

TAX MANAGEMENT PORTFOLIOS™

FOREIGN INCOME

Business Operations in Italy

by

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TAX MANAGEMENT PORTFOLIOS™

FOREIGN INCOME

Business Operations in Italy

PORTFOLIO DESCRIPTION

Tax Management Portfolio, *Business Operations in Italy*, No. 7190, is designed to provide an introduction to Italian business life, including the requirements that must be met and principal problems encountered in making investments, and in particular the establishment and operation of commercial interests in Italy. It includes an analysis of the tax on corporations, the tax on individuals and, in general, all taxes imposed on business firms and investments.

The Portfolio presents the various alternatives under Italian law for creating fixed business relationships in a more concrete form than mere contract, distribution, or agency relationships. Each form of business organization is summarized and particular attention is paid to the tax system, which has an important impact on Italian business operations. The foreign exchange laws and foreign investment laws, which are significant to anyone wishing to introduce capital into Italy for investment purposes, and the mechanisms and characteristics of the more important corporate forms are explained to provide potential investors with a better understanding thereof. Additionally, there is a brief discussion of the provisions of the Italy-United States tax treaty.

This Portfolio may be cited as Marciasini, 7190 T.M., *Business Operations in Italy*.

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DETAILED ANALYSIS

I. Italy — General Background

A. Tax System Overview

1. General

Revenue authority	The Revenue Agency (Agenzia delle Entrate)
Type of tax system	- Residents: Worldwide system (Corporations: Section V.A.; Individuals: Section IX.A.) - Non-residents: Italian-source income (Corporations: Section VI.C.; Individuals: Section X.)
Residence	Corporations: A company is tax resident in Italy if it is incorporated in Italy and has either: - Its registered office, place of effective management or place of day-to-day management is in Italy; or - The company holds, directly or indirectly, a controlling participation in an Italian corporation, where the company either: - Is controlled (directly or indirectly) by a company resident in Italy; or - Is managed by a board of directors or other equivalent executive organ, composed mainly of directors who are resident in Italy. (Section V.A.) Individuals: An individual is tax resident in Italy if for more than 183 days in a fiscal year he or she: - Is physically present in Italy; - Has a 'residence' in Italy (habitual abode); or - As a 'domicile' in Italy (principal centre of social interests, e.g., the family).
Basic domestic nexus rule for foreign corporations	A foreign corporation is subject to corporate income tax on income derived through an Italian PE, as defined in Ital-

	ian domestic law, and on most other Italian source income. (Section VI.)
Treaty network	Italy has tax treaties with nearly 100 countries, including the United States, which largely follow the OECD Model Tax Convention. (Section XIV.A.) MLI signatory: Yes. (Section XII.C.) For the texts and status of Italy's tax treaties, see International Tax Treaties.

2. Corporations

Corporate income tax rate	Flat rate of 24% (Section V.I.)
General withholding tax rates on payments to non-resident companies	<u>Dividends</u>: Dividends payable to non-residents are subject to: - A 1.2% withholding tax for European Union or European Economic Area residents; or - A 26% withholding tax in other cases (Section X.B.) <u>Interest</u>: 26% (Section X.B.); <u>Royalties</u>: 22.5% (Section X.B.) For the rates of source country taxation applying under Italy's domestic law and tax treaties and the context for their application, see the Withholding Tax Chart.
Net operating losses carry back/forward	Carryback: There is no loss carryback. (Section V.H.) Carryforward: Generally, losses relating to one tax period may be carried forward to reduce up to 80% of the aggregate income in the next or ensuing tax years until all of the loss is absorbed. (Section V.H.)
Restrictions on deductibility of interest expenses	Interest expenses can be deducted up to the total amount of interest income plus any interest income carried forward from previous tax years, with the excess being deductible within the limit of 30% of the current tax year's EBITDA (Section V.G.)
Anti-hybrid mismatch rules	Yes. (Section XIII.C.4.)

Incentives (major)	• R&D: Yes. (Section II.A.3.f. and Section V.C.6.) • Patent box: No — repealed as from 2021. (Section V.C.5.) • Enhanced depreciation/capital allowance: Yes. (Section V.E.) • Environmental: Yes. (Section V.C.7.) • Other: Inpatriates (Section II.A.3.a.); new hires (Section V.C.8.)
Participation exemption (or similar regime)	Yes, applicable to Italian corporate income tax on dividends and capital gains on shares in qualifying subsidiaries. (Section V.C.1.)
Tax consolidation	Yes. There are two types of consolidated tax returns: • The national consolidated tax return; • The worldwide consolidated tax return. (Section V.B.4.)
M&A regime	• Tax-free or tax-privileged transaction: Yes. (Section III.E.) • Stamp duty/share transfer taxes: A registration tax applies to asset sales (Section IV.H.) and a financial transaction tax applies to transfers of shares of Italian companies. (Section IV.C.) • Limitation on pre-deal NOL carry-forwards: Generally, yes, subject to exception. (Section V.H.) • See also: EU Mergers Tax Directive (Section III.E.)
OECD Pillar One and Two	Legislation enacted on aspects of Pillar Two (Section XIII.E.)
Controlled foreign company regime	Yes. (Section V.P.)
Transfer pricing regime	Yes. (Section XII.A.) Country-by-country report: Yes. (Section XII.A.2.) See also: Chapter 85: Transfer Pricing Rules and Practice in Italy.
General anti-avoidance rule (GAAR)	Yes.

Mandatory disclosure regime	Yes. (DAC 6/DAC 7). (Section XIII.D.)
Foreign tax relief	Relief may be granted by way of a credit under the terms of a tax treaty or unilaterally. (Section XIV.A.)

3. Individuals

Personal income tax rates	• 0–28,000 euros: 23% • 28,001 euros–50,000 euros: 33% • Above 50,000 euros: 43% (Section IX.D.)
Equity incentives	Yes (Section IX.B.5.b.)
Foreign tax relief	Yes (Section XIV.)
Wealth tax/Inheritance tax/Gift tax	• Italy does not levy a wealth tax on an individual's entire net worth. However, it does levy taxes on specific assets, such as those held abroad. (IX.L.) • Inheritance tax and gift tax are levied at 4%, 6% and 8%. (Section IV.D.)
Exit taxes	No. However, there are exit taxes applicable to qualifying Italian companies. (Section XIII.C.3.)

4. Other Taxes

VAT/GST/Sales tax	VAT is charged at a standard rate of 22% (lower rates of 4%, 5% and 10% is charged on certain items). (Section XI.B.) Taxpayer registration threshold: 65,000 euros turnover. (Section XI.A.) For further research on Italy's GST system, see also the VAT Navigator.
Digital services tax	A 3% digital services tax is levied on revenues resulting from the provision of certain digital services. (Section IV.I.)
Local taxes	Yes, a property-based tax (Section IV.F.3.) and a regional tax and municipal tax. (Section IV.O.)

5. Administrative

Standard tax return filing date	Corporate Income Tax Return: For companies with a tax year coinciding with the calendar year, the return must be filed electronically by November 2, 2026. (Note: While the standard deadline is October 31, it falls on a Saturday in 2026, pushing the deadline to the next business day.) A company that does not have a tax year coinciding with the calendar year must file the return no later than the last day of the tenth month following the close of its tax year. (Section V.J.) Individual Income Tax Return: The Redditi PF (standard return) must generally be filed electronically by November 2, 2026. (Similar to corporate returns, the standard October 31 deadline is moved because it falls on a weekend). Form 730 (for employees and retirees) must be submitted by September 30, 2026. In limited cases where paper filing is still permitted (e.g., for certain returns filed on behalf of a decedent), paper returns must be submitted to a local post office between May 2 and June 30, 2026. (Section IX.G.)
Limitation period for assessment	The tax office has five years from the end of the tax year in which the tax return was filed to send a notice of deficiency. The statute of limitations is seven years if no return was filed.
Advance tax rulings	Yes. A taxpayer may apply to the Tax Authorities for an opinion on a tax issue before entering into a transaction. An advance ruling is binding only on the taxpayer that sought it. (Section IV.A.3.a.) An Italian resident company may apply an advance ruling on the arm's length pricing of intragroup transactions, i.e., an advance pricing agreement. (Section XII.A.)

B. The Country

Italy consists of 20 regions, five of whom are autonomously governed, 107 provinces and metropolitan centers, and two micro-states, San Marino and the Vatican. The capital city, Rome, is also the largest city, but Milan in the north is the economic capital of the country. Italy is bordered by France, Switzerland, Austria, and Slovenia.

Italy is a Member State of the European Union (EU) and has adopted the euro as its official currency.

Italian is the official language, but 12 minority languages are formally recognized.

C. Political Organization/Government

Italy is a unitary parliamentary republic. Under the 1948 Constitution, governmental authority is apportioned among the executive, legislative, and judicial branches. The chief political subdivisions are the 20 regions, which have limited governing powers,¹ alongside two other levels of government: the municipalities (*comuni*) and the provinces (*province*). The Constitution provides, as a general rule, that all “administrative functions” fall within the jurisdiction of the municipalities, with the exception of those functions that require a uniform approach, which then come within the jurisdiction of a province.

1. Executive Branch

Executive power is held by the Council of Ministers or Cabinet. The members of the Cabinet head the various ministries, although some ministers are also appointed without portfolio. Most of the initiative of the government lies with the Council of Ministers, which not only has the right to introduce new laws in Parliament but may also issue legislative decrees under Parliamentary delegation (*decreti legislativi*) and, in cases of emergency, may issue decrees in the absence of such delegation (*decreti legge*).

The President of the Republic is the head of state and is elected for a seven-year term by Parliament sitting jointly with a small number of regional delegates.² The power of the office is limited, in particular by the rule that presidential acts and decrees must be countersigned by a member of the Cabinet. Nevertheless, the responsibilities of the office are varied and substantial. The President formally promulgates laws, ratifies treaties, grants pardons, acts as commander-in-chief of the armed forces, formally dissolves Parliament and, perhaps most importantly, appoints the Prime Minister, subject to Parliamentary approval.³

2. Legislative Branch

Parliament consists of two houses: the Chamber of Deputies and the Senate. Both houses of Parliament are popularly and directly elected by a proportional representation system. As of the general election held in May 2023, the Chamber of Deputies has 400 members and the Senate has 200 members. The Senate continues to include members who are appointed for life in accordance with special constitutional provisions.⁴ The term of legislators in each house is otherwise a maximum of five years.⁵

Parliament serves as the electoral college for the election of the President of the Republic. It also approves the President's selection of the President of the Council of Ministers (or Prime Minister), who is the head of government. Parliament also elects five members of the Constitutional Court and 10 members of the Superior Council of the Judiciary.⁶

¹ *Costituzione* (1948) (Cost.), Art. 114.

² Cost., Arts. 83 and 85.

³ Cost., Art. 87.

⁴ Cost., Arts. 56, 57 and 59.

⁵ Cost., Art. 60.

⁶ Cost., Art. 83.

Legislative bills may originate in either house of Parliament and must be passed by a majority in both. New legislation also may be initiated by the Council of Ministers, by certain state agencies, or by petition of 50,000 voters.⁷

After being signed by the President and at least one minister, all laws and decrees⁸ are published in the Official Gazette and come into effect 15 days after publication, unless the legislation itself provides for a different time period for its entry into force.⁹ Emergency decrees and laws may enter into force immediately on publication. With the exception of certain legislation, most laws may be partially or totally repealed by popular referendum.

The Italian Constitution is the supreme law of the land. Statutes inconsistent with the Constitution and declared unconstitutional by the Constitutional Court¹⁰ are, thereafter, without effect.¹¹ Like that of most other continental European countries, Italy's law revolves around a Civil Code (*Codice Civile*),¹² which is supplemented by legislation. Consolidated codes dealing with specific areas of the law (*testi unici*) are usually compiled and promulgated by the executive under a specific delegation of authority from Parliament.¹³

The Executive promulgates implementing regulations (*regolamenti*). Ministries also issue instructions for compliance with existing law. These instructions are quite extensive in the tax field and are significant because they are adhered to by the tax authorities, but they are not binding on the courts.

Decree Laws promulgated by the Council of Ministers have effect for only 60 days, unless ratified ("converted" into law) by Parliament.¹⁴

D. Judicial System

The Italian judicial system is based on Roman law modified by the Napoleonic code and subsequent statutes. There is only partial judicial review of legislation in the U.S. sense. The Constitutional Court is a post-World War II innovation. Its powers, case load, and frequency of decisions are not as great as those of the U.S. Supreme Court.

The Italian court system consists of ordinary courts, administrative courts and commissions, and the Constitutional Court. Alongside the various courts, there is a highly developed system of formal and informal arbitration.

The decision-making freedom of the Italian courts is virtually unlimited. An Italian court is bound only by statutes enacted in conformity with the Constitution.¹⁵ Further, there is no equivalent to the common-law *stare decisis* rule. Nevertheless,

precedent set by the higher courts is usually followed by the lower courts. Trial by jury is not available in civil matters and the rules of evidence are quite liberal by Anglo-American standards.

1. Ordinary Courts

The ordinary courts hear most civil and criminal cases, with civil proceedings divided between the justices of the peace (*giudici di pace*) and the tribunals (*tribunali*). These courts have jurisdiction over all civil disputes between private parties¹⁶ and share with the administrative courts and commissions jurisdiction over disputes arising between a private party and the state or its agencies. There are four levels of ordinary courts (in ascending order): justices of the peace, tribunals, courts of appeal, and the Supreme Court of Cassation. Appeals from decisions of a trial court to the next highest court is generally available; in most circumstances, further appeal to the Court of Cassation is available as a matter of right, but only on questions of law.

The original jurisdiction of 165 tribunals (*tribunali*) extends to all civil cases beyond the jurisdiction of the *giudice di pace*,¹⁷ based on the amount and subject matter of claims. The tribunals also have exclusive jurisdiction, regardless of the amount of the claim, over certain subject matter, such as civil actions for forgery; labor law; real property and wills; and enforcement of judgments. The composition and jurisdiction of the tribunal consists of a single-judge court of first instance in criminal, civil, labor, and social security matters.¹⁸ Further, all proceedings relating to claims of an undetermined value are heard before a tribunal.¹⁹ Certain matters, such as shareholder actions, bankruptcy challenges, and the liability of boards of directors and auditors' and overseers' boards, as well as cases involving judicial liability, continue to be heard by a panel of three judges.

The courts of appeal (*corti d'appello*) normally decide appeals from the tribunals,²⁰ although they have certain limited areas of original jurisdiction. The admission of new evidence, except in certain specified instances, is prohibited and appeals are conducted less in a manner of a trial *de novo* as previously, and more as a review of the previous proceedings. The parties have up to six months to appeal against an adverse decision.²¹ The courts of appeal are composed of panels of three judges each²² and are grouped in districts having jurisdiction over a number of tribunals. These districts are sometimes also subdivided into specialized sections. There is a special appellate section to hear appeals in labor matters.

The Supreme Court of Cassation (*Corte Suprema di Cassazione*) is the highest ordinary court in Italy. This Court hears appeals from the courts of appeal (or from justices of the peace, when in a matter decided in equity there is an alleged violation of a procedural rule, the Constitution, community law, or regu-

⁷ Cost., Art. 71(2).

⁸ A law is cited by its number and the date of its signature by the President of the Republic. A decree is cited as a Decree Law (DL), a Decree of the President of the Republic (DPR), a Decree of the Prime Minister (DPCM), a Royal Decree (RD), a Royal Decree Law (RDL), a Ministerial Decree (DM) or a Legislative Decree (D. Lgs.), as the case may be, and by its number and the date of its promulgation.

⁹ Cost., Art. 73.

¹⁰ See Cost., Art. 134(1).

¹¹ Cost., Art. 136(1).

¹² The current Civil Code (CC) was promulgated in 1942. RD No. 262, March 16, 1942.

¹³ See Cost., Art. 76.

¹⁴ Cost., Art. 77.

¹⁵ Cost., Art. 1.

¹⁶ See RD No. 12, Jan. 30, 1941, and Code of Civil Procedure (*Codice di Procedura Civile*), RD No. 1443, Oct. 28, 1940 (CCP), which together provide for the establishment and jurisdiction of the ordinary courts.

¹⁷ CCP, Art. 9.

¹⁸ D. Lgs. No. 51, Feb. 19, 1998.

¹⁹ CCP, Arts. 8 and 9.

²⁰ CCP, Art. 341.

²¹ CCP, Art. 327.

²² Law No. 532, Aug. 8, 1977.

latory provisions and the value of the claim exceeds 1,100 euros).²³ It has no original jurisdiction and reviews only questions of law. The Court is divided into panels of five members each, although certain cases are reviewed *en banc* (*sezioni unite*) by a panel of nine judges selected from all panels of the court. The Court also may sit *en banc* where a question of law has already been decided in a conflicting manner by different panels and when a case involves questions of great importance. Until an issue has been decided *en banc*, there is the possibility of conflicting Supreme Court precedents.

2. Administrative Courts, Commissions, and Commercial Courts

The Italian Constitution guarantees the availability of judicial process for all challenges to the legality of a public act.²⁴ The allocation of jurisdiction over disputes arising out of acts of the state or its agencies turns on the subtle distinction drawn between acts that may impinge on a person's "private rights" and acts that harm a person's "legitimate interests." Broadly speaking, a private right is affirmatively recognized by the law, while for a legitimate interest to be acknowledged, a connection with a discretionary power of public authorities is needed. A person's legitimate interests are harmed by the state's use of unfair or improper administrative discretion, whereas a person's private rights are violated when there is no such discretion in the state action.

The Italian system of administrative courts and commissions is intended to provide judicial process for governmental acts offending "legitimate interests,"²⁵ while the ordinary courts generally have jurisdiction over acts alleged to infringe on "private rights."²⁶ The administrative courts and commissions are based on two-level system of administrative tribunals and tax commissions and a high court for tax matters. Furthermore, there are separate tribunals for litigation of commercial and corporate disputes.

a. Administrative Tribunals

The administrative tribunals have the power to annul or modify executive or administrative acts found to impinge on an individual's legitimate interests.²⁷ These tribunals may only nullify or modify actions taken: (i) without authority to regulate the subject of the action; (ii) in violation of general legal principles; or (iii) in abuse of discretion. In such cases, the tribunals also have the power to order compensation for damages sustained.²⁸ An administrative tribunal of first resort (*tribunale amministrativo regionale*) is located in each regional capital.²⁹ An appeal from a decision at this level may be taken to the Council of State (*Consiglio di Stato*) in Rome. Decisions of the Council of State are generally final and binding.³⁰

b. Tax Commissions

Tax disputes have been specifically exempted from the jurisdiction of the general administrative tribunals. Tax commissions (*commissioni tributarie*) have exclusive jurisdiction over tax litigation. For further information, see IV.A.3.b., below.

c. Court of Accounts

The Court of Accounts (*Corte dei Conti*) is a highly specialized court of administrative and accounting law with sections in each region and a central body in Rome. It has wide-ranging original jurisdiction over public fiscal matters concerning national and regional revenue and appropriations, state pensions, public accounts, and the public administration.

d. Commercial Courts

As of 2012, separate tribunals exist for litigation of commercial and corporate disputes, which were created by transforming the already existing specialized sections for industrial and intellectual property litigation into special sections for commercial litigation, vested with jurisdiction over areas such as anti-trust, corporations (including shareholder disputes), contracts/business law, public works, product liability, and consumer protection.³¹ There are 20 commercial courts, primarily located in the Tribunals and Courts of Appeals of the regional capitals.

3. Constitutional Court

The Constitutional Court (*Corte Costituzionale*) was established in 1956. Its jurisdiction is limited to the adjudication of constitutional attacks on national and regional laws and acts having the force of law, separation of powers issues, allegations against the President of the Republic and the referendum process involving the repeal of laws or a legislative initiative.³² It is composed of 15 judges, each one sitting for a nonrenewable term of nine years.³³ The President of the Republic appoints five members, the two houses of Parliament sitting jointly (with regional electors added) elect five judges, and the entire body of supreme, ordinary and civil magistrates elects the remaining five judges.³⁴ These terms are not coterminous. The Court elects its own president, who serves for a three-year period. The Court determines only narrow questions of constitutional law referred to it by an ordinary court from a case under consideration at the time of referral. After deciding the question, the Constitutional Court remands the case for final disposition on its merits. No appeal is available from a decision of the Constitutional Court.³⁵

4. Arbitration System

Arbitration agreements in Italy must be in writing or will be void. This requirement may be met by an exchange of telexes, telegraphs, facsimiles or other electronic means. Moreover, an arbitration clause included in a standard contract must be signed specifically and separately (usually at the end of an

²³ CCP, Art. 360.

²⁴ Cost., Arts. 24 and 113.

²⁵ Cost., Art. 113.

²⁶ See Law No. 2248, March 20, 1865, Annex E.

²⁷ RD No. 1054, June 26, 1924, Art. 26.

²⁸ D. Lgs. No. 80, March 31, 1998, Art. 35.

²⁹ Law No. 1034, Dec. 6, 1971, Art. 1.

³⁰ Cost., Art. 111.

³¹ Decree Law No. 1 of Jan. 1, 2012.

³² Cost., Art. 134, as amended by Law Cost. No. 1, Jan. 16, 1989.

³³ Cost., Art. 135.

³⁴ Cost., Art. 135(1).

³⁵ Cost., Art. 137(3).

agreement, together with other noted unfair terms and conditions).³⁶ An agreement to arbitrate will also be void if it fails to define the subject matter of the controversy between the parties.³⁷ The agreement must appoint one or more arbitrators, or at least designate their number and manner of appointment.³⁸

The parties to a contract may choose to provide an arbitration clause (*clausola compromissoria*) in the contract itself or to draft an agreement to arbitrate (*compromesso*). The *compromesso* is generally drafted once the dispute has already arisen, while the arbitration clause is used to regulate disputes that might arise under a contract. The parties may also choose between formal (*rituale*) and informal (*irrituale*) arbitration.

The Corporate Procedure Law of 2003 expanded the area of corporate disputes that may be subject to arbitration and established the principle that only those corporate matters in which the intervention of a public prosecutor is required and, therefore, in which a public interest exists, cannot be referred to arbitration.³⁹ Under a 2006 reform, the scope of matters that could be submitted to arbitration was expanded to include controversies over non-contractual matters.⁴⁰ However, certain disputes, including those concerning matters of public interest, such as disputes concerning inalienable rights, and disputes within the exclusive jurisdiction of the administrative courts cannot be referred to arbitration.⁴¹ Arbitration in labor matters is permitted if the collective agreement governing the parties' relationship contains a provision to that effect, or if so provided by law.⁴²

a. Informal Arbitration

Informal arbitration is referred to as a means of "contractual determination" that leads to a "contractual award" (*lodo contrattuale*).⁴³ One standard form is the granting of carte blanche to an arbitrator named by the parties. The parties provide the arbitrator with a signed document; as an agent/agents authorized to form a contract between the parties, the arbitrator then creates the terms of the document.⁴⁴ Unlike formal arbitration, informal arbitration awards do not have the force of a court judgment, although the Civil Code recognizes informal arbitration agreements and the courts will enforce them in accordance with the rules relating to the enforcement of contracts⁴⁵ through the Code of Civil Procedure. This type of arbitration is not commonly used, as the remedy for its breach must be sought by civil suit through the courts.

b. Enforcement of Foreign Arbitration Awards

As of 1994, the procedures for the enforcement of international arbitration awards in Italy have been codified. Previous-

ly, enforcement was governed by the general provisions dealing with the enforcement of foreign judgments. The 1994 rules, specifically drafted for international arbitration, were designed to simplify the procedures and meet the requirements of the New York Convention. The arbitration laws enacted through Legislative Decree No. 5 of January 17, 2003 and Legislative Decree No. 20 of February 2, 2006 — respectively known as the "New Corporate Procedure Law" and the "2006 Arbitration Reform" — left unaltered the provisions governing the recognition and enforcement of foreign awards in Italy, which are based on the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Italy operates a unitary system in that it does not make a distinction between purely domestic and international arbitration, even though certain differences still exist when at least one of the parties resides or has its head office abroad.

A party wishing to enforce a foreign arbitration award in Italy must bring suit before the Court of Appeal in the district in which the other party is domiciled. If the other party does not have an Italian domicile, the Court of Appeal of Rome has jurisdiction. The original, or a certified copy, of the foreign award, must be provided to the court, as well as a confirmed, certified translation. If the court is able to ascertain the regularity of the form of the award, it will declare the foreign award enforceable in Italy, unless the dispute could not be resolved by arbitration under Italian law, or would be contrary to Italian public policy. This decision may be appealed before the same Court of Appeal within 30 days from its giving notice of its decision.⁴⁶

5. Mediation

Italy implemented EC Directive 52/2008 on Mediation,⁴⁷ thus parties to a dispute are first required to engage in mediation in disputes over real property rights, succession, division of estates, family pacts, leases, bailments, business branch leases, malpractice and defamation by the press or other media, as well as insurance, banking and financial contracts,⁴⁸ or engage in another alternative form of dispute resolution,⁴⁹ before filing a lawsuit. However, in 2012, the Constitutional Court held⁵⁰ that the government exceeded its authority to implement EC Directive 52/2008 by making it a mandatory prerequisite to filing a lawsuit, when the EC Directive itself was silent on this point; therefore that portion of the law was held unconstitutional. Subsequently, with Decree Law No. 69 of June 21, 2013, the government reinstated mandatory mediation, initially on an experimental basis, but it was later made permanent.⁵¹

⁴⁶ CCP, Art. 839.

⁴⁷ D. Lgs. No. 28, March 4, 2010.

⁴⁸ D. Lgs. No. 28, March 4, 2010, Art. 5(1) and Art. 5(1-bis), as added by DL No. 69, June 2, 2013, Art. 84(1)(b).

⁴⁹ Legislative Decree 179/2007 requires conciliation for disputes arising between investors and financial institutions concerning the breach of the duties of information, transparency and fairness, which is implemented by the arbitration and mediation chamber (the *Camera di Conciliazione e Arbitrato*); Art. 128 bis of the Italian Banking Law establishes the jurisdiction of the *Arbitro Bancario Finanziario* (Financial and Banking Ombudsman), for disputes arising between the banks/financial promoters and their clients regarding banking and financial products and services.

⁵⁰ Case No. 272/2012.

⁵¹ D. Lgs. No. 28, March 4, 2010, Art. 5 (1-bis), as added by DL No. 69, June 21, 2013, Art. 84 (1)(b).

³⁶ CCP, Art. 807.

³⁷ CCP, Arts. 807 and 808.

³⁸ CCP, Art. 809.

³⁹ D. Lgs. No. 5, Jan. 17, 2003.

⁴⁰ CCP, Art. 806.

⁴¹ CCP, Art. 806. See also CC, Art. 1972 (disputes arising from an unlawful transaction).

⁴² CCP, Art. 808(2). See also Law No. 533, Aug. 11, 1973, Art. 4.

⁴³ Such an award should not be confused with the consent award contemplated by certain arbitration rules (for example, Article 26 of the International Chamber of Commerce (ICC) Rules).

⁴⁴ CCP, Art. 808 *ter* (1)–(5).

⁴⁵ CCP, Art. 2932.

Attorneys have a duty to inform their clients of the availability of mediation, the tax incentives available, as well as those cases in which mediation must be attempted before suit can be filed.⁵² Mediation is not to last more than three months from the date of the request to mediate, or the judge's order to the parties to mediate.⁵³ It is without prejudice to the parties, as no statements or information provided by the parties during the process may be used in subsequent court proceedings, nor may a mediator be forced to give testimony on information provided during mediation, or reveal confidential information provided by one party to the mediation to the other party.⁵⁴

Failure to pursue mediation in those cases in which it is mandatory will cause a potential lawsuit to be barred. However, this procedural defense must be raised by the defendant or the judge by no later than the first hearing, or the defense will be considered as waived.

If mediation is successful, the agreement is filed with the court and, once approved by the judge, has the force of law. If the parties fail to settle, the mediator may propose a settlement, which the parties are free to accept or decline. Unreasonable refusal by a party of the mediator's proposed settlement may produce legal consequences, such as fee shifting at trial.

To further encourage the use of mediation, mediated settlements have been given favorable tax treatment. A tax credit of up to 500 euros is available for a successful settlement, which is reduced by one-half if the mediation is unsuccessful.⁵⁵ No registration tax is due on mediated settlements that do not exceed 50,000 euros; for larger awards, registration tax is due on the amount that exceeds 50,000 euros. No documentation or decision regarding a mediation is subject to stamp tax or to other charges applied to legal documents.⁵⁶

⁵²D. Lgs. No. 28, March 4, 2010, Art. 4(3).

⁵³D. Lgs. No. 28, March 4, 2010, Art. 6, as amended by DL No. 69, June 21, 2013.

⁵⁴D. Lgs. No. 28, March 4, 2010, Arts. 9 and 10.

⁵⁵D. Lgs. No. 28, March 4, 2010, Art. 20(1).

⁵⁶D. Lgs. No. 28, March 4, 2010, Art. 17(2), (3).

II. Operating a Business in Italy

A. Foreign Investment Regulation

By the 1970s, Italy had developed an extensive system of regulation that provided foreign investors with guarantees regarding the payment of dividends abroad and the repatriation of capital on the liquidation of their investments in Italy.⁵⁷ At the beginning of the 1990s, the notable growth in Italy's degree of industrialization and its new role as the West's fifth largest economy prompted liberalization of its exchange control laws (see II.B., below) and, at the same time, the repeal of a number of laws regarding foreign investment.

1. Incentives

Italy's investment incentive programs have generally been directed to those regions of the country and sectors of the economy that are relatively less developed or stable. The Interministerial Committee for Economic Planning (CIPE) is responsible for the oversight of a number of these regional development programs. There are also separate development programs for target sectors of the economy. These sectors are usually composed of either older, declining industries with massive capital and employment needs, or newer, high-priority industries in markets where import substitution is desired. In recent years, many of the incentives enacted have been focused on increasing employment, as well as resources devoted to research and development.

2. Regional Assistance

Soon after the end of World War II, the Italian government promulgated legislation designed to encourage industrial growth in certain economically underdeveloped areas of Italy through the use of tax incentives, low-interest loans, and cash grants.⁵⁸ These areas, commonly referred to as the *Mezzogiorno*, originally included not only the Southern regions of Italy, but parts of Lazio, the Marche, Molise, and Sardinia as well. This special help was specifically permitted by the Treaty of Rome, which created the European Economic Community (EEC) in 1957. However, following a European Union (EU) decision redefining the area that was to benefit from the programs,⁵⁹ The Interministerial Committee for the Coordination of Industrial Policy (CIPI), a former subcommittee of the CIPE, adopted a resolution reducing or phasing-out some of the more substantial benefits in the areas of Molise, Lazio, and the Marche.⁶⁰

The original legislation established the *Cassa per il Mezzogiorno* (Fund for the South), a government agency the purpose of which was the development and implementation of the various incentive programs provided by the legislation.

Although the programs enjoyed some success, the overall results were discouraging and the legislation was amended many times. Law No. 64 of March 1, 1986 ("Law 64") shifted

policy to encouraging the growth of small and medium-sized industries. Law 64 also reorganized the administration of the development programs and replaced the *Cassa per il Mezzogiorno* with a decentralized structure, shifting primary responsibility for the implementation of the programs to smaller, more localized agencies. This reorganization included the creation within the Prime Minister's office of a department for the South, and an Agency for the Promotion of the Development of the South (*Agenzia per la Promozione dello Sviluppo del Mezzogiorno*), which reported to the Minister for the South.

a. Grants and Financing

In 1992,⁶¹ the government began dismantling the special agencies to provide assistance to economically depressed areas through ordinary government intervention and EU structural funds. The Agency for the Promotion of the Development of the South and the Ministry for Special Intervention were abolished, and their activities placed under the jurisdiction of the Ministry of the Budget. A five-member committee, called the Observatory of Regional Policies (*Osservatorio delle Politiche Regionali*), had been created within the Ministry of the Budget with oversight functions for programs in depressed areas but was subsequently dismantled in 1995.⁶² Currently, this oversight function is included among the functions of INVITALIA. (See d., below.)

Regional assistance was implemented to provide aid not only to all of the original *Mezzogiorno*, but also to certain northern provinces that were either in industrial decline or in need of funds for rural development. The system of aid was based on a common evaluation method reflecting the EU principle of transparency. In essence, it had to be possible to determine the total aid allotted to an investment as a percentage of the total amount of the investment. Ceilings were set by CIPE resolution or ministerial decree. The regional assistance approach continues to be the basis of much of the assistance for the depressed sectors of the Italian economy.

Law 488 created a simplified procedure for obtaining capital grants and/or low-interest loans. Calls for grants (*bandi*) were issued by the Ministry for Productive Activities. Companies submitted their applications to a primary national bank for evaluation. The bank's evaluation, following ministerial parameters, was sent to the Ministry, which, by decree, prepared a preference list (*graduatoria*) for the grants.

b. Employment Incentives

Numerous incentives have been passed to encourage hiring in the *Mezzogiorno*. These incentives are often limited to a certain number of tax years and are generally not cumulative (i.e., the employer cannot apply more than one type of incentive to a single hiring). Currently, the following incentives specific to the *Mezzogiorno* are available (for employment incentives available throughout Italy, not exclusive to the *Mezzogiorno*, see II.A.3.a., below):

(i) Reduction in social charges for new hires. Employers who hire workers between the ages of 16 and 24 or workers over the age of 25, who have been unemployed for at

⁵⁷ The regulation of foreign investment in Italy was governed primarily by Law No. 43, Feb. 7, 1956.

⁵⁸ Law No. 646, Aug. 10, 1950.

⁵⁹ EC/88/318, March 2, 1988.

⁶⁰ Resolution No. 374 of the Interministerial Committee for the Coordination of Industrial Policy (CIPI), Aug. 3, 1988.

⁶¹ Law No. 488, Dec. 19, 1992 (Law 488).

⁶² D. Lgs. No. 244, Art. 6, June 23, 1995.

least six months, with a permanent full-time contract, will be exempt from social charges on those hires, up to a maximum of 8,060 euros per year for the first 12 months of employment. Employees hired under fixed term contract will have a 50% exemption from social charges.⁶³

(ii) Reduction of 100% in social charges for new hires for first time employment with a permanent employment contract. Companies hiring workers under the age of 36 for the tax years covering January 1, 2021 through December 31, 2022, with permanent employment contracts, or that convert fixed-term contracts to permanent employment contracts, are exempt from social contributions for a period of three years (five years for hirings in the depressed areas of the South), up to a maximum amount of 6,000 euros per year for full-time employment or 3,000 euros for part time employment. Only those employers who, in the six months prior to the new hiring and nine months after that hire, have not terminated individual employees for economic reasons or engaged in collective terminations are eligible for this incentive.⁶⁴ The 2023 Budget Law extended the period covered through December 31, 2023 and increased the maximum amount per year for full-time employment from 6,000 euros to 8,000 euros.⁶⁵ This provision is expired as it was not extended beyond December 31, 2023.

(iii) Reductions in social charges based on specific hirings. Companies may have access to a reduction of social contributions in the following instances: if the employee hired is a long-term unemployed individual over 50 years of age and unemployed for a period of 12 months or is a woman living in an economically depressed area and unemployed for a period of six months, the employer will receive a reduction in the social contributions of 50% for a period ranging from 12 to 18 months. On an experimental basis for the tax years covering January 1, 2021 through December 31, 2022, employers hiring women will be able to receive a 100% reduction in contributions up to a maximum amount of 6,000 euros, reduced for part-time contracts based on the number of hours for which the woman is actually hired. The 2023 Budget Law extended the reduction to include females hired between January 1, 2023 and December 31, 2023 and increased the maximum amount up to which employers hiring women will be able to receive a 100% reduction in contributions to 8,000 euros.⁶⁶ For tax year 2022, women returning from maternity will be able to make use of a 50% reduction in the employee's share of social contributions for up to one year.⁶⁷

(iv) Reductions in social charges for all employees working in the depressed areas of the South as follows: 30%,

through December 31, 2025; 20% from January 1, 2026 through December 31, 2027; 10% from January 1, 2028 through December 31, 2029. Excluded from this incentive are domestic and agricultural employers, as well as employers that are public entities.

(v) Reduction in employee's portion of contributions for disability, old age and survivors' insurance contributions: 3% reduction where taxable compensation does not exceed a monthly amount of 1,923 euros and 2% reduction for taxable monthly compensation of 1,924–2,692 euros. This reduction is available for employees in both the public and private sectors but excludes domestic employees. It applies from January 1, 2022 through to December 31, 2023. This provision has no effect on an employee's contribution to his or her pension.⁶⁸

(vi) Reduction of 100% in social charges for new employees hired in 2022 and 2023 with permanent contracts where the immediate previous employer was a company in economic distress that was engaged in union negotiations over employee terminations. The reduction is valid for 36 months up to a maximum amount of 8,000 euros.⁶⁹

(vii) Contribution exemption in case of hiring employees (between January 1, 2023 and December 31, 2023) who, prior to being hired, had been recipients of the citizens' income (*reddito di cittadinanza*) subsidy. The employees must be provided with permanent employment contracts or their fixed-term contracts must be converted to permanent employment contracts. The contribution exemption is equal to 100% of the employer's social security contributions up to a maximum of 8,000 euros, for a maximum period of 12 months. This provision is conditional upon receipt of approval from the European Commission.⁷⁰

(viii) A new social security contribution exemption was introduced by the Budget Law of 2025 for companies in southern Italy that employ workers on permanent contracts, either as new hires or those already employed in an amount that for tax years 2025 to 2029 will vary from 25% to 15% of the contributions up to a fixed annual amount. For companies with more than 250 employees, the incentive will only be available to employers that on December 31 of each year can prove an increase in the number of permanent contracts compared to the previous year. This latter provision is suspended until it is authorized by the European Commission.⁷¹

c. Economically Depressed Areas

With Law No. 111 of August 9, 2023, proposing the implementation of a dual corporate income tax and Article 9, expressly providing for the revision and simplification of tax incentives, many of the current tax incentives will gradually be replaced. Article 9 specifically provides that the incentives in

⁶³ D. Lgs. 150, Sept. 14, 2015 Art. 19; INPS Circular No. 41, March 1, 2017.

⁶⁴ DL No. 87, July 12, 2018, Art. 1-bis, as amended by Law No. 145, Dec. 30, 2018, Art. 1 (247), as further amended by Law No. 178, Dec. 30, 2020, Art. 1 (10)–(12) (*Legge di Bilancio 2021* or 2021 Budget Law).

⁶⁵ Law No. 197, Dec. 29, 2022, Art. 1 (297).

⁶⁶ Law No. 178, Dec. 30, 2020 Art. 1 (16)–(19), as amended by Law No. 197, Dec. 29, 2022, Art. 1 (298).

⁶⁷ Law No. 234, Dec. 30, 2021, Art. 1.

⁶⁸ Law No. 234, Dec. 30, 2021, Art. 1 (121); Law No. 197, Dec. 29, 2022 (Art. 1) (284).

⁶⁹ Law No. 178, Dec. 30, 2020, Art. 1 (10); Law No. 234, Dec. 30, 2021, Art. 1 (119) as amended by Law No. 197, Dec. 29, 2022, Art. 1 (297).

⁷⁰ Law No. 197, Dec. 29, 2022, Art. 1 (294–296), (299).

⁷¹ Law No. 207, Dec. 30, 2024, Art. 1 (406–420).

depressed areas be revised and simplified to make them more efficient. Therefore, changes are expected to the tax incentives below.

(1) Investments in Manufacturing Plants

Law No. 296 of December 27, 2006, provided for a tax benefit in the form of a tax credit to be granted to companies making new investments in plants located in the depressed areas of Calabria, Campania, Puglia, Sicily, Basilicata, Sardinia, Abruzzo, and Molise (“Depressed Areas”) between January 1, 2007, and December 31, 2013.⁷² The tax credit was renewed beginning in 2014 for investment projects already approved by the Tax Agency. For tax year 2014, only 85% of the total credit could be taken, with the remaining 15% to be taken in the three successive tax years, which for already approved contracts ended with the tax year 2017.⁷³ This benefit was available to all companies other than those in the steel, coal, insurance, and finance sectors. The tax credit, which was granted for the purchase (either directly or through a leasing contract) of productive assets connected to a new investment, must relate to plant and machinery, licenses and, for small companies only, the purchase of information technology. The credit must be used to pay personal income tax (*imposta sul reddito delle persone fisiche* or IRPEF), corporate income tax (*imposta sul reddito delle società* or IRES), and value added tax (*imposta sul valore aggiunto* or IVA, hereafter “VAT”). However, the tax credit was not included in either taxable income or the taxable base for purposes of the regional tax on productive activities (*imposta regionale sulle attività produttive* or IRAP).

(2) Tax Credit for Purchases of New Business Assets

Originally introduced in 2016, the tax credit for the acquisition of new capital assets, including machinery, plant, and equipment, has undergone a significant regulatory evolution. Following several extensions, the previous ‘Bonus Sud’ regime concluded on December 31, 2023.⁷⁴ Effective January 1, 2024, all previous regional incentives have been consolidated into the Single Special Economic Zone (ZES Unica) framework. This new regime covers the regions of Campania, Puglia, Basilicata, Calabria, Molise, Sicily, Sardinia, and Abruzzo. Under the ZES Unica framework, the tax credit applies to initial investments made between January 1, 2024, and November 15, 2024, involving the purchase or leasing of machinery, facilities, and equipment, as well as the acquisition of land and the purchase or construction of buildings. The maximum credit rates are determined by the Regional Aid Map 2022–2027. For most southern regions (excluding Abruzzo), the intensity can reach up to 60% for small businesses, 50% for medium-sized businesses, and 40% for large enterprises. The total investment project must have a minimum value of 200,000 euros, with a maximum cap per project of 100 million euros. The tax credit may not be combined with other state aid if the total exceeds EU limits, and it remains unavailable to companies in financial difficulty or those operating in excluded sectors such as steel, coal, shipbuilding, energy infrastructure, and financial services.⁷⁵

⁷² Law No. 296, Dec. 27, 2006, Art. 1 (271–279).

⁷³ DPCM, Feb. 20, 2014, Art. 5.

⁷⁴ Law No. 178, Dec. 30, 2020, Art. 1 (171)–(172), as amended by Law No. 197, Dec. 29, 2022, Art. 1 (265).

(3) Tax Credit for Installation of Compost Facilities

A 70% tax credit is available, up to a maximum of 1 million euros for the tax years 2023 and 2024, for expenses relating to the installation and placing in operation of composting plants within agribusiness centers in the regions of Campania, Molise, Puglia, Basilicata, Calabria and Sicily incurred up to December 31, 2023.⁷⁶

(4) Reduction of Regional Tax on Productive Activities

Parliament has enacted legislation permitting regional governments in the Depressed Areas to lower the regional tax on productive activities (IRAP) rate (including reducing it to zero), and enact exemptions, credits and deductions for new businesses, as long as the measures comply with EU state aid rules.⁷⁷

(5) Financing for Young Entrepreneurs

A financing incentive has been enacted to encourage entrepreneurs and independent contractors between the ages of 18 and 55⁷⁸ residing in the Mezzogiorno to set up businesses there. The program is to be managed by Invitalia (see below) and funding is available through the *Fondo per lo Sviluppo e la Coesione* (Fund for Development and Cohesion) which will have a total amount of 1,250 million euros to use (36 million euros were available for 2017). Those interested in the funding must file an application with Invitalia. If the application is approved, up to 60,000 euros can be awarded to an entrepreneur. If the applicants are incorporating or have already incorporated a company then financing of up to 50,000 euros per applicant can be awarded. 50% of the financing will be in the form of a loan with a 0% interest rate to be repaid over a period of eight years, with a two-year grace period; 35% will be in the form of a grant.⁷⁹

Decree Law No. 60 of May 7, 2024, was enacted to assist entrepreneurs under the age of 35 with 100% non-repayable vouchers for initial expenses. The initiative, managed by Invitalia, provides up to 50,000 euros in vouchers for innovative investments and up to 75% non-repayable grants for larger projects to boost entrepreneurship in the Mezzogiorno.

d. Invitalia

Established in 2000, Invitalia (formerly Sviluppo Italia) consolidated various promotional and financial institutions to streamline the development of the Mezzogiorno and reduce bureaucratic hurdles. While Southern Italy remains a priority, Invitalia has evolved into the National Agency for Inward Investment and Economic Development, operating nationwide. Its current mission is to Stimulate economic expansion in sectors critical to national development, employment, and the green and digital transitions; manage national incentives that support

⁷⁵ But see, below, Special Economic Zones.

⁷⁶ Law No. 197, Dec. 29, 2022, Art. 1 (270).

⁷⁷ DL No. 78, May 31, 2010, Art. 40.

⁷⁸ The age limit increased from 45 to 55 under Law No. 178, Dec. 30, 2020, Art. 1 (170).

⁷⁹ DL No. 91, June 20, 2017, Art. 1, as converted by Law No. 123, Aug. 3, 2017; as further amended by Law No. 145, Dec. 12, 2018, Art. 1 (601), (a) and as further amended DL No. 34, May 19, 2020, Art. 245-bis.

the creation of new businesses and innovative startups (e.g., through the Sistema Invitalia Startup network); provide funding and technical support for projects of all scales — from small businesses to large industrial contracts — that focus on high-added-value and innovative technologies; and act as a central contracting authority to accelerate the use of EU and national funds (including the PNRR) for infrastructure, public works, and the valorization of Italy's cultural and artistic assets.

e. Banca del Mezzogiorno

In 2009, the Minister of the Treasury proposed the creation of a credit institution to provide medium- and long-term financing for medium and small businesses located and investing in the Mezzogiorno. The Finance Bill of 2010 created the framework for the bank known as the *Banca del Mezzogiorno S.p.A.*, which acts through a network of shareholder member banks. Its priority in providing financing is to encourage the creation of new businesses, especially among women and young entrepreneurs; increase the dimension of existing businesses and their presence in the international market; and encourage research and development to ultimately increase employment in the Mezzogiorno.⁸⁰

f. Unified Special Economic Zone

In 2017, special economic zones (*zone economiche speciali* or ZESs) were created in Italy to encourage foreign investment and investments from other regions of Italy in the Mezzogiorno and transitional regions. As of January 1, 2024, a unified ZES has been created to encompass the entire Mezzogiorno region.⁸¹

To qualify for the unified ZES, the following conditions apply:

- (i) The area must be an area that is clearly identified and defined within Italy (the area can cover one or more regions);
- (ii) The area must contain at least one sea port; and
- (iii) The area must have trans-European transportation infrastructure linkages, as defined by EU Regulation 1315/2013.⁸²

Beginning on January 1, 2024, a new tax credit is available for companies that acquire instrumental assets for production facilities located in the unified ZES region. Eligible companies can receive a tax credit, the amount of which depends on the level of investment intensity, the specific region in which the investment is made, and the size of the business.

While the measure was initially introduced for the 2024–2025 period, the 2026 Budget Bill has officially extended this credit for the 2026–2028 three-year period, establishing it as a multi-year measure ending December 31, 2028.⁸³

The tax credit is calculated by applying a given percentage to the costs of the investments based on a minimum amount of

200,000 euros and a maximum amount of 100 million euros for each investment project.⁸⁴

The actual credit granted is also subject to overall annual spending limits to ensure budgetary compliance. For the 2024–2028 period, the total available funds are capped as follows:

- 2024: 1,8 billion euros
- 2025: 2,2 billion euros
- 2026: 2,3 billion euros
- 2027: 1 billion euros
- 2028: 750 million euros

Because the benefit is granted within these total expenditure limits, the final percentage effectively assigned to each taxpayer may be proportionally reduced by the Revenue Agency if the total value of all valid applications exceeds the available yearly budget.⁸⁵

The tax credit rate ranges from 15% to 60%, depending upon the region where the eligible investment is made and the size of the taxpayer making the investment,⁸⁶ as shown by the following table:

ZES Region	Large Company	Medium Company	Small Company
Campania, Calabria, Apulia, and Sicily	40%	50%	60%
Basilicata, Molise, and Sardinia	30%	40%	50%
Abruzzo, Marche,* Umbria*	15%	25%	35%
* Added by Law. No. 171, Nov. 18, 2025.			

The assets acquired must be part of an initial investment project and can include the following types of assets:

- (i) Purchase, including through leasing contracts, of new machinery, plant and equipment intended for production facilities that already exist or are being established in the region; or
- (ii) Purchase of land and the acquisition, construction, or expansion of real estate instrumental to an investment, provided the value of the land and real estate does not exceed 50% of the total value of the subsidized investment.⁸⁷

⁸⁴ Decree No. 124, Sept. 19, 2023, Art. 16 (4), as converted into law by Law No. 162, 2023.

⁸⁵ Decree No. 124, Sept. 19, 2023, Art. 16(6), as converted into law by Law No. 162, 2023.

⁸⁶ See EU Commission Recommendation No. 2003/361/EC, May 6, 2003.

⁸⁷ Decree No. 124, Sept. 19, 2023, Art. 16, as converted into law by Law No. 162, 2023.

⁸⁰ Law No. 191, Dec. 23, 2009, Art. 2 (165)–(182).

⁸¹ DL No. 124, Sept. 19, 2023, Art. 9.

⁸² DL No. 91, June 6, 2017, Art. 4, as converted into law by Law No. 123, Aug. 2017.

⁸³ Law No. 199, Dec. 30, 2025, Art. 1 (438)–(443).

Companies operating in the steel, coal and lignite industries, transportation (and the infrastructure related thereto),⁸⁸ energy production, storage, transmission and distribution and energy infrastructure, broadband and the credit, financial and insurance sectors are not eligible for this tax credit. Also excluded from the credit are companies that are in liquidation or dissolution.⁸⁹

Businesses that claimed the credit in 2025 are eligible in tax year 2026 for a further tax credit. This additional credit will be 14.6189% of the 2025 tax credit. It is calculated based on the supplementary communication submitted in 2025. This credit will only be granted only if the business did not also claim a credit for one or more of the investments certified in the supplementary communication the Transition 5.0 tax credit.⁹⁰ To apply for the further tax credit, an e-file application had to be made to the Italian Tax Agency between April 15 and May 15, 2026, together with a statement that the business had not claimed the Transition tax 5.0 credit as well as other information indicated by the director of the Tax Agency.⁹¹

The legislation also created a ZES Coordination Committee with the responsibility of guiding, coordinating, supervising, and monitoring the ZES as well as a web to promote easy access to ZESs and ensure a unified revitalization of projects in the ZES regions the legislation had provided for creation of a digital platform with “one-stop shop” window.⁹²

The requirements for accessing the tax credit continue to be that the company keep its business activity in the ZES concerned for a five-year period after completion of the investment and that the company may not be in liquidation or the process of dissolution.⁹³ A business opening in a ZES will benefit from a 50% reduction in income tax, beginning with the tax year in which the business is established and continuing for the next six tax years, provided the businesses remains in the ZES for at least 10 years and maintains the employment created for the same length of time.⁹⁴

g. Simplified Logistic Zones

DPCM No. 40, issued March 4, 2024, regulating Simplified Logistics Zones (SLZs), was introduced to promote investment, industrial growth and efficiency in the transportation sector pursuant to guidelines created by the European Union. Businesses operating in geographic areas designated as SLZs will have access to streamlined bureaucratic and authorization procedures that allow a single authorization to be obtained for economic, industrial, production and logistics activities. Such businesses will be able to submit an application for authorization to the relevant region’s one-stop shop for employment, or, pending the establishment of such a one-stop shop, to the territorially competent one-stop shop for production activities. This

should reduce the time and bureaucracy involved in launching new business initiatives or expanding existing ones, while ensuring compliance with current environmental regulations.

SLZs will be located exclusively in Italy’s Center-North regions⁹⁵ and will have an initial duration of seven years, with the possibility of renewal for up to another seven years.⁹⁶ A region may have only one SLZ and must already have a Port Area or Port System Authority to be eligible to have an SLZ. An SLZ will comprise ports, backport areas, logistics platforms and interports.

The size of SLZs will be limited to ensure their effective management and development, as well as their concentration in strategic areas without excessive dispersion of resources and activities.

Where a number of Port System Authorities fall within the same region or ports of call located in different regions are involved, it is possible to establish multiple SLZs.⁹⁷ Interested regions may jointly apply for the establishment of an interregional SLZ, provided at least one of them has a Port Area. The total area allocated for SLZs in the regions involved may not exceed the limit set for each region. In addition, a region without a Port Area may apply to be associated with an already established SLZ, again subject to the defined size constraints. In addition, arrangements for interregional cooperation within interregional SLZs must be established by the regions involved to ensure the effective coordination of activities and sharing of resources and economic and logistical development goals.

SLZs must comply with the specific provisions established for the “Port and Backport of Genoa” SLZ, so that there is consistency and uniformity in the application of regulations and strategic development measures. Interregional SLZs must comply with the same principles and requirements as SLZs established within individual regions, ensuring effective and harmonious cooperation among the regions involved.

Customs Free Zones (CFZs) may also be established within SLZs to facilitate international trade. CFZs represent areas within the customs territory of the European Union where goods from third countries can be stored without customs duties having to be paid. These zones allow temporary handling and processing operations to be carried out on goods that can then be imported, re-exported or subjected to other customs procedures. CFZs may also include areas that are not directly adjacent to port areas. These are defined spaces supervised by the customs authorities, but where procedures are simplified to facilitate business activities.

Decree Law No. 60 of May 7, 2024, introduced a tax credit on investments in eligible assets within these SLZs initially that were made between May 8, 2024 to November 15, 2024. The law which converted this decree into law extended the period to include investments acquired between January 1, 2025 to November 15, 2025.⁹⁸ Eligible investments include plant and machinery, equipment, land (up to 50% of the total investment

⁸⁸ It should be noted that businesses operating in warehousing and transportation support sectors are eligible for the tax credit.

⁸⁹ Decree No. 124, Sept. 9, 2023, Art. 16(3), as converted into law by Law No. 162, 2023.

⁹⁰ Law No. 199, Dec. 30, 2025, Art. 1 (448–449).

⁹¹ Law No. 199, Dec. 30, 2025, Art. 1 (449).

⁹² Decree No. 124, September 9, 2023, Arts. 12–13, as converted into law by Law No. 162, 2023.

⁹³ DL No. 91, June 6, 2017, Art. 7, as converted into law, by Law No. 123, August 2017.

⁹⁴ Law No. 178, December 30, 2020, Art. 1(173)–(174).

⁹⁵ The Italian National Institute of Statistics defines these regions as Piedmont, Aosta, Liguria and Lombardy, Trentino-Alto Adige, Veneto, Friuli-Venezia Giulia and Emilia-Romagna.

⁹⁶ DPCM No. 40, March 4, 2024, Art. 7(2).

⁹⁷ DPCM No. 40, March 4, 2024, Art. 4.

⁹⁸ Decree Law No. 60 of May 7, 2024, Art. 13, as amended by Law. No. 202 of Dec. 27, 2024, Art. 3 (14-octies).

value), and the acquisition, construction or expansion of real estate instrumental to the investment. The amount invested must be between 200,000 and 100 million euros. This tax credit has been extended to investments made between January 1, 2026 and December 31, 2028. The eligible expenses will be capped at 100 million euros.⁹⁹

The tax credit provides for rates ranging from 10% to 35% depending on the size of the company and the area of reference. The amount of credit that can be used is equal to the credit claimed multiplied by a percentage set by a provision of the agency to be issued within 10 days of the deadline for reporting. If the total credits claimed do not exceed the spending limit, this percentage will be 100%.

The tax credit can be used as an offset of tax for the year the investment was made. The special tax code of “6859” was created to be used for this purpose via the F24 form, which must be submitted through the telematic services of the Italian Tax Agency.

h. Flat Tax for Foreign Retirees in the Mezzogiorno

The 2019 Budget Law enacted a flat tax on the pensions of retirees who transfer their residence to a municipality of no more than 20,000 residents in either Sicily, Calabria, Sardinia, Campagna, Basilicata, Abruzzo, Molise or Puglia, provided they were not resident in Italy for tax purposes in the last five tax years, and who move from a country with which Italy has an Administrative Cooperation agreement. To take advantage of the flat tax of 7%, the taxpayer must opt for it in their first Italian income tax return that is filed after taking up residency. Once the option has been exercised, all of the foreign income of the taxpayer, including dividends, interest and capital gains, will be taxed at the 7% rate. The option is valid for nine years and may be revoked by the taxpayer, even before the nine-year period has expired.¹⁰⁰ These taxpayers also will not have to report their investments held abroad on the RW schedule in their tax returns.

Retirees who only receive “pension benefits” from investment policies, such as unit-linked policies, are not eligible for this benefit.

3. Other Incentives

a. Hiring Incentives Available Throughout Italy

Italy has also adopted numerous incentives to encourage investment and employment throughout the country, such as the following:

(i) Exemption of production bonuses from annual income: Production bonuses up to the amount of 3,000 euros are subject to 10% (5% for the tax years 2023 and 2024, as per the 2023 and 2024 Budget Laws and further extended by the 2025 Budget Law through to tax year 2027) withholding and are exempt from personal income tax (IR-PEF). The 2026 Budget increased the limit of 3,000 euros to 5,000 euros for bonuses paid in 2026 and 2027 and will be subject to 1% withholding.¹⁰¹ Previous legislation

had provided that for those employees who earmark their production bonus for contribution to employee benefit programs available in the company, the amount of the exempt bonus that could be granted was 4,000 euros, but with the raising of the cap this provision no longer applies. However, if the employee chooses to forego the cash and earmarks bonus for employee benefit programs it will be tax-free and exempt from social security contributions up to the full 5,000 euros. These provisions apply only to those employees with an annual income that does not exceed 80,000 euros.¹⁰² While these bonuses are taxed separately at 1%, they are now included in the total income calculation solely for the purpose of determining eligibility for other personal tax reductions, such as those for dependent family members so that a taxpayer with a high total income due in part to a large bonus does not unfairly benefit from social or family deductions reserved for lower-income brackets.¹⁰³

(ii) Hiring of parents under 35: In 2007, a fund to encourage employment among young parents aged 35 and under was established. However, the funding could not be accessed until the National Social Security Institute (*Istituto Nazionale Per la Previdenza Sociale* or INPS) set up a data bank in which these individuals could register, which became operative as of September 14, 2011. Thus, provided certain conditions are met, employers who hire from the data bank will receive a 5,000 euros “hiring bonus.” An employer can hire up to five employees in this manner and the bonus is available until the fund is exhausted.

(iii) Forgiveness of social charges for hires between 16 and 29 years of age: Employers hiring individuals between 16 and 29 years of age, who meet certain criteria, will have their portion of social charges forgiven up to a maximum of 8,060 euros per worker for a permanent hire and up to a maximum of 4,030 euros for a fixed-term hire.

(iv) Forgiveness of social charges for hiring unemployed workers: Social security contributions up to 8,060 euros per year are forgiven for those employers hiring with permanent contracts or who convert project contracts to permanent contracts. This incentive may be used by an employer when hiring an individual who, during the six months prior to being hired, did not have a permanent employment contract.¹⁰⁴

(v) Forgiveness of social charges for hires of student workers: Employers that hire their student interns or apprentices on a permanent contract will have the health portion of the social charges forgiven up to a maximum of 3,250 euros per year for a period of 36 months.¹⁰⁵

(vi) Solidarity contracts: These contracts grant a reduction in the costs of labor where, rather than terminating employees, an employer reduces the hours or salaries of certain employees to hire additional employees. For the new hires, the employer will receive from INPS a contribution

⁹⁹ Law No. 199, Dec. 30, 2025, Art. 1 (444–447).

¹⁰⁰ Law No. 145, Dec. 30, 2018, Art. 1 (273)–(274).

¹⁰¹ Law No. 199, Dec. 30, 2025 Art. 1(8)–(9).

¹⁰² Law No. 232, Dec. 11, 2016.

¹⁰³ D.Lgs No. 192, Dec. 18, 2025, Art. 1(1), amending TU Art. 12 (4-ter).

¹⁰⁴ D. Lgs. No. 23, March 4, 2015.

¹⁰⁵ Law No. 183, Nov. 12, 2011, Art. 22(1).

of 15% of the employee's gross salary for the first 12 months; 10% up to 24 months; and 5% up to the 36th month of employment, or the employer may elect to pay social contributions at a reduced rate of 10%.¹⁰⁶

(vii) Apprentices hired by small businesses: Employers with fewer than nine employees who took on apprentices as of January 1, 2012, through December 31, 2016, will owe no social security or mandatory accident insurance contributions (i.e., no INPS or INAIL) for the first three years of the apprentice's contract.¹⁰⁷

(viii) Training and re-entry contracts for women: Expanded use of fixed-term contracts for training, or re-entry into the work force, in order to hire women in areas of Italy where the rate of female employment is 20% lower than male employment or female unemployment is 10% higher than male unemployment, regardless of whether the areas have been defined as economically disadvantaged, benefit from lower social security contributions. The Ministry of Labor is to identify those areas by December 31 of each year. Women of any age who have been unemployed for at least six months may be hired with these types of contracts and the employer will be able to take advantage of a reduction in social security contributions to be paid for women hired with these fixed-term contracts.¹⁰⁸

(ix) Hiring workers over the age of 50: Those employers who hire, with permanent contracts, workers over 50 years of age who have been unemployed for more than 12 months will receive a 50% reduction in the employer's portion of social charges for a period of 18 months. Employers who hire such workers on a fixed-term contract will receive the 50% reduction, but only for a period of 12 months.¹⁰⁹

(x) Hiring of disabled workers: As of January 1, 2016, employers that provide permanent contracts to (I) workers with a diminished work capacity of more than 79% or certain defined disabilities; (II) workers with diminished work capacity between 67% and 79% or certain defined disabilities; or (III) workers with a mental or psychological disability in excess of 45%, or in the case of workers with mental or psychological disabilities with a term contract for a period of at least one year, are eligible for a government contribution to the salaries of these workers, upon application to INPS, as follows:

Category (I): 70% of the worker's salary for a period of 36 months;

Category (II): 35% of the worker's salary for a period of 36 months;

Category (III): 70% of the worker's salary for a period of 60 months.¹¹⁰

(xi) Hiring workers under the age of 35 (30 years of age as of January 1, 2019): As of January 1, 2018, and continuing through to December 31, 2020, employers that hire individuals under the age of 35 with permanent employment contracts, as opposed to fixed-term contracts, are exempt from 50%¹¹¹ of social contributions for a period of three years up to the maximum amount of 3,000 euros per year. Only employers who have not terminated any employees in the six-month period prior to the hiring and who are up to date in the payment of their employee contributions are eligible for this incentive.¹¹²

(xii) As of July 1, 2025, companies hiring researchers on a permanent basis are entitled to a tax credit of 10,000 euros for each researcher hired.¹¹³

(xiii) Exclusion of 90% of income from taxation for a four-year period for researchers and professors who become residents of Italy and who had previously been permanent residents abroad where they carried out documented research or taught at a university for at least two consecutive years prior to coming to Italy to teach or carry out research.¹¹⁴

(xiv) Exclusion of 50% income from taxation for workers who move to Italy (referred to as the "impatriati" regime) for a period of five tax years. This benefit is available to EU citizens and individuals from countries that have a double taxation agreement or an agreement on exchange of information with Italy. For those taking on managerial roles, they must not have been a resident of Italy in the preceding five tax periods before moving to Italy and must commit to stay a minimum of two years in Italy. For other workers, the benefit is available if they hold a university degree and have worked or studied abroad (and obtained an academic qualification during that period of study) for a period of 24 months.¹¹⁵ As of January 1, 2020, the *impatriati* regime was modified enabling workers returning to Italy or arriving in Italy for the first time, may, for a five-year period, to exclude 70% of their employment and self-employment income from Italian taxation. The income exclusion increases to 90% if the individual takes up residency in the regions of Abruzzo, Molise, Campania, Apulia, Basilicata, Calabria, Sardinia or Sicily. The regime may be extended for a further period of five years if certain conditions are fulfilled. If extended, 50% of the Italian-source income of such workers will be subject to tax (10% in the case of workers with at least three children under 18 years old or otherwise dependent). As of January 1, 2024, the *impatriati* regime has been further modified to provide that

¹¹¹ DL No. 87, July 12, 2018, Art. 1-bis.

¹¹² In 2013, the Italian government enacted legislation to encourage employment by providing an incentive by way of forgiveness of payment of social security contributions for employers hiring on permanent contracts, between July 14, 2013, and June 30, 2015, individuals between 18 and 29 years of age, who met certain criteria. The incentive was equal to a credit for social security contributions due of up to one-third of the employee's gross monthly salary, but not to exceed 650 euros for a period of 18 months, or a period of 12 months if the permanent hire contract was converted from a fixed-term contract.

¹¹³ DL No. 45, April 7, 2025, Art. 3-septies.

¹¹⁴ Decree Law No. 140, May 5, 2010, Art. 44.

¹¹⁵ D. Lgs. No. 147, Sept. 14, 2015, Art. 16.

¹⁰⁶ D. Lgs. No. 81, June 15, 2015, Art. 51.

¹⁰⁷ Law No. 232, Dec. 11, 2014, Art. 1 (308)–(310).

¹⁰⁸ Law No. 183, Nov. 12, 2011, Art. 22(3).

¹⁰⁹ Law No. 92, June 28, 2012, Art. 4 (8)–(10).

¹¹⁰ D. Lgs. No. 151, Sept. 14, 2015, Art. 10.

eligible workers who move to Italy in 2024 must not have been tax resident in Italy for 36 months prior to their arrival in Italy. They are also required to commit to maintaining their tax residence in Italy for four years. Taxpayers meeting these requirements can exclude 50% of their income up to 600,000 euros from taxation. The exemption increases to 60% if the individual moves to Italy with a minor child, or a child is born or adopted during the period in which the exemption is in place.¹¹⁶

(xv) Exemption from social charges for hiring of women who have been the victims of violence: Employers that hire women who have been victims of violence with a permanent employment contract will be exempt from social charges up to a maximum of 8,000 euros per year for tax years 2024 to 2026. If the employee is hired with a fixed term contract the exemption will only be for a maximum of twelve months. If the fixed term contract is converted to a permanent employment contract the employer will receive an additional six months of exemption.¹¹⁷

(xvi) Hiring of women with children: Beginning on January 1, 2024 through to December 31, 2026, employers who hire women with three or more children have a total exemption from payment of social contributions for a period of three years up to the maximum amount of 3,000 euros per year.¹¹⁸ For tax year 2024, the exemption will also be applicable to women with two children.

(xvii) Bonus deduction for hiring with a permanent hiring contract: Companies which were in operation in Italy throughout 2023 and which in 2024 hire a number of employees greater than the average number hired in 2023 and where the number of all employees hired at the end of 2024 is greater than the average hired in 2023 will be able to deduct for IRES for purposes 120% of their labor costs for the new hires in 2024 and in some cases up to 130% of those hires. This deduction has been extended through to December 31, 2027.¹¹⁹

(xviii) Social contribution exemption for mothers with two or more children: employed and self-employed mothers who have two or more children, will be exempt from paying their share of social security contributions for invalidity, old age, and survivors benefits until the month of the youngest child's tenth birthday. Beginning in 2027, mothers with three or more children will also be exempt through to the month of the youngest child's eighteenth birthday.¹²⁰

b. "One Stop Shop" for Productive Activities

To facilitate both domestic and foreign investment long mired in bureaucracy, legislation adopted in 1998, and subsequently refined in 2010,¹²¹ provided for the establishment of

the "One Stop Shop for Productive Activities" (OSS or SUAP, *Sportello Unico per le Attività Produttive*). Under this program, municipalities, either individually or in association, undertake that all matters relating to investment within their jurisdiction are to be dealt with by a single organizational structure. Furthermore, paperwork is reduced by allowing an investor to certify directly many items that formerly required a certificate from the authorities.

c. Desk Italia

For foreign investors who are interested in making substantial investments or investments which are of strategic importance "*Desk Italia — Sportello Attrazione Investimenti Esteri*" (Desk to Attract Foreign Investment) has been created within the Ministry of Economic Development to coordinate activities between the investor, the various agencies operating in this sector, such as the Italian Trade Agency (*Istituto Nazionale per Il Commercio Estero* or ICE) and InvItalia, and the regions. Desk Italia has the power to call interagency meetings, propose changes in administrative proceedings via agreements with other public administrations, and the duty to provide an annual report with proposals for simplifying laws and procedures in force in the area of foreign investment.¹²²

d. Other Projects to Increase Employment

An Office for Policies to Increase Employment (*Ufficio per le Politiche di Promozione Dell'occupazione*), currently part of the Coordinating Service for Employment within the office of the Prime Minister, was established to help fight unemployment in the Mezzogiorno and other depressed areas,¹²³ as well as a Project Finance Support Unit (*Unità Tecnica — Finanza di Progetto*) to assist CIPE in involving the private sector in the financing, construction and operation of infrastructure and utility services throughout Italy.¹²⁴ Financial assistance to support industrial research and technology is available throughout Italy (i.e., not only in depressed areas) for private industry and research institutes in the form of grants, low-interest loans, concessionary interest contributions, tax credits (including a tax credit for those companies that entrust their research and development to universities and public research institutes),¹²⁵ and a tax "bonus" in the form of a reduction of taxes and social contributions paid.¹²⁶

e. Penalties for Companies Who Transfer Production Outside of Italy

D.L. No. 87 of July 12, 2018, provides that companies that have received state assistance from Italy to invest in their productive activities and that subsequently transfer their production from Italy to a country outside of the European Union or the European Economic Area within five years of the end of the assistance, will forfeit the amount granted. In addition, these companies will also be subject to a fine of two to four times the amount of the assistance received plus interest starting from the

¹¹⁶ Law No. 213, Dec. 30, 2023, Art. 1 (190)–(193).

¹¹⁷ Law No. D. Lgs. No. 2009, Dec. 27, 2023, Art. 5.

¹¹⁸ Law No. 213, Dec. 30, 2023, Art. 1(180)–(182).

¹¹⁹ DL. No. 216, Dec. 30, 2023, Art. 4, as amended by Law No. 207, Dec. 30, 2024, Art. 1(399).

¹²⁰ Law No. 207, Dec. 30, 2024, Art. 1(219).

¹²¹ DPR No. 447, Oct. 20, 1998, superseded by DPR No. 160, Sept. 7, 2010.

¹²² DL No. 179, Oct. 18, 2012, Art. 35.

¹²³ DPCM July 23, 2002, Art. 13.

¹²⁴ Law No. 144, May 17, 1999, Art. 7; DM No. 162, May 23, 2003.

¹²⁵ DL No. 145, Dec. 23, 2013, Art. 3.

¹²⁶ D. Lgs. No. 297, July 27, 1999.

date the assistance was used or received increased by a further 5%.¹²⁷

f. Research and Development Incentives

With Law No. 111 of August 9, 2023, having proposed the implementation of a dual corporate income tax system and the express provision in Article 9 to revise and simplify tax incentives, it is likely that current tax incentives, such as the one for research and development (R&D), as well as other similar incentives and tax credits discussed in this section, will gradually be replaced.

Businesses engaged in certain types of R&D activity between January 1, 2015, and December 31, 2019, are eligible for an annual tax credit of 25% (previously 50%) of the costs that exceeded the average costs of the same investment undertaken in the prior three tax years as of the tax year underway on December 31, 2015. The annual tax credit of 50% remains available only for expenses related to personnel employed for R&D activity and research contracts undertaken with universities, research institutions, and innovative start-ups.¹²⁸ The credit reference calculation remains unchanged for the five years that the credit is available. As of January 1, 2019, the R&D expense must be at least 30,000 euros and the total amount of the credit that a business can take in a tax year was capped at 10 million euros.¹²⁹

From January 1, 2015 through December 31, 2019, R&D projects available for the credit were broadly defined as follows:

- (i) Experimental or theoretical work to acquire new knowledge of phenomena even though it might not lead to any concrete application or commercial use;
- (ii) Planned research or critical studies to create new products, processes or services or to improve current processes and services; and
- (iii) Acquiring, combining, structuring or using current scientific, technological and commercial knowledge and capabilities to produce plans, projects, or designs for new products, processes or services, or the modification or improvement of such products, processes and services. However, the credit is not available if the acquisition was from a company that was controlled by, connected to, or that controlled¹³⁰ the company making the acquisition.¹³¹

Permissible research costs included the following:

- (i) Highly qualified personnel;

- (ii) Depreciation; and

- (iii) Research contracts with universities and research institutes and innovative start-up companies.

The 2020 Budget Law changed and broadened the R&D incentives. Through December 31, 2019, the incentives only facilitated basic industrial research and experimental development activities, as described above. As revised, the current incentives are available to all companies that, as of the tax period following the one underway on December 31, 2019, invest in the following:

- (i) Basic research, industrial research and experimental development in the scientific or technological field;
- (ii) Technological innovation for developing new or substantially improved products or processes, that are tangible or intangible assets, services or processes that differ with respect to technological characteristics, eco-compatibility or ergonomics from those already made or used by the company;
- (iii) Design and esthetic innovation R&D by companies in the textile and fashion, footwear, eyewear, goldsmith, furniture and furnishing, and ceramic sectors, for the devising and realizing new products and samples.

The new credit applies at the following rates, depending on the type of activity undertaken:

- With respect to (i), above, at the rate of 12% for expenses related to R&D up to a maximum of 3 million euros;
- With respect to (ii), above, at the rate of 6% for expenses related to technological innovation for developing new or substantially improved products or processes; the rate is increased to 10% for R&D of technological innovations that focus on creating new or improved products or production processes to meet a green economy transition goal or digital innovation. In both these instances, the tax credit is capped at a maximum of 1.5 million euros;
- With respect to (iii), above, at the rate of 6% for R&D expenses related to design and esthetic innovation.

The types of eligible research costs remain unchanged as under the previous legislation, but the tax credit is now to be taken over a three-year period, in equal amounts.¹³²

The 2022 Budget Law further extended this tax credit.¹³³ The credit now applies at the following rates, depending on the type of R&D activity undertaken:

- With respect to (i), above, the rate remains 20% in 2022 up to a maximum of 4 million euros and then falls to 10% in 2023 through 2031 up to a maximum of 5 million euros.
- With respect to (ii), above, the rate is 10% for expenses related to technological innovation for developing new or substantially improved products or processes and remains unchanged through 2023, although the cap has been increased to 2 million euros. However, for 2024 through 2025, the rate will be reduced to 5%.

¹²⁷ DL No. 87, July 12, 2018, Art. 5(3).

¹²⁸ L. 145, Dec. 30, 2019, Art. 1 (70)–(72).

¹²⁹ As from January 1, 2017, the total amount for the credit was capped at 20 million euros per year (previously 5 million euros through December 31, 2016).

¹³⁰ Civil Code Article 2359 defines controlled companies as those companies in which a company: (i) has a majority of the exercisable votes; (ii) has sufficient votes to exercise a dominant influence at an ordinary meeting; or (iii) exerts a dominant influence due to contractual ties. An affiliated company is defined as one in which another company exercises considerable influence. The presumption of influence exists when one-fifth of the shares of a privately-owned company, or one-tenth of the shares of a publicly-traded company can be exercised by the same company at an ordinary meeting.

¹³¹ DL No. 87, July 12, 2018, Art. 8.

¹³² Law No. 160, Dec. 27, 2019, Art. 1 (198)–(209).

¹³³ Law No. 234, Dec. 21, 2021, Art. 1 (45).

The 15% rate will now apply to R&D expenses for technological innovations that focus on creating new or improved products or production processes with respect to a green economy transition goal or digital innovation. In these instances, the tax credit is capped at 2 million euros through 2022. In 2023, the rate will be 10% with the cap increased to 4 million euros, and in 2024 through 2025, the rate will be reduced to 5%.

— With respect to (iii), above, the rate is 10% through 2023 with a cap of 2 million euros for R&D expenses related to design and esthetic innovation. In 2024 through 2025, the rate will be 5% with a cap of 2 million euros.

g. Bureaucracy-Free Zones

Italy has also implemented “bureaucracy-free zones” to reduce red tape in connection with the opening of new businesses and along certain areas of its coast lines, to encourage the development of tourism. In these special zones, permits and licenses are to be granted within 30 days of application and, should the authorities fail to issue the permit or license within that period, or fail to advise the applicant of any problems with the application, such silence is to be interpreted as meaning that the application has been approved.¹³⁴

h. Innovative Start-ups

To stimulate growth, technological development and employment opportunities, Decree Law No. 179 of October 18, 2012, popularly referred to as the “*Decreto Crescita 2.0*” (Growth Decree 2.0), put in place framework legislation for start-up companies.

A company incorporated under Italian law, or a European company (*Societas Europaea*) that is resident in Italy for tax purposes will qualify for such designation if:

- (i) The company is unlisted;
- (ii) It has not been in existence for more than 60 months;
- (iii) Its principal place of business or interests are in Italy;
- (iv) It does not distribute profits;
- (v) Beginning with its second fiscal year, its turnover does not exceed 5 million euros;
- (vi) Its corporate purpose is exclusively to develop, produce and sell innovative products and services with a high technological value; and
- (vii) The company was not created by a merger or split-off, or pursuant to the sale of a business or branch of a business.¹³⁵

In addition, the company must meet one of the following requirements:

- (i) Its R&D costs are equal to or greater than 15% (lowered from 20% in the original formulation of the requirements)

¹³⁴ DL No. 78, May 31, 2010, as amended by Art. 43, Law No. 122, July 30, 2010; DL No. 70, May 13, 2011, as repealed and replaced by Art. 37-*bis*, DL No. 179, October 18, 2012.

¹³⁵ DL No. 179, Oct. 18, 2012, Art. 25, (2), (a)–(g), as amended by Law No. 221, Dec. 17, 2012, which converted it into permanent law, and as further amended by Arts. (9), (16), (a)–(c), DL No. 76, June 28, 2013.

of the greater value between total costs and the total value of production;

(ii) One-third of its employees or consultants must be “highly qualified,” holding either a PhD or be a PhD candidate and have engaged in research in the last three years, or have a university degree with at least three years of research experience or at least two-thirds of its work force is to be composed of individuals with a masters’ degree (*laurea magistrale*); or

(iii) If the licensee holds or has filed an industrial patent for an industrial, biotechnological invention, semi-conductor topography or new plant variety, or is the owner of original software registered with the Italian copyright organization (SIAE) directly related to its corporate purpose and activities.¹³⁶

Qualifying start-ups will be exempt from certain incorporation and registration costs.

Directors, employees, and contractors who are granted shares or quotas in the start-up as remuneration need not consider those financial instruments as income for income taxation or social security purposes.¹³⁷ Term employment contracts are generally allowed in these companies for periods ranging from six to 36 months, and for periods of less than six months or longer than 36 months provided certain conditions are met.¹³⁸

Tax incentives are available for investors of start-ups. For tax years 2013 to 2015, individuals investing directly or through collective investment schemes could take a tax credit of 19% of the amount invested up to a maximum of 500,000 euros per tax year, provided that the investment was maintained for at least two years.¹³⁹

Companies investing in start-ups may deduct 20% or 27%, depending on the type of start-up, up to a maximum per tax year of 1.8 million euros, provided that the company maintains its investment for two years.¹⁴⁰

For investments made in start-ups as of the 2020 tax year, a tax credit of 50%, up to a maximum of 100,000 euros, including with respect to de minimis investments, is available. To be eligible for the tax credit, the investment must be maintained for a minimum of at least three years.¹⁴¹ For tax year 2019, a tax credit of 40% of the amount invested up to 1 million euros is available to individual investors in start-ups, provided that the investment is for a period of three years.

Companies are allowed a deduction from income of 50% up to a maximum of 1.8 million euros, provided that the company wholly owns the start-up and maintains that investment for three years.¹⁴²

Furthermore, as of tax year 2017, the tax incentives provided for innovative start-ups have been extended to all innovative small and medium business.

¹³⁶ DL No. 179, Art. 25, (h), (1)–(3), as amended by Arts. (9), (16), (a)–(c), DL No. 76, June 28, 2013.

¹³⁷ DL No. 179, Art. 27.

¹³⁸ DL No. 179, Art. 28.

¹³⁹ DL No. 179, Art. 29, (1), (3).

¹⁴⁰ DL No. 179, Art. 29, (4)–(5), (7).

¹⁴¹ DL No. 179, Art. 29-*bis*.

¹⁴² Law No. 232, Dec. 11, 2016, as amended by Law No. 145, Dec. 30, 2018, Art. 1 (218).

i. Small and Medium Businesses

(1) Guarantee Fund

A Guarantee Fund for Small and Medium Businesses (*Fondo di Garanzia per Piccole e Medie Imprese*) was created within the Ministry for Economic Development and managed by *Medio Credito Centrale SpA* for the purpose of encouraging access to financing for small and medium sized businesses, by providing a public guarantee on financing given by banks, leasing companies and other financial intermediaries to these companies. The guarantee is applied for by the institution that is granting the financing. The granting of the guarantee is at no risk to the financial institution as in the event that the company receiving the financing becomes insolvent, the Fund will reimburse the financial institution. Should the Fund be depleted, the government will directly reimburse the financial institution.

The Fund may issue direct guarantees, counter guarantees and co-guarantees. In certain instances, direct guarantees may cover up to 80% of up to a maximum amount of 2.5 million euros. As a response to the COVID-19 pandemic, the cap has been temporarily increased to 5 million euros.

(2) New Machinery, Equipment and Building Environmental Systems

Financing incentives have been enacted to allow small and medium sized businesses to purchase or lease machinery, equipment, building environmental systems as well as computer hardware, digital technology and software. The financing granted by a participating financial institution is available at subsidized rates for investments made by a business ranging between 20,000 euros and 4 million euros through financing contracts that last up to five years. Financing can cover up to 100% of “qualifying costs,” which are to be defined by a decree of the Ministry of Business and Made in Italy (formerly Economic Development). Financial institutions can make use of the Guarantee Fund for Small and Medium Businesses to cover up to 80% of the financing granted to a business.¹⁴³ The Budget Law for 2026 increased the expenditure limits for this measure by 200 million euros for 2026 and 450 million euros for 2027. This new allocation of 650 million euros ensures the continuity of the subsidy for investments made through 2029. Furthermore, to help businesses accelerate digital transformation, the law reintroduces hyper-depreciation of up to 180% for Industry 4.0 assets.¹⁴⁴

(3) Micro, Small and Medium Businesses

The government has transitioned from COVID-19 emergency aid to structural support for innovation and sustainability, including the following:

- (i) Free-of-charge guarantees from the Guarantee Fund for Small and Medium Businesses for various forms of financing, specifically targeting green and digital transitions;

- (ii) Extension of eligibility for such guarantees to small and medium-sized businesses to ensure continued liquidity;

- (iii) Maximum amount guaranteed per company maintained at five million euros to provide support to large-scale industrial upgrades;

- (iv) Direct guarantees optimized to support long term investments exceeding 72 months in strategic sectors;

- (v) Simplification of disbursement, allowing for a single lump-sum payment of loans up to 200,000 euros.

The assistance was initially set to expire during the course of 2020 but was structurally integrated into the National Recovery and Resilience Plan (PNRR) and subsequent Budget Laws. The Budget Law of 2026 extended the refinancing and operational deadlines for the purchase of new machinery and equipment (see above) and the Guarantee Fund to December 31, 2029.¹⁴⁵

(4) Tax Credit for Recapitalization

For companies with revenue between 5 million euros and 50 million euros, the government has introduced a 20% tax credit for recapitalization and a tax credit of 50% for capital losses (exceeding 10% of equity). To be eligible for these tax credits, a company must have experienced a 33% drop in revenue compared to the prior year and must have approved a capital increase of at least 250,000 euros by June 31, 2021. The company must also be current with social security contributions and tax payments and, as of December 31, 2019, must not be within the category of an “undertaking in difficulty” as defined by Article 2 (18) of Commission Regulation (EU) no. 651/2014 of June 17, 2014.¹⁴⁶

j. Patent Box

The Patent Box incentive is an option that, when exercised, provides a five-year tax exemption for businesses engaged in R&D that own or have granted a license to exploit intellectual property. The Patent Box incentive was repealed and replaced with a cost-based R&D incentive. For further discussion, see V.C.5., below.

k. Tax Credit for Employee Training in Technology

Businesses that provide employee training in technology included in the National Industrial Plan (Industria 4.0) are eligible for tax incentives. The traditional 4.0 tax credit was as follows:¹⁴⁷

- Small businesses: 50% up to a maximum of 250,000 euros;
- Medium size businesses: 40% up to a maximum of 250,000 euros;
- Large businesses: 30% up to a maximum of 250,000 euros.

¹⁴³ DL No. 69, June 21, 2013, Art. 2.

