by the shareholders;
- equity decreases consist of reductions of the equity through any kind of assignment in favor of the shareholders (i.e. dividends). Losses are not considered as equity decreases;
- each year, the deduction cannot exceed the amount of the equity of the company at the end of the FY (including the loss /profit of the year);
- the deduction cannot generate a tax loss. Therefore, if the deduction exceeds the taxable income for CIT purposes the difference can either be carried forward to the next FYs or converted into a credit to offset IRAP payments (if due) in the next FYs.

### 4. Favourable tax regimes applicable to expatriates or individuals moving to Italy

#### Expat regime (art. 16 D.Lgs. n. 147/2015)

Introduced in 2015 and in force as from 2016, the Italian Expat regime is a favorable tax regime which lowers the taxable base of professional income for expatriates moving to Italy. It aims at attracting in Italy highly qualified professionals.

It applies to individuals who hold a degree (university level) and are EU citizens or non-EU citizens whose country of origin has a double tax treaty in force with Italy (in 2016 it was limited to EU citizens only).

In order to be eligible for the regime, the individual must:

- move in Italy and become tax resident of Italy according to domestic law (art. 2 TUIR);
- hold a degree (university level) and have worked as employee or self-employed outside of Italy for at least 24 months, or
- have studied (university level) and graduated abroad.

After arrival, the individual must carry out a professional activity in Italy, either as employee or self-employed, either in the private or in the public sector.

The expat regime is applicable also to individuals (both EU citizens and non-EU citizens as above) who do not hold a degree (university level), provided that they cover management roles or are highly-qualified or highly-specialized. In order to be eligible, the individual must:

- move in Italy and become tax resident of Italy according to domestic law (art. 2 TUIR);
- have not been a tax resident of Italy for 5 years prior to moving to Italy;
- have a professional activity in Italy for at least 183 days over each tax year;
- work for an Italian resident company (also as assignee in Italy from a foreign company);
- cover management roles or be highly-qualified or highly-specialized.

After arrival, the individual must carry out a professional activity in Italy, either as employee or self-employed, in the private sector only.

The application of the expat regime allows to benefit from a lower taxable base, which is, for the fiscal year 2016, 70% of employment income only and, for the fiscal year 2017 onwards, 50% of professional income (both employment and self-employed income).

The benefit lasts for 5 years starting from the first year of tax residency in Italy.

The applicability of the regime terminates if the individual breaks his tax residency in Italy prior to 2 years from the first year of benefit.

### **Substitute personal income tax regime for new Italian tax residents (art. 24-bis TUIR – income tax code)**

This favorable tax regime has recently been introduced in the Italian tax law and is in force as from 2017. It aims at attracting in Italy high-wealth individuals.

It is an optional regime, and is applicable to individuals of any nationality, Italian or foreign, who

- move to Italy and become tax resident of Italy, and
- have been tax resident outside of Italy for 9 years out of the 10 preceding the applicability of the regime.

The requirements above are cumulative. It is given the possibility to extend the regime to family members of the eligible individual, if they meet the 2 conditions above.

The regime implies a taxation principle that is alternative to the principle of worldwide tax liability normally applicable to Italian tax residents. Under the regime, eligible individuals are taxed in Italy on Italian-source income according to domestic tax law, and on foreign-source income on a lump-sum basis. In particular, the regime foresees the application of a substitute personal income tax on any income of foreign source whilst any income of Italian source is instead taxable in Italy according to the regular progressive taxation on personal income. The substitute personal income tax is a flat tax of 100,000 euro per year, regardless the amount of income of foreign-source.

There is the possibility to extend the substitute flat taxation on foreign-source income to family members of the eligible individual. In such case, the flat tax on foreign-source income amounts to 25,000 euro per year.

The benefit lasts for a maximum of 15 years starting from the first year of option.

The option for the applicability of the regime has to be made through the filing of the personal income tax return. It is possible to request an upfront ruling with the Italian tax authorities to determine the eligibility to the regime, in particular with respect to the residency requirements (specific cases apply when prior residency is in black-listed countries).

It is possible to revoke the application of the regime through tax return.

The regime ceases to apply in case the substitute tax is not paid by the due date or in case the tax residency in Italy is broken.

### 5. “Super and Hyper amortization” relief

The so called “Legge di Bilancio 2018”, has extended to the fiscal year 2018 the “super- amortization” relief and the “hyper- amortization” relief.

#### The super- amortization relief

The “super- amortization” discipline consists in overestimating, for tax purposes, the investments in tangible fixed assets, finalized between January 1st and December 31st 2018, of 30%. In order to benefit from the relief, the assets could be owned or leased by the company.

As mentioned above, the so called “Legge di Bilancio 2018” has extended the relief, for the investments made:

- by December 31st 2018;
- or by June 30th 2019, provided that by December 31st 2018 the order is accepted by the seller and the advance payments of at least 20% of the acquisition cost has taken place.