¹⁴⁴ Law No. 178, Dec. 30, 2020, Art. 1 (95)–(96), (248) as amended by Law No. 199, Dec. 30, 2025, Art. 1 (427)–(436), (468).

¹⁴⁵ Law No. 178, Dec. 30, 2020, Art. 1 (216)–(218) as extended by Law No. 199, Dec. 30, 2025, Art. 1 (468).

¹⁴⁶ Law No. 178, Dec. 30, 2020, Art. 1 (263)–(264).

¹⁴⁷ Law No. 145, Dec. 30, 2018, Art. 1 (78)–(81).

While these traditional credits were absorbed by newer frameworks, incentives remain available for training linked to energy-saving digital transformation projects. The 60% tax credit for companies providing training to employees who are considered disadvantaged or very disadvantaged, enacted by the 2020 Budget Law and the Decree of the Ministry of Labor and Social Policies issued on October 17, 2017, remains a key provision for eligible companies.

Technology training that qualifies for the tax credit includes big data, data analysis, cloud and fog computing, cyber security, cyber physical systems, rapid prototyping, display systems and augmented reality, advanced and collaborative robotics, interface between humans and machines, the internet of things and machines, and digital integration of business processes.¹⁴⁸ Under the current Transition 5.0 framework, these training activities must also support the company's energy efficiency goals.

The 2026 Budget Law introduced a new hyper-depreciation regime for investments in digital and energy-saving technology between January 1, 2026, and September 30, 2028. This measure replaces the previous tax credit system by allowing companies to increase the deductible acquisition cost of eligible assets for income tax purposes. The percentage of the cost increase depends on the total amount of investment, as shown below.¹⁴⁹

Hyper-depreciation Rate	Investment Amount (euros)
180% of the acquisition cost	Up to 2.5 million
100% of the acquisition cost	Between 2.5 and 10 million
50% of the acquisition cost	Between 10 and 20 million

1. Tax Credits for Newspaper Publishers

In response to the significant increase in the cost of paper, which hit the publishing sector particularly hard as the sector was already in economic distress as a result of the COVID-19 pandemic and the war in Ukraine, the 2024 Budget Law provided that, for tax years 2024 and 2025, a 30% tax credit would be available for the purchase of print paper.¹⁵⁰ This represents the restoration of an earlier, 10%, credit initially granted in tax year 2020 and in place for tax years 2022 and 2023. The earlier credit was reported to the European Commission as state aid and approved by the Commission. Italy has also notified the Commission of the amended credit, which has also been approved.¹⁵¹

To be eligible for the credit, a publisher must:

- (i) Be registered in the Registry of Communication Professionals (*Registro degli Operatori di Comunicazione, ROC*);

- (ii) Have its legal headquarters in the European Union or the European Economic Area;
- (iii) Be tax resident in Italy or have a branch in Italy; and
- (iv) Have a newspaper or magazine publishing business code.

m. Fast Track Investor Visa and Flat Tax

To encourage immigration into Italy of certain high net worth individuals willing to provide much needed investment capital, the 2017 Budget Law enacted two initiatives:

- (i) Fast track investor visa.
- (ii) Flat tax on income produced outside of Italy.

The fast-track visa (also known as the Golden Visa) is an immigration provision that allows wealthy foreign investors to receive a two-year residence visa within three months of their arrival in Italy. The investor may not be an EU citizen and must either acquire at least 2 million euros in Italian state bonds, invest at least 500,000 euros in an Italian company or invest at least 250,000 euros in an Italian innovative start-up company.

The investment is to be maintained for a minimum two-year period.

Alternatively, the visa will also be available if the investor makes a charitable donation in the minimum amount of 1 million euros to a project of public interest in the arts, education, immigration management, scientific research, or the restoration of cultural or environmental assets.

The flat tax provision is available not only to these high-net-worth non-EU citizen investors, but to EU citizens who choose to make Italy their principal place of residence. Individuals who opt for this mode of taxation within the first tax period in which they take up residence in Italy as of January 1, 2026 will be subject to a flat tax of 300,000 euros on all income derived outside Italy, with an additional 50,000 euros payable for each family member¹⁵² who also takes up residence in Italy, rather than ordinary IRPEF taxation.¹⁵³ This option is available to individuals who have not been resident in Italy for nine out of the 10 past calendar years and, once exercised, applies for a minimum period of nine years and a maximum of 15 years.

IVAFE and IVIE taxation (i.e., on foreign investments and real property) will not be applied and the Italian foreign account reporting requirements will be waived for the period during which the option is in place. Foreign taxes paid on the income produced outside Italy cannot be used to offset the flat tax.¹⁵⁴

¹⁵² The family members who may take advantage of this option are defined by Civil Code Article 433 and include: the spouse, children and their spouses, parents, grandparents, and brothers and sisters of the high net worth individual.

¹⁵³ DPR No. 917 of Dec. 22, 1986, Art. 24-bis, added by Law No. 232, of Dec. 11, 2016, Art. 1 (152); Law No. 199, Dec. 20, 2025, Art. 1 (25). For those taxpayers that established residency in Italy before 2026, they will be grandfathered in at the original rate. For taxpayers that became residents prior to August 10, 2024, they will continue paying 100,000 euros. Those that became resident in the period of August 10, 2024 to December 31, 2025, will continue to be subject to the 200,000 euros flat tax.

¹⁵⁴ Law No. 232, of Dec. 11, 2016, Art. 1 (153).

¹⁴⁸ Law No. 205, Dec. 27, 2017, Art. 1 (46)–(56).

¹⁴⁹ Law No. 199, Dec. 30, 2025, Art. 1 (427)–(436).

¹⁵⁰ Law No. 213, Dec. 30, 2023, Art. 1 (319).

¹⁵¹ SA113437; SA 112885.

n. Tax Credit for Recycled Products

A tax credit in the amount of 36% up to a maximum amount of 20,000 euros was enacted in the 2019 Budget Law for companies that purchase in tax years 2019 and 2020 recycled, biodegradable products, and packaging or such products or packaging that can be used as compost.¹⁵⁵

The 2020 Budget Law enacted an additional tax credit for companies that between January 1, 2020 and December 31, 2020, incur costs to make technical adjustments to produce biodegradable and compostable materials. The amount of the tax credit is 10% up to a maximum of 20,000 euros per company.¹⁵⁶ The tax credit is to be taken in the company's returns filed in 2020 and 2021. The tax credit is also valid for purposes of IRAP.

o. Tax Credits for Increased Energy and Gas Costs

In response to the rapidly rising cost of energy during the course of 2022, Italy enacted tax measures to alleviate the impact on those businesses hardest hit. The measures are in the form of tax credits to be used by either December 31, 2022, or

March 31, 2023 (applicable deadlines outlined in the tables below). Eligible businesses are:

- Energy intensive businesses;
- Businesses that have electricity meters with available wattage of ≥ 16.5 kilowatts or 4.5 kilowatts (applicable capacity outlined in tables below);
- Gas intensive businesses; and
- Businesses that purchase natural gas for uses other than heating.

The tax credits may be offset when making the business's tax payments. The tax credits may also be assigned by the business to a third party, such as a bank, companies belonging to a banking group, or insurance companies authorized to do business in Italy. A notice must be provided to the Italian tax authority of the assignment, accompanied by a formal statement of compliance (*visto di conformità*), prepared by an authorized tax professional attesting to the underlying expenses giving rise to the tax credit.

The table below illustrates eligibility of a business for such tax credits, as enacted by Decree Law No. 50 of May 17, 2022:

¹⁵⁵ Law No. 145, Dec. 30, 2018, Art. 1 (73)–(77).

¹⁵⁶ Law No. 160, Dec. 27, 2019, Art. 1 (653)–(654).

Amount of Increase	Period of Reference	Amount of Tax Credit	Deadline to Claim
ENERGY INTENSIVE BUSINESSES			
>30% average cost of electricity per kWh after deductions and contributions	Q4 2021 vs. Q4 2019	20% of energy costs incurred in Q1 2021	December 31, 2022
> 30% average cost of electricity per kWh after deductions and contributions	Q1 2022 vs. Q1 2019 FY	25% of energy costs incurred in Q2 2022	December 31, 2022
BUSINESSES WITH ELECTRICITY METERS WITH AVAILABLE WATTAGE OF ≥ 16.5 kW			
> 30% average cost of electricity per kWh after deductions and contributions	Q1 2022 vs. Q1 2019	15% of energy costs incurred in Q2 2022	December 31, 2022
GAS INTENSIVE BUSINESSES			
> 30% average price of gas on the MI-GAS natural gas market	Q1 2022 FY vs. Q1 2019 FY	25% of natural gas costs incurred in Q2 2022.	December 31, 2022
> 30% average price of gas on the MI-GAS natural gas market	Q4 2021 vs. Q4 2019	10% of natural gas costs incurred in Q1 2022	December 31, 2022
BUSINESSES PURCHASING NATURAL GAS FOR OTHER THAN HEATING PURPOSES			
> 30% average price of gas on the MI-GAS natural gas market	Q1 2022 vs. Q1 2019	25% of natural gas costs incurred in Q2 2022.	December 31, 2022

Subsequently, Decree Laws No. 115 of August 9, 2022, and No. 144 of September 23, 2022, extended these tax credits to cover the third and fourth quarters of 2022.

The following table sets out those measures:

Amount of Increase	Period of Reference	Amount of Tax Credit	Deadline to Claim
ENERGY INTENSIVE BUSINESSES			
>30% average cost of electricity per kWh after deductions and contributions	Q2 2022 vs. Q2 2019	25% of energy costs incurred in Q3 of 2022	March 31, 2023
>30% average cost of electricity per kWh after deductions and contributions	Q3 2022 vs. Q3 2019	40% of energy costs incurred in October and November 2022	March 31, 2023
BUSINESSES WITH ELECTRICITY METERS WITH AVAILABLE WATTAGE OF ≥ 16.5 kW			
> 30% average cost of electricity per kWh after deductions and contributions	Q2 2022 vs. Q2 2019	15% of energy costs incurred in Q3 2022	March 31, 2023
BUSINESSES WITH ELECTRICITY METERS WITH AVAILABLE WATTAGE OF ≥ 4.5 kW			
> 30% average cost of electricity per kWh after deductions and contributions	Q3 2022 vs. Q3 2019	30% of energy costs incurred in October and November 2022	March 31, 2023
GAS INTENSIVE BUSINESSES			
> 30% average price of gas on the MI-GAS natural gas market	Q2 2022 vs. Q2 2019	25% of natural gas used costs incurred in Q3 2022	March 31, 2023
> 30% average price of gas on the MI-GAS natural gas market	Q3 2022 vs. Q3 2019	40% of natural gas costs incurred in October and November 2022	March 31, 2023
BUSINESSES PURCHASING NATURAL GAS FOR OTHER THAN HEATING PURPOSES			
> 30% average price of gas on the MI-GAS natural gas market	Q2 2022 vs. Q2 2019	25% of natural gas cost incurred in Q3 2022	March 31, 2023
> 30% average price of gas on the MI-GAS natural gas market	Q3 2022 vs. Q3 2019	40% of natural gas costs incurred in October and November 2022	March 31, 2023

The 2023 Budget Law extended the tax credits for the purchase of electricity and natural gas to the first quarter of 2023 as follows:

Amount of Increase	Period of Reference	Amount of Tax Credit	Deadline to Claim
ENERGY INTENSIVE BUSINESSES			
>30% average cost of electricity per kWh after deductions and contributions	Q2 2022 vs. Q2 2019	25% of energy costs incurred in Q3 of 2022	March 31, 2023
>30% average cost of electricity per kWh after deductions and contributions	Q3 2022 vs. Q3 2019	40% of energy costs incurred in October and November 2022	March 31, 2023
BUSINESSES WITH ELECTRICITY METERS WITH AVAILABLE WATTAGE OF ≥ 16.5 kW			
> 30% average cost of electricity per kWh after deductions and contributions	Q2 2022 vs. Q2 2019	15% of energy costs incurred in Q3 2022	March 31, 2023
BUSINESSES WITH ELECTRICITY METERS WITH AVAILABLE WATTAGE OF ≥ 4.5 kW			
> 30% average cost of electricity per kWh after deductions and contributions	Q3 2022 vs. Q3 2019	30% of energy costs incurred in October and November 2022	March 31, 2023
GAS INTENSIVE BUSINESSES			
> 30% average price of gas on the MI-GAS natural gas market	Q2 2022 vs. Q2 2019	25% of natural gas used costs incurred in Q3 2022	March 31, 2023
> 30% average price of gas on the MI-GAS natural gas market	Q3 2022 vs. Q3 2019	40% of natural gas costs incurred in October and November 2022	March 31, 2023
BUSINESSES PURCHASING NATURAL GAS FOR OTHER THAN HEATING PURPOSES			
> 30% average price of gas on the MI-GAS natural gas market	Q2 2022 vs. Q2 2019	25% of natural gas cost incurred in Q3 2022	March 31, 2023
> 30% average price of gas on the MI-GAS natural gas market	Q3 2022 vs. Q3 2019	40% of natural gas costs incurred in October and November 2022	March 31, 2023

The 2023 Budget Law extended the tax credits for the purchase of electricity and natural gas to the first quarter of 2023 as follows:

Amount of Increase	Period of Reference	Amount of Tax Credit	Deadline to Claim
ENERGY INTENSIVE BUSINESSES			
>30% average cost of electricity per kWh after deductions and contributions	Q4 2022 vs. Q4 2019	45% of energy costs incurred in October and November 2022	December 31, 2023
BUSINESSES WITH ELECTRICITY METERS WITH AVAILABLE WATTAGE OF ≥ 16.5 kW			
Cancelled for Q1 2023 to reduce the effects of price increases in the electricity industry.			
BUSINESSES WITH ELECTRICITY METERS WITH AVAILABLE WATTAGE OF ≥ 4.5 kW			
> 30% average cost of electricity per kWh after deductions and contributions	Q4 2022 vs. Q4 2019	35% of energy costs incurred in October and November 2022	December 31, 2023
GAS INTENSIVE BUSINESSES			
> 30% average price of gas on the MI-GAS natural gas market	Q4 2022 vs. Q4 2019	45% of natural gas costs incurred in October and November 2022	December 31, 2023

p. Retention in Service

Those workers who on December 31, 2025, have met the requirements for early retirement may choose to remain in service and request that the portion of social security contributions that the employer would normally pay to the Italian Social Security Institution be paid directly by the employer to them. This payment will not count as income to the employee for income tax purposes.¹⁵⁷

B. Currency and Foreign Exchange

1. National Currency

The official currency of Italy is the euro. The euro replaced the *lira* on January 1, 1999, at the fixed rate of exchange of one euro = 1,936.27 *lire*.

2. Foreign Exchange Laws

a. In General

After World War II, Italy modified its program of exchange controls to address the problems of reconstruction. The chief purpose of the post-war regulatory effort was to avert the flight of capital and relieve other sources of pressure on the Italian monetary system.

Italy's economic growth was helped by these restrictions but, as a measure of the country's improved economic position, the most significant restrictions were removed on May 14, 1990, without any adverse impact on its currency, then the *lira*.

b. Specific Provisions

(1) Residents

While some minor restrictions remain, Italian residents are free to enter into economic and financial relationships with foreigners. Residents may contract with nonresidents in Italy and abroad. Furthermore, assets located abroad may be the subject of transactions between residents with no authorization being required.¹⁵⁸

Residents can hold accounts in any currency with any bank in Italy or abroad. However, receipts or transfers of foreign currency, euros, or virtual currency in excess of 5,000 euros (this is the ceiling provided for in the 2023 Budget, which, as of the time of writing had been approved by the Government, but had not yet been passed by Parliament; 1,000 euros prior to January 1, 2023) must be made through a financial institution and are subject to monitoring by that institution.

A resident may export means of payment, negotiable instruments, transferable securities, foreign currencies and euros. Shares and securities over the 5,000 euros¹⁵⁹ maximum may be exported without using a broker, provided the resident presents a specific notice to customs.

Italian banks freely act on the international markets and engage in hedging transactions, futures, swaps and options.

(2) Nonresidents

Nonresidents may make payments in Italy for the acquisition of goods, services, or investments using either foreign currency or euros, or tangible or intangible assets, and may transfer abroad earnings on investments and invested capital on liquida-

¹⁵⁷ Law No. 207, Dec. 30, 2024, Art. 1 (161).

¹⁵⁸ DPR No. 148, March 31, 1988, Art. 5(2); D. Lgs. No. 143, March 31, 1998, referring to the Commercial Trade regulations.

¹⁵⁹ DM, Oct. 17, 2002, No. 25601, Official Gazette No. 290/2002.

tion, re-export imported currency (whether foreign or Italian), and offer financial products and services.

Specifically, nonresidents may freely export means of payment, negotiable instruments, transferable securities, and other funds in foreign currencies and euros. Nonresidents may open accounts (*conto estero*) with Italian banks in foreign currency and euros.

Again, cash transfers in excess of 5,000 euros must be made through an intermediary bank. Nonresidents may personally export money or bearer securities without using a bank, provided the excess over the amount declared at Italian customs is evidenced by a customs document issued when the funds entered the country.

A written declaration must be made to customs if shares and securities over the exempt amount are to be exported by being carried personally across the border.

The financial products that a nonresident may offer are: obligations issued or guaranteed by Organisation for Economic Cooperation and Development (OECD) Member States; stocks or bonds issued or payable in EU Member States; stocks or bonds issued or payable in OECD Member States, if related to enterprises listed or scheduled to be listed on a regulated stock market; and negotiable instruments issued in the due course of the business of a financial institution resident in an OECD Member State. Financial services that nonresidents may offer include underwriting, consulting, factoring, and the management of credit cards.

c. "Tax Monitoring" Reporting Requirements

Regulations referring to Article 4 of EC Directive 88/361 were issued under Decree Law No. 167 of June 28, 1990, as implemented by Law No. 227 of August 4, 1990, and under Legislative Decree No. 56 of February 20, 2004 (implementing EC Directive 2001/97/EEC), providing for the disclosure of cross-border transfers. The decrees require that credit agencies, special credit institutions and, in certain cases, notaries and legal counsel keep evidence of cross-border transfers of money, shares, or transferable securities exceeding 10,000 euros, as well as the purchase and sale of foreign securities that are not cross-border transfers but that exceed the 10,000 euros threshold. Such evidence includes the particulars (name, domicile, and tax code) of the Italian resident, the party on behalf of or to which the transfer was made, the date of, reason for, and amount of the transfer, and information identifying the account into which the funds were transferred.

A penalty ranging from 10% to 30% is also levied where a customs declaration is not made on transfers or attempted transfers in Euros or foreign currency, or of bearer securities in euros or foreign currency when the amount does not exceed 10,000 euros; in all other cases, a penalty ranging from 30% to 50% will be applied.¹⁶⁰

Providing brokers with false information regarding cross-border transfers, or falsely declaring nonresident status in Italy to evade the requirement to retain evidence of such transfers is punishable by imprisonment for six months to a year and a fine

of up to 5,164.56 euros, unless the act constitutes a more serious crime.

Although residents no longer need to report their cross-border transfers, they are required to report any foreign investments held abroad, as well as bank accounts which have an average balance that exceeds 15,000 euros, or accounts that have an average annual balance of less than 5,000 euros, but that during the course of the year exceed 15,000 euros.¹⁶¹ Also to be reported, but only for purposes of calculating the Tax on Investments Held Abroad (*Imposta sul valore delle Attività Finanziarie Detenute all'Ester*o, or IVAFE) are those that have an average annual balance of more than 5,000 euros, but during the course of a year never have a balance in excess of 15,000 euros. Failure to disclose these investments on the tax return is subject to a fine that varies between 3% and 15%, and for investments held in Black List countries the fines are double to range between 6% and 30%. However, for taxpayers who comply with reporting requirements within 90 days of the due date of the annual tax return, a fixed fine of 258 euros will be levied.¹⁶² Furthermore, if the taxpayer states in the return that the income is deferred to a subsequent tax period, the presumptive tax is not levied.¹⁶³

Foreign residents who have opted for the flat tax option (see II.A.3.j., above) are not required to report their foreign investments.¹⁶⁴

d. Limitations on Cash Purchases

From July 1, 2020 through December 31, 2022, Italian residents were not able to make cash purchases in excess of 2,000 euros. Payments in excess of that amount were only be permitted to be made by debit card, credit card or check. The reduction in the cash purchase limit to 1,000 euros expected to occur in January 2023 was not implemented, and the limit was raised to 5,000 euros as of January 5, 2023.¹⁶⁵ Foreigners who are not residents of Italy, who provide the seller with a copy of their passport, certify that they are not Italian citizens and are residents of another country, and who arrange for the cash to be deposited into the seller's account, may make cash purchases up to 15,000 euros.¹⁶⁶

e. Selected Transactions

(1) Imports and Exports

Earlier restrictions on the timing of payments for the import and export of goods or services have been eliminated, and parties may arrange payments in a manner that is commercially convenient. However, in accordance with EC Directive 2000/35 concerning the reduction of delays in payment in commercial transactions, certain limitations have been introduced regarding payment terms in the case of transactions relating to

¹⁶¹ Law No. 97, Aug. 6, 2013, as amended by Law No. 186 of Dec. 12, 2014.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ Law No. 232 of Dec. 11, 2016, Art. 1 (153).

¹⁶⁵ DL No. 124 of Oct. 26, 2019, Art. 18 (1), (a) as converted by Law No. 157 of Dec. 15, 2019, as further amended by DL No. 228 of Dec. 31, 2021, Art. 3 (6-septies) as converted by Law No. 15 of Feb. 25, 2022 and Law No. 197, Dec. 29, 2022, Art. 2 (384) (b).

¹⁶⁶ Law No. 145, Dec. 30, 2019 Art. 1 (245).

¹⁶⁰ D. Lgs. No. 195, Nov. 19, 2008, Art. 9, as amended by DL No. 16, Mar. 2, 2012, Art. 11(8)(d)(1), as converted into law with amendments by Law No. 44, April 26, 2012.

the supply of goods and services.¹⁶⁷ In general, agreements on payment dates or the consequences of delayed payment are null and void if, taking into account accepted commercial practices, including the nature of the merchandise or services, the economic condition of the contracting parties and the relationships between them, or any other relevant circumstance, they would be gravely unjust to the debtor. In particular, the law considers gravely unjust an agreement that, without any objective justification, has as its main purpose procuring additional liquidity for the creditor at the expense of the debtor, or an agreement by which a contractor or subcontractor imposes on its suppliers or sub-suppliers payment terms of unjustifiably greater length than the payment terms it enjoys by itself. In these cases, a judge, even a judge acting *ex officio*, may declare the agreement null, apply other legal terms or modify the contents of the agreement so as to make its terms equitable.

With particular regard to contracts for the transfer or sale of perishable food products, payment must be made within 60 days from the date of delivery or pick-up of the products. The parties may, however, fix a longer term in writing that, nevertheless, must be within limits set by the most representative organizations at a national level for production, transformation, and distribution by category of products.

(2) Foreign Borrowing

Italian residents wishing to issue bonds or contract loans abroad are no longer required to obtain prior authorization. If the transfer of money is made through a bank, the bank must keep evidence of any transaction over the exempt amount (i.e., 10,000 euros). Transfers in excess of that amount made through a nonresident must be reported on the resident's tax return.

(3) Purchase and Sale of Securities Issued or Payable Abroad

Italian resident individuals and enterprises are permitted to buy and sell stocks and bonds issued or payable abroad even if such securities are not listed on a foreign stock exchange. The provisions regarding foreign borrowing apply to transfers of stock exceeding 10,000 euros.

f. Foreigners' Bank Accounts

Nonresidents may freely open accounts (*conto estero*) in euros or other currencies with an Italian bank. Special arrangements for resident signatories may be made in the case of nonresident corporate accounts. The account may be used for all transactions.

C. Regulation of Trade and Commerce

1. Trade

a. Imports

See II.B., above.

b. Export Promotion

As in other industrialized nations, the government has enacted specific measures to support Italian exports. In particular, the *Istituto per i Servizi Assicurativi del Commercio Estero*¹⁶⁸ — now SACE SpA — was established to support the internationalization of the Italian economy through insurance, reinsurance and guarantees involving the political, catastrophic, economic, commercial and exchange risks to which Italian businesses are exposed in international transactions. In addition, SIMEST SpA, a company controlled by the Ministry for Economic Development, provides for the financing of international transactions, in particular by subsidizing interest payable.

(1) SACE SpA

As of January 1, 2004, the former public entity, *Istituto per i Servizi Assicurativi del Commercio Estero*, was transformed into SACE SpA (*Sezione Speciale per l'Assicurazione del Credito all'Esportazione*), a joint stock company, which is entirely owned by the Ministry of Economy and Finance.¹⁶⁹

SACE conducts the same export credit insurance activities for nonmarketable risks as were previously carried out by the former *Istituto*, in compliance with applicable regulations. Such activities are guaranteed by the state within the limits provided for in the law approving the state budget. SACE may provide the following types of coverage:¹⁷⁰

(i) Insurance, reinsurance, coinsurance, and financial guarantees of risks to which Italian companies, including foreign companies connected with or controlled by Italian companies, are exposed either directly or indirectly during the course of their activities; and

(ii) Insurance, reinsurance, coinsurance, and financial guarantees of risks related to transactions that are of strategic importance to the national economy in the areas of internationalization, economic security, production and employment maintenance, even where there are no Italian companies or foreign companies connected with or controlled by Italian companies involved.

Guarantees and insurance coverage may be issued for risks of a political, catastrophic, economic, commercial and exchange-related nature. They may be issued in any form and pursuant to any terms used in markets in which SACE operates. Further, they may be issued for any type of financing and may be granted by national or foreign banks as well as by Italian and foreign financial institutions as long as these have complied with the standards of organization, equity, and vigilance required by law.

In addition to its nonmarketable insurance activities, SACE may insure and guarantee marketable risks in accordance with EU regulations. Any such business conducted by SACE is required either to be separated, for accounting purposes

¹⁶⁷ D. Lgs. No. 231, Oct. 9, 2002, applicable to contracts entered into after August 8, 2002.

¹⁶⁸ Law No. 227, May 24, 1977, Art. 2; D. Lgs. No. 143, March 31, 1998, as amended by D. Lgs. No. 170, April 30, 1999, and by L. No. 296, Dec. 27, 2006.

¹⁶⁹ DL No. 269, Sept. 30, 2003, as converted by Law No. 326, Nov. 24, 2003.

¹⁷⁰ Interministerial Committee for Economic Planning (CIPE) Decision No. 62/07, July 20, 2007, Arts. (1), (2).

es, from SACE's other business, or conducted through a subsidiary whose share capital is required to be at least 30% owned by SACE.

SACE's marketable risk insurance activities do not automatically benefit from any state guarantee and are subject to the rules and regulations applicable to private insurance companies, including those concerning the supervision of the Italian supervisory authority for the insurance industry (ISVAP).

(2) SIMEST SpA

SIMEST (*Società Italiana per le Imprese all'Esterro*) was established as a government-controlled joint stock company in 1990 to promote the "internationalization" of Italian companies and to assist Italian entrepreneurs in activities abroad. Since 1991, SIMEST has been entrusted with the management of all activities regarding the financing of exports and, in particular, the granting of interest subsidies, which were previously managed by *Mediocredito Centrale SpA*.¹⁷¹ Interest subsidies for financing agreements constitute the difference between the prevailing "reference" rate (a Ministry of the Treasury figure automatically modified at two-month intervals based on variations in the average cost of funds procured through the issuance of bonds by industrial credit institutions) and the interest rate charged to the exporter or its clients.¹⁷²

The intended recipients of the subsidies are:

- (i) Italian enterprises that have been granted financing abroad, even if through an Italian bank;
- (ii) Italian or foreign banks granting financing to Italian operators or their foreign counterparts; and
- (iii) Foreign purchasers of Italian goods and services.

SIMEST may make an investment of up to 25% (the investment can go up to 49% when investing through a managed fund) of the project, but the investment period must be limited to eight years and the contract must have a buy-back clause.

c. Trade and Tariffs

(1) EU-US Trade Talks

As of April 26, 2026, EU-US trade relations are characterized by a major new partnership on raw materials and the ongoing implementation of a historic, yet controversial, broader trade agreement. The most recent development occurred on April 24, 2026, when the EU and US officially signed a Memorandum of Understanding (MoU) and an Action Plan for Critical Minerals Supply Chain Resilience. The purpose of the pact is to secure sustainable supply chains for materials essential to electric vehicles, defense, and advanced semiconductors. It includes exploring trade tools like border-adjusted price floors, common mining standards, and rapid response mechanisms for supply disruptions.

The Turnberry Deal or the "Agreement on Reciprocal, Fair, and Balanced Trade" is the broader agreement on trade between the US and the EU. It has recently cleared major insti-

tutional hurdles as on March 26, 2026, when the European Parliament approved the agreement, following a temporary suspension triggered by diplomatic tensions regarding US interest in Greenland. The key provisions of the Turnberry Deal are: a standard 15% tariff applies to most EU goods, including cars, pharmaceuticals, and semiconductors; the EU commitments to eliminate tariffs on all US industrial goods and provide preferential access for US agricultural products (e.g., seafood, dairy, and pork) and the EU pledge to invest \$600 billion in the US over the current presidential term. There are still friction points with respect to metals and steel as well as an Internal EU Divide within the EU Council against calls from France to overhaul the deal, with most members favoring the current stability over reopening negotiations.

For Italy, the Turnberry Deal mitigated the economic risk to Italy by stabilizing tariffs at a standardized rate. The agreement prevented trade war scenarios where duties on Italian luxury goods, food (grated cheese, Prosecco wine, olive oil), and machinery could have spiked to 50% or more. While the 15% tariff remains a challenge for price-sensitive sectors like textiles and furniture, it allows high-end "Made in Italy" brands to maintain their presence in the US market through strategic pricing, avoiding the total market exclusion that higher tariffs would have caused.

(2) EU-India Trade Deal

On January 27, 2026, India and the EU concluded negotiations for the "EU-India Trade Deal", aimed at liberalizing over 90% of trade between two of the world's largest markets. The agreement is subject to legal vetting and translation before formal signing. For Italy, the EU's fourth-largest partner with India, the implications are transformative. The agreement reduces prohibitive tariffs on iconic exports, such as wine duties from 150% to 20% and luxury car tariffs from 110% to 10% under specific quotas. Beyond consumer goods, Italy's specialized machinery and engineering sectors stand to gain a massive competitive edge through the near-total removal of industrial duties. By facilitating easier investment for the more than 700 Italian companies already active in India it secures Italy's role in the strategic IMEC corridor, diversifying supply chains and tapping into India's rapidly growing middle class.

2. Transparency in Corporate Ownership

In October 2023, Italy established an Ultimate Beneficiary Owner (UBO) Registry, which aims to increase transparency with respect to corporate ownership and to combat and prevent financial crimes such as money laundering, terrorist financing and tax evasion. The registry is maintained by the local Chambers of Commerce, which compile information on individuals who:

- (i) Hold, directly or indirectly, more than 25% of the shares in a company;
- (ii) Have the majority of the voting rights that can be exercised in the general shareholders' meeting of a company or sufficient voting rights to exercise dominant influence on the shareholders' meeting of a company; or
- (iii) Are party to binding agreements under which a dominant influence can be exercised over a company.

¹⁷¹ SIMEST was established by Law No. 100, April 24, 1990. The transfer of *Mediocredito Centrale*'s activities was provided for by D. Lgs. No. 143, March 31, 1998.

¹⁷² DM No. 199, April 21, 2000.

If none of the above criteria apply, UBOs are identified as individuals who are vested with the legal representation of a company or hold managing and/or directorship powers.

Corporate entities, trusts and fiduciaries and foreign entities operating in Italy must submit to the UBO Registry the names, dates of birth, nationalities, addresses of their beneficial owners and the extent and nature of the beneficial interests held by them within 30 days of the initial filing with the Companies' Registry after incorporation, or within 30 days of a change in beneficial ownership. Annual compliance with Italy's UBO Registry requires businesses to confirm their beneficial owner information within 12 months of the initial disclosure or their last update. Companies may submit this confirmation with their annual financial statements and the filing can be done electronically through the same channels as are used for the initial disclosure.

Under Article 2630 of the Civil Code, failure to make a UBO filing is punishable with an administrative fine ranging from 103 euros to 1,032 euros. If the disclosure is made within 30 days after the expiration of the due date, the administrative fine is reduced to one third.

3. Commerce

a. Antitrust and Merger Controls

(1) Antitrust

As a result of Italy's membership of the EU, the antitrust norms issued under the Treaty of Rome form part of the internal law of Italy. After years of discussion of various proposals, Parliament enacted Law No. 287 of October 10, 1990 (the "Antitrust Law"), which embodies many of the principles of EU competition law, applied at the national level. It forbids, for example: (i) agreements distorting competition; (ii) abuses of a dominant position; and (iii) concentrations restricting free competition. The Antitrust Law provides that the European Commission must be informed when concentrations are of sufficient size to fall outside the scope of Italian jurisdiction and, therefore, to have a "Community dimension." Further, when proceedings are initiated before the European Commission, proceedings underway in Italy must be suspended except as to those aspects of a purely national character.

To carry out its purposes, the Antitrust Law created the *Autorità Garante della Concorrenza e del Mercato* (the "Authority"), which has had a strong impact on the Italian marketplace. The Authority has opened the market for mobile telephone networks, telecommunication services, air transport and seaports. It has issued decisions in all the principal economic fields, from cement to oil, and from insurance to accounting and auditing.

The Authority has fined companies heavily for serious infringements of competition law. For example, it imposed record fines of over 15 million euros on Coca-Cola Italia for abusive conduct with respect to its smaller competitor, Pepsi-Cola Italia and 152 million euros on Telecom Italia for abusive conduct with respect to its competitors on the TLC services for business customers market. In its consultative capacity, it has also passed on to the Italian parliament and government its opinion that the privatization and liberalization processes

should be fostered, in particular in the energy, financial, and telecommunications sectors.

(a) The Authority

The Authority has general jurisdiction to apply the law in all sectors of the economy, although in the insurance and telecom/media sectors, ISVAP (the agency that oversees insurance companies) and the Telecom Authority must be consulted before the Authority takes any measures against insurance companies and telecom undertakings, respectively.¹⁷³ With respect to oversight in the banking sector, the Bank of Italy (*Banca d'Italia*) and the Authority have joint jurisdiction. Further, in 2007, the Authority's investigative powers were broadened to include the independent investigation of unfair commercial practices and of new forms of misleading and comparative advertising.¹⁷⁴

Although the Antitrust Law applies to both private and state-owned undertakings, those undertakings that the law entrusts with the operation of services of general economic interest or having the nature of a legal monopoly are subject to the Antitrust Law only to the extent that the application of the law does not obstruct the performance of the specific tasks assigned to them.¹⁷⁵

The Authority is a three-person body (a president plus two members), the members of which are chosen for their personal independence. During their term in office, the members may not hold public office or engage in private business activities.¹⁷⁶

The Authority is empowered to carry out, on its own initiative or at the request of either a public administration or interested parties, general investigations into practices that impede or restrict competition.¹⁷⁷ In contrast with the procedures governing the European Commission, the procedures governing the Authority entail expiration dates by which the Authority must act or at least begin an investigation. If a company notifies the Authority of an agreement or concerted practice, the Authority must open its investigation within 120 days or be barred thereafter, unless the notification is shown to be inaccurate or incomplete.¹⁷⁸

If the Authority believes that a violation of Article 2 (restricted agreements) or Article 3 (abuse of a dominant position) of the Antitrust Law may have occurred, it must notify the companies involved and other interested entities of the opening of proceedings. Parties have a right to be heard and a duty to supply information and documents at the Authority's request. Refusal to supply information or documents may result in a fine of up to 25,822.84 euros. Further, providing false or inaccurate documents may result in a fine of up to 61,645.68 euros.¹⁷⁹ All information gathered in the proceedings remains secret, except

¹⁷³ Law No. 287, Oct. 10, 1990, Art. 20 (4), (5), (5-bis).

¹⁷⁴ D. Lgs. No. 146/2007, Aug. 2, 2007, implementing Directive 2005/29/EC and amending Directives 84/450/EEC, 97/7/EC, 98/27/EC, 2002/65/EC and Regulation No. 2006/2004; D. Lgs. No. 145/2007, Aug. 2, 2007, implementing sec. 14 of Directive 2005/29/EC amending Directive 84/450/EEC.

¹⁷⁵ Law No. 287, Oct. 10, 1990, Art. 8 (2), with reference to the broadcasting and print media markets.

¹⁷⁶ Law No. 287, Oct. 10, 1990, Art. 10 (2).

¹⁷⁷ Law No. 287, Oct. 10, 1990, Art. 12.

¹⁷⁸ Law No. 287, Oct. 10, 1990, Art. 13.

¹⁷⁹ Law No. 287, Oct. 10, 1990, Art. 14 (5).

in the case of collaborative efforts with the EU or reports of criminal activity required by law.

Moreover, if after a brief review of a transaction, the Authority finds a violation that creates serious or irreparable damage to competition, it may adopt interim measures. If a company fails to comply with such measures, the Authority may levy administrative fines of up to 3% of the company's turnover.¹⁸⁰

Within three months from the opening of a procedure, the companies under investigation may offer commitments to the Authority to correct their anticompetitive conduct. After evaluating the suitability of the commitments, the Authority may make those commitments binding and close the proceedings without adjudicating the alleged violations. If the companies fail to honor the commitments, the Authority may levy administrative fines of up to 10% of the companies' turnover. The Authority may reopen the proceedings if: (i) there is a change in a factual element in the case; (ii) the companies engage in behavior contrary to the commitments made; or (iii) the Authority's decision was based on information supplied by the parties and that information was incomplete, inexact or misleading.¹⁸¹ The rules applicable to this procedure are set forth in the Notice adopted by the Authority in its decision of October 12, 2006.

If, at the conclusion of the proceedings, the Authority decides that the Antitrust Law has been violated, it may fix a deadline for remedying the violation. If there has been a serious violation, the Authority also may fine the company concerned up to 10% of its turnover in the accounting year before the Authority's announcement of the opening of the investigation, depending on the gravity and duration of the violation. Failure to comply with the deadlines set by the Authority may lead to sanctions of up to twice the initial fine, but not exceeding 10% of the company's net turnover, as noted above.

If a company still fails to comply, the Authority may suspend its business activities for up to 30 days.¹⁸² The Authority cannot, however, award damages.

When a company under investigation cooperates, the Authority may decide to reduce the fine or not levy it at all.¹⁸³ To further encourage cooperation, on February 15, 2007, the Authority adopted a Notice introducing a leniency program to reward undertakings that cooperate in the investigation of a cartel. The leniency program allows the Authority to reduce or even waive fines if a company admits to anticompetitive behavior or provides the Authority with evidence to show the existence of a cartel. A company may benefit from the leniency program provided that: (i) the company terminates its anticompetitive behavior, after filing the request for leniency; (ii) the company cooperates with the Authority throughout the proceedings on a continuing and effective basis; and (iii) the company does not disclose its intent to participate in the leniency program to third parties.

The Authority is required to provide an annual report to the Council of Ministers on its activity that forms the basis of an annual competition law to remove obstacles to competi-

tion, open markets, and promote the development of competition and consumer protection.¹⁸⁴ The Authority may also generally provide advice to parliament and the government and review existing legislation, administrative decisions and regulations to ascertain their impact on competition and the proper functioning of the market. In addition, the Authority may give its opinion regarding ways to remove or prevent distortions in the market.¹⁸⁵

Further, the Authority, on its own, may give advice on proposed legislation concerning competition or the market whenever it deems this appropriate. In addition, the Prime Minister may request the Authority's opinion on proposed legislation that may directly impose quantitative restrictions on the exercise of an activity or access to a market, create exclusive rights in some areas, or impose general practices with respect to pricing and conditions of sale.¹⁸⁶

(b) *Restrictive Agreements and Practices; Abuses of Dominant Position*

Articles 2 and 3 of the Antitrust Law mirror Articles 81 and 82 (former Articles 85 and 86) of the Treaty establishing the European Community. Article 2 prohibits agreements and concerted practices that have the effect or purpose of preventing, restricting or distorting competition in the national market or a significant portion thereof. For example, it specifies that the following are restrictive practices:

- (i) Directly or indirectly fixing purchase or sales prices or other contractual conditions;
- (ii) Impeding or limiting production, outlets, access to the market, investments, technical development, or technological progress;
- (iii) Sharing markets or sources of supply;
- (iv) Applying different conditions for similar services in contracts, thereby creating an unjustified competitive disadvantage; and
- (v) Imposing unrelated supplementary services as part of contracts with other parties.

There is no general obligation to give notice of an agreement between enterprises; however, notice of an agreement or practice may be given voluntarily to the Authority, as discussed in (a), above.

An agreement prohibited by Article 2 of the Antitrust Law may be exempted by the Authority for a limited period of time if the agreement, as a whole, gives rise to improvements on the supply side of the market, thereby providing a substantial benefit to consumers.¹⁸⁷ Such improvements are to be determined taking into account the need to ensure competitiveness at an international level, in particular in connection with production increases, as well as with the improvement and distribution of the product itself, or with the promotion of technical or technological progress. Article 2 also provides for group or block exemptions, but no block exemptions have yet been issued. As Italy is

¹⁸⁰ Law No. 287, Oct. 10, 1990, Art. 14 *bis* (3).

¹⁸¹ Law No. 287, Oct. 10, 1990, Art. 14 *ter*.

¹⁸² Law No. 287, Oct. 10, 1990, Art. 15.

¹⁸³ Law No. 287, Oct. 10, 1990, Art. 15, par. 2 *bis*.

¹⁸⁴ Law No. 99, July 23, 2009, Art. 47 (2).

¹⁸⁵ Law No. 287, Oct. 10, 1990, Art. 21.

¹⁸⁶ Law No. 287, Oct. 10, 1990, Art. 22.

¹⁸⁷ Law No. 287, Oct. 10, 1990, Art. 4.

an EU Member State, block exemptions fixed by the EU automatically apply in Italy.

Article 3 of the Antitrust Law prohibits abuse of a dominant position in the national market or a significant portion thereof. It therefore also prevents undertakings from taking, even where the decision is made unilaterally, most of the actions prohibited with respect to Article 2 as set out above in (i) to (v).

Since 1996, the Authority has been authorized to apply directly Articles 85(1) and 86 of the Treaty of Rome (now Articles 81(1) and 82). The Authority initiated its first procedure under EU Antitrust Law in 1998, in connection with restrictive practices in the insurance field.

(c) Merger Control

The Authority also may investigate whether a merger or joint venture constitutes the creation or reinforcement of a dominant position or eliminates or restricts free competition. There are threshold amounts, adjusted annually for inflation, below which a transaction will not be subject to review. As of January 2013, the Antitrust Law was amended to provide that only major transactions need to be reported, thereby correcting an anomaly in the legislation which required reporting of transactions that had no real impact in Italy. The Authority is now to be given prior notice of a merger if the total domestic gross turnover of the enterprises involved is 582 million euros or more, and the total individual domestic gross turnover of at least two of the enterprises involved is 35 million euros or more.¹⁸⁸ Previously, only one of these two conditions had to be fulfilled for the filing requirement to be triggered.

The Antitrust Law makes no reference to the worldwide turnover of the enterprises involved.

If the proposed acquisition concerns only part of an enterprise (i.e., a line of business), the duty to notify is measured only with reference to the turnover of that portion of the enterprise involved.

In 2005, the Authority adopted an experimental procedure to allow companies to consult with the Authority before formally notifying it of a merger or acquisition. The “pre-notification” procedure may apply only when the total individual domestic turnover of at least two of the companies involved is at least 31 million euros. Companies wishing to use this procedure must submit, no later than 15 days before the date of filing formal notification, the following information: (i) the names of the parties to the transaction; (ii) a short description of the transaction; (iii) the markets involved in the transaction; (iv) the position of the parties in the interested markets; and (v) verification of the duty to notify other European Authorities. The Authority will discuss the information provided in this informal document with the parties for the purpose of clarifying the information to be provided in the formal notification.

¹⁸⁸ Law No. 287, October 10, 1990, Art. 16, as amended by Law No. 124, August 4, 2017, Art. 1, (177). The threshold of 511 million euros was in effect until March 20, 2022. On March 21, 2022, it was increased to 517 million euros. On March 27, 2023, the thresholds were increased to 532 million euros and 32 million euros. On March 5, 2024, the thresholds were increased to 567 million euros and 35 million euros. On March 24, 2025, the threshold of 567 million euros was increased to 582 million euros; the other threshold of 35 million euros remains unchanged. On March 16, 2026, the thresholds were increased to 595 million euros and 36 million euros.

The filing fees for companies required to provide formal notice to the Authority have been repealed and replaced by a tax of 0.00055% levied on companies that have an Italian turnover in excess of 50 million euros to be paid by July 31 of each year. The minimum amount due is 2,750 euros. The contribution is capped at 275,000 euros per individual company.¹⁸⁹

The Authority must either give clearance to the merger or initiate a formal proceeding within 30 days from receipt of the notification (Phase 1). Once initiated, a formal proceeding must be completed within 45 days (Phase 2).¹⁹⁰ These provisions are somewhat modified in the event of a tender offer (Phase 1 is reduced to 15 days) and with respect to banks, insurance companies, broadcasting companies, and publishers of newspapers and periodicals. Oversight of mergers among banks is now the joint responsibility of the Bank of Italy and the Authority, both of which are to authorize the transaction by a separate resolution within 60 days of the filing. The two authorities are to collaborate, and exchange information and documents in the execution of this procedure.¹⁹¹ With respect to insurance companies, the Authority must request the opinion of ISVAP before rendering its final decision; the opinion, which is neither mandatory nor binding, must be rendered within 30 days of the request and has the effect of delaying the timing of Phase 1. Finally, the Telecommunications Regulator (AG-COM) was granted control powers over mergers and cartels involving companies in the broadcasting and print media sectors, in order to prevent or eliminate the creation of dominant positions on the integrated communications market.¹⁹² The rules applicable to this procedure are set forth in the Regulator’s resolution of November 30, 2006, n. 646/06/CONS.

On commencing an investigation, the Authority may order the enterprises involved to suspend the merger until the investigation is concluded. If, during the course of its investigation, the Authority decides that it will not intervene in the transaction, it must immediately notify the enterprises to that effect.

If the Authority finds that a proposed merger threatens to create or strengthen a dominant position, thereby eliminating or significantly reducing competition in the market concerned, it will prohibit the merger. However, the Authority may give clearance to the merger if the party’s proposed measures, such as partial divestitures or spin-offs, are deemed to be sufficient to restore conditions of competition within the market.

In making its appraisal of a concentration, the Authority must take into account:

- (i) The market position of the companies concerned;
- (ii) The alternatives available to suppliers and users;
- (iii) The access of suppliers and users to supplies or markets;
- (iv) The structure of the markets involved;
- (v) Any legal or other barriers to entry;

¹⁸⁹ Law No. 287, October 10, 1990, Art. 10 (7-ter), (7-quarter); see also Resolution No. 31468 of March 4, 2025.

¹⁹⁰ Law No. 287, Oct. 10, 1990, Art. 16.

¹⁹¹ Law No. 287, Oct. 10, 1990, Art. 20 (5) as amended by D. Lgs., Dec. 29, 2006.

¹⁹² D. Lgs. No. 177/2005, July 31, 2005.

(vi) The development of supply and demand; and

(vii) The competitive situation of the nation's industry.

It is important to note that, following a 1997 decision of the Authority involving the beer sector, the law must be interpreted so as to prohibit equally a dominant position attained by a single firm and a collective dominant position attained by two or more firms as a result of a merger (a collective or oligopolistic dominant position).

The Authority can impose fines of not less than 1% and not more than 10% of the turnover of the enterprises (or the appropriate portions thereof) involved in a merger whenever:¹⁹³

(i) The merger occurs in violation of a prohibition order issued by the Authority; or

(ii) The enterprises fail to obey the measures set out by the Authority as necessary to restore conditions of effective competition (for example, a divestiture order).¹⁹⁴

The Authority may impose fines of up to 1% of the turnover in the year preceding that in which the examination procedure took place when the undertakings fail to comply with an obligation to provide prior notification.¹⁹⁵

Appeals against administrative actions taken by the Authority under the Antitrust Law are within the exclusive jurisdiction of an administrative court, the Regional Administrative Tribunal (TAR) of Lazio.¹⁹⁶ However, proceedings to declare a measure void or seek damages and requests for interim measures relating to infringements of the Antitrust Law must be brought before the Court of Appeal.¹⁹⁷

During 2022, Parliament passed legislation¹⁹⁸ to allow the Italian Competition Authority (ICA)¹⁹⁹ to scrutinize qualifying mergers provided they satisfy certain criteria. At the beginning of 2023, the ICA issued the following guidance to determine whether these types of mergers should be notified:²⁰⁰

(i) No more than six months have elapsed since the merger was concluded;

(ii) The merger exceeds one of the two thresholds provided under Article 16 of the Italian Antitrust Law, or the worldwide turnover generated by all the parties involved in the operation exceeds \$5 billion; and

(iii) The ICA has reason to believe that there is a *prima facie* risk to competition in the Italian marketplace or a significant portion thereof.

This scrutiny function applies to qualifying mergers taking place after August 27, 2022, and could even be carried out in situations where the target company has no Italian revenue.

Furthermore, the ICA also introduced the option for interested undertakings to request a preliminary assessment of a sub-threshold merger that is deemed to meet the above require-

ments. In these cases, the ICA will review elements such as the structure of the market, characteristics of the economic operators, the type of economic activity involved and its importance for consumers or other businesses, the importance of any innovative activity carried out, as well as the competitive restrictions exercised by one or more companies in the particular market.

As market share and the degree of concentration within the market are initial indicators of the merging parties and their competitors' market power, the ICA provided a few examples as to the analysis it would apply using the Herfindahl-Hirschman ("HHI") Index as a guide.²⁰¹

The ICA provided two examples in which it would probably not call for notification:

(i) For horizontal mergers the notification would be unlikely where:

- The combined post-merger market share is less than 25% and the HHI is less than 1,000;

- The HHI is between 1,000 and 2,000 but the incremental change is less than 250; or

- The HHI is above 2,000 but the incremental change is less than 150.

(ii) For vertical mergers the notification will be unlikely where the merged entity's market share is less than 30% in any upstream or downstream market and the HHI is less than 2000.

Where the ICA has called for notification, the parties will have 30 days to submit the filing. This period may be extended to an additional 30 days if the parties file a substantiated and timely request for the additional time. If the parties fail to meet the filing deadline the ICA may impose a fine of up to 1% of the preceding year's turnover.

Voluntary submissions of below threshold mergers may be made by the parties to the ICA. The ICA will inform the parties within 60 days from the submission as to whether the merger will require notification.

(2) Regulation of Securities Markets and Tender Offers

The securities market is subject to the supervision of the Italian Commission for Companies and the Stock Exchange (*Commissione Nazionale per le Società e la Borsa* — CONSOB). Since its creation in 1974,²⁰² CONSOB has undergone significant changes, finally becoming the supervisory body for the entire securities market, the parties operating therein and any operation involving securities. However, CONSOB's powers are not only supervisory but also regulatory.²⁰³

In 1998, the substantive rules regulating the Italian securities market were profoundly changed by the enactment of the Consolidated Text on Financial Intermediation by means of Legislative Decree No. 58 of February 24, 1998,²⁰⁴ commonly

¹⁹³ Law No. 287, Oct. 10, 1990, Art. 19.

¹⁹⁴ Law No. 287, Oct. 10, 1990, Art. 19.

¹⁹⁵ Law No. 287, Oct. 10, 1990, Art. 19.

¹⁹⁶ See generally *Codice di Procedura Amministrativa* (Code of Administrative Procedure), Art. 14.

¹⁹⁷ Law No. 287, Oct. 10, 1990, Art. 33.

¹⁹⁸ Law No. 118, Aug 2, 2022.

¹⁹⁹ Law No. 287, Oct. 10, 1990, Art. 19 (2).

²⁰⁰ Notice No. 30407, Dec. 13, 2022.

²⁰¹ The Herfindahl-Hirschman Index (HHI) is a common measure of market concentration used to determine market competitiveness.

²⁰² Law No. 216, June 7, 1974.

²⁰³ See Regulation No. 11768/98 on markets in general and Regulation No. 11971/99 on tender offers.

²⁰⁴ D. Lgs. 58/1998, as amended by DL No. 351, Sept. 25, 2001, D. Lgs. No. 274, Aug. 1, 2003; Law No. 326, Nov. 24, 2003; Law No. 350, Dec. 24,

known as the “Draghi Decree.” With particular regard to tender offers, the Draghi Decree sets forth general rules applicable to both listed and unlisted companies, and mandatory rules for companies listed on the stock exchange.

Companies intending to make a tender offer must meet certain obligations regarding communication of the offer, the document containing the offer, and their behavior while the offer is pending. Companies must promptly inform CONSOB and the target company of the offer and publish a notice to inform the market in general. Following the communication, the offeror must send CONSOB a document containing the offer (the “Document”) and an acceptance prepared according to CONSOB forms, together with the documentation regarding the necessary guarantees and eventual authorizations. The Document must contain, at a minimum, an indication of the company making the offer, the target company, any intermediaries involved, the minimum quantity of shares to be accepted, the price, the reasons for the operation, the means of payment, and the future plans of the offeror. Any agreements made with the target company or its directors must also be mentioned. Finally, the Document must also indicate the manner of acceptance of the offer and its duration. The Document must be published in a national newspaper.

The managing body of the target company, in turn, must make a statement as to whether it considers the offer to be hostile or friendly, and must explain the reasons for the conclusion reached.

Once the offer is published, it cannot be modified unless the entire process is reinitiated. CONSOB may suspend the offer or declare it to be invalid, if it finds or has reason to believe that the offer is unlawful.

Once the term for the offer has elapsed, the offeror must publish the results and any other useful information, following the same procedure used to publish the original offer in the first place.

b. Mandatory Tender Offers

Companies acquiring qualified participations (over 30% or over 90%) in companies listed on the stock exchange are under an obligation to make a tender offer by following the mandatory rules set out in the Draghi Decree.²⁰⁵

c. Insider Trading

Article 9 of Law No. 62 of April 18, 2005, implemented the EC Directive on insider trading and market abuse²⁰⁶ in Italy, substantially amending the former legislation on insider trading contained in the Draghi Decree. A new set of provisions have been adopted specifying to whom the insider trading regime

applies, the definition of inside information and the prohibited conduct, as well as the investigative powers granted to the CONSOB.

Article 181 of the Draghi Decree, as amended by Law No. 62 of April 18, 2005, sets forth a broad definition of insider information that encompasses any precise information that: (i) is not public; (ii) refers, directly or indirectly to financial instruments; and (iii) if disclosed could materially affect the prices of such financial instruments. Insider information is deemed to be precise information if it refers to a set of circumstances that exists or may reasonably be expected to come into existence, or an event that has occurred or may reasonably be expected to occur, and is specific enough to enable a conclusion to be drawn as to the possible effect of the cited set of circumstances or events on the price of a financial instrument. A material effect on the price of financial instruments refers to any information a reasonable investor would be likely to use as part of the basis of an investment decision. A definition of insider information with respect to derivatives on commodities is also given.

The use of insider information gathered through the exercise of a person’s duties in the management, direction or oversight control of a company, in connection with share ownership, or by virtue of employment or the exercise of a profession or public duties or office to: (i) purchase, sell or engage in other transactions in financial instruments, implemented, directly or indirectly, even on behalf of a third party, by using such information; (ii) communicate such information to any third party, if not as part of the normal work related activities; (iii) prompt or cause anyone on the basis of such information to execute one of the activities referred to at (i), is prohibited as an abuse of insider information. An abuse of insider information also exists where any person who, possessing inside information by virtue of the preparation or execution of criminal activities, executes one of the prohibited activities referred to above.²⁰⁷

The Draghi Decree, as amended by Law No. 62 of April 18, 2005, also imposes liability on the legal persons in whose interest or advantage the criminal offense of insider trading has been committed.

Abuse of insider information is, as a criminal matter, punishable by imprisonment for up to 12 years and a fine ranging from 20,000 euros to 3 million euros²⁰⁸ and by administrative fines ranging from 20,000 euros to 3 million euros.²⁰⁹ Further, at the discretion of the judge, any fines levied may be tripled.

In an effort to reduce the level of concealed information that could be exploited by insiders, the Draghi Decree, as amended, now sets forth a series of detailed obligations requiring a company issuing securities to provide information with respect to the company’s activities that could affect the price of the securities or its financial situation. Furthermore, Article 114(5) provides that CONSOB may require the company’s management and oversight bodies, the shareholders, or shareholders participating in a shareholders’ agreement, to disclose any information or documents that CONSOB deems to contain information relevant for the public.

2003, D. Lgs. No. 37, Feb. 6, 2004, D. Lgs. 170, May 21, 2004; D. Lgs. 197, July 9, 2004; Law No. 62, April 18, 2005, Art. 9; L. No. 262, Dec. 28, 2005; D. Lgs. No. 303, Dec. 29, 2006; Art. 2 of D. Lgs. No. 297, Dec. 27, 2006, as enacted by Law No. 151, Feb. 23, 2007; Law No. 13, Feb. 6, 2007; D. Lgs. No. 32, Feb. 2, 2007 Art. 2; D. Lgs. No. 51, Mar. 28, 2007; D. Lgs. No. 164, Sept. 17, 2007; D. Lgs. No. 195, Nov. 6, 2007; D. Lgs. No. 229, Nov. 19, 2007; D. Lgs. No. 173, Nov. 3, 2008; DL No. 185, Nov. 29, 2008, as enacted by Law No. 2, Jan. 28, 2009; DL No. 5, Feb. 2, 2009, as enacted by Law No. 33, April 9, 2009; Law No. 69, June 18, 2009; D. Lgs. No. 101, July 17, 2009; D. Lgs. No. 146, Sept. 25, 2009; as further amended by D. Lgs. No. 254, Dec. 30, 2016.

²⁰⁵ D. Lgs. No. 58, Feb. 24, 1998, Art. 106.

²⁰⁶ Directive 2003/6/CE.

²⁰⁷ D. Lgs. No. 58, Feb. 24, 1998, Art. 184.

²⁰⁸ D. Lgs. No. 58, Feb. 24, 1998, Art. 184.

²⁰⁹ D. Lgs. No. 58, Feb. 24, 1998, Art. 187 bis.

d. Prohibition Against Interlocking Directorates

Legislation adopted in 2011 introduced a prohibition against individuals serving on multiple management and oversight bodies of companies in the banking, finance and insurance sectors where at least one of the companies or group has an annual domestic turnover of at least 47 million euros.²¹⁰ Thus, it is prohibited for an individual to contemporaneously serve on a board of directors, board of statutory auditors or supervisory board, or even in high ranking corporate offices (e.g., director general or chief financial officer of a quoted company) of a company in the same industry. Individuals serving on multiple management bodies have 90 days from the appointment to choose which appointment will be relinquished; a failure to do so will automatically forfeit all incompatible appointments with the forfeiture to be declared by the appropriate governing corporate body within the following 30 days. In the event that the governing body fails to make such a declaration, the forfeiture will be declared by the Authority having oversight of the industry.²¹¹

The prohibition does not apply to interlocking directorates where the appointment is held in: (i) a foreign corporation, even if it operates in Italy through a branch or; (ii) a branch of a foreign company operating in Italy.²¹²

e. Price Controls

Until 1993, Italy still maintained price controls on a variety of consumer goods that were initially established under emergency legislation prior to World War II.

The Interministerial Committee for Prices (CIP) was empowered to set prices for all goods and services, including imports and exports, on a national basis, while Provincial Committees for Prices (CPPs) performed essentially the same function in each province. In December 1993, Italy abolished the CIP. The CPPs also were abolished in April 1994, their pending tasks being taken over by the provincial offices of the Ministry for Economic Development. The CIP regulated the prices of many staples such as milk, bread and meat, but most price restrictions have been removed. The CIPE has taken over from the CIP with respect to regulating the prices of pharmaceuticals. Other functions of the CIP have been transferred to the Ministry for Economic Development, which exercises control over the electrical and gas energy fields and advises on the prices of petroleum products. The Ministry for Communications has assumed control over mail and telegraph rates.

f. Labeling, Advertising, and Fair Trade Regulations

(1) Consumer Protection Laws

Consumer protection legislation did not develop in Italy until the late 1980s. Legislation adopted in 1998²¹³ recognized consumer and user rights that can be asserted individually and

through consumers' and users' associations. In 2005, Parliament enacted the Consumer Code, Article 2 of which the following comprise "fundamental rights" of the consumer:

- (i) Health protection;
- (ii) The security and quality of products and services;
- (iii) Adequate information and fair advertising;
- (iv) Consumer education;
- (v) Fairness and transparency in contracts for goods and services;
- (vi) The promotion of free, voluntary and democratic consumer and user associations; and
- (vii) The supply of quality, efficient public services.

Furthermore, a registry was created that lists the consumer associations, as well as a national Consumers and Users Council, chaired by the Minister for Economic Development, within the Ministry for Economic Development to protect and develop consumer rights. Council members are representatives of registered consumer associations and are appointed by the Prime Minister.²¹⁴

In addition to actions by individuals, registered consumer associations have standing to sue: (i) to enjoin actions harmful to consumer interests; (ii) to seek redress for the damaging effects of any violations; and (iii) to petition for court orders giving publicity to violations where publication would contribute to the prevention or correction of the effects of a violation.²¹⁵ Italy has also instituted class action suits, along the lines of the U.S. model, specifically for the protection of consumer rights that may be filed by individuals and registered consumer associations.²¹⁶

In 1988, a products liability law was enacted to impose liability on manufacturers and, in some cases, suppliers for defective products put into commercial circulation. This law, which implemented EC Directive 85/377, represented an important step for the protection of the consumer. The scope of the legislation was limited to imposing liability only for personal injury and damage to property. The provisions of this legislation were incorporated into the Consumer Code with no substantial changes.

Manufacturers and, in certain circumstances, suppliers, will be held liable for a defective product when that product does not provide the level of safety that could be reasonably attributed to it.²¹⁷ Factors to be considered include the marketing of the product, accompanying literature or warnings, and the use to which the product is put.²¹⁸ Liability is imposed for personal injury, as well as for damage to property, provided that damage exceeds 387 euros.²¹⁹ No liability for damages attaches if the injured party was aware of the defect.²²⁰ If the injured

²¹⁰ DL No. 201, Dec. 6, 2011, as converted into law by Law No. 214, Dec. 22, 2011, Art. 36 (1).

²¹¹ DL No. 201, Dec. 6, 2011, as converted into law by Law No. 214, Dec. 22, 2011, Art. 36 (2-bis).

²¹² *Criteri per l'applicazione dell'art 36 of the DL. "Salva Italia"* (cd. "divieto di interlocking"), issued jointly by the Banca d'Italia, Consob and Isvap, in coordination with l'Autorità garante della concorrenza e del mercato on April 20, 2012, p. 5.

²¹³ Law No. 281, July 30, 1998, repealed by D. Lgs. No. 206, September 2005, enacting the Consumer Code.

²¹⁴ Consumer Code, Arts. 136–137.

²¹⁵ Consumer Code, Arts. 139–140 bis.

²¹⁶ Consumer Code, Art. 140-bis as amended by Law No. 49, July 23, 2009.

²¹⁷ Consumer Code, Art. 117.

²¹⁸ Consumer Code, Art. 117.

²¹⁹ Consumer Code, Art. 123(2).

²²⁰ Consumer Code, Art. 122(2).

party is guilty of contributory negligence, damages will be reduced.²²¹

A three-year statute of limitations begins running from the day on which the injured party knew, or should have known, of the damage or the defect and the identity of the responsible party.²²² In no event is recovery for damages permitted more than 10 years after the date on which the product was put into circulation in the EU by the manufacturer or the importer. The law voids any agreement that limits the liability established by law.²²³

(2) *Unfair Trade Practices*

Until 1992, Italian regulation of advertising provided only limited safeguards to Italian consumers. In most cases, only advertising that was actually misleading was forbidden; the law did not recognize any positive duty of disclosure. Certain exceptions were provided for with special legislation. The only prohibition on false advertising was found in the rules on unfair competition, which prohibited a false statement of definite facts. Thus, a competitor could bring complaints for advertising that tended to confuse the advertiser's products with those of its competitors, but consumers had no such remedy.

The first attempts at comprehensive protection came with the implementation, in 1992, of EC Directive 84/450 on misleading advertising,²²⁴ followed by the implementation, in 2000, of EC Directive 97/55 on comparative advertising.

With the passage of Consumer Code Title III, gathered under the heading "Unfair Trade Practices," complete protection was afforded to competitors and consumers from all behaviors that were misleading and aggressive, including misleading advertising.

A commercial practice is unfair if it is contrary to the requirements of professional diligence and materially distorts, or is likely to materially distort, the economic behavior of the average consumer so that it causes, or is likely to cause, the consumer to make a transactional decision that he or she would not otherwise have made.²²⁵ The law sets forth two types of unfair commercial practices:

- (i) "Misleading practices," which consist of providing information that, even though factually correct, does not correspond to the truth and that, in any way, including through the overall manner in which it is presented, induces or could induce the average consumer erroneously to make a decision that he or she would not otherwise have made; and
- (ii) "Aggressive practices" that cause consumers to make commercial decisions that they would not otherwise have made, as a result of harassment, coercion or any other form of undue influence.²²⁶

Comparative advertising (i.e., advertising comparing a competitor's products or services) is allowed, provided it meets

certain requirements. Reference to a "guaranty," or a statement that the product is "guaranteed," must be accompanied by either the contents or terms of the guaranty offered.

In addition, the Consumer Code seeks to protect consumers from advertising that induces them to fail to use products with the normal prudence necessary for products dangerous to their health and safety.²²⁷ Advertising that preys on the inexperience or immaturity of children, as well as advertising that plays upon the tender feelings that adults have for children, also is prohibited.²²⁸

Although the ordinary courts have retained jurisdiction in cases of unfair competition, the Italian Antitrust Authority has been given jurisdiction in the area of unfair trade practices.²²⁹ The Authority, either on its own initiative or on the complaint of a consumer, competitor or other interested party, may undertake an investigation of improper commercial practices, misleading advertising and unlawful comparative advertising.²³⁰ Its investigative powers include the authority to conduct investigations, access documents and request other information pertinent to the investigation.²³¹ In the event of refusal, or the provision of false information or documents, it may impose penalties ranging from 2,000 euros to 20,000 euros for refusal and 4,000 euros to 40,000 euros for the provision of false information.²³² Once a violation has been determined, the Authority may order the party to cease, order the publication of rectifying statements at the company's expense, and levy fines ranging from 10,000 euros to 10 million euros. If the practice relates to hazardous products that could indirectly threaten the well-being of minors, the minimum penalty levied will be 50,000 euros.²³³ In the event of non-compliance with the Authority's measures, injunctions or instructions, the Authority may impose administrative fines of 10,000 euros to 10 million euros.²³⁴ As in the antitrust area, the Authority may waive the need to prove a violation has been committed if the trader concerned undertakes to remove the unlawful aspect from its commercial practices, unless the practice involves manifest unfairness and gross violations.²³⁵

With respect to unfair trade practices on-line, the Authority may order connectivity service providers of internet networks, operators of other telematic or telecommunication networks as well as to operators who provide telematic or telecommunication services to remove harmful information, even as a precautionary measure. In the event of non-compliance, the Authority may impose a fine of up to of up to 5 million euros.²³⁶ When violations are of a cross-border nature as provided by EU Regulation 2017/2394, including via the internet, the Authority may levy fines equal to 4% of the turnover in Italy, or the turnover in the EU Member States affected. Where information on the Italian turnover is unavailable, a fine of 2 million euros may be levied.²³⁷

²²⁷ Consumer Code, Art. 21(3).

²²⁸ Consumer Code, Art. 21(4).

²²⁹ Consumer Code, Art. 27(15).

²³⁰ Consumer Code, Art. 27.

²³¹ Consumer Code, Art. 27(2).

²³² Consumer Code, Art. 27(4); L. No. 287, Oct. 10, 1990, Art. 14(2).

²³³ Consumer Code, Art. 27(9).

²³⁴ Consumer Code, Art. 21(4), Art. 27(9), (12).

²³⁵ Consumer Code, Art. 27(7).

²³⁶ Consumer Code, Art. 27(3-bis).

²³⁷ Consumer Code, Art. 27(9-bis).

²²¹ Consumer Code, Art. 122(1).

²²² Consumer Code, Art. 125.

²²³ Consumer Code, Art. 126.

²²⁴ D. Lgs. No. 74, January 25, 1992, as amended by D. Lgs. No. 67, February 25, 2000.

²²⁵ Consumer Code, Art. 20.

²²⁶ Consumer Code, Art. 24.

To provide consumers with greater administrative protection for contracts entered into with businesses, an amendment to the Consumer Code now provides that the Authority may, upon request of consumer organizations or professional associations, on its own initiative, or pursuant to a consumer complaint, declare that certain clauses contained in contracts entered into by adhering to general conditions of contract or by executing a standard form, to be unconscionable. Any failure to cooperate with an investigation by the Authority by not providing information, may be fined in amounts ranging from 2,000 euros to 20,000 euros and businesses that furnish false information will be subject to fines ranging from 4,000 euros to 40,000 euros. The Authority's ruling is to be posted on its website, the business' website, as well as publicized by any other means useful to inform consumers of its holding. Failure of a business to publish the Authority's ruling on its website will lead to the levy of a fine of 5,000 euros to 50,000 euros. Businesses may also consult with the Authority to ascertain the legality of contract clauses they intend to use. Clauses reviewed in advance by the Authority cannot be the subject of a review at a later date.²³⁸

Decisions of the Authority may only be appealed to the administrative courts.²³⁹

The Consumer Code also provides for the voluntary control of unfair practices by self-regulatory bodies.²⁴⁰ Parties may agree to postpone making a complaint to the Authority until the self-regulatory body has issued a final decision. If a proceeding has already commenced before the Authority or is subsequently commenced, any interested party may ask that the proceeding be suspended for up to 30 days. It is up to the Authority, however, to decide whether a suspension should be granted.²⁴¹

(3) Consumer Contracts

(a) Binding Contracts

Law No. 52 of February 6, 1996, implemented the EC Directive concerning unfair terms in binding contracts and these provisions are now part of the Consumer Code.²⁴² Contracts on printed forms must be in clear, intelligible language and any ambiguous terms are to be interpreted in favor of the consumer.²⁴³ Any clause in a consumer contract that creates a significant imbalance to the consumer's detriment, even if inserted in good faith, is unfair.²⁴⁴ Such clauses will be void, while the remainder of the contract will continue to be valid.

Certain contract clauses, for example, those asserting the seller's right to modify the contract unilaterally without a justified reason being provided in the contract, or provisions allowing the price of goods to be established on delivery, are pre-

sumed to be unfair unless proven by the seller to have been the subject of specific negotiation.²⁴⁵ In any event, the following clauses are void regardless of whether they were specifically negotiated, namely clauses that:

- (i) Exclude or limit the seller's liability for the death of, or personal injury to, the consumer;
- (ii) Exclude or limit the consumer's right of action against the seller or other party in the event of total or partial breach or nonconforming performance by the seller; or
- (iii) Foresee or allow the binding of the consumer by extension to provisions that the consumer in fact did not have the opportunity to be informed of before the conclusion of the contract.²⁴⁶

In addition, any clause providing for the application of the law of a non-EU country will be void if the contract has a closer connection with an EU Member State and the clause has the effect of depriving the consumer of the protection described above.²⁴⁷

The law also creates a right for consumers, consumer associations, professionals and chambers of commerce to petition a court to prohibit the use of a contract clause where its unconscionability has already been ascertained.²⁴⁸

(b) Door-to-Door and Similar Sales

With respect to door-to-door and similar sales, a consumer entering into a sales contract outside of the seller's place of business is granted additional protection. The consumer must be informed in writing of the right to cancel the contract within 14 business days of the signing of the contract or the receipt of the merchandise.²⁴⁹ The 14-day period commences:

- (i) On the day the order containing the information regarding cancellation is signed or, if no order is signed, on the date the information is received for those service contracts or contracts for the supply of goods where the seller has either shown the consumer the goods or explained the services; or
- (ii) On receipt of the goods, if the goods are received after the contract was signed, for those contracts for the supply of goods where the purchase was made without the presence of the seller, or where the goods shown to the consumer are different from those purchased under the contract.²⁵⁰

A consumer that is not so informed or that is given incorrect information has 12 months from the expiration of the 14-day cancellation period to cancel.²⁵¹ Real property, insurance and securities contracts, and contracts for the supply of food and beverages are not subject to this law.²⁵²

²³⁸ Consumer Code, Art. 37-bis, as added by DL No. 1, Jan. 24, 2012, Art. 5, as amended by Law No. 27, March 24, 2012.

²³⁹ Consumer Code, Art. 27(14).

²⁴⁰ Consumer Code, Art. 27-ter (1), (2).

²⁴¹ Consumer Code, Art. 27-ter (3).

²⁴² Prior to the implementation of EC Directives on binding contracts and door-to-door sales, the only protection available to consumers was the formalistic approach taken by CC, Arts. 1341 and 1342, which require that, to be binding, clauses containing certain types of standard conditions favoring the party that prepared the contract must be specifically and separately approved in writing.

²⁴³ Consumer Code, Art. 35.

²⁴⁴ Consumer Code, Arts. 33 and 36.

²⁴⁵ Consumer Code, Art. 33.

²⁴⁶ Consumer Code, Art. 36 (2), (c).

²⁴⁷ CC, Consumer Code, Art. 36(5).

²⁴⁸ Consumer Code, Art. 37.

²⁴⁹ Consumer Code, Art. 52(1), (f), as amended by D. Lgs. No. 21, Feb. 21, 2014.

²⁵⁰ Consumer Code, Art. 64(1).

²⁵¹ Consumer Code, Art. 53(1).

²⁵² Consumer Code, Art. 47.

(c) Distance Contracts

A distance contract is a contract entered into through a system of sales or service offering organized by the supplier using solely one or more communication techniques through to the moment the contract is executed.²⁵³ A consumer for this purpose is defined as an individual who is acting for purposes that do not relate to engagement in any professional activity. An essential element in characterization as a distance contract is the absence of the simultaneous physical presence of the seller and the purchaser (off premises). Among the techniques involved are mass mailings with or without an address, newspaper publicity with sales coupons, catalogues, telephone calls (whether or not using an operator), radio, teletext, electronic mail, fax, television and the like. The law does not apply to: distance contracts relating to financial services, automatic mechanical distribution devices, telephone service contracts entered into through the use of public telephones, real property contracts other than rentals, or auction sales.²⁵⁴

The law requires the following information to be provided to the purchaser:²⁵⁵

- (i) The identity of the seller;
- (ii) The essential characteristics of the merchandise or the service;
- (iii) The price, including all taxes and the cost of delivery;
- (iv) The means of payment, the mode of delivery of the merchandise or service and any other performance under the contract;
- (v) The existence of the right to cancel (or the exclusion thereof);
- (vi) The means and time limit for the return or withdrawal of the merchandise in the event of cancellation;
- (vii) Any additional cost attributable to the use of distance sale techniques;
- (viii) The time limit for the validity of the offer and the price; and
- (ix) The minimum term for contracts for the sale of the goods or the rendering of the services.

The above information must be clearly provided in a manner adequate to the type of communication being used. The consumer must be given confirmation of the transaction in writing or, at the consumer's option, through another lasting means of communication available to him. Such information is to be supplied before or at the moment of the conclusion of the contract. At the same time, information must be supplied with regard to: the right to cancel; the geographic location of the seller, to which complaints may be addressed; information concerning service and commercial guarantees with respect to the product; and conditions for the cancellation of a contract for an indefinite period or in excess of one year.²⁵⁶

²⁵³ Consumer Code, Art. 50.

²⁵⁴ Consumer Code, Art. 51.

²⁵⁵ Consumer Code, Art. 49.

²⁵⁶ Consumer Code, Art. 53. However, with the exception of providing the geographic location for consumer complaint purposes, this information need

Italian law provides a right to cancel without penalty and without any requirement to provide a reason for cancellation within 14 business days (rather than seven business days as in the EU Directive), calculated as follows:²⁵⁷

- (i) In the case of goods, from the date on which the goods are received, or within three months in the event that the required information was not supplied on a timely basis; and
- (ii) In the case of services, from the date of stipulation of the contract; but if the information requirements have not been met, the term is extended to three months.

Unless otherwise agreed between the parties, the seller must perform his/her part of the contract within 30 days of the day following that on which the purchaser transmits his/her order.²⁵⁸

(4) Labels

Labelling legislation is substantially stricter than that regulating advertising. As noted in (2), above, the legal principles applied to advertising are drawn chiefly from unfair competition law. Restrictions on labels conform more closely to contract law. The information on a label is considered similar to an express declaration in contract negotiations inducing a party to sign or, in this case, a consumer to buy. Thus, in affixing a label to its products, the manufacturer is not only required to be truthful but is held to a positive duty of disclosure.

Special label legislation has extended the duty of disclosure to the required identification of the specific properties of certain products, such as food and beverages.²⁵⁹ Thus, an indication of the minimum shelf-life or expiration date of foodstuffs must be easily visible, clearly legible and indelibly printed in a manner that is no less visible than the product's indication of quantity, and placed where it is easily identifiable by consumers. Subject to certain exceptions, the sale price and the per-unit price of non-food products, as well as foodstuffs, must be clearly indicated.²⁶⁰

Breach of the duty of disclosure is generally deemed to be a lesser offense than violation of the duty of truthfulness. Criminal sanctions are available for punishment of those that "sell or otherwise place on the market" products carrying misleading written information about the components or qualities of the products that are likely to deceive the buyer. However, it should be noted that, with respect to both types of violations, monetary, rather than criminal, sanctions are usually imposed by the courts.

not be provided when the services rendered by distance communication are provided in a single performance, and are invoiced through the same means of distance communication.

²⁵⁷ Consumer Code, Art. 52. In a decision issued in 2017, the Antitrust Authority fined several phone service providers as, during the 14-day period within which consumers have the specific right to cancel, they had activated phone services without receiving the consumers' express consent to do so. See Consolidated Decision Antitrust Commission of July 18, 2017, of cases PS 10027, PS 110684, PS 10685, PS 10686, and PS 10695.

²⁵⁸ Consumer Code, Art. 54.

²⁵⁹ D. Lgs. No. 231, Dec. 15, 2017, Arts 17–19.

²⁶⁰ Consumer Code, Arts. 13–17.

4. Industrial Property

Legislative Decree No. 30 of February 10, 2005 — the Industrial Property Rights Code (the “Code”) — which entered into force on March 19, 2005, simplified and reorganized the existing rules governing patents, utility models, designs, plant varieties, semiconductor topographies, trademarks and other distinctive signs, geographical indications, designations of origin and trade secrets. However, the Code does not govern software, copyrights, and biotechnology inventions, as these are regulated by separate legislation.²⁶¹

a. Patents

Patents for industrial inventions are available to both Italians and foreigners. The duration of an industrial patent is 20 years from the date on which the application is filed and cannot be renewed or extended.²⁶² To be patentable, in addition to being lawful, an invention must be new, involve an inventive activity in any field of technology, and be appropriate for industrial application.²⁶³ Discoveries, scientific theories and mathematical methods, principles and methods for intellectual activities, games or commercial activities, computer programs and the presentation of information are not considered inventions.²⁶⁴ Similarly, methods for the surgical or therapeutic treatment of humans or animals, and diagnostic methods are not considered inventions, although the products used to execute one of those methods are considered inventions.²⁶⁵ Plant or animal varieties or essentially biological processes for their production, including new plant varieties where the invention consists solely in the genetic modification of another plant variety even where this change is the result of genetic engineering, are not considered inventions.²⁶⁶ A patent of improvement may be granted for an invention based on the patent of another person, but such a patent may not be exploited without the permission of the owner of the basic patent.²⁶⁷

Although the right to file or use a patent is fully transferable, the right of recognition as the inventor is inalienable, so that, when a patent is filed by an assignee, the inventor must be recognized as such in the application.²⁶⁸ Similarly, an employer of a researcher has the right to file for a patent with respect to patentable inventions developed by the employee, but the inventor has a moral right to recognition.²⁶⁹ Moreover, an employee who was not hired for research but who develops an invention in the course of his/her duties that is patented by the employer has a right to fair compensation for his/her invention, even though the rights to the patent vest in the employer.²⁷⁰

While the foregoing provisions make it clear that an employer has the right to its employee’s inventions in most em-

ployment situations, until quite recently Italian intellectual property legislation recognized what was referred to as the “professor’s privilege”. The old Article 65 of the IPC provided that professors and researchers who in the course of an employment relationship with a university or public research institution developed a patentable invention had the right to that patent. Law No. 102 of July 24, 2023, amended Article 65 to provide that when the invention is made in the course of employment, the employee (inventor) must disclose the invention to the institution. The institution then has a six-month period, which can be extended by a further three months, to apply for the patent. If the institution does not apply for the patent after the six-month period, the inventor may then apply for the patent.

The Italian Patent and Trademark Office grants patents without prior examination of the novelty and originality of an invention, although it does verify the qualification of the discovery as a patentable invention, the unity of the invention, and the distinction between an invention and a utility model.²⁷¹ However, a patent is invalid if the invention lacks the requirements of novelty, inventive activity, and industrial capability; if it is contrary to public order; if the description of the invention is too vague for the invention to be exploited by a third party; if it has been filed by a person not entitled to do so; or if, during the course of the patent procedure, changes have been introduced that expand the contents of the patent beyond that of the original application.²⁷²

A patent can be declared null by a court after a procedure filed with one of the 12 tribunals having exclusive jurisdiction in these matters with special sections established for industrial and intellectual property matters.²⁷³

Italian legislation provides that a compulsory license of any patent (including a patent for a utility model) not exploited in Italy for three years from the date the patent was granted or four years from the filing of the application can be claimed by any person.²⁷⁴ A patent enters into the public domain if it is not exploited by the owner or any licensee within two years of the granting of the first license.²⁷⁵ The requirement of exploitation of the invention in Italy is met by the importation into Italy of goods produced in states that are members of the EU, the EEA or the World Trade Organization (WTO).²⁷⁶

Because EU antitrust law prohibits the impairment of competition between EU Member States, the holder of exclusive patent rights in more than one country may not restrict the import into one of those countries of goods produced under his/her patents in another country.

A civil action for injunctive relief and pecuniary and specific damages may be brought by a patent owner against an alleged infringer before one of the specialized Tribunals. The burden of proving the existence of the patent and its infringement by the defendant lies with the plaintiff, while the defen-

²⁶¹ See Law No. 633 of April 22, 1941 (software and copyright); Law No. 78 of Feb. 22, 2006, implementing EC Directive 98/44 (biotechnology).

²⁶² D. Lgs. No. 30, Feb. 10, 2005 (the “Intellectual Property Code”), Art. 60.

²⁶³ Intellectual Property Code, Arts. 45–50.

²⁶⁴ Intellectual Property Code, Art. 45(2).

²⁶⁵ Intellectual Property Code, Art. 45(2)–45(4).

²⁶⁶ Intellectual Property Code, Art. 45(4).

²⁶⁷ Intellectual Property Code, Art. 68.2; CC, Art. 2587.

²⁶⁸ CC, Art. 2589.

²⁶⁹ Intellectual Property Code, Art. 64(1).

²⁷⁰ Intellectual Property Code, Art. 64.2.

²⁷¹ Intellectual Property Code, Arts. 160 and 170(1)(b).

²⁷² Intellectual Property Code, Art. 76.1.

²⁷³ D. Lgs. No. 168, June 27, 2003, Arts. (3), (4). See also discussion at I., above, regarding specialized tribunals.

²⁷⁴ Intellectual Property Code, Arts. 70 and 86(2).

²⁷⁵ Intellectual Property Code, Art. 70(4).

²⁷⁶ Intellectual Property Code, Art. 69(3).

dant may raise and prove the affirmative defense of invalidity.²⁷⁷

Patent protection in Italy may also be obtained by registering a European patent in accordance with the Convention of Monaco of October 5, 1973, ratified by Italy (together with the implementation regulation) by Law No. 260 of May 26, 1978.

b. Patents for Utility Models and Registration of Designs and Models

Patents for utility models protect new forms that confer on a known product a particular utility or convenience of application or use.²⁷⁸ Such patents, like those for inventions, must meet the requirements of novelty and originality; what distinguishes the two types of discovery is the fact that, while an invention must consist of a new solution to a technical problem, a utility model involves only the formal and executive aspects of that which is already known.

A patent for a utility model is valid for 10 years from the date on which the application is filed.²⁷⁹

The registration of a design or model relates to the aesthetic aspect of the product and does not have any functional value.²⁸⁰

A design or model must meet the requirements of lawfulness, novelty and individual character.²⁸¹ With respect to novelty, certain forms of dissemination are considered irrelevant (that is, they do not destroy the existence of that condition), such as communication to third parties who are bound by secrecy and dissemination effected by the author within 12 months prior to the date of registration (the grace period).²⁸²

Registration of a design or model is valid for five years from the date on which the application is filed and can be extended for successive five-year periods, up to a maximum of 25 years.²⁸³

c. Trademarks

The registration of trademarks is also governed by D. Lgs. No. 30 of February 10, 2005, which abolished RD No. 929 of June 21, 1942. As a result of intense harmonization activity on the part of the EU, the substantive principles that form the basis of trademark legislation in all the Member States are today largely identical. Some differences remain, however, in the procedures for registration.

Any person or entity, whether domestic or foreign, may apply for the registration of a trademark in Italy. Registration may be made at the Patent and Trademark Office in Rome or locally at the Chamber of Commerce, or in Geneva under the international registration rules of the Madrid Arrangement and Protocol,²⁸⁴ as well as by the registration of an EU trademark in accordance with the EU regulation.²⁸⁵ A trademark may con-

sist of a new sign that can be represented graphically and, in particular, in words (including names of persons), designs, letters, numbers, sounds, forms of the product or of the packaging, color combinations and tones.²⁸⁶ To qualify for registration as a trademark, a mark must not only be novel and lawful, but must have a distinctive quality so as to distinguish its products from those of other enterprises.²⁸⁷

On the filing of an application, priority can be claimed based on a prior registration made in a member country of the Paris Convention within the previous six months. Similarly, the Italian filing may be claimed as the priority for subsequent filings in the same countries in the following six months.²⁸⁸

The Italian Patent and Trademark Office examines applications with respect to the formal requirements, as well as the existence of the conditions of legality, distinctive capacity and non-deceptiveness of the mark, but does not engage in any preventive examination concerning novelty.²⁸⁹

The Intellectual Property Code provides for a procedure for filing opposition to the granting of a patent. Opposition must be filed within three months after publication of the application by owners of identical or similar prior trademarks.²⁹⁰ A trademark can be declared null by a court in an action filed with one of the 20 specialized tribunal sections referred to in i., below.

Trademarks are valid for renewable periods of 10 years but enter the public domain if they are not used in Italy for a period of five years without justification. The use of one of a series of similar registered trademarks will sustain the validity of all of them.²⁹¹ Expiration for failure to use a trademark cannot be declared if use of the trademark began or was resumed before the filing of the judicial claim for expiration.

An Italian trademark may be freely transferred or licensed. The license need not be exclusive. The only limitation is that the transfer may not be deceptive to consumers.²⁹²

Both criminal²⁹³ and civil actions may be brought for the infringement of a trademark. As in the case of the infringement of a patent, the burden of establishing the existence of a trademark and the infringement are with the plaintiff, while the defendant must set up and prove an affirmative defense of invalidity. A claim for nullity of a trademark on the grounds of the priority of another registration can only be made by the owner of the prior mark. The Italian Civil Code provisions on unfair competition²⁹⁴ afford a certain amount of protection to a de facto trademark, but the owner has the burden of proving its exclusive use, whereas the registration of a trademark is conclusive.

EU antitrust legislation and the Code do not permit the owner of a trademark in one EU Member State to prohibit the

²⁷⁷ Intellectual Property Code, Arts. 121, 124–126, and 128–132.

²⁷⁸ Intellectual Property Code, Art. 82.

²⁷⁹ Intellectual Property Code, Art. 85.

²⁸⁰ Intellectual Property Code, Art. 31.

²⁸¹ Intellectual Property Code, Arts. 32–33-bis.

²⁸² Intellectual Property Code, Art. 34.

²⁸³ Intellectual Property Code, Art. 37.

²⁸⁴ Madrid Arrangement, April 14, 1891, on the International Registration of Trademarks; Madrid Protocol, June 27, 1989. Italy has ratified the Protocol, which entered into force on April 17, 2000.

²⁸⁵ Regulation 40/94/CE.

²⁸⁶ Intellectual Property Code, Art. 7.

²⁸⁷ Intellectual Property Code, Arts. 7 and 12–14.

²⁸⁸ Intellectual Property Code, Arts. 4 and 169; Paris Convention, March 20, 1833, Art. 4.

²⁸⁹ Intellectual Property Code, Arts. 158 and 170(1)(a).

²⁹⁰ Intellectual Property Code, Arts. 176–184.

²⁹¹ Intellectual Property Code, Arts. 15(4), 16, and 24(1).

²⁹² Intellectual Property Code, Art. 23.

²⁹³ Penal Code, Art. 473.

²⁹⁴ CC, Art. 2598(1).

importation of goods introduced into the EU by the owner of the mark or with the owner's consent.²⁹⁵

Comment: When licensing a foreign trademark to an Italian licensee, it should be borne in mind that the most effective litigating posture requires that the owner be entitled to bring an action for infringement and that the licensee must join in the action, because it is the licensee that has actually sustained the damage.

d. Copyrights

Rules relating to copyrights are contained in Articles 2575–2583 of the Civil Code and in Law No. 633 of April 22, 1941, as amended. A copyright attaches to all intellectual expressions at the time of creation without any further requirement having to be met.²⁹⁶ A prime consequence of this rule is the enforceability of the copyright from the moment of the creation of the work to which it is related. The subsequent application for registration of the work, required by the copyright laws, is irrelevant to the creation of the right; it is intended only to convey its existence to third parties.

The author has exclusive publication and assignment rights, as well as the right to have his/her work faithfully reproduced and to be acknowledged as its author. Such “traditional” rights have been expanded to take account of new technologies for the dissemination of copyrighted works. In particular, the exclusive right of the owner to reproduce the work even temporarily and to put it at the disposal of the public in such a manner that each member of the public has access in the place and at the moment individually chosen, has now been recognized.²⁹⁷ Further, provisions have been enacted, including criminal penalties, for technological means of protection aimed at impeding or limiting actions that are not authorized with respect to protected works.²⁹⁸ The law requires all transfers of rights relating to the exploitation of a work to be in writing, for purposes of proof.

e. Software

As part of the EU-wide effort to combat software piracy, Italy has amended its Copyright Act to include the protection of computer programs. Protection is granted to any form of computer program that is an original product of the author's intellectual creation. Excluded from protection are the ideas and principles underlying a program and its interfaces.²⁹⁹

The amendments to the Copyright Act confer exclusive rights to control the following operations:

- (i) Any reproduction of the program in any form or by any manner. To the extent that loading, displaying, running, transmitting or storing of the program necessitates reproduction, these operations are also subject to the authorization of the rightholder.
- (ii) The translation, adaptation, arrangement or any other alteration of the program and the reproduction of the re-

sults thereof. However, if these acts are essential to the use of the program by the lawful acquirer, in accordance with its intended purpose, they are not subject to authorization.

(iii) Any form of distribution to the public, including the rental of the original program or copies thereof, is prohibited, except that the rightholder's distribution right is exhausted with the first sale directly by the rightholder, or with the rightholder's consent, in the EU of a copy of the program. The right to control further rental of the copy is not exhausted on the first sale.³⁰⁰

Despite the rightholder's protections listed above, a person that has acquired the right to use a program may not be prohibited from making a back-up copy if necessary for the use of the program, nor may such a person be prohibited from observing, studying or testing the program's functioning to ascertain the principles and elements underlying it.³⁰¹

Nor can a rightholder compel a lawful acquirer to seek authorization for decompilation where: it is fundamental to the interoperability of the independently created program with other programs; the information for interoperability is not readily available; and the acts are limited to the parts that are essential to achieving interoperability. Contracts that prohibit decompilation are null and void.³⁰² A lawful acquirer cannot use information gained through decompilation for purposes other than interoperability, i.e., for third parties, or actions that infringe on the program's original copyright.³⁰³

The law also provides for criminal liability for software piracy. It is a crime to engage in the unauthorized copying of computer programs, or to distribute or possess unauthorized copies of programs for resale. It is also a crime to place in circulation, or to possess the means to remove or avoid, computer program protection systems. If convicted, a perpetrator may be sentenced to up to three years in jail and fined between 2,582 euros and 15,493 euros.³⁰⁴

f. Databases

In conformity with EC Directive 96/9, Italy has extended the protection afforded to both designers of databases and investors that make the development of databases possible.³⁰⁵ The protection of the work of the originator or designer involves an extension of the copyright concept to the form of expression, which constitutes an intellectual creation by the author in addition to content.³⁰⁶ The extension applies to the structure of both electronic and hard copy databases.

The law also establishes an exclusive economic right in favor of the manufacturers of databases. This right, which is *sui generis*, is intended to protect the creators of a database with respect to their investment of time and money, and their efforts to

³⁰⁰ Law No. 633, April 22, 1941, Art. 64-bis, as added by D. Lgs. No. 518, Dec. 29, 1992.

³⁰¹ Law No. 633, April 22, 1941, Art. 64-ter.

³⁰² Law No. 633, April 22, 1941, Art. 64-quater (1).

³⁰³ Law No. 633, April 22, 1941, Art. 64-quater (2).

³⁰⁴ Law No. 633, April 22, 1941, Art. 171-bis, as amended by Law No. 248, Aug. 18, 2000.

³⁰⁵ Law No. 633, April 22, 1941, as amended by D. Lgs. No. 169, May 6, 1999.

³⁰⁶ Law No. 633, April 22, 1941, Arts. 1 (2) and 2 (9), as amended by D. Lgs. No. 169, May 6, 1999.

²⁹⁵ Intellectual Property Code, Art. 5.

²⁹⁶ CC, Art. 2576.

²⁹⁷ Law No. 633, April 22, 1941, Art. 16, as amended by D. Lgs. No. 68, April 9, 2003.

²⁹⁸ Law No. 633, April 22, 1941, Art. 102-quater.

²⁹⁹ Law No. 633, April 22, 1941, Art. 2 (8).

establish a database, regardless of whether the database is itself innovative. This protection is valid for an initial period of 15 years and can be renewed if there are further substantial investments. Since most network services in the developing information society are operated from databases, this protection is of great importance. It should be noted that the law also provides that, when a database is created by an employee, the employer automatically acquires rights to utilize the database, without affecting the copyright protection of the employee.

g. Designs

In implementing EC Directive 98/71³⁰⁷ relating to the protection of designs and models, Italy definitively established that works of “industrial design” meeting the requirements of creative character and artistic value are to be considered protected by copyright law.³⁰⁸ At the same time, the prohibition on the combination of copyright protection with protection under a patent of ornamental design (now registration for a design or model) was repealed. Subsequently, a transitional provision³⁰⁹ was issued providing that no protection would be extended to works of industrial design that were or fell into the public domain before April 19, 2001.³¹⁰

h. Biotechnology Patents

In implementing EC Directive 98/44 relating to the legal protection of biotechnological inventions, the Italian legislature confirmed that, within certain limits, inventions that are new, that involve an inventive step and that may have an industrial application are patentable even if they have to do with a product consisting of or containing biological material, or a process by means of which biological material is produced, processed or used.

i. Litigation

Legislative Decree No. 168 of June 27, 2003, instituted special sections in the Tribunals and Courts of Appeal of the districts of Bari, Bologna, Catania, Florence, Genoa, Milan, Naples, Palermo, Rome, Trieste, Turin, and Venice that, as of July 1, 2003, have exclusive jurisdiction over matters involving industrial and intellectual property in all cases filed, involving trademarks, patents, utility models, designs and copyright, and unfair competition cases involving interference with industrial and intellectual property rights.

Legislative Decree No. 168 was amended to increase the number of these special sections to 20 and to expand the jurisdiction of these tribunals to include class action suits, as well as commercial and corporate litigation (see I.C., above).

5. Carbon Border Adjustment Mechanism

The Carbon Border Adjustment Mechanism (CBAM) is a landmark EU environmental policy designed to equalize the price of carbon between domestic products and imports. The primary goal is to prevent carbon leakage, which occurs when EU-based companies move carbon-intensive production abroad

to countries with less stringent climate rules. The CBAM requires importers to purchase “CBAM certificates” to cover the carbon emissions generated during the production of goods imported into the EU. The price of these certificates is linked to the weekly average auction price of the EU Emissions Trading System (ETS) allowances. The system currently covers the high-pollution sectors of cement, iron and steel, aluminum, fertilizers, electricity, and hydrogen. The rollout is divided into two distinct periods:

- i. Transitional Phase (October 2023 to December 2025): This was the learning phase. Importers were only required to report the direct and indirect emissions embedded in their goods on a quarterly basis. No financial payments were required during this period.
- ii. Definitive Phase (starting January 2026): Importers must be officially authorized and begin purchasing certificates. The first annual report for 2026 emissions was due by May 31, 2027.

Italy has integrated the EU regulation through its national administrative framework. The Ministry of Environment and Energy Security (MASE) is the designated National Competent Authority (NCA). It manages the authorization of importers and oversees compliance. As of January 1, 2025, Italian companies must apply for the status of Authorized CBAM Declarant through the MASE portal to continue importing regulated goods after the transitional period ends. The Customs and Monopolies Agency (ADM) works with MASE to monitor imports at the border and ensure that declarations match the physical goods entering the country. Italy applies the EU-wide threshold where consignments with an intrinsic value of less than 150 euros or certain low-volume imports (under 50 tons per year for specific goods) are exempt from reporting.

D. Labor Relations

Under Italian law, the rights of workers are principally governed by the *Statuto dei Lavoratori* (the “Statuto”),³¹¹ a workers’ bill of rights, reinforced by a procedural law³¹² intended to ensure prompt judicial action. These statutes, coupled with national collective bargaining agreements, which are periodically renegotiated on an industry-wide basis, provide a comprehensive framework for labor relations that is generally favorable to the Italian worker.

The right to form unions and the right to strike are constitutionally granted prerogatives of Italian workers.³¹³ Unions can file petitions in court³¹⁴ for the enforcement of workers’ rights where management violations are asserted. The statutorily enhanced rights of the workforce are numerous and the trend of judicial decisions interpreting them has been, until recently, exceptionally pro-labor.

At the end of 2014, Parliament passed legislation delegating to the government the authority to pass legislative decrees to reorganize labor contracts and the approach to individual ter-

³⁰⁷ D. Lgs. No. 95, Feb. 2, 2001, implementing EC Directive 98/71.

³⁰⁸ Law No. 633, April 22, 1941, Art. 2 (10), added by D. Lgs. No. 95, Feb. 2, 2001.

³⁰⁹ D. Lgs. No. 30, Feb. 10, 2005, Art. 239.

³¹⁰ Date of entry into force of D. Lgs. No. 95, Feb. 2, 2001.

³¹¹ Law No. 300, May 20, 1970.

³¹² Law No. 533, Aug. 11, 1973; further amended by Law No. 5, Feb. 19, 1998.

³¹³ Cost., Arts. 39 and 40.

³¹⁴ Law No. 300, May 20, 1970, Art. 28.

minations.³¹⁵ In March 2015, the government adopted a legislative decree with new provisions for individual terminations to be applied to hirings after March 7, 2015. These provisions can be summarized as follows:

- (i) Invalid economic terminations: these cases will no longer require re-hiring and the indemnity to be paid to the wrongfully terminated worker will vary depending on length of employment. Thus, for each year of employment, an employee will be entitled to two months of salary up to a maximum of 24 months. The law further provides that, in any event, the indemnity to be paid will be no less than four months of salary;³¹⁶
- (ii) Invalid disciplinary terminations: depending on the type of invalidity, the judge can decide whether an indemnity is to be paid or the employee rehired;
- (iii) Discriminatory terminations, by definition always invalid: the employee is to be rehired regardless of the size of the employer's business (i.e., applies even to businesses with fewer than 15 employees).

1. Workers' Rights

The *Statuto* codified and very significantly enlarged workers' rights. Workers may meet on their employer's premises at any time after working hours, and for 10 hours during working hours in any one year.³¹⁷ Management must make space available for the posting of union notices and must not attempt to suspend in any manner the broad permission granted the unions by the law.³¹⁸

Discrimination based on religious, political or union affiliation is strictly forbidden and, more importantly, hiring decisions may not be based on information resulting from investigation into such matters. Audio-visual surveillance of workers on the job is prohibited.³¹⁹ However, such surveillance may be allowed for safety, organizational, or productive purposes, as well as for the protection of company property, provided the surveillance is agreed to in the national collective contract or, if not agreed to therein, authorization is agreed to by the local Labor Inspectorate. Personal inspections are allowed only at certain checkpoints agreed to in advance with the workers' representative. Employers may request a social welfare physician's corroboration of an employee's reported illness, but an employee need not submit to an examination by company doctors.³²⁰

Where it is determined that workers' rights have been violated by an employer, the courts can impose remedies, the implementation of which is not deferred by the filing of an appeal.

2. Collective Bargaining Agreements

National or local representatives of management associations and labor unions negotiate the National Collective Contracts (NCCs) that provide the main economic terms and supplement the provisions of the labor laws in regulating labor

practices. The provisions of an NCC signed prior to October 3, 1959, have the force of law on promulgation by Presidential Decree for many categories of employees. Even employers or employees not belonging to the groups that were party to such an NCC are bound thereby. Agreements signed after that date are, however, legally binding only on their signatories and persons that have formally chosen to abide by them.

In either case, the courts are invariably mindful of the terms of NCCs in devising the minimum constitutional standards for the protection of workers' interests under Article 35 of the Constitution. Thus, in negotiating terms less favorable to his/her employees than the corresponding provisions of the applicable NCC, an employer runs the risk that, if even only a single worker protests, a court may hold that the terms of the NCC are the minimum norms acceptable constitutionally.

Italian workers fall into the following four categories, the varying rights and privileges of which are carefully fixed by the relevant provisions of the NCCs:

- (i) Blue-collar, factory, or manual workers (*operai*);
- (ii) White-collar workers, such as office employees and clerks (*impiegati*);
- (iii) White-collar workers that have higher functions without being supervisory personnel (*quadri*); and
- (iv) Supervisory personnel (*dirigenti*).

Additional sub-classifications of both white- and blue-collar workers affect minimum pay and other rights provided under the relevant NCC. The agreements specify in detail the relatively infrequent circumstances under which a worker is promoted from one category to another.

Apprentices, or workers between the ages of 15 and 29 (*apprendisti*), are hired and compensated in accordance with special laws and agreements.³²¹

Part-time employment is regulated by Legislative Decree No. 61 of February 25, 2000, which permits the following three categories of part-time employment:

- (i) Horizontal: where the employee works on a reduced daily schedule;
- (ii) Vertical: where the employee works full-time, but the activity is limited to certain periods during a week, month or year; and
- (iii) Mixed: where the employee works under a mix of the other two categories of part-time employment.³²²

3. Labor Relations

The major features of Italy's highly detailed regulation of labor relations are discussed in 4., below.

4. Hiring

All employees must be provided with a hiring letter setting forth the terms of their employment, including the trial period (see a., below) to which they will be subject before the first day of work, or the employer will be subject to a fine ranging from 250 euros to 1,500 euros per employee who did not receive a

³¹⁵ Law No. 183, Dec. 12, 2014.

³¹⁶ D. Lgs. No. 23, March 4, 2015, Art. 3.

³¹⁷ Law No. 300, May 20, 1970, Art. 20.

³¹⁸ Law No. 300, May 20, 1970, Art. 20.

³¹⁹ Law No. 300, May 20, 1970, Art. 4.

³²⁰ Law No. 300, May 20, 1970, Art. 5.

³²¹ D. Lgs. No. 81, June 16, 2015, Title V.

³²² D. Lgs. No. 61, Feb. 25, 2000, Art. 1(c), (d), (d-bis).

hiring letter as provided by law.³²³ In addition, by no later than the day before the hiring is to commence, an employer must notify the *Servizio per l'Impiego* (Hiring Service Center) by filing an on-line notification of the hiring, unless productive needs prohibit the filing, in which case five days are granted from the day the employee begins work.³²⁴ Failure to notify could subject the employer to a “maxi fine,” as follows, for having hired an employee off the books in cases where the employee has actually worked for the following periods:

- (i) Up to 30 days: a fine from 1,500 euros to 9,000 euros per worker;
- (ii) Between 31 days and 60 days: a fine from 3,000 euros to 18,000 euros per worker; and
- (iii) More than 60 days: a fine from 6,000 euros to 36,000 euros per worker.³²⁵

In cases where it is clear from the employer’s past behavior that it was not its intent to hire a worker off the books, and the employer rectifies the situation before inspection by paying all social charges due, or files the notice before the first social charges are due (i.e., before the 16th of the next month), the employer will not be subject to the maxi fine, but will be subject to the standard fine which ranges from a minimum of 100 euros to a maximum 500 euros per employee.³²⁶

Employers of more than 15 individuals also must comply with labor department directives by hiring specified percentages and types of disabled individuals.

a. Employment Period

An employment agreement may provide for a trial period (*periodo di prova*) within which either party may terminate the agreement without having to provide notice or justification. A trial period can only be agreed to in writing,³²⁷ may not be renewed or extended, and may not exceed the limit established by law or the relevant NCC. The trial period is regarded as part of the period of service for all purposes, should the employee be hired permanently.

An employer may hire an employee pursuant to a fixed term contract (*Contratto a tempo determinato*)³²⁸ when the employer has specific technical, productive or organizational needs, or if the employer must temporarily substitute an employee (for example, for an employee on maternity leave or sick leave). Through October 31, 2018, these reasons did not need to be stated if the contract does not exceed a three-year period³²⁹ and an employer could stipulate several fixed term contracts for a total of 36 months with a maximum of five renewals in that time period, without any waiting period between renewals.³³⁰ With the passage of DL No. 87 of July 12, 2018, re-

ferred to as the “Dignity Decree,” as of November 1, 2018, the maximum length of a fixed term contract is 12 months, which can be lengthened to 24 months, provided that a specific reason, such as those indicated above, is specified in the contract.

In 2023, a further change was made to the fixed term contract to provide that the maximum term for a contract may be for 24 months (i.e., either one contract for the entire period, four six-month contracts or two 12-month contracts). The specific reason for the contract is only needed after the first 12 months of the contract have lapsed. This means that if contracts for six-month periods have been entered into with an employee, the first two contracts need not have a specific reason in the contracts.³³¹

Employers may also make use of workers supplied by an agency (staff leasing), which is the actual employer of the worker. A worker may be supplied on a permanent or fixed-term contract. Employees used under staff leasing fixed-term contracts cannot exceed 30% of those employees directly hired pursuant to permanent contracts.³³² One employee in excess of the limit will give rise to a fine of 20% for each month or fraction of a month in excess of 15 days that the employee is paid under such a contract; two or more hires beyond the ceiling will give rise to a fine of 50% of the employee’s salary. Employers with fewer than five employees have no restriction on the percentage of their work force hired with these types of contracts.

Further, with respect to Dignity Decree fixed-term contracts (i.e., contracts that began on November 1, 2018 or thereafter), including those for staff leasing, that are extended, social security contributions will be increased for the additional period by 0.5%.³³³

For employers with more than five employees, up to 20% of the work force may be hired with these types of contracts. Companies that violate this restriction by hiring one employee beyond this ceiling will be fined 20% of the employee’s salary for each month or fraction of a month in excess of 15 days that the employee is paid under such a contract; two or more hires beyond the ceiling will give rise to a fine of 50% of the employee’s salary. Employers with fewer than five employees have no restriction on the percentage of their work force hired with these types of contracts.³³⁴

The forms of employment established under Act No. 30/2003 and Legislative Decree No. 276/20013 (the “Biagi Reform”) were amended by Law No. 92 of June 28, 2012 (the “Fornero Reform”), as follows:

- (i) Job-on-call (*lavoro intermittente*). This type of contract permits an employer to call on a worker at any time, according to its own needs, based on an agreement reached with the worker, which may even be for a fixed period of time. This contract provides for the employee to be paid a

³²³ DL No. 510, Oct. 1, 1996, Art. 9-bis as converted by Law No. 608, Nov. 28, 1996, as amended by DL No. 112, June 25, 2008, Art. 40, para. 2.

³²⁴ DL No. 510, Oct. 1, 1996 Art. 9-bis, (2), Art. 2-bis as converted into law by Law No. 608, Nov. 11, 1996; see also Ministerial Decree, Oct. 30, 2007.

³²⁵ D. Lgs. No. 151, Sept. 14, 2015, Art. 22 (1), (2).

³²⁶ D. Lgs. No. 276, Sept. 10, 2003, Art. 19(3).

³²⁷ CC, Art. 2096.

³²⁸ D. Lgs. No. 368, Sept. 6, 2001, which repealed both Law No. 230, April 18, 1962, and Law No. 56, Feb. 28, 1987, Art. 23, as amended by DL No. 34, March 20, 2014.

³²⁹ D. Lgs. No. 368, Sept. 6, 2001, Art. 1, as amended by DL No. 34, Mar. 20, 2014, as amended by DL No. 87, July 12, 2018, Art. 1.

³³⁰ Previous legislation required that 60 days (subsequently reduced to 10 days) elapse between the original contract and the renewal if the original contract was for up to six months, and a period of 90 days (subsequently reduced to 20 days) if the contract exceeded six months.

³³¹ D.L. No. 48, May 4, 2023, Art. 24.

³³² D. Lgs. No. 81 of 2015, as amended by DL No. 87, July 12, 2018, Art. 2(2).

³³³ DL No. 87, July 12, 2018, Art. 1.

³³⁴ D. Lgs. No. 368, Sept. 6, 2001 as amended by DL No. 34, March 20, 2014.

sum as compensation for remaining available in the non-working period, but it may only be used for workers aged between 24 and 55 and cannot be used only for work during weekends and holidays. Further, this contract may only be used for each employee for a maximum 400 days of work in a period of three years. Should this limit be exceeded, the contract will be converted to full-time permanent employment.³³⁵ Contracts underway as of July 18, 2012, when the *Fornero* Reform entered into force, that were not in conformity with the new provisions were voided.

(ii) Job-sharing (*lavoro ripartito*). Under this arrangement two workers can jointly and severally undertake to work at one position.

(iii) Forms of apprenticeship: qualified apprenticeship — a contract intended to teach persons at least 15 years old a trade or job skill, for a maximum period of three years; professional apprenticeship — a training contract for persons between 18 and 29 years of age, intended to teach them a specific trade based on their acquiring specified abilities; and specialized apprenticeship — a “formation” (training) contract for persons between 18 and 29 years of age to allow them to earn a secondary school diploma or a university degree as well as a technical specialization. All apprenticeships must last for a minimum of six months and the hiring of apprentices is subject to the condition that at least 50% of apprentices hired in the three previous years have been hired as permanent employees by the employer. Further, companies with at least 50 employees must have at least 20% of their workforce hired pursuant to apprenticeship contracts.³³⁶

(iv) Insertion contract — a formation contract (which replaced the former type of formation contract in the private sector), by means of which certain categories of individuals are presumed to be disadvantaged (for example, workers between 18 and 29 years old, those who have been unemployed for a long period, women, workers over 50 years of age, individuals who have not worked for at least two years, and handicapped individuals) could be inserted or reinserted in an occupation through a specific individual project and adaptation to a particular business working context. This type of formation contract was repealed by the *Fornero* Reform and may no longer be used to hire employees after December 31, 2012.

(v) Project employment — this replaced the previous standard of coordinated and continued collaboration. Project employment must be specified in writing and have as its purpose a specific project that is within the entrepreneur’s business purpose; a contract for a “program” or “portion of a program” is no longer permitted. The contract provisions had to describe the project in detail, specify the length of the contract, payment terms (which may not be less than the minimum pay established by the NCLCs), and the manner in which the employment was to be co-

ordinated with the entrepreneur and brought into compliance with legislation for health and safety in the workplace. With some exceptions, as of 2015, this type of contract can no longer be entered into. Further, beginning in 2016, those contracts which were still in force were to be reviewed and those which were deemed continuous in nature, in that they were constantly renewed, or those in which the employer controlled the manner in which the work was to be carried out, were converted to permanent employment contracts.³³⁷

(vi) Occasional work — this involves occasional and discontinuous work with the same employer for not more than 30 days in a calendar year. Total annual compensation for such work may not exceed 10,000 euros (adjusted annually for inflation); in addition, when the work is carried out for professionals and entrepreneurs, no more than 5,000 euros may be earned from each individual entrepreneur or professional.³³⁸

b. Compensation

Italian wages are usually higher than the minimum wages fixed in an NCC. Mandatory wage increases are often stipulated by law or by contract, and most employees receive a cost-of-living increase (*contingenza*), which is adjusted periodically according to government economic indicators.

If the employee’s consent can be obtained, it is recommended that letters of employment or agreements concerning compensation state that the amount of pay exceeding the contractual minimum is subject to future absorption (*assorbibile*) so that such an amount will not be considered in calculating future raises. Absent such measures, the employee could claim the benefit of new, higher minimum wage levels established by collective agreement, even where the current pay already corresponds to such higher levels.

The compensation paid to an individual worker depends on a variety of factors including age, category, and the industry in which the worker is employed. Each Christmas, both white and blue-collar workers are entitled to extra compensation, known as “the thirteenth month” and generally equivalent to one month’s pay. Under the terms of many collective agreements, extra compensation results in a “fourteenth month” payment on July 1. Such bonuses must be awarded on a pro rata basis to an employee whose employment is terminated during the course of the year.

Profit-sharing in the form of production premiums (*premi di produzione*) has also evolved under many industry-wide contracts. Such premiums are determined in a variety of ways, but typically represent a percentage of the minimum wage payable to each category of employee.

Previous legislation had introduced a possibility for payments to workers under the age of 25 and certain retirees in the hotel, agriculture and tourism sectors, as well as for work performed for local government authorities, to be made by way of “vouchers;”³³⁹ provided that the employer had no more than

³³⁵ DL No. 76, June 28, 2013, Art. 7, as amended by Law No. 99, Aug. 3, 2013.

³³⁶ DL No. 34, March 20, 2014.

³³⁷ *Id.*

³³⁸ DL No. 50, April 24, 2017, Art. 54-bis.

³³⁹ A voucher is a form of payment for occasional work, which contains not only payment for the work performed, but social security contributions due on

eight employees and the work did not last for more than 10 days.³⁴⁰ This regime was replaced in the 2023 Budget Law by two types of vouchers:

- (i) Vouchers, which can be used by private individuals to pay workers providing domestic and care services, as well as private lessons (e.g., at home tutoring, music lessons); and
- (ii) Vouchers, which can be used by public sector and private sector employers (e.g., self-employed individuals, professionals, entrepreneurs, associations and non-governmental agencies).

Public sector employers may only use the vouchers to pay for specific activities including:

- (i) Projects undertaken for people in need;
- (ii) Emergency activities in response to natural and environmental disasters;
- (iii) Activities undertaken in relation to solidarity projects; and
- (iv) Organizing social, cultural, sport, or charitable events.

Private sector employers may use vouchers, provided that they:

- (i) are not a construction or extractive company;
- (ii) do not use vouchers as payment as part of a subcontracting agreement; or
- (iii) have no more than five permanent employees.

Each voucher is worth 10 euros gross and 7.50 euros net.³⁴¹

c. Working Hours

Italian workers are prohibited by law from working more than 48 hours per week, consisting of 40 regular working hours and eight hours overtime per week. Shorter working weeks are included in the provisions of most collective agreements.

The law permits overtime only if it is permitted under collective bargaining agreements or specifically agreed to by the employer, but in any event it must be kept under regulation. Where overtime has been agreed to between the employer and the employee it cannot exceed 250 hours per year.³⁴²

The rate of pay for overtime, as well as for night work (12 a.m. to 5 a.m.) and work on holidays, must exceed that for work performed during regular hours. The percentages by which the normal pay rates are increased are commonly specified in the governing collective bargaining agreement (and typically range from 25% for overtime to 70% for holiday night work) and vary according to the category of worker. Compensating time off may be agreed to. The law provides for no less than four weeks of paid holidays, but better conditions may be agreed to in the relevant collective labor agreements. Pay cannot be substituted for the holiday period, except at the end of the labor relationship.

that compensation as well. The worker can cash the voucher by presenting it to a bank, post office, or other authorized entity.

³⁴⁰ DL No. 87, July 12, 2018, Art. 2-bis.

³⁴¹ Law No. 197, Dec. 29, 2022, Art. 1 (342–354).

³⁴² D. Lgs. N. 66, 2003, April 8, 2003, Arts. 4 (4) and 5(3).

Due to the labor shortage in the tourism, accommodation and spa sectors, those employees who in tax year 2024 received employment income of 40,000 euros or less will receive a special supplementary payment between January 1, 2025 to September 30, 2025 in the amount of 15% of the gross remuneration for night work and overtime on public holidays. The payment will not be subject to income tax.³⁴³

d. Remote Working

In response to remote working becoming more common, Parliament passed legislation in 2017 providing that remote work had to be an option that the employee undertook voluntarily pursuant to a written agreement between the employee and the employer.³⁴⁴ The legislation provided that priority as regards the ability to undertake remote work be given to mothers with children under 12 years of age. It also provided that equality of pay and seniority be maintained for those working remotely and that remote workers only be required to work a regular week, as determined by law and collective bargaining.

Due to the COVID-19 pandemic and the urgency with which entire sectors had to shift to remote work, the provisions of the 2017 law were suspended, removing the requirement that a written agreement exist between the parties, as well as the other guarantees provided under the 2017 law. This suspension expired on January 1, 2023. Thus, the guarantees provided by the 2017 law are once again fully applicable, and an employer that wishes to implement remote working with an employee is required to enter into an individual contract with the employee to that effect. However, the 2023 Budget Law provides that “fragile” workers (i.e., employees with underlying conditions susceptible to potentially life-threatening medical problems) had to be provided with an option to work remotely until December 31, 2023.³⁴⁵ Remote work agreements for these types of employees was further extended to March 30, 2024, and thereafter ended. These workers must now also enter into a written agreement with their employer in order to be allowed to remote work.

e. Time Off

Italian workers are entitled to one day off a week, usually Sunday, and 11 standard religious and national holidays. It is standard practice to allow 15 days paid vacation when an employee marries. An employee also has a right to annual paid vacation of four weeks, generally to be taken all at once, but with at least a minimum period of two weeks that must be taken consecutively. The remaining two weeks may be taken within the 18-month period following the period in which the vacation time became due.³⁴⁶

(1) Maternity and Paternity Leave

Pregnant employees may not be exposed to dangerous chemical, biological or physical agents, and are entitled to personal time during working hours for prenatal and clinical exam-

³⁴³ Law No. 209, Dec. 30, 2024, Art. 1 (395) to (398).

³⁴⁴ Law No. 81, May 22, 2017, Arts 18–24.

³⁴⁵ Law No. 197, Dec. 29, 2022, Art. 1 (306) as amended by Decree No. 132, Sept 29, 2023, Art.8.

³⁴⁶ CC Art. 2109; D. Lgs. No. 66, Aug. 4, 2003, Art. 10(1), as amended by D. Lgs. No. 213, July 19, 2004.

inations.³⁴⁷ The employment of a female employee may not be terminated in the first year following marriage, nor may women be dismissed during pregnancy or the year following childbirth. They are entitled to five months of maternity leave, which they can either distribute between the period before birth and that subsequent to birth or take in its entirety after the birth; such leave cannot be waived by the employee.³⁴⁸ During this period, women are entitled to 80% of their compensation, this being paid by the INPS. Depending on the relevant contract, an additional 20% may be paid by the employer.

Women who are adopting, or have been awarded pre-adoptive custody, may also take five months of maternity leave. However, in such instances, the employee may waive the right. When custody awarded is not for adoption purposes, maternity leave may only be taken for a period of three months.³⁴⁹

In the event of the mother's death or serious illness, the father has a right to the same amount of leave (five months) given by law to the mother.³⁵⁰

Fathers also have obligatory leave within the first five months of the child's birth for a total of 10 days during that period, or 20 days in the case of a multiple birth.³⁵¹

The mother, or alternatively the father, of a handicapped child may extend leave until the child is 12 years old, if the child is not institutionalized. This extended leave may last for a period of up to three years. If neither parent extends the leave, he or she has a right to two hours of personal time per day for the first three years of the child's life. Thereafter, a parent may have three days of personal leave each month to attend to the child.

Following childbirth, women may choose to remain at home for an additional six months and receive 30% of salary without losing seniority. Female employees are entitled to resume their employment thereafter and, throughout the first year of their child's life, to take personal time off twice a day to nurse.³⁵² A father will have the right to such personal time off in the event that he/she is the custodial parent, or the mother has opted not to take the time off or has died, or is seriously ill.³⁵³

(2) Parental Leave

Until a child is 12 years of age, parents may, jointly or individually, take time off from work to care for the child.³⁵⁴ Parental leave may generally not exceed a total of 10 months (11 months in the case of a single parent). After obligatory maternity leave has been exhausted, a mother may take an additional six months of parental leave, while a father may take up to seven months of leave beginning with the birth of the child, if he or she takes the leave in blocks of not less than three months.³⁵⁵ The parent taking parental leave is entitled to an allowance of 80% of his or her salary.³⁵⁶ Parents may take

the leave either for a continuous period or fractioned in days or even hours. Parental leave is also available on the same terms in cases of adoption.³⁵⁷

f. Absence Due to Illness

Regular employees may not be dismissed as a result of a period of absence due to accident or illness, unless such absence exceeds the limits permitted by law or contract. A worker absent for these reasons is entitled to receive an indemnity equal to all or part of his/her regular pay depending on one's category and seniority. The indemnity is advanced by the employer, who then deducts the indemnity from contributions paid to the INPS on the employee's behalf.

g. Work Assignments

Italian law requires employees to be assigned to the types of task for which they were specifically hired at the outset of the employment contract. The imposition of extra or more demanding duties requires a pay increase. The job of an employee who assumes extra duties over a period of three months is permanently upgraded, except where the employee is substituting for an absent employee.

An employer must be able to justify transferring an employee from one work unit to another on organizational or technical grounds. The employee must be allowed 20 days advance notice of such a transfer to give the employee time to consider the transfer and to register any objections that he/she or his/her union may have.

The *Biagi* Reform of 2003 provided for the "certification of a labor relationship," i.e., an administrative procedure permitting the certification on a voluntary basis of the proper legal description of some of the types of legal relationships indicated at a., above.

Staff leasing, or the supply of a workforce by authorized agencies for technical productive organizational reasons, which was formerly forbidden, is now permitted. Staff leasing may be for a fixed or indeterminate period of time.

h. Termination

Except in the case of a labor contract for a fixed term, both employers and employees are entitled to receive, and required to give, notice of the proposed termination of a labor contract. The seniority and category of the employee concerned determine the amount of notice necessary. Termination without notice, by either the employer or the employee, will result in the offending party's paying the other party an indemnity equal to the compensation that would normally be due during the period of notice.

Resignations tendered by pregnant women or either parent during the first three years of a child's life, or the first three years of the custody or adoption of a minor, are subject to ratification by the Labor Ministry before they will be considered valid.³⁵⁸ In all other cases, resignations must be ratified either

³⁴⁷ D. Lgs. No. 151, March 26, 2001, Art. 13.

³⁴⁸ *Id.*, Arts. 16 and 20, as amended by Law No. 145, Dec. 30, 2018, Art. 1 (485).

³⁴⁹ *Id.*, Art. 26.

³⁵⁰ *Id.*, Art. 28.

³⁵¹ Law No. 145, Dec. 30, 2018, Art. 1 (278), as amended by Law No. 234, Dec. 30, 2021, Art. 1 (134).

³⁵² D. Lgs. No. 151, March 26, 2001, Art. 39.

³⁵³ D. Lgs. No. 151, March 26, 2001, Art. 40.

³⁵⁴ D. Lgs. No. 151, March 26, 2001, Art. 32, as amended by D. Lgs. No. 80, June 15, 2015, Art. 7(1)(b).

³⁵⁵ D. Lgs. No. 151, March 26, 2001, Art. 32(2), as amended by Law No. 228, Dec. 24, 2012, Art. 339.

³⁵⁶ D. Lgs. No. 151, March 26, 2001, as amended by Law No. 207, Dec. 30, 2024, Art. 1 (217).

³⁵⁷ D. Lgs. No. 151, March 26, 2001, Art. 36(10)(i).

³⁵⁸ Law No. 92, June 28, 2012, Art. 4 (16).

by the local labor office, labor union office, or by the employee's execution of a confirmatory declaration to be filed with the employment office along with the notice of termination of employment.³⁵⁹ If the employee does not follow the ratification procedure, the employer may request in writing that the employee comply with the ratification requirements. If, within seven days of receipt of that request, the employee fails to provide ratification or revoke the resignation, the resignation will be automatically validated.³⁶⁰

Ratification of a resignation has been extended to project work.³⁶¹

Employers who fail to comply with these provisions are subject to fines ranging from 5,000 euros to 30,000 euros.³⁶²

Article 18 of Law No. 300 of May 20, 1970, provided for only two grounds for valid dismissal of employees: just cause (*giusta causa*) and valid reason (*giustificato motivo*). Wrongfully terminated employees had a right to be rehired by the employer where the employer had more than 15 employees in a work unit, or 60 employees in Italy, in addition to the right to an indemnity. The *Fornero* Reform amended Article 18 by eliminating the remedy of blanket rehiring and by providing different remedies for different types of termination. Wrongful terminations may be classified as follows:

(i) Discriminatory termination: by definition, this type of termination is always invalid and the employee will be entitled to be rehired regardless of the size of the employer's business (i.e., applies even to businesses with fewer than 15 employees). In addition, the employee will be entitled to damages of a minimum of five months' salary, without a cap on the maximum amount that can be awarded. Rather than be reinstated, the employee may opt for payment of an indemnity of 15 months' salary.³⁶³

(ii) Invalid disciplinary ("subjective") termination: this type includes terminations for such conduct which falls under the headings of *giusta causa* and *giustificato motivo* and includes conduct that ranges from alleged poor performance, to insubordination, to fraud in the workplace. In the case of wrongful terminations in this category, employees are entitled to be rehired where: (a) the conduct for which they were terminated did not exist; or (b) the conduct is covered by a collective contract disciplinary code which provides for a lighter sanction. The employee is also entitled to an indemnity of up to 12 months' salary plus social security contributions, less any amounts earned for other work undertaken during the period during which he/she was dismissed, or an amount that the employee could have earned if the employee had diligently attempted to find other employment.

(iii) In other cases of wrongful disciplinary or economic termination, under the *Fornero* reform the employee was no longer entitled to reinstatement, but was entitled to an

indemnity for wrongful termination of not less than 12 and not more than 24 months' salary. In establishing the indemnity, the court is to take into account the employee's seniority, number of employees employed by the business, economic dimensions of the business, and the conduct and conditions of the parties to the suit.³⁶⁴ For individuals hired after March 7, 2015, by employers with more than 15 employees, the indemnity for wrongful termination will be based only on the employee's seniority (i.e., two months for every year of employment) with an indemnity that cannot in any event be less than six months or more than 36 months of salary³⁶⁵ (four months or more than 24 months of salary prior to November 1, 2018). For employers with fewer than 15 employees, the indemnity is halved.³⁶⁶

Where the termination is found to be ineffective because the employer has failed to provide reasons in the letter of termination, or has breached procedural aspects of termination, the employee will be entitled to an indemnity of a minimum of six months' to a maximum of 12 months' salary, without prejudice to a later finding of actual wrongful termination. For those hired after March 7, 2015, the indemnity to be paid is based on the last salary and is to be not less than two and not more than 12 months of salary.³⁶⁷

In addition, Italy's Jobs Act of 2014–2015, a major reform of the labor market, introduced new measures to avoid litigation for wrongful termination. First, the employer may revoke the termination within 15 days of receipt of notice of a challenge to the termination by the employee.³⁶⁸ Alternatively, the employer may offer the employee, within 60 days of receipt of such notice via conciliation, an amount that cannot be less than two months or greater than 18 months of salary. If accepted, this indemnity will not be subject to personal income tax or social security contributions.³⁶⁹

Any termination of employment, whether it results from dismissal, resignation, retirement, or death, entitles an employee to severance compensation (*Trattamento di Fine Rapporto* or TFR) drawn from a special company fund. The amount paid depends on a number of factors including the nature of the industry and the employee's rank. Severance compensation is computed based on an employee's regular pay as well as special compensation or bonuses regularly received by the employee (for example, "thirteenth month" and "fourteenth month" bonuses). The standard rule of thumb for calculating severance pay is to divide the previous year's salary by 13.5 and multiply it by the number of years of service.³⁷⁰

Law No. 279/2006 introduced a comprehensive reform of the severance compensation system to provide an incentive to use private pension funds and insurance schemes in addition to the mandatory social security system. The reform allows an employee to choose whether to keep a TFR fund in a company (as it was) or to transfer it to a private pension fund. Moreover,

³⁵⁹ Law No. 92, June 28, 2012, Art. 4 (17).

³⁶⁰ Law No. 92, June 28, 2012, Art. 4 (19).

³⁶¹ *Id.*, Art. 23-bis (16)–(23), as amended by DL No. 76, June 28, 2013, Art. 7.

³⁶² *Id.*

³⁶³ Law No. 300, May 20, 1970, Art. 18, as amended by Law No. 92, June 20, 2012, Art. 1. See also D. Lgs. No. 21, March 4, 2015, Art. 2.

³⁶⁴ Law No. 300, May 20, 1970, Art. 18, as amended by Law No. 92, June 20, 2012, Art. 1.

³⁶⁵ DL No. 87, July 12, 2018, Art. 3 ("Dignity Decree").

³⁶⁶ D. Lgs. No. 23, March 4, 2015, Art. 3(1).

³⁶⁷ D. Lgs. No. 23, March 4, 2015, Art. 4.

³⁶⁸ D. Lgs. No. 23, Art. 5.

³⁶⁹ D. Lgs. No. 23, Art. 6.

³⁷⁰ CC, Art. 2120.

companies with more than 50 employees and maintaining TFR funds of their employees will be required to transfer them to a state fund managed by the INPS (the National Social Security Agency). Thus, companies will no longer be able to use these funds as an internal financial resource.

After eight years of employment, employees may apply for an advance payment equal to 70% of their accrued TFR: (i) for personal or family health purposes; or (ii) to purchase their first home or a first home for their children, which must be adequately documented. These requests are granted annually up to a limit of 10% of qualifying employees and in any event within a limit of 4% of the total number of employees. National collective contracts may provide more generous terms.³⁷¹

Employees may be eligible for pension fund benefits after five years' service and on reaching the retirement age. For provisions relating to foreign workers, see E.3., below.

i. Workers' Rights to Information

An employer is required to supply an employee, within 30 days of being hired, with the following information: the parties to the employment contract; location of the work; starting date; duration of the contract, specifying whether it is for a fixed or an indefinite period; duration of the trial period, if applicable; title and contractual position of the employee under the national contract (i.e., a national collective agreement, which is typically utilized by most Italian employers), or the characteristics and a summary description of the job; initial compensation and the elements of which it is comprised, together with an indication of the pay period; length of paid holidays; the working hours; and notice period required in the event of termination of the employment. This information must be furnished in writing in the labor agreement, hiring letter or other documentation given to the employee.³⁷²

The same information must be supplied, before his/her departure, to an employee that is sent to work overseas for more than 30 days, together with the following additional information: duration of the assignment; currency in which wages will be paid; any fringe benefits in cash or in kind; and any relevant conditions for the repatriation of the employee.³⁷³

Any changes in these items not arising from law or the NCCs must be notified to the employee in writing within one month.³⁷⁴ If the employer does not respect the duty to provide this information, the employee may notify the provincial labor office, which may order the employer to provide the information within 15 days of the order. An employer that does not comply is subject to an administrative fine ranging from 51.64 euros to 258.23 euros.³⁷⁵

j. Night Work

Night work is covered by Legislative Decree No. 66 of April 8, 2003, implementing EC Directive 93/104 and Directive 2000/34, which applies to private and public employers, except for those employers in the fields of air and railway trans-

port, and maritime navigation. Eight hours of night work are allowed within a 24-hour period. Night workers must undergo medical and other tests prior to undertaking night work, and thereafter every two years at the employer's expense. Pregnant women may not undertake night work.

Night work is defined as work performed between the hours of midnight and 5 a.m. A "night worker" is an employee who usually performs at least three hours of night work per 24-hour period.³⁷⁶

k. Employment of Minors

The employment of children under the age of 16³⁷⁷ is prohibited. It is, however, permitted in the case of artistic, cultural, sporting, advertising or entertainment activities, subject to the parents' written consent and the special authorization of the Provincial Labor Office. Children between the ages of 15 and 18 can be employed only in activities that do not involve risk, subject to prior medical examination. In general, minors cannot be employed to perform night work.³⁷⁸

l. Labor Disputes

First level jurisdiction in labor disputes was transferred from the Pretorial Courts to the Tribunal.³⁷⁹ Appeals are now heard by a special section of the Court of Appeals, final appellate jurisdiction remaining with the Supreme Court of Cassation.

In a return to the past, recent legislation has made conciliation prior to filing suit an option to be exercised by the plaintiff, repealing the requirement enacted in 1998 making conciliation a mandatory step before suit could be filed in a labor dispute.³⁸⁰ Conciliation continues to be held before special commissions of the provincial labor office, or in a union office, in accordance with procedures set out in the NCCs.

Further, parties may now either proceed directly to arbitration or decide to arbitrate during conciliation, or at the end of an unsuccessful conciliation. An arbitral award in a labor dispute can be challenged before a tribunal within 30 days, and subsequently before the Court of Appeals and the Supreme Court of Cassation, respectively.³⁸¹

E. Immigration Law

In addition to a valid passport, all foreigners from outside the EU entering Italy for a period of 90 days or more, for whatever purpose, must have a visa. Following arrival in Italy, every foreigner who stays for a period exceeding 90 days must also secure a residence permit (*permesso di soggiorno*) and, if he or she intends to work in Italy, possess a work permit.

No visa is required for citizens of EU Member States, who have the right to work in Italy.

³⁷⁶ DL No. 112, June 25, 2008, Art. 41(1).

³⁷⁷ Law No. 296, Dec. 27, 2006, Art. 1 (622); see also Ministry of Labor Note No. 25/1/0009799, July 20, 2007.

³⁷⁸ D. Lgs. No. 345, Aug. 4, 1999 (implementing EC Directive 94/33), amending Law No. 977, Oct. 17, 1967; Law No. 296, Dec. 27, 2006, Art. 1 (622).

³⁷⁹ D. Lgs. No. 51, Feb. 19, 1998; Law No. 188, June 16, 1998.

³⁸⁰ CCP, Art. 410(1), as amended by Law No. 183, Nov. 11, 2010, Art. 31 (1).

³⁸¹ CCP, Arts. 412-ter and 412-quater, as amended by Law No. 183, Nov. 11, 2010, Art. 31 (9).

³⁷¹ CC, Art. 2120.

³⁷² D. Lgs. No. 152, May 26, 1997, Art. 1, implementing EC Directive 91/533.

³⁷³ D. Lgs. No. 152, May 26, 1997, Art. 2.

³⁷⁴ D. Lgs. No. 152, May 26, 1997, Art. 3.

³⁷⁵ D. Lgs. No. 152, May 26, 1997, Art. 4.

1. Visas

Visas may be applied for and secured from an Italian consulate having jurisdiction in the applicant's country of origin or where the applicant has a stable residence. The consulate forwards applications to the Ministry of the Interior in Italy. Visas provide various types of authorizations; the readiness with which they are issued depends on the purpose of the foreign applicant in coming to Italy. Delays in issuance may result if those purposes require the examination of government bureaus in addition to the Ministry of the Interior (for example, the Ministries of Labor, Foreign Affairs, or Industry and Commerce).

2. Residence Permits

All non-EU citizens arriving in Italy must apply to the local police (*Questura*) for a residence permit (*permesso di soggiorno*) within eight days of arrival. A residence permit is automatically granted for a period of three months and is renewable thereafter. A residence permit is granted on the presentation of a valid visa³⁸² allowing entry into Italy. EU citizens are required only to report their presence.

After five years of residence for reasons not inherently subject to limitation, a foreigner may apply for a "residence card," which basically grants the foreigner the right to engage in any activity not expressly forbidden to foreigners. Moreover, a cardholder is not subject to expulsion except on very serious and limited grounds.³⁸³

3. Alien Work Permits

Every non-EU citizen coming to Italy to work must obtain a work authorization. A simplified procedure for work permits was introduced in 2002.³⁸⁴ Each province (there are 110 in Italy) has a "Single Window" for immigration at the Prefecture, which is responsible for the entire procedure relating to the hiring of foreign employees. An employer who wishes to hire a foreigner residing abroad presents to the Single Window in his/her province a request for a *nulla osta* (declaration of no objection), together with documentation concerning housing for the applicant worker, and a draft contract with terms and conditions, including the employer's undertaking to pay return travel expenses of the foreigner and to advise of any changes. The Single Window must provide a reply within 40 days from completion of the application, and if quota positions and other conditions contained in the law are still available, the *Questura*, at the request of the employer, transmits the authorization to the appropriate Italian consular office abroad. There, after further investigation, a visa for work purposes is given to the individual concerned. Within eight days after arrival in Italy, the worker must present himself at the Single Window to which his/her employer applied.

With the passage of D. Lgs. No. 108 of June 28, 2012, Italy implemented the EU Directive on the entry and residence

of third country nationals for "highly qualified employment." Those non-EU citizens meeting certain education requirements, who intend to enter Italy for a position that has a salary three times the minimum level of the exemption from the national health care system co-payments, are eligible to receive an "EU Blue Card" as a residence permit. Individuals hired under a permanent contract (*tempo indeterminato*) will be granted a Blue Card valid for two years. While permits for those hired under fixed term contracts (*tempo determinato*) will be granted a Blue Card for the duration of the contract plus three months. During the first two years of legal employment, individuals holding a Blue Card may not change employers, unless specifically authorized by the local Labor Office. If granted such permission, they may only change to another "highly qualified employment" position. After 18 months of legal residence in another EU country, a Blue Card holder may enter Italy without the need for a "highly qualified employment" work visa. Blue Card holders may also cumulate periods of residence in other EU Member States to reach the five-year period needed to apply for an Italian residence card.

4. Professional Consultants and Corporate Directors

A foreigner who intends to engage in professional work or to hold corporate office (directorship) in Italy must demonstrate to the Italian consulate having jurisdiction in his/her country of origin or where he/she has a stable residence that proper housing is available and that he/she is in possession of legitimate income above the minimum level specified by law for exemption from payments in the healthcare system. After verifying that these requirements have been met, the consulate grants a visa to the individual, specifying on the visa the activity to be engaged in. A visa application for such independent work must be granted or denied within 120 days from the filing of the application and documentation, and must be used within 180 days of its being granted.

F. Privacy Law

In Italy, a code for the protection of personal data, gathering and organizing in a single text the various laws that had been passed in the field, entered into force on January 1, 2004 (the "Privacy Law").³⁸⁵ On April 14, 2016, the General Data Protection Regulation ("GDPR") was adopted by the European Parliament. It became enforceable in EU Member States as of May 25, 2018. The GDPR expanded and updated data rules to provide EU residents with more control over their personal data.

The Privacy Law provides protection to individuals with respect to the handling of their personal data, which is defined as any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the

³⁸² Persons whose countries of origin have executed reciprocal agreements with respect to visas with Italy may automatically obtain a first *permesso di soggiorno* without a visa and may, on providing proof of their self-supporting status, secure a renewal thereof.

³⁸³ Law No. 286, July 25, 1998, Art. 9.

³⁸⁴ Law No. 189, July 30, 2002.

³⁸⁵ D. Lgs. No. 196, June 30, 2003, Art. 186 (as later amended by D. Lgs. No. 42/2004, Law No. 45/2004, Law No. 138/2004, Law No. 188/2004, Law No. 306/2004, Law No. 26/2005, Law No. 155/2005, D. Lgs. No. 209/2005, Law No. 21/2006, Law No. 51/2006 and Law No. 173/2006); DL No. 207, Dec. 30, 2008; DL No. 112, June 25, 2008.

physical, physiological, genetic, mental, economic, cultural or social identity of a natural person.³⁸⁶

During the course of 2017 and 2018, Italy brought its legal framework into compliance with the GDPR. Through its annual European Delegation Law,³⁸⁷ Parliament authorized the government to issue one or more legislative decrees to bring the Italian Privacy Law into compliance with the GDPR by May 21, 2017.³⁸⁸ In addition to the authorization to the government, with passage of Law No. 167 of November 20, 2017 (“European Law”), Parliament amended certain provisions of the Privacy Law to comply with the GDPR and on August 10, 2018, Legislative Decree No. 101 further amended Italy’s Privacy Code.

As a result of these changes, companies must now obtain an individual’s consent to store and process data. Data must not be held for more time than is necessary and individuals have the express right to revoke consent to use of their data at any time. It also introduces the right to portability of personal data and codifies the right of individuals to have their data completely eradicated.³⁸⁹ Individuals also have the right to access their personal data in order to verify the processing, provided that this does not adversely affect the rights or freedoms of third parties, including the trade secrets for software and copy-rights protecting software; the right to timely rectification of inaccurate personal data; the right to restrict processing where the accuracy of the data is contested, or processing is unlawful and opposed by the individual; as well as the right not to be subjected to a decision based solely on automated processing, including profiling when the decision will produce legal effects on him or her, or will significantly affect him or her.³⁹⁰

Data processors must now be appointed pursuant to a written contract or appointment letter by the data controller specifying the subject matter to be processed, the purpose pursued by the processing, the length of time of the processing, the category of data to be processed, and the rights and obligations of the data processor.³⁹¹

The European Law provides for the secondary use of data. The Data Processing Authority may authorize within 45 days of receipt of a request, the secondary use of data for scientific research or statistical use provided the data transferred is a minimal amount and is rendered anonymous.³⁹²

Data breaches are to be notified with undue delay to the individual to whom the data belongs and to the Data Protection Authority by no later than 72 hours after having become aware of it, unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons. If the notification is not made within 72 hours, the reasons for the delay must be provided in the notification.³⁹³

Under the new Privacy Law data transfers outside the European Union are prohibited unless the Commission has determined that it has an adequate level of protection;³⁹⁴ or adequate contractual guarantees exist between the parties involved.³⁹⁵

Transfers of data in violation of the above is subject to a fine of up to 20 million euros, or for businesses up 4% of its worldwide revenues in the preceding year, if greater.

³⁸⁶ EU Regulation No. 679, April 14, 2016, Art. 4.

³⁸⁷ Law No. 163, Oct. 15, 2017.

³⁸⁸ Law No. 163, Oct. 15, 2017, Art. 13.

³⁸⁹ EU Regulation No. 679, April 14, 2016, Art. 17.

³⁹⁰ EU Regulation No. 679, April 14, 2016, Arts. 13–22.

³⁹¹ EU Regulation No. 679, April 14, 2016, Art. 28.

³⁹² Privacy Law, Art. 110-*bis*, as amended by Law No. 167, Nov. 20, 2017, Art. 28 (1), (b); D. Lgs. 101, Aug. 10, 2018, Art. 8 (1), (s).

³⁹³ EU Regulation No. 679, April 14, 2016, Arts. 33–34.

³⁹⁴ EU Regulation No. 679, April 14, 2016, Art. 45.

³⁹⁵ EU Regulation No. 679, April 14, 2016, Art. 46.

III. Forms of Doing Business in Italy

A. Principal Business Entities

1. In General

The law governing business entities not listed on a Stock Exchange is to be found in the Civil Code of 1942, as amended, in particular the substantial amendments contained in Legislative Decree No. 6 of January 17, 2003, effective January 1, 2004, as amended by Legislative Decree No. 37 of February 6, 2004. Various enactments after 1942 modified Code provisions concerning the rights of shareholders and third parties in relation to Italian companies.³⁹⁶

With respect to listed companies, Legislative Decree No. 58 of February 24, 1998 (the “*Draghi Decree*”) was issued as a Unified Text of the provisions relating to financial mediation. The most important provisions concerning listed companies are dealt with at C., below.

Certain provisions of the 1942 Code, as amended, apply specifically to companies that are active in the market for risk capital, i.e., listed companies that “have shares widely held among the public,” with a net worth of not less than 5 million euros, and having more than 200 shareholders and bondholders.³⁹⁷

Apart from sole proprietorships, independent business entities organized under Italian law may be divided into two broad categories, partnerships and joint stock companies. Three other types of business relationships are also of interest: branches of foreign companies, joint ventures, and agencies and distributorships.

2. Partnerships

Italian partnerships are created by the signing of articles of partnership, which must be filed with the Commercial Register. The articles must include the name and address of the partnership, the name and amount of the subscription of each partner, the names of the partners who will manage the partnership, and the provisions for the division of proceeds. The articles need not be prepared by a notary.

The two authorized types of partnerships are described in a. and b., below.

a. Unlimited Partnership

An unlimited partnership (*società in nome collettivo*)³⁹⁸ has only one class of partner. All partners are on an equal footing, and each is jointly and severally liable without limit for the debts and obligations of the partnership.³⁹⁹ Each partner is eligible to be appointed a managing director of the partnership.⁴⁰⁰ A partner may only transfer his/her interest in the partnership in certain specific circumstances.⁴⁰¹

³⁹⁶ D. Lgs. No. 30, Feb. 6, 2007, regulating the relations of certain persons with companies based in the European Union (EU).

³⁹⁷ CC, Art. 2325 *bis*; D. Lgs. No. 58 of Feb. 24, 1998, Art. 116, integrated Reg. CONSOB 11971/99.

³⁹⁸ CC, Arts. 2291–2312.

³⁹⁹ CC, Art. 2291.

⁴⁰⁰ CC, Arts. 2297(2) and 2298.

⁴⁰¹ CC, Arts. 2284–2290 and 2293.

b. Limited Partnership

A limited partnership (*società in accomandita semplice*)⁴⁰² has both limited partners and general partners.⁴⁰³ The liability of a limited partner extends only to the amount the partner has invested in the partnership.⁴⁰⁴ Only general partners may manage a limited partnership⁴⁰⁵ and be named in the partnership name.⁴⁰⁶ The liability of general partners for the obligations of the partnership is unlimited.⁴⁰⁷

The liability of a limited partner whose name is included in the partnership name becomes unlimited like that of a general partner. Limited partners may also act as managers or representatives of the partnership under a limited authorization granted by the partnership. The articles of association must specify the class to which each partner belongs and the restrictions placed on the limited partners.

3. Joint Stock Corporations

The three types of Italian joint stock corporations are described in a. through c., below.

a. Limited Liability Company

A limited liability company (*società responsabilità limitata* or Srl)⁴⁰⁸ must have a capital of at least 10,000 euros, divided into quotas with a par value of no less than 1 euro each. Quotas above the minimum value must be in multiples of 1. Srls may now be structured in a manner very similar to that in which corporations are structured (see D.3., below). A law adopted to satisfy an EU Directive now permits an Srl to be incorporated by a single person and to carry on business with a single quotaholder while retaining limited liability. This privilege is lost with respect to liabilities incurred while the company is insolvent if: (i) the sole quotaholder is a legal person or the sole owner of another company; (ii) the capital has not been fully paid-in; or (iii) the required notice of single quotaholder status has not been given.⁴⁰⁹ Srls are no longer required to keep a quotaholders’ book. Managing directors are now required to file the list of quotaholders and changes in quotaholders with the Companies Registry in the local Chamber of Commerce.⁴¹⁰

A legislative decree enacted to implement EU Directive No. 2019/1151 permits that an Srl may be incorporated via an on-line appearance before a notary, rather than by an in-person appearance, if the Srl’s legal offices are in Italy and the capital contributions are only in cash and not a conferment of assets.⁴¹¹

Italian law also provides for a simplified form of the limited liability company for small businesses (*società responsabilità limitata semplificata*, simplified Srl).⁴¹² An eligible compa-

⁴⁰² CC, Arts. 2313–2324.

⁴⁰³ CC, Art. 2313.

⁴⁰⁴ CC, Art. 2313.

⁴⁰⁵ CC, Art. 2318.

⁴⁰⁶ CC, Art. 2314.

⁴⁰⁷ CC, Art. 2313.

⁴⁰⁸ CC, Arts. 2462–2497 *bis*.

⁴⁰⁹ CC, Art. 2497; D. Lgs. No. 88, March 3, 1993, implementing EC Directive 89/667.

⁴¹⁰ Law No. 2, Jan. 28, 2009, converting into permanent law, with amendments, DL No. 185, Nov. 29, 2008.

⁴¹¹ D.Lgs. No. 183, 2021, Nov. 8, 2021, Art. 2.

⁴¹² CC Art. 2463-*bis*.

ny cannot have legal persons as members. Its minimum capital can be as low as 1 euro and the maximum capital permitted is 9,999.99 euros. Members' contributions to the capital of a simplified Srl may only take the form of cash contributions.

b. Corporation

A corporation (*società per azioni*, SpA), which formerly was required to have capital of at least 120,000 euros, may now have a minimum capital of 50,000 euros.⁴¹³ The capital must be fully subscribed,⁴¹⁴ and the liability of shareholders is limited to any amount outstanding on their subscriptions.⁴¹⁵ However, if there is only one shareholder at any time after incorporation, the liability of that shareholder for the obligations of the corporation incurred while the corporation is insolvent is unlimited.⁴¹⁶

c. Limited Partnership with Shares

The structure of a limited partnership with shares (*società in accomandita per azioni*)⁴¹⁷ is similar to that of a limited partnership, but, because its equity is divided into shares,⁴¹⁸ it is subject to much of Italy's corporate law.⁴¹⁹ The articles of incorporation must be in the form of a notarial deed, and the duties of corporate directors are imposed on the general partners. This form of partnership is seldom used.

A limited partnership with shares may adopt a single-tier or double-tier system of management and control in the same manner as an SpA.

4. Branches

By registering a branch office, a foreign company may operate in Italy without forming a separate business entity.⁴²⁰ Within 30 days of a branch being set up, the articles of incorporation and by-laws of the foreign company must be filed with the Companies Registry. Financial reporting and income tax requirements for a branch are generally the same as those for domestic companies, although intercompany transactions (between branch and head office) may be more carefully scrutinized.

Because of the similarity in operating conditions and the general desirability of insulating parent company operations from Italian jurisdiction, there are only a few cases in which the operation of a branch is likely to be preferable to the formation of a subsidiary. These are: (i) when profits from the subsidiary would be subject to the withholding tax on after-tax dividends remitted to the parent, since profits remitted from a branch to its home office are exempt; and (ii) if the foreign corporation desires to take immediate write-offs on expected operating losses from its Italian operations.

5. Joint Ventures

The closest Italian equivalent to a joint venture is an *as-sociazione in partecipazione*.⁴²¹ Because the organization of this type of venture actually entails the owner of an ongoing concern granting interests to outsiders, the venturers are not on an equal footing. The grantor of the interest continues to operate the concern and be fully responsible for its obligations, while the risk of outsiders is limited to the amount of consideration paid by them for the interest in the venture. However, the parties may contract for different allocations of duty and powers.

6. European Economic Interest Grouping

Italy introduced its version of the European Economic Interest Grouping (EEIG) in 1991 to meet the norms of the European Union (EU), which has provided for similar entities since 1985. An EEIG is a contractually created organization having a plurality of members, including individual persons, engaged in an economic activity. At least two members must reside in different EU Member States. An EEIG has independent legal capacity and, therefore, it can hold its own property and act independently. Its purpose is clearly one of mutual aid: an EEIG is not permitted to pursue a profit goal for itself, but only for its members. This goal is pursued by undertaking "auxiliary" economic activities in support of those of its members.

An EEIG is tax-neutral, not being subject to *imposta sul reddito delle persone fisiche* (IRPEF), *imposta sul reddito delle società* (IRES), or the regional tax on productive activities (*imposta regionale sulle attività produttive* or IRAP), in keeping with Article 40 of the EC regulations that created the EEIG. The members of an EEIG have unlimited liability (like partners in partnerships) for the obligations of the EEIG. The profits and losses are divided and directly attributed to the members on a *pro rata* basis.

7. Agencies and Distributorships

A foreign business entity that does not wish to commit itself to the establishment of a branch or subsidiary can, nevertheless, enter the Italian market by way of distributors or agents. Although the two relationships accomplish basically similar purposes, they entail substantially different tax and, to some extent, labor law consequences about which the foreign exporter needs to be well advised.

a. Distributorships

A distributorship is a purely contractual relationship between a foreign exporter and a wholly independent domestic individual or entity. The distributor purchases goods from the exporter and resells them at his/her own risk, except to the extent of any warranties by which the exporter may be bound. The distributor may be the sole distributor of an exporter's products in a given territory, or may distribute that exporter's products exclusively, or both. Because the exporter has no permanent establishment (PE) in Italy and the distributor makes the sales, the Italian income tax burden is borne by the distributor. No payments are due to a distributor on expiration of the contract.

⁴¹³ DL No. 91, June 24, 2014, as converted into permanent law by Law No. 116, Aug. 11, 2014, amending CC. Art. 2327.

⁴¹⁴ CC, Art. 2329(1).

⁴¹⁵ CC, Art. 2325.

⁴¹⁶ CC, Art. 2362.

⁴¹⁷ CC, Arts. 2452–2461.

⁴¹⁸ CC, Art. 2452.

⁴¹⁹ CC, Art. 2454.

⁴²⁰ CC, Art. 2508.

⁴²¹ CC, Arts. 2549–2554.

b. Agencies

The relationship between a foreign principal and an Italian agent can involve the potential exposure of the principal to Italian labor law if the agreement departs significantly from the usual terms of Italian agency agreements, and income tax can be levied on the principal for sales made through the agent. Although Italy has recognized in principle the Organisation for Economic Cooperation and Development (OECD) definition of a PE, an early administrative decision held that the existence in Italy of a general agent for the sale of a company's products was sufficient basis for the taxation of profits from Italian sales, even though the purchase orders were accepted by the foreign supplier outside Italy.⁴²² Because there is no statutory definition of a PE and the validity of the single holding on the issue is unclear, it is advisable to limit the contracting and acceptance powers of an agent as far as is practicable to ensure the foreign entity appears to be carrying on its activities in Italy from abroad. Tax treaty provisions frequently offer protection to a foreign principal.

In conformity with EC law, Italian agency law also: (i) automatically converts a fixed-term contract to a contract for an indefinite period if the parties perform beyond the termination date; (ii) recognizes the agent's right to a commission after termination of the contract if the agent's prior efforts lead to subsequent sales or agreements for the principal; and (iii) recognizes the agent's right to an indemnity for clientele development. The provisions limit the principal's ability to prevent the agent from competing after termination of the agency relationship.

Since an Italian agent is treated, for certain purposes, as analogous to an employee of his/her principal, regardless of the nationality of the principal, care must be taken to avoid clauses in the agency agreement that may, in the event of a dispute, lead to classification of an individual agent as an employee with the rights pertaining to an employee.⁴²³ Collective bargaining agreements negotiated by the agents' unions and principals' associations are binding on all agencies.

As a result of a proceeding by the EU Commission against Italy under the Treaty of Rome, substantial amendments⁴²⁴ were made to the Civil Code, the most important being:

- (i) Article 1742(2), which requires an agency agreement to be in writing. Each party has the right to obtain a signed document with the contents of the agreement from the other party;
- (ii) Articles 1746(1) and 1749(1), which provide that the parties must act dutifully and in good faith;
- (iii) Article 1748, which provides that, unless otherwise expressly agreed between the parties, an agent's right to a commission accrues on the sale and not on the collection of the price by the principal, unless the principal breaches its undertakings to the purchaser; and

(iv) Article 1751(1), which provides that an agent's right to a termination indemnity applies if: the agent has procured new customers for the principal or has developed the business with existing customers, and substantial advantage continues to accrue therefrom to the principal; and payment of the indemnity is fair, taking into account the commissions that the agent will lose in connection with such customers.

To meet the various Italian social security obligations to which they are subject, principals are permitted⁴²⁵ to contribute to the Welfare Fund for Commercial Agents (*Ente Nazionale Assistenza Agenti Rappresentanti di Commercio* or ENASARCO), the government agency that administers the social security plan for domestic agents. The principal and agent each must contribute an amount equal to a certain percentage of all commissions paid to the agent. The percentages are as follows: 8.5% from 2020 through to 2026, with minimum annual payments (as of January 1, 2026) of 515 euros each for a nonexclusive agent and 1,026 euros each for an exclusive agent up to annual ceilings of 30,478 euros and 45,717 euros each, respectively.⁴²⁶ The agent's portion of the contributions must be computed and withheld by the principal from all disbursements to the agent. In the case of an exclusive agent, the principal also must contribute to a severance indemnity fund an amount totaling 4% of the first 24,000 euros in yearly disbursements, 2% of yearly disbursements from 24,001 euros to 36,000 euros, and 1% of disbursements over 36,000 euros. In the case of a nonexclusive agent, the severance fund contribution is 4% of the first 12,000 euros in yearly disbursements, 2% 12,000.01 euros to 18,000 euros, and 1% of disbursements over 18,000 euros.

B. Joint Stock Corporations

1. Formation

a. Purpose Clause

One of the principal features of the governing document of any Italian company is the purpose clause, which sets out the nature of the business to be conducted by the company and the scope of its powers. In practice, the specific business tends to be defined quite narrowly and the powers given in broad general terms. By law, a corporation is entitled to undertake activities that are either necessary for, or ancillary to, the achievement of its main business purpose. Corporate acts outside the scope of the objectives and powers defined in the purpose clause, or implied by law, may be objected to by the shareholders and may entail directors' liability in the case of insolvency.

b. Corporate Name

An SpA may have any name that includes the designation "*Società per Azioni*" (SpA).⁴²⁷ However, a corporate name can be pre-empted by a previously registered name with which it might be confused. If two corporations with similar names op-

⁴²² Central Commission of Direct Taxation, Decision No. 7559, Nov. 28, 1949.

⁴²³ CC, Arts. 1742–1753.

⁴²⁴ D. Lgs. No. 65, Feb. 15, 1999.

⁴²⁵ DM No. 15030, Feb. 20, 1974, Art. 1.

⁴²⁶ Fondazione ENASARCO, Regolamento delle attività istituzionali, in force as of February 5, 2025.

⁴²⁷ CC, Art. 2326.

erate in the same general areas and markets, the later-registered name must be changed.⁴²⁸

c. Articles of Incorporation

The *statuto*, which contains the ongoing operative rules of a corporation, is attached to and forms part of the articles of incorporation.⁴²⁹ Although often translated as “by-laws,” this document is more formal than the U.S. concept of by-laws, as amendment of the *statuto* requires a special shareholders’ meeting and a higher percentage of shareholder votes than an amendment of the by-laws. To emphasize this important characteristic, the Italian term “*statuto*” will generally be used.

d. Capital Structure

Shares may now be in registered or bearer form, at the shareholder’s choice, except when otherwise provided by the *statuto* or special laws. Shares need not be issued, and other techniques for ownership and circulation may be employed. No-par shares may also be issued.

Traditionally, the Civil Code has allowed only: (i) common (ordinary) shares, each with one vote and having equal administrative and economic rights; (ii) preferred shares, with preferences as to dividends and on liquidation but with some limits on voting rights; (iii) workers’ shares; and (iv) savings shares or *azioni di risparmio*. The latter may be issued by corporations listed on an Italian stock exchange. This class of security was introduced to minimize the risks to small-scale investors. Savings shares have a dividend priority over common and preferred stock of 5% of their face value. Any additional dividends are allocated among all three classes so that the dividend on the savings shares is greater than that on the common stock by 2% of par value. The savings shares also have absolute priority over common and preferred stock as to the distribution of assets on liquidation. Savings shares carry no voting rights at shareholders’ meetings except as to issues affecting their interests. Holders of such shares may elect a common representative.⁴³⁰

Companies may also create other categories of shares, in terms of participation in profits and losses, as long as: (i) all shares in each category have the same rights; and (ii) no shareholder is excluded from participation in profits and losses. It is also possible to create shares that entitle the holder to participate only in the profits of a particular business of the company (“tracking shares”).

The *statuto* can also provide for shares that do not carry a right to vote, or that entitle the holder to vote only on specific matters or subject to special limits and conditions (although no shares carrying multiple rights can be issued). The value of such shares cannot exceed 50% of the registered capital.

A company may also issue “hybrid securities,” whose holders may be granted economic and/or administrative rights (for example, to appoint directors, and/or auditors), except for the right to vote at the shareholders’ meeting.

Stock in an SpA may be transferred by means of the entry of the name of the transferee in the stock register of the compa-

ny and on the certificate itself.⁴³¹ Stock also may be transferred by authenticated endorsement of the certificate.⁴³² The transfer of shares that are not issued can be effected simply by entering the name of the transferor and the transferee in the company’s stock register, without the need to endorse the shares by way of transfer. Transferors and transferees of stock that is not paid-up are jointly and severally liable for the amounts due for a period of three years after the transfer. Notaries, banks and stockbrokers must keep documentary evidence for a period of five years of cross-border stock transfers exceeding 12,500 euros for review by the tax administration.⁴³³

The *statuto* may forbid share transfers for five years after incorporation or the introduction of the relevant provision into the *statuto*.

Clauses requiring the approval of transfers by corporate bodies or other shareholders are invalid unless the *statuto* provides that the corporation or the shareholders are obliged to purchase the shares or to permit the selling shareholder to withdraw his/her capital.⁴³⁴

e. Incorporation Procedures

The incorporation of an SpA is effected by way of a declaration before a notary public. The incorporators must appear before the notary in person or be represented by specially constituted attorneys-in-fact. At incorporation, the entire authorized capital must have been subscribed and the notary must be given proof of deposit with a bank in Italy of 25% of that capital (100% in the case of a corporation with only one shareholder).⁴³⁵ These funds will be held without interest until the completion of the incorporation procedure, a period of about two months. If there is one shareholder, the entire capital must be paid in. Otherwise, the remainder must be paid in within 90 days.⁴³⁶

The notary public must register the SpA at the Registry Office within 20 days of its incorporation and pay the registry tax. The notary also must file the SpA’s articles of incorporation with the appropriate Companies Registry within 20 days of incorporation.

An SpA does not have legal personality until it is registered with the Companies Registry. Any activities undertaken in the name of the corporation before the date of registration are carried on at the personal risk of the actor. Any sale of securities before the date of registration is void.

f. Costs of Incorporation

A registry tax of 1% of subscribed capital is payable at the time of registration with the Registry Tax Office. There also are court costs, a government concessions tax, a notaries’ archives tax, a contribution to the notaries’ fund, and a notarial fee of between 1,500 euros and 4,500 euros for the incorporation of an SpA with a capital of 1 million euros or more. Although

⁴²⁸ CC, Arts. 2567 and 2564.

⁴²⁹ CC, Art. 2328.

⁴³⁰ CC, Art. 2417.

⁴³¹ CC, Art. 2022.

⁴³² CC, Art. 2023.

⁴³³ Law No. 169, March 11, 1985, Art. 1; DL No. 167, June 28, 1990, Art. 1, as amended by Law No. 413, Dec. 30, 1991, Art. 20.

⁴³⁴ CC, Art. 2355 *bis*.

⁴³⁵ CC, Art. 2329.

⁴³⁶ CC, Art. 2342(2), (4).

there are many variables, the estimated overall cost can easily amount to around 15,000 euros.

2. Operation

a. Amendment of Articles

Once an SpA has been incorporated, the articles of incorporation are its fundamental document. They may be amended only at an extraordinary shareholders' meeting (see e., below).

b. Increases and Reductions of Capital

Increases or reductions of capital, like other changes affecting capital, including the issuance of bonds, preferred stock or savings shares, must be approved at an extraordinary shareholders' meeting (see e., below). If the *statuto* so provides, bonds may also be issued by the board of directors.

c. Acquisition of Own Shares

A publicly traded SpA may acquire up to 20% of its own shares, including shares owned by controlled companies. There is no ownership limit for a privately held SpA. A shareholder's resolution is required for the purchase.⁴³⁷ The funds must be drawn from retained earnings, and the minimum legal reserve must be maintained. The acquired stock may not be voted, nor may the directors otherwise dispose of it.⁴³⁸ The restrictions do not apply in the case of a shareholders' resolution to purchase in order to redeem and cancel stock.

The Civil Code provides that a company that is directly or indirectly controlled by another company may not acquire stock of the controlling company unless the acquisition is authorized by a resolution approved at an extraordinary shareholders' meeting, the stock is paid for out of retained earnings, and a nondistributable fund equal to the carrying value of the shares of the controlled company as shown on the assets side of the balance sheet is created. In any event, the acquisition may not exceed 10% of the controlling company's stock, including the stock held by the controlling company and other companies controlled by it. The controlled company may not vote the acquired stock at shareholders' meetings.⁴³⁹

d. Corporate Officers

An Italian corporation has no corporate officers as the term is understood in the United States. The dual roles of chairman of the board and president/chief executive officer (CEO) do not exist. The *presidente* may perform both functions. Alternatively, the CEO may be a managing director (*amministratore delegato*) or the function may be shared between a managing director and the *presidente*. Both the long-term and the day-to-day management of an SpA are entrusted to the board of directors, whose role is much more direct than that of their U.S. counterparts. As noted, there is a *presidente* and, if permitted by the articles, the board of directors may elect a *vice presidente* and/or one or more managing directors, who may be given powers analogous to those of corporate officers.⁴⁴⁰ One or more directors may also be appointed "legal representatives" of

the corporation, a concept that allows broad authority to act and entails for the person concerned substantial civil and criminal liability. Together with the chairman, these directors have all the powers necessary to implement the corporate purpose. Limitations to the contrary imposed in the articles, or at the time of their election to office, generally are not effective against third parties. Directors can be employees of the corporation or outsiders, and may be foreigners.

e. Shareholders' Meetings

Meetings of the shareholders of an SpA are normally called by the board of directors (or the board of managers under the two-tier system)⁴⁴¹ and take place in the municipality in which the corporation has its registered office, unless otherwise provided for in the *statuto*.⁴⁴² Meetings also may be called by the board of statutory auditors if there are no directors remaining in office,⁴⁴³ or by a court on petition of 5% of the voting capital or such lesser amount as may be specified in the *statuto* if the directors fail to call a meeting after a request from the shareholders.⁴⁴⁴

Notice of a shareholders' meeting is given as provided for in the articles of incorporation and is required by law to be published in the Official Gazette,⁴⁴⁵ or in at least one daily newspaper specified in the *statuto* at least 15 days prior to the meeting. Simpler formalities are provided for companies that are not active in the risk capital market.

Unless the *statuto* provides otherwise, shareholders may be present at a meeting by electronic means and may vote in writing or via electronic means.⁴⁴⁶ Shareholders may execute voting proxies in favor of any person other than a director, auditor or employee of the SpA, or of a corporation controlled by it, unless the *statuto* provides differently. Proxies must be in writing, but need not otherwise be formalized. No person may be proxyholder for more than: 20 shareholders at any meeting; 50 shareholders, if the corporation has capital of not more than 5 million euros; 100, if the capital is over 5 million euros but not over 25 million euros; or more than 200, if the capital is more than 25 million euros.⁴⁴⁷

According to the Civil Code, ordinary meetings must be called at least once every year within the time fixed by the *statuto* and no more than 120 days after the end of the fiscal year. The *statuto* may provide for a longer period, not to exceed a total of 180 days, for corporations required to approve a consolidated balance sheet and when particular circumstances relating to the structure and purpose of the corporation so require. In such cases, the directors must specify the reasons for the delay in their management report.⁴⁴⁸

Extraordinary (or special) meetings consider extraordinary matters affecting the nature or capitalization of the company or its articles. The powers of the ordinary shareholders' meet-

⁴³⁷ CC, Art. 2357.

⁴³⁸ CC, Art. 2357-ter.

⁴³⁹ CC, Art. 2359 bis.

⁴⁴⁰ CC, Art. 2381.

⁴⁴¹ CC, Art. 2366(1).

⁴⁴² CC, Art. 2363.

⁴⁴³ CC, Art. 2386(5).

⁴⁴⁴ CC, Art. 2367(2).

⁴⁴⁵ CC, Art. 2366(2).

⁴⁴⁶ CC, Art. 2370.

⁴⁴⁷ CC, Art. 2372.

⁴⁴⁸ CC, Art. 2364(2).

ing depend on whether the two-tier system of management has been adopted, involving a board of overseers.