In this regard, please note that in order to identify the period in which the investment is realized - and, therefore, whether or not it falls within the facilitated period - the referring rule is art. 109 of the Italian Tax Code. In this respect, please note the company can benefit from the fiscal relief from the entry into operation of the asset pursuant to art. 102 of the Italian Tax Code.

This tax benefit lead to an increase in the capital expenditures incurred by the company, exclusively for tax purposes. This leads to a greater annual deductible depreciation, or a greater annual deductible leasing fees, thus, a decrease in taxable income.

In this regard, please note that if during the tax period the benefit is used less than the maximum limit allowed, the unallocated difference cannot be recovered in any way during subsequent tax periods; this differential can only be recovered by using ordinary instruments allowed by the Italian Tax Law such as the CIT return amendment.

Subjects benefiting from "super-depreciation" relief are:

- companies and permanent establishment of foreign companies regardless of the legal nature, the size of the business or the economic sector in which they operate;

- professions, even if they carry out their activity in associative form.

The assets subject to relief must be:

- materials;
- instrumental;
- new;
- owned or leased by the company.

Vehicles are not included in the relief.

## **The hyper- amortization relief**

The "hyper-amortization" discipline consists in overestimating the investments in tangible fixed assets, finalized between January 1st and December 31st 2018, of 150%. In order to benefit from the relief, the assets, acquired or leased by the company, must be functional to the company's technological and/or digital improvement.

As for the "super- amortization" this tax benefit leads to an increase in the capital expenditures incurred by the company, exclusively for tax purposes, which results in a greater annual deductible depreciation, or a greater annual deductible leasing fees, thus, a decrease in taxable income.

In this regard if during the tax period the benefit is used less than the maximum limit allowed, the unallocated difference cannot be recovered in any way during subsequent tax periods; this differential can only be recovered by using ordinary instruments allowed by the Italian Tax Law such as the CIT return amendment.

Subjects benefiting from "super-depreciation" relief are companies and permanent establishment of foreign companies regardless of the legal nature, the size of the business or the economic sector in which they operate.

As anticipated at the beginning of the paragraph, the so called "Legge di Stabilità 2018" has extended the relief for the investments made:

- by December 31st 2018;
- or by December 31st 2019, provided that by December 31st 2018 the order is accepted by the seller and the advance payments of at least 20% of the acquisition cost has taken place.

The acquisition cost is increased by 150% only for investments in new instrumental assets. These are functional assets for the technological and / or digital transformation of the companies such as:

- instrumental assets whose operation is controlled by computerized and / or managed systems through appropriate sensors and actuation;
- quality assurance and sustainability systems;

For companies benefiting from the above-mentioned relief, the ss.cc. "Legge di Bilancio 2018" has provided the "super- amortization" (30%) discipline also for intangible fixed assets included in the Annex B (such as software and IT systems).

This tax relief is recognized for companies benefiting from a 150% increase (hyper-amortization relief). The rule, therefore, relates the intangible asset to the "subject" that benefits from the depreciation and not to a specific material asset.

For the benefit of hyper-depreciation and related super amortization of intangible assets, the company must produce:

- a statement by the legal representative pursuant to Presidential Decree 445/2000;
- for assets with purchase price of over 500,000 euros, a technical legalized report.

This documentation must attest that:

- the assets can be included in the list set out in Annex A and / or B of the ss.cc. "Legge di Bilancio 2018";
- the asset is interconnected to the production management system or to the supply network.

## 6. Other incentives

### Program to relaunch areas affected by industrial crisis (Law 181/89)

The program is aimed at relaunching industrial activities, safeguarding employment levels, supporting investment programs and entrepreneurial development in areas affected by industrial and sector crises.

Companies set up as joint-stock companies, cooperative societies and consortium companies are eligible for benefits.

Initiatives that are eligible for facilitations are:

- The ones that provide for the implementation of production investment programs and / or investment programs for environmental protection, possibly supplemented by projects for the innovation of the organization, with eligible expenses not lower than 1.5 million euro;
- The ones that involve an increase in the number of employees of the production unit involved in the investment program.

Incentives are granted in the form of:

- contribution for the purchase of fixed assets,
- direct contribution to the expenditure;
- soft loan.

The soft loan is equal to 50% of eligible investments. The contribution for the purchase of fixed assets and the direct contribution to the expenditure is not less than 3% of the eligible expenditure.

## Agreements for Innovation

Companies of any size and with at least two approved financial statements, which carry out industrial, agro-industrial, craft activity or industry services, as well as research activities, can have access to this procedure.

This incentive projects concerning industrial research and experimental development activities aimed at the creation of new products, processes or services or the significant improvement of existing products, processes or services, through the development of one or more of the technologies identified by the European Union Framework Program for research and innovation 2014 – 2020, "Horizon 2020".