(1) Ordinary Meetings

A shareholder having a conflict of interest is now allowed to vote at an ordinary shareholders' meeting, but the resolution may be attacked if his/her vote is decisive and damages the corporation. The two-tier system also prohibits directors from voting on their own liability and members of the management board from voting on the naming, revocation or liability of the board of overseers.

The role of the ordinary shareholders' meeting varies depending on which of the three possible systems of management has been chosen, i.e., "traditional," one-tier or two-tier. The differences among these systems are dealt with at g., below. If the two-tier system applies, the board of directors is replaced by a board of management and a board of overseers.

Comment: Because the dual system gives the board of overseers powers that, under the other systems of management, would be given to the shareholders' meeting, for example, the naming and revocation of members of the board and approval of the balance sheet, it is necessary to examine what authority remains with the shareholders' meeting in such cases.

(a) Corporations Without a Board of Overseers

Ordinary meetings of the shareholders deal with the approval of the balance sheet, the election of directors and statutory auditors and, when so required, the party responsible for accounting controls, the liability of directors and auditors for any damage they may have caused the corporation, and other topics that fall within the jurisdiction of the shareholders' meeting, as well as authorizations that may be required by the *statuto* for actions to be undertaken by the directors. It also approves regulations governing the procedures of the shareholders' meeting.

A quorum is constituted at an ordinary meeting on first call by the holders of one-half of the voting stock issued.⁴⁴⁹ Resolutions must be passed by the holders of a majority of the voting stock represented at a meeting held on first call, unless the *statuto* requires a greater majority.⁴⁵⁰ If a quorum is not present, a second meeting must be called for another date, usually specified in the call for the first meeting. Any number of shares represented constitutes a quorum on second call.⁴⁵¹ For listed companies, the *statuto* may forego the provision of a second call, provided that on first call quorum is met with whatever number of shares is represented.⁴⁵²

The articles of some corporations require the affirmative vote of a majority of the voting capital to pass a resolution. However, the prevailing view is that such a provision is invalid as to ordinary meetings held on a second call.⁴⁵³ Special rules also may be included for the election of directors and statutory auditors.⁴⁵⁴ In this way, corporations having large numbers of shareholders may provide for elections by a plurality rather than the majority otherwise required for shareholder action.

(b) Corporations with a Board of Overseers

In the event that the dual system is chosen, the corporation must have a board of overseers (see g., below). This body undertakes part of the duties of the shareholders' meeting (such as approval of the annual balance sheet and the election of directors) in addition to all the oversight duties that were among the duties of the statutory auditors. The duties of the shareholders' meeting are thus reduced to the following: the appointment and removal of the board of overseers; resolutions with respect to the compensation of the board of overseers, unless already fixed by the *statuto*; and resolutions relating to the liability of the board of overseers, the distribution of profits and the appointment of the party to be charged with accounting oversight.⁴⁵⁵

(2) Special Meetings

A special shareholders' meeting resolves on amendments to the *statuto*, the choice, substitution and powers of the liquidators, and other topics expressly attributed to it bylaw,⁴⁵⁶ including the transfer of the legal headquarters abroad,⁴⁵⁷ the issue of preferred shares,⁴⁵⁸ and the transformation,⁴⁵⁹ merger⁴⁶⁰ and division⁴⁶¹ of the corporation.

The legislation also provides for the possibility of the *statuto* attributing to the directors the power to adopt a series of resolutions otherwise pertaining to the special shareholders' meeting, such as merger by incorporation of wholly-owned corporations, merger by incorporation of corporations that are at least 90% owned, the closing of branches, the indication of directors having powers of signature, the reduction of capital in the event of the withdrawal of a shareholder, amendments of the *statuto* to meet new normative provisions, the issuance of bonds, and the transfer of the corporate offices within the country. Amendments to the *statuto*, although resolved on by the administrative body, must in any event be recorded in the Companies Registry.

The affirmative vote of the holders of at least half of the voting capital is required to pass resolutions, unless a greater majority is required by the articles.⁴⁶² There are further provisions for the second or subsequent calls of the shareholders' meeting, which provide different rules depending on whether the corporation seeks capital in the market.⁴⁶³

f. Shareholders' Remedies

There is no provision in Italian law allowing a derivative lawsuit by a shareholder on behalf of an SpA. Nonetheless, several remedies are available that permit shareholders to challenge certain corporate actions:

(i) Shareholders can require a corporation to bring an action for damages against its directors for injury to the

⁴⁴⁹ CC, Art. 2368.

⁴⁵⁰ CC, Art. 2368(1).

⁴⁵¹ CC, Art. 2369(3).

⁴⁵² CC, Art. 2369 (1), (3) and (4).

⁴⁵³ CC, Art. 2369(3).

⁴⁵⁴ CC, Art. 2368(1).

⁴⁵⁵ CC, Art. 2364-bis.

⁴⁵⁶ CC, Art. 2365(1).

⁴⁵⁷ CC, Art. 2369(5).

⁴⁵⁸ CC, Art. 2369(5).

⁴⁵⁹ CC, Art. 2500-sexies.

⁴⁶⁰ CC, Art. 2502.

⁴⁶¹ CC, Art. 2506-ter.

⁴⁶² CC, Art. 2368(2).

⁴⁶³ CC, Art. 2369.

corporation resulting from the directors' fraud or negligence.⁴⁶⁴ Such a resolution may be passed only at an ordinary shareholders' meeting and may be withdrawn only if at least 80% of the holders of unredeemed common shares vote for withdrawal at a subsequent ordinary shareholders' meeting. In the case of corporations that seek risk capital in the market, the percentage required for withdrawal is 95%, or such other amount as may be specified in the *statuto*, to be established taking into account the percentage fixed for the exercise of the right of action discussed in (ii), below.⁴⁶⁵

(ii) Minority shareholders representing at least one-fifth of the corporate capital, or such other amount as may be specified in the *statuto*, but in any event no more than one-third in the case of unlisted corporations, or one-fortieth of the corporate capital registered in the Shareholders' Register for at least six months (for corporations that seek risk capital on the market),⁴⁶⁶ may undertake the shareholders' action referred to above in (i) through a common representative.

(iii) A shareholder always has recourse to the appropriate court for personal losses resulting from the alleged fraud or negligence of the directors of a corporation.⁴⁶⁷

(iv) The court having jurisdiction over an SpA at its principal place of business may be petitioned to examine and annul resolutions alleged to violate law or the corporation's articles of incorporation. The petition must be filed within 90 days of passage of the resolution, and it must establish that the petitioner was either absent from the meeting or voted against the resolution.⁴⁶⁸ The action may be brought by shareholders who hold one-tenth of 1% of the capital in the case of listed companies, and 5% of the capital in the case of other companies. These limits may be reduced or removed by the *statuto*.⁴⁶⁹ Shareholders who do not own sufficient capital to act are limited to seeking reimbursement of damages caused by an illegal resolution.⁴⁷⁰ The burden of proof of ownership of the required amount rests on the shareholders. If this burden is not met, the shareholders can only obtain payment for damages, but cannot void the resolution.⁴⁷¹

In addition to the remedies discussed above, shareholders also have available to them the following instruments to use against corporate bodies for actions that they deem irregular, damaging to the corporation or to the individual shareholder, or simply undesirable:

(i) Any number of shareholders may complain to the company's board of statutory auditors concerning directors' actions deemed to be adverse to the corporation's interests. The board must then report the complaint at the next

ordinary shareholders' meeting. If 5% (2% in the case of corporations that seek risk capital in the market) of the shareholders join in the complaint, the board must investigate the directors' actions immediately and report any improprieties at the next ordinary shareholders' meeting.⁴⁷²

(ii) Shareholders representing not less than 10% (5% in the case of shareholders of corporations that seek risk capital in the market, unless the *statuto* provides for a lower threshold) of the corporate capital may allege a breach of corporate duty by an SpA's board of directors or board of statutory auditors and request a court investigation. Thereafter, the court may invalidate any improper actions, convene a shareholders' meeting to review its findings or, in serious cases, appoint a judicial administrator to replace the directors and auditors.⁴⁷³

(iii) In certain situations enumerated in the Civil Code, a dissenting shareholder has the right to withdraw from the corporation after the passage of a specified shareholders' resolution. The dissenting shareholder is entitled to receive fair compensation for the shares surrendered. Any corporate provision denying or in any way impairing this right is void.

g. Directors

(1) In General

A 2004 corporate governance reform made it possible to choose from three different systems of corporate management. This choice is made in the articles of incorporation. In the absence of any provision to the contrary, the provisions of the traditional system will be applied.⁴⁷⁴

(a) Traditional System

The "traditional" system was the only system in effect prior to January 1, 2004. It consists of an administrative body (single or collegial, the latter having the ability to delegate powers to an executive committee or to one or more of its own members), coupled with a board of statutory auditors that has a control function.

(b) Two-Tier System

The two-tier system is inspired by German practice. It consists of:⁴⁷⁵ (i) a board of management that has the duty of managing the company on its own responsibility, the duties, powers and responsibilities of the board of management being the same as those applicable to directors under the traditional system; (ii) a board of overseers, with functions of control and surveillance, the duties of which include naming and revoking the members of the board of management, approving the balance sheet, and filing claims against members of the board of management. (Such powers belong to the ordinary shareholders' meeting under the traditional system). With respect to the balance sheet, the *statuto* may provide that, if not approved by the board of overseers or, in any event, if so requested by one-

⁴⁶⁴ CC, Art. 2392.

⁴⁶⁵ CC, Art. 2393(4).

⁴⁶⁶ CC, Art. 2393 *bis*, (2), as amended by Law No. 262, Dec. 28, 2005, Art. 3, (1), (b).

⁴⁶⁷ CC, Art. 2395.

⁴⁶⁸ CC, Arts. 2377 and 2378.

⁴⁶⁹ CC, Art. 2377(3).

⁴⁷⁰ CC, Art. 2377(4).

⁴⁷¹ CC, Art. 2378(2).

⁴⁷² CC, Art. 2408.

⁴⁷³ CC, Art. 2409(4).

⁴⁷⁴ CC, Art. 2380(1).

⁴⁷⁵ CC, Arts. 2380(2) and 2409-*octies*.

third of the members of the board of management or the board of overseers, the approval of the balance sheet may be allocated to the shareholders' meeting.⁴⁷⁶ The functions, duties, powers and liabilities of the board of overseers are the same as those specified for the board of statutory auditors under the traditional system.⁴⁷⁷

(c) One-Tier System

The one-tier system follows the Anglo-Saxon method. Like the traditional system, it consists of a board of directors appointed by the shareholders. Oversight functions are undertaken by a committee for management control within the board of directors, or by directors who are not members of the executive committee and to whom neither specific powers nor particular tasks have been delegated. They must meet the requirements of independence provided for by the law for the board of statutory auditors.⁴⁷⁸ The rules relating to the functions, duties and powers of the directors follow the traditional model.⁴⁷⁹ The committee for control of management instead undertakes the functions and the essential duties of the board of statutory auditors under the traditional system.⁴⁸⁰

(2) Composition of the Board of Directors

The number of directors of an SpA is determined by its articles of incorporation. Corporations may have one or more directors, chosen by the shareholders' meeting (except for the first directors, who are identified in the articles of incorporation),⁴⁸¹ none of whom need be shareholders or Italian citizens. The directors must select their own chairman (*presidente*) unless the *statuto* provides for his/her appointment by the shareholders or for the appointment of a sole director. The chairman is always a legal representative of the SpA.

In the two-tier system, the board of management is composed of two or more members, who need not be shareholders or Italian citizens, appointed by the board of overseers.⁴⁸² In turn, the board of overseers is composed of members, who need not be shareholders or Italian citizens, chosen by the shareholders' meeting (except for the first overseers who are identified in the articles of incorporation) and, unless otherwise provided in the *statuto*, who may not be less than three in number.⁴⁸³

In the one-tier system, at least one-third of the board of directors must have the requisite independence established for members of the board of statutory auditors.⁴⁸⁴ Naming the members of the committee for the control of management is the duty of the board of directors, unless otherwise provided by the *statuto*; the number of members may not be less than three in corporations that seek risk capital on the market. In any event, at least one of the members of the committee for the control of management must be listed in the Register of Accounting Specialists.⁴⁸⁵

(3) Special Appointments

Under all three management systems, where this is permitted by the *statuto* and authorized by the shareholders, the board of directors may appoint one or more of its number to be managing director(s), may appoint one or more vice-chairperson, and may delegate its powers to an executive committee. The powers delegated to such individuals or such a committee must be specified in the appointment resolution. Their remuneration, if not determined by the shareholders' meeting, must be fixed by the board, after consultation with the board of statutory auditors.⁴⁸⁶

The board may choose to vest the "legal representation" of the company in one or more of the persons so designated.⁴⁸⁷ Thereafter, the legal representative and the chairman of the board will each have all the powers necessary for the attaining of corporate objectives. An abstract of the minutes of the board meeting at which such officers are elected must be filed with the Companies Registry to apprise third parties of their powers.

(4) Elections

In the case of the traditional and one-tier systems, the members of the board of directors are elected by the shareholders' meeting; in the two-tier system, the shareholders' meeting chooses only the members of the board of overseers, which in turn appoints the board of management. In any event, the first directors are identified in the articles of incorporation. Thereafter, directors are elected by the shareholders at ordinary shareholders' meetings.

A director's term of service cannot exceed three years, but absent a provision to the contrary in the *statuto*,⁴⁸⁸ a director may be re-elected.

Directors must file an acceptance of office within 30 days of being given notice of their election. Within the same time period, directors granted specific powers must file their signatures with the Companies Registry, indicating whether those directors having powers of signature are authorized to act singly or in concert.⁴⁸⁹

Directors do not have "apparent authority" to bind a corporation. Individual directors either act as legal representatives or based on specific delegations of power by the board.

(5) Resignations and Vacancies

Under all three management systems, a director or member of the board of management can resign by providing written notice to the board of directors and to the chairman of the board of statutory auditors. Resigning directors are not relieved of their responsibilities towards a corporation until they have been replaced.⁴⁹⁰ Notice of resignation must be filed with the Companies Registry within 30 days by the board of statutory auditors.⁴⁹¹

Under the traditional and single-tier systems, the following method applies with respect to vacancies:

⁴⁷⁶ CC, Art. 2409-terdecies.

⁴⁷⁷ CC, Art. 2409-quatordecies.

⁴⁷⁸ CC, Arts. 2380(2) and 2409-sexiesdecies.

⁴⁷⁹ CC, Art. 2409-noviesdeceis.

⁴⁸⁰ CC, Art. 2409-octiesdecies.

⁴⁸¹ CC, Arts. 2380 and 2383(1).

⁴⁸² CC, Art. 2409.

⁴⁸³ CC, Arts. 2409-duodecies and 2409-novies.

⁴⁸⁴ CC, Arts. 2409-septiesdecies and 2399.

⁴⁸⁵ CC, Art. 2409-octiesdecies.

⁴⁸⁶ CC, Art. 2389(1).

⁴⁸⁷ CC, Arts. 2381 and 2384.

⁴⁸⁸ CC, Art. 2383.

⁴⁸⁹ CC, Art. 2383.

⁴⁹⁰ CC, Art. 2385.

⁴⁹¹ CC, Art. 2385(3).

(i) A vacancy that occurs during the board's term of office is filled by the remaining directors choosing a replacement, provided the majority consists of directors chosen by the shareholders' meeting, who must be approved by the board of statutory auditors. A director elected in this way holds office until the next ordinary shareholders' meeting, at which time he/she can be confirmed or replaced.

(ii) If the majority of directors chosen by the shareholders' meeting have left office, the remaining directors must call a shareholders' meeting to elect directors to complete the terms of office of the original directors.⁴⁹² The *statuto* frequently provides that, in these circumstances, the terms of office of the remaining directors are also terminated.

(iii) Where all directorships become vacant at once, or the sole director vacates his or her post, the board of statutory auditors must call a shareholders' meeting and assume responsibility for ordinary management in the interim.

Under the two-tier system, if one or more members of the board of management should cease to hold office during a fiscal year, the board of overseers must provide for their substitution.⁴⁹³ As to members of the board of overseers, the shareholders' meeting is to act in the same manner.

(6) Duties

A director (or a member of the board of management in the two-tier system) bears a fiduciary's duty of care and loyalty to a corporation and its shareholders.⁴⁹⁴ In exercising his/her authority as a director of a corporation, each director must make the interests of the corporation paramount over his/her own. For this reason, the Civil Code provides that no director may be an unlimited partner, director, or general manager in a partnership in competition with the corporation of which he/she is a director, except with the approval of the shareholders, nor may a director directly compete with the corporation. Violation of this duty of loyalty may result in the director's dismissal and/or liability for damages resulting to the corporation.⁴⁹⁵

If there is a conflict of interest, the individual director must communicate to all the other directors and to the board of statutory auditors the interest that may be in conflict or in competition. A managing director has an obligation to abstain from undertaking an operation in relation to which a conflict of interest exists. The decision on such an operation must be taken by the board.⁴⁹⁶ In both cases, the decision taken must be adequately explained.⁴⁹⁷ The relevant resolution may be attacked where the above requirements have not been met, or if the resolution of the board or the executive committee was adopted with the decisive vote of the director involved and the resolution is either actually or potentially harmful to the corporation. The other directors and the board of statutory auditors can seek to annul the resolution within 90 days. Under the two-tier system, the mem-

bers of the board of overseers are similarly entitled to impugn a resolution of the management committee.⁴⁹⁸

In performing his/her duties on behalf of a corporation, each director must act with the diligence required by the nature of the task and his/her specific competence and is liable, jointly and severally with the other directors, to the corporation for damage deriving from the nonobservance of that duty of care.⁴⁹⁹ Further, directors also are liable on a joint basis if they fail to supervise the conduct of corporate affairs. A director who is otherwise without fault will not be liable for acts or omissions of the board if he/she has registered his/her dissent in the minute book of the board of directors and provides written notice accordingly to the chairman of the board of statutory auditors.

(7) Liability

The corporation or a specified minority of shareholder groups may sue the directors. Directors also may be liable to a corporation's creditors for nonobservance of their duties concerning the preservation of the corporation's assets.⁵⁰⁰ These provisions also apply to managing directors appointed by the shareholders or named in the articles of incorporation with respect to their enumerated duties.⁵⁰¹ In any event, suits based on employment with the corporation remain applicable.

(8) Compensation

Under the traditional and one-tier systems, the fees and/or share of profits to which the board of directors is entitled are fixed in the articles of incorporation or set by the shareholders. The fees may consist in whole or in part of a share of the profits or the granting of the right to subscribe to shares to be issued in the future at a predetermined price. The fees of directors holding particular offices, in accordance with the *statuto*, are established by the board of directors after consultation with the board of statutory auditors.⁵⁰²

Under the two-tier system, the fees of members of the board of overseers are fixed by the shareholders' meeting, unless these are already fixed by the *statuto*.⁵⁰³ The fees of members of the management committee are set by the board of overseers, unless the *statuto* reserves that right to the shareholders' meeting.⁵⁰⁴

(9) Dismissal

Under the traditional and one-tier systems, the appointment of any director may be revoked at any ordinary shareholders' meeting. However, absent just cause for such dismissal, an action for damages may be brought against the corporation by the director dismissed.⁵⁰⁵ Under the two-tier system, the appointment of members of the board of overseers may be revoked by the shareholders' meeting at any time, by a resolution adopted with a majority representing at least one-fifth of the

⁴⁹² CC, Art. 2386(2).

⁴⁹³ CC, Art. 2409-*noniesnonies*.

⁴⁹⁴ CC, Art. 2392.

⁴⁹⁵ CC, Art. 2390.

⁴⁹⁶ CC, Art. 2391(1).

⁴⁹⁷ CC, Art. 2391(2).

⁴⁹⁸ CC, Art. 2409-*undecies*.

⁴⁹⁹ CC, Arts. 2392(2) and 2393.

⁵⁰⁰ CC, Art. 2394.

⁵⁰¹ CC, Art. 2396.

⁵⁰² CC, Art. 2389.

⁵⁰³ CC, Art. 2364-*bis*.

⁵⁰⁴ CC, Art. 2409-*terdecies*.

⁵⁰⁵ CC, Art. 2383.

corporate capital, even if the members were named in the articles of incorporation, without prejudice to their right to damages if the revocation is without just cause.⁵⁰⁶

The appointment of members of the management committee may be revoked by the board of overseers at any time, even if the members were named in the articles of incorporation, without prejudice to their right to damages if the revocation is without just cause.⁵⁰⁷

h. Directors' Meetings

A corporation's articles of incorporation will normally establish the minimum number of directors' meetings required per year and the notice to be provided to board members. Under all three management systems, a majority of the directors, or any greater quorum established in the articles of incorporation, must be present (the *statuto* may provide that a director is "present" via means of telecommunications) at a board meeting for binding resolutions to be passed.⁵⁰⁸ Resolutions are passed by an absolute majority of the directors present, unless otherwise provided in the articles.⁵⁰⁹ All resolutions of the board of directors must be recorded in a minute book.

All members of the board of directors (or management committee under the two-tier system) must be provided with adequate notice of board meetings. The directors must be personally present (unless the *statuto* allows for presence via telecommunications) to vote on resolutions offered at duly convened meetings; neither directors' proxy voting,⁵¹⁰ nor alternate or deputy directors are permitted. Frequently, the *statuto* stipulates that, in the case of deadlock, the chairman of the board of directors is to have a casting vote.

i. Board of Statutory Auditors

The board of statutory auditors (*Collegio Sindacale*) represents a concept unknown in U.S. corporate practice — that of an internal auditing panel with direct responsibility to the shareholders and oversight powers as to management. The board of statutory auditors is a feature of only the traditional system; under the one- and two-tier systems, its role is assumed by, respectively, the board of overseers (which differs from the traditional board of statutory auditors in that it has certain powers belonging to the shareholders' meeting under the traditional system),⁵¹¹ and the committee of control over management (which differs from the traditional board of statutory auditors inasmuch as it is an internal body within the board of directors).⁵¹² The principal function of the board of statutory auditors is that of examining the legality and correctness of the management of an SpA. While the board has no direct control over the policy or administration of a corporation, it has a duty to prevent any violation of the corporation's articles of incorporation⁵¹³ and, where the directors are unable or unwilling to

perform certain functions (for example, convening mandatory shareholders' meetings), it must act in their stead.⁵¹⁴

It should be noted that, under the 2004 corporate governance reform, control over accounting is no longer the duty of the board of statutory auditors, but is now normally exercised by an external auditor, in the case of both listed and unlisted companies. Nevertheless, certain accessory functions of an accounting nature remain the responsibility of the board of statutory auditors, such as controlling the adequacy of the accounting system, offering an opinion on the adoption of particular valuation criteria with respect to items on the balance sheet and drafting a report on the balance sheet. In addition, the board of statutory auditors is required to review and, in the case of corporations not listed on the stock exchange, to certify the annual corporate accounts provided to it by the board of directors. (For a discussion of the Civil Code requirement of an outside audit in the case of firms listed on the stock exchange, see l., below). Such certification must be accompanied by the board of statutory auditors' report containing an appraisal of the corporation's financial position and all relevant observations and criticisms as to the corporation's financial management.

In meeting these responsibilities, board members, both individually and collectively, have the authority to require the production of information or documentation from the board of directors as to general business or particular transactions. The result of such inquiries and inspections must be transcribed in a special auditors' minute book.⁵¹⁵

With regard to its more general oversight functions, the board is entitled to seek judicial voiding of any resolution improperly passed by the directors or shareholders. It also must petition the appropriate court for a reduction of corporate capital when losses have reduced corporate capital by more than one-third and no resolution to that effect has been voted by the shareholders.

In its reports to shareholders' meetings, the board of statutory auditors must make a note of all shareholder complaints that have been brought before it alleging violations by management of the corporation's articles of incorporation or best interests. On receiving a complaint brought by shareholders representing one-twentieth (one-fiftieth in the case of corporations that seek risk capital in the market) of the corporate capital, the board of statutory auditors must promptly investigate the alleged improprieties, and submit findings and recommendations to the shareholders if the complaint is supported by the facts.⁵¹⁶

An SpA may opt to appoint a sole statutory auditor where the charter does not require a board of statutory auditors. To exercise this option, a corporation must meet the requirements to file an abridged balance sheet (see k.(3), below) and the sole auditor must be registered in the role of Inspectors of Accounts.⁵¹⁷

(1) Composition of the Board

The board of statutory auditors has either three or five standing members, as determined in the articles of incorpora-

⁵⁰⁶ CC, Art. 2409-*duodecies*.

⁵⁰⁷ CC, Art. 2409-*nonies* (5).

⁵⁰⁸ CC, Art. 2388(1).

⁵⁰⁹ CC, Art. 2388(2).

⁵¹⁰ CC, Art. 2388(3).

⁵¹¹ CC, Art. 2409-*octies et seq.*

⁵¹² CC, Art. 2409-*sexiesdecies et seq.*

⁵¹³ CC, Art. 2403.

⁵¹⁴ CC, Art. 2406.

⁵¹⁵ CC, Art. 2403 *bis*.

⁵¹⁶ CC, Art. 2408.

⁵¹⁷ CC, Art. 2397, as amended by DL No. 5, Feb. 9, 2012, Art. 35 (1).

tion (in some cases by law), and two substitute auditors who can replace a standing auditor who ceases to hold office.⁵¹⁸ The chairman of the board of auditors is elected by the shareholders' meeting.⁵¹⁹ One active member and one substitute member of the board of statutory auditors must be registered in the role of inspectors of accounts (*revisori contabili*). The other members must be either lawyers, accountants, bookkeepers, labor consultants, or law or economics professors.⁵²⁰ This provision also applies to the board of overseers⁵²¹ and the members of the committee for the control of management,⁵²² which under the two-tier and one-tier systems, respectively, have the same functions as the board of statutory auditors. Auditors need not be shareholders.

The members of the board of statutory auditors, including the first group named in the articles of incorporation, are appointed for renewable terms of three years at ordinary shareholders' meetings.⁵²³ Statutory auditors hold office for three fiscal years. Their term expires on the date of the shareholders' meeting called for the approval of the balance sheet related to the third fiscal year of their term, at the moment at which the board is reconstituted.

In addition to the standard grounds for ineligibility for office (for example, insanity and bankruptcy), other grounds for ineligibility are: being related by blood or marriage up to the fourth degree, or married, to a director of the corporation; being the spouse or a relative up to the fourth degree of a director of a controlled corporation, a controlling corporation, or a corporation that is subject to common control due to a work relationship or a continuing relationship of consultancy or compensated work, or by any other relationship of an economic nature that compromises the auditor's independence; being an employee of the corporation or a subsidiary; or being suspended, at any time during the term of office, from the professional organization that was the auditor's credential for board membership. The *statuto* can specify other reasons for ineligibility or termination, as well as other reasons for incompatibility, and limits and criteria for the accumulation of appointments.⁵²⁴

(2) Compensation

The compensation of the board of auditors is established at the shareholders' meeting at the time of the auditors' appointment.⁵²⁵ Normally, compensation is determined by reference to a schedule created for that purpose by law, based on the corporation's capital plus reserves.

(3) Meetings

The board of statutory auditors must meet at least once every 90 days. Decisions must be approved by an absolute majority of those present at a meeting. The board of statutory auditors is duly constituted when a majority of the auditors is present. Members dissenting from any resolution may have

the grounds for their dissent recorded in the minutes of the meeting.⁵²⁶ Auditors must attend all directors' and shareholders' meetings and those of the executive committee, if such a committee exists. Failure to attend two meetings of the auditors, directors or shareholders in any fiscal year, without cause, will result in the forfeiture of an auditor's position.⁵²⁷

(4) Liability

Auditors share with directors liability for any injury to a corporation caused by any act or omission of the directors that could have been averted by the exercise of diligence.⁵²⁸ In the event of such injury to the corporation, shareholders representing 10% (5% in the case of corporations that seek risk capital on the market) of the corporate capital may resort to the appropriate court for a private hearing and investigation. If the complaint is found to be justified, the court may order any of an array of remedies, including the dismissal of the directors and auditors, and the appointment of a judicial administrator.⁵²⁹

j. Books and Records

A corporation must maintain a large number of mandatory records. In addition to a corporate journal and inventory book, a company is required to keep a stock register and a bond register (if the corporation has issued bonds), as well as minute books of all meetings of the board of directors or the board of management (under the two-tier system), the board of statutory auditors or the board of overseers or the committee for control of management (under, respectively, the two-tier and one-tier systems), the executive committee (if such a committee exists), the shareholders and the bondholders.⁵³⁰

The records must be kept in books the pages of which have been numbered consecutively in advance. Each book must be certified before it is put into use, and pages may not be destroyed or replaced. (See IV.G., below, for a discussion of the stamp tax applicable to legal documents.)

A corporation is also required to retain originals of all incoming letters, invoices and telegrams, and copies of all such outgoing documents for a period of 10 years.⁵³¹

These general corporate rules are supplemented by special requirements of the tax laws (for example, for a record of fixed assets and depreciation taken) and the labor laws (for example, for a payroll journal and a personnel register).

k. Financial Reporting

It is the board of directors' duty to prepare annual accounts for the corporation and submit them with a report to the corporation's statutory and external auditors, and to the shareholders. After examining these records, the auditors deliver their report to the shareholders at the annual meeting. The annual accounts must normally be approved at a shareholders' meeting within four months of the end of the corporation's fiscal year, although this time limit may be extended to six months.⁵³² Ap-

⁵¹⁸ CC, Art. 2397(1).

⁵¹⁹ CC, Art. 2398.

⁵²⁰ CC, Art. 2397(2); DM No. 320, Dec. 29, 2004.

⁵²¹ CC, Art. 2409-*duodecies* (4).

⁵²² CC, Art. 2409-*octiesdecies* (3).

⁵²³ CC, Art. 2400.

⁵²⁴ CC, Art. 2399(3).

⁵²⁵ CC, Art. 2402.

⁵²⁶ CC, Art. 2404.

⁵²⁷ CC, Art. 2405.

⁵²⁸ CC, Art. 2407(2).

⁵²⁹ CC, Art. 2409.

⁵³⁰ CC, Art. 2421.

⁵³¹ CC, Arts. 2214, 2220, and 2421.

⁵³² CC, Art. 2364(2).

proval of the accounts does not relieve the directors, who are responsible for their accuracy, of liability resulting from any breach of their duty in connection with the preparation of these documents.

The balance sheet of a corporation under the two-tier system is approved by the board of overseers rather than by the shareholders' meeting, although the *statuto* may provide that, if the balance sheet is not approved by the board of overseers, or if so required by at least one third of the members of the board of management or the board of overseers, the shareholders' meeting is competent to approve the balance sheet.⁵³³

The chief components of the annual accounts are the balance sheet, the profit and loss account, and the notes to the accounts. The law states that all records relating thereto must be retained for a period of 10 years from the date of the last entry.⁵³⁴ All records must be maintained in accordance with the rules of orderly accounting. There must be no blank spaces, interlinear entries or marginal notations. No erasures can be made. Any cancellations must be made in such a manner as to leave the canceled words legible.⁵³⁵

Within 30 days of their being approved, a copy of the annual accounts, the reports of the board of directors and the board of auditors, and a list of the shareholders, indicating the number of shares possessed by each shareholder and other rightholders, as well as the minutes of the meeting that approved them (the shareholders' meeting or the board of overseers under the two-tier system), must be filed with the Companies Registry,⁵³⁶ as well as with the National Commission for Companies and the Stock Exchange (CONSOB) if the corporation is listed on a stock exchange or otherwise subject to CONSOB requirements. The directors are subject to fines for failure to file or late filing.

Within the same period, a corporation also is required to file its income tax return, accompanied by the balance sheet and the profit and loss statement, the report of the directors, the report of the auditors, and the minutes of the meeting of the shareholders (or the board of overseers, under the two-tier system) that approved the balance sheet.⁵³⁷

(1) Annual Accounts

The annual accounts are drawn up by the board of directors and comprise a balance sheet (financial statement), profit and loss account, and notes to the accounts. These are reviewed by the board of statutory auditors and, except in the case of corporations that do not seek risk capital on the market and are not required to prepare a consolidated balance sheet, by an independent accounting firm. The annual report prepared by the board of directors must present a reliable, balanced, and exhaustive analysis of the corporation's business as well as a description of the main risks and uncertainties to which the corporation is exposed.⁵³⁸ The board of directors must submit its annual report to the auditors at least 30 days (45 days, if to an

independent auditing firm) before the annual meeting at which it is to be approved.

The auditors also report on the exact correlation between the amounts shown in the balance sheet and the amounts reflected in the corporation's books, on the prudential nature of the criteria used in drawing up the balance sheet, and on the periodic reviews of the corporation's records. The report concludes by making remarks and recommendations relating to the approval of the balance sheet. Where relevant, an independent auditing firm must certify the accounts, or justify its refusal to do so, in a written report to the shareholders.

The balance sheet and the reports of the directors and auditors must be kept available for shareholder inspection at the legal address of the corporation during the 15 days preceding the shareholders' meeting and until the balance sheet is approved.⁵³⁹ The approved balance sheet must be signed by the chair of the board of directors and by the auditors.

The Civil Code sections regarding the content of the balance sheet and valuation criteria were amended by Legislative Decree No. 127 of April 9, 1991, to comply with EC Directive 349/83. These items, as well as the layout of the balance sheet, are specified⁵⁴⁰ in the Code. Offsetting entries between assets and liabilities is forbidden. The criteria to be followed in valuing assets are set out in (b), below.

(a) Contents of the Balance Sheet

Legislation adopted in 1991 specified a precise format for balance sheets that must be used by all companies. For the items that must be indicated in the balance sheet, subject to the provisions of special laws concerning companies engaged in regulated activities (for example, banks and insurance companies), see the Worksheets.

(b) Criteria for the Valuation of Assets

The following criteria must be observed in valuing assets:⁵⁴¹

- (i) Fixed assets must be carried at purchase price or production cost. The purchase price includes incidental costs; production cost includes all direct, as well as financing, costs.
- (ii) The cost of tangible and intangible fixed assets having a limited economic life must be systematically amortized, taking account of their residual utility. Changes in amortization criteria and coefficients applied must be disclosed in the notes to the accounts.
- (iii) Fixed assets that, at the close of the fiscal year, have a permanently lower value than the value achieved by applying the criteria set out above in (i) and (ii) must be entered at that lower value. If the reason for the lower value ceases to apply, the lower value may no longer be used.

If shareholdings in controlled or affiliated companies are carried at a cost that is greater than the value derived using the net worth method, the reasons for so carrying these as-

⁵³³ CC, Art. 2409-terdecies.

⁵³⁴ CC, Art. 2220.

⁵³⁵ CC, Art. 2219.

⁵³⁶ CC, Art. 2435, as amended by D. Lgs. No. 127, April 9, 1991 and Law No. 310, Aug. 12, 1993.

⁵³⁷ CC, Art. 2423(3).

⁵³⁸ CC, Art. 2428(1).

⁵³⁹ CC, Art. 2429.

⁵⁴⁰ CC, Art. 2424, as amended by D. Lgs. No. 127, April 9, 1991; D. Lgs. No. 139, Aug. 18, 2015.

⁵⁴¹ CC, Arts. 2424–2426.

sets must be stated in the notes to the accounts. If the corporation is not required to prepare consolidated accounts, the shareholdings are carried at the value of the corresponding fraction of the net assets as shown in the last balance sheet of the enterprise in which the corporation has invested. The difference must be shown in the notes to the accounts.

(iv) Shareholdings in controlled or affiliated companies can be valued, as to either one or more of those enterprises, at an amount equal to the corresponding fraction of the net assets shown in the last balance sheet of the enterprise (less dividends) in which the shareholdings are held and after application of the adjustments required in drafting consolidated accounts.

When it is first entered, a shareholding may be shown using the net worth method or at cost. The difference between the fraction attributable to depreciable assets and the fraction attributable to goodwill must be amortized. If the net worth method is used, any capital gains later derived as a result of using this method must be placed in a nondistributable reserve.

(v) The cost of plant and equipment and expansion, and research and development (R&D) costs with an economic life longer than one fiscal year may be carried as assets, with the consent of the board of statutory auditors, and must be amortized over a five-year period. The 2026 Budget Law introduces hyper-amortization for qualifying new capital goods, acquired between January 1, 2026 and September 30, 2028, tax-deductible costs may be increased via hyper-amortization (up to 180% for investments up to 2.5 million euros). Such assets must be amortized over five years with the consent of the board of auditors.⁵⁴² Dividends may be distributed only if enough remains in the distributable reserves to cover costs that have not yet been depreciated.

(vi) Purchased goodwill may be carried as an asset, with the consent of the board of statutory auditors, if any, in an amount not exceeding the price paid, and written off within five years. However, a longer write-off period may be used, provided it does not exceed the period of use of the goodwill and is adequately explained in the notes to the accounts. Pursuant to the 2026 Budget Law, for specific entities (mainly banks and insurance companies), the 12.36% tax deduction quota for goodwill amortization and intangible assets linked to deferred tax assets (DTAs) that was scheduled for the 2027 fiscal year is suspended. This amount must now be recovered in two equal installments of 6.18% during the 2028 and 2029 fiscal years.⁵⁴³

(vii) Expenses related to a loan are carried as assets and depreciated over the duration of the loan.

(viii) Receivables are valued in accordance with their recovery value.

(ix) Assets and liabilities in foreign exchange, other than fixed assets, must be shown at the exchange rate for cash at the closing date of the fiscal year, and the profit or loss on exchange must be imputed to the profit and loss account, and any net profit must be placed in a special reserve not to be distributed until realized. Fixed assets in foreign exchange must be shown at the exchange rate at the time of their acquisition or, if lower, that on the date of closing of the fiscal year, if the reduction is considered permanent.

(x) Inventory, securities and investments that are not fixed assets are carried at a value not exceeding the lower of market value, purchase price, or production cost unless, in subsequent fiscal years, the reasons for the lower value cease to apply. Distribution costs cannot be costs of production.

(xi) The cost of fungible goods is calculated based on average weighted price, using a “first in first out” (FIFO) or “last in first out” (LIFO) method; if the value thus obtained differs appreciably from the actual costs at closing, the difference must be indicated, by category of goods, in the notes to the accounts.

(xii) Commissioned work in progress may be carried as assets, based on reasonably certain contract amounts.

(xiii) Industrial and commercial equipment, raw materials, reserves and consumables are carried as assets in a constant amount where: the items are constantly renewed; overall, the items are of scant importance in relation to the other assets; and there are no variations in the importance, amount and composition of the items.

(2) Profit and Loss Statement

For the composition of the profit and loss statement,⁵⁴⁴ see the Worksheets.

(3) Abridged Balance Sheet

Unlisted companies may draw up abridged balance sheets when, in their first year or for two succeeding years, they do not exceed two of the three following limits:

- (i) Balance sheet total: 4,4 million euros;
- (ii) Net turnover: 8,8 million euros; and
- (iii) Average number of employees during the financial year: 50.⁵⁴⁵

Corporations using abridged balance sheets must prepare an ordinary balance sheet if two of the above criteria are exceeded for two consecutive fiscal years.

For the items that must be included in an abridged balance sheet, see the Worksheets.

(4) Assets Destined for a Specific Transaction

In 2004, a new concept was introduced to extend the financing possibilities for SpAs beyond the traditional channels

⁵⁴² Law No. 199, Dec. 30, 2025, Art. 1 (427)–(436).

⁵⁴³ Law No. 199, Dec. 30, 2025, Art. 1 (77).

⁵⁴⁴ CC, Art. 2426.

⁵⁴⁵ CC, Art. 2435-bis, as amended by D. Lgs. No. 173, Nov. 3, 2008, Art. 1.

of shareholder finance, resort to credit, and associations in participation. Two separate fact situations are provided for: (i) the corporation may either assign one or more holdings exclusively to the execution of a transaction with a value not exceeding 10% of the net worth of the corporation and not involving a reserved activity under a special law; or (ii) the corporation may agree in the finance contract for a specific transaction that reimbursement of the loan will be covered by the revenue from the transaction itself (or part thereof). In both cases, there is a separation of assets.

The first case covers assets or security already in the hands of the corporation for the carrying out of a particular transaction. Such assets enjoy the benefit of limited liability for obligations contracted with respect to the specific transaction, unless different provision is made in the resolution creating it. Provision is made for issuing financial interests with a participation in the transaction. *Ad hoc* rules apply with respect to the transaction, as though the assets were a separate company, relating to the manner of constituting it, making public the information relating thereto, the rights of the corporation and its creditors, reporting, and other formalities.⁵⁴⁶

1. Audit Review

Accounting control and the audit review of the annual accounts of corporations listed on the stock exchange are entrusted to outside auditors.⁵⁴⁷ These firms are required to certify balance sheets and profit and loss statements, and in general, to perform the functions of the independent auditing firms long familiar in Anglo-American corporate practice. The board of statutory auditors performs a limited internal control function.

The duties of the party charged with auditing are essentially those of verifying that the corporate accounts are properly kept, examining the management items found therein, confirming that the balance sheet reflects the accounts, and providing an opinion on the balance sheet, including the consolidated balance sheet, to be deposited at the offices of the corporation. For this purpose, independent auditors have the legal right to obtain from corporate directors documents and information required for their audits. They may carry out inspections and controls, informing the board of statutory auditors of any facts that they consider prejudicial to the corporation, and thereby assisting the board in fulfilling its legal duties.

(1) Unlisted Corporations

As of January 1, 2004, accounting review is no longer the task of the board of statutory auditors, but must be entrusted to an external auditor, which was formerly a requirement only for listed companies. There are special rules for unlisted corporations, including the option of choosing an individual and not necessarily an auditing firm as the party responsible for the review. The assignment lasts for three fiscal years, until the shareholders' meeting to approve the balance sheet for the third year and, unlike in the case of listed companies, is not renewable. The appointment may be revoked only for just cause, at the recommendation of the company's management body.⁵⁴⁸

⁵⁴⁶ CC, Art. 2447-bis.

⁵⁴⁷ D. Lgs. No. 39 of Jan. 27, 2010.

⁵⁴⁸ D. Lgs. No. 39, Jan. 27, 2010, Art. 13(3).

Another difference with respect to listed companies is that CONSOB has no powers of appointment. An unlisted corporation may be exempted from the requirement of external review if it does not seek risk capital on the market and is required to draft a consolidated balance sheet. Such a corporation may provide in its *statuto* for the accounting review to be entrusted to a board of statutory auditors, all members having qualified as accountants (*revisori contabili*) in the Registry kept by the Ministry of Justice. Unlisted companies that are under the one or two-tier systems cannot enjoy this exception for the simple reason that, under these systems, the board of statutory auditors does not have an independent nature.

(2) Public Corporations

The shareholders of a listed corporation select the independent auditing firm. If the shareholders fail to make such a designation, the firm is appointed by CONSOB. The appointment is effective for three fiscal years and may be renewed twice. Thereafter, the same firm may not be named for a five-year period. The relationship may be severed for "just cause," which automatically triggers an investigation.

Auditors' fees may be determined by the shareholders, subject to CONSOB approval.

The directors of a corporation are charged with submitting accounts to the independent auditors before the annual general meeting. The accounts must be certified by the auditors if they are found to present, according to generally accepted accounting principles, an accurate reflection of the corporation's financial situation. A refusal to certify the accounts must be supported by a report specifically outlining the auditing firm's objections.

The independent auditors must maintain a book at the corporation headquarters setting out their certifications, opinions and determinations.

The law establishes time limits for the certification of the balance sheet and its issuance, filing and publication. A certified balance sheet may, nonetheless, be challenged by shareholders representing at least 5% of the corporate capital. The balance sheet also may be attacked by CONSOB within six months of the registration of the resolution approving it. CONSOB supervision and external audit extend to banking institutions, large financial companies, and public agencies, as well as to listed companies.

m. Dividends and Other Distributions

The distribution of corporate profits is effected by the payment of dividends to the shareholders of the corporation. Following the approval of the annual accounts at their general meeting, the shareholders resolve on the manner and extent of the distribution of a corporation's profits. Under the two-tier system, the decision as to the distribution of profits is the task of the shareholders' meeting, even if the balance sheet has been approved by the board of overseers. For dividends to be declared, the approved balance sheet must show profits actually realized.⁵⁴⁹ Dividends received in good faith by the shareholders, based on the figures shown in the approved balance sheet,

⁵⁴⁹ CC, Art. 2433(1) and (2).

may not be subsequently recovered should those figures later prove to have been incorrect or misleading.⁵⁵⁰

A corporation is not required to make a distribution of its profits and may elect instead to transfer such profits to statutory or other reserves. On the other hand, a corporation may distribute interim dividends between yearly general meetings by resolution of the board of directors as an advance against the amount to be distributed at the end of the fiscal year. Because no statute specifically authorizes the payment of interim dividends, problems occasionally arise; however, many listed companies have established a practice of declaring interim dividends.

n. Reserves and Funds

In a rather outdated effort to ensure, on behalf of both creditors and shareholders, that a corporation's net resources remain equal to its capital, Italian law requires payment into a statutory reserve by every corporation of an amount equal to at least 1/20 of its annual profits until the reserve equals one-fifth of the corporation's stated capital.⁵⁵¹ Yearly transfers to the reserve must be resolved on by the shareholders at their general meeting. Should the reserve be reduced for any reason, subsequent profits must be applied to replenish it.⁵⁵²

Paid-in surplus received by a corporation as a result of the issue of shares at more than par value may not be distributed until the legal reserve fund has reached the required one-fifth of capital.

The Civil Code requires a severance compensation reserve as an accounting provision for the termination of employment relationships. However, such reserves are unfunded.

In addition to the statutory reserves, a corporation may, through its articles of incorporation, authorize reserves that are subject to distribution on a subsequent resolution of the shareholders.

o. Securitization

One of the enduring problems of Italian commercial law has been the high cost and inflexibility of the classic means by which a debtor grants a security interest in his/her property, i.e., a mortgage on real property. Faced with competition within the EU from those jurisdictions that had modernized their security instruments, the Italian legislature enacted a law to permit the transfer of debts into a specific security interest (*cartolarizzazione*) to facilitate certain transactions.⁵⁵³

Basically, under this system, existing and future financial obligations that can be identified in block are transferred to a "special purpose vehicle" (SPV) company that deals exclusively with securitization. The assets transferred are separate from both the transferor company and the SPV's assets and those assets involved in other securitization operations.⁵⁵⁴ Thus, monies paid by the assigned debtors will be used to satisfy the credit rights of the securities issued by the SPV. Essentially the same technique can be used for transfers to mutual funds that have as their purpose the purchase of accounts receivable.

p. Shareholders' Agreements

A set of rules for shareholders' agreements, applicable to both listed and unlisted companies⁵⁵⁵ (rules for such agreements had been created by the *Draghi* Decree for listed corporations), has been in effect since January 1, 2004. These agreements have as their purpose the stabilization of the ownership arrangements of a corporation or its governance and involve the exercise of voting rights. They place limits on the transfer of shareholdings and are entered into in order to exercise, jointly, a dominant influence.

Agreements may stipulate a fixed or indefinite term. Fixed agreements may not exceed a five-year term; if they are for a longer period, they are automatically reduced. If they are for an indefinite period, the contracting parties may withdraw with at least six months' prior notice.

Public notice requirements apply to agreements involving a corporation that seeks risk capital in the market. The corporation must be notified and such agreements must be openly declared in each shareholders' meeting. This open declaration must be noted in the minutes of the meeting, which are to be deposited in the Companies Registry. Failure to give such notice results in a freezing of the right to vote and eventually can lead to the impugning of the resolutions concerned.⁵⁵⁶

3. Liquidations

A corporation may be liquidated at the behest of its shareholders, expressed by resolution at an extraordinary meeting, or on the fulfillment of a stipulated legal or other event,⁵⁵⁷ ranging from the exhaustion or achievement of corporate objectives to bankruptcy. The *statuto* may in any event provide reasons for liquidation in addition to those provided by law.⁵⁵⁸

Except in cases where dissolution is the result of a shareholder mandate, the directors are required to determine without delay if a reason for liquidation has occurred and to present the declaration thereof to the Companies Registry for registration.⁵⁵⁹ In the event of delay on the part of the directors, the occurrence of the liquidation event can be ascertained by decree of the Tribunal, which is also to be presented to the Companies Registry, at the request of any shareholder, director, or statutory auditor.⁵⁶⁰ Dissolution marks the conclusion of a corporation's active business life, but its existence as a legal entity continues until the winding-up is completed. Following the passage of a shareholder resolution or a court order requiring liquidation, liquidators are appointed by the shareholders, or failing that, the court.

On appointment, the liquidators assume the directors' responsibility for the corporate assets, as well as the corporation's books and records. The shareholders' meeting or the decree of the Tribunal naming the liquidators fixes the criteria in accordance with which the liquidation is to take place and the powers of the liquidators, with particular reference to the transfer of the business or lines of business, or even the individual

⁵⁵⁰ CC, Art. 2433(4).

⁵⁵¹ CC, Art. 2430.

⁵⁵² CC, Art. 2430(2).

⁵⁵³ Law No. 130, April 30, 1999.

⁵⁵⁴ Law No. 130, April 30, 1999, Art. 3.

⁵⁵⁵ CC, Art. 2341 *bis* and 2341 *ter*.

⁵⁵⁶ CC, Art. 2341-*ter*.

⁵⁵⁷ CC, Art. 2484.

⁵⁵⁸ CC, Art. 2484(7).

⁵⁵⁹ CC, Art. 2484(1)-(7).

⁵⁶⁰ CC, Art. 2485.

assets or rights or groups of assets or rights. It also establishes the actions necessary to conserve the value of the enterprise, including the temporary conduct of its business or individual lines of business, all for the purpose of maximizing realization.⁵⁶¹ In all cases, the liquidators have the power to undertake all actions useful for the liquidation of the corporation.⁵⁶² The liquidators must prepare and submit a final balance sheet specifying the portion of the proceeds of the liquidation due to each shareholder. A report by the board of statutory auditors and the party charged with the accounting review must be attached to a signed copy of this final balance sheet and filed with the Companies Registry.⁵⁶³ If the liquidation takes more than one fiscal year, the liquidators must prepare a fiscal year balance sheet at the end of the fiscal year, in accordance with the norms relating to it.⁵⁶⁴

If no shareholder objects to the contents of the final balance sheet within 90 days of its filing in the Companies Registry, it is deemed to be approved and the liquidators may proceed to distribute the corporation's assets.⁵⁶⁵ In the event of a timely objection, the court will commence hearings on the plan of liquidation. All shareholder claims may be consolidated, at the court's discretion, in a single proceeding; the court's decision will, thereafter, be binding on the parties and all shareholders, whether or not represented at the hearing.⁵⁶⁶ Following the approval of the final balance sheet, the liquidators must petition the court for cancellation of the company's registration.⁵⁶⁷ In addition, the liquidators must deposit the corporate books with the court, where they will be available for inspection by interested parties, on payment of the usual fees, for a period of 10 years. With the cancellation of its registration, the legal personality of the corporation is surrendered.

Prior to the passage of Legislative Decree No. 192 of December 13, 2024, the tax regime for voluntary liquidations provided that income relating to the period between the beginning and the end of the liquidation was to be determined on the basis of the final financial statements. Furthermore, if the liquidation lasted beyond the first year, the income relating to the remaining portion of that year and each subsequent interim year was to be determined, on a provisional basis, on the basis of the respective financial statements. The tax so calculated would be paid and was subject to adjustment to be made on the basis of the final liquidation financial statements. Legislative Decree No. 192 changed this treatment. The law now provides that the taxes paid in the intermediate years, before final closure of the liquidation, are considered to have been paid outright, with no possibility of adjustment or refund.⁵⁶⁸

C. Public Companies

1. Mandatory Public Purchase Offers

The law commonly known as the "Draghi Decree" provides that anyone acquiring for consideration a shareholding in excess of 30% in a listed company must make a public offer to purchase all the remaining common stock at a price not lower than the average between the weighted market price over the last 12 months and any higher price agreed during that same period by the offeror for the purchase of the common shares.⁵⁶⁹ This law removed CONSOB's discretionary power to fix a threshold triggering the obligation to make a public offer to purchase. The law also requires a public offer to purchase the remaining shares whenever, as a result of a global takeover, a shareholder acquires a 95% ownership in a company listed in Italy, should such a request be made.⁵⁷⁰ In the event that a shareholder acquires more than a 90% ownership, the shareholder, on request, is required to make a public offer unless, within 90 days of the acquisition, sufficient shares are made available to ensure a proper course of buy and sell transactions.⁵⁷¹

CONSOB determines both the conduct of the offer and exempt situations.⁵⁷² Violation of its requirements will entail the suspension of voting rights attached to the entire shareholding and, within 12 months, the shares that exceed the percentages indicated will have to be sold.⁵⁷³

A public offer must also be made when the 30% and 90% levels indicated above are exceeded as a result of purchases made by several parties acting together.⁵⁷⁴

2. Conditional Offers

The *Draghi* Decree also governs the circumstances in which a nonobligatory public offer can be made.⁵⁷⁵ Such offers can be made if at least 60% of the common shares are tendered, subject to the condition that the offerors have not purchased more than 1% of the shares in the 12 months prior to the offer or during the offer, and that the offer will be valid only if it is accepted by shareholders owning a majority of the common shares not owned by the offeror, the shareholder holding the relative majority of the shares, the shareholder holding even only a relative majority if that shareholder's holdings exceed 10%, and those acting in concert with the shareholder.⁵⁷⁶

If, after a public offer, the purchaser owns more than 95% of such shares, the purchaser has the right to purchase the remaining shares at a price to be fixed by a court appointed expert.⁵⁷⁷

⁵⁶¹ CC, Art. 2487.

⁵⁶² CC, Art. 2489.

⁵⁶³ CC, Art. 2492(2).

⁵⁶⁴ CC, Art. 2490.

⁵⁶⁵ CC, Art. 2493(1).

⁵⁶⁶ CC, Art. 2492(4).

⁵⁶⁷ CC, Art. 2495(1).

⁵⁶⁸ D. Lgs. No. 192, Dec. 13, 2024, Art. 18.

⁵⁶⁹ D. Lgs. No. 58, Feb. 24, 1998, Art. 106(1), (2).

⁵⁷⁰ D. Lgs. No. 58, Feb. 24, 1998, Art. 108(1), as amended by D. Lgs. No. 146, Sept. 25, 2009, Art. 2(a).

⁵⁷¹ D. Lgs. No. 58, Feb. 24, 1998, Art. 108(2).

⁵⁷² D. Lgs. No. 58, Feb. 24, 1998, Art. 106(3), (4), (5).

⁵⁷³ D. Lgs. No. 58, Feb. 24, 1998, Art. 110.

⁵⁷⁴ D. Lgs. No. 58, Feb. 24, 1998, Art. 109.

⁵⁷⁵ D. Lgs. No. 58, Feb. 24, 1998, Art. 107, as amended by D. Lgs. No. 146, Sept. 25, 2009, Art. 2(3).

⁵⁷⁶ D. Lgs. No. 58, Feb. 24, 1998, Art. 107, as amended by D. Lgs. No. 146, Sept. 25, 2009, Art. 2(3).

⁵⁷⁷ D. Lgs. No. 58, Feb. 24, 1998, Art. 111.

3. Notification of Material Shareholdings

CONSOB must be notified of all shareholdings of 3% or more in a listed company. This percentage is increased to 5% if the shareholder is a listed company with shares in a company that is not listed.⁵⁷⁸ In the event of cross shareholdings, a company that subsequently exceeds this limit cannot exercise its right to vote the shares and must dispose of them within 12 months of the date on which it exceeds the limit.⁵⁷⁹

4. Notification of Shareholders' Agreements

Within five days of its execution, a shareholders' agreement must be notified to CONSOB. The agreement must also be published in summary form in the daily press and filed with the Companies Registry. Failure to comply with these requirements will cause the suspension of the right to vote referred to in the shareholders' agreement.⁵⁸⁰

Other agreements also subject to the above requirements are: agreements providing for the exercise of a right to vote in listed companies (and their controlling companies); "consultation agreements;" agreements limiting the transfer of shares or financial instruments carrying the right to purchase or to subscribe to the same, or that involve the purchase of shares or financial instruments or the joint exercise of a dominant influence over listed companies (or their controlling companies); and agreements that encourage or counter takeover bids or exchange tender offerings, including the commitment not to adhere to a takeover bid.⁵⁸¹

5. Broad Share Ownership

When the *Draghi* Decree was first enacted it also provided for the protection of minority interests by reducing the shareholding required for certain actions, which could be further reduced by the *statuto*. These protections have since been incorporated into the Civil Code. Thus, by way of example, to require the board of statutory auditors to investigate the actions of directors, only 2% of the shareholders need join in the complaint (rather than 5%, as in the case of unlisted companies); and to file a complaint with the Tribunal only 5% of the shareholders need participate (rather than 10%, as in the case of unlisted companies).⁵⁸²

Furthermore, the *statuto* must contain clauses ensuring that the minority shareholders can name a statutory auditor (or two statutory auditors if the audit panel has more than three members).⁵⁸³ Other provisions aimed at protecting the small investor require equal treatment among shareholders with respect to the purchase of treasury shares and shares of a parent company.⁵⁸⁴

6. Proxy Solicitation

Under the *Draghi* Decree, it is legal to solicit proxies,⁵⁸⁵ even if this is forbidden by the *statuto*. Proxies may be given only for shareholders' meetings already called.⁵⁸⁶

Solicitation can be undertaken by a "promoter."⁵⁸⁷ The promoter must supply a prospectus and proxy form, the contents of which are to be fixed by CONSOB.⁵⁸⁸

The proxy is exercised by the promoter, who may only delegate the exercise thereof to third parties if these are expressly provided for in the prospectus.⁵⁸⁹

A shareholder association may also gather proxies, provided the association has been created by notarized contract, does not engage in entrepreneurial activity and has at least 50 individual members, each being a shareholder holding no more than 0.1% of the voting capital.⁵⁹⁰

7. Board of Statutory Auditors of Listed Companies

The directors must advise the board of statutory auditors at least once every three months as to the business, financial and economic operations of the company and its controlled companies, with particular attention being given to operations that may involve conflicts of interest. The statutory auditors, or any one of the statutory auditors, may ask the directors for further information and may at any time inspect or review the business. (See also the discussion on the Board of Statutory Auditors (*Collegio Sindacale*) at B.2.i., above.)

If the statutory auditors find irregularities, they must:

- (i) Report the irregularities to the shareholders' meeting;
- (ii) Advise CONSOB;
- (iii) Provide the information to the outside auditors and develop proposals to resolve the problems with the firm;
- (iv) Call a meeting of the executive committee, the board of directors, or the shareholders and make proposals; or
- (v) Report the facts to the Tribunal.

8. External Auditor

Verification of the accounts and financial statements of listed companies is the exclusive duty of external accountants, who must be enrolled in a special register.⁵⁹¹ The auditors are required to report immediately to CONSOB and to the company's management body any matters that they believe merit criticism.

CONSOB is responsible for overseeing auditing firms that are registered as authorized to examine listed companies. An audit company has the duty to express in its report a "judgment" on the profit and loss statement and on the financial statement (consolidated where appropriate). The auditors must inform CONSOB if they express a negative opinion of the profit and loss and financial statements or if they find it impossible

⁵⁷⁸ D. Lgs. No. 58, Feb. 24, 1998, Art. 120(2), as amended by D. Lgs. No. 25, Feb. 15, 2016, Art. 1.

⁵⁷⁹ D. Lgs. No. 58, Feb. 24, 1998, Art. 121(1).

⁵⁸⁰ D. Lgs. No. 58, Feb. 24, 1998, Art. 122(1), (3), (4), as amended by D. Lgs. No. 146, Sept. 25, 2009, Art. 3(2)(a).

⁵⁸¹ D. Lgs. No. 58, Feb. 24, 1998, Art. 122(1), (5), as amended by D. Lgs. No. 229, Nov. 19, 2007, Art. 4.

⁵⁸² CC, Arts. 2408 and 2409.

⁵⁸³ D. Lgs. No. 58, Feb. 24, 1998, Art. 148(2).

⁵⁸⁴ D. Lgs. No. 58, Feb. 24, 1998, Art. 132(1).

⁵⁸⁵ D. Lgs. No. 58, Feb. 24, 1998, Art. 137(3).

⁵⁸⁶ D. Lgs. No. 58, Feb. 24, 1998, Art. 142(1).

⁵⁸⁷ D. Lgs. No. 58, Feb. 24, 1998, Art. 138.

⁵⁸⁸ D. Lgs. No. 58, Feb. 24, 1998, Art. 138(1).

⁵⁸⁹ D. Lgs. No. 58, Feb. 24, 1998, Art. 138.

⁵⁹⁰ D. Lgs. No. 58, Feb. 24, 1998, Art. 141.

⁵⁹¹ D. Lgs. No. 58, Feb. 24, 1998, Art. 155(2).

to express an opinion.⁵⁹² A shareholders' resolution approving the balance sheet can be attacked by shareholders representing at least 5% of the corporate capital contending that the balance sheet is not in conformity with the rules. The same number of shareholders may petition the court to assess whether the consolidated balance sheet has been properly prepared. The same initiatives may be undertaken by CONSOB within six months of the filing of the annual accounts in the Companies Registry.⁵⁹³

Additionally, it should be noted that in the event of a capital increase where existing shareholders are excluded or a limitation is placed on their right of first refusal, the outside auditing company is required to give its opinion as to the adequacy of the issue price. Likewise, in the event of a capital increase by way of a contribution in kind, the outside auditors must review the values established by the appraisers. However, in the event of a merger or a split-up, the auditors may prepare their report on the value of the shares on behalf of only one of the companies involved in the transaction.⁵⁹⁴

9. Audit Committee

With the enactment of Legislative Decree No. 39 of January 2010, implementing EC Directive 2006/43/EC on statutory Audits of Annual Accounts and Consolidated Accounts, among the changes introduced was the requirement that "public interest entities" (for example, listed companies, companies issuing publicly traded securities, insurance companies, banks and regulated market management companies) set up an audit committee responsible for the control of the financial information process, the effectiveness of internal control systems, internal audit and risk management, auditing of the annual accounts and consolidated accounts, and the independence of the external auditor or audit firm. To avoid additional corporate bodies having to be created, the functions of the audit committee may be carried out by the board of statutory auditors, the board of overseers, or the committee for management and control, depending on the type of management system adopted.⁵⁹⁵

10. Insider Trading

CONSOB has the power to investigate violations of the insider trading rules. CONSOB can request from a company any information and documents it deems necessary, and can also obtain access to the information of the tax authorities. At the end of such an investigation, the chairman of CONSOB submits a report to the public prosecutor.

D. Limited Liability Company

1. In General

The rules applying to limited liability companies (*società a responsabilità limitata* or Srls) through December 31, 2003, were very similar to those applying to SpAs, subject to a few exceptions, for example, with regard to the minimum corporate capital and the division of the capital into quotas (rather than shares). However, as of January 1, 2004, new provisions were

introduced to make the Srl an extremely flexible vehicle. Thus, many choices as to the management and organization of an Srl are left to its quotaholders. Under current law, an Srl is, therefore, closer to a partnership than to a corporation, even if its members, like those of an SpA, enjoy limited liability.

Furthermore, on January 24, 2012, entrepreneurs were given the opportunity to incorporate a *società semplificata a responsabilità limitata* (simplified Srl or Srls). Entrepreneurs⁵⁹⁶ may incorporate a simplified Srl with a minimum capital of 1 euro, but in any event less than the 10,000 euros required for a regular Srl. At the time of incorporation, the capital must be entirely paid in. To use this vehicle, the standard model charter, as developed by the Ministries of Justice, Economy and Finance and Development, must be adopted, and no revisions thereto are permitted. Incorporation is free of notarial fees and is only subject to a fixed registration tax of 200 euros and some other minor duties. Management of the company may only be carried out by the quotaholders. All the quotaholders must be physical persons and, as originally enacted, any transfers of quotas to individuals who were 35 years of age or older would be void.⁵⁹⁷

Subsequently, Article 44 of Decree Law No. 83 of June 22, 2012, created a *società a responsabilità limitata capitale ridotto* (an Srl with reduced capital, Srlcr). An Srlcr could also be constituted with a minimum capital of 1 euro, but in any event less than the 10,000 euros required for a regular Srl and was available to individuals regardless of age. At the time of incorporation the capital had to be entirely paid in. Decree Law No. 76 of June 28, 2013, removed the age requirement for the Simplified Srl and repealed the Srlcr. Any already incorporated Srlcr were reclassified as Simplified Srl.

2. Incorporation

a. Corporate Name

The company name must include the abbreviation "Srl."⁵⁹⁸

b. Articles of Incorporation — Main Differences from a Società per Azioni

Like an SpA, an Srl may be incorporated by contract or unilateral act before a notary public.⁵⁹⁹ It is not necessary to fix a duration for the life of an Srl. However, in the case of an Srl of indefinite duration, a time within which quotaholders may withdraw, which may not be more than one year from incorporation, can be provided. If the articles of incorporation do not indicate such a term, it will be 180 days.⁶⁰⁰

The *statuto* of an Srl differs from that of an SpA in some important respects, among which the following may be highlighted:

- (i) The capital is divided into quotas rather than shares, and the minimum capital may be between 1 euro and 10,000 euros. Special rules exist for the transfer of quotas (which by law are prohibited from being represented by certifi-

⁵⁹² D. Lgs. No. 58, Feb. 24, 1998, Art. 156(4).

⁵⁹³ D. Lgs. No. 58, Feb. 24, 1998, Art. 157(1), (2).

⁵⁹⁴ D. Lgs. No. 58, Feb. 24, 1998, Art. 158.

⁵⁹⁵ D. Lgs. No. 39, Jan. 27, 2010.

⁵⁹⁶ DL No. 1, Jan. 24, 2012, Art. 3.

⁵⁹⁷ The original legislation provided that entrepreneurs had to be under the age of 35. The age requirement was repealed by DL No. 76, June 28, 2013, Art. 19 (13), (c).

⁵⁹⁸ CC, Art. 2463(1), (2).

⁵⁹⁹ CC, Art. 2463.

⁶⁰⁰ CC, Art. 2473(2).

cates),⁶⁰¹ which are more complex than those provided for the transfer of the shares of an SpA.

(ii) The *statuto* may derogate from the general rule, which requires capital contributions to be made in money, by providing that contributions may be represented by an item or entity having an economic value, such as the performance of services, which is not permitted in the case of an SpA.⁶⁰² However, for an Srl with capital of less than 10,000 euros, all capital contributions must be in cash and completely paid-in.

(iii) Where the capital of an Srl is less than 10,000 euros, the amount that is set aside to form the company's legal reserve must be at least one-fifth of the profits as shown on the balance sheet until the reserve combined with the capital reaches 10,000 euros. This reserve can only be used for the allocation of capital and to cover any losses. It must be replenished if it is reduced for any reason.⁶⁰³

(iv) Except for certain powers exercisable by the quotaholders (see below), the distribution of powers between directors and quotaholders is left to the *statuto*, permitting quotaholders to organize the management of the company in a much more flexible way than in the case of an SpA.⁶⁰⁴

(v) Given the more flexible structure of an Srl, the rules concerning an SpA's single and two-tier systems do not apply.

(vi) An Srl, like an SpA, can issue bonds, if the *statuto* expressly authorizes it to do so.⁶⁰⁵

c. Conditions for Incorporation

Provisions similar to those applying to an SpA apply to an Srl, including the obligation to deposit 25% of the subscribed capital in a bank account in Italy⁶⁰⁶ (100% in the case of incorporation by way of a unilateral act or contributions in kind). In those cases where the capital is less than 10,000 euros, it must be fully paid into the management body at the time of incorporation.⁶⁰⁷

3. Capital Structure

a. Liability

The liability of the quotaholders for corporate obligations is limited to their subscriptions. A quotaholder who is the sole quotaholder on the insolvency of an Srl has unlimited liability if the corporate capital has not been entirely paid in at the time of incorporation (unless payment is substituted for by an insurance policy or a bank guarantee)⁶⁰⁸ or the contribution still due is not paid to the Srl within 90 days from the date on which the Srl becomes a company with a sole quotaholder.⁶⁰⁹ The sole

quotaholder is also liable without limit when the information about the sole quotaholder required by law⁶¹⁰ is not found at the Companies Registry.

Any contract between the Srl and the sole quotaholder is effective against creditors of the Srl only if it is registered in the directors' minute book or it has a fixed date.⁶¹¹

b. Contributions

Unless otherwise provided in the *statuto*, capital contributions must be made in money. In any case, the value of contributions cannot be lower than the overall stated amount of the corporate capital.⁶¹²

An insurance policy or a bank guarantee serves as a guarantee for the obligations of the quotaholders having as their object the performance of services. An insurance policy or a bank guarantee, with characteristics to be indicated in a future ministerial decree, may also substitute for contributions in money in an equal amount. The quotaholder may at any time substitute the insurance policy by paying the corresponding amount in money.⁶¹³

c. Quotaholders' Loans

An Srl may borrow from its quotaholders. However, payment of other creditors of the company is privileged by law. Any sum repaid to the quotaholders is subject to revocation if it occurs in the year preceding the declaration of the bankruptcy of the Srl.⁶¹⁴

d. Quotas

The corporate capital of an Srl is expressed as quotas rather than shares. Quotas cannot be the object of a solicited investment.⁶¹⁵

The rights of the quotaholders are proportional to their percentage of quotas. However, the *statuto* may provide that the value of the quotas need not be proportional to the contributions.⁶¹⁶ It may also provide that a quotaholder is granted special rights, for example, options or pre-emptive rights to appoint a director.⁶¹⁷

e. Quota Transfers

Quotas can be freely transferred inter vivos and by inheritance, unless otherwise provided by the *statuto*. If the *statuto* provides that quotas are not transferable or that their transfer is subject to the approval of a corporate body, another quotaholder or a third party, or is subject to conditions preventing the transfer of quotas at death, the quotaholder and his/her successors are granted the right to withdraw from the company. In such cases, the *statuto* can establish that withdrawal can take

⁶⁰¹ CC, Art. 2468.

⁶⁰² CC, Art. 2464(2)–(3).

⁶⁰³ CC, Art. 2463(5).

⁶⁰⁴ CC, Art. 2463(3).

⁶⁰⁵ CC, Art. 2483.

⁶⁰⁶ CC, Art. 2464(4).

⁶⁰⁷ CC, Art. 2464(4), as amended by Art. 9 (15-bis) and (15-ter) of DL No. 76 of June 18, 2013.

⁶⁰⁸ CC, Art. 2464(6).

⁶⁰⁹ CC, Art. 2464(7).

⁶¹⁰ CC, Art. 2462.

⁶¹¹ CC, Art. 2478(3).

⁶¹² CC, Art. 2464(1), (2).

⁶¹³ CC, Art. 2464 (6).

⁶¹⁴ CC, Art. 2467.

⁶¹⁵ CC, Art. 2468(1); Draghi Decree, Art. 94, as amended by D. Lgs. No. 51, March 28, 2007.

⁶¹⁶ CC, Art. 2468(2).

⁶¹⁷ CC, Art. 2468(3) and (4).

place only after a period of up to two years, either from the date of incorporation or the purchase of the quotas.⁶¹⁸

A transfer of quotas is effective for an Srl from the time it is filed by a notary public at the local Companies Registry. The filing must be made within 30 days of the transfer or a fine ranging from 206 euros to 2,065 euros will be levied, the tax exemption for the transaction will be lost, and a payment of 95 euros in stamp tax and other fees will also be levied by the Companies Registry.⁶¹⁹

4. Corporate Governance

a. Relationship Between Quotaholders and Directors

As noted at 1., above, the *statuto* may freely determine the powers exercisable by the directors and the quotaholders, respectively.⁶²⁰ The distribution of powers and functions among the various corporate bodies can therefore, unlike in the case of an SpA, be molded by the quotaholders, depending on the needs of the company, but is subject to some limits.

Certain powers are mandatorily reserved to the quotaholders and cannot be entrusted to directors, for example: approval of the balance sheet and the distribution of profits; the appointment of directors (if provided for in the *statuto*) and the statutory auditors, or, alternatively, the external auditor; the amendment of the articles of incorporation; and the amendment of the corporate purpose or the rights of quotaholders.

Other powers may be freely allocated between the directors and the quotaholders. It is possible to entrust to the directors any matter not subject to the competence of the quotaholders or even to provide that any resolution concerning the company's management is entrusted to the quotaholders, de facto assimilating the position of the quotaholders to that of the directors, as in a partnership.

b. Directors

Unless otherwise provided in the *statuto*, directors must be quotaholders and must be appointed by a quotaholders' resolution.⁶²¹ Should more than one director be appointed, the directors form a board, even if the *statuto* provides that the directors are severally or jointly entitled to manage the company. This means that the quotaholders may appoint, as an alternative to a sole director or a board of directors, two or more directors endowed with powers expressly provided for in the appointment to be exercised jointly or severally, as in a partnership.⁶²² When two or more directors are appointed, resolutions dealing with certain matters, such as the approval of the balance sheet and projects for mergers and the increase of capital, may only be approved by the board of directors.⁶²³

Norms similar to those applying in the case of an SpA apply as to the duty of care and the liability of directors of an Srl.⁶²⁴ On the other hand, there are differences between an Srl and an SpA in relation to legal actions against directors for

damages; for example, a single quotaholder of an Srl may bring an action, irrespective of the value of his/her quota.⁶²⁵

c. Quotaholders' Meetings

There is flexibility as to the manner of appointment in directors' resolutions. The *statuto* may provide that resolutions of the quotaholders are approved informally outside of any quotaholders' meeting. However, written evidence of such resolutions must be provided.⁶²⁶ This procedure does not apply to a resolution amending the *statuto*, the corporate purpose or the rights of the quotaholders, which requires a duly called quotaholders' meeting. The same procedure applies when any director or quotaholders representing at least one-third of the company's corporate capital formally request the quotaholders' meeting to vote on matters covered in Articles 2479 *bis* of the Civil Code.⁶²⁷

It is worth mentioning that, irrespective of the value of his/her capital, any quotaholder who is not a director of the company may request an audit of both the company's management and the relevant books and records, with the aid of professionals (i.e., lawyers, accountants).⁶²⁸ This right seems to apply to quotaholders even if the company has a board of statutory auditors or an external auditor.

d. Board of Statutory Auditors and External Audit

The appointment of a board of statutory auditors, or a sole statutory auditor, in an Srl is compulsory when:

- (i) The Srl must prepare consolidated accounts;
- (ii) The Srl controls a company that is subject to external audit; and
- (iii) Two out of the following three thresholds are met for at least two fiscal years:

- Assets on the balance sheet are more than 4,400,000 euros;
- Net turnover is more than 8,800,000 euros; and
- The average number of employees is more than 50.⁶²⁹

If the above conditions are not met, the Srl has the right, but not the obligation, to appoint a board of statutory auditors, sole statutory auditor, or an external auditor.

The requirement to appoint a board of statutory auditors or a sole auditor when an Srl's capital is at least equal to the minimum required for an SpA, was repealed by Article 20 of Decree Law No. 91 of June 24, 2014.

e. Simplified Balance Sheet

Article 14(9) of Law No. 183 of November 11, 2011, made it possible, as of January 1, 2012, for an Srl that is not required to have a board of statutory auditors, to prepare a "simplified balance sheet," which is based on the outline adopted by the Ministry of Economy and Finance

⁶¹⁸ CC, Art. 2469.

⁶¹⁹ CC, Arts. 2470 and 2630.

⁶²⁰ CC, Arts. 2479(1) and 2463(2) and No. 7.

⁶²¹ CC, Art. 2475(1).

⁶²² CC, Art. 2475(3) and (4).

⁶²³ CC, Art. 2475(5).

⁶²⁴ CC, Art. 2476(1).

⁶²⁵ CC, Art. 2476(3).

⁶²⁶ CC, Art. 2479(3).

⁶²⁷ CC, Art. 2479(4).

⁶²⁸ CC, Art. 2476(2).

⁶²⁹ CC, Arts. 2477 and 2435-*bis*.

E. Mergers and Spin-offs

1. In General

For many years, mergers were a source of almost automatic tax litigation due to the inadequacy of the Italian legislation. Italian courts and tax tribunals continued for many years to produce often conflicting decisions as a result of taking into account differing theoretical positions (for example, the realization of income on the transfer of assets in a merger). This state of affairs persisted until Legislative Decree No. 22 of January 16, 1991, which was required to implement EC Directive 78/855,⁶³⁰ settled most outstanding issues.

In corporate law terms, a merger can be effected by incorporating a new company to which assets are transferred (pure merger), or by having an existing company absorb one or more other companies. This “merger by incorporation” can be achieved by using a company that, at the beginning of the transaction, owns all, or only some, of the capital of the company that is to be merged into the surviving company.

In civil law terms, the companies involved must prepare a formalistic merger plan consisting essentially of their financial statements and a report explaining the financial and legal aspects of the plan and justifying the share or quota exchange ratio.⁶³¹ The report must be made available to the shareholders before the merger is submitted, including by posting on the Internet sites of the companies involved, to special shareholders’ meetings of each of the merging companies.⁶³² The merger resolution must be filed with the Companies Registry.

Italian tax law has established a basic rule of neutrality for mergers. A merger does not give rise to the realization of gains or losses by the merged companies, or the distribution of profits, despite increased or decreased values being included on the financial statement required by the Civil Code.⁶³³ Increased asset values actually reflected on the balance sheet of the surviving company/incorporator are not taken into account to the extent of the difference between the cost of the cancelled shares of the merged companies and the net worth of those companies.⁶³⁴ Failure to reconstitute reserves representing items the taxation of which has been suspended, leads to their being treated as taxable in the hands of the surviving corporation in the fiscal year after the merger.⁶³⁵ This provision does not apply to reserves that are only taxable on distribution, i.e., on a reduction of corporate capital or the liquidation of the corporation.⁶³⁶

Likewise, if there is a gain on the merger or an increase in capital that exceeds the total capital of all the companies involved in the merger, net of subsidiaries, the reserves created will only be taxed on distribution or a reduction of capital.

One of the old problems resolved by Legislative Decree No. 22 of January 16, 1991, was that of tax loss carryforwards. Under the current rules, the resulting corporation can set off the net losses of all other companies involved in the merger against its own income up to an amount that does not exceed their net worth (deemed to be net worth as reflected in the last financial statement or the position drafted for purposes of Article 2501-*quater* of the Civil Code). Net worth is calculated without taking into consideration any payments or contributions made in the 24 months prior to the date of the merger financial statement.⁶³⁷

A provision relating to merger after a purchase through borrowing, in effect as of January 1, 2004, eliminates doubts that existed, both in case law and in commentary, as to the legitimacy of leveraged buy-outs achieved through a merger.

In certain situations, the surviving company in a merger may opt to use the increased asset values that result from a merger by electing in its annual IRES return to pay substitute tax in lieu of IRES and IRAP at varying rates of 12%, 14% and 16%, depending on the assets values. The substitute tax is applied on the difference between the new stepped-up asset values and the former tax values of the assets.⁶³⁸ However, if the assets subject to the substitute tax are sold within a four-year period following payment, any gain realized will be subject to normal IRES taxation with a credit applied for the substitute tax paid.⁶³⁹

The 2021 Budget Law introduced a tax incentive to encourage combinations, covering mergers, split-offs or contributions of a business line carried out between January 1, 2021 and December 31, 2021. The 2022 budget law extended this incentive to June 30, 2022. Under the incentive, the resulting entity is entitled to convert deferred tax assets which relate to net operating loss carryforwards and excess ACE, into a tax credit.

To benefit from the incentive, the companies that participate in the operation:

- Must have been in operation for at least two years;
- Must not be part of the same group, have a control relationship of greater than 20%, or be under common control as defined in Article 2359 of the Italian Civil Code.

Companies that are in financial distress or are considered insolvent cannot use this incentive. The tax credit may be used to offset corporate income tax due (or any other type of tax liability) as follows:

- An amount equal to one-fourth of the tax credit may be used in the tax year in which the operation takes place; and
- The remaining three-fourths of the tax credit may be used in the following tax year.

The threshold of the deferred tax assets that can be converted into a tax credit is no longer applicable as the Budget Law 2026 has introduced a mandatory deferral of deferred tax asset (DTA) deductions. For the 2026 and 2027 tax periods, the deduction of components related to credit devaluations and

⁶³⁰The EU’s enactment of Directive 2011/35, which entered into force on July 1, 2011, abrogated Directive 78/855 and introduced new rules simplifying publicity requirements for mergers and promoting their dissemination through the internet. As of the time of writing, Italy has not yet implemented the directive.

⁶³¹CC, Art. 2501-*bis*, -*ter*, -*quater*, -*quinquies*, -*sexies*.

⁶³²CC, Art. 2501-*septies*.

⁶³³DPR Dec. 22, 1986, No. 917 (TU), Art. 172(1).

⁶³⁴TU, Art. 172(2).

⁶³⁵TU, Art. 172(5).

⁶³⁶TU, Art. 172(5).

⁶³⁷TU, Art. 172(7).

⁶³⁸Law No. 111, Aug. 9, 2023, Article 6. Italy has several systems to allow taxpayers to elect a stepped-up basis. The law has called for common step-up rules.

⁶³⁹TU, Art. 172 (10-*bis*).

goodwill — which previously generated convertible DTAs — is suspended and must be recovered in equal installments between 2028 and 2031.

To offset the impact of these assets, the 2026 Budget Law stipulates that companies (particularly in the financial sector) must recalculate their tax liabilities. The previous option to pay a 25% fee for immediate conversion has been replaced by a system where 2026 tax losses and ACE surpluses can only be utilized to offset up to 35% of the taxable income generated by these deferred deductions. Additionally, for the years 2026 to 2028, the IRAP rate for financial entities has been increased by 2 percentage points, further affecting the net valuation of these assets.⁶⁴⁰ To complement these legislative changes, Tax Agency Resolution No. 73 of December 29, 2025 provides essential guidelines regarding the transfer of tax credits arising from DTA conversions, ensuring that the recovery process aligns with the new restrictive framework. Specifically, it prohibits third-party buyers of tax credits from DTA conversions from offsetting tax liabilities, requiring mandatory, direct monetization (by receiving a refund). Furthermore, the resolution limits liquidity by banning subsequent transfers of these credits and mandating formalization via public deed.

Article 15 of Legislative Decree 192 of December 13, 2024, provides for deductibility of the losses of the merging companies when the merger occurs by absorption. The losses are to be deducted from the taxable income of the surviving company if the profit and loss statement for the tax year prior to the effective date of the merger shows gross receipts and other proceeds derived from the main business activity and the labor costs exceeded 40% of their average amount in the two preceding tax years. If these conditions are met, the maximum amount of loss that can generally be carried forward is limited to the certified economic value of net equity.

Legislative Decree No. 192 of December 13, 2024, mandates that tax loss carryforwards in mergers are limited to the net equity, which can now be determined via a certified economic value supported by a sworn appraisal, replacing the former accounting value. The reforms introduce an exemption for intra-group restructurings and update the step-up option to an 18% substitute tax rate, while maintaining the “vitality” test for loss usage.

2. Demergers by Spin-off

A corporate demerger by spin-off is an operation that allows the demerged company to assign part or all of its assets to one or more newly established or pre-existing beneficiary companies in exchange for the assignment of shares or units of the latter to the demerged company itself. In general, such a reorganization may qualify for tax-neutral treatment. Legislative Decree No. 192 of December 13, 2024, as supplemented by Article 6 of Legislative Decree 192 of December 18, 2025, amended TU, Article 173 confirming this neutrality, provided certain conditions are met, due to the particular characteristics of this new form of reorganization. These amendments provide:

- That the demerged company will assume, on the effective date of the demerger as set forth in Article 2506-*quater* of the Civil Code,⁶⁴¹ as the value of the equity

interests received, an amount equal to the difference between the value for tax purposes of the assets and the value of the liabilities being demerged, even if the interests do not constitute a business;⁶⁴²

- That the assets and liabilities subject to spin-off, including goodwill if the spin-off relates to a business, in the hands of the beneficiary companies will assume the value for tax purposes that the assets and liabilities have in the spun-off company on the effective date of the spin-off;

- That the assets and liabilities subject to the spin-off are also deemed to be owned by the beneficiary companies for the same period of ownership of the spin-off company; the period of ownership of the holdings received by the spin-off company is to be taken into account for the purpose of computing the period of ownership of the spin-off company.

Furthermore, where the demerger relates to:

- A business, the shares received by the demerged company will be deemed to be recorded as a fixed financial asset in the balance sheet;

- Shares received by the demerged company qualifying for exemption under TU Article 87 (participation exemption), the shares will carry with them the uninterrupted possession requirements of TU Article 87 as the shares attributed to the spun-off company;⁶⁴³

- Property, assets or liabilities that do not constitute companies or holdings and that at the time of transfer do not meet the requirements for the participation exemption under TU Article 87, these will be eligible for the participation exemption under Article 87 if and when the relevant requirements are met.

The netbook value of the assets and liabilities being demerged must be compared to the book equity of the demerged company as shown in the financial statements for the last fiscal year ended prior to the effective date of the demerger.⁶⁴⁴ After the demerger has taken place, the reserves recorded in the balance sheet of the last fiscal year of the demerged company that are closed before the effective date of the demerger will retain their original tax treatment and the equity of the spun-off companies, recognized at the time of their incorporation, will be subject to taxation as provided by TU Article 47.⁶⁴⁵

⁶⁴¹ Article 2506-*quater*, CN provides that a split-off has effect from the date of its final registration in the Companies Registry. A later date can be used when the split-off is accomplished through the incorporation of new companies. In certain cases, an earlier date can be used such as, for example, when the date the shares participate in the profits or the date in which company operations are charged to the company which resulted from the merger. See also CC Arts. 2501-*ter* and 2504-*bis*.

⁶⁴² CC, Art. 2605.1.

⁶⁴³ Article 87, TU provides that to qualify for the participation exemption share ownership must be uninterrupted from the first day of the twelfth month preceding the month of the transfer and that shares or units acquired most recently will be considered to have been transferred first.

⁶⁴⁴ TU, Art. 173(4).

⁶⁴⁵ TU, Art. 49(5) provides that amounts and assets received by shareholders of companies subject to corporate income tax because of distribution of reserves or other funds established with share or unit issue overpricing, with adjustment interest paid by subscribers of new shares or units, with payments made by shareholders on a non-refundable or capital account, and with tax-

⁶⁴⁰ Law No. 199, Dec. 30, 2025, Art. 1 (76)–(81).

This form of demerger, also known as a demerger by demerger split, can be used in the cross-border context as an alternative way to transform an Italian permanent establishment of a foreign company into a local subsidiary. Specifically, if the foreign company being spun off is in an EU or EEA country that has an information exchange agreement with Italy and the spin-off relates to its permanent establishment in Italy, which is being assigned to a newly established (or pre-existing) Italian resident company, the assignment to the spun-off company of shares to the beneficiary company will not give rise to taxation, regardless of whether the foreign spun-off company continues to maintain a permanent establishment in Italy whose assets include these shareholdings.

The new provisions apply to demergers through spin-off carried out as of the fiscal year in progress as of December 31, 2024, and may also apply to transactions carried out in the previous fiscal year, as long as the relevant tax returns are prepared in accordance with the new provisions.⁶⁴⁶

3. Contributions of Assets and Restructuring

Legislative Decree 192 of December 13, 2024, amended the Italian tax law to align it with the EU merger directive concerning intra-EU exchanges of shares.

Before this amendment, when an acquiring company from an EU country already held a controlling interest in the acquired company, the acquisition of additional shares could qualify for tax-neutral treatment, but only if the increase in the percentage of control occurred “by virtue of a legal obligation or a statutory constraint.” Legislative Decree 192 eliminated this condition to resolve the conflict between the Italian tax legislation and the provisions of the EU directive.

Accordingly, the tax-neutral regime applies not only to exchanges of shares as a result of which the acquiring company obtains the majority of the voting rights of the acquired company, but also to exchanges as a result of which the acquiring company increases its majority holding, regardless of the reasons for which the additional shares are exchanged.

The tax neutral regime also applies to domestic exchanges of shares by contribution. Moreover, Article 17 of Legislative Decree 192 also provides that the “controlled realization regime” applies to exchanges of shares by the contribution of shares in nonresident companies. To benefit from this regime, the non-Italian company whose shares are contributed must have an ordinary shareholders’ meeting and, in turn, the transferee company is required to either acquire control of the company or increase its existing controlling shareholding. Furthermore, the deductibility of the related capital loss, equal to the difference between the increases in the capital of the transferee company and the recognized tax cost of the contributed share, will be allowed. The goodwill value is included in the contribution and, accordingly, in the value of the shares received by the contributor.

These changes apply to reorganizations that are completed beginning as of December 31, 2024.

exempt currency revaluation balances do not constitute profits; however, the amounts or normal value of the assets received reduce the taxable cost of the shares or units held.

⁶⁴⁶ D. Lgs. No. 192, Dec. 13, 2024, Art. 16.

F. Corporate Groups

Provisions dealing with groups of corporations were introduced in the Civil Code, effective January 1, 2004. Among the more important aspects of these provisions is the fact that a controlling corporation may be held liable, vis-à-vis the shareholders or creditors of the controlled companies, for violations of the principles of correct corporate and entrepreneurial management.⁶⁴⁷ While the law does not identify these principles, they are generally held to be constituted by the ability of a company in the formulation of the group’s global strategy to find an equilibrium between its interests and those of each of its controlled companies. Any party that participated in an action that caused damage may be held jointly liable with the head company and, to the extent of any benefit obtained, with any person that thereby obtained a benefit. To succeed in an action for damages, shareholders and creditors that have suffered a prejudice must demonstrate that there was a prejudice to the income production of their holding and to the integrity of the corporate assets, and a failure to repay by the corporation that was subject to direction and coordination of another party. On the other hand, there is no liability if the prejudice to the shareholders and the creditors is part of the overall results of the corporation, or if the prejudice was totally eliminated by specific operations carried out to eliminate the prejudice.⁶⁴⁸

Specific disclosure requirements assure the transparency of the group. The directors of a company must disclose, in a special section of the Companies Registry created for this purpose, any party engaged in the direction or coordination of the group and those members of the group that are subject to such direction or coordination. The fact that a corporation is subject to the direction and coordination of another party must also be disclosed in the documents and correspondence of the company. Failure to satisfy these reporting requirements (or failure to report any changes thereto, should circumstances change) renders the directors liable for any damages incurred by shareholders or third parties resulting from their failing to have been informed of such facts. Controlled companies must also disclose a summary of the essential information from the last balance sheet of the corporation or entity that directs or coordinates their activities. Likewise, the directors must disclose in their report on management any relationships with parties exercising direction or coordination, and with other companies that are subject thereto, as well as the effect that such relationships have had on the corporate enterprise and its results.

Other important provisions relate to the requirements that there be an analytical explanation inclusive of the reasons and interests the evaluation of which affected decisions taken by the corporation subject to direction and coordination, when such decisions were influenced by these circumstances,⁶⁴⁹ as well as providing that the repayment of loans by a controlled company to the controlling company must be subordinated to the satisfaction of sums due to other creditors of the parent company.⁶⁵⁰

⁶⁴⁷ CC, Art. 2497.

⁶⁴⁸ CC, Art. 2497.

⁶⁴⁹ CC, Art. 2497-ter.

⁶⁵⁰ CC, Art. 2497-quinquies.

IV. Principal Taxes

A. Sources of Authority in Tax

1. Legislative

a. Consolidated Text

Italy's current tax legislation is the result of a comprehensive reform that came fully into effect in 1974. Prompted by the EC Directives on tax harmonization in force at the time,⁶⁵¹ Italy's Parliament delegated broad powers to the government to reform the tax law by issuing Decrees of the President of the Republic (DPRs), in accordance with the general principles laid down by Parliament. The key features of that reform included: the replacement of a plethora of national and local "direct" (income) tax measures by three nationally levied taxes imposed on most individuals and all companies — personal income tax (*imposta sul reddito delle persone fisiche* or IRPEF), corporate income tax (*imposta sul reddito delle persone giuridiche* or IRPEG), and local income tax (*imposta locale sui redditi* or ILOR) — and the abolition of a score of indirect taxes in favor of an EC-directed value added tax (VAT) (*imposta sul valore aggiunto* or IVA under its Italian acronym, hereafter referred to as "VAT"). Although, in 1971, Parliament authorized the government to prepare a series of Consolidated Texts (*Testi Unici*) intended to simplify the laws governing the various fields of taxation by inserting common definitions, cross-references, and unified choices of legislative language, only the text covering the two income taxes (personal and corporate) has been published; rather than a consolidation, it offers specific solutions to problems presented under former laws, i.e., the 1973 DPRs. This "Consolidated Text" became effective on January 1, 1988.⁶⁵²

In 1997, a sweeping reform of the Italian tax system was passed that included the repeal of ILOR and the introduction of a new regional tax levied on the net value of production arising from business activities in a region. This regional tax on productive activities (*imposta regionale sulle attività produttive* or IRAP) entered into effect on January 1, 1998.

In 2003, the government authorized the reform of the entire tax system within two years,⁶⁵³ coordinating it with the reform of corporate law,⁶⁵⁴ the adoption of new international accounting principles,⁶⁵⁵ and the reform of labor law.⁶⁵⁶ The government exercised its authority effective January 1, 2004, amending the Consolidated Tax Code (*Testo Unico* or TU)⁶⁵⁷ by means of Legislative Decree No. 344 of December 12, 2003. As a consequence of these amendments, as of January 1, 2004, the corporate income tax was renamed *imposta sul reddito delle società* (IRES) and the personal income tax *imposta sul reddito*

(IRE). However, IRE never came into effect and, subsequently, the 2007 Finance Act repealed it and reintroduced IRPEF.

In addition to the taxes referred to above, other significant taxes include stamp and registration taxes, inheritance and gift tax, and the municipal tax on property (*imposta comunale sugli immobili* or ICI).

b. Interpretation of Tax Laws

There is no specific set of rules for interpreting tax legislation. Generally, interpretation is to begin with the plain meaning of the words within the context of the lawmaker's intent.⁶⁵⁸ Thus, the legislative record of the Parliamentary discussions as well as professional and academic commentaries are important in assisting practitioners in understanding legislation. Ministerial decrees are another important instrument for understanding tax legislation, as well as a source of statutory law.⁶⁵⁹ Ministerial decrees, which cannot contain any provisions contrary to current laws, contain detailed explanations on the implementation of a law.

Practitioners also make recourse to case law, although the concept of *stare decisis* as understood in the common law system does not exist. Nevertheless, the tax authorities generally follow significant cases issued by the central tax commission. Cases decided by regional tax commissions are of lesser importance, but may be taken into account in instances of test cases brought with respect to new or amended legislation.

c. Legislative Process

(1) In General

The Italian Constitution provides that Parliament holds the legislative power and that all taxes must be based in law.⁶⁶⁰ However, Parliament can specifically delegate its legislative power to the government, as it did with the enactment of the Consolidated Text for income taxation.

(2) Annual Budget (*Legge di Stabilità*)

The government formulates and proposes the annual budget bill (*legge di stabilità*), which is to be presented to Parliament by October 15 of each year⁶⁶¹ and must be passed by both chambers.⁶⁶² As Italy is a member of the European Monetary Union, its annual stability law must also be approved by the European Commission. By April 15 of each year the budget must be presented to the European Commission and European Council for review and discussion of the proposed budget's keeping with European Union parameters. The mandatory changes that these bodies require are to be provided by the end of July so that these can be made before presentation to Parliament in October.

2. Judicial

The Constitutional Court created after World War II has exclusive jurisdiction in Constitutional matters. (See, general-

⁶⁵¹ Sixth Council Directive of May 17, 1977, on the Harmonization of Laws of the Member States Relating to Turnover Taxes, Common System of VAT: Uniform Basis of Assessment.

⁶⁵² DPR No. 917, Dec. 22, 1986.

⁶⁵³ Law No. 80, April 7, 2003.

⁶⁵⁴ D. Lgs. No. 6, Jan. 17, 2003.

⁶⁵⁵ Law No. 306, Oct. 31, 2003.

⁶⁵⁶ D. Lgs. No. 276, Sept. 10, 2003.

⁶⁵⁷ DPR No. 917, Dec. 22, 1986.

⁶⁵⁸ CC, Art. 12 of the sources of law (*preleggi*).

⁶⁵⁹ In the hierarchy of regulations, ministerial decrees are second to laws.

⁶⁶⁰ Cost., Art. 23.

⁶⁶¹ Law No. 163, Aug. 4, 2016.

⁶⁶² Cost., Art. 81; see also Cost., Art. 23.

ly, I.D.3., above). An individual raising a constitutional issue on a tax issue cannot do so with a direct appeal. An appeal to the Constitutional Court will only be heard if the court hearing the case refers the constitutional issue to the Constitutional Court.

The majority of tax disputes are settled through the administrative court system specifically created for such disputes.

3. Administrative

a. Interpretive Documentation

In addition to Ministerial Decrees, the tax administration issues various documentation to assist tax practitioners, local tax offices and taxpayers interpret the law. These are as follows:

- (i) Circulars (*Circolari*): Circulars are issued by the Ministry of Finance to the various tax offices and are not binding on taxpayers, but the tax authorities are required to apply them;
- (ii) Advance rulings (*Interpello*): A taxpayer may petition the national Tax Office (*Agenzia delle Entrate*), which is a unit of the Ministry of Economy and Finance, for an opinion as to a tax issue before the former enters into a transaction. An advance ruling is binding only on the taxpayer filing the petition; and
- (iii) Instructions (*Istruzioni*): Instructions are issued to provide direction as to the completion of tax forms.

b. Tax Commissions

Taxpayers who wish to challenge an adverse decision of the tax authorities can appeal to a tax commission (*commissioni tributarie*) or, as of 2012, in certain cases file a “complaint and mediation” application with the tax office that issued the decision. If the complaint and mediation process should fail, the taxpayer can then file an appeal.

The tax litigation system was significantly amended by two decrees issued at the end of 1992.⁶⁶³ The three-level system of commissions created by the 1972 reform was reduced to two by the abolition of the central tax commission, which previously had final appellate jurisdiction. In 2010, more changes were made to the tax litigation system to further simplify proceedings and reduce the number of cases within the system. Notice of tax commission decisions was simplified to allow for a speedier appeal from a tax commission decision. To clear the dockets, legislation was also passed in 2010 providing that all pending cases more than a decade old, in which the taxpayer has prevailed at the first two levels, were to be definitively settled. The process by which these were to be settled varied based on whether the litigants were currently before a tax commission or the Court of Cassation.⁶⁶⁴

A tax commission in each provincial capital acts as a court of first appeal from decisions or actions of the tax office. At the request of the taxpayer or on its own initiative, the provincial commission may employ conciliation to resolve a dispute.⁶⁶⁵ Conciliation allows the taxpayer and the tax office to come to

an agreement and have it formalized by the commission during *in camera* proceedings.⁶⁶⁶ Under conciliation, taxpayers are permitted to pay agreed amounts of 50,000 euros or less in installments of up to eight quarterly payments. Amounts in excess of 50,000 euros may be paid in up to 16 quarterly installments with the first payment to be made within 20 days from the date of the execution of the agreement.⁶⁶⁷ Failure to make the payments as agreed will result in the debt being registered in the tax rolls, with a revocation of the installment payment option and with the levy of a fine of 60% (the 30% fine for failure to pay taxes being doubled) on the remaining amount due.⁶⁶⁸ The tax so determined is final and conclusive. Opting for conciliation reduces the amount of any penalty due to 40% of the penalty assessed.⁶⁶⁹

As of April 1, 2012, taxpayers challenging assessments that do not exceed 20,000 euros cannot use conciliation or a direct appeal to the tax commissions to resolve the dispute, but must use a new procedure known as “complaint and mediation.” This procedure was enacted to induce taxpayers to settle with the tax authorities, thereby avoiding litigation and the clogging of the tax commission dockets with relatively small disputes. The taxpayer in its “complaint” proposes settlement terms to the tax authorities, which may then respond by accepting it, in whole or in part, or formulate their own counterproposal. If, within 90 days, the taxpayer does not receive notice of the acceptance of the proposal or a mediated settlement is not reached, then the “complaint” is treated as a tax appeal filed by the taxpayer with the Tax Commission.⁶⁷⁰

Regional commissions, located in each regional capital, review first-level decisions. A regional commission cannot adjudicate issues that were not raised at a lower level, nor can it allow the admission of new evidence, unless the taxpayer can show that the evidence could not have been presented before, or the judge finds that the decision cannot be rendered without it.⁶⁷¹

When the central tax commission was repealed, the taxpayer lost the choice between remaining within the administrative system or using the ordinary courts for additional appeals. An appeal from a decision of the regional commission will lie exclusively to the Supreme Court of Cassation,⁶⁷² which reviews only issues of jurisdiction, venue, violation or misapplication of law, prejudicial procedural errors, or decisions totally unsupported by facts.⁶⁷³

Appeals must be lodged within 60 days after notice is given to the taxpayer of an assessment, action, or decision.⁶⁷⁴ The

⁶⁶³ D. Lgs. No. 546, Art. 48(1), as amended by D. Lgs. No. 218, June 19, 1997.

⁶⁶⁶ D. Lgs. No. 546, Art. 48(5), as amended by D. Lgs. No. 218, June 19, 1997.

⁶⁶⁷ D. Lgs. No. 546, Dec. 31, 1993, Art. 48(3), as amended by Art. 3(1)(b), DL No. 40, March 25, 2010; D. Lgs. No. 311, Aug. 13, 2010, Art. 9(6); DL No. 98, July 6, 2010, Art. 19(a), (b), (c).

⁶⁶⁸ D. Lgs. No. 546, Dec. 31, 1993, Art. 48(3-bis), as amended by DL No. 98, July 6, 2010, Art. 19(c).

⁶⁶⁹ D. Lgs. No. 546, Art. 48(6), as amended by Law No. 220, Dec. 12, 2010.

⁶⁷⁰ Law No. 546, Dec. 12, 1992, Art. 17-bis (added by DL No. 98, July 6, 2011, Art. 39).

⁶⁷¹ D. Lgs. No. 546, Arts. 57–58.

⁶⁷² D. Lgs. No. 546, Art. 62.

⁶⁷³ CCP, Art. 360(1–5).

⁶⁷⁴ D. Lgs. No. 546, Art. 21; D.P.R. No. 115, May 30, 2002, Arts. 127–139.

⁶⁶³ D. Lgs. No. 545, Dec. 31, 1992; D. Lgs. No. 546, Dec. 31, 1992.

⁶⁶⁴ DL No. 40, March 2010, Art. 3.

taxpayer has a right to representation before the commissions and, if the taxpayer cannot afford to pay for such representation, free representation is provided.⁶⁷⁵ Nevertheless, the taxpayer may choose to forego assistance if the tax in dispute is less than 2,582.28 euros.⁶⁷⁶ Costs of the proceedings are borne by the losing party.⁶⁷⁷

c. Amnesty Provisions

The 2023 Budget Law introduced a series of measures to prevent and settle disputes between the Italian tax authorities and taxpayers.

(1) Automated Assessments

For the tax years 2019–2021, a taxpayer who received an automated assessment notice, for which the payment deadline had not expired at January 1, 2023, may resolve the issue by paying the additional tax due with a 3% fine and interest thereon in one installment or divide the payment into equal installments of up to 20 equal quarterly payments.⁶⁷⁸

(2) Correction of Formal Errors

Any taxpayer who made formal errors (not relevant in determining the taxable base for IRPEF, IRES, IRAP and IRAP purposes) in his or her returns may address such irregularities committed up to October 31, 2022 by paying 200 euros per tax period and correcting the error(s) in an amended tax return. Payment should be made in two installments due on March 31, 2023 and March 31, 2024.⁶⁷⁹

(3) Voluntary Correction Procedures

A taxpayer that has tax violations (such as failing to pay tax or taking improper deductions) in his or her return(s) and is not under audit may correct these return violations by paying reduced penalties equal to 1/18 of the statutory minimum, plus the additional tax due and interest thereon. Payment may be divided into eight equal quarterly installments, with the first being due by March 31, 2023, with interest equal to 2% per year accruing on the installments. This procedure is not available in the case of violations in the form of failure to disclose (financial) assets held outside of Italy by Italian residents.⁶⁸⁰

(4) Settlement of Tax Assessments

Tax assessments delivered or notified by March 31, 2023, as well as assessments that can still be challenged on January 1, 2023, can be settled by payment of reduced penalties ranging from 1/3 to 1/18 of the minimum required by the law. Payments can be divided into 20 equal quarterly installments. Annual interest will accrue on the installment payments.⁶⁸¹

(5) Settlement of Tax Litigation

A taxpayer may settle tax litigation pending before the tax courts on January 1, 2023, provided the process is completed by June 30, 2023. The amount the taxpayer must pay to settle the litigation will vary depending on the level of the court in which the litigation is pending.

Litigation pending before the court of first instance can be settled by paying 90% of the challenged taxes. A taxpayer may also settle the dispute by paying 40% of the challenged taxes if he or she obtained a favorable judgment from the court of first instance and the case is on appeal with the second-tier tax court. The amount payable is reduced to 15% if the taxpayer prevails before the second-tier tax court and the case is pending before the Supreme Court of Cassation. The amount payable is further reduced to 5% where litigation is pending before the Supreme Court of Cassation and the taxpayer has obtained favorable decisions from both the first-tier and second-tier tax courts. Payments should be made by June 30, 2023, and can be divided into equal quarterly installments (up to 20).⁶⁸²

d. Structural Reform of Accounting Error Corrections (Post-2025)

Legislative Decree No. 192 of December 18, 2025, established a new, permanent framework for the correction of accounting errors. This marks a shift from ‘settling’ past disputes to a system of strict retroactive accuracy. Beginning with tax year 2025, any material error under national (OIC 29) or international (IAS 8)⁶⁸³ accounting standards can no longer be corrected with an immediate tax effect in the year of discovery. Instead, taxpayers are required to file an amended tax return (*Dichiarazione Integrativa*) for the specific tax period in which the error occurred. Immaterial errors may still be corrected in the current year’s tax return, provided the taxpayer is subject to statutory audit and the correction is made by the time the financial statements for the following year are approved.⁶⁸⁴

4. Taxpayers’ Bill of Rights

In 2000, Law No. 212, a taxpayer bill of rights (*statuto dei diritti del contribuente*), was enacted to guarantee a citizen’s proper treatment by the tax administration, based on the principles of collaboration and good faith. This objective is to be realized, *inter alia*, by the following:

- (i) A duty of clarity and the non-retroactivity of tax laws;
- (ii) The right to ask the Tax Administration for a prior ruling in doubtful cases;
- (iii) A prohibition on the imposition of tax penalties if the violation concerned does not damage the Treasury (formal violations);
- (iv) A series of guarantees for taxpayers subjected to a tax audit (i.e., the right to be informed of the reasons for the audit; the right to be assisted by an audit professional; and

⁶⁷⁵ D. Lgs. No. 546, Arts. 12 and 13.

⁶⁷⁶ D. Lgs. No. 546, Art. 12(5) as amended by DL No. 437, Aug. 8, 1996 converted by Law No. 556, Oct. 24, 1996.

⁶⁷⁷ D. Lgs. No. 546, Art. 15.

⁶⁷⁸ Law No. 197, Dec. 29, 2022, Art. 1 (153).

⁶⁷⁹ Law No. 197, Dec. 29, 2022, Art. 1 (166)–(173).

⁶⁸⁰ Law No. 197, Dec. 29, 2022, Art. 1 (174)–(178).

⁶⁸¹ Law No. 197, Dec. 29, 2022, Art. 1 (179)–(185).

⁶⁸² Law No. 197, Dec. 29, 2022, Art. 1 (176)–(205).

⁶⁸³ Omissions or misstatements are material if they could reasonably be expected to influence the economic decisions that users make based on the financial statements.

⁶⁸⁴ D. Lgs. No. 192, Dec. 18, 2025, Art. 4 amending TU Art. 83.

a maximum audit duration of 30 days, to be extended in cases of necessity to no more than 60 days); and

(v) The appointment of a person to serve as guarantor of a taxpayer at every regional tax level, to protect a taxpayer in the event of illegal procedures during an audit and to control the application of the Taxpayers' Bill of Rights by the financial offices.

As part of this tax reform, Parliament also directed the Government to perform a review of the existing taxpayer's bill of rights. The review required the tax authority to substantiate the reasons for undertaking a tax audit, enhance the concept among taxpayers of the "legality of contributing" and provide taxpayers with greater legal certainty.⁶⁸⁵ Accordingly, on December 30, 2023, the Government enacted Legislative Decree No. 209, which strengthens the taxpayer's bill of rights by provide for greater clarity and legal certainty for taxpayers. Among its most important revisions are the following:

- (i) A prohibition on *bis in idem* in tax proceedings and the disclosure of taxpayer data;
- (ii) Codification of the principle that legal presumptions do not apply retroactively;
- (iii) The necessity of all measures adversely impacting a taxpayer being preceded by informed and effective adversarial proceedings, or being susceptible to annulment; and
- (iv) An extension of the 10-year obligation requiring taxpayers to retain tax documentation and accounting records; once this period has lapsed, the tax authorities are prohibited from further using the documentation for evidentiary purposes.

The reform also provides for tax reporting obligations to be simplified and for fees to be introduced for tax rulings.

In 2025, Article 13 of Legislative Decree No. 192 of December 18, 2025, introduced further refinements to ensure administrative efficiency and legal certainty, including:

- (i) Filing fees for tax rulings (*interpello*) in order to prevent the misuse of the ruling system with the specific amounts being determined by ministerial decree based on the taxpayer's annual turnover and the complexity of the request, intended so that large corporations may face significant fees for complex international rulings, while exemptions or reduced "social" fees are provided for low-income individuals and certified non-profit organizations to ensure access to legal clarity;
- (ii) Mandatory self-correction (*Autotutela Obbligatoria*) to create a stricter duty for the Tax Agency to annul its own assessments in cases of manifest material error, such as a mistake in the taxpayer's identity, mathematical calculation errors, or the assessment of a tax that has already been paid, which protection applies even if the assessment has become final or has not been challenged in court;
- (iii) Simplification of reporting obligations which prohibits the Tax Agency from requesting documents or information already in its possession or available through other

public databases, as part of a broader effort to reduce the administrative burden on compliant taxpayers;

(iv) Digital economy coordination to specifically supports the expanded 2025 Digital Services Tax (DST) framework Granting taxpayers a strengthened procedural right to seek binding rulings on new digital business models, ensuring legal certainty regarding taxability before entering or expanding within the Italian market.

B. Income Tax

The main provisions of Italian tax law, which are applicable to individuals, partnerships, and companies, and other private and public entities, unless otherwise specified, are governed by the Consolidated Tax Code (DPR No. 917 of December 22, 1986, *Testo Unico* or TU), as amended, most importantly in 2003.

Corporate income tax (*imposta sul reddito delle società* or IRES) is governed by Articles 72 through 161 of the TU.

Individuals are subject to personal income tax (*imposta sul reddito delle persone fisiche* or IRPEF).⁶⁸⁶ Self-employed individuals are also subject to the regional tax on productive activities (*imposta regionale sulle attività produttive* or IRAP). (For a discussion of IRAP, see IV.S., below.) Personal income tax is governed by Articles 1 to 71 of the Consolidated Tax Code (*Testo Unico*, DPR No. 917 of December 22, 1986 or TU). (For a discussion of personal income taxation of resident individuals, see IX., below.)

C. Tax on Financial Transactions (Tobin Tax)

1. In General

Article 1 (491)–(499) of Law No. 228 of December 24, 2012, introduced a tax on financial transactions (popularly known as the "Tobin Tax") within the Italian financial markets. When Italy enacted the Tobin Tax, it was part of a group of 11 EU countries contemplating enactment of such a tax; as of the time of writing, in addition to Italy, the following European countries have enacted the tax: Austria, Belgium, France, Germany, Greece, Portugal, Slovakia, Slovenia, and Spain.⁶⁸⁷

All transactions involving Italian shares or derivatives of companies that are resident in Italy with capital of more than 500 million euros as of November 30, 2012, are subject to this transfer tax, regardless of where the transaction is concluded, or the residence of the purchaser. The tax is levied on only those transactions that generated a profit at the end of the trading day with respect to the previous trading day, thereby excluding day-traders from the tax. It is not deductible for income tax purposes or IRAP. Failure to pay, or insufficient or late payment, is subject to a fine of 30% of the amount due.⁶⁸⁸

⁶⁸⁶ Law No. 80, April 7, 2003, enacted a reform of the national tax system pursuant to which *imposta sul reddito delle persone fisiche* (IRPEF) was renamed *imposta sul reddito* (IRE). However, the renamed tax never entered into force, and later it was repealed and IRPEF reinstated under Finance Act 2007.

⁶⁸⁷ Tobin Tax, Niovo Modello 2018. *Ecco quando si paga, aliquote, esenzioni*, D'andrea Anna Maria www.money.it/tobin-tax-2017, Dec. 18, 2017 (accessed May 5, 2018).

⁶⁸⁸ DM, Feb. 2, 2013, Art. 20.

⁶⁸⁵ Law No. 111, August 9, 2023, Art. 4.

All over-the-counter transactions of shares are subject to a 0.4% tax (previously 0.2%). For transactions on regulated markets, multilateral trading facilities, or through a broker, the rate is reduced to 0.2% (previously 0.1%).⁶⁸⁹

The tax applies to derivative transactions⁶⁹⁰ at a tax rate varying from 0.01875 euros to 200 euros, depending on the type of instrument and notional value of the transaction and, unlike the taxation of share transactions, which must only be paid by the transferee, the tax must be paid by both parties. If the transaction is carried out on a regulated market or multilateral trading facilities, the tax is reduced to 20% of the original notional amount.

To combat high-frequency trading (HFT) in shares and derivatives, the Tobin Tax specifically covers these transactions. A 0.04% tax (previously 0.02%) is levied on the gross amount of the cancelled or modified orders regardless of the residency of the issuing company.⁶⁹¹

High frequency trading is defined as those transactions:

- (i) For which trading is based on computer algorithms that automatically determine decisions regarding transmittal, amendment and cancellation of orders; and
- (ii) Which occur in intervals of not more than half a second.⁶⁹²

The tax is owed by the party placing the trades. It is calculated on a daily basis and will be due when, in a day of trading, the ratio between the total of cancelled orders and modified orders, and the total of issued orders and modified orders is greater than 60%.⁶⁹³

2. Exclusions

In addition to the capital requirement of 500 million euros, there are several types of transfers excluded from the Tobin Tax, the most important of which are:

- (i) Transfers made by gift or inheritance;
- (ii) New issues or cancellations of shares, financial instruments, or other securities;
- (iii) Stock lending or borrowing, or lending or borrowing of other financial instruments, repurchase or reverse purchase, or buy-sell back or sell-buy back transactions;
- (iv) Transactions with a controlled company; and
- (v) Transfers within the context of corporate reorganizations.⁶⁹⁴

Transactions with the EU institutions, the European Central Bank or the central bank of an EU member state or institutions established by international agreements to which Italy is a party are also exempt.⁶⁹⁵

D. Inheritance and Gift Tax

Inheritance and gift taxation was reinstated as of October 3, 2006.⁶⁹⁶ From October 25, 2001, to October 2, 2006, the inheritance tax had been repealed. The only requirement remaining was with respect to the inheritance of real property, which still required the filing of a return and payment of a 1% mortgage tax (or 200 euros if the real property qualified as a “first home”) and a 2% cadastral tax computed on cadastral value.

The gift tax was also repealed with respect to transfers within the fourth degree of kinship, subject to the exception described above. In all other cases, the ordinary rules for transfers for consideration remained applicable if the gift exceeded 180,760 euros. Each donee in the case of a lifetime gift had an exemption of 180,760 euros, increased to 1.5 million euros if the donee was a minor or a disabled individual.⁶⁹⁷

Presently, inheritance taxes are levied on the beneficiary, who is also liable for the decedent’s debts, up to his or her share of the inheritance, as shown below:

Beneficiary	Rate
Spouse or lineal descendants or ascendants in the first degree	4% on the amount that exceeds 1 million euros
Siblings	6% on the amount that exceeds 100,000 euros
Relatives up to the fourth degree and lineal and collateral relatives acquired through marriage up to the third degree	6%
Other beneficiaries	8%

If the beneficiary is disabled, the rates are levied on the amount of the inheritance that exceeds 1.5 million euros.

Gift taxes are levied on the donee as shown in the table below:

Donee	Rate
Spouse or lineal descendants or ascendants in the first degree	4% on the amount that exceeds 1 million euros
Siblings	6% on the amount that exceeds 100,000 euros
Relatives up to the fourth degree and lineal and collateral relatives acquired through marriage up to the third degree	6%
Other donees	8%

⁶⁸⁹ Law No. 199, Dec. 30, 2025, Art. 1 (29).

⁶⁹⁰ DL No. 69, June 21, 2013, amending Art. 1(497) of Law No. 228, Dec. 24, 2012.

⁶⁹¹ Law No. 199, Dec. 30, 2025, Art. 1 (30).

⁶⁹² Law No. 228, Dec. 24, 2012, Art. 1 (495).

⁶⁹³ Law No. 228, Art. 1 (495).

⁶⁹⁴ Law No. 228, Art. 1 (494).

⁶⁹⁵ Law No. 228, Art. 1 (494).

⁶⁹⁶ D. Lgs. No. 262 of Oct. 3, 2006, Art. 6.

⁶⁹⁷ Law No. 342, Nov. 21, 2000, Art. 69.

If the value of the decedent's assets exceeds 100,000 euros, or if real property or real property rights, regardless of the total value of all the assets, are among the decedent's property, an estate tax return (*Dichiarazione di succssione*) must be filed generally by no later than 12 months from the date of the decedent's death.

E. Value Added Tax

For a discussion of the Value Added Tax (VAT), see XI, below. See also the VAT Navigator.

F. Property Taxes

1. Municipal Tax

As part of the Save Italy legislation, the Municipal Tax (*Imposta Municipale Unica*, IMU) entered into effect on a trial basis on January 1, 2012, replacing the previous local property tax (ICI). However, the IMU tax base was broader than that of the ICI, as it included principal residences (which had been exempted from the ICI in 2008) and their appurtenances, rural buildings, and foreign real property owned by Italian residents. As of 2014, IMU is no longer due on principal residences, unless they are classified as luxury residences. For these residences, the tax is levied at 0.4% with a tax-exempt amount of 200 euros.⁶⁹⁸ As a result of the repeal of TASI (see F.3., below), the base rate for IMU is now 0.86%. Municipalities may choose to vary the rate so that the ordinary rate for IMU can range from 0.86% to 1.06%. Those municipalities that had implemented TASI may levy IMU up to a rate of 1.14%.

As part of the government's COVID-19 assistance, taxpayers owning buildings used in the entertainment and tourism accommodation sectors were exempt from paying the first IMU installment for the 2021 tax year, due in June.

2. Tax on Real Property Located Abroad

Initially part of IMU, foreign real property owned by Italian residents is now subject to a specific property tax known as the *imposta sul valore degli immobili situati all'estero* (tax on real property located abroad, IVIE). Through to December 31, 2023, the rate of taxation of foreign real property had a base rate of 0.76% levied on the value of the property as shown on the deed of sale, other title documents or, if the value cannot be ascertained from that documentation, market value. Beginning on January 1, 2024, the base rate has been increased to 1.06%.⁶⁹⁹ If the foreign real property is the taxpayer's principal residence, the tax rate is 0.4%. A foreign principal residence is also allowed a deduction of 200 euros and a 50 euros deduction, up to a maximum of 400 euros, for each dependent child residing in that residence under the age of 26.

The tax does not apply to a taxpayer's principal residence unless it is classified as a "luxury" property (in Italy these are cadastral categories A/1, A/8, or A/9). If the foreign real property is classified as a luxury principal residence, the tax rate will be 0.4%. A foreign luxury principal residence is also allowed a deduction of 200 euros and a 50 euros deduction, up to

a maximum of 400 euros, for each dependent child residing in that residence under the age of 26.

For property located in EU or EEA countries that guarantee adequate exchange of information, the property value to be used as the basis for IVIE will be the value of the property used as the basis for property taxation in that country. As of January 1, 2021, real estate located in the United Kingdom is no longer eligible for the cadastral value (Council Tax) basis and must be valued at its purchase cost or market value. A deduction is available to taxpayers up to the amount of property taxes paid in the country of situs.⁷⁰⁰

No IVIE will be due if the value of the property does not exceed 200 euros.⁷⁰¹

3. Other Property-Based Taxes on Services Provided

Through December 31, 2019, the other property-based taxes on services provided were (i) TASI (*tributo per servizi indivisibili*, tax on indivisible services); (ii) a tax on services provided by a municipality; and (iii) TARI (*tassa sui rifiuti*, garbage tax). These local taxes were enacted by the 2013 Stability Law.⁷⁰²

The Stability Law of 2016 exempted principal residences from TASI. The sum of IMU and TASI cannot exceed 10.3%.

The Stability Law of 2020 repealed TASI as of January 1, 2020. To make up for the loss in revenue, the rate of IMU was increased (see F.1.).

G. Stamp Tax

Generally, legal documents executed in Italy are subject to a stamp tax. On September 1, 2007, stamped taxed paper that was available for these purposes was abolished. Legal documents executed in Italy or abroad will therefore now have to be drafted on ordinary paper and a 16-euro stamp affixed to each document folio before use in Italy. Both paper and electronic invoices or documents that have a value that exceeds 77.47 euros, that are not subject to VAT (for example, the documents relating to services rendered to a party outside of Italy and the European Union) are subject to a stamp tax of 2 euros.

A government concessions tax on the numbering and stamping of pages in company registers and books (*imposta di bollo*) has been in effect since January 1, 1996.⁷⁰³ The tax is paid annually by March 16 (or the following day if March 16 falls on a Sunday) measured by reference to a corporation's capitalization. In the case of corporations with capital of 516,457 euros or less, the tax is 309.87 euros. Corporations with higher capital pay a tax of 516.46 euros.

The Stability Law of 2014 amended the stamp tax introduced on bank and investment accounts in 2011 by increasing the tax rate from 0.15% to 0.2%. Individuals holding investment accounts with a value of up to 5,000 euros are now exempt from the stamp tax, while accounts with a value of more than 5,000 euros and up to 17,000 euros are subject to the tax at the rate of 0.2% of the amount invested. In the case of com-

⁷⁰⁰ DL No. 201, Dec. 6, 2011, Art. 19(13)–(17), as converted by Law No. 214, Dec. 22, 2011.

⁷⁰¹ DL No. 201, Dec. 6, 2011, Art. 19, as amended by DL No. 16, March 3, 2012, Art. 8(16), (e); Art. 13 (10).

⁷⁰² Law No. 147, Dec. 27, 2013, Art. 1(669).

⁷⁰³ Law No. 549, Dec. 28, 1995, Art. 3 (142–143).

⁶⁹⁸ Law No. 147, Dec. 27, 2013, Art. 1 (707 *et seq.*).

⁶⁹⁹ Law No. 213, Dec. 30, 2023, Art. 1 (91).

panies, the tax is capped at 14,000 euros. The tax is to be calculated and applied whenever a statement of account is issued to a client and thus will often appear on a *pro rata* basis on the statement.⁷⁰⁴

Checking and passbook accounts owned by individuals that during a calendar year have an average balance in excess of 5,000 euros remain subject to a fixed stamp tax of 34.20 euros. The tax is 100 euros for accounts held by companies.⁷⁰⁵

Article 8 of Law No. 383 of October 18, 2001 introduced a series of changes to simplify the keeping of accounts. Many formalities have been abolished with a view to simplifying the keeping of accounting books and records. In particular:

(i) The requirement to stamp and verify accounting books annually has, in principle, been eliminated. Registers are now deemed properly kept if each page has been consecutively numbered by the taxpayer before use.

(ii) The corporate record books required under Article 2421 of the Civil Code (shareholders' register; bondholders' register; and minute books of the board of directors, the shareholders, the statutory auditors and the executive committee, meetings of the bondholders, and financial instruments) are excluded from the above provision, as is any other book or register subject to a stamping requirement under special provisions. A Ministerial Decree of January 23, 2004 established rules permitting the above books to be maintained electronically.

The Ministerial Decree of January 23, 2004 established the rules for the electronic keeping of the accounting books (general ledger, inventory book and VAT book) and other accounting documents (for example, invoices and letters). Under Article 3 of the Decree, it is permissible for tax purposes to keep the documents electronically, provided the documents:

(i) Are formatted as static documents that cannot be modified;

(ii) Are issued, in order to guarantee the attestation of the date, and their authenticity and integrity, with a time reference and the electronic signature of a public officer (preferably a Notary) affixed, certifying conformity to the original documents;

(iii) Correspond to the paper documents and may at any time be read by means made available by the individual consulting the electronic documents; and

(iv) Can be read over time and are in chronological order. It must also be possible to search for and extract information.

H. Registration Tax

As part of Italy's continuing commitment to simplifying tax legislation and streamlining taxpayer compliance obligations, on August 1, 2025, the Government enacted Legislative Decree No. 123, which implemented a Consolidated Law on registration tax and other indirect taxes. The Consolidated Law systematically brings together the current regulations and re-

peals numerous laws. The consolidated tax will enter into force on January 1, 2026. While it does repeal a few obsolete indirect taxes, on the whole there are no major substantive changes to Italian tax law.

The Registration Tax Law provides that all deeds and other written documents, including leases, that have legal effect and are executed in Italy, as well as certain oral agreements, must be registered with the registration tax office within 30 days from the date of their execution.⁷⁰⁶

As a rule, value added tax VAT is considered to be an alternative to registration tax. Transactions not subject to VAT (see XI.A.2., below) are subject to registration tax at the following rates:

(i) Conveyances of listed real property and rights with respect to real property: aggregate tax of 9% payable in full to the registration office. This tax is comprised of the following taxes:

- Actual registration tax: 9%;⁷⁰⁷
- Mortgage tax: 50 euros;⁷⁰⁸ and
- Cadastral tax: 50 euros.⁷⁰⁹

The actual registration tax is reduced to 2%, plus a flat 50 euro payment for mortgage and cadastral taxes⁷¹⁰ if: the purchaser of the property is an individual; the property purchased is used by the buyer as his or her sole residence in the town in which he or she is resident or in which he or she maintains his or her principal residence; and the purchaser has not already paid a reduced tax on other property.

(ii) Transfers of building rights: 3%.

(iii) Financial statements used for merger purposes, or the expert appraisal of a contribution in cash and in kind, based on assets net of liabilities, on the incorporation of a company, or a contribution to capital: flat 200 euros.⁷¹¹

⁷⁰⁶ DPR No. 131, April 26, 1986, Arts. 13 and 17 (3-bis); Articles repealed with effect from January 1, 2026 and replaced by Consolidated Text enacted by Legislative Decree No. 123, August 1, 2025, Art. 204 (1), (f).

⁷⁰⁷ DPR No. 131, April 26, 1986, Tariff, Art. 1, as amended by Law No. 488, December 23, 1999, Art. 7(7), as further amended by D. Lgs. No. 23, March 14, 2011, Art. 10; repealed with effect from January 1, 2026 and replaced by Consolidated Text enacted by Legislative Decree No. 123, August 1, 2025, Art. 204 (1), (f).

⁷⁰⁸ DL No. 347, Oct. 31, 1990, Tariff, Art. 1, as amended by Law No. 549, December 28, 1996, Art. 3(132), and as amended by DL No. 262, October 3, 2006, Art. 6; as further amended by D. Lgs. No. 23, March 14, 2011, Art. 10, repealed with effect from January 1, 2026 and replaced by Consolidated Text enacted by Legislative Decree No. 123, August 1, 2025, Art. 204 (1), (f).

⁷⁰⁹ DL No. 347, October 31, 1990, Art. 10, as amended by Law No. 549, December 28, 1996, Art. 3(133); as further amended by D. Lgs. No. 23, March 14, 2011; DL No. 104, September 12, 2013 and, as further amended by D. Lgs. No. 23, March 14, 2011, Art. 10; repealed with effect from January 1, 2026 and replaced by Consolidated Text enacted by Legislative Decree No. 123, August 1, 2025, Art. 204 (1), (f).

⁷¹⁰ DL No. 12, February 7, 1985, Art. 2, as amended by DL No. 323, June 20, 1996, Art. 10, converted by Law No. 425, August 8, 1996, as amended by Law No. 488, December 23, 1999, Art. 7(6).

⁷¹¹ DPR No. 131, April 26, 1986, Tariff, Art. 4, as amended by Law No. 488, December 23, 1999, Art. 10, repealed with effect from January 1, 2026 and replaced by Consolidated Text enacted by Legislative Decree No. 123, August 1, 2025, Art. 204 (1), (f).

⁷⁰⁴ DL No. 2013, Art. 19 (1)–(3), as amended by Law No. 147, Dec. 27, 2013, Art. 1 (581 *et seq.*).

⁷⁰⁵ *Id.*

As a rule, transactions subject to VAT attract a nominal flat registration tax of 200 euros. Agreements relating to payments on which VAT is imposed are required to be registered only on use and, again, at nominal rates.

Prior to their use in judicial administrative, or arbitration proceedings, contracts executed abroad that have legal effects in Italy must be registered on payment of the normal registration tax in the usual manner.⁷¹²

With effect from July 4, 2006, specific rules apply to commercial real estate taxation, as summarized in the following table:

⁷¹²DPR No. 131, April 26, 1986, Tariff 2, Art. 11.

Seller	Characteristics of Buildings	Purchaser	VAT	Registration Tax	Mortgage and Land Registry Tax
Construction company or company that carries out restructuring work	Buildings completed less than 4 years earlier	Any person	22%	200 euros	200 euros + 200 euros
	Buildings completed more than 4 years earlier	Purchaser not subject to VAT/Purchaser subject to VAT with activities qualifying for VAT deduction equal to or < 25%	22%	200 euros	200 euros + 200 euros
		Other purchaser subject to VAT	Exempt or 22% at the seller's option	200 euros	2% + 1%
Others subject to VAT (enterprises and persons engaged in the arts or professions)	All buildings without distinction	Purchaser not subject to VAT/Purchaser subject to VAT with activities qualifying for VAT deduction equal to or < 25%	22%	200 euros	2% + 1%
		Other purchaser subject to VAT	Exempt or 21% at the seller's option	200 euros	3% + 1%

With effect from March 1, 2008, sales of non-residential buildings subject to VAT in some instances are subject to VAT under the reverse charge system applied by the purchaser through self-invoicing.⁷¹³

I. Digital Services

The Stability Law of 2014 introduced a “web tax” that required a company intending to provide advertising services and online sponsored links in Italy to have a VAT number. This provision was meant to enter into force on March 1, 2014. However, the day before its entry into force, the government rescinded the tax. The government noted that reconsideration of some type of provision for companies operating in Italy through the web was not out of the question, but that it probably should be done at a European-wide level.

Despite the earlier position of addressing the issue of a web tax at a European-wide level, Law 205/2017 (the 2018 Budget Law) enacted a web tax of 3% that was to apply to digital transactions placed as of January 1, 2019. The tax was in-

tended to be levied on businesses that transact over 3,000 transactions in a year and the government was to enact regulations for the application of the tax by April 30, 2018. However, its enactment was postponed so as to await action at the EU level, which at the time appeared to be a concrete possibility in the last quarter of 2018.

Subsequently, with the 2019 Budget Law, the web tax as enacted in 2018 was repealed and replaced by a new version, the digital services tax (DST), which provided for the DST to enter into effect on January 1, 2020. The DST provides for a 3% tax on revenue for services provided electronically, to be levied on companies that have at least 750 million euros in revenue earned on a worldwide basis and have revenue in Italy of at least 5.5 million euros.⁷¹⁴ The 2025 Budget Law repealed the second threshold requiring revenue in Italy of at least 5.5 million euros.⁷¹⁵

However, as Italy moved forward domestically by enacting the DST internationally, members of the OECD/G20 con-

⁷¹³Law No. 244, December 24, 2007.

⁷¹⁴Law No. 145, Dec. 31, 2018, Art. 1 (35)–(50).

⁷¹⁵Law No. 207, Dec. 31, 2024, Art. 1 (22).

tinued the debate for the best approach to address tax avoidance by large multinationals (MNEs) that has resulted from the digitalization of the economy. In 2021, a solution was found through a two-pillar system. The first pillar focusses on re-allocating the profits of the most profitable MNEs to the jurisdictions where the customers and users of those MNEs are located. The second pillar provides a global minimum tax of 15%, which Italy implemented via Legislative Decree No. 209 of December 27, 2023, effective as of January 1, 2024. At the end of 2021, members announced an agreement on an all-Inclusive Framework to take effect in 2023. While the initial goal was for the rules to take effect in 2023, the implementation of Pillar One has faced significant delays, with negotiations on the Multilateral Convention (MLC) continuing through 2024 and 2025. The agreement was approved by the ministers of Finance and the Governors of the Central Banks of the G-20 members. The entry into force of the first pillar is now subject to the finalization and ratification of the MLC by a critical mass of jurisdictions, which will of course require that countries enact legislation to implement these new rules into their domestic legislation. These agreements provide for the repeal of the various domestic taxes on digital services already in force, such as the Italian DST, once the new Pillar One rules are effectively implemented. Accordingly, pursuant to the 2020 Budget Law, the DST is to be automatically repealed as soon as implementing legislation for the Pillar One international agreement enters into force. In the interim, Italy and other European nations reached a “standstill” agreement with the United States to maintain their DSTs until a definitive transition to Pillar One occurs, subject to a tax credit mechanism for payments made in the intervening period.⁷¹⁶

J. Sugar Tax

The 2020 Budget Law introduced a tax on sugary drinks.⁷¹⁷ The tax was originally supposed to enter into effect on October 1, 2020, but has been postponed on multiple occasions. The entry into force of the sugar tax was most recently postponed by the 2026 Budget Bill, which postponed its entry into force to January 1, 2027.

The tax will apply to sugary drinks that contain 25 grams or more of sugar in 1,000 liters or at least 125 grams of sugar in syrups that are to be diluted. It will be levied as follows:

- 10 euros per 100 liters; or
- 0.25 euros per kilo for syrups that are to be diluted.

Subject to the tax will be Italian producers or importers of sugary drinks for consumption in Italy, and those who purchase sugary drinks imported from the EU member states. Sugary drinks produced for export are exempt from the tax. The fine for failure to pay the tax is 10 times the amount due, with a minimum of at least 500 euros levied. Late payment will give rise to a fine of 30% of the tax due, which cannot be less than 250 euros.

⁷¹⁶Law No. 160, December 27, 2019, Art. 1 (678), (m), (n); see also Joint Statement from the United States, Austria, France, Italy, Spain, and the United Kingdom Regarding a Compromise on a Transitional Approach to Existing Unilateral Measures During the Interim Period Before Pillar 1 Implementation (Oct. 21, 2021), as extended on Feb. 15, 2024.

⁷¹⁷Law No. 160, Dec. 27, 2019, Art. 1 (661)–(667).

K. Plastic Tax

The 2020 Budget Law also enacted a tax on plastic used for containing, protecting, handling or delivering goods or food products. As defined by the law, the type of plastic subject to taxation is single use item (*manufatti con singolo impiego*, MACSI) with a content of more than 40% plastic, and therefore cannot be used as compost.

Subject to the tax are Italian producers, importers and purchasers of plastic. The tax is levied at 0.45 euros per kilo of plastic. The fine for failure to pay the tax is 2 to 5 times the amount of tax due, with a minimum fine of 250 euros applied. Late payment will give rise to a fine of 25% of the amount of tax due with a minimum 150 euros levied.⁷¹⁸

Exempt from the tax are plastic medicine containers, medical devices and plastic produced for export.⁷¹⁹

As a result of the impact of COVID-19 and the ensuing lockdown, the entry into force of the plastic tax has been postponed on multiple occasions. Most recently, the 2026 Budget Bill proposed the postponement of its entry into force to January 1, 2027.

L. Capital Investment Tax

Italy does not have a capital investment tax.

M. Payroll Tax

Italy does not have a payroll tax.

N. Net Worth Tax

Italy does not have a net worth tax.

O. Local Taxes

Italy has property-based taxation that is levied for funding of local government services (see IV.F.3., above).

In addition, for devolution to the regions, a regional tax is added to IRPEF with a rate that is between 1.23% and 3.33%; a municipal tax is also added to IRPEF at a rate ranging from 0.5% to a maximum of 0.8% of IRPEF. See IX.F., below.

P. Windfall Profits Tax on Energy Producers

Italy enacted a one-time windfall tax on profits for those businesses engaged in:

- (i) The production of electricity for re-sale;
- (ii) Production of methane gas for extraction of natural gas;
- (iii) Re-sale of electricity, methane gas, and natural gas;
- (iv) Manufacturing, distribution, and sale of oil products, and
- (v) Import into and purchase within the EU of electricity, natural gas or methane gas, and oil products.

⁷¹⁸Law No. 160, December 27, 2019, Art. 1 (650), as amended by Law No. 178 Dec. 30, 178, Art. 1(1084), (i).

⁷¹⁹Law No. 160, December 27, 2019, Art. 1 (634)–(650).

According to the 2023 Budget Law, 75% of the total revenue of such a business must be derived from the above activities for the windfall profits tax to apply.⁷²⁰

The windfall profits tax applies when the increase in net sales between October 1, 2021, and April 30, 2022, is both greater than 5 million euros and higher than 10% relative to net sales between October 1, 2020 and April 30, 2021. The tax basis to establish if the two thresholds have been met is calculated using net sales reported for VAT purposes. The tax was originally levied at 10%,⁷²¹ but it was subsequently increased to 25%.⁷²²

The tax applies to businesses deriving at least 75% of their revenues from the production, import and sale of electricity, natural gas and oil products (including distribution of oil products).⁷²³ The 50% tax rate applies to the portion of income calculated for corporate income tax purposes for the tax year 2022 exceeding the average income of the business for the four years prior to 2022 by at least 10% (if the average is negative, the basis will be zero).⁷²⁴ The tax cannot be more than 25% of the value of the net equity as at 31 December 2021 (in the case of calendar-year entities).

The tax is due within six months of the company's year-end. For companies with a calendar tax year, windfall profits tax is due by June 30, 2023. The tax is not deductible for IRES or IRAP purposes.⁷²⁵

Windfall profits tax does not apply to businesses which organize and manage platforms for the exchange of electricity, gas, environmental certificates and fuel as well as certain small and micro-enterprises engaged in the fuel retail business.⁷²⁶

A subsequent windfall profits tax was enacted under the 2023 Budget Law for the tax year 2023, replacing the previous one-off tax for 2022.

Q. Cryptocurrency Taxation

Until the enactment of the 2023 Budget Law, Italy considered cryptocurrency to be a foreign currency.

There were signs of a change in approach in the Italian courts and, in November 2022, the Italian Supreme Court of Cassation indicated in a criminal case that crypto-assets with certain characteristics came within the domestic category of financial products. Specifically, the Court stated that crypto-assets that required the investor to pay for the assets with an expectation of a financial return and that carried a risk directly associated with the amount of funds invested should be considered to constitute financial products.⁷²⁷

The 2023 Budget Bill introduced capital gains taxation on the sale of cryptocurrency and assets; the possibility of adopting a step-up in basis for crypto-assets held on January 1, 2023; an amnesty program for crypto-related income not reported in

the previous tax years; and a stamp duty on crypto transactions.⁷²⁸

Initially, gains from the sale of cryptocurrency and other crypto-assets exceeding 2,000 euros were subject to capital gains tax of 26%. Later, pursuant to the Budget Law of 2025, as of January 1, 2026, the tax rate on gains increased to 33% and the tax-exempt threshold of 2,000 euros was eliminated.⁷²⁹ However, pursuant to the 2026 Budget Law, the reduced 26% rate continues to apply to euro-denominated stablecoins (e-money tokens) that comply with the EU MiCAR regulation.⁷³⁰

Gains are calculated as the difference between the cost basis and the sale price. The cost basis depends on how the asset concerned was acquired. If the asset was purchased, the basis is the purchase price. If the asset was inherited, the basis is the value declared in the estate tax return (generally, the date of death value). If the asset was received as a gift, the cost basis is that the donor's cost basis in the asset.

Capital losses can be set off against capital gains of the same kind subsequently realized in the same year or up to four years following the year of the sale.

Individuals with taxable capital gains are required to report capital gains and losses in their annual tax returns. Taxpayers may elect to pay the tax through an Italian financial intermediary (e.g., a bank or other qualified intermediary) or a crypto-assets service provider (including wallet providers).

To encourage taxpayers to report their crypto-assets, an election was also introduced to allow taxpayers to step up the tax value of their crypto-assets to their market value on January 1, 2023, with the payment of a flat tax of 14% on the amount of the step-up. The law originally provided that this step-up tax could be paid in a single installment by June 30, 2023, or in three equal annual installments, 3% annual interest will apply to installments paid after June 30, 2023. On June 13, 2023, the Ministry of Economy and Finance issued Notice No. 96 postponing the start of the payment to September 30, 2023.

The Budget Law of 2025 introduced the step-up option as a permanent measure, according to which taxpayers may step-up the tax value of their crypto-assets to their market value as on January 1 of each year, starting in 2025, with the payment of a flat tax of 18% on the amount of the step-up.⁷³¹

A step-up in basis will not be allowed should it result in a loss.

As of January 1, 2026, the value of all-held crypto-assets must also be included in the taxpayer's ISEE (Equivalent Economic Situation Indicator), which determines eligibility for social benefits and university fee reductions.⁷³²

The 2023 Budget Law provided a tax amnesty for taxpayers who had failed to disclose in their annual tax returns the holding of crypto-assets as well as any income related to those assets as of December 31, 2021. Taxpayers who held undisclosed crypto-assets that did not generate taxable income can become compliant by paying a reduced penalty equal to 0.5% per annum on the value of the undisclosed crypto-assets. Tax-

⁷²⁰ DL No. 21, March 21, 2022, Art. 37 as amended by Law No. 197, Dec. 29, 2022, Art. 1 (120).

⁷²¹ DL No. 21, March 21, 2022, Art. 37.

⁷²² DL No. 50, May 17, 2022, Art. 55.

⁷²³ Law No. 197, Dec. 22, 2022, Art. 1 (115).

⁷²⁴ *Id.* at Art. 1 (116).

⁷²⁵ *Id.* at Art. 1(117–118).

⁷²⁶ *Id.* at Art. 1 (115).

⁷²⁷ Supreme Court of Cassation Case No. 44378, Nov. 22, 2022.

⁷²⁸ Law No. 197, Dec. 29, 2022, Art. 1 (126–137).

⁷²⁹ Law No. 207, Dec. 30, 2024, Art. 1 (25).

⁷³⁰ Law No. 199, Dec. 30, 2025, Art. 1 (32) amending DL No. 201, Dec. 6, 2011, Art. 5 (1).

⁷³¹ Law No. 207, Dec. 30, 2024, Art. 1 (26).

⁷³² Law No. 199, Dec. 30, 2025, Art. 1 (28).

payers that realized income from undisclosed crypto-assets will be required to pay a 3.5% flat tax on either the end of year value of the undisclosed crypto-assets or the value of the assets on the date of their disposal, plus interest and penalties equal to 0.5% of the value of the crypto-assets concerned.⁷³³ Taxpayers who missed this window remain subject to standard penalties for non-disclosure in their Quadro RW (Foreign Assets) reporting.

A 0.20% stamp tax is applied annually based on periodic reports submitted by an Italian financial intermediary to its clients regarding crypto-assets deposited with the intermediary. The stamp tax will be due even when no such periodic communications are sent to the taxpayer. Where an Italian taxpayer's crypto-assets are not held through an Italian intermediary (e.g., crypto-assets stored in digital or physical wallets), the taxpayer must pay, in lieu of the above stamp tax, a 0.20% tax on the value of those crypto-assets.⁷³⁴

Italian companies that account in their financial statements for write-ups and write-downs of crypto-assets deriving from valuation procedures (i.e., where the assets are not effectively realized) are not subject to tax for IRES and IRAP purposes.

After a consultation process that closed on June 30, 2023, the Tax Agency issued Circular No. 30/E, of October 17, 2023, which provides guidelines and explanations on the taxation of crypto-assets. Among the issues addressed are:

(i) The territorial aspect of the taxation of crypto-assets. The Circular addresses this point by making reference to Article 67 of the TUIR, which provides that income from an activity carried out within Italy from assets located in Italy will be taxable in Italy. Thus, nonresidents will be subject to taxation if the crypto-assets (access keys) are held by intermediaries residing in Italy, or if these assets have a substantial connection with a resident intermediary. However, for those access keys directly held by a taxpayer with devices such as USB keys the presumption that the assets are in Italy will only apply if the taxpayer is a resident of Italy. This presumption can be rebutted by the taxpayer.

(ii) Taxation rate for income from crypto-assets. Income from the redemption, exchange or sale of crypto-assets is taxed at a rate of 33% (increased from 26% as of January 1, 2026) in the hands of both residents and nonresidents. Exchanges among crypto-currencies with the same economic function will not be considered taxable events, while exchanges between non-fungible tokens (NFTs) and cryptocurrency will be taxable events.

(iii) Revaluation of crypto-assets. The Circular clarified the procedures for revaluing crypto-assets held on January 1, 2023, using either the cost or purchase value as of that date. This option was available even if the crypto-assets were no longer held at the time of payment of the substitute tax of 14%. Revaluation, which was available through November 15, 2023, was useful to taxpayers as it allowed for a higher cost basis on which to determine a capital gain in the event of reimbursement or sale of the crypto-asset or

exchange with other crypto-assets having different characteristics and functions (for example, the purchase of an NFT with bitcoin).

(iv) Failure to disclose crypto-assets held abroad. Individuals, non-commercial entities and certain types of small companies that held crypto-assets on December 31, 2021 and that had failed to disclose the assets in Quadro RW (the schedule in which foreign accounts and assets held abroad are reported on Italian income tax returns) could become compliant by the filing of a petition with the Tax Agency by November 30, 2023, attaching proof of payment of a fine as well as documentation to prove the value of the crypto-assets. The fine levied was 3.5% of the value of the assets held at the end of each year, or the value at the time of sale, plus 0.5% of the value of the assets at December 31 of each year in which the crypto-assets were held and not disclosed. If the crypto-assets produced no income, only the fine of 0.5% on the year-end value of the crypto-assets is due for failure to disclose the assets in Quadro RW.

(v) Annual stamp tax (also so known as the Italian wealth tax on crypto-assets). An annual stamp tax of 0.2% will be levied on the value of the crypto-assets held by an individual at the end of the reporting period or, in the event of failure to report that value, the value at December 31 of each year as determined by the intermediary or service provider who will withhold the tax. If the end of year value is not available, the purchase cost of the crypto-assets will be used as the value. The Circular makes it clear that payment methods and terms are the same as those currently provided for in the context of the stamp duty on communications relating to financial products. It also specifies that entities and companies will be subject to a maximum stamp tax of 14 euros annually on the value of the crypto-assets held by them, as determined above.

(vi) VAT treatment of crypto-assets. As crypto-assets are not subject to specific VAT provisions, the Circular refers to international best practices and provides a look through approach to ascertaining the actual nature of the crypto-assets, their function in practice, and the purposes for which they are actually used, as recommended in the OECD's Crypto-Asset Reporting Framework (CARF), approved in August 2022 to establish taxation for VAT purposes. For example, when a crypto-asset is used to pay for a transaction subject to VAT, the value of the crypto-asset is to be converted into euros to calculate the taxable amount of the transaction based on which the applicable VAT amount will be determined.

Certain cryptocurrency transactions will generally be exempt from VAT. These transactions include the exchange of traditional currency for cryptocurrency; mining of cryptocurrency that is compensated through a miner's fee; and cryptocurrency "staking" transactions.

The VAT rules for tokens are essentially the same as those for cryptocurrency. These transactions will be taxable when used as payment for a transaction subject to VAT.

⁷³³ Law No. 197, Dec 29, 2022, Art. 1 (138–143).

⁷³⁴ Law No. 197, Dec 29, 2022, Art. 1 (144–147).

Transactions with tokens will be exempt from VAT when the actual nature is that of an investment instrument (such as “security tokens”); and treated as equivalent to vouchers for VAT purposes when the tokens must be accepted by the supplier as a means of payment for a transaction and bear an indication of the goods or services that can be purchased or an indication of the supplier obliged to accept them. The VAT treatment of NFTs will hinge on the evaluation of the contractual agreements (“smart contract”) associated with NFTs and their circulation.

The VAT treatment of NFTs and related activities is contingent on whether the interest is only in the NFT or the underlying assets it represents; and

(vii) Value of crypto-assets for purposes of transfer by gift or at death. The value of crypto-assets on their transfer by way of gift or at death is their fair market value.

R. Domestic Anti-Avoidance Measures

Article 10-*bis* of Law No. 212 of July 27, 2000 contains the current law on anti-avoidance measures in Italy.

The article defines abuse as the undertaking of operations devoid of economic substance. While formally the operations are compliant with tax law, they are carried out essentially to obtain an undue tax advantage. Operations without any economic substance are defined as facts, acts and contracts that may be connected to each other but are not suitable for producing significant economic effects other than the procurement of tax advantages. Undue tax advantages are benefits that conflict with the purpose of the tax rules or the principles of the tax system, even if the benefits are not immediately available to the taxpayer.

Article 10-*bis* expressly provides that taxpayers may choose the option with the lower tax burden. Transactions justified by valid and significant corporate or business reasons do not contravene the anti-abuse provisions.

A taxpayer may apply for a ruling from the Tax Authority regarding an operation it intends to carry out or has already carried out. The application must be filed before the deadline for filing the tax return in the year in which the operation concerned occurred, or before the taxpayer fulfills other tax obligations connected to the operation. The taxpayer must set out in its application:

- (i) The elements defining the operations;
- (ii) The tax sector with respect to which the operations raise abuse concerns; and
- (iii) The specific regulations and laws involved, including those that may be challenge because of the operations undertaken or to be undertaken.

The Tax Authority must reply within 90 days of the submission of the ruling application or within 60 days of the delivery of any supplementary documentation requested from the taxpayer by the Tax Authority.

S. Regional Tax on Productive Activities

As part of the 1997 Finance Act, Parliament delegated legislative powers to the government to enact a regional tax with a view to reducing labor costs and simplifying the tax system

by eliminating various taxes collected throughout the year. On January 1, 1998, the regional tax on productive activities (*imposta regionale sulle attività produttive* or IRAP) made its debut,⁷³⁵ replacing such taxes as the local income tax (*imposta locale sui redditi* or ILOR), the municipal tax on productive activities (ICIAP) and the company net worth tax, as well as health contributions made by employers on behalf of employees. IRAP is levied on the value of the net production of goods and services produced in a region, and is not deductible for purposes of personal income tax (*imposta sui redditi delle persone fisiche* or IRPEF) or corporate tax (*imposta sul reddito delle società* or IRES). However, for companies with employee expenses, these costs are now completely deductible for IRAP purposes.⁷³⁶ In the case of interest expenses, 10% of IRAP paid is deductible for IRES purposes.⁷³⁷

The basic IRAP tax rate is 3.9%.⁷³⁸ Each region may increase the rate by no more than 0.92%. For companies licensed for certain types of public works, the rate is 4.2%.⁷³⁹ Taxpayers with business activities in more than one region must apportion their taxable base and deductions accordingly. For the 2026 tax year, the Budget Law has introduced a significant temporary increase in the tax rate for the financial services sector. The IRAP rate for banks and financial intermediaries has increased to 6.65%. The IRAP rate for insurance companies has increased to 7.90%. These increases are scheduled to remain in effect throughout the 2028 tax year. To mitigate the impact of this measure, a deduction of 90,000 euros was introduced for the 2027 and 2028 tax years.⁷⁴⁰ This deduction is granted up to the amount of the difference between the tax resulting from the new increased rates and the tax that would have been due under the previous ordinary rates, effectively acting as a compensatory mechanism for the higher tax burden.

The taxable base for companies and commercial entities is the difference between the total value of production and the total costs of production (excluding depreciation, amortization, employees' costs, provisions for risk and other provisions). In the case of financial institutions, the 2026 Budget Law stipulates that the deductibility of interest expenses is limited to 96% for 2026, with a progressive recovery of 1% annually until 2029 and will return to being 100% deductible in the 2030 tax year.

The 2026 Budget Law also reschedules the deduction of specific costs giving rise to deferred tax assets (DTAs) for banks and insurance companies. Specifically, the deduction of the fiscal year 2027 installments for the following items is suspended and deferred to the 2028 and 2029 tax periods in two equal parts:⁷⁴¹

- Credit Write-downs and Loan Losses: A 9.50% quota related to IFRS 9 first-time adoption costs;

⁷³⁵ D. Lgs. No. 446, Dec. 15, 1997.

⁷³⁶ D. Lgs. No. 446, Dec. 15, 1997 Art. 2.

⁷³⁷ D. Lgs. No. 185, Nov. 29, 2008, Art. 6 (1).

⁷³⁸ D. Lgs. No. 446, Dec. 15, 1997, Art. 16.

⁷³⁹ Law No. 190, Dec. 23, 2014, Art. 1 (20) amending D. Lgs. No. 446, Dec. 15, 1997, Art. 11 (1).

⁷⁴⁰ Law No. 199 Dec. 30, 2025, Art. 1 (74)–(75).

⁷⁴¹ Law No. 199, Dec. 30, 2025, Art. 1 (133)–(136).

- Goodwill and Intangibles: A 12.36% quota of the amortization (with 6.18% becoming deductible in 2028 and 6.18% in 2029).

Additionally in compliance with EU jurisprudence, 95% of dividends received by banks and insurance companies from EU-based subsidiaries are now excluded from the taxable base.⁷⁴²

With respect to the circulation of tax credits derived from the transformation of DTAs, the Italian Tax Agency issued Resolution No. 73 on December 29, 2025. This ruling clarifies that when a tax credit resulting from the transformation of DTAs is transferred to a third party, the transferee cannot use the credit to offset other tax liabilities in the F24 payment form. Furthermore, the transferee is prohibited from subsequent transfers of the same credit to other entities. Consequently, the only method for the transferee to recover the value is through a direct refund from the Italian Tax Agency.

The following are among the deductions generally allowed for IRAP purposes:

- (i) The mandatory costs of insuring against injury in the workplace (*Istituto Nazionale per l'Assicurazione contro gli Infortuni sul Lavoro*, INAIL);
- (ii) Full deduction for all costs related to employees hired under permanent contracts;⁷⁴³
- (iii) The costs of personnel engaged in research and development (R&D);⁷⁴⁴
- (iv) Costs related to the hiring of apprentices and employees hired under formation contracts, as well as costs related to the hiring of disabled employees;⁷⁴⁵
- (v) A deferred deduction for credit write-offs and goodwill amortization, which the 2026 provisions have postponed to the 2028 and 2029 tax periods (see above).⁷⁴⁶

In 2003, Parliament delegated to the Italian government the powers to abolish IRAP gradually. As part of that mandate, the 2022 Budget Law also excluded independent contractors, self-employed professionals and sole proprietorships from IRAP taxation. Parliament specified that priority be given to the progressive exclusion from the tax base of labor and related costs taking into consideration the possibility of providing re-

lief to corporate taxpayers whose labor costs are the predominant costs.⁷⁴⁷ Law No. 111 of August 9, 2023, once again addressed the gradual abolition of IRAP. Priority has been given to removing partnerships and entities without legal personality from IRAP taxation with implementation deadline set for August 2026.

While the 2022 Budget Law excluded sole proprietorships and self-employed professionals from IRAP, certain capital companies, partnerships, and commercial entities remain subject to the tax. These taxpayers may still claim a lump-sum deduction if their taxable base is below 180,999.91 euros. However, the impact of these base deductions has been significantly reduced by the full deductibility of labor costs for employees on permanent contracts. Additionally, for the 2024–2027 period, a 120% super-deduction applies to labor costs for new permanent hires that increase the net employment level.

The applicable base deductions are:⁷⁴⁸

Income Brackets (euros)	Tax Deduction (euros)
Up to 180,759.91	8,000
180,759.92–180,839.91	6,000
180,839.92–180,919.91	4,000
180,919.92–180,999.91	2,000

Certain capital companies and remaining taxpayers with a taxable base under 180,999.91 euros may still claim a small forborne deduction. However, these are largely superseded by the full deductibility of labor costs for permanent employees.

Although IRAP was not considered a creditable tax for U.S. foreign tax credit purposes under the 1984 Italy-United States tax treaty,⁷⁴⁹ under the 1999 Italy-United States tax treaty, that portion of IRAP that relates to the taxation of a taxpayer's business profits is now covered. (See further at XIV.C.1., below).⁷⁵⁰

The IRAP tax return is filed electronically with the Italian tax agency, which transmits it to the Region or autonomous province (*provincia autonoma*) in which the taxpayer has its tax domicile.

⁷⁴² Law No. 199, Dec. 30, 2025, Art. 1 (46)–(50); see Joined Cases C-92/24, C-93/24 and C-94/24, *Banca Mediolanum SpA and Others v. Agenzia delle Entrate*, ECLI:EU:C:2025:612 (Aug. 1, 2025).

⁷⁴³ D. Lgs. No. 446, Dec. 15, 1997, Art. 11(1)(a)(2), as amended by Law No. 190, Dec. 23, 2014, Art. 1 (20).

⁷⁴⁴ D. Lgs. No. 446, Dec. 15, 1996, Art. 11 (1)(a).

⁷⁴⁵ D. Lgs. No. 446, Dec. 15, 1997, Art. 11 (1)(a)(1)–(5).

⁷⁴⁶ Law No. 199, Dec. 30, 2025, Art. 1 (76)–(77).

⁷⁴⁷ Law No. 80, April 7, 2003, Art. 8; D. Lgs. No. 446, Dec. 15, 1997, Art. 11 (4-bis).

⁷⁴⁸ D. Lgs. No. 446, Dec. 15, 1996, Art. 11 (4-bis), (d); Law No. 289, Dec. 27, 2022, Art. 5 (3).

⁷⁴⁹ Convention Between the Government of the United States of America and the Government of the Italian Republic for the Avoidance of Double Taxation with Respect to Taxes on Income and the Prevention of Fraud or Fiscal Evasion, signed on April 17, 1984 (the “1984 Italy-United States tax treaty”).

⁷⁵⁰ 1999 Italy-United States tax treaty, Arts. 2 and 23.

V. Taxation of Domestic Corporations

A. What Is a Domestic Corporation?

1. In General

The main provisions of Italian tax law, which are applicable to individuals, partnerships, and companies, and other private and public entities, unless otherwise specified, are governed by the Consolidated Tax Code (DPR No. 917 of December 22, 1986, *Testo Unico* or TU), as amended, most importantly in 2003. Corporate income tax (*imposta sul reddito delle persone giuridiche* (IRPEG); as of January 1, 2004, renamed *imposta sul reddito delle società* (IRES)) is governed by Articles 72 through 161 of the TU.

Through to December 31, 2023, corporate taxpayers were considered resident in Italy for IRES purposes if they were incorporated in Italy or if their administrative headquarters or principal business purpose was located in Italy for the majority of the tax year. However, as of January 1, 2024, in addition to incorporation in Italy, corporations that have either (i) their registered office, (ii) place of effective management, or (iii) place of day-to-day (ordinary) management for the greater part of the year in Italy (183 days) will be deemed resident for IRES purposes.⁷⁵¹ This amendment is intended to bring Italy's corporate tax residency rules in line with international practices and provisions of tax treaties to prevent double taxation.

On November 4, 2024, the Italian Tax Agency issued Circular No. 20/E, providing guidelines to its local offices to ensure uniformity in applying the new criteria for tax residency. Thus, if any of the criteria at (i) to (iii), above, is met for the majority of the tax year, the corporation will be considered resident in Italy in that year.

The Circular focuses on mainly providing guidance on the criteria of what is considered “effective management” and “day-to-day management”. It also provides definitional context to “place of effective management” as the place where the coordinated and continuous decisions of managerial content are taken, specifying that decisions that are merely supervisory or for monitoring purposes are insufficient to meet this condition. Importantly, the Circular also noted that due to developments in technology, the place where business is carried out and the place where strategic decisions are taken may not coincide. Since there are no consolidated practices on this matter at the international level, a case-by-case analysis of the facts of each situation may need to be carried out.

Also addressed in the Circular is the principal of “day-to-day management,” stating that it is consistent with the clarifications provided by paragraph 24.1 of the Commentary on Article 4 of the OECD Model, according to which the place where the day-to-day management of the business takes place is an element to resolve the conflict of residence in favor of a contracting State. Thus, this element should be understood to be the place where the normal functioning of the company and where the activities relating to its ordinary administration take place. Noting that an exhaustive list of the activities could not be produced in abstract, the factors determining day-to-day manage-

ment will vary depending on the business structure, the distinctive activity, and the organization of the corporation. Under the current law, it is specified that company management is to concern the undertaking as a whole, in order to distinguish the legal person's country of residence from the place where a permanent establishment may be located. The specification of the characteristics of day-to-day management to determine tax residence in Italy does not preclude the possibility that a company may have establishments located abroad, as long as the ordinary management activity is carried out mainly in Italy.

As of the fiscal year underway on July 4, 2006,⁷⁵² a foreign company has been considered resident in Italy, unless rebutted by the company, when the company holds, directly or indirectly, a controlling participation in an Italian corporation, as defined in Article 2359 of the Civil Code, where the company either:

- (i) Is controlled, even indirectly, by a company resident in Italy; or
- (ii) Is managed by a board of directors or other equivalent executive organ, composed mainly by directors who are resident in Italy.

This presumption also applies in those instances in which a nonresident holding company is placed between the holding resident company and its controlled company.

Total net income of the following types of entity is subject to IRES: a joint stock company (corporation — *Società per Azioni* or SpA); a limited liability company (*Società Responsabilità Limitata* or Srl); a cooperative; a mutual insurance company; a limited partnership with shares (*Società in Accomandita per Azioni*) having its principal place of business or business purpose in Italy; a trust; and any other entity having as its sole or principal purpose the pursuit of commercial activities with a principal place of business or business purpose in Italy. A partnership, the income of which is attributed to its individual partners, is not subject to IRES.⁷⁵³ (See IX., below, for a discussion of personal income taxation of resident individuals.)

Resident companies are subject to corporate income tax on all income, including income derived abroad. In the case of noncommercial public and private entities having their principal place of business or principal purpose in Italy, the corporate tax is imposed only on income from capital, income from commercial activity, income from land and buildings, and miscellaneous income.

2. Tax Rate

As of January 1, 2017, the standard corporate income tax rate remains 24%.

A reduction of 4% in IRES, bringing the rate down to 20%, is available under the Budget Law of 2025, for corporations that invest in assets covered under the credits for investments for the National Industrial Plan (see Capital Expenditures) and Energy-Saving Technology. To qualify for the reduced rate:

⁷⁵² Law No. 248 of Aug. 4, 2006, Art. 35(13–14).

⁷⁵³ TU, Art. 73, as amended by DL July 4, 2006, n° 223 (DL 223/2006), Art. 35.

⁷⁵¹ D. Lgs. No. 209, December 27, 2023, Art. 2 amending TU, Art. 73(3).

- i) At least 80% of the company's 2024 profits must be placed in a special reserve; and
- ii) A minimum of 24% of that reserve must be invested in capital assets to be used in production plants in Italy.

Furthermore, the investments must be at least 20,000 euros and have been made no later than the filing date of the 2025 income tax return.⁷⁵⁴

Law No. 111 of August 9, 2023, through which the Italian Parliament approved a set of general principles enabling the reform of the Italian tax system, proposed the adoption of a dual corporate income tax system to help attract investment to Italy as well as to improve the capitalization of Italian companies. A reduced IRES rate, which was not specified in the legislation, will be available for companies that within two years of generating the income meet the following conditions:

- i) A part or all of the company profits is used for qualifying investments, new employee hires, or providing a permanent profit share plan for employees; and
- ii) The profits are not distributed or used for purposes other than the company's business activities.

3. Surcharge on Oil and Gas Companies

A tax surcharge enacted by Law No. 133, August 6, 2008 (commonly referred to as the "Robin Tax" or "Robin Hood Tax") — declared unconstitutional on February 11, 2015, without retroactive effect⁷⁵⁵ — was levied on companies operating in the oil, gas and energy production sector at a rate of 5%. It was first increased to 6.5% and then to 10.5% for the three accounting periods following that in progress on December 31, 2011. The extent of the surcharge was also broadened, both with respect to company earnings and the types of companies subject to the surcharge, to include, for example, mid-range companies operating in the sectors covered. Thus, companies with a gross turnover in excess of 3 million euros and taxable profits exceeding 300 million euros were subject to the Robin Tax (it had originally only applied to companies with a turnover of 25 million euros and then to companies with a turnover of 10 million euros and taxable profits of 1 million euros).⁷⁵⁶ Companies that transmitted and delivered electricity, transported or distributed natural gas, and companies that generated biomass, photovoltaic and wind electricity were also covered.⁷⁵⁷ The surcharge is no longer applicable with effect from February 11, 2015.

4. Windfall Tax on Banks

In 2023, Italy took steps to selectively tax excess profits; this time in relation to the banking sector. Decree No. 104⁷⁵⁸ in-

troduced an extraordinary tax (known as a windfall tax) on Italian banks, including Italian branches of foreign banks. The tax rate was 40% applicable on the increased interest margin realized by banks during the tax year 2023 in relation to the tax year 2021 with a floor of 10% (regardless of the amount realized in fiscal year 2022).

The amount of the windfall tax could not exceed 0.26% of the total amount of the risk-weighted assets determined at the closing date of the financial year preceding the year pending as of January 1, 2023 (generally, tax year 2022).

The windfall tax was to be paid within the sixth months following the end of the tax year prior to the fiscal year ending on January 1, 2024 (for most banks this would be June 30). For those banks that approved their financial statements after the end of the fourth month following the end of their reporting year, payment was to be made by the end of the month following the one in which the financial statements are approved. For banks — with a financial year that was not aligned with the calendar year — payment must be made by no later than January 31, 2024.

This windfall profits tax could not be deducted from IRES or IRAP. Banks could choose to transfer two and a half times the amount of windfall tax due to one of their non-distributable reserves instead of paying the tax. Banks were expressly prohibited by the law from passing the cost of the tax onto their customers. The Antitrust Authority was empowered to supervise the compliance of the banks with this prohibition.

The 2026 Budget Bill transitioned Italy's banking tax policy from a one-off extra-profits tax to a series of recurring measures aimed at long-term revenue and unlocking of previous reserves. Banks that avoided the 2023 windfall tax by creating non-distributable reserves may now unlock these funds for distribution to shareholders. However, in order to release these reserves, banks must pay a substitute tax of 27.5% on the reserve amount existing as of December 31, 2025, or 33% for those existing as of December 31, 2026. As of tax year 2029, any profit distribution will be legally presumed to be drawn first from these windfall tax reserves, triggering the original tax (plus interest) unless the substitute tax has been paid.

The IRAP rate for banks and financial intermediaries has been increased by two percentage points for the 2026, 2027, and 2028 tax periods. For most banks, this effectively raises the rate from 4.65% to 6.65%.

New tax liabilities arising from these deferrals can generally be settled in four equal annual installments starting from the 2025 tax return cycle.⁷⁵⁹

The following is a comparative table that shows the cash impact between the original tax and the unlocking option introduced by the 2026 Budget Law. Assume that the bank calculated a theoretical extraordinary tax of 100 million euros in 2023:

⁷⁵⁴ Law No. 207, Dec. 30, 2024, Art. 1 (436).

⁷⁵⁵ Const. Court, Case No. 10, Feb. 11, 2015.

⁷⁵⁶ DL No. 69, June 21, 2013, Art. 5, as converted by Law No. 98, Aug. 9, 2013.

⁷⁵⁷ DL No. 138, Aug. 13, 2011, Art. 7.

⁷⁵⁸ DL No. 104, Aug 10, 2023, Art. 26 as converted by Law No. 136, Oct. 9, 2023.

⁷⁵⁹ Law No. 199, Dec. 30, 2025, Art. 1 (68)–(73).

Feature	Original Levy Due in 2024	Substitute Tax Option 2025	Substitute Tax Option 2026
Tax Rate	40% (on interest margin)	27.5% (on the reserve)	33% (on the reserve)
Tax Base	Increased interest margin	Allocated reserve (2.5x)	Allocated reserve (2.5x)
Total Cash Outflow	100 million euros	68.75 million euros	82.5 million euros
Payment Timing	By June 2024 (one-off)	Annual installments (4x)	Annual installments (4x)
Reserve Status	N/A (taxes paid immediately)	Distributable to shareholders	Distributable to shareholders
Fiscal Benefit	None	31.25% savings	17.5% savings

To avoid the immediate 40% payment, the majority of Italian banks chose to allocate funds to reserves in 2024. As the table above illustrates, the 27.5% option is the most advantageous scenario, allowing banks to free up capital for dividends with a significantly lower outlay than the original tax. While the original 40% levy immediately reduced net equity, the substitute tax allows banks to manage cash outflows over four years, smoothing the impact on regulatory capital ratios. Waiting until 2026 to unlock the reserve triggers a rate increase from 27.5% to 33%. This provides a strong incentive for institutions to settle their tax positions by the end of 2025.