For the purposes of access to the incentive provided for by the Ministerial Decree of 24 May 2017 it is necessary that an Agreement for Innovation is defined between the Ministry of Economic Development and the Regions and the Autonomous Provinces involved and / or the proposing subject.

For the activation of the negotiation procedure aimed at defining the Agreement for Innovation, the proposing subject shall submit to the Ministry of Economic Development a project proposal containing at least:

- the name and the size of each proposing subject, as well as a description of the company's profile, with particular reference to the technical-organizational structure and to the presence at national and international level;
- an updated strategic business plan;
- the description of each project, indicating the objects, the start and ending dates, the production units involved and the expected costs;
- the type and the amount of the incentive required for the implementation of each project.

The above-mentioned documentation shall be sent electronically through certified mail at the address [dgiai.segreteria@pec.mise.gov.it](mailto:dgiai.segreteria@pec.mise.gov.it).

Once received the project proposal, the Ministry of Economic Development will start the interlocutory phase with the Regions and the Autonomous Provinces and to evaluate the strategic validity of the proposed initiative by analyzing the following elements:

- relevance of the initiative in terms of technological developments and degree of innovation of the expected outcomes;
- industrial interest in the realization of the initiative in terms of ability to encourage innovation of specific sectors or economic segments;
- direct and indirect effects on the employment level of the productive sector and / or of the reference territory;
- national value of the interventions from the point of view of the multiregional impacts of the initiative;
- possible ability to attract foreign investments, also through the consolidation and expansion of foreign companies already present on the national territory;
- ability to strengthen the presence of Italian products in market segments characterized by strong international competition.

In the event that the evaluations are concluded with a positive outcome, the Agreement for Innovation is defined. The right to the benefit does not automatically follow the Agreement, but it is rather subordinated to the presentation of the executive projects and the subsequent evaluation by the Managing Entity.

More specifically, an application shall be submitted based on a specific form provided by the Ministry of Economic Development, together with a technical sheet, a development plan, a declaration in substitution of an affidavit concerning the accounting data and a declaration in substitution of an affidavit regarding the requirements to access the benefit. The application can be submitted only electronically, through the procedure available at <http://fondocrescitasostenibile.mcc.it>.

Once the Managing Entity has concluded his evaluation activity, the results are sent to the Ministry that – in case of positive outcome – notifies the proposing subject.

The incentive can consist of:

- a direct contribution to expenditure for a minimum percentage of 20% of eligible costs and expenses (to which a defined variable part may be added in relation to available regional financial resources);

- a soft loan, if provided for by the Agreement, up to a limit of 20% of the eligible costs and expenses (to which a defined variable quota can be added in relation to the available regional financial resources).

### INVITALIA Development Contract

The so-called “Development Contract” (Contratto di Sviluppo) is focused on supporting greenfield or expansion projects of more than EUR 20 million (or EUR 7,5 million for food processing). It can consist of one or more connected and functional projects (investment and R&D&I), also presented in joint form, in the following sectors:

- Manufacturing;
- Food processing;
- Tourism (no R&D&I projects)
- Environmental protection.

Eligible investments are:

- a) creation of a new production plant;
- b) expansion of an existing production plant;
- c) reconversion of an existing production plant (manufacturing new products);
- d) restructuring of an existing production plant, with:
  - a fundamental change in the existing production processes, introducing innovations, or
  - significant improvement in the existing production processes, in order to increase efficiency and/or flexibility (cost reduction, increase in product quality and/or processes, environmental impact reduction and work safety conditions improvement);
- e) acquisition of an existing production plant, located in a priority area and owned by a company not subjected to bankruptcy proceedings in order to safeguard jobs.

The available time to complete the investment is 36 months.

The size of the company size and the precise location of the plant affect aid intensity:

- in the Southern regions (Basilicata, Calabria, Campania, Apulia, Sardinia and Sicily): companies of any size (small, medium and large) can benefit from the incentive;
- outside the Southern Regions, large companies can benefit of the incentive only for the investments defined at letters a), c) and e) above.

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<http://www.invitalia.it/site/eng/home/what-we-do/supporting-large-investments/development-contract.html>

The Development Contract may also be jointly carried out by multiple parties with the network contract (Law 33 of 9 April 2009). In this case, the specially appointed joint body acts as the representative of the Contract participants and shall take on all obligations towards Invitalia.

The incentives consist of grants and soft loans towards capital investment and towards research & experimental development expenses, and investors must contribute financially at least 25% of the eligible costs.

The incentives will be the result of a negotiation established between proposing companies and the managing authority (Invitalia).

Projects presented by foreign companies, providing a minimum EUR 50 million investment, gain access to the "Fast Track" procedure (time shortening, "ad hoc" resource...).



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*Ministero dello Sviluppo Economico*



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