5. Surcharge on Financial Institutions

The 2016 Stability Law levied an IRES surcharge on credit and financial institutions of 3.5%. Such institutions include banks, real estate investment trust management companies, holding companies of banking groups, members of the banking association, securities intermediation companies, financial intermediation companies, payment institutions, and financial holding companies.⁷⁶⁰ Further, the tax deduction for interest expenses incurred by insurance companies and holding companies of insurance groups is limited to 96% of such expenses as of January 1, 2017.⁷⁶¹ The Budget Bill of 2026 introduced a temporary limitation on the deductibility of interest expense for banks, financial companies and other intermediaries (excluding insurance companies, insurance group holding companies, asset management companies (SGRs) and securities brokerage firms (SIMs)), as follows:

Year	Percentage of Deductibility
2026	96%
2027	97%
2028	98%
2029	99%
2030 and onwards	100%

⁷⁶⁰ Law No. 208, of Dec. 28, 2015, Art. 1 (65)–(69).

⁷⁶¹ *Id.* at Art. 1(67).

These limitations are not taken into account when calculating advance payments.⁷⁶²

6. Municipal Property Tax

Companies are also subject to the municipal property tax IMU levied at a rate of 0.46% to 1.06% of cadastral value. (See IV.F.1., above.) The rate is determined by the municipality in which the property is located, as is the regional tax on productive activities IRAP. (See IV.S., above.) The tax basis for IRAP purposes is the value added to a product or service in the region concerned. The tax rate for corporations begins at 3.9%, which a region may choose to increase by up to an additional 0.92%, leading to a maximum allowable rate of 4.82%.⁷⁶³

B. Accounting

1. In General

With the implementation of the EC Fourth Directive 349/83, which required amendment of Italy's Civil Code sections⁷⁶⁴ containing the norms binding the board of directors in drawing up the annual accounts, Italy's corporate accounting was brought into line with EU standards.

The “civilistic”⁷⁶⁵ accounts of companies are the only official accounts. These accounts are used in the tax return, with a schedule showing the adjustments made for purposes of determining taxable income. Thus, for example, the depreciation rules of the TU, to the extent they are in conflict with the rules of the Civil Code, are shown separately as tax return adjustments. Legislative Decree No. 6 of January 17, 2003, prohibits reference being made in balance sheets to tax norms.

The mechanism of deducting for tax purposes items not accounted for and included in the balance sheet (*deduzioni extracontabili*) was eliminated by the 2008 Finance Act. The repeal was effective for tax periods following that underway as of December 31, 2007.

The accounting profession in Italy has issued and continues to issue statements of generally accepted accounting principles.

2. Accounting Periods

Individuals and non-corporate entities are required to report for tax purposes on a calendar year basis.⁷⁶⁶ Corporate entities may use a fiscal year that does not coincide with the calendar year if this is provided for in their articles of incorporation.⁷⁶⁷

⁷⁶² Law No. 199, Dec. 30, 2025, Art. 1 (133)–(136).

⁷⁶³ Law No. 662, Dec. 23, 1996, Art. 3(143) *et seq.*, as amended by Law No. 448, Dec. 23, 1998, and Law No. 244, Dec. 24, 2007; D. Lgs. No. 446, Sept. 2, 1997, Art. 16 (3).

⁷⁶⁴ CC, Arts. 2423, 2423 *bis*, 2423 *ter*, 2424, and 2425.

⁷⁶⁵ Historically, the tax law and the Civil Code in Italy often imposed divergent obligations on corporate taxpayers. Over time, the tax law has been revised with the intention of harmonizing its provisions with the general accounting concepts embodied in the Civil Code, which has resulted in the adoption of “civilistic” accounts. Some differences, nonetheless, remain (e.g., there is no recognition in the tax law of inventory write-offs, as permitted under the Civil Code).

⁷⁶⁶ TU, Art. 7.

⁷⁶⁷ TU, Art. 76.

3. Accounting Methods

Individuals and non-corporate entities use the cash basis method of accounting, except with regards to business income, for which the accrual method of accounting is used. Other taxpayers must use the accrual method.

4. Inventories

Inventories are valued at cost, including directly attributable expenses, but excluding interest and overhead. A system of pricing inventories that is basically a modified last-in first-out (LIFO) method is specified.⁷⁶⁸

In the tax period in which they are acquired, inventory items are valued by dividing the total cost of goods purchased in the period by their quantity. Thereafter, increases in quantity must be indicated as separate items in the tax period in which the items are acquired. Decreases in quantity must be charged against increases that occurred in prior tax periods, beginning with the most recent.

If the unit value so determined is higher than the normal value in the last month of the tax period, valuation may be arrived at by multiplying the quantity of goods, independently of the period, by this normal value (market value).

Companies may elect to use alternate methods of inventory pricing. Other than LIFO, any acceptable basis will produce, in times of rising prices, a higher taxable profit and should be acceptable to the fiscal authorities. A taxpayer must follow the chosen method in subsequent years, until another method of valuation is selected. The taxpayer must notify the tax office of any change in method and the change will become effective at the beginning of the next tax period. A taxpayer must follow the chosen method in subsequent years, until another method of valuation is selected. The Civil Code requires inventories to be stated at the lower of cost or market value.

Companies in the oil and gas sector are required to use the first-in first-out (FIFO) method to value inventories rather than the more commonly used LIFO method.⁷⁶⁹ Capital gains generated by the use of the FIFO method are not subject to IRES during the first tax period, but are instead subject to a 16% substitute tax.⁷⁷⁰

5. Consolidated Groups

Two types of consolidated tax returns were introduced by Legislative Decree No. 344/2003:

- (i) The national consolidated return;⁷⁷¹ and
- (ii) Worldwide tax consolidation.⁷⁷²

a. National Tax Consolidation

A controlling corporation and any controlled corporation (as defined in Article 2359(1) of the Civil Code) may jointly

opt to be taxed as a group. The following requirements must be met:

(i) The controlling corporation can be resident in Italy, an EU country, or a country with a tax treaty with Italy that provides for exchange of information, that has a business activity through a permanent establishment (PE) in Italy; if it does not have a PE in Italy it must be resident in an EU country or a country in the European Economic Area that has an exchange of information agreement with Italy;⁷⁷³

(ii) All corporations involved must have the same tax period;

(iii) The option must be jointly exercised by each corporation involved and communicated to the Tax Agency with the tax return that is filed in the year that the option is to begin; and

(iv) Each corporation must elect domicile with the controlling corporation for purposes of any assessments or the levying of sanctions.

With respect to determining whether the necessary element of control exists, Article 120 of the TU provides that corporations in whose capital or balance sheet profit another corporation has a direct or indirect participation of more than 50% are deemed to be controlled by that other corporation.

A group is taxed based on a consolidated tax return prepared by the controlling corporation, which declares the total accumulated revenue from the sum of the net income of the controlled corporations.

The following adjustments are also provided:

(i) A type of “reimbursement” for a corporation that transfers tax losses it is unable to use to a controlling company; however, tax losses from tax periods prior to that in which the option to consolidate is exercised can be used only by the company that generated the losses;

(ii) IRES carryforwards acquired before consolidation by the controlled company may be transferred to the controlling company. IRES carryforwards acquired after consolidation are to be used only by the controlling company; and

(iii) An obligation to adjust the taxable income of the group corporations in the event that a group member devalues its shareholdings.

Once exercised, the option to file a consolidated return cannot be revoked for a period of three years, unless the required control element ceases to exist. Should that occur, losses can be attributed to the controlling company or proportionally among the companies that produced the losses and for which the required control element has ceased to exist, or to the company or companies that produced the loss. If there were intragroup transfers under the tax neutrality regime prior to its repeal,⁷⁷⁴ the income of the controlling corporation must be adjusted to take into account any remaining difference between the book value of assets that were transferred under the tax neutrality regime and the value recognized for tax purposes. A later

⁷⁶⁸ TU, Arts. 92–93.

⁷⁶⁹ DL No. 112, June 25, 2008, Art. 81(19), amending TU, Art. 92; Art. 92-bis.

⁷⁷⁰ DL No. 112, Art. 81(20); Art. 92-bis; D. Lgs. No. 38, February 28, 2005, Art. 13 (4).

⁷⁷¹ TU, Arts. 117–129.

⁷⁷² TU, Arts. 130–142.

⁷⁷³ TU, Art. 117.

⁷⁷⁴ The tax neutrality regime was repealed for intragroup transfers effected on or after January 1, 2008.

decree determined the means of allocating any group losses not fully offset and other operational details.⁷⁷⁵

At the end of the three-year period, the option is automatically renewed, unless it is specifically revoked.

b. *Worldwide Consolidation*

The law also provided that a resident controlling corporation can opt to include proportionally, in its own tax base, the income earned by all its nonresident controlled corporations. The option, which cannot be revoked for a period of five years, may be exercised by corporations whose shares are traded on regulated stock exchanges, or that are controlled by the state or other public entities, or by individuals. Corporations that had previously exercised the consolidation option with effect through the tax year ending on December 31, 2016, could renew the option for at least three additional years if renewal was expressly requested; for tax years ending after December 31, 2016, the renewal is automatic for three additional years.

A controlling corporation that opts for worldwide consolidation cannot also opt for national consolidation.

With respect to determining whether the requisite control element exists, Article 133 of the TU provides that corporations in whose capital or balance sheet profit another corporation has a direct or indirect participation of more than 50% are deemed to be controlled by that other corporation.

For the option for worldwide consolidation to be exercised, the following conditions must also be met:

- (i) All nonresident controlled corporations must be included;
- (ii) The tax periods of the corporations involved must be identical, unless this is not permitted by local legislation; and
- (iii) The balance sheets of the companies involved must be audited.

During the first tax year, the controlling corporation applies to the Tax Agency to verify the existence of the prerequisites for consolidation.

The taxable income of each controlled foreign company must be recalculated by the controlling corporation in accordance with Italian tax rules, but excluding certain costs, such as sums paid under financial leases, the reimbursement of employee expenses, and compensation paid to directors (i.e., such costs are simply not taken into account).

c. *Consolidated Accounts*

Consolidated accounts are required for groups that in two successive tax years exceed: 20 million euros in assets; 40 million euros in revenue; and have an average of 250 employees.⁷⁷⁶

Tax credits may be transferred within a group if a 50% common shareholding exists.⁷⁷⁷

⁷⁷⁵ DM, June 9, 2004.

⁷⁷⁶ D. Lgs. No. 127, April 9, 1991, Arts. 25 and 27, as amended by D. Lgs. No. 39, Aug. 18, 2015.

⁷⁷⁷ DPR 602, Sept. 29, 1973, as amended by Law No. 549, Dec. 28, 1995, Art. 43 *ter*.

6. *Transparent Taxation*

a. *In General*

A resident corporation may opt for “transparent taxation,” which permits the corporation’s income to be taxed on a pass-through basis to its corporate shareholders, regardless of whether the corporation’s profits are distributed as dividends.⁷⁷⁸ The option is available for a period of three years. For options expiring on December 31, 2016, the option had to be expressly renewed; options expiring after that date are automatically renewed.

The requirements for exercising the transparency option are that the shareholding company and the subsidiary must both be capital companies and the shareholding company’s right to vote in shareholders’ meetings and its percentage of participation in the profits of the subsidiary company may not be less than 10% or more than 50%.

These requirements must be met as of the first day of the tax period in which the corporation exercises its option and must remain in place without interruption for the entire period of the transparency regime (three years).

The transparent taxation option may not be exercised if the subsidiary has issued alternative equity instruments that do not carry a right to vote in shareholders’ meetings or has elected for national or worldwide consolidation.

The transparency regime also operates where the corporation produces a tax loss, the loss being attributed to the shareholders in proportion to their participation and up to the limit of their share of the net worth of the corporation. Shareholders may use any loss allocated to them up to the amount of their total income and may carry any excess forward to subsequent fiscal years in accordance with the ordinary rules.

The shareholders’ tax losses from tax periods preceding transparent taxation may not be used to offset their share of the subsidiary’s income after transparent taxation commences.

The transparency option is also available if the shareholders of the Italian corporation concerned are corporations residing in one of the EU Member States that own at least 25% of the capital of the Italian corporation for a period of more than one year.

Under transparent taxation, the attribution of income is made in the tax period of the participating corporations that is in progress on the date of the close of the fiscal year of the subsidiary corporation. Provisional withholding taxes applied to the income of the subsidiary corporation, tax credits and partial payments of tax are subtracted from the taxes due from the corporate shareholders in proportion to their share of the profits of the subsidiary corporation.

b. *Comparison of Ordinary and Transparent Taxation*

Assume that the shareholders of Alpha Corporation are Beta Corporation (50%), Gamma Corporation (40%), and Omega Corporation (10%).

⁷⁷⁸ TU, Art. 115.

ALPHA	Ordinary Taxation	Transparent Taxation
Corporate income	100,000	100,000
IRES (24%)	24,000	0
Net profit	76,000	100,000
Profit to BETA	38,000	50,000
Profit to GAMMA	30,400	40,000
Profit to OMEGA	7,600	10,000
BETA	Ordinary Taxation	Transparent Taxation
Dividend or taxable income	1,900 (38,000 × 5%)	50,000
Gross income	1,900	50,000
Taxable income	1,900	50,000
IRES — (24%)	456	12,000
GAMMA	Ordinary Taxation	Transparent Taxation
Dividend or taxable income	1,520 (30,400 × 5%)	40,000
Gross income	1,520	40,000
Taxable income	1,520	40,000
IRES — (24%)	364.80	9,600
OMEGA	Ordinary Taxation	Transparent Taxation
Dividend or taxable income	380 (7,600 × 5%)	10,000
Gross income	380	10,000
Taxable income	380	10,000
IRES — (24%)	91.20	2,400
Total taxation	24,912.00 (24,000 + 456 + 364.80 + 91.20)	24,000 (0 + 12,000 + 9,600 + 2,400)
Total taxation	24.9%	24%

The double taxation that arises from the taxation of the dividend under ordinary taxation, leads inevitably to a slightly higher tax burden than that under transparent taxation, which

does not provide for any further taxation in the event that a dividend is actually distributed.

c. Transparent Taxation in the Case of a Limited Liability Company

Pursuant to Article 116 of the TU, a *società a responsabilità limitata* (Srl) may opt for transparent taxation if its turnover is not in excess of 5,164,570 euros and it has no more than 10 individual quotaholders, or 20 quotaholders if it is a cooperative. The duration of the option and the limit on the imputation of losses are the same as indicated in a., above, in relation to IRES taxpayers.

7. Reserves

Only allocations to reserves set up to cover an ascertainable reduction in the value of assets, such as depreciation, or to meet definite liabilities, such as service termination indemnities, are allowable as deductions in computing taxable income. Italy has passed several provisions over the years to allow businesses to revalue their reserves. The Budget Bill of 2016 had provided that, with the exception of assets of their own production, or where the exchange of assets is the business of the company, businesses could revalue all their assets and shareholdings carried on the balance sheet as of December 31, 2015, upon payment of a withholding tax of 16% on depreciable assets and 12% on non-depreciable assets, as well as payment of IRAP.⁷⁷⁹ The tax values of these assets may be realigned to the values in the balance sheet. Companies with a calendar year had time until December 31, 2016, to carry out the revaluation; companies that do not have a calendar year tax year, and that had approved their annual accounts before the decree was published, could revalue their assets by the closing of their next tax year. For example, a company that closed its year on June 30, 2016, had until June 30, 2017, to carry out the revaluation. The depreciation of the revalued assets was taken into account beginning with the company's 2018 tax year.

Pursuant to the 2020 Budget Law, businesses were allowed to revalue their assets by the close of the 2019 tax year with respect to all assets, both tangible and intangible, carried in their accounts as at December 31, 2018, upon payment of a withholding tax of 12% on depreciable assets and 10% on non-depreciable assets, as well as payment of IRAP.⁷⁸⁰ This revaluation was extended to assets carried in business accounts as at December 31, 2019. For companies that wanted the revaluation to apply for tax and book purposes, an additional 3% withholding applied; whereas if the revaluation applied only for book purposes, a withholding of 10% applied.⁷⁸¹

The 2025 Budget Law introduced, as a permanent measure, the option for taxpayers to step up the value of their assets (both listed and unlisted) and land holdings (both agricultural land and land zoned for construction) held as on January 1 of each tax year through the payment of a substitute flat withholding tax of 18%.

The 2026 Budget Bill increased the withholding tax from 18% to 21% for both listed and unlisted assets for revaluations

⁷⁷⁹ Law No. 232, Dec. 11, 2016, Art. 1 (559), (561); Law No. 311, Dec. 30, 2004, Art. 1(475), (477), (478).

⁷⁸⁰ Law No. 160, Dec. 27, 2019, Art. 1.

⁷⁸¹ Law No. 178, Dec. 30, 2020, Art. (83).

made between January 1, 2026 through November 30, 2026, while the withholding tax on land assets remains at 18%.⁷⁸² The revaluation for unlisted assets requires a professional appraisal.

This substitute tax is levied on the fair market value of the asset or land as of January 1 of the tax year and a revaluation deadline of November 30. By the latter date, a qualified professional must have prepared a certified appraisal for the unlisted shares or land. For listed shares, the fair market value can be used.

The substitute tax may either be paid in full by November 30 of the step-up year or by three annual installments beginning November 30 of the step-up year. The second and third installments will be subject to 3% annual interest.

The balance resulting from the revaluation is either placed in a special revaluation reserve, or used to increase capital. Stock dividends, bonus shares or increases in the par value of shares resulting from such capital increases, and distributed to shareholders, are not subject to tax in the hands of the shareholders. The amount of cash distributions made and charged to the special reserve becomes taxable in the hands of both the company and the shareholders.

The revaluation creates a category of reserve with separate, complex rules for eliminating or mitigating taxation of the reserve. The revaluation creates a category of reserves subject to specific rules for mitigating taxation. Specifically, the 2026 Budget Law has renewed the option to free revaluation surpluses and tax-deferred reserves that were recorded in financial statements for the tax year ending December 31, 2024 and which remained outstanding as of December 31, 2025.

The tax-deferred status is removed by paying a 10% substitute tax in lieu of IRES and IRAP. Once the substitute tax is paid, these reserves lose their tax-deferred status and may be distributed to shareholders or used for other purposes without the company incurring further corporate taxation at the time of distribution. The option must be exercised in the tax return for the 2025 tax year filed in 2026 and the tax paid in four equal annual installments. Additionally, any original substitute tax credits related to the revaluation that initially created the reserve may no longer be applied once the reserve is freed.⁷⁸³

It should be noted that the payment of this tax does not eliminate existing civil law restrictions on distributing these reserves; it only addresses their tax status. This means that even if the tax is paid, the Italian Civil Code (specifically Article 2426 and laws governing capital protection) may still prevent the company from distributing the cash to shareholders. For example:

- i. Under Italian civil law certain revaluation reserves can only be used to cover business losses. If the company has existing losses, it cannot distribute the freed reserve until those losses are covered or the reserve is replenished.
- ii. If the reserve was used to increase the company's capital, it cannot be distributed unless the company follows the formal capital reduction procedures, which include a 90-days waiting period for creditors to object.⁷⁸⁴

iii. If the revaluation was based on an increase in the value of an asset, under Italian Civil Law, it is often viewed as a paper profit. To prevent companies from draining cash they do not have, the law may restrict distributing these gains until the asset is sold.

Thus, before freeing reserves for distribution, a company must first ensure that it satisfies the solvency and capital maintenance requirements of the Italian Civil Code.

8. *Asset Assignment and Sales of Assets to Shareholders*

The Budget Bill of 2026 provided that companies which between October 1, 2016 and September 30, 2017 assigned or ceded to shareholders non-instrumental operating assets or goods could do so with payment of an 8% substitute tax in lieu of IRES and IRAP, without the transfer being considered income to the company.⁷⁸⁵ The 2026 Budget Bill has re-introduced this possibility for non-instrumental assets (such as real estate not used directly for business or registered movable property such as vehicles not used for business) with an 8% substitute tax in the capital gains (the difference between fair market value and tax-recognized cost) to be paid in lieu of IRES and IRAP. The substitute tax increases to 10.5% for dormant companies. A 13% substitute tax to free any tax-suspended reserves is cancelled as a result of the assignment; 60% of the substitute tax must be paid September 30, 2026, and the remaining 40% by November 30, 2026. The assignment or sale must be executed by September 30, 2026.⁷⁸⁶

C. *Calculation of Net Income*

1. *Capital Gains*

There is no separate capital gains taxation of companies in Italy, except as provided for by Article 87 of the TU with respect to the participation exemption. All income and loss is ordinary income and loss for purposes of IRES.

Starting with the first tax period beginning after January 1, 2004, the system known as the "participation exemption" applies in Italy. As originally enacted, the system provided a 100% tax exemption. However, as of January 1, 2008, the exemption was fixed, subject to specified conditions, at 95%⁷⁸⁷ of profits realized or losses or devaluations suffered, as a consequence of the transfer of a shareholding. While the 2026 Budget Law briefly introduced minimum ownership thresholds of 5% or a value threshold of at least 500,000 euros for this exemption, Decree Law No. 38 of March 27, 2026 (effective March 28, 2026) repealed those restrictions, restoring the standard regime. This means that the exemption applies regardless of the size or value of the participation, provided the historical qualitative requirements (holding period, accounting classification, residence, and commercial activity) are met.

The system of exemption of profits (or the disregarding of losses and devaluations, if any) is conditioned on meeting the following requirements:

⁷⁸⁵ Law No. 232, Dec. 11, 2016, Art. 1 (565)–(566).

⁷⁸⁶ Law No. 199, Dec. 30, 2026, Art. 1 (35)–(41).

⁷⁸⁷ DL No. 203 of Sept. 30, 2005, Art. 5, as converted into permanent law with amendments by Law No. 248 of Dec. 2, 2005, and Law 244/2007, Art. 1 (339)(i); TU, Art. 87(1).

⁷⁸² Law No. 199, Dec. 30, 2025, Art. 1 (144).

⁷⁸³ Law No. 199, Dec. 30, 2025, Art. 1 (44).

⁷⁸⁴ Civil Code, Art. 2445.

(i) Uninterrupted possession for a period of 12 months⁷⁸⁸ prior to the transfer of the shareholding, the shares and quotas most recently acquired being deemed to be transferred first (LIFO method);

(ii) The listing of such shareholdings among the financial assets on the first balance sheet drawn up during the period of possession;⁷⁸⁹

(iii) The subsidiary corporation in which the shareholding is owned not having its fiscal residence in a country with a “privileged tax system,”⁷⁹⁰ and

(iv) The subsidiary undertaking a commercial activity. The participation exemption is not available if the assets of the subsidiary consist predominantly of real property, except real property that is built or sold as the main activity of the enterprise, or plant and structures directly used in the exercise of the activity of the enterprise.

The requirements set out above at (iii) and (iv) must be met without interruption, at least from the beginning of the third tax period before the transfer.⁷⁹¹

Gains on the sale of cryptocurrencies should be included in the taxable base for Italian corporate income tax purposes. As of January 1, 2026, the tax rate on capital gains from crypto-assets has increased to 33% (though a reduced 26% rate remains applicable to Euro-pegged stablecoins/EMTs compliant with MiCA regulations). The previous tax-exempt threshold of 2,000 euros has been abolished. Tax losses may be offset against gains realized in the tax year. Unused losses can be carried forward for a maximum of four subsequent tax years and can be offset against gains of future years. (See IV.Q., above.)

The 2024 Budget Law amended the domestic participation exemption to encompass a nonresident company that does not have a permanent establishment (PE) in Italy, is resident in an EU Member State or an EEA country that allows an adequate exchange of information, and is subject to corporate income tax in its country of residence.⁷⁹² On July 29, 2024 the Italian Tax Agency issued Circular 17/E, which provides guidelines on the newly-revised tax regime applying to capital gains on qualified shareholdings. The new regime standardizes the taxation treatment of capital gains, which had hitherto applied only to resident entities, by making the tax treatment applying to the non-resident companies referred to above the same as that applying

to resident companies, thus ensuring compliance with obligations arising from EU law.

Capital gains arising from the sale of qualified participations subject to tax in Italy and realized by a company or commercial entity without a PE in Italy but resident in an EU or EEA Member State and subject to corporate income tax in that State will be subject to this special tax regime, which grants a 95% exemption provided the company/entity fulfills the same conditions as those that resident companies must fulfill to benefit from the participation exemption system described above (see also VI., below).

2. Dividends

a. In General

Beginning January 1, 2004, a system of partial taxation was adopted, eliminating the previous tax credit mechanism.⁷⁹³ The effect on the recipient of a dividend was that of partial double economic taxation of the portion of income subjected to tax both at the time of its production by the corporation and again at the time of receipt by the shareholder.

Profits distributed — in any form and under any name — to their shareholders by corporations or entities resident in Italy are included in the recipient’s taxable income in an amount equal to 5% of the dividend distributed.⁷⁹⁴ This rule applies without regard to the type of participation held (i.e., whether qualified or nonqualified). Taxpayers who have opted for transparent taxation or for a consolidated tax return are excluded from this system.

The rule covers all transfers of profits by a corporation to its shareholders, including, for example, the sums or the normal value of assets received by shareholders on withdrawal or reduction for excess capital, or on liquidation. These are all considered profits to the extent they exceed the price paid for the purchase of the shares or quotas annulled. This also applies to profits deriving from a participation agreement in the event that the shareholder has provided only capital.

With effect from the tax year beginning January 1, 2021, only 50% of dividends received by non-commercial entities resident in Italy that carry on activities related to the education and training of young people, crime prevention scientific re-

⁷⁸⁸ However, the disregarding of losses for tax purposes applies in the case of uninterrupted possession for a period of 12 months, pursuant to Law 244/2007.

⁷⁸⁹ As to shareholdings already owned at the time the new tax code entered into force, condition (ii) was deemed to have been met if the financial assets were listed in the balance sheet relating to the second tax period prior to that in which the provisions were to be applied for the first time.

⁷⁹⁰ A country with a “privileged tax system” is a country where the nominal level of taxation is less than 50% of that applied in Italy. TU, Art. 167 (4); see also Circular 35/E, Aug. 4, 2016.

⁷⁹¹ Until 2014, capital gains derived from the sale of holdings held for a period of at least three years in a company that was in existence for no more than seven tax periods were not taxable, provided that, within two years of the realization of the gain, it was reinvested in other companies operating in the same sector that have been in existence for no more than three years. DL No. 112, June 25, 2008, Art. 3(1); this provision was repealed by Law No. 147, Dec. 27, 2013; Art. 1 (583) (e).

⁷⁹² Law No. 213, Dec. 30, 2023, Art. 1 (64), amending TU, Art. 68.

⁷⁹³ Prior to January 1, 2004, Italian tax law eliminated the double taxation of dividends for resident taxpayers by allowing them a tax credit on dividends received. The formula for calculating the tax credit also provided an unwarranted tax credit if the dividends received had not been fully taxed at the corporate level. To prevent this, an “equalization tax” was used as an offset against distributions out of income not subject to full taxation prior to distribution. The equalization tax was paid by a corporation on any distribution amounting to more than 64% of its net income inclusive of any loss carryforwards from previous years, in an amount equal to 56.25% of the excess. This was repealed effective January 1, 1998. Thereafter, a 56.25% tax credit (reduced to 51.51% for dividends distributed after September 30, 2003, but on or before December 31, 2003) was fully recognized only to the extent that IRPEG (corporate income tax at the time) was actually paid or reported on a return prior to distribution. In certain specified cases, a limited tax credit was available to shareholders even when the dividends were not subject to taxation at the corporate level, so that the shareholder would enjoy the same benefit with respect to the income as the company. Any unused portion of the imputation tax credit could be carried forward or refunded.

⁷⁹⁴ TU, Art. 89 (2), as amended by DL No. 223/2006, as converted with amendments by Law No. 248 of August 4, 2006.

search, environmental protection or activities in the arts are subject to taxation.⁷⁹⁵

In a July 2024 private letter ruling,⁷⁹⁶ the Italian Tax Agency confirmed, and provided some clarity on, the application of the exemption regime introduced in the 2021 Budget Law⁷⁹⁷ to Italian-source dividends and capital gains arising from the sale of qualified shareholdings by foreign investment funds that satisfy certain criteria.

The 2021 Budget law provided that, with effect from January 1, 2021, dividends and capital gains derived by certain foreign EU/EEA UCITS funds would not be subject to Italian taxation by way of either withholding or substitute tax. Specifically, this applies to a collective investment vehicle established in an EU or EEA Member State that permits an adequate exchange of information where:

- (i) The fund is in compliance with the provisions of Directive 2009/65/EC of the European Parliament and of the Council of July 13, 2009 on collective investment undertakings; or
- (ii) If the fund is not in compliance with the provisions of Directive 2009/65/EC, the fund manager is subject to supervision in the country in which the fund is established in accordance with Directive 2011/61/EU of the European Parliament and of the Council of June 8, 2011 (the “AIFM Directive”).

This measure was introduced to remove differences in treatment between investment funds governed by Italian law and those governed by foreign law, in light of the provisions of Article 63 of the Treaty on the Functioning of the European Union (TFEU) regarding the free movement of capital, which prohibits all restrictions on the movement of capital between EU Member States, as well as between Member States and third countries, subject to the possibility of derogation allowed by Article 65 of the TFEU.

The Tax Agency has made it clear that the exemption for dividends paid with respect to, and capital gains from the sale of, qualified shareholdings available to Italian collective investment vehicles applies to foreign UCITS (other than real estate funds) that are:

- (i) Established in an EU or EEA Member State that allows an adequate exchange of information.
- (ii) Are either UCITS-compliant, or if not UCITS-compliant, have a fund manager who is subject to supervision in the country in which the fund is established in accordance with the AIFM Directive.

The Tax Agency also made it clear that, although the above regulatory requirements must be met, there is no requirement as to the legal form or tax status of such funds in the countries in which they are established.

Further, it noted that the AIFM Directive had introduced measures designed to create a European internal market for alternative investment fund managers (AIFMs) by establishing a harmonized framework for the regulation of the authoriza-

tion, operation and transparency of all AIFMs that manage and/or market alternative investment funds. Thus, the AIFM Directive, like the UCITS Directive, ensures EU-wide recognition of each EU Member State’s authorization and supervisory systems. For a harmonized UCITS or alternative investment fund to be established and managed in a Member State, it is sufficient for the home Member State of the fund manager to grant authorization and exercise supervision. The AIFM Directive does not regulate alternative investment funds, which continue to be regulated and supervised domestically under the law of the state in which they are established.

Thus, as a rule, in the case of a non-UCITS-compliant collective investment vehicle, the tax exemption regime for dividends and capital gains will apply where the investment undertaking can qualify as an alternative investment fund under the law of the EU or EEA Member State in which it is established and is managed by an AIFM subject to supervision under the AIFM Directive.

b. Foreign-Source Dividends

The exemption for dividends distributed by nonresident corporations to resident corporations is 95%, if the following conditions are met:

- (i) The dividends are derived from a type of participation similar to the shares or quotas of an Italian company. This condition is deemed to be met where the payments, if made by a resident corporation, would be nondeductible from its total revenue under Article 109(9) of the TU; and
- (ii) The dividends are not derived from a corporation resident in a state or territory that has a privileged tax system, unless there has been a favorable ruling in relation to that foreign corporation, in which it was demonstrated that the participation was not for purposes of placing the income in a country with a privileged tax system and thus the controlled foreign corporation (CFC) rules would not be applicable. (See O., below, for a discussion of transactions involving residents of tax haven jurisdictions.)

Following the enactment of Decree Law No. 38 of March 27, 2026, the quantitative thresholds initially set for 2026 (requiring a 5% stake or a 500,000 euros tax value) by the Budget Bill have been abolished with retroactive effect from January 1, 2026. Accordingly, the 95% exemption remains applicable to all such dividends without regard to the size or value of the shareholding.

Dividends distributed by nonresident corporations from countries having a privileged tax system⁷⁹⁸ to resident corporations where the above two requirements are not met are taxed on 100% of their amount.

This taxation applies not only when dividends are distributed directly by a company with a privileged tax system to an Italian company, but also when such dividends are distributed indirectly to an Italian company, i.e., through another nonresident company which does not benefit from a privileged tax system.⁷⁹⁹

⁷⁹⁵ Law No. 178, December 30, 2020, Art. 1 (44)–(47); See also TU, Art. 173.

⁷⁹⁶ Private letter ruling No. 148/2024 published on July 11, 2024.

⁷⁹⁷ Law No. 178, December 30, 2020 Art. 1 (633).

⁷⁹⁸ TU, Art. 167(4).

⁷⁹⁹ Law No. 248, Aug. 4, 2006, Art. 36 (3–4 *bis*), as amended by DL No. 262, Oct. 3, 2006; TU, Art. 47(4).

c. Transition Tax on Undistributed Profits of Foreign Subsidiaries in Low Tax Jurisdictions

A voluntary one-off reduced tax on undistributed profits of foreign subsidiaries located in low tax jurisdictions (“Transition Tax”) was introduced by the 2023 Budget Law. Under the current tax rules, dividends paid by foreign subsidiaries to Italian companies are generally subject to a 95% participation exemption. In certain circumstances, full taxation (24%) or 50% taxation (12%) may be imposed on dividends distributed by subsidiaries located in low tax jurisdictions, unless the relevant profits have already been directly attributed to the Italian shareholder under the CFC rules.

Under the new provisions, companies may elect to pay a 9% Transition Tax (30% in the case of individual entrepreneurs) on qualifying undistributed earnings. “Qualifying undistributed earnings” are defined as earnings that remain undistributed as of the date of entry into force of the new rules (i.e., January 1, 2023), provided those earnings are earnings reflected in the 2021 financial statements of the relevant subsidiaries or the last financial statements closed before January 1, 2022 for non-calendar year entities.⁸⁰⁰

Taxpayers opting for the Transition Tax could be Italian tax residents or non-tax residents provided they have a permanent establishment in Italy.⁸⁰¹

The payment of the Transition Tax will allow the earnings to be treated as if they have been repatriated (i.e., the earnings will not be subject to further taxation when they are actually distributed). On distribution, earnings that were subject to the Transition Tax will be deemed to have been received first.⁸⁰²

The 9% Transition Tax may be reduced to 6%⁸⁰³ where a parent company located in Italy receives the foreign earnings and: (i) the earnings are in fact repatriated by the deadline for the income tax balance payment for the 2023 tax year (i.e., June 30, 2024 for companies with a calendar tax year end); and (ii) the Italian parent sets aside the repatriated earnings in a special equity reserve for a minimum period of two years. Failure to fulfill these conditions will result in a recapture of the benefit with an additional tax (3%), penalties (20%) and interest.⁸⁰⁴

⁸⁰⁰ Law No. 197, Dec. 29, 2022, Art. 1 (87–88).

⁸⁰¹ Ministerial Decree of the Ministry of Economy and Finance, June 26, 2023, Art. 2.

⁸⁰² It should be noted that the Ministry of Economy and Finance, in its Ministerial Decree of June 26, 2023, held that it was necessary to coordinate the Transition Tax with the CFC transparency tax regime. It specifically set out that profits repatriated with the 6% Transition Tax until June 30, 2024, would be considered to be formed by profits excluded from the Transitions Tax provided they have been repatriated by that date and that any remaining amounts from CFC entities were already taxed for transparency.

⁸⁰³ Ministerial Decree of the Ministry of Economy and Finance, June 26, 2023, Art. 4.

⁸⁰⁴ Law No. 197, Dec. 29, 2022, Art. 1 (89).

Where operating losses impede the creation of or reduce the reserve for the already exercised Transition Tax, the option will not lapse, but the reserve that cannot be established or is reduced due to losses will have to be created or reinstated by utilizing profits generated in the subsequent years through to the two-year minimum holding period. Thereafter, the requirement to establish or reinstate the reserve does not apply.

Additionally, a taxpayer may combine the “ordinary” (i.e., 9% or 30% for an individual) and “special” (6% or 27% for an individual) repatriation regime both with respect to different foreign entities as well as for different amounts of profits/profit reserves of the same foreign entity. If one of the conditions of the special regime should fail, the Transition Tax regime will not be revoked but the “ordinary” regime will apply. The taxpayer will be required to pay the 3% difference plus 20% in penalties plus interest within 30 days of the event that triggered the lapse of the special regime.⁸⁰⁵

The payment of the Transition Tax will provide taxpayers with an opportunity to step up their basis in the relevant shares up to the amount of their sale price by an amount equal to the earnings on which the Transition Tax was paid. The basis will be reduced to the extent the sale proceeds are distributed.

The tax is due in full by the deadline for the payment of the tax balance for fiscal year 2022 (June 30, 2023, for calendar year entities).

The Transition Tax election, which can be exercised separately for each foreign subsidiary with respect to all or part of the profits or retained earnings reserves, must be made when the 2022 tax return is filed (i.e., by November 30, 2023).⁸⁰⁶

3. Exclusions from Gross Income

The following may be excluded from taxable income:

- (i) Income subject to a final withholding tax at source, including income from public bonds (subject to some exceptions);
- (ii) Premiums received on certain Italian government instruments;
- (iii) Specified state grants;
- (iv) Income from real property (which is generally excluded and taxed separately, except that income derived from buildings constituting company assets is considered taxable business income); and
- (v) Capital surplus paid-in at issue and interest paid by subscribers for new shares or quotas.⁸⁰⁷

⁸⁰⁵ Ministerial Decree of the Ministry of Economy and Finance, June 26, 2023, Arts. 4 and 6.

⁸⁰⁶ Law No. 197, Dec. 29, 2022, Art. 1 (91). See also Ministerial Decree of the Ministry of Economy and Finance of June 26, 2023, Art. 4.

⁸⁰⁷ TU, Art. 91.

4. Incentive for Economic Growth

To encourage equity funding of companies, an incentive for economic growth (*aiuto alla crescita economica*, ACE, or “allowance for corporate equity”) was enacted in 2011 to permit companies to deduct from taxable income an amount corresponding to a notional return on new equity injected into the company. In 2016, the notional return was 4.75%; for 2017, it was 2.3%; and for 2018 and thereafter was to be 2.7%.⁸⁰⁸ The amount to be deducted was not to exceed the total amount of income declared by the company for the year and any excess amount may be carried forward in the following fiscal years. ACE became effective beginning with the fiscal year in progress as of December 31, 2011. The base year for determining the increase in capital is December 31, 2010, without taking into account profits from that fiscal year.⁸⁰⁹

ACE was repealed by the 2019 Budget Law,⁸¹⁰ but the 2020 Budget Law reinstated it with retroactive effect to tax year 2019 with its notional rate of 1.3% and introduced an enhanced ACE benefit for temporary period.⁸¹¹

For equity injections of up to 5 million euros made during 2021, the notional ACE (Super Ace or Innovative ACE) return was increased to 15%. Standard ACE remains in force and is also applicable to capital injections that exceed 5 million euros.⁸¹²

The following table illustrates the two ACE treatments available for the 2021 tax year:

⁸⁰⁸ Law No. 232, Dec. 11, 2016, Art. 1(549)–(550).

⁸⁰⁹ DL No. 201, Dec. 6, 2011, Art. 1; Law No. 147, Dec. 27, 2013, Art. 1 (137 *et seq.*).

⁸¹⁰ Law No. 145, Dec. 30, 2018, Art. 1 (1080).

⁸¹¹ Law No. 160, Dec. 27, 2019, Art. 1(287).

⁸¹² Law No. 106, July 23, 2021, Art. 19.

Characteristics	Innovative ACE	Standard ACE
Tax years applicable	2021	Post-2010
Notional return	15%	1.3%
Variation in capital for calculation	$\Delta +$ at 12/31/2012 with respect to 12/31/2021	$\Delta +$ company capital as at 12/31/2010
Maximum amount of $\Delta +$ recognized	5 million euros	Net assets as shown in balance sheet (excluding revaluation reserve)

Innovative ACE may be taken as either a tax credit or as a reduction in taxable income. The legislation provides anti-abuse provisions to discourage taxpayers from making temporary capital increases to take advantage of the incentive. The anti-abuse provisions require restitution of the benefit if in the two tax years following the 2021 tax period, the company’s net assets are reduced for reasons other than losses. The restitution mechanism applied will vary depending on whether the taxpayer has opted for a tax credit or a tax reduction.

In the tax periods that are subject to anti-abuse monitoring, should the variation in company capital be less than the increases in capital, the tax credit will be recaptured in proportion to the difference between the variation and the increases.⁸¹³

The following table illustrates the mechanism when the taxpayer opts for a tax credit:

⁸¹³ Law No. 106, July 23, 2021, Art. 19.

Year	Capital Increase	Innovative ACE Tax Credit	Capital Decrease	Δ Capital	Difference	Calculation for Recapture	Recaptured Amount
2021	1000	36 (1000 $\times$ 15 $\times$ 24)	200	800	200 (800 < 1000)	(200:1000 = X:36)	7,2
2022	—	—	300	500	300 (500 < 800)	((800 – 500):1000 = X:36)	10,8
2023	—	—	100	400	400 (400 < 800)	((800 – 400):1000 = X:36–10,8)	3,6

For taxpayers that opt to use ACE to reduce their tax liability, the legislation provides that if in 2022 the variation in a company’s capital is less than what was used to reduce the tax liability in 2021, it will be recaptured by an increase in total income in 2022, in the amount of 15% of the difference between the variation in 2021 and 2022, without taking into account losses in the annual accounts. If in 2023 the variation in the increase of capital is less than the increase recorded in

2021, the reduction in income taken will be recaptured as an increase in income in 2023, in amount of 15% of the difference between the change in the capital increase in 2021 and that of 2023 (net of the 2022 recapture).⁸¹⁴

⁸¹⁴ Law No. 106, July 23, 2021, Art. 19(4).

The following example illustrates the mechanism:

2021	
Capital Increase	1000
Notional Return	15%
Tax Reduction Calculation	$1000 \times 15\% = 150$
Tax Reduction Amount	150
2022	
Variation	800
Difference in Change (2021 and 2022)	$1000 - 800 = 200$
Calculation of Amount Returned to Total Income	$200 \times 15\%$
Recaptured Amount	30
2023	
Variation	400
Difference in Change (2021 and 2023)	$1000 - 400 = 600$
Change Net of 2022 Recapture	$((1000 - 400) \times 15\%) - 30 = 60$
Recaptured Amount	60

As of January 1, 2024, ACE was repealed. However, the Italian Tax Authorities in Circular No. 2/E of February 6, 2024, specified that companies will be able to use the residual effects produced by ACE without time limits.

The 2026 Budget Law introduced new temporary limitations on the utilization of these residual ACE surpluses and prior tax losses. For tax years 2026 and 2027, entities — primarily banks, financial intermediaries, and insurance companies — subject to rescheduling of specific deferred tax assets (DTA), must observe the following caps when offsetting additional taxable income generated by those deferrals.⁸¹⁵

(i) For FY 2026: Offsetting is restricted to 35% of the additional taxable income resulting from mandatory deduction deferrals as determined by Law No. 207 of December 30, 2024, Article 1 (814)–(17);

(ii) For FY 2027: The cap on offsetting increases to 42% of such additional taxable income.

These limitations will also be applicable when determining the income of entities included in the national consolidation regimes.⁸¹⁶

⁸¹⁵ Law No. 199, Dec. 30, 2025, Art. 1 (79)–(80).

⁸¹⁶ TU, Art. 117 *et. seq.*

5. Patent Box Regime

The patent box incentive was an optional tax incentive that came into effect in 2015 and was available through the 2020 tax year when it was repealed⁸¹⁷ and replaced by a research and development (R&D) super deduction.

When exercised, the patent box provided a five-year tax exemption for businesses engaged in R&D that own or that have granted a license to exploit their intellectual property.

The following intellectual property qualified for the patent box incentive:

(i) Software, provided that it was protected by copyright;

(ii) Industrial patents that are registered or for which registration was underway;

(iii) Designs and models which are capable of protection under law; and

(iv) Trade secrets and know-how, which includes formulae and information regarding expertise acquired in the industrial, commercial and scientific sectors that could be protected under law.

When the regime was originally enacted, trademarks were also included as eligible intellectual property. However, the OECD directives did not include trademarks as part of eligible intellectual property and, to align the Italian patent box option with regimes in other EU Member States, as of January 1, 2017, trademarks became ineligible intellectual property for this purpose.⁸¹⁸

The regime was elective and the election, as of tax year 2017, was exercised in the company's tax return. With the election, a business could exclude from its IRES and IRAP tax base a portion of income derived from the direct or indirect use of qualifying software.

Once elected, the option had a duration of five years and was irrevocable for that period, but it could be renewed by application to the tax authority at least 90 days before the election expired. Businesses that are exercising the option for directly owned intellectual property must obtain a ruling from the tax agency to determine the amount of the intellectual property's contribution to the business' income.⁸¹⁹ Such a ruling is not necessary when the income is received from the grant of a license to exploit the intellectual property.

As of 2017 and ensuing tax years, 50% (40% in 2016) of income so derived could be excluded from taxable income. Patent box options exercised in 2015 and 2016 for trademarks have been grandfathered and are therefore entitled to the benefits under the regime, although not beyond June 30, 2021.⁸²⁰

Taxpayers that had opted for the patent box incentive but that have not yet received a ruling from the tax authorities may revoke the election and instead opt for the R&D incentive discussed below.

⁸¹⁷ Law No. 106, July 23, 2021, Art. 19(5).

⁸¹⁸ Decree of the Ministry of Economic Development in Concert with the Ministry of Finance, Nov. 28, 2017.

⁸¹⁹ Tax Authority Circular No. 36/E, Dec. 1, 2015.

⁸²⁰ Law No. 190, December 23, 2014, Arts. 1(37)–1(45). Decree of the Ministry of Economic Development in Concert with the Ministry of Finance, November 28, 2017, Art. 13.

6. Super Deduction for Research and Development Costs

A cost-based R&D incentive was introduced at the end of 2021 in order to replace the patent box. Eligible costs incurred in relation to copyrighted software, patents, trademarks, designs, models and qualifying know-how⁸²¹ may be recognized with effect from the tax period underway on October 20, 2021, with a 110% increase in the deduction for IRES and IRAP purposes. Once elected, the super deduction for R&D has a duration of five years, is irrevocable for that period and can be renewed.

On February 15, 2022, the Italian Tax Agency issued guidelines for the implementation of the super deduction regime, setting out which taxpayers may avail themselves of the deduction, as well as which activities, expenses and intangible assets qualify under the regime.⁸²²

Corporate taxpayers eligible to opt for the super deduction are those that: (i) have the right to exploit the use of the intangible assets financially; (ii) invest in R&D within their business, assuming the costs and risks associated with such investments in accordance with the principles and criteria in Chapters I (The Arm's Length Principle) and VI (Special Considerations for Intangibles) of the OECD Transfer Pricing Guidelines; and (iii) would profit from the outcome of the R&D activities.

The Tax Agency guidelines indicate that the following activities qualify for the super deduction:

- (i) Industrial research and experimental development activities;
- (ii) Technological innovation activities intended to create or implement new and/or significantly improved products and/or processes, compared to those already created or applied by the company;
- (iii) Design activities; and
- (iv) Activities related to the legal protection of intangible assets.

These R&D activities will continue to qualify even if carried out by independent third parties, such as universities and research centers, provided they are carried out under the technical supervision of the taxpayer opting for the super deduction.

⁸²¹ Decree Law No. 146, October 22, 2021, Art. 6, as amended by Law No. 234, December 30, 2021, Art. 1(10). ⁷³⁶² These activities are defined in Ministerial Decree, 26 May 2020 Arts. 2–4 issued by the Ministry of Economic Development.

⁸²² Italian Tax Agency Guidelines, February 15, 2022, No. 48243.

The research must also be carried out in labs or structures located in Italy, an EU Member State, or a country within the European Economic Area (EEA) that has an information-sharing agreement with Italy.

Contractors or sub-contractors carrying out relevant R&D activities must be tax resident Italy, an EU Member State, or an EEA country that has an information-sharing agreement with Italy. R&D activities carried out based on agreements with related parties are excluded from the super deduction.

The R&D expenses qualifying for the 110% increased deduction are:

- (i) The cost of employees or independent contractors directly involved in the R&D;
- (ii) Amortization, principal payments on financial leases, operating lease payments and other expenses with respect to mobile equipment and intangible assets used for R&D;
- (iii) The cost of consulting services and similar services for R&D;
- (iv) The cost of materials, supplies and other products; and
- (v) The cost of maintaining rights with respect to subsidized intangible assets and their renewal on expiration, and the cost of protecting such rights, including associated expenses incurred for purposes of preventing counterfeiting and the costs of managing litigation to protect the taxpayer's rights in the intangible assets.

Qualifying R&D expenses incurred while carrying out the qualifying activities must be related to the following intangible assets used in carrying out business activities:

- (i) Copyrighted software;
- (ii) Industrial patents, including patents for inventions and biotechnological inventions, as well as their protection certificates;
- (iii) Utility model patents, including certificates for plant varieties and certificates and patents for the topographies of semiconductor products; and
- (iv) Protected designs and models.

Know-how and trademarks are excluded from the super deduction regime.

Comment: Companies that elect the R&D super deduction may also simultaneously utilize the R&D tax credit. See II.A.3.f., above.

7. Tax Credit for Investments in Energy Efficiency Technology

The parameters of the tax credit for resident companies and permanent establishments introduced by Article 38 of Decree Law No. 19 of March 2, 2024 for investments in energy-saving technology were set down in a decree of the Ministry of Business and Made in Italy of July 24, 2024. Companies that, between January 1, 2024 and December 31, 2025, make investments in technology that reduces the energy consumed by their business premises by at least 3% or that reduce energy consumption in their productive processes by at least 5% are eligible for the credits. In the case of newly incorporated companies, the energy savings are calculated with respect to average annual energy consumption based on a hypothesized scenario.

The credit is based on the cost of the investment and increases as savings in energy consumption increase, as shown below:

Tax Credit	Reduction of Energy Consumption in Production	Reduction of Energy Consumption in Production Processes Due to Investment
35% of purchase cost up to 2.5 million	Not less than 3%	Not less than 5%
15% for investments over 2.5 and up to 10 million		
5% for investments over 10 and up to 50 million		
40% for investments up to 2.5 million	More than 6%	More than 10%
20% for investments between 2.5 and 10 million		
10% for investments between 10 and 50 million.		
45% for investments up to 2.5 million	More than 10%	More than 15%
25% investments between 2.5 and 10 million		
15% for investments between 10 and 50 million.		

The 2025 Budget Law simplified the brackets by merging the first two tiers to encourage larger investments. For 2025, the 35%, 40%, and 45% rates now apply to the entire first 10 million euros of an investment, rather than capping it at 2.5 million euros. For investments made in 2025, the simplified structure is as follows:⁸²³

⁸²³Law No. 190, Dec. 30, 2025, Art. 1 (427)–(436).

Tax Credit	Reduction of Energy Consumption in Production	Reduction of Energy Consumption in Production Processes Due to Investment
35% of investments up to 10 million	Between 3% and 6%	Between 5% and 10%
5% for investments over 10 million up to 50 million		
40% for investments up to 10 million	Between 6% and 10%	Between 10% and 15%
5% for investments over 10 million up to 50 million		
45% for investments up to 10 million	More than 10%	More than 15%
15% for investments over 10 up to 50 million		

These measures apply to investments made beginning on January 1, 2024.⁸²⁴

The 2026 Budget Law introduced a new hyper-depreciation regime for investments in digital and energy-saving technology between January 1, 2026, and September 30, 2028. This measure replaces the previous tax credit system by allowing companies to increase the deductible acquisition cost of eligible assets for income tax purposes. The percentage of the cost increase depends on the total amount of the investment, as shown below.

Hyper-depreciation Rate	Investment Amount (euros)
180% of the acquisition cost	Up to 2.5 million
100% of the acquisition cost	Between 2.5 and 10 million
50% of the acquisition cost	Between 10 and 20 million

8. Super Deduction for New Hires

Ministerial Decree No. 154 of June 25, 2024, published in Official Gazette No. 154 of July 3, 2024, contains the implementing regulations for Article 4 of Legislative Decree 216/2023. This article provides for the enhanced deductibility of labor costs incurred by companies that increased the number of their permanent employees in the tax year following that underway on December 31, 2023. The super-deduction allows companies a 120% tax deduction with respect to labor costs relating to new hires and a 130% deduction when the new hires are within certain protected categories such as the disabled, women with at least two minor children or young people qualifying for employment incentives.

⁸²⁴Law No. 201, Dec. 20, 2024, Art. 1 (427)–(429).

As of the end of 2024, eligibility for the deduction requires that the following conditions be met:

- (i) The number of full-time employees at the end of 2024 must be higher than the average number of full-time employees employed in 2023, net of decreases in employment numbers in subsidiary or associated companies or companies under the control of the same entity, even through third parties; and
- (ii) The total number of employees (including temporary employees) must be higher than the average number of such employees employed in 2023, without taking into account intra-group decreases.

Taxpayers benefiting from this income reduction include corporations (SpAs or Srls), sole proprietorships and individuals engaged in the arts or professions. Businesses winding up or in liquidation are not eligible.

This deduction was extended for the three tax periods following the fiscal year underway as of December 31, 2024 (i.e., for tax years 2025, 2026, and 2027 for calendar-year taxpayers) by the 2025 Budget Law.⁸²⁵ On January 20, 2025 the Italian Revenue Agency issued Circular No. 1/2025, providing operational guidelines to guarantee uniformity in the application of the deduction. It provides that the super deduction will only be applicable if, at the end of the eligible tax period, the increase in the number of permanent employees (“employment increase”) was accompanied by an increase in the overall number of employees, including those with fixed-term contracts (“overall employment increase”), thereby confirming that the increase in costs (of 20% or 30% for workers from protected categories) will be applicable on the basis of the costs incurred for hiring new permanent staff, assuming the lower of the two following values:

- (i) The actual cost attributable to new permanent employees in each eligible tax period (2025–2026–2027);
- (ii) An increase in the overall cost of staff with both fixed-term and permanent contracts at the end of each tax period eligible for the tax relief (2025–2026–2027), compared to the previous tax period.

For both parameters, the cost of personnel must always be determined on the basis of the entry for personnel expenses in the income statement of the balance sheet.

To this end, the Italian Revenue Agency illustrates the various steps for calculating the relief, with the help of numerical examples, to which reference is made for an in-depth operational analysis.

9. Tax Relief for Assignments of Assets to Shareholders

The Budget Law of 2025 introduced a provision for direct tax relief for corporations and partnerships that assign their non-instrumental real estate assets as well as non-instrumental movable assets to individual shareholders. This provision was extended to 2026.

This benefit will apply only to such assignments that are completed by September 30, 2026. An 8% substitute tax will

be due by the business entity on the difference between the fair market value of the assigned assets and their tax recognized cost (capital gain). The substitute tax replaces the ordinary tax that would apply in the event of assignment to shareholders of company assets and attributable to the capital gains on those assets. This substitute tax is increased to 10.5% for a company that has been inactive in at least two of the three tax periods preceding the one underway IRES tax rate at the time of the assignment. Additionally, a 13% substitute tax applies to the cancellation of any tax-deferred reserves.

The substitute tax must be paid in two installments: 60% by September 30 and the remaining 40% by November 30 of the year of assignment. Where applicable, proportional registration taxes are reduced by 50%, and mortgage and cadastral taxes are due at a fixed rate.⁸²⁶

10. Reduced IRES for Investments in Tangible Assets

The Budget Law of 2025 provided for a reduction of 4% in the IRES rate, bringing the rate to 20% for a corporation that invests in assets covered by the credits for investments under the National Industrial Plan (see Capital Expenditures) and Energy-Saving Technology provided:

- (i) At least 80% of the corporation’s 2024 profits are placed in a special reserve;
- (ii) The amount invested in capital assets that will be used in production plants in Italy is at least the highest of the following three amounts:
 - 30% of the earnings retained in the special reserve;
 - 24% of the 2023 profits; or
- (iii) Meet a minimum threshold of 20,000 euros; and
- (iv) The investments are made by no later than the filing date for the 2025 income tax return.

Example: The following example was provided by the Ministry of Economy and Finance when the decree was implemented:

- (i) A corporation with a December tax year-end had a profit of 100 euros in 2024 and distributed 20 euros to its shareholders. In 2023, the corporation had profits of 150 euros that were partially offset by a loss of 60 euros from the 2022 tax year.
- (ii) The minimum investment for qualifying for the IRES reduction would be calculated as follows:
 - Tax year 2024: 100 euros × 80% × 30% = 24 euros; and
 - Tax year 2023: 150 euros × 24% = 36 euros.
- (iii) The higher of these two amounts, i.e., 36 euros, would apply.

⁸²⁵ Law No. 207, Dec. 30, 2024.

⁸²⁶ Law No. 207, December 30, 2024, Art. 1 (31–36); Law No. 199, Dec. 30, 2025, Art. 1 (35)–(41).

The corporation would, therefore, have to make significant investments of at least 36 euros to access the reduced IRES rate.⁸²⁷

Other conditions include that the number of employees hired during the tax year following the one underway at December 31, 2024, must not be less than the average of the previous three years; that during tax year following the one underway at December 31, 2024, the new hires with permanent contracts bring an increase by at least 1% in the average number of permanent employees when compared to the average of the tax year in progress at December 31, 2024; and that the company has not resorted to the wage guarantee fund (CIG) during the tax year underway on December 31, 2024.

The reduction in IRES will be revoked when the special reserve is distributed within two tax years of the tax year underway at December 31, 2024, or if the assets are decommissioned, sold or transferred abroad within the fifth tax year following the one in which the investment was made (i.e., by 2030 for companies with a calendar year).

Companies that use simplified accounting,⁸²⁸ have been placed in liquidation or have initiated insolvency proceedings are ineligible for the reduced IRES rate.⁸²⁹

D. Business Expenses

In general, companies are entitled to take as deductions costs and expenses incurred in the production of income to the extent that they are properly allocable to the taxable period. Specifically, deductions include:

- (i) Company formation expenses incurred within a five-year period beginning with the year in which the first revenues are produced;⁸³⁰
- (ii) Entertainment and promotional expenses, provided they are fully deductible, the relevant receipts meet very specific formal requirements and the expenses do not exceed a ceiling calculated by reference to the company's revenues, as shown in its income tax return for the same period as follows:
 - 1.3% of revenue and other proceeds up to 10 million euros;
 - 0.5% of revenue and other proceeds over 10 million euros and up to 50 million euros; and
 - 0.1% of revenue and other proceeds over 50 million euros.⁸³¹

Thus, a company with 15 million euros in revenue may deduct expenses of up to 155,000 euros per year (130,000 euros on the first 10 million euros and 25,000 euros on

the remaining five million euros). Any excess expenses are non-deductible. Furthermore, only 75% of expenses relating to hotels and meals that qualify as entertainment and promotion may be deducted (subject to the aforementioned revenue ceilings).

(iii) Travel expenses, provided the relevant receipts meet certain formal requirements;

(iv) Royalties and service fees, including management, technical, advisory and assistance fees, provided the amount of such fees is negotiated at arm's length, especially where the fees are paid between related companies where one of the companies is a nonresident;

(v) Indirect taxes, including stamp tax, registration tax, and value added tax (VAT) (*imposta sul valore aggiunto*) when the VAT is not recoverable;

(vi) Depreciation of fixed assets. For investments in new capital goods made as of January 1, 2026, companies may benefit from increased deductible costs (hyper-depreciation) of up to 180% for assets linked to the Transition 5.0 framework;

(vii) Amortization of costs related to the acquisition of patents, copyrights and know-how throughout the term of their validity, up to a maximum annual deduction of 50% of cost. Note that for these specific assets, companies can opt for the "New Patent Box" regime, which allows for a 110% super-deduction of related Research and Development costs. Costs related to trademarks are deductible in annual installments of no more than 1/18 of the cost;⁸³²

(viii) Amortization of goodwill and trademarks, up to an annual deduction of 5.56% of cost. However, under the 2026 Budget Law, the deduction for the goodwill amortization quota is partially deferred; only 3.25% of the annual quota is immediately deductible in 2026, with the remainder recovered in subsequent tax periods;⁸³³

(ix) Charitable contributions (up to 2% of reported income) and employee services (up to 0.5% of total employee expenditure). For 2025–2027, an additional 120% super-deduction is available for labor costs of new permanent hires;⁸³⁴

(x) Gifts to universities (up to 2% of reported income) and gifts to legally-established entities in the Mezzogiorno region that are wholly devoted to scientific research (up to 2% of reported income);

(xi) Losses on "small credits" (up to 2,500 euros, or 5,000 euros for large corporations) are automatically deductible if overdue for at least six months;⁸³⁵

(xii) Reserves established to cover a definite reduction in the value of assets (for example, depreciation), or to cover definite liabilities (for example, employee termination indemnities);

⁸²⁷ Decree of the Ministry of the Economy and Finance August 8, 2025, Art. 5.

⁸²⁸ Decree of the Ministry of the Economy August 8, 2025, Art. 3 (3), (b).

⁸²⁹ Law No. 207, December 30, 2024, Art. 1 (436–444).

⁸³⁰ TU, Art. 108 (4).

⁸³¹ TU, Art. 108 (2), as amended by Art. 1 (33)(p) of Law No. 2, Jan. 28, 2009, converting into permanent law with amendments DL No. 185, Nov. 29, 2008, and DM of Nov. 19, 2008, as further amended by D. Lgs. No. 147, Sept. 14, 2015, Art. 9(1).

⁸³² TU, Art. 103 (1).

⁸³³ TU, Art. 103 (1).

⁸³⁴ TU, Art. 95.

⁸³⁵ TU, Art. 101(5).

(xiii) Bad debts arising from commercial transactions, up to 0.5% of total accounts receivable at the conclusion of the tax period, until the provision for such debts amounts to 5% of accounts receivable. For banks and financial institutions, bad debts and write-downs are generally deductible in the tax year in which they are reported in the annual accounts, subject to specific deferral rules and percentage limits introduced by the most recent Budget Laws, including the 2026 Budget Law;⁸³⁶

(xiv) Rent, to the extent this is shown in a properly registered (taxed) contract;

(xv) Expenses that are not capitalized relating to repairs, modernization and maintenance, up to a maximum of 5% of the cost of depreciable assets owned at the commencement of the financial period. Amounts in excess of the 5% maximum are allowed as deductions in equal amounts over the following five years;

(xvi) Directors' fees, on a cash rather than an accrual basis;

(xvii) Research costs in the year in which they are incurred or in equal amounts in the following four years;

(xviii) Annual amortization of the difference between the amount payable on the redemption of bonds or similar securities issued by the company and the amount paid in on issuance;

(xix) Gifts for expenses relating to buildings or monuments of an historic or artistic nature. In addition, for certain types of restoration activities, a tax credit in the amount of 65% is available.⁸³⁷

Expenses attributable to operations in tax havens are generally not deductible. See O., below.

E. Capital Expenditures

Depreciation of assets is permitted beginning in the fiscal year in which the assets are first used, applying coefficients established by the Ministry of Finance for the category of asset concerned and normal use.⁸³⁸ This amount may be increased if usage in excess of normal standards can be proven. First year depreciation is one-half of normal depreciation. Accelerated depreciation is no longer permitted.⁸³⁹

However, as an incentive to encourage companies to invest in operating assets purchased between October 15, 2016 and December 31, 2016, "super" depreciation was available. The cost of the asset purchased was increased by 40%, resulting in a higher annual depreciation.⁸⁴⁰ The 2017 Stability Law extended this provision through June 30, 2018.⁸⁴¹ The Stability

Law for 2018 further extended super depreciation to December 31, 2018, or June 30, 2019, if 20% of the purchase price was paid by December 31, 2018.⁸⁴² This last extension reduced super depreciation by 10% to 30%. There has been no further extension of super depreciation as of January 1, 2019.

In addition, to encourage the digital development of companies, "hyper" depreciation was introduced for highly technological assets in the 2017 Stability Law. Thus, the cost of assets purchased between December 31, 2017 through September 30, 2018, provided in that latter case that a purchase order had been accepted and 20% of the price was paid by December 31, 2017,⁸⁴³ could be increased by 150%. The Stability Law of 2018 extended hyper depreciation to include assets purchased between January 1, 2018 through June 30 2019, provided that in the latter case the purchase order had been accepted and 20% of the price was paid by December 31, 2018.⁸⁴⁴

The Stability Law of 2019, further extended hyper depreciation to include assets purchased through December 31, 2019, or through December 31, 2020, provided that in the latter case the purchase order has been accepted and 20% of the price is paid by December 31, 2019. For assets purchased in 2019, hyper depreciation is to be applied as follows:

- 150% if the amount invested is less than 2.5 million euros;
- 100% if the amount invested is between 2.5 million euros and 10 million euros;
- 50% if the amount invested is between 10 million euros and 20 million euros;
- 0% for amounts invested in excess of 20 million euros; and
- 40% for the cost of purchase of software, and e-commerce and digital services management systems.

For businesses that used 150% hyper depreciation in 2018, the 2019 super depreciation is not available.⁸⁴⁵

Assets eligible for hyper depreciation purchased after July 14, 2018, must be used in Italy. If they are sold or used outside of Italy, even by group companies, the hyper depreciation will be subject to clawback.⁸⁴⁶

Depreciation for vehicles that are not instrumental to the business was repealed beginning with the tax period in progress on July 4, 2006.

Hyper-depreciation was not extended further.

A tax credit was enacted by the 2020 Budget law available for businesses that purchase assets between January 1, 2020 through December 31, 2020, or have paid at least 20% of the price on an accepted purchase order by that latter date, as follows:

- 40% for instrumental assets up to 2.5 million euros;
- 20% for instrumental assets above 2.5 million euros;

⁸³⁶ TU, Art. 106 (3), as amended by DL No. 83, June 27, 2015.

⁸³⁷ TU, Art. 100; DL No. 83, May 31, 2014, Art. 1.

⁸³⁸ See the Worksheets. The Ministry of Finance had intended to issue new depreciation coefficients for fiscal purposes. In legislation passed in 2009, Parliament had provided that, by no later than December 31, 2009, a revision of the depreciation coefficients would be completed. However, it did not do so and, consequently, the 1988 table is still being used.

⁸³⁹ TU, Art. 102, as amended by DL 223/2006, as converted with amendments by Law No. 248 of Aug. 4, 2006.

⁸⁴⁰ Law No. 208, Dec. 12, 2015, Art. 1(91).

⁸⁴¹ Law No. 232, Dec. 11, 2016, Art. 1(8).

⁸⁴² Law No. 205, Dec. 27, 2017.

⁸⁴³ Law No. 232, Dec. 12, 2016, Art. 1(9).

⁸⁴⁴ Law No. 205, Dec. 27, 2017, Art. 1(30).

⁸⁴⁵ Law No. 145, Dec. 30, 2018, Art. 1 (60)–(65), (229).

⁸⁴⁶ D. Lgs. No. 87, July 12, 2018, Art. 7.

- 15% for intellectual property assets connected to instrumental assets up to 750,000 euros.⁸⁴⁷

The 2021 Budget Law enacted a new tax credit, that partially overlaps the above credit, but is broader than the previous credit, as it can be used for assets acquired in leasing.

For investments made between January 1, 2022 and December 31, 2022, or by September 30, 2023,⁸⁴⁸ but ordered by December 31, 2022, with at least 20% of the cost paid, the credit will be as follows:

- 40% of the cost for instrumental assets for business in the National Industrial Plan (“*Industria 4.0*”) for technological innovation for investments up to 2.5 million euros;
- 20% for such investments if the amount is over 2.5 million euros and up to 10 million euros; and
- 10% for such investments if the amount is over 10 million euros and up to 20 million euros.

For other tangible assets unrelated to the *Industria 4.0* plan:

- 6% of the investment up to 2 million euros;

For other intangible assets unrelated to the *Industria 4.0* plan:

- 6% of the investment up to 2 million euros.

For investments made between November 16, 2020 and December 31, 2022, or by June 30, 2022, but ordered by December 31, 2021, with at least 20% of the cost paid, the credit will be as follows:

- 50% of the cost for instrumental assets for business in the National Industrial Plan (“*Industria 4.0*”) for technological innovation for investments up to 2.5 million euros;
- 30% for such investments if the amount is over 2.5 million euros and up to 10 million euros;
- 10% for such investments if the amount is over 10 million euros and up to a maximum 20 million euros; and
- 20% for intellectual property assets up to 1 million euros.

For other tangible assets, unrelated to the *Industria 4.0* plan:

- 10% (increased to 15% for investments related to telecommuting) of the investment up to 2 million euros.

For other intangible assets unrelated to the *Industria 4.0* plan:

- 10% (increased to 15% for investments related to telecommuting) of the investment up to 1 million euros.

The tax credit may be used to offset corporate income tax (or other taxes) in three equal annual installments, or in a single installment for companies with annual revenue of less than 5 million euros, under certain conditions.

The Budget Law passed at the end 2021⁸⁴⁹ extended the credit granted in the 2020 Budget Law and changed the percentage of credit that could be used for investments made between January 1, 2023 and December 31, 2025, or by June 30,

2026, but were ordered by December 31, 2025, with at least 20% of the cost paid as follows:

- 20% of the cost for instrumental assets for business in the National Industrial Plan (“*Industria 4.0*”) for technological innovation for investments up to 2.5 million euros;
- 10% for such investments if the amount is over 2.5 million euros and up to 10 million euros; and
- 5% for such investments if the amount is over 10 million euros and up to 20 million euros.

For investments in high-tech intangible assets, the tax credit amounts to:

- 20% of the purchase cost for investments made up to a maximum annual investment amount of 1 million euros, provided the investment is made between November 16, 2020, and December 31, 2023, or ordered by June 30, 2024 and with at least 20% of the cost has been paid.
- 15% of the purchase cost for investments up to a maximum annual investment amount of 1 million euros for investments made between January 1, 2024, and December 31, 2024, or ordered by June 30, 2025 and with at least 20% of the cost paid.
- 10% of the purchase cost for investments up to a maximum annual investment amount of 1 million euros for investments made between January 1, 2025, and December 31, 2025, or ordered by June 30, 2026, and with at least 20% of the cost paid.

Pursuant to the Budget Law of 2025, the credit for investments in intangible assets will only be available for investments that were made by December 31, 2024, which was later extended to June 30, 2025, provided that the order was accepted by the seller by December 31, 2024 and at least 20% of the price was also paid by that date.⁸⁵⁰ Further, a spending cap of 2.2 billion euros was introduced for the purchase of tangible assets acquired between January 1, 2025 through to December 31, 2025, with an extension to June 30, 2026, for orders accepted by the seller as of December 31, 2025 and at least 20% of the price was also paid by that date. To ensure that the funding cap is not exceeded, taxpayers will need to submit an online filing advising the Ministry of Enterprises and Made in Italy advising of the amount of the expenses and the tax credit accrued.⁸⁵¹

F. Thin Capitalization

The thin capitalization regime was repealed by the 2008 Finance Act with effect for the tax period following that in progress as of December 31, 2007 (i.e., for the tax period beginning January 1, 2008, if the tax period coincided with the calendar year).

G. Interest Deduction Regime

Legislative Decree No. 142 of November 29, 2018, which transposed into Italian law EU Directives 2016/1164/EU (“ATAD 1”) and 2017/952 (“ATAD 2”), substantially re-wrote the provisions of Article 96, TU, which regulates the deduction

⁸⁴⁷ Law No. Dec. 27, 2020, Art. 1 (184) to (190).

⁸⁴⁸ Law No. 197, Dec. 29, 2022, Art. 1(423).

⁸⁴⁹ Law No. 234, Dec. 30, 2021, Art. 1 (44)–(45).

⁸⁵⁰ Law No. 207, Dec. 31, 2024, Art. 1(446).

⁸⁵¹ Law No. 207, Dec. 30, 2024, Art. 1(447–448).

of interest expenses, to bring the provisions into complete compliance with the provisions of ATAD 1 and ATAD 2. Prior to this amendment, Article 96 had provided that passive interest could be deducted up to the amount of interest earned and any interest expenses in excess thereof were deductible up to an amount not exceeding 30% of gross operating income (*reddito operativo lordo* — or ROL). Under the new rules, interest expenses can now be deducted up to the total amount of interest income plus any interest income carried forward from previous tax years, with the excess being deductible within the limit of 30% of the current tax year's earnings before interest, taxes, depreciation and amortization (EBITDA).⁸⁵² When implementing this rule Italy elected to not enact the ATAD *de minimis* threshold. However, Article 6 of Law No. 111 of August 9, 2023, has proposed introducing the *de minimis* threshold.

ROL consists of the difference between the total value of production and the total cost of production, excluding such items as tangible and intangible assets, depreciation, rent paid for instrumental assets, and financial leases, as shown in the profit and loss account. Also excluded from the calculation are financial expenses and extraordinary items.⁸⁵³ Prior to the Legislative Decree, the calculation of ROL was based on accounting values; it is now based on tax values.⁸⁵⁴ This means that tax-exempt income, such as patent box income, should be excluded from EBITDA. Interest expenses that are capitalized on the cost of goods are now included.

Excess ROL not used for deduction purposes may be carried forward to increase ROL of future tax periods for a period of five years. Excess interest income may be carried forward without a time limit.⁸⁵⁵

Pursuant to Article 96, paragraph 13 of the TU, certain entities, such as banks and other financial institutions, that do not have as their sole activity the holding of shares, are not subject to these rules. However, beginning with the tax period following that in progress on December 31, 2007, only 96% of interest accrued by banks and financial entities is deductible.

H. Loss Carryover and Carryback

Losses relating to one tax period may be carried forward to reduce up to 80% of the aggregate income in the next or ensuing tax years until all of the loss is absorbed. Previously, losses were allowed to be carried forward for only five tax years. There is no loss carryback.⁸⁵⁶ Start-up losses incurred in the first three tax periods following incorporation that relate to a new production activity may also be carried forward without time limit, but such losses are not subject to the 80% limitation and can offset taxable income in its entirety.⁸⁵⁷ This regime became applicable from the tax period in progress on July 4, 2006.

1. Losses Resulting from a Change in Control

Article 15 of Legislative Decree No. 192 of December 13, 2024, amended TU Article 84 to restrict the utilization of losses

after a reorganization resulting in a change in control. The amendment provides that tax losses may not be carried forward if: (i) shares representing the majority of the voting rights in the company reporting the losses are transferred or otherwise acquired by third parties (a change in control); and (ii) the main business activity carried on in the tax period(s) in which the losses were incurred was changed in the fiscal year in which the change in control occurred or in the two preceding or subsequent tax years.

This restriction will not apply, however, if the profit and loss statement of the loss-reporting company for the tax year prior to the year when the change in control occurred showed gross receipts and other proceeds derived from the main business activity and labor costs that exceed 40% of their average amount in the two preceding tax years. In this case, the losses can be carried forward up to the certified economic value of net equity, subject to certain conditions and adjustments.

These provisions also apply to the carryforward of non-deducted interest expense surpluses and “ACE” surpluses.

The new provisions also apply to mergers and demergers allowing for the deductibility of losses of the merging companies, including the surviving company when the a merger is by absorption, from the taxable income of the surviving company where the profit and loss statement for the tax year prior to the effective date of the merger shows gross receipts and other proceeds derived from the main business activity and labor costs that exceed 40% of their average amount in the two preceding tax years. If the relevant conditions are met, the amount of losses that can be carried forward up to the certified economic value of net equity, subject to certain conditions and adjustments.

These rules apply to transactions carried out as from the fiscal year in progress on December 31, 2024.

Recent legislative changes contained in Article 2 of Decree-Law No. 84 of June 17, 2025, modified the Italian tax rules regarding the carryforward of tax losses. The changes adjust the criteria for losses influenced by recent payments and contributions, and extend the loss-carryforward limitations to companies receiving business contributions. The calculation of the carryforward of losses is based on the net equity of the company reporting the losses. This can be calculated using one of two methods:

(i) Estimated economic value of net equity: the estimated economic value of a company's net equity is expressed at current values via a sworn appraisal prepared by a statutory auditor. The prior rules have been simplified in that contributions and payments received by a company in the previous 24 months are no longer adjusted using a formula based on the ratio of the economic value of the company's net equity to its book value. Instead, a reduction is applied equal to twice the absolute value of the contributions. The amount of losses that can be carried forward will therefore be equal to the estimated value of the company, minus twice the contributions and payments made in the previous two years and exclusive of payments made by public entities. This eliminates the distorting effect in the previous rule whereby an increase in assets could lead to the elimination of the net losses that could be carried forward.

(ii) Book value from the financial statements: if the company chooses to forego an appraisal, the limit is represent-

⁸⁵² TU, Art. 96 (2), (7).

⁸⁵³ TU, Art. 96(4).

⁸⁵⁴ TU, Art. 96 (3).

⁸⁵⁵ TU, Art. 96 (5).

⁸⁵⁶ TU, Art. 84, as amended by Art. 36 (12–14) of Law No. 248 of Aug. 4, 2006, and Art. 23(9) of DL No. 98, July 6, 2011.

⁸⁵⁷ D. Lgs. No. 262 of Oct. 3, 2006, Art. 3 (6).

ed by the net book value shown in the last financial statements finalized on or before the date on which the losses were incurred. The amount would be net of contributions and payments made in the previous 24 months and would exclude public contributions.

This reinforces the principle that only tax losses related to a company's independent and historical production capacity can be carried forward. The purpose of the provision is to limit the utilization by a profit-making company of losses derived from the acquisition of a loss-making company where there is no actual continuity of the business of the loss-making company.

2. Intra-Group Loss Carryforward

With the introduction of new Article 177-ter of the TU, the limits and conditions applicable to the carryforward tax of losses in the case of transfers of shares and changes of activity or mergers and demergers do not apply to "intra-group losses" and "pre-entry losses" (i.e. losses that can be utilized by a company prior to its entry into a group and can continue to be utilized once the company joins the group) where such transactions occur within the same group.

On June 27, 2025, the Ministry of Economy and Finance issued the implementation rules for this exemption. The Decree specifies that the general limitations on the carryforward of tax losses provided for in Articles 84, 172, and 173 of the TU will not apply to restructuring operations (such as mergers or share transfers) with respect to a qualifying business conducted within the same corporate group.

The exemption will apply where losses are incurred:

- (i) During tax periods in which the companies involved were already members of the same group; and/or
- (ii) In earlier periods that were subject to loss carryforward restrictions, either when the loss-making company entered the group or subsequently.

The Decree sets out the conditions for determining group membership and specifies how various categories of losses are to be treated to ensure business decisions continue to be made based on their economic merits rather than tax considerations. The Decree also provides that the exemption extends to the carryforward of excess non-deductible interest expenses and excess allowances for corporate equity (ACE).

Limitations apply with respect to the carryforward of losses by companies subject to transparency taxation (see V.B.6., above). Tax losses that are attributed for transparency purposes may be carried forward only to offset income attributed for transparency purposes by the company in the five tax periods following that in which the losses were incurred.

I. Tax Rates and Calculation of Taxable Income

As of January 1, 2017, the corporate income tax (IRES) rate remains 24%.⁸⁵⁸ Credit is allowed for taxes withheld at source on income included in aggregate income (see also V.H., above).

⁸⁵⁸ TU, Art. 77.

J. Assessment and Filing

1. Filing Deadlines

The deadlines for the filing of a company's tax returns are as follows.⁸⁵⁹

(i) Corporate tax return (IRES and IRAP): for 2025 income reporting, the tax return of companies on a calendar tax year must be filed no later than the last day of the 10th month after the close of the tax year, i.e., October 31, 2026, which falls on a Saturday and thus the return may be filed by November 2, 2026.⁸⁶⁰ A company that does not have a tax year coinciding with the calendar year must file the return no later than April 15, 2025;⁸⁶¹

(ii) Annual VAT return: by April 30;⁸⁶² and

(iii) Withholding tax return (*semplificato*): for 2025, the return must be filed by no later than November 2, 2026 (the October 31 deadline falls on a Saturday).⁸⁶³

Civil penalties for failure to remit withholding tax payments are levied at a rate of 25% of the unpaid amount (reduced from 30% by the 2024 reform). Failure to file the return attracts a fixed penalty of 120% of the taxes due, with a minimum penalty of 250 euros. Criminal sanctions are triggered if the failure to pay over withholding tax payments exceeds 150,000 euros per tax year.⁸⁶⁴

2. Simplification Measures

In recent years, Italy has been working on simplifying the tax filing process. It began by making available on-line pre-prepared 730⁸⁶⁵ tax forms with information taken from taxpayers' tax accounts. A taxpayer could then accept the information or make changes to the form and file the return. For the 2024 filing year, the Tax Agency expanded the list of taxpayers eligible to use the simplified form to all taxpayers, thus encompassing taxpayers who also have capital income, including capital income from foreign sources, if they are subject to substitute taxation. Taxpayers will also now be able to request refunds through their forms 730 even where tax was withheld by a withholding agent.

3. Payments and Offsets

The first estimated tax payments for IRES and IRAP are due by June 30 for companies with a calendar year tax year, and by the last day of the sixth month following the year in which the tax period is closed for companies that do not have a calendar year tax year.

⁸⁵⁹ Law No. 248 of Aug. 4, 2006, Art. 37.

⁸⁶⁰ DPR No. 322, July 22, 1998, Art. 4 (3-bis).

⁸⁶¹ DPR No. 322, July 22, 1998, Art. 2; see also Law No. 205, Dec. 27, 2017, Art. 1 (932); Law No. 244 of Dec. 24, 2007, Art. 1 (43-45); D. Lgs. No. 13, Feb. 12, 2024, Art. 13 (1) (b).

⁸⁶² DPR No. 322, Art. 8 (1), as amended by DL No. 193, Oct. 22, 2017, Art. 4 (4)(c), converted into law by Law No. 225, Dec. 1, 2016.

⁸⁶³ D. Lgs. No. 471, Dec. 18, 1997; D. Lgs. No. 74, March 10, 2000, Art. 10-bis as amended by D. Lgs. No. 87, June 14, 2024, Art. 1 (1), (b).

⁸⁶⁴ D. Lgs. No. 108, Aug. 5, 2024, Arts. 2 (6), 4 (1).

⁸⁶⁵ Form 730 is generally used by individuals with only employment or pension income.

The second estimated tax payment is due by no later than November 30, for those companies with a calendar year tax year, and by the last day of the eleventh month following the year in which the tax period is closed for companies that do not have a calendar year tax year.⁸⁶⁶

The balance due is generally to be paid when the first estimated tax payment is paid. For companies that have a provision in their charter that allows them to approve their annual accounts later than four months after the close of their tax year then the income tax balance must be paid by no later than the last day of the month following approval. Thus, if a company must approve its balance sheet by no later than June 30, it must pay the tax due by July 31. Beginning in 2024, the deadline for filing the annual IRES and IRAP returns has been moved to October 31 of the following year (or the end of the tenth month following the tax year-end).⁸⁶⁷

All companies and other organizations subject to IRES may offset overpayments for a previous tax year against amounts due for the next tax year (known as vertical compensation). These taxpayers may also offset overpayments of other taxes to various government agencies against amounts due for IRES as well as to those other agencies. Thus taxes, social security contributions and other sums due to the national and regional governments and social security agencies can be offset by credits accrued with the same administrations in the same period, shown on the returns and periodic reports filed by the taxpayer. Effective January 1, 2026, horizontal offsets are prohibited if the taxpayer has over 50,000 euros in outstanding tax roll debts (reduced from 100,000 euros).⁸⁶⁸ The offset computation must be filed on Form F24. Depending on taxes being offset, the maximum offset is 2 million euros per tax period, including any refund requested by the taxpayer.⁸⁶⁹

Failure to pay VAT of 250,000 euros or more, or the offsetting of non-existent tax credits in excess of 50,000 euros will result in criminal sanctions.⁸⁷⁰

Payments of IRES and IRAP are due prior to or upon the filing of the annual return. Advance payments equal to 100% of the previous year's tax must be paid, 40% of which is due earlier when the prior year's return is filed.⁸⁷¹ The remainder is due in November, in the case of companies using a calendar year accounting period, or in the eleventh month of the fiscal year in the case of non-calendar year companies. In calculating advance tax, deductions are allowed for tax credits and taxes withheld at source. Payments may be based on 100% of estimated tax liability for the current year.⁸⁷²

⁸⁶⁶ DPR 435, December 7, 2001, Art. 17 (b).

⁸⁶⁷ D.P.R. No. 322, July 22, 1998, Art. 2 as amended by D. Lgs. No. 1, Jan. 8, 2024, Art. 11 and D. Lgs. No. 108, Aug. 5, 2024, Art. 2 (1).

⁸⁶⁸ Law No. 199, Dec. 30, 2025, Art. 1 (11).

⁸⁶⁹ D. Lgs. No. 241, July 9, 1997, Art. 17, as amended by Law No. 388, December 23, 2000, Art. 34(1) and DL No. 223, July 4, 2005, Art. 35, as amended by Law No. 234, December 31, 2021, Art. 1 (72).

⁸⁷⁰ D. Lgs. No. 74, March 10, 2000, Arts. 10 *ter* and 10 *quater*, as amended by Law No. 248, August 4, 2006, Art. 35(7) and further amended by Art. 1 (2) (c), D.Lgs. No. 87, June 14, 2024.

⁸⁷¹ DL No. 76, June 28, 2013, Art. 11 (18).

⁸⁷² The levels of advance payment of the corporate income tax (*imposta sul reddito delle società*, IRES) and the regional tax on productive activities (*imposta regionale sulle attività produttive*, IRAP) were fixed by Law No. 311, December 30, 2004, Art. 1 (51), (301).

Beginning with the 2016 tax year, assessment notices regarding income tax may generally be given by the tax authorities to the taxpayer by December 31 of the fifth calendar year following that in which the income tax return was filed. When no return is filed, assessment notices may be given until December 31 of the seventh calendar year following that in which the return should have been filed.⁸⁷³ However, in certain instances, where there are violations for which a prosecutor is required to file criminal charges, such as when false invoices are issued or accounting documents are destroyed, an assessment can be given by December 31 of the seventh calendar year in which the tax return was filed.⁸⁷⁴

K. Audits and Cooperative Compliance

There are general guidelines as to the frequency of tax audits. Generally, large companies (those with an annual turnover of approximately 25 million euros or more) can expect to be subject to an audit every two years, while other companies can expect an audit every four years. Tax audits and tax assessments can be carried out by either the *Guardia di Finanza* (Tax Police) or by *Agenzia delle Entrate* (Tax Office) inspectors. A tax audit can take place at the offices of the taxpayer or at the offices of the body carrying out the audit. The authorities have 60 working days, to which an additional 60 day-period can be added, in which to complete the audit, barring exceptional circumstances. At the end of the audit, the auditors will draw up a report which is transmitted to the Tax Office. If the report determines that additional taxes are due, the Tax Office will then issue an assessment based on the report.

As of 2015, the introduction of the “cooperative compliance” procedure allows taxpayers to cooperate and exchange information with the tax authorities to resolve in advance any challenges by the tax authorities against positions taken by a taxpayer. Taxpayers eligible to participate in this procedure are resident and nonresident companies that have an effective internal system to detect, measure, manage, and monitor tax risk that have been certified by a qualified professional and that meet one of the following requirements:

- (i) Have a turnover for tax years 2022 and 2023 of at least 1 billion euros; beginning in 2024 the turnover requirements have been reduced to 750 million euros, with a further reduction in 2026 to 500 million euros and in 2028 to 100 million euros;⁸⁷⁵
- (ii) Have filed petitions for tax rulings on new investments and have indicated an intent to follow the ruling of the tax authorities; or
- (iii) Regardless of the volume of business or revenues, are part of a VAT Group that has already been admitted to the procedure.⁸⁷⁶

⁸⁷³ DPR No. 633, October 26, 1972, Art. 571 (1).

⁸⁷⁴ DL No. 223, July 4, 2006, Art. 37(25). See DPR No. 633, October 26, 1972, Art. 57; D. Lgs. No. 74, March 10, 2000.

⁸⁷⁵ D. Lgs. No. 221, Dec. 30, 2023, Art. 1(d) amending D. Lgs. No. 128, Aug. 5, 2015, Art. 7. The gradual reduction of the threshold is part of the legislation passed on August 9, 2023 that has enabled the Government to pass legislative decrees to reform the tax system.

⁸⁷⁶ D. Lgs. No. 128, Aug. 5, 2015, implementing Law No. 23, Mar. 11, 2014, Art. 2 (5), (6), (8); see also Decree of the Ministry of the Economy and Finance of January 31, 2022.

Taxpayers participating in this program are required to maintain their oversight system and make any changes required by the tax authorities; maintain cooperative, transparent behavior, providing timely notice to the authorities of any risks and transactions that are tax aggressive; respond in a timely manner to any requests made by the tax authorities; and promote company culture based on the principles of honesty, accuracy, and respect for the law.

Cooperative compliance is effective as of the tax year underway at the time of the application to participate and is tacitly renewed until revoked by the company, or until the tax authorities remove the company from the program for failure to maintain adequate or effective oversight; or for three tax years if turnover is significantly lower than the threshold required.

Before filing their annual returns, companies participating in the compliance program will review positions taken therein that carry a degree of tax risk. If the company notifies the tax office of a risk and the authorities do not agree with the position taken, the penalties will be reduced by half. Collection will also be suspended until the assessment is final and the company will also be permitted to amend its return, with a further reduction in any penalties levied.⁸⁷⁷ One of the principal benefits for taxpayers participating in the cooperative compliance program is a reduction in the statute of limitations for assessment by two years. The cooperative compliance may also apply to tax years prior to access to the program with a 50% reduction of penalties for any risk communicated within 120 days from admission to the program.⁸⁷⁸

There is also an option for smaller companies to enter into an arrangement for a two-year definition of the taxable base for income and IRAP tax purposes, provided they adopt a system for detecting, measuring, managing and controlling tax risk and provide this to the tax authority. The option will be tacitly renewed at the end of the two-year period.⁸⁷⁹

L. Convenience Companies

Italy has legislation that targets tax avoidance through the use of corporations, partnerships and foreign entities deemed to be “convenience companies” (*società di comodo*). A *Società per Azioni* (SpA), an Srl, a partnership and various kinds of nonresident entities are deemed to be convenience companies if they have total gross receipts in the last three fiscal years of less than:

- (i) 1% of investments;
- (ii) 3% of fixed assets, including those used in leasing;
- (iii) 2.5% of property used for office space;
- (iv) 2% of residential real estate purchased or revalued in the tax year and the two preceding years;
- (v) 6% commercial maritime vessels, excluding pleasure crafts; or
- (vi) 15% to other fixed assets.⁸⁸⁰

⁸⁷⁷ D. Lgs. No. 128, Aug. 5, 2015, implementing Law No. 23, Mar. 11, 2014, Art. 2 (5), (6), (8).

⁸⁷⁸ D. Lgs. No. 128, Aug. 5, 2015, Art. 6 (3-ter).

⁸⁷⁹ Law No. 111, Aug. 9, 2023, Art. 1 (g), (1.9.4).

⁸⁸⁰ D. Lgs. No. 13, Dec. 13, 2024, Art. 20.

These percentages, are reduced to 0.5% if the company is located in a municipality having fewer than 1,000 residents.⁸⁸¹ The taxable income of such companies for IRES and IRAP purposes will be presumed to be the sum of the following:

- (i) 0.75% of investments;
- (ii) 2.385% of the value of fixed assets;
- (iii) 2% of the value of property used for office space;
- (iv) 1.5% of the value of residential real estate purchased or revalued in the fiscal year and the two preceding years;
- (v) 0.45% of the value of real estate located in municipalities with less than 1,000 inhabitants;
- (vi) 4.75% of the value of commercial maritime vessels, excluding pleasure crafts; and
- (vii) 12% of the total value of other fixed assets, including leased property.

For VAT purposes, convenience companies may not offset tax credits,⁸⁸² may not obtain a refund, and may not assign the tax credit resulting from the Annual VAT return.

Included in the brief list of companies excluded from the application of the law are: companies in their first fiscal year; innovative start-up companies during the start-up phase (generally a four-year period); companies, including controlling companies, traded on regulated Italian and foreign markets; companies under special bankruptcy administration; and companies required by law to carry out business in a corporate form. Other companies that are not subject to the convenience company taxation regime include, *inter alia*, those that in the two previous tax periods never had fewer than 10 employees and companies whose total revenue exceeds the amount of their total assets.⁸⁸³ Generally, all other companies must show that “objective extraordinary circumstances” prevented the achievement of the minimum level of revenue required by the law. If these circumstances exist, the company may request that the tax rules under Article 37-*bis*, (8) of Presidential Decree No. 600/73 not be applied.⁸⁸⁴

The 2011 legislation providing for additional measures for financial stability has sharply increased the IRES rate applied to convenience companies by increasing the corporate income tax rate by 10.5%, making the applicable tax rate for these companies 34.5%.⁸⁸⁵

Moreover, the definition of a convenience company was subsequently broadened to cover companies that would not have fallen within the parameters of the law but that were in what is defined as a “systemic loss” positions and thus:

- (i) Filed tax returns showing losses for five consecutive years; or

⁸⁸¹ DL No. 41, Feb. 23, 1995, Art. 27, as amended by DL 223/2006, as converted with amendments by Law No. 248, Aug. 4, 2006; Law No. 296, Dec. 27, 2006.

⁸⁸² D. Lgs. No. 241 July 9, 1997, Art. 17.

⁸⁸³ Law No. 244 of Dec. 24, 2007, Art. 1(128).

⁸⁸⁴ DL No. 41, Feb. 23, 1995, Art. 27 as amended by DL 223/2006 and converted with amendments by Law No. 248 of Aug. 4, 2006, the exclusion for a company in liquidation has been repealed. See also Art. 1 of Law 296/2006 and Ministerial Circular No. 5/E, Feb. 2, 2007.

⁸⁸⁵ DL No. 138, Aug. 13, 2011, Art. 2(36-quinquies); TU, Art. 75.

(ii) For four consecutive years filed returns showing losses and in one year reported income lower than the percentages shown above used to calculate taxable income for convenience companies.⁸⁸⁶

Both the increased rate and the broadened definition applied as of the fiscal year following that in progress on September 17, 2011, the date the law entered into effect.⁸⁸⁷

Decree Law No. 73 of June 21, 2022,⁸⁸⁸ repealed the provisions regarding companies in systemic loss positions with effect from tax year 2022. Thus, in 2023, when corporate tax returns will be prepared for tax years beginning in 2022, those companies that would have previously satisfied the systematic loss criteria (because they incurred losses from tax years 2017 through 2021) will not be considered convenience companies for tax purposes.

M. Trusts

Although a trust may be created in Italy, it will be governed under foreign law because the legal concept of a trust has not been adopted under Italian law. Trusts have been recognized in Italy since the Law of October 16, 1989, N. 364, ratifying the Hague Convention, which came into force on January 1, 1992, and are taxed both on creation and over their lifetime.

On the creation of a trust, either during the lifetime of the settlor or under the terms of a will, inheritance or gift tax will be due (see IV.D., above). Registration tax will also be due, as well as indirect transfer taxes on the transfer of any real property to the trust.

During the lifetime of the trust, two additional factors will determine how the income of the trust will be taxed. The first is residence and the second is transparency.

Resident trusts are taxable in Italy on their worldwide income. Nonresident trusts are taxable only on their Italian-source income. Residence in Italy for tax purposes is defined as having a registered office, a management office or the main business purpose in Italy.⁸⁸⁹ Further, a trust will be deemed to be a resident in Italy when it is not created in a country with which Italy has an exchange of information arrangement and either: (i) at least one of the beneficiaries and one of the settlors is a tax resident of Italy; or (ii) after the trust is created, an Italian resident transfers real property to it, or grants or transfers rights in real property to it.⁸⁹⁰

Transparent trusts are trusts that have an identified beneficiary in the trust deed; trusts whose beneficiaries are not identified are nontransparent. The income of a nontransparent trust is taxed directly at the trust level at the IRES rate of 24%.

In the case of a transparent trust, the beneficiaries are taxed using a look-through taxation method, with the income being attributed and taxed in the beneficiaries' hands annually in proportion to their respective shares, regardless of the amount of income actually distributed. Where the beneficia-

ries' shares cannot be determined, the income is divided equally among them.

The law also recognizes that, for tax purposes, a trust also can be treated as both transparent and nontransparent. This occurs when the trust deed provides for only a portion of income to be assigned to the beneficiaries and a portion is retained by the trust. The portion of income assigned to the beneficiaries is taxed to each beneficiary at his/her personal income tax rate, while the accumulated profits are subject to IRES at the trust level.

Trusts that do not carry on business in Italy but only have investment income from certain securities are not subject to the transparency regime but are subject to a flat tax by way of withholding at source at the rate of either 12.5% (state bonds) or 26%.

N. Tonnage Tax

The 2003 Reform introduced an optional tonnage tax available to shipping companies,⁸⁹¹ thereby bringing Italian tax law in this sector in line with the majority of EU Member States and favoring the return of cargo tonnage to Italian flagged ships. The European Commission extended Italy's tonnage tax option through to January 13, 2034, after amendments Italy made upon the request of the Commission.

Taxpayers permitted to use this system are resident and non-resident maritime companies operating in Italy through a permanent establishment using vessels listed on the International Register with a net displacement of over 100 tons and engaged in the transport of cargo or passengers, rescue operations, or towing and high seas assistance. The flat tax base covers those activities conducted on board the vessel that are directly connected, instrumental to or complementary to the foregoing. For the purpose of determining the flat-rate taxable amount days of non-use due to maintenance, ordinary or extraordinary repair, modernization and transformation of the ship, as well as the days on which the ship is in temporary lay-up or is leased on a bare hull basis are included. Prior to the amendment these days had been excluded.⁸⁹²

Capital gains or losses arising from the transfer of ships that have been acquired by a company while under the tonnage tax regime are also deemed to be included in tonnage tax income. However, if a taxpayer sells a vessel already owned prior to opting for the tonnage tax, the capital gain is added to its taxable income. In this instance, the gain is equal to the lower of (i) the difference in the market value of the vessel and its undepreciated cost, recorded on the last day of the year preceding the one in which the option was exercised, and (ii) the difference between the consideration received and the undepreciated cost at the time of the sale. The taxable amount cannot be lower than the "net latent capital gain," calculated as the difference between the market value of the vessel and the undepreciated cost of the same before the tax period in which the option is exercised and decreased by the tonnage income determined up to the transfer.⁸⁹³ Losses can no longer be used to offset the income under the flat tax.

⁸⁸⁶ DL No. 138, Art. 2(36-*decies*).

⁸⁸⁷ DL No. 138, Art. 2(36-*novies*).

⁸⁸⁸ DL No. 73, June 21, 2022, Art. 9 as converted into law by L. No. 122, August 4, 2022, Art. 1(1).

⁸⁸⁹ TU, Art. 73.

⁸⁹⁰ TU, Art. 73 (3).

⁸⁹¹ TU, Arts. 155–161.

⁸⁹² TU, Art. 156, as amended by D. Lgs. No. 192, Dec. 23, 2024, Art. 19(2).

⁸⁹³ TU, Art. 158.

Taxable income is calculated on a flat, unitary, and daily basis for each vessel, as shown below.

- (i) Depending on the tonnage levels, the following fixed amounts are determined.⁸⁹⁴

Net Displacement Tonnage	Euros per Ton
From 0 to 1,000	0.0090
From 1,001 to 10,000	0.0070
From 10,001 to 25,000	0.0040
Over 25,001	0.0020

Bare boat charters are excluded from the scheme. The election to apply the tonnage tax regime is to be made for all qualifying vessels of a company or group.

The tonnage tax option is valid for 10 years, can be tacitly renewed and requires Italian cadet officials to be trained at the expense of the shipping companies.

O. Transactions Involving Residents of Tax Havens

Italy has re-visited the deductibility of expenses and other negative components of income derived from transactions with companies resident in non-cooperative jurisdictions for tax purposes. Expenses may now be deducted up to a limit based on the “normal value”⁸⁹⁵ of the relevant goods and services, with expenses in excess of such normal value being disallowed. However, if the Italian resident company can demonstrate that the relevant transactions with the foreign company correspond to a real economic interest and are properly executed, the deduction will be fully allowed.⁸⁹⁶ The limitation does not apply to transactions with subsidiaries within the scope of the Italian CFC regime. However, it does apply in relation to payments for services rendered by professionals resident in jurisdictions that are not a part of the EU and whose tax regimes are considered to constitute tax havens.

Italy has only one “black list” which is used to presumptively determine tax residence in Italy for individuals who transfer their residence to one of the nations or territories included in the list.⁸⁹⁷ In all other cases in which the tax law makes reference to a tax haven, or country with a “privileged tax regime,” the definition used to determine the tax treatment of the transaction is the definition used for residents undertaking operations with their controlled foreign company.⁸⁹⁸ Thus, a tax haven country is one in which the effective rate of taxation is less than 50% of Italy’s taxation and more than one-third of its income is from passive income.⁸⁹⁹

Resident taxpayers with VAT numbers are no longer required to report purchases or sales of goods or services with black list countries.

P. Controlled Foreign Companies

Rules adopted in 2000⁹⁰⁰ apply to a foreign corporation that is controlled directly or indirectly (as defined under Article 2359 of the Civil Code), including through a trust or intermediaries, by resident taxpayers; or if more than 50% of the foreign company’s profits is held either directly or indirectly (as defined under Article 2359 of the Civil Code) by resident taxpayers, including through a trust or intermediaries. In accordance with this provision, income earned by the foreign corporation will be attributed to the Italian resident taxpayers (including individuals) in proportion to their holdings in the foreign corporation, unless:

- (i) The foreign corporation carries on an “actual industrial or commercial activity;” or
- (ii) The resident taxpayer does not attain through its share participation the objective of placing its earnings in specific territories for purposes of enjoying special tax privileges.

Through December 31, 2017, dividends distributed by the CFC were generally subjected to full IRES taxation.⁹⁰¹ The 2018 Budget Law amended TU Article 167 to provide that 50% of dividends distributed by companies in countries with a privileged tax system will be excluded from the tax base of the Italian company receiving the dividends for IRES purposes, if it can be shown that the foreign company actually carries out a business activity in the country in which it is organized.⁹⁰² The 2018 Budget Law has also provided for a transitional period for dividends accrued in previous fiscal years, which would otherwise be subject to full IRES taxation. Thus, dividends received after December 31, 2014, but accruing prior to that year while the foreign company was not resident in a country with a privileged tax system, are deemed not to have arisen in a tax haven. Dividends accruing in a tax year following the tax year in progress on December 31, 2014, but while the foreign company was not resident in a country with a privileged tax system, will not be treated as having arisen in a country with a privileged tax system even if paid in a year in which the CFC is resident in such a country. In these two instances, 95% of those dividends will be exempt from IRES taxation.

In order to align the minimum level of CFC taxation with minimum global taxation under Pillar 2, at the end of 2023 legislation that amended TU Article 167 was passed to simplify the calculation of the effective tax rate provided that the financial statements of the foreign-controlled entity are audited and certified by licensed professionals in that foreign country.⁹⁰³ As revised, TU Article 167 classifies foreign entities as residents of a country with a privileged tax system if an entity’s effective rate of taxation is less than 15%. This is based on the ratio between the sum of current taxes and deferred tax assets and liabilities entered in the subsidiary’s financial statements and pre-

⁸⁹⁴ TU, Art. 156.

⁸⁹⁵ TU, Art. 9(3) defines normal value “as [the] average price charged for goods of the same or similar type in conditions of free competition and at the same stage of marketing, in the time and place where the goods are acquired.”

⁸⁹⁶ Law No. 197, December 29, 2022 Art. 1 (84–86).

⁸⁹⁷ TU, Art. 2 (2-bis); DM March 30, 2015, contains the “Black List” countries for this purpose.

⁸⁹⁸ TU, Art. 167; see also Circular No. 35/E, August 4, 2016.

⁸⁹⁹ TU, Art. 167 (4)(a)–(b).

⁹⁰⁰ Law No. 342, November 21, 2000; TU, Art. 167.

⁹⁰¹ TU, Art. 89 (3).

⁹⁰² TU, Art. 167 (4-quarter), (5).

⁹⁰³ D. Lgs. No. 209 of December 27, 2023.

tax earnings. The simplification will avoid the complex calculation of the virtual domestic taxation of the foreign entity under Italy's tax rules and the need then to compare this with the actual level of foreign taxation.

When verifying the actual taxation of a foreign entity, the equivalent domestic minimum tax (QDMTT) that may have been paid by the foreign entity in accordance with the local global minimum tax rules must also be taken into account.⁹⁰⁴

Decree Law 84 of June 17, 2025 amends Article 167 of the TU and clarifies how QDMTT is to be attributed to CFCs for purposes of the CFC effective tax rate test. It simplifies the calculation of the attributable QDMTT by providing that, in the first instance, the method used should take into account the allocation methods prescribed by the QDMTT/CFC jurisdiction. If no such method exists, the QDMTT should be apportioned by reference to the ratio of the CFC's income to the aggregated income of all group entities in the QDMTT/CFC jurisdiction that are part of the same blending group for Pillar Two purposes. This simplification avoids the complex calculation of the "virtual" domestic taxation of the foreign entity in accordance with Italian tax rules and its subsequent comparison with the actual level of foreign taxation, provided the relevant CFC conditions are fulfilled. The method may only be used when the financial statements of the foreign-controlled company are audited and certified by licensed professionals in the foreign country concerned.

As an alternative to calculating the level of effective taxation, a controlling company may opt to pay a substitute tax of 15% of its net accounting profit for the year, without factor-

ing in taxes that contributed to determining that profit, write-downs of assets or provisions for risks. The substitute tax option is irrevocable for three years and is automatically renewable. The option must be exercised by the ultimate controlling Italian company and also extends to subsidiaries acquired in any capacity during the period when the option is effective.⁹⁰⁵ Additionally, it follows the "all in/all out" rule, meaning that the optional regime applies to all CFCs that earn passive income constituting at least one-third of their total income. The substitute income tax rate is consistent with the "threshold rate" provided for by the Pillar Two rules.⁹⁰⁶ This option prevents the foreign subsidiary's income from being imputed based on transparency, without requiring verification or demonstration of actual economic activity. The Italian Tax Agency has now made it clear that a credit for taxes paid abroad by a nonresident subsidiary whose income has been subject to the substitute tax cannot be used as a tax credit. Further, net profit subject to the substitute tax is excluded from the income tax base of the controlling shareholder when the shareholder receives the relevant income.⁹⁰⁷

The 15% alternative tax under the CFC rules cannot be deducted from a company's taxable income for IRAP purposes.

The CFC regime applying to foreign entities, as well as the benefits of opting for the substitute tax, must always be considered in conjunction with the rules set out in Articles 89 and 47-*bis* of the TU, which address taxation of dividends from entities that are resident or located in countries or territories with privileged tax regimes.

⁹⁰⁴ TU, Art. 167 (4-*bis*).

⁹⁰⁵ Tax Agency provision No. 148 of April 20, 2024.

⁹⁰⁶ TU, Art. 167 (4-*ter*).

⁹⁰⁷ Tax Agency provision No. 148 of April 20, 2024.

VI. Taxation of Foreign Corporations

A. What Is a Foreign Corporation?

Corporate income tax is imposed on any income derived from within Italy by nonresident entities, whether or not such entities have legal personality, including trusts (see V., above.) and partnerships, the income of which is attributed to the individual partners.

Until December 31, 2023, corporate residency was determined by the absence in Italy of a company's legal headquarters, principal place of business and business purpose of that entity. However, as of January 1, 2024, corporations that do not have a registered office, a place of effective management or a place of day-to-day management in Italy for the greater part of the year do not have residency in Italy for tax purposes. This change brings Italy's corporate tax residency rules in line with international practices and provisions of tax treaties to prevent double taxation.

Under current Italian tax law, a nonresident company is always defined as a corporation regardless of how it may be classified in its own jurisdiction. Among the general principles provided by Law No. 111 of August 9, 2023, this presumption will be reviewed so that the characterization of the local jurisdiction is taken into consideration.

B. Determination of a Permanent Establishment

1. In General

The determination of what is income derived in Italy depends on whether the nonresident company has a permanent establishment in Italy. The domestic notion of permanent establishment, as provided for by Article 162 of the TUIR, includes two distinct definitions: (i) the fixed place of business or "material" permanent establishment and (ii) the agency or "personal" permanent establishment.

2. Definition of Permanent Establishment

The domestic definition of permanent establishment (PE), as provided in TU Article 162, is used where there is no tax treaty between Italy and the country in which the nonresident corporation is incorporated, or the definition in the TU is more favorable for the nonresident corporation than the definition in the treaty.

The 2018 Budget Law⁹⁰⁸ broadened the definition of a PE as part of Italy's efforts to tax the services provided by MNEs in the digital economy as well as to address tax avoidance strategies designed to prevent the establishment of a PE, as addressed in Action 7 of the OECD Base Erosion and Profit Sharing (BEPS) project, also known as the anti-fragmentation rule.

The 2023 Budget Law⁹⁰⁹ made additional changes to the domestic definition of a PE to carve out an exclusion under certain circumstances for nonresident investment vehicles with asset managers in Italy.

The Article 162 definition before and after Law No. 205 amendments as well as the change made by the 2023 Budget Law are set out below.

a. Fixed Place of Business

A place of management, an office, a branch, a factory, a workshop, a mine, an oil or gas well, a quarry or other place for extracting natural resources were all that were and still are considered to create a PE. This evaluation looks to a fixed or material presence in Italy. Nevertheless, a foreign corporation could show that it did not have a fixed place of business if the activity carried out there was preparatory or ancillary to the core business of the foreign corporation. Article 162 specifically provides the following exemptions:

- (i) The facility was being used only for the storage, display or delivery of the company's goods;
- (ii) Maintaining a stock of the company's goods in the facility was solely for the purpose of its processing by another company;
- (iii) The stock of the company's goods kept at the facility was solely for the purpose of storage, display or delivery;
- (iv) The fixed place of business was only for the purpose of purchasing goods or for gathering information for the foreign corporation; or
- (v) The fixed place of business was for ancillary or preparatory activities, or was used only for the purpose of a combination of the activities listed at (i) to (v) provided that, in their totality, the activities have a preparatory or ancillary nature.

The 2018 Budget Law anti-fragmentation provision modified Article 162 so that, in order for the exceptions, or even a combination of the exceptions, to be applicable, even with respect to their totality, the activities must be preparatory or ancillary with respect to the business in its entirety.⁹¹⁰ Further, Article 162 now provides that a PE may also be created where there is a significant or continuous economic presence in Italy, when it is constructed in such a way to not have a physical presence in Italy.⁹¹¹ The purpose of this condition is to trigger a taxable presence of an otherwise nonresident digital company in Italy (See risk assessment below).⁹¹²

b. Agency Arrangements

The activities of an agent have always had the ability to constitute a PE where the agent habitually concluded contracts on behalf of the foreign corporation, unless the contracts were simply for purchasing goods, or where the party that concluded the contracts was either a broker, general commission agent, or an independent agent acting in the ordinary course of business. This definition has been amended to provide that a foreign corporation will have a PE where the agent habitually concludes contracts that are in the name of the corporation and routinely

⁹¹⁰ TU, Art. 162 (4) (f); 4-bis.

⁹¹¹ TU, Art. 162 (2)(f-bis), as amended by Law No. 205, Dec. 27, 2017, Art. 1(1010)(a).

⁹¹² Prior to January 1, 2018, Article 162 provided that the presence of processors and supplementary equipment for the collection and transfer of data in order to sell goods and servers in Italy was not sufficient to constitute a PE.

⁹⁰⁸ Law No. 205, December 27, 2017, Art. 1 (997)–(998).

⁹⁰⁹ Law No 197, Dec. 29, 2023, Art. 1. (255).

approved by the corporation without amendment; or are for the transfer of ownership, or the right to use company owned property or property the company has a right to use; or is for the provision of the company's services.⁹¹³ However, if the contracts signed by the agent on behalf of the foreign corporation are limited to the activities listed at (i) to (iv) at VI.B.2.a., above, a PE will not be constituted.⁹¹⁴

The exception which provided that an agent acting as an independent party in the course of business will not constitute a PE still exists, but has been limited so that, where that agent acts almost exclusively for one or more entities closely related to the foreign corporation, the agent will not be considered an independent party with respect to the foreign corporation.⁹¹⁵

For this purpose, an entity is considered closely related to a company if, taking into consideration all the facts and circumstances, one party controls the other, or a third party controls both. The required degree of control occurs when a party has more than a 50% interest, directly or indirectly, in the other; if that party is a company, it is closely related where it possesses more than 50% of the voting rights or capital. In the case where a third party has control of both, the third party must hold, directly or indirectly, more than 50% of the entity, and if the third party is a company, it must possess more than 50% of the voting rights or capital.⁹¹⁶

However, an exclusion to prevent the finding of a PE under certain conditions was introduced for nonresident investment vehicles with asset managers in Italy.

An asset manager is defined as an individual or an entity which, in the name of or on behalf of a foreign investment vehicle (including its direct or indirect subsidiaries), habitually concludes contracts or negotiations, or assists, including through preliminary transactions, with the purchase or sale of financial instruments, even if using only discretionary powers to do so.⁹¹⁷

An asset manager, which can be either an Italian resident or a nonresident entity operating through an Italian PE, will not be considered to be an agent within the meaning of TU, Art. 162 provided that: (i) the nonresident investment vehicle, including its direct or indirect subsidiaries, is located in a state that allows for an adequate exchange of information with Italy (i.e., a white list country); (ii) the investment vehicle qualifies as an independent vehicle, looking to the characteristics of the investment vehicle itself (i.e., a plurality of investors and being subject to supervision) rather than to the object of its investments; (iii) the investment manager meets independence requirements; and (iv) the compensation of the asset manager is calculated at arm's length and is properly documented.⁹¹⁸ However, with respect to condition (iii), above, there are two elements: first, the manager cannot have a position in the manage-

ment or supervisory bodies of the foreign investment vehicle (or of its direct or indirect subsidiaries), including through general operational powers delegated by the board of directors; and second, the manager cannot have an interest in the economic outcomes of the investment vehicle greater than 25%.

Further, a nonresident investment vehicle will not necessarily be held to have a "fixed place of business" available in Italy based solely on the fact that a resident entity carries out an activity, on its own premises and using its own staff, that may provide a benefit to the foreign vehicle.⁹¹⁹

C. Determination of Taxable Income

1. Income of a Permanent Establishment

The income of a foreign corporation with a permanent establishment (PE) in Italy is determined on the basis of the results of its economic and income statement. The PE attributable income and its endowment fund will be established by the risks it has assumed and the assets used by the PE and will be considered as functionally distinct and separate from the nonresident foreign parent. Italy uses the two-step process of the OECD's attribution report to carry out this analysis. In step one, a functional and factual analysis is completed. The operations and responsibilities of the PE are determined to assess the PE for taxation as a separate entity. In step two, the arm's length profit of the PE by means of a comparability analysis.

The PE and its parent company are subject to corporate income tax, IRES, and the regional tax on productive activities (*imposta regionale sulle attività produttive*), IRAP. IRES is levied on the business income of the PE produced during the tax year at the rate of 24%. IRAP is a local tax on income that is realized on productive activities within a regional territory of Italy, the standard rate for which is 3.9%, but higher rates apply to certain industries. To reduce their tax liability, taxpayers can utilize the deduction for the Incentive for Economic Growth (see V.C.4., above) and the foreign tax credit (see V.H., above, and VII., below).⁹²⁰

a. Permanent Establishment Risk Assessment

In recent years, the Italian tax authorities have focused on the use of digital presence to create a hidden PE. The tax authorities have taken the position that computer servers that are located in Italy for an indefinite period of time and used exclusively by a foreign business constitute a PE.⁹²¹ The Court of Cassation, in case no. 5649 of March 20, 2015, stated that the introduction of an IT system for data collection and processing was not in and of itself a sufficient element to create a PE, but through the use of the server the nonresident company must be able to engage in wider marketing activity.

More recently, Netflix, the American video on-demand Internet streaming service, came under investigation from the Mi-

⁹¹³ TU, Art. 162 (6), as amended by Law No. 205, Dec. 27, 2017, Art. 1(1010)(b).

⁹¹⁴ TU, Art. 162 (6), as amended by Law No. 205, Dec. 27, 2017, Art. 1(1010)(b).

⁹¹⁵ TU, Art. 162 (7).

⁹¹⁶ TU, Art. 162 (7-bis), added by Law No. 205, Dec. 27, 2017, Art. 1(1010)(b).

⁹¹⁷ TU, Art. 162 (7-ter), new paragraph added by Law No. 197, Dec. 29, 2022, Art. 1(255).

⁹¹⁸ TU, Art. 162 (7-quater), new paragraph added by Law No. 197, Dec. 29, 2022, Art. 1(255) See also Tax Agency Guidelines No. 68665/2024 of February 28, 2024.

⁹¹⁹ TU, Art. 162 (9-bis), new paragraph added by Law No. 197, Dec. 29, 2022, Art. 1(255).

⁹²⁰ TU, Arts. 152 and 110.

⁹²¹ Tax Agency Ruling 119 of 2007. In a private letter issued pursuant to the request of a French company that offered on-line access to video games through a server located in Italy and used exclusively for that purpose, the Italian tax agency found that a PE exists where a nonresident company does business through a server of its exclusive use installed for an indefinite period of time in Italy.

lan prosecutor's office for having a hidden PE in Italy. Netflix had no employees, contact person or headquarters in Italy; its content was developed outside of Italy, and it only broadcasted in Italy through a network of servers and computers. However, its network not only processed data but also processed the algorithms that profiled customers and made specific sales offers in Italy. The Italian tax authority asserted that Netflix was operating in Italy through a hidden PE.⁹²²

Another risk factor to consider is a remote worker present in Italy working for a nonresident company. The Italian tax authority has noted that there is potential for a hidden PE with the hiring of personnel living in Italy to work remotely from Italy for a nonresident employer. The tax authority has also pointed out a correlation between the ever more prevalent use of remote work by employees to also enable the growth of the digital economy.⁹²³ The length of time that the employee is present and working remotely from Italy is also a risk factor.

Among the items to review when analyzing potential exposure to the finding of a PE in Italy, companies in such circumstances should periodically assess their situation with the following queries in mind:

- i. Whether facilities in Italy are used for storage or delivery of its goods or for processing by another company;
- ii. Whether stock in a facility is only for display storage or delivery;
- iii. Whether a place of business is used only to purchase goods or gathering information;
- iv. Whether the activities in question, carried out either remotely or through a place of business in Italy, are of an ancillary or preparatory nature;
- v. Whether the digital presence is only for data collection;
- vi. Whether the remote individual worker is regularly working from a fixed location in Italy;
- vii. Whether the company also conducts business from a fixed location in Italy;
- viii. Whether the hardware and software used by the remote worker are provided by the company;
- ix. Whether revenue is generated by the remote employee's activity in Italy;
- x. Whether payments are received in Italy for the company and whether there are financial transactions being handled locally on behalf of the company;
- xi. Whether research and development is being carried out in Italy.

An affirmative answer to any of the above queries could place a company at risk for a PE in Italy under current practice trends.

b. Permanent Establishment Risk Mitigation

The following are some steps nonresident companies can take to mitigate their risk of having a PE in Italy:

- i. Request an advance ruling. Before undertaking the activity, a company with concerns that they may be at risk for a PE may petition the Italy tax agency for an advance ruling on the proposed activities.
- ii. Use an Employer of Record (EOR) arrangement when hiring local personnel. An EOR mitigates the PE risk since the EOR is the legal employer and the nonresident company does not have to establish a presence in Italy. While this approach mitigates the risk, it does not completely remove the risk of a PE. There is a consensus that when the number of employees is limited and their activities are not aimed at generating business in Italy but are for customer service needs or data entry, the EOR approach will be successful. However, when large numbers of employees are sent over to Italy to develop the nonresident employer's business in Italy, the EOR approach may not provide a sufficient shield.
- iii. Use independent contractors and freelancers in Italy to provide services to the nonresident company.
- iv. Incorporate an Srl or SPA in Italy to do business.

2. Taxable Income of a Nonresident Corporation Without a Permanent Establishment

a. General

A nonresident company without a PE is generally taxable on all income it derives from within Italy, except for income that has been already subject to a final tax. This income is composed of income from land, interest, dividends, capital gains and other income produced from investments in Italy.⁹²⁴ For the rates of source country taxation applying to investment income, services income and capital gains under Italy's domestic law and tax treaties and the context for the application of those rates, see the Withholding Tax Chart.

For a noncommercial, nonresident entity, tax is imposed only on income from capital, income from occasional commercial activity, and income from land and buildings.⁹²⁵

b. Nonresident Capital Gains Tax

As of January 1, 2023, a nonresident company will be subject to 26% capital gains tax on the sale of shares in other nonresident companies where more than 50% of the value of the shareholding is derived, at any time during the 365 days preceding the sale, directly or indirectly, from real property located in Italy.⁹²⁶ This provision has its origins in Article 13(4) of the OECD Model Convention. Gains from the sale of shares listed on regulated markets are expressly excluded from taxation under this provision.

The 2024 Budget Law amended the domestic participation exemption to encompass a nonresident company that has no

⁹²² Netflix settled the matter by paying a fine and subsequently incorporated a company in Italy to continue to do business in Italy.

⁹²³ See Circular No. 33/2020; Private Letter Ruling No. 596 of Sept. 16, 2021.

⁹²⁴ TU, Art. 151.

⁹²⁵ TU, Art. 153.

⁹²⁶ TU, Art. 23, as amended by Law No. 197, Dec. 29, 2022, Art. 1 (96).

permanent establishment (PE) in Italy but is resident in an EU Member State or EEA country that allows an adequate exchange of information, and that is subject to corporate income tax in its country of residence.⁹²⁷

On July 29, 2024, the Italian Tax Agency issued Circular 17/E providing guidelines on the newly-revised tax regime applying to capital gains on the disposal of qualified shareholdings,⁹²⁸ which standardizes the tax treatment of capital gains that had been reserved for resident entities, by making the tax treatment applying to nonresident companies the same as that applying to resident companies, thus ensuring compliance with obligations arising from EU law.

Capital gains arising from the sale of qualified participations subject to tax in Italy realized by a company or commercial entity without a PE in Italy but resident in an EU or EEA Member State and subject to corporate income tax in that State will be subject to this special tax regime, which allows a 95%⁹²⁹ exemption for gains realized or losses or devaluations suffered, as a consequence of the transfer of a shareholding.

To be eligible for the participation exemption the nonresident entity must meet the following requirements under the participation exemption regime:

- (i) The shareholding concerned must be held for an uninterrupted period of 12 months prior to the transfer, the shares and quotas most recently acquired being deemed to be transferred first (LIFO method);
- (ii) The shareholdings must be listed among the financial assets on the first balance sheet drawn up during the period for which the shareholding is held;
- (iii) The subsidiary corporation in which the shareholding is owned may not be tax-resident in a country with a “privileged tax system;” and
- (iv) The subsidiary must carry on a commercial activity. The participation exemption is not available if the assets of the subsidiary consist predominantly of real property, except real property that is built or sold as part of the main activity of the enterprise, or plant and structures directly used by the enterprise in carrying on its activity.

The requirements set out above at (iii) and (iv) must be met without interruption from at least the beginning of the third tax period before the transfer.

c. Withholding Tax on Dividends

The 2018 Budget Law provides that, as of January 1, 2018, all dividends are subject to a 26% withholding tax and abolishes the qualified/nonqualified holdings distinction. A transitional taxation regime applies to distributions (made in or after 2018) of profits earned in prior years. As such, distributions of income relating to the years in which the qualified/non-qualified holdings system was in place are taxed in line with the previously applicable regime.

Dividends paid to residents on non-qualified holdings (see X.B., below) are subject to a final 26% withholding tax without the benefit of the dividend tax credit.

In the case of a resident individual:

- (i) Dividends from non-qualified holdings not relating to the conduct of business are subject to a final withholding tax rate of 26% on the gross amount;
- (ii) Dividends from qualified holdings not relating to the conduct of a business are generally not subject to withholding tax;
- (iii) Dividends distributed to nonresident investors are subject to a final 26% withholding tax unless an applicable tax treaty provides for a lower rate.

The following is a summary of withholding tax rates on dividends:

Recipients	Tax Rate
Resident individuals (IRPEF)	26%
Nonresident corporations and individuals:	
Non-treaty	26%
Tax Haven	26%

Nonresidents have the right to a refund of up to 11/26 of the withholding tax imposed, on provision of a certificate from the appropriate foreign tax office declaring they have definitely paid abroad a tax on the same profits.

Comment: The applicable tax treaty (if any) should be consulted to determine whether a reduced rate for dividends applies.

d. Withholding Tax on Interest and Other Income from Capital

Interest on bonds is subject to a 26% withholding tax that constitutes an advance payment of tax in the case of resident taxpayers subject to IRES on business income, partnerships and companies, and permanent establishments (PEs) of nonresident companies. Interest on bonds issued by banks and listed and unlisted corporations is also subject to a 26% withholding tax.⁹³⁰ The payment of interest on bank and postal deposits is likewise subject to withholding tax at the rate of 26%, which in the case of resident taxpayers subject to IRPEF on business income, partnerships and resident companies constitutes an advance payment of tax.⁹³¹ Nonresidents are subject to a final withholding tax on interest income at the same 26% rate, unless an applicable tax treaty provides otherwise.⁹³²

With respect to interest derived from other Member States of the European Union (EU) by individuals resident in Italy, EC Directive 2003/48, adopted by Legislative Decree No. 84, April 18, 2005, requires that each Member State tax the effective beneficiary in the state of residence based on the rules applicable in

⁹²⁷ Law No. 213, Dec. 30, 2023, Art. 1 (64), amending TU, Art. 68.

⁹²⁸ Law No. 213, Dec. 30, 2023 Art. 1(92), (c) amending TU, Art. 68.

⁹²⁹ D. Lgs. No. 203, Sept. 30, 2005, Art. 5, as converted into permanent law with amendments by Law No. 248 of December 2, 2005, and Law 244/2007, Art. 1 (339)(i); TU, Art. 87(1).

⁹³⁰ DPR No. 600, Sept. 29, 1973, Art. 27.

⁹³¹ DPR No. 600, Sept. 29, 1973, Art. 26.

⁹³² DPR No. 600, Sept. 29, 1973, Art. 26, as amended by D. Lgs. No. 461, Nov. 21, 1997, Art. 12(5).

that state for such interest payments. Nothing prevents the state of the payor applying source withholding taxes, but in such a case the state of tax residence of the effective beneficiary must grant either a tax credit equal to the withholding effected up to the amount of the tax due in the state of residence, or a refund of any withholding that is in excess of the tax due.

Multinational corporations with intra-group financial flows are subject to a specific provision pursuant to which a 5% withholding is applied on interest paid to nonresident controlled companies or companies controlled by that company, where the interest is to be used to finance the payment of bonds which the nonresident company has issued on a regulated EU market and which are guaranteed by the Italian resident company that paid out the interest.⁹³³

Other income from capital paid to nonresident taxpayers (other than dividends) is subject to a 26% final withholding tax.

The following is a summary of withholding tax rates on interest:

	Residents	Nonresidents: Blacklist Country	Nonresidents: Whitelist Country
Interest on:			
— Debentures issued by medium & long-term credit institutions	26%	26%	0%
— Convertible bonds	26%	26%	0%
— Other	26%	26%	0%
Ordinary and multi-year bonds issued by the State and Treasury Credit Certificates	12.5%	12.5%	0%
Bank deposits, current accounts and postal accounts	26%	26%	0%
Other income from capital (not covered by (A) or (B) and not dividends)	26%	26%	26% (subject to DTT)

Withholding is an advance payment for taxpayers subject to IRES and a definitive tax for individuals.

An applicable treaty (if any) should be consulted to determine whether a reduced rate of withholding tax on interest applies. As of January 1, 2021, Italian-source capital gains paid to UCITS or EAA funds are no longer subject to Italian with-

holding of 26%. See Law No 178, December 30, 2020, art. 1 (631)–(633).

e. Withholding Tax on Royalties

Withholding tax is imposed on royalties received by companies and entities subject to IRPEG, on partnerships, and on private entrepreneurs. The withholding tax constitutes an advance payment of tax and rates apply prior to giving effect to the provisions of any applicable treaty.

The following is a summary of withholding tax rates on royalties:

Recipients	Tax Rate on Royalties	Tax Basis
Resident individuals who are not entrepreneurs	20%	75% of sum received
Other residents	No withholding	
Nonresidents	30%	75% of sum received

With effect from January 1, 2004, under EC Directive 2003/49/CE (implemented in Italy by Decree No. 143, of May 30, 2006), interest and royalties are exempt from withholding tax when paid between a parent company and its affiliate (and vice versa) in an EU Member State or between related entities directly controlled by the same parent company on condition that: (i) the parent company holds at least 25% of the affiliate; and (ii) the participation is held for more than one year. The holding period requirement (ii) should be met at the time the interest or royalty is paid for the exemption to apply. It can also be met subsequent to the payment but only for the purposes of a refund, rather than providing an immediate exemption.

D. Method of Taxation

Where a liability for Italian corporate income tax exists, a tax return must be filed (*modello redditi società di capitali*). For companies on a calendar tax year, the tax return must be filed by no later than the last day of the tenth month after the close of the company tax year, i.e., for tax year 2025, by October 31, 2026 (as the day falls on a Saturday the return may be filed by November 2, 2026). For a company that does not have a tax year coinciding with the calendar year, the return must also be filed by no later than the last day of the tenth month after the close of the company's tax year.⁹³⁴

A nonresident foreign corporation or noncommercial entity with income that is not connected to the income of a local permanent establishment (PE) must submit the schedule(s) related to the type of income earned. For example, Schedule RB must be completed to report income earned from buildings and Schedule RT is used to report capital gains from investments. Income from a PE is treated as business income. While the determination of taxable income often occurs in Schedule RF, nonresident companies use Schedule PF within the *Modello Redditi SC* to calculate their specific tax liability.

⁹³³ DPR No. 600, Sept. 29, 1973, Art. 26-quarter (8-bis), as amended by DL No. 98, July 6, 2011, Art. 23.

⁹³⁴ D. Lgs. No. 13, Feb. 12, 2024, Art. 13 (1) (b).

If no return is filed, the tax office may levy an assessment on the Italian fiscal agent (*rappresentante fiscale*) who must be appointed by a nonresident entity in receipt of most forms of Italian-source income.

VII. Taxation of a Branch

In general, the tax treatment of a branch of a foreign company in Italy resembles that of an independent subsidiary. The subsidiary form is sometimes preferred as a means of avoiding government inquiries into the arm's-length nature of transactions between a foreign company and its branch. Moreover, a parent company may charge certain interest and royalty expenses to its subsidiary that would not be chargeable to a branch. The chief tax advantage related to a branch operation is that no Italian withholding tax is imposed on the remittance of branch profits (including dividends received from Italian subsidiaries) to the foreign company of which it is a branch.

A branch of a foreign company in Italy is subject to Italian corporate income tax on all income arising, or deemed to arise, in Italy (as discussed at VI.C., above). It is also liable for the regional tax on productive activities (*imposta regionale sulle attività produttive* or IRAP) on income derived in the various regions of Italy.

Dividends received from an Italian company by a foreign company maintaining a branch in Italy are considered to be branch income, and are subject to Italian corporate income tax. The Italian taxpayer with a foreign permanent establishment (PE)/branch is required to declare the income in its annual tax return (*modello redditi società di capitali*) and may use a foreign tax credit paid provided that reciprocity exists between Italy and the country in which the branch is organized (see V.H., above).

Beginning with tax year 2016, a branch exemption option came into force for Italian companies with PEs. If elected, the profits of the branch will be excluded from taxation. Thus, the profits attributable to the Italian parent company will be exempt from taxation and the parent company will not be able to use losses to offset gains.

Specifically, the exemption can be elected by the Italian taxpayer when it has a PE as defined either by a tax treaty or when it meets the definition of TU Article 162 (see VI.B., above). The election is to be made on Schedule RF of the tax return (*modello redditi società di capitali*) during the period in which the PE is established with effect starting in that year. The election is irrevocable and includes all the branches that are in existence when the election is made, as well as those which are yet to be established. If the taxpayer fails to elect the option when the PE is established, it can be elected for that PE when a subsequent PE is established.⁹³⁵ The option is also available to PEs that were in existence as of October 7, 2015, the date at which D. Lgs. No. 147 of September 14, 2017, entered into effect. The election terminates when all the PEs covered are sold or liquidated, and in some cases following a corporate reorganization.

The branch exemption provisions are subject to transitional measures to prevent tax avoidance through the exercise of the election. Thus, losses in the five tax years preceding the election year are subject to recapture. The income produced by the PE after the election will be subject to taxation without the benefit of the elections until the losses have been recaptured.⁹³⁶ Recapture provisions have also been provided where there is an intra-group transfer or a transfer outside the group of a branch/PE that has sustained losses in the five years preceding the election.⁹³⁷

IRAP in this scenario is calculated by excluding the PE income excluded under the election.

Regulations for exercising the branch exemption option were promulgated under Tax Agency Circular No. 165138 of August 28, 2017.

⁹³⁵ TU, Art. 168-ter.

⁹³⁶ TU, Art. 168-ter (7).

⁹³⁷ TU, Art. 168-ter (8).

VIII. Taxation of Partnerships and Small Businesses

A. Taxation of Partnerships

Partnerships, whether commercial or noncommercial, and whether general or limited in nature, are subject to certain special provisions relating to the taxation of income produced in association with other persons.⁹³⁸

Income tax is not levied on partnerships and similar associations but on their individual members. A partnership must file an income tax return (unified form) in Italy, similar to that used in the United States, that reflects each partner's share in the partnership's profits. Such returns are ultimately subject to correction and/or assessment. All partnership profits, whether distributed or undistributed, are attributed to the individual partners in proportion to their shares in the partnership. In the absence of a document authenticated by a notary containing an indication to the contrary, all partnership shares are deemed to be equal in value by the tax authority.⁹³⁹

The tax rules used to compute the business income of an individual (see IX.B.2., below) apply to the calculation of income derived by individual partners from a commercial partnership, subject to the following exceptions:

- (i) Profit-sharing benefits paid to managing partners are deductible as partnership costs;⁹⁴⁰
- (ii) Profits arising on the sale of stocks or bonds are taxable regardless of the nature of the partnership's commercial activity;⁹⁴¹
- (iii) Capital gains derived from business-related assets are considered to be business income, even where apportioned or distributed to individual partners prior to sale;⁹⁴²
- (iv) Income from capital is an item of business income;⁹⁴³
- (v) Payments made by partners to a partnership in proportion to their share of the profits, or the waiver by partners of claims deriving from earlier contributions, are not considered to be a form of partnership income;⁹⁴⁴ and
- (vi) Rental income is considered to be business income and is not calculated separately based on assessed value.⁹⁴⁵

⁹³⁸ TU, Art. 5.

⁹³⁹ TU, Art. 5.

⁹⁴⁰ TU, Art. 95.

⁹⁴¹ TU, Art. 85.

⁹⁴² TU, Art. 86.

⁹⁴³ TU, Art. 48.

⁹⁴⁴ TU, Art. 88.

⁹⁴⁵ TU, Art. 40.

In general, all other income derived in association with other persons is treated in the same manner, except for income realized by entities that are subject to corporate tax (*imposta sul reddito delle società* or IRES). A de facto partnership will be treated as either a general or a noncommercial (nonprofit) partnership, depending on its purpose.⁹⁴⁶ Certain enterprises (for example, shipping companies or associations of artists or professionals) are considered to be partnerships irrespective of their purported form or the way in which they are described.⁹⁴⁷

B. Taxation of Small Businesses

An alternate method of flat tax calculation for certain small enterprises, essentially a cash basis system with simplified accounts, is available.⁹⁴⁸ This option applies to: (i) taxpayers with receipts of up to either 500,000 euros (taxpayers in the service industries) or 800,000 euros (taxpayers engaged in other activities); and (ii) businesses engaged in the transportation by road of goods on behalf of third parties.

C. Tax on Business Income Repealed

The 2017 Budget Law⁹⁴⁹ introduced the *imposta sul reddito d'impresa* (IRI), or tax on business income, which applied on an optional basis. This option, when exercised by certain businesses, subjected income to taxation at the corporate income tax (IRES) rate of 24%, rather than taxing the income from the business on a pass-through basis in the hands of the business owners. Any income paid to the business owners was taken as a deduction by the business.

Specifically, this option was available to:

- (i) Sole proprietorships;
- (ii) General partnerships;
- (iii) Limited partnerships; and
- (iv) Certain Srls with a restricted asset base eligible for transparent taxation.

The option for IRI taxation was to be made in the return for the first year that the IRI was to be used. The option lasted for five years and could be renewed.

The 2019 Budget Law repealed this option effective for the tax year underway on December 31, 2018, as small businesses can now elect the 15% flat tax option.⁹⁵⁰

⁹⁴⁶ TU, Art. 5.

⁹⁴⁷ TU, Art. 5.

⁹⁴⁸ TU, Art. 66 as amended by Law No. 197, Dec. 29, 2022, Art. 1 (276).

⁹⁴⁹ Law No. 232, December 11, 2016, adding Art. 55-*bis* to DPR No. 917 of December 22, 1986.

⁹⁵⁰ Law No. 145, December 30, 2018, Art. 1 (1055).

IX. Taxation of Resident Individuals

A. Scope of Taxation

1. In General

Individuals are subject to personal income tax (*imposta sul reddito delle persone fisiche* or IRPEF).⁹⁵¹ Self-employed individuals are also subject to the regional tax on productive activities (*imposta regionale sulle attività produttive* or IRAP). Personal income tax is governed by Articles 1 to 71 of the Consolidated Tax Code (*Testo Unico*, DPR No. 917 of December 22, 1986 or TU). The TU contains the main provisions of Italian tax law that apply to individuals, partnerships and companies, and to other private and public entities, unless otherwise specified. (See V., above.)

The personal income tax applies to all individuals, whether or not resident in Italy. Residents are subject to tax on their worldwide income. Nonresidents are taxed only on their Italian-source income. Neither partnerships nor European Economic Interest Groupings (EEIGs) are deemed to be taxable entities, but are regarded as income reporting vehicles, the individual partners or members being taxed directly.

2. Residence

Residence is defined as follows: for income tax purposes, individuals who, for the greater part of the tax period, are registered in the Office of Records of the Resident Population (*anagrafe*), or who are resident or domiciled within the territory of the State within the meaning of the Civil Code are considered to be resident.⁹⁵²

The old tax code was more specific. It provided that any individual who resided in Italy for more than six months in a year would be considered to be resident. The reference to the Civil Code provision provided more flexibility because it defines an individual's place of residence as the individual's place of habitual abode.⁹⁵³

Pursuant to Article 3 of Law No. 111 of August 9, 2023, a review of the tax residence principles to bring Italy in line with modern tax treaties and international best practices was authorized, which would include coordinating tax residency rules with permanent establishment (PE) rules, including for individuals working remotely from Italy.

Based on the mandate authorized under Law No. 111, Italy revised its tax residency rules to provide that an individual will be deemed to be a tax resident of Italy if, for the greater part of the tax year (i.e., for 183 days or in a leap year 184 days), any of the following conditions are fulfilled:

(i) The individual is domiciled in Italy. Domicile for tax residency now refers to where a person has their personal and familial relationships, removing the reference to the Civil Code concept of domicile of an individual's place of habitual abode or the center of their personal interests; or

(ii) The individual is resident in Italy within the meaning of the Civil Code; or

(iii) The individual is physically present in Italy.⁹⁵⁴

The current rules also introduced the concept that fractions of a day are to be counted as a full day for purposes of determining tax residency. Tax Agency Circular No. 20/E of November 4, 2024 also confirmed that presence in Italy may be for non-consecutive periods, which can include the simple presence in Italy for any reason, such as vacations, study, or to visit family and friends. Under the new definition of tax residency, however, an individual's registration as a resident in the registry of a municipality is no longer an absolute presumption of residency but a rebuttable legal presumption.

With respect to domicile based on "personal and familial relationships," the Circular states that these include relationships governed by law, such as marriage and civil unions, as well as stable personal relationships, such as a couple that lives together. Also included are stable social relationships, such as annual memberships in cultural associations and sports clubs. As an illustration, the Circular provides the example of an individual who has taken a job abroad and is registered in the Registry of Italian Citizens Resident Abroad (AIRE), but maintains title to a home in Italy with utility bills in their name, returns on weekends, and spends time in Italy when not working. Even in such a case, the individual's circumstances and activities could still give rise to meeting the condition of domicile and thereby subject the person to worldwide taxation based on residence.

On the other hand, an Italian citizen who remains resident for tax purposes but works abroad as an employee for more than 183 days in a period of 12 months is taxed in Italy based on an assumed compensation, to be fixed annually by Ministerial Decree, unless an applicable tax treaty provides otherwise.⁹⁵⁵

A new agreement between Italy and Switzerland has been entered into that governs the taxation of income earned by Italian residents who commute across the border to Switzerland.⁹⁵⁶ The agreement provides that, with effect from July 17, 2023, Switzerland will levy 80% of its withholding tax on the income of such commuters who live within 20 kilometers of the border and return home each day by means of new tariff codes (R, S, T, U and V). Since the income will be taxed in Italy, to mitigate double taxation, the employment income will be reported to Italy every year by means of an electronic data exchange.

Existing cross-border commuters who worked in the cantons of Graubünden, Ticino or Valais between December 31, 2018 and July 17, 2023 will continue to be fully taxed in Switzerland, at the ordinary withholding tax rates, but Switzerland will transfer 40% of the taxes paid by these commuters to the Italian border municipalities until the end of the 2033 tax year. The Italian government has also passed legislation that allows these workers to opt for taxation equal to 25% of the tax levied in Switzerland in lieu of personal income tax levied at the graduated rates and regional and municipal tax.⁹⁵⁷

⁹⁵¹ Law No. 80, April 7, 2003, enacted a reform of the national tax system pursuant to which *imposta sul reddito delle persone fisiche* (IRPEF) was renamed *imposta sul reddito* (IRE). However, the renamed tax never entered into force, and it was repealed and IRPEF reinstated under Finance Act 2007.

⁹⁵² TU, Art. 2.

⁹⁵³ CC, Art. 43.

⁹⁵⁴ D. Lgs. No. 209, Dec. 27, Art. 1, amending TUIR ART 2(2).

⁹⁵⁵ Law No. 342, Nov. 21, 2000, Art. 36.

⁹⁵⁶ Agreement between the Italian Republic and the Swiss Confederation on the taxation of frontier workers, entered into in Rome on December 23, 2020, ratified and enforceable pursuant to Law No. 83 of June 13, 2023, Art. 2.

⁹⁵⁷ D. Lgs. No. 13, August 9, 2024, Art. 6.

Italian citizens who have emigrated to jurisdictions that are considered to be tax havens, as defined by specific Ministerial Decree (see V.O., above),⁹⁵⁸ are still deemed to be tax residents of Italy, unless it can be proven otherwise.

For Italian citizens who move abroad, it has long been a requirement that they register in the national Registry of Italian Citizens Living Abroad (*Anagrafe dei Cittadini Residenti all'Estero*, or AIRE). As of January 1, 2024, fines have been introduced for such citizens who have failed to register in AIRE. The fine ranges from 200 euros and 1,000 euros for each year of failure to register after January 1, 2024, up to a maximum of five years.⁹⁵⁹

B. Determination of Aggregate Income

1. In General

Personal income tax (*imposta sul reddito delle persone fisiche* (IRPEF)) is levied on all types of income, whether received in cash or in kind. In general, taxable income falls into the following six categories:

- (i) Business income (*redditi di impresa*);
- (ii) Income from capital (*redditi di capitale*);
- (iii) Income from real property (*redditi fondiari*);
- (iv) Income from dependent personal services (*redditi di lavoro dipendente*);
- (v) Income from independent personal services (*redditi di lavoro autonomo*); and
- (vi) Miscellaneous income (*redditi diversi*).

Income from all the above categories is added together to arrive at aggregate income. Special provisions of the IRPEF law determine the number of allowable deductions in arriving at net income from each category. Progressive tax rates apply to the aggregate net income. It should be noted, however, that certain types of income are not included in aggregate income and are subject to separate taxation (see C., below). Most expenses previously allowed as personal deductions from income are now treated as a credit against taxes to be paid at a rate of 19%.

2. Business Income

All income generated by commercial or industrial activities is considered to be business income. Gains from the transfer of goods and services to foreign-related companies also constitute business income.

Business income is to be computed based on the “civil” profit and loss account (*conto economico*), as provided for by the Civil Code, subject to adjustments for allowable deductions.

a. Deductions

The most important allowable deductions are discussed below. These are: (i) interest and overhead expenses; (ii) current year costs and expenses; (iii) depreciation of movable and

immovable assets, including certain intangibles; (iv) allocations to certain reserves; and (v) costs relating to the purchase of goods if attributable to a receipt on an accrual basis. (For a discussion of deductible business expenses of resident corporations, see also V.C., above.)

Interest and overhead expenses are deductible only in an amount corresponding to the ratio of gross income to gross income minus exempt income and income previously reduced by a final withholding tax.⁹⁶⁰

Only current year costs and expenses may be deducted from income. A deduction may be postponed in accordance with the tax rules governing business income in the case of expenses capitalized on a previous balance sheet.⁹⁶¹

Depreciation of movable and immovable assets, including patents, licenses, and other intangible assets, must be based on specific law or the percentages periodically fixed by the Finance Ministry.⁹⁶² Beginning with the fiscal year in progress on July 4, 2006, the depreciation of land, and appurtenances included in the value of the building, is no longer allowed.⁹⁶³

Italian law does not require the use of straight-line or other depreciation systems for tax purposes, even though the accounting rules tend to follow the internationally acceptable systems of consistent depreciation. Certain concepts from non-tax law may complicate depreciation problems. Italian Civil Code Article 2426(2) provides that depreciation is to be “systematically” taken (for example, accelerated depreciation cannot be used) in each fiscal year in relation to the residual possibility of the assets’ utilization. When determining business income, it is important that the taxpayer adhere to this non-tax law principle in its annual accounts. Depreciation for tax purposes is more complex and must follow Ministry Guidelines. When determining a company’s taxable income, the taxpayer must evaluate the possible differences between the depreciation taken and that which can be taken for tax purposes. The difference between the depreciation in the annual accounts and that allowed for tax purposes cannot be taken as a deduction. Depreciation is prorated when an asset is put into use during the course of a particular year.

For a period of time, accelerated depreciation at twice the normal rate was available during the first three years of use of a capital asset. However, beginning with fiscal year 2008, accelerated depreciation is no longer permitted for any kind of fixed asset and depreciation must be taken according to the coefficients set by the Finance Ministry, which vary according to sector. For example, for sector specific buildings in the meat processing sector, the depreciation coefficient is 4% and for sector specific buildings in the mining of liquid and gaseous fuels sector, the depreciation coefficient is 5.5%.⁹⁶⁴ (For other coefficients, see the Worksheets.)

Deductions are allowed for allocations to certain reserves, in particular reserves for special maintenance work, bad debts,

⁹⁶⁰ TU, Art. 61.

⁹⁶¹ TU, Arts. 108–109.

⁹⁶² TU, Arts. 102–104. Pursuant to DL No. 98 of July 6, 2011, Art. 23 (47), new depreciation percentages were to be established by one or more decrees to be issued by the Finance Ministry to take effect in 2013. These decrees have never been issued and the depreciation tables issued in 1988 are still in effect.

⁹⁶³ Law No. 248, Aug. 4, 2006, Art. 36 (7) and (8).

⁹⁶⁴ Law No. 244, Dec. 24, 2007, Art. 1 (33); TU, Art. 102.

⁹⁵⁸ DM, May 4, 1999; TUIR 2 (2-bis).

⁹⁵⁹ Law No. 213, Dec. 30, 2023, Art. 1. (242)–(243).

and employee severance payments.⁹⁶⁵ All other reserves reflected on the balance sheet are subject to taxation.

Costs relating to the purchase of goods and services may be deducted only if they are directly attributable on an accrual basis to a receipt and, as a general rule, only if they are allocated to the profit and loss account.⁹⁶⁶

Inventory can be valued on any basis that does not lead to a deduction in excess of that produced by the application of the last-in first-out (LIFO) method.⁹⁶⁷ Similar criteria are used in valuing securities.⁹⁶⁸

All income items listed on the accounts on an accrual basis, the existence or value of which is incapable of objective determination, are considered to be tax deductible items only in that tax period in which objective determination of their value becomes possible.⁹⁶⁹

b. Capital Gains

Capital gains began to be taxed on a separate basis in Italy in 1990. At the end of 1997, the government enacted legislation taxing all gains at a rate of 12.5%, except those realized on a “qualified transfer” which were to be taxed at 27%. This became effective on July 1, 1998, and applied to capital gains realized by individuals on sales of shares, quotas, options, convertible debentures, derivatives and structured notes.⁹⁷⁰ The 27% rate was reduced to 26% by Decree Law No. 138 of August 13, 2011.

Taxpayers with managed portfolios that did not engage in qualified transfers could choose from two taxation options (see below).

A transfer was defined as “qualified” when it involved: (i) more than 2% of the voting rights or more than 5% of the capital of a listed company; or (ii) more than 20% of the voting rights or more than 25% of the capital of an unlisted company.⁹⁷¹ Until the investor exceeded one of the above thresholds, transactions in a single security are not accumulated. Transactions occurring within the preceding 365 days were taken into account for threshold purposes. Once a threshold was exceeded, all transactions in that security were taxed as qualified.

During the period of the repeal of the gift and inheritance taxes (from October 25, 2001, to October 2, 2006), the cost basis of a donated or inherited shareholding was the cost basis of the donor or of the decedent.⁹⁷² Gift and inheritance taxes were re-established as of October 3, 2006. (See IV.D., above.)

Law No. 205 of December 27, 2017 (the 2018 Budget Law) repealed the distinction between “qualified” and “non-qualified” transfers and, beginning on January 1, 2019, capital gains realized by individuals on sales of shares, quotas, options, convertible debentures, derivatives and structured notes will be subject to a flat tax of 26%.⁹⁷³

The gain is the difference between the purchase and sale prices. If the securities are originally acquired by inheritance, the basis is the value agreed on in settlement of inheritance taxes, or the value declared for inheritance tax purposes. If the securities are acquired by way of gift, the cost basis is that of the donor.

In most instances, losses may be set off against gains and any unutilized losses may be carried forward for up to four years.

All other gains are taxed as normal business income or as nonbusiness personal income in those cases specifically provided for by law.

Taxpayers with managed portfolios continue to have two other taxation options. Under the first option, tax is paid on the realized gain.⁹⁷⁴ The second option⁹⁷⁵ allows a taxpayer to have the tax applied to the total net gains matured during the year, irrespective of whether the gain proceeds were actually paid to the taxpayer.⁹⁷⁶

Pursuant to Article 5 of Law No. 448 of December 7, 2001,⁹⁷⁷ individuals with shareholdings in unlisted companies could substitute for their original tax basis an amount equal to that percentage of their individual net worth represented by the holding according to an appraisal as at January 1, 2005.⁹⁷⁸ The appraised value was subject to a substitute tax at a rate of 4% for qualified investments and of 2% for nonqualified investments. In 2017, legislation provided for new appraisals for companies not listed on regulated markets. Thus, shareholdings in unlisted companies can have the original tax basis substituted with an amount established by appraisal carried out between January 1 and June 30, 2017, and on which the taxpayer has paid a substitute tax of 8%.⁹⁷⁹ The appraisal period was extended to June 30, 2018, by the 2018 Budget Law. In 2020, the Budget Law allowed an increase in the tax basis of shareholdings of unlisted companies held as of January 1, 2020, with an amount established by an appraisal carried out by June 30, 2020, and on which the taxpayer paid a substitute tax of 11%. The Budget Law of 2021 has extended this possibility to shareholdings held as of January 1, 2021, with appraisals to be completed as of June 31, 2021 and payment of the substitute tax of 11%.⁹⁸⁰ The 2023 Budget Law enables taxpayers to elect to step up the value of certain shareholdings in Italian companies, including participations in listed companies and real estate.⁹⁸¹ The cost basis for purposes of the 16% substitute tax is the value of the participation as of January 1, 2023 (certified by a

⁹⁷⁴ D. Lgs. No. 461, Nov. 21, 1997, Art. 6.

⁹⁷⁵ D. Lgs. No. 461, Nov. 21, 1997, Art. 7.

⁹⁷⁶ Prior to August 4, 2001, under the first option, which operates on a cash basis, an equalization coefficient was established to take into account the interest factor and make the two options equivalent. The coefficient was set annually by ministerial decree and was applied to securities taxed under the first option held for more than 12 calendar months. The equalization coefficient, however, was abolished as of August 4, 2001.

⁹⁷⁷ As extended several times, most recently by Law No. 147, Dec. 27, 2014, Art. 1(165 et seq.). This extension provided that the asset must be owned as of January 1, 2014 and the substitute tax is to be paid by June 30, 2014.

⁹⁷⁸ DL No. 355, Sept. 2003, Art. 6 bis.

⁹⁷⁹ Law No. 232, Dec. 11, 2016, Art. 1 (554–555).

⁹⁸⁰ Law No. 187, Dec. 30, 2020, Art. 1 (1122–1123).

⁹⁸¹ Law No. 111, Aug. 9, 2023, Article 6. Italy has several systems to allow taxpayers to elect a stepped-up basis. The law has called for common step-up rules.

⁹⁶⁵ TU, Arts. 105–107.

⁹⁶⁶ TU, Art. 109.

⁹⁶⁷ TU, Art. 92.

⁹⁶⁸ TU, Art. 94.

⁹⁶⁹ TU, Art. 109.

⁹⁷⁰ D. Lgs. No. 461, Nov. 21, 1997; TU, Arts. 20, 41, 112.

⁹⁷¹ TU, Art. 67 (8).

⁹⁷² Law No. 383, Oct. 18, 2001, Art. 13.

⁹⁷³ Law No. 205, Dec. 27, 2017.

sworn appraisal of the value prepared not later than November 15, 2023). The relevant participation must still be held by the shareholder on January 1, 2023.⁹⁸²

The Budget Law of 2024 has once again created the possibility of stepping up the cost basis of shareholdings held as of January 1, 2024, in both listed and unlisted companies. For shareholdings in quoted companies, the share value is the stated market value on January 1, 2024. For shareholdings in unlisted companies, the share value is to be established by an appraisal, which must be carried out by June 30, 2024. The substitute tax of 16% can be paid in three annual installments beginning on June 30, 2024, subject to a 3% annual interest surcharge due with the second and third installments.⁹⁸³

Failure to declare capital gains can result in a fine ranging from 120% to 240% of the tax due. Failure to pay the tax or failure to pay sufficient tax can result in a fine of 50% of the unpaid tax.⁹⁸⁴

c. Crypto-Assets

Prior to the enactment of the 2023 Budget Law, Italy considered cryptocurrency to be a foreign currency.

The Italian courts appeared to signal a change in their approach to cryptocurrency and, in November 2022, the Italian Supreme Court of Cassation indicated in a criminal case that crypto-assets fall within the broad category of domestic financial products if they:

- (i) Require the payment of funds by the investor;
- (ii) Entail an expectation of a financial return; and
- (iii) Entail a risk directly associated with the amount of funds invested.⁹⁸⁵

The 2023 Budget Law introduced the following:

- (i) Capital gains taxation on the sale of cryptocurrency and crypto-assets;
- (ii) The possibility of adopting a step-up in basis for crypto-assets held on January 1, 2023;
- (iii) An amnesty program for crypto-related income not reported in previous tax years; and
- (iv) Stamp duty on reports relating to crypto transactions.⁹⁸⁶ (See IV.Q., above).

Pursuant to the Budget Law of 2023, gains on the sale of cryptocurrencies and other crypto-assets exceeding 2,000 euros were subject to tax at the rate of 26%. Gains are calculated as the difference between the cost basis and the sale price. The cost basis will depend on how the asset is acquired. If the assets were purchased, the basis is the purchase price. If the assets were inherited, the basis is the value declared in the estate tax return (generally, the value on the date of death). If the assets were received as a gift, the cost basis is the cost basis of the donor in the assets.

Subsequently, the Budget Law of 2025 increased the tax rate on crypto capital gains to 33%, effective as of January 1, 2026, and eliminated the exempt threshold of 2,000 euros under which gains would not be taxed.⁹⁸⁷ Gains on euro-denominated stablecoins (e-money tokens) that comply with the EU MiCAR regulation will continue to be taxed at the reduced rate of 26%.

Capital losses can be used to offset capital gains of the same kind subsequently realized in the same year or up to four years following the year of the sale.

Individuals with taxable capital gains are required to report any such capital gains and losses in their annual tax returns. Taxpayers may elect to pay the tax through an Italian financial intermediary (e.g., a bank or other qualified intermediary) or a crypto-assets service provider (including a wallet provider).

Taxpayers may elect to step-up the cost basis of their crypto-assets to their market value on January 1, 2023, with a flat 16% tax on the amount of the step-up. The law originally provided for payments to be made by June 30, 2023, or in three equal annual installments, subject to 3% annual interest to installments paid after June 30, 2023. However, on June 13, 2023, the Ministry of Economy and Finance issued Notice No. 96 postponing the start of payments to September 30, 2023.

Subsequently, the Budget Law of 2025 introduced as a permanent provision the option for a taxpayer to step-up the tax value of their crypto-assets to market value as on January 1 of each year, starting in 2025, with the payment of a flat tax of 18% on the amount of the step-up.⁹⁸⁸

The election to step-up the basis of crypto-assets will not be allowed if it would result in a loss.

As stated above, the 2023 Budget Law provided a tax amnesty for taxpayers who had failed to disclose in their annual tax returns the holding of crypto-assets as well as any income related to those assets as of December 31, 2021. Taxpayers who held undisclosed crypto-assets that did not generate taxable income could become compliant by paying a reduced penalty equal to 0.5% per annum on the value of the undisclosed crypto-assets. Taxpayers that realized income from undisclosed crypto-assets are required to pay a 3.5% flat tax on either the year-end value of the undisclosed crypto-assets or the value of the assets on the date of their disposal, plus interest and penalties equal to 0.5% of the value of the crypto-assets concerned. Taxpayers who missed this window remain subject to standard penalties for non-disclosure in their Quadro RW (Foreign Assets) reporting.⁹⁸⁹

After a consultation process that closed on June 30, 2023, the Tax Agency issued Circular No. 30/E, of October 17, 2023, which provides guidelines and explanations on the taxation of crypto-assets. Among the issues addressed are:

- i) The territorial aspect for taxation of crypto-assets. The Circular addressed this point by making reference to Article 67 of the TUIR which provides that income from an activity carried out within Italy from assets located in Italy will be taxable in Italy. Thus, non-residents will be subject to taxation if the crypto-assets (access keys) are held by intermediaries residing in Italy, or if these assets have a

⁹⁸² Law No. 197, Dec. 29, 2022, Art. 1 (107–109).

⁹⁸³ Law No. 213, Dec. 30, 2023, Art. 1 (52)–(53).

⁹⁸⁴ D. Lgs. No. 461, Nov. 21, 1997, Arts. 5(6), 6(11), and 7(16).

⁹⁸⁵ Supreme Court of Cassation Case No. 44378, Nov. 22, 2022.

⁹⁸⁶ Law No. 197, Dec. 29, 2022, Art. 1 (126–137).

⁹⁸⁷ Law No. 207, Dec. 30, 2024, Art. 1 (25).

⁹⁸⁸ Law No. 207, Dec. 30, 2024, Art. 1 (26).

⁹⁸⁹ Law No. 197, Dec. 29, 2022, Art. 1 (144–147).

substantial connection with a resident intermediary. However, for those access keys directly held by a taxpayer with devices such as USB keys the presumption that the assets are in Italy will only apply if the taxpayer is a resident of Italy. This presumption can be rebutted by the taxpayer;

ii) Taxation rate of income from crypto-assets. Taxation from the redemption, exchange, or sale will be taxed at a rate of 33%, increased from 26%, as of January 1, 2026, except for euro-denominated stablecoins (e-money tokens) that comply with the EU MiCAR regulation which continue to be taxed at 26% for both residents and non-residents. Exchanges among crypto-currencies with the same economic function will not be considered a taxable event, while an exchange between nonfungible tokens (NFTs) and cryptocurrency will be a taxable event;

iii) Revaluation of crypto-assets. The Circular clarified the procedures for revaluing crypto-assets held on January 1, 2023, using either the cost or purchase value as of that date. This option was still available even if the crypto-assets were no longer held at the time of payment of the substitute tax of 14%. Revaluation, which was available through November 15, 2023, was useful for taxpayers as it allowed for a higher cost basis on which to determine a capital gain in the event of reimbursement or sale of the crypto-asset or exchange with other crypto-assets having different characteristics and functions (e.g., purchasing an NFT with bitcoin);

iv) Failure to disclose crypto-assets held abroad. Individuals, non-commercial entities and certain types of small companies that held crypto-assets on December 31, 2021 and that had failed to disclose the assets in Quadro RW (the schedule in which foreign accounts and assets held abroad are reported in the Italian income tax return) could become compliant by filing a petition by November 30, 2023 with the Tax Agency, attaching proof of payment of a fine as well as documentation to prove the value of the crypto-assets. The fine levied was 3.5% of the value of the assets held at the end of each year, or the value at the time of sale, plus 0.5% of the value of the assets at December 31 of each year in which the crypto-assets were held and not disclosed. If there was no income from the crypto-assets only the fine of 0.5% on the year-end value of the crypto-assets is due for failure to disclose the asset in Quadro RW;

v) Annual stamp tax (also known as the Italian wealth tax on crypto-assets). An annual stamp tax for individuals of 0.2% will be levied on the value of the crypto-assets at the end of the reporting period or, in the event of failure to report that value, the value at December 31 of each year as determined by the intermediary or service provider who will withhold the tax. If the end of year value is not available, the purchase cost of the crypto-assets will be used as the value. The Circular clarified that payment methods and terms are the same as those currently provided for the stamp duty for communications relating to financial products. It was also specified that entities and companies will be subject to a maximum stamp tax of 14 euros annually on the value of the crypto-assets as determined above;

vi) VAT treatment of crypto-asset taxation. As crypto-assets are not subject to specific VAT provisions, the Circular, referring to international best practice provided a look through approach in order to ascertain the actual nature, their function in practice, and the purposes for which the crypto-assets are actually used as recommended in the OECD “Crypto-Asset Reporting Framework (CARF)”, approved in August 2022 to establish taxation for VAT purposes. For example, when a crypto-asset is used as payment for a transaction subject to VAT, the value of the crypto-asset is to be converted to Euros to calculate the taxable amount of the transaction and then the VAT amount applicable will be determined.

Certain cryptocurrency transactions will generally be exempt from VAT. These transactions include the exchange of traditional currency for cryptocurrency; mining of cryptocurrency that is compensated through a miner’s fee; and cryptocurrency “staking” transactions.

The VAT rules for tokens are essentially the same as those for cryptocurrency. These transactions will be taxable when used as payment for a transaction subject to VAT.

Transactions with tokens will be exempt from VAT when the actual nature is that of an investment instrument (such as “security tokens”); and treated as equivalent to vouchers for VAT purposes when the tokens must be accepted by the supplier as a means of payment for a transaction and bear an indication of the goods or services that can be purchased or an indication of the supplier obliged to accept them.

The VAT treatment of NFTs will hinge on the evaluation of the contractual agreements (“smart contract”) associated with NFTs and their circulation. The VAT treatment of NFTs and related activities is contingent on whether the interest is only in the NFT or the underlying assets it represents; and

vii) Value of crypto-assets for transfer by gift or at death. For gifts or transfers at death of crypto-assets the value is the fair market value of the crypto-assets.

3. Capital (Investment) Income

Income from investment capital is treated as falling within a separate tax category only when received by a taxpayer who is not engaged in a business. Items such as interest and dividends received by such an individual are taxed on a gross basis with no deductions allowed for expenses. Special government bond issues may be exempt from tax.

In particular, the taxation of dividends is treated differently depending on whether the individual is an entrepreneur. Until December 31, 2003, the full amount of dividends received by an entrepreneur was included for purposes of ordinary IRPEF taxation and a tax credit regime applied. Likewise, for the period through December 31, 2003, an individual who was not an entrepreneur also had to include dividends received for ordinary IRPEF taxation purposes and a tax credit regime applied. Dividends from nonqualified participations were subject to a separate, substitute tax at a rate of 12.5%.

From January 1, 2004 until December 31, 2008, 40% of dividends received from qualified participations were subject to ordinary IRPEF taxation, and from January 1, 2009, 49.72% of dividends received from qualified participations were subject to ordinary IRPEF taxation (no withholding is made by the company paying out the dividend) without a tax credit; dividends from nonqualified participations are subject to final taxation at a rate of 26% as of July 2014.⁹⁹⁰ However, between December 31, 2016 and December 31, 2017, 58.14% of dividends from qualified participations were subject to ordinary IRPEF taxation.

The 2018 Budget Law⁹⁹¹ amended TU Article 44 to provide that, beginning January 1, 2018, dividends are subject to a flat rate of 26%, provided that the dividends do not relate to profits earned prior to 2018. A transitory taxation regime covers the tax years beginning January 1, 2018 through December 31, 2022, as summarized in the following table:

⁹⁹⁰ Until December 31, 2011, the flat rate was 12.5%. From January 1, 2012, to June 30, 2014, the flat rate was 20%.

⁹⁹¹ Law No. 205, Dec. 27, 2017.

Date of Dividend Resolution	Date Dividend Received	Relevance of Tax Year in Which Dividend Matured	Type of Participation Held	Tax Treatment	
Up to Dec. 31, 2017	During 2017	Relevant	Qualified	Profit made:	
				From 2017	58.14%
				2008–2016	49.72%
				Before 2008	40%
	During 2018	If dividend is from profits earned in prior tax years	Qualified	Profit made:	
				From 2017	58.14%
				2008–2016	49.72%
				Before 2008	40%
	During 2018	Not relevant	Not qualified	Flat 26% withholding	
From Jan. 1, 2018 to Dec. 31, 2022	From 2018	Relevant	Qualified	Profit made:	
				From 2017	58.14%
				2008–2016	49.72%
				Before 2008	40%
	From 2018	Not relevant	Not qualified	Flat 26% withholding	
From Jan. 1, 2023	From 2023	Not relevant	Not relevant	26% withholding	

As of January 1, 2023, all dividends will be taxed at 26% and the distinction between qualified and non-qualified participations will no longer be applicable.

Income from capital earned by taxpayers engaged in business is considered to be an item of business income to be reflected in the profit and loss account, and related expenses may be deducted.⁹⁹²

The 2023 Budget Law introduced a voluntary one-off reduced tax on the undistributed earnings of foreign subsidiaries located in low tax jurisdictions.

The 9% Transition Tax (30% for individuals) is computed based on qualifying undistributed earnings (i.e., earnings that remain undistributed as of January 1, 2023, provided such earnings are reflected in either the relevant subsidiaries' 2021 financial statements or the last financial statements closed before January 1, 2022 for non-calendar year entities).⁹⁹³ Payment of the Transition Tax permits such earnings to be treated as if they were repatriated in the year of the election (i.e., they will not be further taxed when they are subsequently actually distributed).

⁹⁹² TU, Arts. 55–60.

⁹⁹³ Law No. 197, December 29, 2022, Art. 1 (87)–(88).

On distribution, the earnings subject to the Transition Tax will be deemed to be received first.

Payment of the Transition Tax will also permit taxpayers to take a stepped-up basis in the shares up to the limit of their sale price in an amount equal to the earnings on which the Transition Tax was paid. The basis will therefore be reduced to the extent the sale proceeds are distributed.

Taxpayers must pay the tax by the deadline for the payment of the tax balance for the fiscal year 2022 (i.e., June 30, 2023 for calendar year entities). The Transition Tax election can be exercised separately for each foreign subsidiary in which the taxpayer has an interest with respect to all or part of the profits or retained earnings reserves. The election must be made in the 2022 tax return (i.e., generally by November 30, 2023).⁹⁹⁴

4. Real Property Income

Income from real property is generally computed based on the assessed (cadastral) value of the property concerned and the income that property with that value is presumed to produce.⁹⁹⁵ The assessed values are revised every 10 years by Ministerial Decree. Income from property used in a business is business income.

There are three general subcategories of income from real property: (i) income from buildings based on presumed earnings (*redditi dei fabbricati*); (ii) income from the ownership of farmland (*redditi dominicali dei terreni*); and (iii) agricultural income (*redditi agrari*).

Income from buildings is based on the higher of actual income and a presumed or imputed income based on an overall real property valuation chart not dissimilar to that used in the U.S. assessment system. A flat reduction for presumed expenses is allowed against the presumed income produced by the real property.

Income from the ownership of farmland (*redditi dominicali dei terreni*) is income that is based on tariffs established by the land registry and is taxed regardless of whether the land is in fact farmed.⁹⁹⁶ Agricultural income (*redditi agrari*) is the actual income generated through farming activities.⁹⁹⁷ The taxation of agricultural income is generally governed by a complex separate system. In any event, for tax years 2017–2019, farmers who pay into the social security scheme set up for farmers have been exempted from payment of personal income tax (IRPEF) and property taxes.⁹⁹⁸ This exemption has been further extended through tax year 2021.⁹⁹⁹ For tax years 2024 and 2025, income up to 10,000 euros remains exempt from IRPEF, whereas income over 10,000 euros and up to 15,000 is 50% exempt; income over 15,000 euros is subject to full IRPEF taxation.¹⁰⁰⁰

Further to encourage technological innovation and modernization in agriculture, Italy has also broadened the scope of activities considered agricultural to include activities such as the handling, processing and marketing of agricultural prod-

ucts, if these activities are involved with products obtained directly from a farm. This has paved the way for innovations, such as production in protected environments, contributing to the evolution of more sustainable agricultural practices. Legislative Decree No. 192 of December 13, 2024, represented a major breakthrough in sustainable agricultural practices, by regulating indoor cultivation and eliminating the requirement that produce must be grown on land. This reform enshrined that even artificial spaces, such as buildings or urban greenhouses, can be considered the same as agricultural land, greatly expanding the scope of tax benefits. Specifically, Article 1 of Legislative Decree No. 192 introduced specific standards for modern vertical farming systems able to reduce water consumption, stem the destructive effects of climate change, and enable the exploitation of environments other than typical ones. This approach takes into account the peculiarities of above-ground crops, such as vertical farms or hydroponic crops, enhancing their environmental efficiency and sustainability. Accordingly, Article 56-*bis* to the TU was amended to allow the application of the flat-rate tax regime to a range of related activities, including:

- (i) The processing and marketing of agricultural products exceeding the traditional limits of agricultural income;
- (ii) The provision of services instrumental to agricultural activity;
- (iii) The marketing, within certain limits, of floricultural products purchased from other businesses in the sector; and
- (iv) The production and sale of intangibles, such as carbon credits, which are considered agrarian income within certain limits.

This amplification of activities also permitted the formal recognition of the role of the farm as a key player in environmental protection and combating climate change, in line with European directives on sustainable development.

Legislative Decree No. 192 also extends cadastral taxation,¹⁰⁰¹ to agricultural businesses, thereby unifying the tax treatment between sole proprietorships and corporations. Thus, the taxation of agricultural property will be taxed at the highest cadastral rate in the province where the activity is located, increased by 400%.

Agricultural companies that opt for cadastral taxation can now benefit from the flat-rate regimes as provided by Article 56-*bis*.¹⁰⁰²

5. Personal Services Income

a. In General

Income from personal services generally constitutes the major element of individual taxable income. It encompasses both income from employment (*reddito di lavoro dipendente*)

⁹⁹⁴ Law No. 197, December 29, 2022, Art. 1 (91).

⁹⁹⁵ TU, Arts. 25–43.

⁹⁹⁶ TU, Art. 28.

⁹⁹⁷ TU, Arts. 32–35.

⁹⁹⁸ Law No. 232, Dec. 11, 2016.

⁹⁹⁹ Law No. 178, Dec. 30, 2020, Art. 1 (38).

¹⁰⁰⁰ Law No. 215 of Dec. 39, 2023, Art. 13 (13-*bis*).

¹⁰⁰¹ The cadastral value of property in Italy represents the calculation of taxes associated with property ownership or acquisition. It is specifically tailored for tax purposes and does not reflect the fair market value of property. It is, essentially, the value that serves as the taxable base upon which various property related taxes are levied.

¹⁰⁰² D. Lgs. No. 192, December 13, 2024, Art. 1.

and the earned income of self-employed individuals (*reddito di lavoro autonomo*).¹⁰⁰³ The former includes pensions, profit-sharing, and employee stock plan benefits, but excludes certain items (for example, severance pay) that are subject to separate taxation. Income earned by self-employed persons includes income from copyright, patent and trademark royalties.

For self-employed individuals, Article 5 of Legislative Decree No. 192 of December 13, 2024, also made several important changes to Article 54 to the TU, which governs the tax treatment of self-employment income. Among the most important changes are:

- (i) Expansion of what qualifies as professional compensation to include any amount or value received in the tax period in any capacity that is attributable to artistic or professional activity; sums paid as compensation for losses actually suffered (“emergent damage”) will not count as self-employment income in the tax year in which they are received;
- (ii) Confirmation that self-employment income is taxed on a cash basis, meaning that payments received in the tax period following that in which they were billed are charged to the tax period in which the payer/tax withholding obligation arises; and
- (iii) Confirmation that sums received as a result of a recharge to other parties for expenses incurred (for example, telephone, electricity, secretarial, etc. expenses) for the common use of real estate, including mixed use, devoted to the exercise of the activity do not contribute to the income of the professional and therefore amounts charged back to other professionals are not recognized as income and any cost incurred can be deducted only net of the portion recharged.

b. Equity Incentives

Stock options are considered fringe benefits and therefore taxable as employment income, when exercised (“cash principle”).

The income in the hands of the recipient of a stock option is equal to the difference between: (i) the market value of the shares at the exercise date; and (ii) the price paid. This income is subject to personal income tax (IRPEF) at progressive rates — currently 23% (up to 28,000 euros), 33% (28,001 to 50,000 euros), and 43% (above 50,000 euros) levied by the employer by way of withholding tax.

For the 2025–2027 period, this income is tax-exempt only if the total value of all fringe benefits received by the employee during the calendar year does not exceed the following thresholds:

- (i) 1,000 euros for all employees; or
- (ii) 2,000 euros for employees with dependent children.

If the total value of benefits exceeds these thresholds, the entire amount (not just the excess) becomes taxable as employment income subject to IRPEF.

Any subsequent gain realized upon the future sale of the shares (the difference between the sale price and the market

value at exercise) is subject to a flat capital gains tax at a rate of 26%.

Under the 2026 Budget Law No. 199 of December 30, 2025, Article 1 paragraphs 44–46, the treatment of cash settled stock options or stock grant plans has been aligned. Under this alignment, for equity settled plans (receipt of the actual shares) the company can deduct the cost only when the options are granted. For cash settled plans (receipt of cash rather than shares) the company can deduct the cost when payment is actually made.

As of July 16, 2011, income from bonuses or stock options granted to directors and managers in the financial sector that is in excess of base salary is subject to an additional 10% IRPEF.¹⁰⁰⁴ The additional taxation is to be withheld at source on the bonus paid or the option exercised, along with the withholding for personal income tax made on the employee’s salary.¹⁰⁰⁵ However, under the 2026 Budget Law, companies may avoid this 10% surcharge by making a qualifying donation to non-profit organizations, and the surcharge no longer applies to employees of non-financial holding companies.

c. Production Bonuses

Among the efforts to increase employee productivity and to protect individual buying power the government has provided that production bonuses paid to an employee will be subject to withholding in lieu of IRPEF, as well as regional and municipal IRPEF. While the standard structural rate is 10%, the 2023, 2024, and 2025 Budget Laws reduced this rate to 5% for bonuses up to 3,000 euros.¹⁰⁰⁶ For the 2026 and 2027 tax years, the 2026 Budget Law (Law No. 199/2025) has further reduced this tax to 1% and increased the eligibility threshold from 3,000 euros to 5,000 euros.¹⁰⁰⁷ The bonus is available to employees whose income from the previous year did not exceed 80,000 euros. To qualify, bonuses must be linked to incremental and verifiable objectives in productivity, profitability, quality, efficiency, or innovation, as defined by collective company or territorial agreements.¹⁰⁰⁸ The bonus may be paid for overtime work, for supplemental work by a part-time employee or as a result of increased productivity.¹⁰⁰⁹

In 2025, a special incentive was introduced by Law No. 76 of May 5, 2025 that provides that, where at least 10% of total company profits are distributed to employees, as provided by national collective agreements or collective agreements at the company level, the standard 10% withholding tax would be reduced to 5% and the threshold of income eligible for the lower rate of withholding tax would increase to 5,000 euros.

In addition, only 50% of dividends up to 1,500 euros received by an employee in the 2026 tax year will be subject to IRPEF. The dividends must have been paid on shares granted

¹⁰⁰⁴ D. Lgs. No. 78, May 31, 2010, Art. 33 (2-bis), added by D. Lgs. No. 98, July 6, 2011, as amended by Law No. 111, July 15, 2011.

¹⁰⁰⁵ The previous additional 10% taxation, which applied from May 31, 2010, until July 15, 2011, was levied only where income from bonuses or stock options was three times base salary. D. Lgs. No. 78, May 31, 2010, Art. 33.

¹⁰⁰⁶ Law No. 197, Dec. 29, 2022, Art. 1 (63); Law No. 207, Dec. 30, 2024, Art. 1 (385).

¹⁰⁰⁷ Law No. 199, Dec. 30, 2025, Art. 9.

¹⁰⁰⁸ DPCM, March 23, 2012.

¹⁰⁰⁹ DL Law No. 208, December 28, 2015, Art. 1(182).

¹⁰⁰³ TU, Arts. 49–54.

in lieu of cash bonuses as part of an equity-based compensation program.¹⁰¹⁰

d. Reimbursement of Employee Travel Expenses

From 2025, all meal, lodging, entertainment and transportation expenses incurred by employees or self-employed individuals within Italy must be paid using a payment method that permits the verification of the transaction and service provider concerned. Failure to comply with this obligation will result in the expense concerned being treated as a non-deductible cost for the employer (including for IRAP purposes) or the self-employed individual and as taxable remuneration in the hands of the employee.

Acceptable payment methods include credit cards, debit cards, prepaid cards, bank cashier's checks and toll passes.

Employees may use their own credit cards for payment, in which case, the reimbursement statement must be accompanied by tax documents, such as invoices and payment receipts, certifying the relevant expense. Payments made with an employer-issued company credit card should be linked to the company's bank account and the expense documentation should be in the name of the company.

Expenses incurred by employees and self-employed individuals outside Italy are not subject to the above verification requirements.

e. Fringe Benefits

According to the provisions of Italian Tax Code, fringe benefits are not considered part of the taxable base of employment income, provided that their total value does not exceed a certain threshold during the tax year. In addition to stock options, discussed above, the most common fringe benefits for employees include a company car for personal use, meal vouchers, company day care, insurance policies, fuel vouchers, devices such as telephones, personal computers or tablets, company housing, company butler, as well as reimbursement of expenses for first home rent, interest expense on the mortgage related to the purchase of the first home, and household utilities. These benefits are not taxable provided they do not exceed the amount of 258.23 euros annually.¹⁰¹¹ If the limit is exceeded, the entire value of the asset becomes fully taxable.

However, for tax years 2025, 2026, and 2027, this amount is increased to 1,000 euros for all employees and 2,000 euros for employees with dependent children. Thus, an employee with no children who received benefits worth 950 euros will not be taxed on this amount, but if the benefit totals 1,100 euros, the employee will be taxed on the entire amount. However, for an employee who has dependent children that receives a benefit of 1,100 euros, the entire amount will be tax free.

For newly hired permanent employees in 2025, whose annual income in 2024 was under 35,000 euros and who relocated over 100 kilometers from their previous place of residence, the annual limit is 5,000 euros.¹⁰¹²

To avoid disputes with the Italian Tax Agency on these increased values, Article 3 of Legislative Decree 192 of December 13, 2024, provides that the value of the fringe benefit is to be based on the normal value of the benefit. "Normal value" is defined as the fair market value of the asset. The normal value can be ascertained from suppliers' price lists or tariffs, and in the absence of these, from the price lists of the Chambers of Commerce or from professional rates, considering usage discounts. A specific method is applied to goods produced by the company itself, which before the amendment were valued at the average price charged in sales to wholesalers.

The 2025 Budget Law also provided a change in approach to the taxation of personal use company cars. As of January 1, 2025, the taxable amount to the employee is 10% for electric vehicles; 20% for plug-in hybrid vehicles; and 50% for all other vehicles (such as gasoline, diesel, liquified petroleum gas, compressed natural gas).¹⁰¹³

Comment: Clearly, this new method of calculation favors the use of low-emission vehicles, promoting sustainable mobility but penalizes vehicles with traditional engines, which will be subject to higher percentage of taxation.

6. Miscellaneous Income

Other kinds of taxable income include income from: occasional business activity, investments received by individuals not categorized as business income, domestic real property development, speculative investments, and foreign real property.¹⁰¹⁴

7. Aggregate Taxable Income

Aggregate taxable income is the sum of all net income of the types referred to in 2. to 6., above. Any losses arising from a business or the practice of an art or profession may be deducted. Certain non-business expenses entitle the taxpayer to a deduction from aggregate income in arriving at net taxable income, including alimony, indemnity for loss of goodwill, charitable donations for the clergy, rents, social security, and welfare contributions.¹⁰¹⁵ Other expenses, such as life insurance premiums, mortgage interest, and educational, medical and funeral expenses are treated as tax credits.¹⁰¹⁶

C. Income Subject to Substitute Tax

Substitute taxation may apply to special types of income not included in aggregate income, which then enjoy the benefit of a lower tax rate. Except in the case of payments relating to the termination of employment,¹⁰¹⁷ generally, the applicable tax rate is determined by applying to the amount of each income type the tax rate applicable to one-half of the taxpayer's aggregate net income during the two-year period prior to that in which the right to receive such income arose.

Among the chief income items subject to substitute tax are:

¹⁰¹⁰ Law No. 76, May 5, 2025, Arts. 5–6.

¹⁰¹¹ TU, Art. 51(3).

¹⁰¹² TU, Art. 51(3), as amended by D. Lgs. No. 192, Dec. 13, 2024, Art. 3(1), (b) and Law No. 207, Dec. 30, 2024, Art. 1(83).

¹⁰¹³ Law No. 207, Dec. 30, 2024, Art. 1 (48).

¹⁰¹⁴ TU, Arts. 67–71.

¹⁰¹⁵ TU, Arts. 8 and 10.

¹⁰¹⁶ TU, Art. 15.

¹⁰¹⁷ TU, Arts. 17–21.

(i) Back-pay, severance payments and other indemnities for the termination of employment, agency, or other continuing relationships, and amounts arising from the capitalization of pensions;

(ii) Receipts of deferred employment income;

(iii) Capital gains arising on the liquidation or transfer of a business owned for more than five years;

(iv) Compensation received for loss of goodwill;

(v) Damages for loss of income; and

(vi) Capital gains from real property speculation.

With respect to (iv), (v) and (vi), the taxpayer may waive substitute tax treatment.¹⁰¹⁸

D. Tax Rates

Taxable income is determined by calculating the total net income of the taxpayer and that of any unemancipated minor children or other individuals whose income is freely available to the taxpayer. A spouse's income is computed and taxed separately. Each spouse is entitled to claim 50% of the credits for dependents unless, pursuant to prior agreement, the full amount of the credit is assigned to the spouse with the higher revenue.

The principle set out in Article 5 of Law No. 111 of August 9, 2023, to revise and gradually reduce personal income taxation, has been enacted. As of January 1, 2026, the personal income tax rates in Italy are as follows:¹⁰¹⁹

Taxable Income (euros)	Tax Rate
0–28,000	23%
28,001–50,000	33%
50,001 and above	43%

The “solidarity contribution” of 3% levied on income in excess of 300,000 euros in effect for tax years 2011 to 2013 was extended through tax year 2016, but it was not renewed for 2017 or subsequent tax years.¹⁰²⁰

Flat tax income taxation¹⁰²¹ is an option available to self-employed taxpayers or any other taxpayers with business income. It takes the form of a 15% flat tax (with a further reduc-

tion to 5% for taxpayers who have been in business for no more than five years). The ceiling for opting for this form of taxation is 85,000 euros. This increase is in effect as of the tax year beginning on January 1, 2023.¹⁰²² The flat tax option is not available to employees or self-employed individuals with income in excess of 100,000 euros in the current tax year. Also excluded from this option are taxpayers who incur employee expenses of 20,000 euros or more or who have employment income of 35,000 euros or more received in the previous tax year.¹⁰²³ Those within the regime whose income exceeds 100,000 euros must apply VAT starting from the transaction that caused the threshold to be exceeded, and are prevented from using the scheme for two tax years. Starting from January 1, 2024, all taxpayers in this regime are required to use electronic invoicing regardless of the size of their turnover.

For tax year 2023, taxpayers who failed to qualify for the flat tax regime could opt for a 15% flat tax on adjusted income that exceeds the highest income in any of the three prior years up to the amount of 40,000 euros. Specifically, the amount of adjusted income that may benefit from the 15% flat tax option is equal to the difference between business or self-employment for 2023 and the highest amount of business or self-employment income declared in the years 2020 to 2022, reduced by an amount equal to 5% of the latter amount (subject to a 40,000 euros maximum).

E. Allowances and Credits

In calculating tax payable, each taxpayer is entitled to tax-free allowances in the form of reductions from gross personal income (i.e., deductions rather than credits).

The tax credits (*detrazioni*) for a wage-earner vary depending on taxable income, starting at 1,955 euros for incomes up to 15,000 euros and phasing out completely once income exceeds 50,000 euros. For a high-income earner at 200,000 euros, these specific employment credits are entirely unavailable. Additionally, for 2026, taxpayers at this level face a mandatory reduction of 440 euros on any other eligible tax credits and are subject to a strict expenditure cap; the total amount of deductible expenses is limited to a base of 8,000 euros, which is further reduced by a family coefficient based on the number of dependents. The formulas in the table below show the reductions as income increases.¹⁰²⁴

¹⁰¹⁸ TU, Art. 17.

¹⁰¹⁹ TU, Art. 11 as amended by Law No. 199, Dec. 30, 2025, Art. 1 (3).

¹⁰²⁰ DL No. 138, Aug. 13, 2011, Art. 2(2).

¹⁰²¹ Law No. 160, Dec. 27, 2019, Art. 1 (692).

¹⁰²² Law No. 197, Dec. 29, 2022, Art. 1(54).

¹⁰²³ Law No. 160, Dec. 27, 2019, Art. 1 (692).

¹⁰²⁴ TU, Art. 13, as amended by D.L. No. 3, Feb. 5, 2003, Arts. 1–2; Law No. 178, Art. 1(8)–(9), as further amended by Law No. 24, Dec. 30, 2021, Art. 1(2) as further amended by Law No. 199, Dec. 30, 2025, Art. 1 (4).

Taxable Income (euros)	Reduction for Wage Earner
Up to 15,000	1955
15,001–28,000	1910 euros × [(28,000 – total income)/13,000] + 45 euros
28,001–50,000	1910 euros × [(50,000 – total income)/22,000]
50,001 and above	0 (Standard)/690 euros (Safeguard)

For taxpayers with total income between 25,000 euros and 35,000 euros, the deduction increases by 65 euros for total income.

As of tax year 2025, taxpayers with income between 75,000 euros and 100,000 euros will be eligible for a maximum income tax deduction of 14,000 euros. Income in excess of 100,000 euros and up to 120,000 euros may only be eligible for a maximum deduction of 8,000 euros.¹⁰²⁵ Certain exceptions will be made for those taxpayers with dependents.

Further for tax year 2025 a nontaxable amount will be granted to employees with a total income that does not exceed 20,000 euros¹⁰²⁶ calculated by applying to their total income as follows:

Taxable Income (euros)	Reduction for Wage Earner
Up to 8,500	7.1%
8,501 to 15,000	5.3%
Over 15,000	4.8%

For employees with total income in excess of 20,000 euros, a prorated deduction is available based on days worked in the amount of 1,000 euros if total income is between 20,001 euros and 32,000 euros. For incomes above 32,000 euros but not more than 40,000 euros, the calculation is the product of between 1,000 euros and the amount that corresponds to the proportion between 40,000 euros.¹⁰²⁷

Tax reductions are also provided for pension income. Pensioners with a total income of 8,500 euros receive a reduction of 1,955 euros; the reduction is phased-out so that it ceases to apply to pensioners' income over 50,000 euros.¹⁰²⁸ Taxpayers with income from independent personal services with a total income of 5,500 euros are eligible to claim a reduction of 1,265 euros. The deduction gradually phases out as income increases, with a complete phase-out for incomes of over 50,000 euros.¹⁰²⁹ In addition, for "border workers" (individuals who reside in Italy but work in border areas or in countries bordering Italy) only those amounts earned in excess of 6,700 euros are considered in calculating total income.¹⁰³⁰

¹⁰²⁵ TU, Art. 16-ter, as amended by Law No. 209, Dec. 30, 2024, Art. 1 (10).

¹⁰²⁶ Law No. 207, Dec. 30, 2024, Art. 1(5).

¹⁰²⁷ Law No. 207, Dec. 30, 2024, Art. 1(6).

¹⁰²⁸ TU, Art. 13(3), as amended by Law No. 24, Dec. 30, 2021, Art. 1(2).

¹⁰²⁹ TU, Art. 13, as amended by Law No. 24, Dec. 30, 2021, Art. 1(2).

Tax reductions for a dependent spouse are as follows:¹⁰³¹

Taxable Income (euros)	Reduction for Dependent Spouse
0–15,000	800 euros. The reduction is decreased as follows: 800 – 110 × (total income ÷ 15,000 euros)
15,001–40,000	690 euros
40,001–80,000	690 euros. The reduction is decreased as follows: 690 × (80,000 – total income ÷ 40,000 euros) There is no reduction for income above 80,000 euros

For example, the tax reduction for the spouse of a taxpayer with 65,000 euros in taxable income will be 285.72 euros, calculated as follows: 690 × (80,000 – 65,000/40,000 euros) = 690 × 0.375 = 258.72 euros.

A basic tax reduction of 950 euros is allowed for each dependent child, increased as follows:

From age 21 to age 30:

- 400 euros for each disabled child;
- 200 euros for the fourth and each additional child.

The actual tax credit allowed is then determined as follows:

Basic tax credit × [(95,000 euros + 15,000 euros for each additional child) – total income] ÷ (95,000 + 15,000 for each additional child).

If the result is less than 0, or equal to 0 or 1, the tax credit will not be allowed. If the result is greater than 0.0001 but less than 0.9999, the tax credit can be taken. If there is more than one child, the amount of 95,000 euros is increased by 15,000 euros for each successive child.¹⁰³²

Generally, children under the age of 21 are covered by the Single Universal Allowance (*Assegno Unico Universale* — AUU) rather than this tax reduction. The reduction is only useful if the taxpayer owes tax. By providing a cash payment instead, the benefit is guaranteed to all families regardless of their income level or tax liability.¹⁰³³ Thus, the provision of 270 euros for children under 3 years of age is now generally addressed through the AUU system rather than the tax return.

As for other dependent family members, a tax reduction of 750 euros is now allowed for other cohabiting relatives (including parents, siblings, and in-laws), as defined by Article 433 of the Civil Code.¹⁰³⁴ The credit is calculated as follows:

¹⁰³⁰ Law No. 147, Dec. 27, 2013, Art. 1(175).

¹⁰³¹ TU, Art. 12.

¹⁰³² TU, Art. 12.

¹⁰³³ D. Lgs. No. 230, Dec. 29, 2021, Art. 1.

¹⁰³⁴ D. Lgs. No. 192, Dec. 18, 2025, Art. 1 amending TU, Art. 12 (4-ter).

750 euros $\times$ [(80,000 euros – total income) $\div$ 80,000 euros].

If the result is between 0 and 1, the credit is rounded; if income exceeds 80,000 euros, the reduction will not be allowed.

To qualify as a dependent under these rules, the family member's annual income must not exceed 4,000 euros for children aged 24 or younger. For all other family members income must not exceed 2,840.51 euros for all other family members (this includes children of ages 25 to 30 and all other relatives).

The following types of expenditure entitle the taxpayer to a 19% reduction in tax payable, if the expenditure is not already deducted in the calculation of the various types of income included in aggregate income:

- (i) Health expenses exceeding 129.11 euros;
- (ii) Life and accident insurance premiums not exceeding 1,291.14 euros;
- (iii) High school and university education expenses; for high school the limit is 1,000 euros per student; for university expenses these cannot exceed the amount of tuition and contributions to state institutions;
- (iv) Mortgage interest up to 4,000 euros;
- (v) Veterinary expenses that exceed 129.11 euros up to the amount of 550 euros; and
- (vi) Funeral expenses up to 1,550 euros.¹⁰³⁵

In addition to individual category limits, a general spending cap was introduced on January 1, 2026, which limits the total base amount of eligible expenses (excluding health costs and mortgage interest) based on income and family composition as discussed below.

Taxable Income (euros)	Amount of Reduction Permissible
0–75,000	Full 19% available
75,001–100,000	14,000 euros $\times$ coefficient
Above 100,000	8,000 euros $\times$ family coefficient

The family coefficient is 0.50 where there are no children, 0.70 for one child, 0.85 for two children, and 1.00 for three or more children or a disabled child.

Once the applicable spending cap is determined, the actual 19% tax credit is subject to a progressive phase-out for higher income brackets, reaching zero at 240,000 euros, as detailed below:¹⁰³⁶

Taxable Income (euros)	Reduction to the 19% Tax Credit
0–120,000	Full 19% deduction available (subject to Table 1 cap)
120,001–240,000	Pro-rata reduction using formula:
— 200,001 to 240,000	440 euros flat reduction applied to the total tax credit
— 240,001 and above	0 euros (deduction is fully phased out)

With the exception of purchases for prescription drugs, medical and hospital appointments, and medical devices, the above reductions are only available if payment is made through electronic means.

The following expenditures confer a right to a deduction from aggregate income:

- (i) Mandatory social security payments; and
- (ii) Contributions to supplemental pensions in an amount not to exceed 12% of aggregate income, and in any event not to exceed 5,300 euros as well as contributions paid to entities and funds with providing health assistance up to a limit of 3615.20 euros.¹⁰³⁷

F. Regional Income Tax

Historically an additional regional tax applied on IRPEF for the benefit of Italy's regions at rates ranging from 0.9% to a maximum of 1.4% of IRPEF.¹⁰³⁸ Currently, the base rate of the additional regional IRPEF tax has been between 1.23% and 3.33%. Furthermore, an additional municipal tax is added to IRPEF for the benefit of the municipalities at a rate currently ranging from 0% to a maximum of 0.8% of IRPEF. In specific cases, such as for municipalities, in financial recovery the rate may be increased up to a maximum of 0.9%. Municipalities can choose to apply a flat rate or progressive rates based on the taxpayer's income brackets.¹⁰³⁹

G. Assessment and Payment of Tax

Personal income tax returns (*Modello Redditi Persone Fisiche PF*), as well as IRAP returns (*Modello IRAP*), must generally be filed electronically by no later than October 31 (for the 2025 tax filing the return is due on November 2, 2026, as October 31 falls on a Saturday) of the year following the year for which the reporting is due. For the simplified tax return (Form 730), the deadline is September 30 of the year following the year for which the reporting is due. In very limited cases (for example, in the case of a tax return filed for a decedent), the tax return may be delivered in person to a local tax office. For tax year 2024, returns filed on paper may be filed between April 3 and June 30 after the tax year.

Individual taxpayers pay the tax due shown on their returns generally through banks, either in person or through on-

¹⁰³⁵ TU, Art. 15.

¹⁰³⁶ TU, Art. 16-ter.

¹⁰³⁷ TU, Art. 10(1) (e-ter); D. Lgs. No. 252, Dec. 5, 2005, Art. 8(4).

¹⁰³⁸ D. Lgs. No. 446, Dec. 15, 1997; D. Lgs. No. 68, May 6, 2011, Art. 6.

¹⁰³⁹ D. Lgs. No. 360, Sept. 28, 1998; Law No. 234, Dec. 30, 2011 Art. 1(572).

line banking services, using a standardized form (F-24). Payment of any tax balance due and the first estimated tax payment for the following year (i.e., 40% of the estimated payments due) is generally due by June 30, while the balance of the estimated payment (i.e., the remaining 60%) is due by November 30.

If the income in the current tax year is less than the income of the prior year with the result that tax is overpaid, the taxpayer may choose between a claim for a refund or crediting the overpayment towards his/her income tax advance payments, VAT or social security taxes due the following year.

The bank that collects estimated and final payments must remit these sums to the Italian treasury within five days.

H. Withholding at Source

Taxes are withheld at source on salaries and wages, on remuneration for independent personal work, on passive income paid by private entities and the state, on income for personal services paid by the state, on commissions paid to agents, and on winnings from lotteries.

1. Withholding on Wages and Fees

Individuals carrying on professional or business activities, including industrial, commercial or agricultural activities, and companies and other legal entities, must withhold tax on salaries and wages paid to their employees if they intend to deduct salaries paid for purposes of their own income tax. The percentage of gross earnings withheld depends on the amount of such earnings.¹⁰⁴⁰

The tax withheld constitutes an advance payment of an employee's personal income tax. At the end of the fiscal year, or at the time an employee's employment is terminated, an employer must balance the amount of tax already withheld with the tax due on the total earnings paid to the employee.

If a taxpayer has no income other than salaries and wages, the withholding at source will correspond to the income tax due, after taking into account the personal tax credit and credits for dependents.

Individuals engaged in business and legal entities also must withhold tax on fees paid to professionals and remuneration for other independent personal work. The withholding rate is 20%.¹⁰⁴¹ A final withholding tax of 30% is imposed on fees paid to nonresidents, subject to any limitation on source country tax provided for under the terms of an applicable tax treaty.¹⁰⁴² With respect to agency agreements and other continuous relationships, a withholding tax of 23% is imposed on 20% of an agent's commissions, if the agent's work involves the participation of other persons, or of 23% on 50% of commissions, if the agent works alone.¹⁰⁴³ As in the case of salaries and wages, the taxes withheld constitute an advance payment of income tax.

2. Withholding on Passive Income

A 10% withholding tax applies to lottery winnings connected with charitable or other good works, and a 20% withholding tax to winnings from television, radio and sports competitions. All other winnings and prizes are subject to withholding at the rate of 25%.¹⁰⁴⁴

Proceeds from securities or certificates (excepting shares, bonds and similar instruments, or certificates representing participation in open-ended investment funds) are subject to a 26% withholding tax. The rate of withholding is also 26% in the case of proceeds paid to residents on securities or certificates issued by nonresidents and placed in Italy.¹⁰⁴⁵

Mutual funds are subject to a withholding tax of 26% on their net results withheld at source by the investment firm or bank managing the investment. There is no withholding on payments to investors. However, Italian-source dividends that are paid on or after January 1, 2021 to qualifying European Undertakings for Collective Investment in Transferable Securities (UCITS) or EEA funds are no longer subject to Italian withholding tax.¹⁰⁴⁶ This change was introduced to remove differences in treatment between investment funds governed by Italian law and those governed by foreign law, in light of the provisions of Article 63 of the Treaty on the Functioning of the European Union (TFEU) regarding the free movement of capital, which prohibits all restrictions on the movement of capital between EU Member States or between Member States and third countries, except to the extent permitted by Article 65 of the TFEU.

In a July 2024 private letter ruling,¹⁰⁴⁷ the Italian Tax Agency confirmed, and provided some clarity on, the application of the exemption regime introduced in the 2021 Budget Law¹⁰⁴⁸ to Italian-source dividends and capital gains arising from the sale of qualified shareholdings by foreign investment funds that satisfy certain criteria.

The 2021 Budget law provided that, with effect from January 1, 2021, dividends and capital gains derived by certain foreign EU/EEA UCITS funds would not be subject to Italian taxation by way of either withholding or substitute tax. Specifically, this applies to a collective investment vehicle established in an EU or EEA Member State that permits an adequate exchange of information where:

- (i) The fund is in compliance with the provisions of Directive 2009/65/EC of the European Parliament and of the Council of July 13, 2009 on collective investment undertakings; or
- (ii) If the fund is not in compliance with the provisions of Directive 2009/65/EC, the fund manager is subject to supervision in the country in which the fund is established in accordance with Directive 2011/61/EU of the European

¹⁰⁴⁴ DPR No. 600, September 29, 1973, Art. 30 (2), as amended by Law No. 122, July 7, 2016, Art. 6.

¹⁰⁴⁵ DPR No. 600, September 29, 1973, Art. 26, as amended by D. Lgs. No. 461, November 21, 1997, Art. 12(5).

¹⁰⁴⁶ Law No. 178, December 30, 2020, Art. 1 (631)–(633). The exemption also applies to the taxation of Italian-source capital gains that are realized by such qualifying funds on or after January 1, 2021.

¹⁰⁴⁷ Private letter ruling No. 148/2024 published on July 11, 2024.

¹⁰⁴⁸ L. No. 178, December 30, 2020, Art. 1 (633).

¹⁰⁴⁰ DPR No. 600, Sept. 29, 1973, Art. 23 *et seq.*, as amended.

¹⁰⁴¹ DPR No. 600, Sept. 29, 1973, Art. 25, as amended by Law No. 449, Dec. 27, 1997, Art. 21(11)(b)(1).

¹⁰⁴² DPR No. 600, Sept. 29, 1973, Art. 25(2) as amended by Law No. 449, Dec. 27, 1997, Art. 21(11)(b)(2).

¹⁰⁴³ DPR No. 600, Sept. 29, 1973, Art. 25*bis*, as amended by Law No. 449, Dec. 27, 1997, Art. 21(11)(c).

Parliament and of the Council of June 8, 2011 (the “AIFM Directive”).

This measure was introduced to remove differences in treatment between investment funds governed by Italian law and those governed by foreign law, in light of the provisions of Article 63 of the Treaty on the Functioning of the European Union (TFEU) regarding the free movement of capital, which prohibits all restrictions on the movement of capital between EU Member States, as well as between Member States and third countries, subject to the possibility of derogation allowed by Article 65 of the TFEU.

The Tax Agency has made it clear that the exemption for dividends paid with respect to, and capital gains from the sale of, qualified shareholdings available to Italian collective investment vehicles applies to foreign UCITs (other than real estate funds) that are:

- (i) Established in an EU or EEA Member State that allows an adequate exchange of information.
- (ii) Are either UCITS-compliant, or if not UCITS-compliant, have a fund manager who is subject to supervision in the country in which the fund is established in accordance with the AIFM Directive.

The Tax Agency also made it clear that, although the above regulatory requirements must be met, there is no requirement as to the legal form or tax status of such funds in the countries in which they are established.

Further, it noted that the AIFM Directive had introduced measures designed to create a European internal market for alternative investment fund managers (AIFMs) by establishing a harmonized framework for the regulation of the authorization, operation and transparency of all AIFMs that manage and/or market alternative investment funds. Thus, the AIFM Directive, like the UCITS Directive, ensures EU-wide recognition of each EU Member State’s authorization and supervisory systems. For a harmonized UCITS or alternative investment fund to be established and managed in a Member State, it is sufficient for the home Member State of the fund manager to grant authorization and exercise supervision. The AIFM Directive does not regulate alternative investment funds, which continue to be regulated and supervised domestically under the law of the state in which they are established.

Thus, as a rule, in the case of a non-UCITS-compliant collective investment vehicle, the tax exemption regime for dividends and capital gains will apply where the investment undertaking can qualify as an alternative investment fund under the law of the EU or EEA Member State in which it is established and is managed by an AIFM subject to supervision under the AIFM Directive.

The 2023 Budget Law permits individuals, noncommercial partnerships and entities to pay a reduced upfront tax of 14% on unrealized gains and proceeds of mutual funds based on the difference in value on December 31, 2022 and the original cost basis. Taxpayers interested in this option are required to exercise it by June 30, 2023 by providing notice to the intermediary managing the funds. The 14% tax is to be paid by September 16, 2023. Excluded from this option are funds held under the managed savings option. The option also applies to certain types of life insurance policies.¹⁰⁴⁹

In the case of securities or certificates without a fixed maturity date, an advance payment must be made by March 31 of the relevant year of one-third of the tax computed on the difference between the value of the securities or certificates on December 31 of the prior year and their value in the year preceding the prior year (the relevant date again being December 31).¹⁰⁵⁰

I. Distressed Taxpayers

Taxpayers in economic difficulty, as defined by reference to an economic condition indicator (*indicatore della situazione economica*, ISEE) of not more than 20,000 euros, will have the opportunity to extinguish their income tax debts or missed social contributions that were sent for collection in the period from January 1, 2000 through December 31, 2017, by paying tax at the rate of either 16.2% or 35%, depending on their ISEE income level. These taxpayers may pay these debts either in instalments or by way of a lump sum and will not have to pay interest or penalties due on them.¹⁰⁵¹

J. Biennial Preventive Agreement

Legislative Decree No. 13 of February 12, 2024, introduced a program under which small businesses and self-employed individuals can enter into agreements with the Italian Tax Agency for a two-year settlement of income earned from their business activities. By participating in the program, such taxpayers will avoid being subject to inductive assessments during this period, although the Tax Agency may still perform checks and inspections that could result in a taxpayer being excluded from the program.

The Tax Agency will calculate a higher estimated income for the two-year period based on information previously declared by the taxpayer and other information available to the Agency. If the Taxpayer agrees to participate in the program and the earned income in the two-year period is actually higher than the Tax Agency’s estimate, the taxpayer will have achieved a tax saving.

Taxpayers subject to personal income taxation who opt into this program will pay an incremental substitute tax in place of IRPEF (including the regional and municipal tax) or IRES. The substitute tax will be levied at the following rates:

- (i) 10% for taxpayers with a reliability index¹⁰⁵² of 8, 9 or 10;
- (ii) 12% for taxpayers with a reliability index of 6, 7 or 8; and
- (iii) 15% for taxpayers with a reliability of index of 5 or less.

¹⁰⁴⁹ Law No. 197, December 29, 2022, Art. 1 (112)–(114).

¹⁰⁵⁰ DPR No. 600, September 29, 1973, Art. 26, as amended by D. Lgs. No. 461, November 21, 1997.

¹⁰⁵¹ Law No. 145, December 30, 2018, Art. 1 (184)–(199).

¹⁰⁵² The reliability indices or “*indici sintetici di affidabilità*” (ISAs) are special instruments providing taxpayers with an overall assessment of their tax reliability, graded on a scale of 1 to 10, arrived at through the application of individual indicators. A survey is attached to income returns in which a taxpayer’s economic accounting and structural data is reported. The higher the score, the more reliable the taxpayer is and the less likely to be subject to audit.

For IRES taxpayers, the rate of substitute tax is 10% and for start-ups, 3%.

Following the 2024 corrective decree, a “flat-tax” amnesty (*ravvedimento operoso*) was introduced, allowing taxpayers who join the program to clear past tax irregularities for the years 2018 to 2022 by paying a significantly reduced substitute tax.¹⁰⁵³

To be eligible for the program, a taxpayer may not:

(i) Have outstanding taxes or social security contributions of more than 5,000 euros that have been finally assessed by the Tax Agency and due as of December 31, 2024;

(ii) Have failed to file taxes for the three years prior to the years covered by the agreement;

(iii) Have been convicted of a tax crime or the crime of falsifying company information, money laundering, self-laundering or the use of illegally-sourced money, goods or benefits in the last three years prior to the years covered by the agreement;

(iv) Have 40% or more of the income earned in the taxpayer’s business activity excluded from its taxable base in the year prior to the years covered by the agreement;

(v) If it is a corporate taxpayer, have been involved in a merger or split-off operations or the sale of a business branch or, if it is a partnership or an association, had a

change in its membership structure in the first year covered by the agreement; or

(vi) Have been a business start-up or a taxpayer paying personal taxes under the flat tax option in the year prior to the years covered by the agreement.

The program is no longer available to taxpayers in the flat-rate regime as of the 2025 tax year.¹⁰⁵⁴ The program was set to expire on October 31, 2024, but was subsequently extended to December 12, 2024, for certain categories. For future periods, the permanent deadline for joining has been established as September 30 of each year.¹⁰⁵⁵

K. Civil Penalties

Article 19 of Law No. 111 of August 9, 2023, by which the Italian Parliament approved a set of general principles permitting the Government to reform the Italian tax system, also provides for the reorganization of both civil and criminal penalties to ensure these penalties are more integrated and to create a penalty system that has greater proportionality.

On June 14, 2024, the government passed legislative decree No. 87 reducing civil penalties on violations that take place on or after September 1, 2024. The key changes to civil penalties are set out in the table below:

¹⁰⁵³ DL No. 113, Aug. 9, 2024, Art. 2-*quater* as converted into Law No. 143, Oct. 7, 2024.

¹⁰⁵⁴ DL No. 167, Nov. 14, 2024, Art. 1.

¹⁰⁵⁵ D. Lgs. No. 81, June 12, 2025, Art. 7.

Violation	Penalty Before D.Lgs. No. 87	Penalty After D.Lgs. No. 87
Failure to file person income tax return and IRAP returns	120% to 140% of tax due	120% of tax due
Filing inaccurate personal income tax or IRAP return	135% to 270% of tax due	120% of tax due
Failure to file withholding tax return	120% to 240% of tax due	70% of tax due
Filing inaccurate withholding tax return	90% to 180% of tax due	120% of tax due
Failure to file VAT return	120% to 240% of tax due	120% of tax due
Filing inaccurate VAT return	90% to 180% of tax due	70% of tax due
Filing inaccurate VAT return containing non-existent transactions or fraudulent behavior	135% to 270% of tax due	105% to 140% of tax due
VAT record keeping violations	90% to 180% of tax due	70% of tax due
Failure to issue VAT invoices or transportation documents, or issuing such documents for lower amounts	90% of tax due	70% of tax due
Wrongful VAT deductions	90% of wrongful deduction	70% of wrongful deduction
VAT violations by client or purchaser (non-compliant or non-existent invoices)	100% of tax due	70% of tax due
Late or omitted payments	30% of tax due	25% of tax due
Offsetting tax with credits unavailable to taxpayer	30% of amount of unavailable credits taken	25% of amount of unavailable credits taken
Offsetting tax with non-existent credits	100% to 200% of amount of non-existent credits taken	70% of amount of non-existent credits taken

L. Foreign Financial Assets

As of tax year 2011, a tax on investments held abroad (*imposta sul valore delle attività finanziarie detenute all'estero* (IVAFE)) subjects individuals resident in Italy with foreign investments to a tax on the value of those investments.¹⁰⁵⁶ The current rate of IVAFE, beginning with tax year 2014, is 0.2%, up from 0.15% in 2013 and 0.1% in 2011 and 2012. As of tax year 2024, in countries or territories with a privileged tax regime (“black list” jurisdictions), IVAFE is levied at the rate of 0.4%. For simple foreign bank accounts, a flat fee of 34.20 euros applies (if the average annual balance exceeds 5,000 euros), regardless of the country’s tax status.

Although the types of “foreign investments” subject to this tax are not clearly defined in the law, it has been generally understood by tax practitioners that “foreign investment” is to be broadly construed to include all types of investments held abroad, including bank accounts (currently accounts with an average balance in excess of 5,000 euros during a tax year), with the only clear exception being investments managed by an Italian intermediary, provided that the intermediary has levied withholding on those investments.¹⁰⁵⁷

The tax basis is the market value of the investment as established by the country in which the investment is held at the end of the year or, if that cannot be ascertained, the nominal value of the investment or the amount of return.¹⁰⁵⁸

Taxpayers have a tax credit for any similar tax already paid on the investment, up to the amount of tax due in Italy.¹⁰⁵⁹

Taxpayers pay IVAFE when they pay personal income tax. Penalties for failure to pay are the same as those imposed for failure to pay IRPEF, i.e., 25% of the sum not paid.¹⁰⁶⁰ The tax authorities may also levy fines on the grounds that taxable income was under-declared and impose a penalty of 70% of the additional tax due or of the excess tax due as a result of the disallowance of a tax credit claimed.¹⁰⁶¹ In certain instances, where an investment is not declared, depending on the amount of the undeclared investment, a taxpayer may also face criminal prosecution.¹⁰⁶²

M. Sales of Real Property Renovated with Super Bonus Deduction

Among the measures designed to kick start the economy after COVID-19, Italy introduced a bonus for property renovation in the form of a 110% tax credit for seismic and energy efficiency renovations to residential property. The credit could be taken as an offset against tax due in the taxpayer’s annual income tax return in five equal installments or sold to a financial institution. As this “super bonus” deduction has proved costly,

Italy has begun to pare it back. The bonus was scaled back to 90% with effect from January 1, 2023. In 2024, the bonus was only 70% and in 2025 is further reduced to 65%. The government has also recently enacted legislation to discourage speculation in property that has benefited from the bonus by providing for capital gains taxation with respect to disposals of such property in certain circumstances.

Generally, no Italian tax is due on the sale by a private individual of real property that has been owned by the individual for more than five years as of the date of sale. However, the 2024 Budget Law provided that tax will be due on gains from the sale of renovated property with respect to which the owner claimed the super bonus deduction tax if the property has not been held for at least 10 years following completion of the relevant renovation work.

In the case of real property sold within five years of completion of the renovations, no deduction for the cost of the work will be allowed in calculating the taxable gain. In the case of real property sold between five and 10 years after the completion of the renovations, only 50% of the cost of the work will be allowed.¹⁰⁶³

The gain will be taxed at the rate of 26%.

N. High Net Worth Individuals

The flat tax on high net worth individuals was introduced in the 2017 Budget law. The tax allows high net worth individuals who transfer their residence to Italy to pay a flat tax on their non-Italian source income. The regime often goes hand in hand with the fast-track investor visa available to non-EU citizens.

High net worth non-EU citizens and EU citizens (including Italian citizens) who choose to make Italy their principal residence may elect this option if they have not been resident in Italy for nine out of the past 10 calendar years. Once the option has been exercised, it applies for a minimum period of nine years and a maximum of 15 years. It can be terminated at any time within this period by the taxpayer, or automatically if the taxpayer transfers his or her residence outside Italy or fails to pay the flat tax.

Under the rules as initially introduced in 2017, the tax on all income derived outside Italy by an individual who opted for flat taxation in the first tax period in which he or she took up residence in Italy was 100,000 euros and each family member who opted to take up residence in Italy was subject to a flat tax of 25,000 euros,¹⁰⁶⁴ rather than ordinary IRPEF taxation. In August of 2024, the flat tax charge was increased to 200,000 euros on all income derived outside Italy.¹⁰⁶⁵ Thus, taxpayers who opted for the flat tax after August 10, 2024, will have to pay the higher tax in their 2025 tax filings. The additional 25,000 euros per family member remains unchanged.¹⁰⁶⁶ As of January

¹⁰⁵⁶ DL No. 201, Dec. 6, 2011, as converted into law by L. No. 44, April 26, 2012, Arts. 19(18), (20).

¹⁰⁵⁷ Tax Agency Circular N. 38/E/2013.

¹⁰⁵⁸ DL No. 201, Dec. 6, 2011, as converted into law by L. No. 44, April 26, 2012, Art. 19(20).

¹⁰⁵⁹ DL No. 201, Dec. 6, 2011, as converted into law by L. No. 44, April 26, 2012, Art. 19(21).

¹⁰⁶⁰ D. Lgs. No. 471, Dec. 12, 1997, Art. 13(1) as amended by Art. 2 (1), (l), D. Lgs. No. 87, June 14, 2024.

¹⁰⁶¹ D. Lgs. No. 471, Dec. 12, 1997, Art. 1(2) as amended by Art. 2 (1), (a), D. Lgs. No. 87, June 14, 2024.

¹⁰⁶² D. Lgs. No. 74, March 3, 2000.

¹⁰⁶³ TU, Arts 67–68; Tax Agency Circular N. 13/E/2024.

¹⁰⁶⁴ The family members who may take advantage of this option are defined in Civil Code, Art. 433 and include: the spouse, children and their spouses, parents, grandparents, and brothers and sisters of the high net worth individual.

¹⁰⁶⁵ DL No. 113, Aug. 9, 2024, Art. 2, as converted into Law No. 143, Oct. 7, 2024.

¹⁰⁶⁶ DPR No. 917 of Dec. 22, 1986, Art. 24-bis, added by Law No. 232, of Dec. 11, 2016, Art. 1 (152) and further amended by DL No. 113, August 9, 2024, Art. 2.

1, 2026, taxpayers will be subject to a flat tax of 300,000 euros on all income derived outside Italy, with an additional 50,000 euros payable for each family member.¹⁰⁶⁷

Taxpayers exercising this option are subject neither to inheritance tax on their assets located outside Italy nor to gift taxes on gifts of assets held outside Italy. They also will not need to report foreign financial assets or foreign real property in their annual tax returns within Quadro RW, nor will they be subject to IVIE or IVAFE.

The option can be exercised in a taxpayer's first income tax filing after he or she becomes resident in Italy. Prior to taking up residence in Italy, a taxpayer may also request a letter ruling from the Italian Tax Authority as to his or her eligibility to avail himself or herself of the option. The request must contain sufficient information to show that the taxpayer was not an Italian resident in the previous 10-year period. The tax agency has 120 days to respond to the request.

While the tax regime does not limit the activities an individual may undertake in Italy, the individual will be taxed at Italy's regular income tax rates on investment, business and work income derived in Italy.

O. Building Renovation Bonus

The Building Renovation Bonus is a tax incentive designed to encourage the renovation and maintenance of residential properties. It allows taxpayers to deduct a portion of

their renovation expenses from their personal income tax (IR-PEF). The bonus operates as a deduction spread over 10 equal annual installments in the taxpayer's annual tax return and is subject to the following limits:

- Principal residence: 50% deduction on eligible expenses;
- Secondary residences: 36% deduction on eligible expenses;
- Spending limit: The maximum deductible amount is capped at 96,000 euros per property unit.

Work that is eligible for the deduction includes the replacement of windows, renovation of electrical or plumbing systems, installation of elevators, and accessibility improvements for people with disabilities; works preserving the building's historical or functional integrity; structural modifications such as opening of new doors/windows, or merging/splitting real estate units; and security upgrades, such as installations of alarm systems, security cameras, window grates, and reinforced doors.

All payments must be made via a specific dedicated bank transfer which must include the purpose of the payment, the tax code of the beneficiary, and the VAT/tax code of the contractor. Owners are required to keep all building permits (e.g., CILA, SCIA), invoices, and payment receipts for future audits.¹⁰⁶⁸

¹⁰⁶⁷ Law No. 199, Dec. 30, 2025, Art. 1 (25).

¹⁰⁶⁸ Law No. 199, Dec. 30, 2025, Art. 1 (22) (b).

X. Taxation of Nonresident Individuals

A. Scope of Taxation

1. In General

Nonresident individuals are subject to personal income tax (*imposta sul reddito delle persone fisiche* (IRPEF)) only on their Italian-source income. They may also be subject to the regional tax on productive activities (*imposta regionale sulle attività produttive* (IRAP)) on such income if they have a fixed place of business in Italy for at least three months.¹⁰⁶⁹

2. Italian Source Income

The following kinds of income are generally deemed to be of Italian-source:

- (i) Income from real property located in Italy;
- (ii) Income from capital paid by the state, a resident, or a permanent establishment (PE) in Italy;
- (iii) Income from employment carried on in Italy or carried on abroad in the interest of the state;
- (iv) Income from a profession carried on in Italy;
- (v) Business income earned through a PE in Italy;
- (vi) Other income, for example, income from speculative transactions and capital gains (with the exception of gains on transfers of nonqualified securities — see below), if the income-producing transactions are carried out in Italy or with respect to assets in Italy;
- (vii) Capital gains from the liquidation of an Italian company;
- (viii) Income of companies and associations subject to corporate tax (*imposta sul reddito delle società* or IRES) that is attributable to nonresident entities;¹⁰⁷⁰ and
- (ix) Income from the sale of shares (nonlisted companies) where more than 50% of the value of the shareholdings derives, at any time during the course of the 365 days preceding the sale, directly or indirectly, from real property located in Italy.¹⁰⁷¹

Nonresidents are not subject to tax on capital gains from nonqualified transfers of securities even when the securities are held in Italy, provided they reside in a country that has a tax treaty with Italy containing an exchange of information provision and that is not considered to be a tax haven.¹⁰⁷² Capital gains from qualified transfers are taxable in the hands of nonresidents, unless exempted under the terms of an applicable tax treaty.

Until the enactment of the 1986 Tax Reform, it was generally held that, before Italian-source income was taxable in the hands of a nonresident, a “territorial connection” was required. The determination of what constituted a territorial connection,

beyond the mere fact of payment, was the object of protracted academic discussion and litigation, particularly with respect to royalties. The 1986 Tax Reform resulted in the settlement of the controversy by providing that certain taxes may be levied on nonresidents without any territorial connection. For example, royalties remitted by an Italian payor are subject to withholding taxes and gains realized from the sale of shares of Italian companies are, in the absence of treaty protection, liable to tax in Italy, even if neither the buyer nor the seller is resident in Italy.

B. Withholding Source Tax

Salaries and wages are subject to withholding tax at source at rates varying in accordance with the amount of income earned. Income from professions and other independent work is subject to a final withholding tax at the rate of 30%, although lower rates are provided for in some of Italy’s tax treaties. Payments for the loss of goodwill are subject to a 15% withholding tax.

The following types of income are subject to a withholding tax at source that constitutes final payment of the income tax due (see the Worksheets):¹⁰⁷³

- (i) Dividends payable to nonresidents are subject to a 1.2% withholding tax if the beneficiary is tax resident in a European Union (EU) or European Economic Area (EEA) Member State (if the EC Parent-Subsidiary Directive does not apply) or, with effect from July 1, 2014, a 26% withholding tax in other cases,¹⁰⁷⁴ unless an applicable tax treaty provides otherwise.¹⁰⁷⁵ A taxpayer may claim a refund of up to 11/26 of the Italian withholding tax. As a result, the effective Italian withholding tax rate may be reduced to as low as 15%. The taxpayer must prove that taxes were paid abroad on the same funds.¹⁰⁷⁶
- (ii) Interest paid to a nonresident on bonds issued by the state, banks and quoted companies and on asset-backed securities issued by a special purpose vehicle (SPV — a securitization entity) is not subject to withholding tax provided the investor resides in a country with which Italy has an adequate exchange of information system.¹⁰⁷⁷ The investor must file a certificate with his or her financial intermediary stating that he or she is the true beneficiary and does not reside in a tax haven. The certificate remains valid until revoked.
- (iii) Interest payable to nonresident beneficiaries is generally subject to withholding tax at a rate of 26%; this applies to: interest on bonds issued by non-quoted companies when a non-market interest rate is applied; and interest on

¹⁰⁷³ DPR No. 600, September 29, 1973, Arts. 25–27.

¹⁰⁷⁴ DPR No. 600, September 29, 1973, Art. 26.

¹⁰⁷⁵ See, e.g., 1999 Italy-United States tax treaty, Art. 10(2).

¹⁰⁷⁶ DPR No. 600, September 29, 1973, Art. 26, as modified by D. Lgs. No. 461, November 21, 1997, Article 12-(1), and as further amended by DL 238, August 13, 2011, Art. 1(13)(a)(1), (c), as further amended by Law No. 208, December 28, 2015, Art. 1(62).

¹⁰⁷⁷ This rule became effective on January 1, 2002, DL No. 350 of September 25, 2001, pursuant to Article 10 of as converted into permanent law by Law No. 409 of November 23, 2001.

¹⁰⁶⁹ D. Lgs. No. 446, December 15, 1997, Art. 12(2).

¹⁰⁷⁰ TU, Art. 23.

¹⁰⁷¹ TU, Art. 23 (1-bis) as added by Law No. 197, Dec. 29, 2022, Art. 1 (96).

¹⁰⁷² D. Lgs. No. 461, Nov. 21, 1997, Art. 5; TU, Art. 81.

bonds with a term to maturity of less than 18 months.¹⁰⁷⁸ Interest on bank deposits and current accounts with credit institutions is subject to withholding at a rate of 26%, but may be exempted if an applicable tax treaty provides for the exchange of information between Italy and the other country concerned, and the other country is not considered to be a tax haven.

(iv) Royalties paid by Italian companies or individuals to nonresident beneficiaries are generally subject to a final withholding tax at the rate of 22.5% (i.e., 30% of 75% of gross royalties).¹⁰⁷⁹

(v) A 10% withholding tax applies to lottery winnings connected with charitable or other good works, and a 20% rate to winnings from television, radio and sporting competitions, and most prizes and lotteries conducted directly by the state.¹⁰⁸⁰

The provisions of relevant double taxation agreements should be studied for possible adjustments to all the withholding rates set out above in (i) to (v).

Furthermore, EC Interest and Royalties Directive 2003/49/CE of June 3, 2003 (IRD), enacted in Italy by Legislative Decree No. 143, May 30, 2006, with effect from January 1, 2004, provides that in certain cases interest and royalty payments are

not subject to withholding if the beneficiary is an EU corporation owning 25% or more of the payor.¹⁰⁸¹

C. Assessment and Payment of Tax

Generally, the tax liability of nonresidents is calculated in the same way as that of residents. However, nonresidents are not entitled to deduct such costs as alimony, indemnity for loss of goodwill, charitable donations for the clergy, social security, and welfare contributions. Nonresidents are required to file a tax return (*Modello Redditi Persone Fisiche*) and complete the return schedules that cover the type of income received, to report Italian-source income other than income subject to final withholding tax at source.

¹⁰⁷⁸ DPR No. 600, September 29, 1973, Art. 26, as amended by DL No. 323, June 20, 1996, Art. 7(6), converted by Law No. 425, August 8, 1996, and as further amended by DL 238, August 13, 2011, Art. 1(13)(a)(1), (c).

¹⁰⁷⁹ DPR No. 600, Sept. 29, 1973, Art. 25.

¹⁰⁸⁰ DPR No. 600, Sept. 29, 1973, Art. 30.

¹⁰⁸¹ A case was recently decided in the regional tax court of Lombardy (Regional Tax Court Decision Lombardy No. 295 of February 3, 2022) concerning the payment of interest by an Italian company to its Luxembourg parent under the IRD exemption from withholding. The Luxembourg company receiving the interest was wholly owned by another Luxembourg company that was wholly owned by a third Luxembourg company that was wholly owned by a Dutch Investment fund that was managed by a UK partnership. The Lombardy court applied a look-through approach holding that even though the direct recipient of the interest was not the beneficial owner this would not jeopardize application of either the IRD exemption or the direct loan withholding exemption under DPR No. 600 of September 29, 1973, article 26 (5-bis), provided the indirect recipient (i.e., the beneficial owner) met the requirements for the exemption. The case is in contrast with the position taken by the Italian Tax Authorities in case audits but is consistent with an earlier, 2019, provisional tax commission case decided in Milan. An appeal is expected to the Supreme Court of Cassation.

XI. Value Added Tax

A. Scope of VAT

1. In General

In 1972, the value added tax (*imposta sul valore aggiunto* or IVA, hereafter “VAT”), which is a direct consumer tax and not a traditional “cascade” sales tax, abolished and replaced a turnover tax on sales and some 20 indirect taxes. The collection of the tax is based on a system of numbered and recorded invoices and other accounting records, the maintenance of which is a considerable guarantee against tax evasion.¹⁰⁸²

Payment of the tax ultimately falls on the consumer because payments of VAT on all purchases of products and services by manufacturers are offset against VAT charges on the sale of all manufactured goods. The process whereby the tax is collected exempts the nonconsumer from payment of the tax. The tax authority, in effect, maintains an account to which all VAT payments made by the manufacturer are credited and all VAT charged to purchasers of its products is debited. Such accounts may be closed out at various intervals depending on the volume of the taxpayer’s business, the taxpayer paying the difference between the amount of VAT charged on its sales and the amount of VAT paid on its purchases in the preceding period. If the taxpayer has paid more VAT than it has charged, the excess is carried over as a credit to its account for the subsequent accounting period. However, supplies of goods and services to public sector agencies are treated differently given that, although the supplier calculates VAT in the invoice, the agency will not pay the VAT in the invoice to the supplier but directly to the tax authority.¹⁰⁸³

Currently, any entrepreneur that, at the end of an accounting period, has paid more VAT than it has charged may choose to credit the sum against its income tax, regional tax on productive activities (*imposta regionale sulle attività produttive* or IRAP) or social security taxes due.

However, this horizontal offset is not permitted where the taxpayer has more than 1,500 euros outstanding on any of these other taxes registered on the tax rolls.¹⁰⁸⁴ Moreover, offsetting of VAT in amounts in excess of 5,000 euros can only be done via computer link on the sixteenth day of the month following the month in which the return or claim is filed; for amounts in excess of 15,000 euros, a seal of approval by an accountant or a labor consultant must be affixed to the return, or the claim.¹⁰⁸⁵

For further research on the Italian VAT system, see also the VAT Navigator.

Law No. 111 of August 9, 2023, also enables for the amendment of sections of the Italian VAT legislation to align

it more fully with European VAT law. Among the rules to be reviewed and re-defined are:

- (i) VAT exempt transactions, including those transactions for which taxpayers may currently opt for taxation;
- (ii) Review of VAT in order to increase its efficiency and to standardize the VAT treatment of similar goods and services;
- (iii) Certain VAT deduction rules including harmonizing the deductibility of VAT in the real estate sector, and the adjustment to the deduction of imported goods and services;
- (iv) VAT rates on imported artwork;
- (v) VAT group regulations to examine the “all in, all out” principle currently underpinning VAT group rules; and
- (vi) VAT regulations of entities operating in the non-profit sector with the goal of simplifying requirements for activities of general interest.¹⁰⁸⁶

In addition, in order to detect and combat VAT fraud in cross-border internet sales of goods and services, the Government enacted Legislative Decree No. 153 of October 10, 2023, to implement EU Council Directive 2020/84, providing that payment service providers who make more than 25 cross-border payments must maintain electronic records of these payments and the beneficiaries must come into compliance with the framework of the new centralized European system for collecting and exchanging payment information — the Central Electronic System of Payment Information (CESOP).

As of January 1, 2024, payment service providers in Italy, which comprise electronic money institutions, payment entities and banks, must keep specific payment information to permit the identification of the recipient of cross-border payments.

A cross border payment is defined as one in which the payer is in one EU member state and the payee is located in another EU member state. The obligation to keep records applies when during a quarter in the calendar year payment services of more than 25 payments are made to the same recipient. The documentation pertaining to the payments is to be kept for three calendar years from the end of the year in which the payment was made.

In the month following each calendar quarter, a payment service provider must provide the Italian tax authority with the BIC or other company identification information of the payment service provider; name of the recipient and if available the recipient’s VAT number or tax ID and address; IBAN or other code to identify the recipient’s location; in cases where the recipient does not have a payment account then the BIC or other company identifier which identifies the payment service provider used by the recipient to receive the money; and the details of payments and refunds.

Payment service providers that fail to keep said information are subject to fines ranging from 1,000 to 8,000 euros. Fines for failure to communicate the information range from 2,000 to 21,000 euros.

¹⁰⁸⁶ Law No. 111, Aug 9, 2023, Art. 7.

¹⁰⁸² DPR No. 633, Oct. 1972, as amended several times (the “VAT Law”). DPR Nos. 24, Jan. 29, 1979, and 94, March 31, 1979, changed the structure of the law above to comply with the Sixth EC Directive, now Council Directive 2112/2006/EC. DPR No. 897, Dec. 30, 1980, introduced new anti-avoidance measures, while improving general terms for exporters.

¹⁰⁸³ DPR No. 633, Oct. 26, 1972, Art. 17.

¹⁰⁸⁴ DL No. 78, May 31, 2010, Art. 31(1), as amended by Law No. 122, July 30, 2010.

¹⁰⁸⁵ DL No. 78, July 1, 2009, Art. 10, as amended by DL No. 16, Feb. 2, 2012, Art. 8.

2. Transactions Subject to VAT

All imports of goods into Italy from outside the European Union (EU) are subject to VAT.¹⁰⁸⁷ Likewise, the transfer of goods and the rendering of services in connection with the operation of a business, or the practice of an art or profession, are subject to VAT in all cases where the following criteria are met:

- (i) The legal entities or individuals carrying out the transaction are classified as entrepreneurs under the applicable provisions of the Italian Civil Code¹⁰⁸⁸ (including small entrepreneurs and farmers); or
- (ii) The transactions are carried out by public or private entities other than legal entities, consortia, associations, or other organizations of persons, with respect to goods intended to be used exclusively or mainly in commercial or agricultural activities.

Some transactions involving the transfer of goods or the rendering of services may not be taxable, depending on the nature of the parties to the transaction. For instance, the sale of a used car by one consumer to another consumer who is buying it for his/her personal use is not subject to VAT because the seller cannot be regarded as an entrepreneur, artist or professional with respect to the item sold.

In addition, for certain transactions related to the real estate sector, VAT is applied by the assignee or the consignor using the reverse-charge mechanism.

Finally, certain categories of transactions are exempted from the scope of the tax. Transactions connected with international trade, and transactions subject to other indirect taxes, such as the registration tax applying to the sale of a business or the transfer of goods resulting from a merger, do not attract a VAT charge. Similarly, certain cultural activities (e.g., admissions to museums), certain social services (e.g., hospital charges and public transportation), and transactions involving export sales or their equivalent are specifically exempted from the scope of the tax.¹⁰⁸⁹ However, the availability of VAT exclusions may depend on a proper classification of each individual transaction.

Additionally, taxpayers who, during the previous calendar year, had a turnover that did not exceed 65,000 euros, as well as taxpayers who have just begun their activity, are exempt from VAT.¹⁰⁹⁰

3. Territorial Application of VAT

Considerable redrafting of the territorial provisions of DPR No. 633 of October 26, 1972 (*imposta sul valore aggiunto* (IVA), hereafter “the VAT Law”) was undertaken to comply with the Sixth EC Directive (now Council Directive 2112/2006/EC) relating to the computation of each Member State’s contributions to EU financial operations. Under the VAT Law, “national territory” includes all of Italy’s sovereign territory, including its territorial waters. All transfers of goods in Italy, except goods in transit or under customs bonding, are subject to

VAT regardless of the nature of the parties to the transactions. However, the taxability of services rendered generally depends on domicile or the existence of a permanent establishment (PE) in Italy.

Detailed provisions in the VAT Law¹⁰⁹¹ aid in determining whether a transaction took place in Italy. No tax is levied on the exportation of goods. The transfer and licensing by non-Italian companies or persons of intangible rights, such as patents, trademarks, and know-how, may be taxable to Italian purchasers or recipients of such rights depending on where use and enjoyment take place.

The implementation of EC Directives 2008/8/EC, 2008/9/EC, and 2008/117/EC changed the general rules for determining the place of supply of general services.¹⁰⁹² Thus, services rendered between taxable persons (business to business) are to be considered as rendered where the customer is located. However, in the case of services provided to consumers (business to consumer), VAT is charged in the place where the service provider is located.¹⁰⁹³

B. VAT Rates

As of October 1, 2013, the standard rate was 22%. The 2016 Stability Law had provided that on January 1, 2017, the standard rate would increase to 24% and again to 25% on January 1, 2018. The 2017 Budget Law revoked the 2017 increase and provided that the standard rate would increase to 25% as of January 1, 2018, with a further increase of 0.9% on January 1, 2019, bringing the standard rate to 25.9% in 2019. However, Law 205/2017 (the 2018 Budget Law) confirms the standard rate at 22% for all of 2018 and provided that the standard rate will increase by 2.2% on January 1, 2019, an additional 0.7% on January 1, 2020, and 0.1% on January 1, 2021. The following reduced rates also apply:

- (i) 4% on certain foods, beverages and agricultural products;
- (ii) 5% on items such as hospital furniture and medical equipment; this has recently been extended to cover sales of collectibles and antiques;¹⁰⁹⁴
- (iii) 10% on foods such as meat and eggs, as well as supplies of electricity and gas for domestic use, medicines, and building restoration.

Despite numerous scheduled increases, an increase of the 10% rate to 11.5% was expected to take effect as of January 1, 2019, with a further increase to 13% on January 1, 2020.¹⁰⁹⁵ These rates remain unchanged as the 2020 Budget Law revoked the 2020 scheduled increases in VAT. VAT rates remained at 10% and 22% for all of 2020.¹⁰⁹⁶ The rates of 10% and 22% were again programmed to increase on January 1, 2021, to 12%

¹⁰⁹¹ VAT Law, Arts. 7, 8, 8-bis, and 9.

¹⁰⁹² D. Lgs. No. 18, February 11, 2010. General services are services for which no special exceptions are provided in the VAT Law.

¹⁰⁹³ VAT Law, Art. 7-ter.

¹⁰⁹⁴ Legislative Decree No. 95 of June 30, 2025, Art. 9.

¹⁰⁹⁵ VAT Law, Art. 16, as amended by DL No. 138, August 13, 2011, Art. 2(2-bis), by DL No. 201, December 4, 2011, DL No. 95, July 6, 2012, Art. 21, and Law No. 228, December 24, 2012, Art. 1(480), and further amended by Law No. 190, December 23, 2014, and Law No. 232, December 11, 2016.

¹⁰⁹⁶ Law No. 160, December 27, 20129, Art. 1(3).

¹⁰⁸⁷ VAT Law, Art. 1.

¹⁰⁸⁸ CC, Arts. 2082, 2083, and 2135.

¹⁰⁸⁹ VAT Law, Arts. 2, 8, 9, and 10.

¹⁰⁹⁰ Law No. 190, Dec. 23, 2014, Art. 1 (54–89), as amended by Law No. 145, Dec. 30, 2018, Art. 1(a).

and 25%, respectively. No increase was programmed for the 4% rate. However, the 2019 Budget Law repealed the scheduled increase of the 10% VAT rate; thus for all of 2019 it remained unchanged. It was programmed again to increase to 13% in 2020. The ordinary rate of 22% was scheduled to increase to 25.9% in 2020 and then to 26.5% in 2022.¹⁰⁹⁷ Subsequently, the increase in the ordinary VAT rate of 22% and the 10% rate were both revoked;¹⁰⁹⁸ hence, these rates remain unchanged.

The applicable rate is determined by a schedule attached to the VAT Law.

As part of the harmonization of VAT legislation in the EU, Italy repealed a 38% VAT rate on luxury goods.

C. Assessment and Payment of VAT

The transferor of the goods or the performer of the services, whether a natural or legal person, must make monthly or quarterly payments (quarterly payments are only available to taxpayers that have opted to use the simplified procedures, see E., below) of the applicable VAT to the tax authority, after having charged the tax due on each transaction to the recipient of the goods or services concerned.¹⁰⁹⁹ The taxpayer is allowed to deduct from the VAT due to the tax authority the VAT paid by the taxpayer as the transferee of goods or recipient of services. The taxpayer is required to provide the tax authority with documentation supporting the amount of VAT paid at the end of each year. The yearly VAT return shows the amount of tax due or, in cases where the amount of tax paid exceeds the amount charged, the amount refundable.

Payment of any tax still due for the reporting year must be shown in the annual return. As previously noted, any refund to which the taxpayer is entitled may take the form of a cash reimbursement or a credit to the taxpayer's VAT account. Such refunds may be provided to specified taxpayers on a quarterly basis.

Failure to file a VAT return is subject to an administrative fine of 120%.¹¹⁰⁰

D. VAT Groups

A group of resident companies can opt to be treated as a single taxpayer for VAT purposes. To qualify for this option, companies must have sufficient financial, economic and organizational connections. The financial connections are met where the parent company directly or indirectly controls a majority of the voting rights of the subsidiaries. Sufficient economic ties will be met when the companies have the same principal purposes; their activities are complimentary or interdependent; or they benefit, either totally or partially, one or more companies in the group. To meet the requirement of organizational ties, the companies must be subject to common coordination.¹¹⁰¹ The effects of exercising this option are that (i) the sales of goods and services to other members of the same VAT group

are not considered sales of goods or services; (ii) sales of goods and services made by one group participant to a third party are considered to have been made by the entire group; (iii) sales of goods and services from a third party to a participant of the group are considered to have been made to the entire group; and (iv) the rights and duties arising under the VAT legislation are applicable to the group as a whole (for example, members will be jointly and severally liable for VAT penalties).

To have effect in the year following that in which the option is exercised, the option must be made by September 30 (for example, options exercised by September 30, 2024 are effective as of January 1, 2025). Options exercised between October 1 and December 31 have effect in the second year following the exercise of the option (for example, an option exercised on October 1, 2024, will have effect from January 1, 2026). The option is valid for three years and will renew automatically annually thereafter, until it is revoked.

The option operates on an "all-in, all-out principle." Thus, if a company which meets the conditions for exercising the option does not opt in, any benefit assessed upon the group will also apply to that company.

E. VAT Record-Keeping

1. In General

To ensure that VAT collected by taxpayers is reported and paid to the Treasury, taxpayers are required to keep detailed accounts of all transactions involving VAT. Specifically, every taxpayer is required to perform the following record-keeping functions:

(i) A register must be maintained, with consecutively numbered pages, in which a taxpayer engaged in a business activity, or the practice of any art or profession must enter all invoices and customs bills relating to goods and services purchased or imported. Each entry must show the date of the invoice or bill, the number given to it by the taxpayer, the name of the transferor of the goods or the performer of the service, the amount of the taxable transaction, and the tax.

The taxpayer is required to record such invoices within specified periods of time after the occurrence of the transactions concerned. The actual invoices issued, the invoices and customs bills received, and the registers reflecting such records for each calendar year must be maintained in good order until final determinations of VAT for the calendar year have been made or the statute of limitations has expired.¹¹⁰²

As a result of a major change to the VAT Law, a company keeping ordinary accounts may choose not to keep a VAT register if its journal ledger is kept in accordance with VAT rules and in such manner as to be readily available for inspection by the tax authorities.¹¹⁰³

(ii) Invoices must be issued in duplicate for each taxable transaction within a specified time. Such invoices must be numbered consecutively and dated, and must show the

¹⁰⁹⁷ Law No. 145, December 30, 2018, Art. 1(2).

¹⁰⁹⁸ DL No. 34, May 5, 2020, Art. 123(1).

¹⁰⁹⁹ VAT Law, Art. 27.

¹¹⁰⁰ D. Lgs. No. 471, December 12, 1997 as amended by Art. 2, (1), (d), D. Lgs. No. 87, June 14, 2024.

¹¹⁰¹ Law No. 232, Dec. 11, 2016, Art. 1 (24).

¹¹⁰² VAT Law, Art. 39.

¹¹⁰³ DPR No. 435, Dec. 7, 2001.

names and addresses of the parties to the transaction; the description, quality and quantity of the goods and services; the amount involved; and any other financial information appropriate for calculating the taxable base, and the rate and amount of tax due. In addition, the individual issuing the invoice must list his/her tax identification number.¹¹⁰⁴

Special rules, consistent with EC Directive 2001/115, apply with respect to electronic invoices, as follows:¹¹⁰⁵

- An invoice may be issued electronically on condition that the recipient agrees and an electronic signature is used to attest to the date of issue;
- A single invoice may be issued to a customer for goods sold and services rendered on the same day; and
- An invoice may be issued by the customer, a third party or a resident of another country that exceeds 500 euros.

(iii) An additional register must be maintained showing all invoices issued by the taxpayer. The entry for each such invoice must show its number, the value of the taxable transaction, the amount of VAT, and the name of the recipient of the goods or services. Within the first 15 days of each month, the register must show the VAT paid with respect to the previous month.

As of January 1, 2019, with few exceptions, all invoices must be issued in electronic format.

2. Simplified Regime

The VAT Law provides a special regime for taxpayers engaged in businesses relating to farming and fishery products that essentially permits them to use special fixed rates for determining their deductions for VAT, thus eliminating some of the administrative aspects of the VAT Law. Furthermore, taxpayers whose turnover does not exceed 7,000 euros, at least two-thirds of which consists of the sale of agricultural or fishery products, are exempt from the payment of the tax and from the invoicing, registration, periodic payment and return filing requirements. The sole obligation of such taxpayers is to keep and number invoices and important certificates relating to their purchases and imports.

A transferee or contractor that purchases goods or utilizes the services of such taxpayers in connection with the conduct of any enterprise must issue and register self-invoices (and send a copy to the other party, who must number and retain the self-invoices).

Articles 32 and 33 of the VAT Law provide the following simplified procedures for taxpayers engaged in the arts or professions or providing services with a turnover of 400,000 euros or less in the previous calendar year, and for taxpayers engaged in other sectors with a turnover of 700,000 euros or less:

- (i) Invoicing and registration may be completed using a series of perforated coupons. The removable half of the coupon constitutes the invoice and must be delivered to the other party; the other half remains attached to the coupon

book and constitutes the registration required by Article 23 of the VAT Law.

- (ii) Taxpayers are generally required to pay VAT every month. However, if their business volume is below certain limits, they may choose to pay every three months, in which case they will have to pay interest at a rate of 1%.

Perhaps the most significant simplification of the VAT record-keeping requirements relates to taxpayers engaged in retail trade and related activities. Taxpayers engaged in the following are not required to issue an invoice at the time of the relevant transaction, unless asked to do so by the customer: retail trade; the dispensing of food and beverages in public places or premises open to the public; the transportation of persons; hotel services; and services supplied on such public premises, in customer-owned premises, or by way of door-to-door trade.¹¹⁰⁶

Taxpayers operating under this provision must, within a day after each taxable transaction, enter all transactions carried out each day into a daily register, the total proceeds therefrom, and the amounts of VAT charged at the various rates. Certain taxpayers also are required to issue “fiscal receipts” to customers with respect to the relevant transactions.

In calculating the amount of VAT due to the Treasury from such taxpayers, the sum payable is obtained by deducting from gross receipts appropriate percentages, based on the rates applicable to the transfer of the goods or the supply of the services in question, which will be added to the amount of VAT shown on the invoices requested by customers.

While the above procedures were specifically created for the benefit of taxpayers engaged in retail trade, the Ministry of Finance may, by decree, expand their application to include banks, insurance, and telephone companies, as well as other businesses that serve the public either so infrequently, or so frequently, as to render compliance with the extensive invoicing requirements of the VAT Law especially burdensome.

In addition, at the time the monthly or quarterly VAT payment is made to the Treasury, taxpayers must furnish the Treasury with information on sales of goods and services provided to or received from entities with residence, registered office, or registered business address in any black listed country.¹¹⁰⁷

F. VAT Audits

The Italian tax authority is responsible both for taxpayer compliance with record-keeping obligations and for reviewing taxpayer returns. Taxes due on transactions not reported or under-invoiced are assessed and collected following the issuance of an assessment notice to the taxpayer notifying him of the error or omission.¹¹⁰⁸ Fines may be imposed or criminal prosecutions brought in the case of false or incorrect declarations.¹¹⁰⁹

An assessment notice may be issued to a taxpayer until December 31 of the fifth year following the year in which an incorrect tax return was filed. In the event of failure to file a return, such an assessment may be issued through December

¹¹⁰⁴ VAT Law, Art. 21.

¹¹⁰⁵ DL No. 52, Feb. 20, 2003, amending DPR No. 663/1972 of Oct. 23, 1972, Art. 21.

¹¹⁰⁶ VAT Law, Art. 22.

¹¹⁰⁷ TU, Art. 2 (2-bis); DM March 30, 2015, contains the “Black List” countries for this purpose. (See the discussion at ILB.2.c., above.)

¹¹⁰⁸ VAT Law, Arts. 54 and 540-bis.

¹¹⁰⁹ D. Lgs. No. 471, Dec. 18, 1997, Arts. (5)–(6), as amended by DL No. 193, Oct. 22, 2016; see also D. Lgs. No. 74, March 10, 2000, Art. 2.

31 of the seventh year following the year in which the tax return should have been filed.¹¹¹⁰ Further, should the failure to file or the filing of an incorrect return be held to be a crime, then the time period for an audit may be extended to twice the period starting from the year in which the criminal violation is alleged.¹¹¹¹

In reviewing taxpayer returns and record-keeping, VAT authority personnel are entitled to demand the production of books and records required by law, and may search a taxpayer's premises, examining any tax-related books and records found thereon, whether or not required to be kept by law. Such searches must be authorized by an administrative warrant. In cases where the taxpayer is engaged in the practice of the arts or the professions, the professional or his/her representative must be present during the inspection.¹¹¹² Where a more invasive search is involved, such as the opening of sealed packages or safes, or if the premises are also the taxpayer's dwelling, a warrant must be obtained from the public prosecutor.¹¹¹³ In addition, VAT authority personnel is allowed to seek information from banks regarding customer accounts or transactions in certain circumstances.

All fines assessed against a taxpayer must be paid within 60 days of notification by the VAT authority, or, where the assessment is the subject of an appeal, within 60 days of final judgment. Appeals may be filed against VAT assessments in accordance with the general rules of procedure for tax cases. Within 60 days of the notification of the assessment to the taxpayer, the deficiency as established by the court must nonetheless be paid as follows:

- (i) One-half of the tax, as assessed by the tax office;
- (ii) Up to two-thirds of tax owed, as calculated by the first provincial tax commission; or
- (iii) The total amount of tax still owed, as determined by the regional tax commission.¹¹¹⁴

G. Penalties for Non-Compliance

Under the VAT system, the taxpayer's duties are manifold: to issue invoices, to keep appropriate records, to file a VAT return, and to pay the applicable tax to the Treasury. Violation of the record-keeping requirements is regarded as especially serious, because failure to record a transaction usually results in a failure to pay the necessary tax. Administrative fines are levied in the amount of 70% of the taxable amount. Fines for failure to document properly non-taxable or exempt operations range from 250 euros to 2,000 euros.¹¹¹⁵

Criminal sanctions apply if no return is filed and the tax evaded exceeds 250,000 euros.¹¹¹⁶ Criminal sanctions also apply to taxpayers who evade payment of VAT in an amount that exceeds 250,000 euros annually, or who offset VAT with non-existent credits or credits that cannot be properly claimed by them¹¹¹⁷ in excess of 50,000 euros.

¹¹¹⁴ VAT Law, Art. 68; D. Lgs. December 31, 1992, No. 546.

¹¹¹⁵ VAT Law, Art. 42; D. Lgs. No. 471, December 18, 1997, Art. 6 as amended by Art. 2; D. Lgs. No. 87, June 14, 2024.

¹¹¹⁶ D. Lgs. No. 74, March 10, 2000, Art. 5, as amended by DL No. 138, August 13, 2011, Arts. 2(36-*vicies semel*)(f) and 5 as amended by Art. 1(1), (c), D. Lgs. No. 87, June 14, 2024.

¹¹¹⁷ D. Lgs. No. 74, March 10, 2000, Arts. 10-*bis* and 10-*quarter*, as amended by Art. 35(7), DL No. 223, July 4, 2006, as converted into permanent law by Law No. 248, August 4, 2006.

¹¹¹⁰ VAT Law, Art. 57 (1), (2).

¹¹¹¹ VAT Law, Art. 57; see also D. Lgs. No. 74, March 10, 2000, Art. 17.

¹¹¹² VAT Law, Art. 52.

¹¹¹³ VAT Law, Art. 52.

XII. Transfer Pricing

A. Scope of Provision

1. In General

Guidelines for Italy's transfer pricing laws are found in Article 110 of the Consolidated Tax Code (DPR No. 917 of December 22, 1986, *Testo Unico* or TU) and periodic rules issued by the Ministry of Finance. These have their basis in the OECD Model Tax Convention and the OECD Guidelines for Multinational Enterprises and Tax Administrations. The rules apply where an Italian company or permanent establishment (PE) directly or indirectly controls, or is controlled by, a nonresident entity;¹¹¹⁸ in such cases the rules allow for a departure from the domestic principle of evaluating a transaction based on an agreed price, thereby permitting the Tax Authorities to determine whether transactions between related companies are at arm's-length. Until the entry into force of Decree Law No. 50 of April 24, 2017, which amended TU, Art. 110(7), that article provided that the evaluation was made pursuant to "normal" or "open market" criteria rather than with the arm's length criteria used in the OECD Guidelines.¹¹¹⁹ Although the evaluation criteria were based on the OECD Guidelines, the amendment completely aligned the wording of Article 110(7) to the Guidelines. As amended, it now states that the evaluation is to be made with reference to the "conditions and prices that would have been applied between independent parties operating under principles of free competition and in comparable circumstances." While the amendment is significant, in practice the consolidated interpretation of the normal or open market criteria was already considered to mean the "arm's length" principle of as provided for in the OECD Guidelines.

If the tax authority prove a failure to apply arm's length standards showing that additional tax is due, or that a smaller tax credit was applicable, sanctions can be levied ranging from 90% to 180% of additional tax or the difference in the tax credit, subject to a minimum amount of 250 euros,¹¹²⁰ unless the taxpayer adopts Country-by-Country (CbC) reporting (see below)¹¹²¹ and the tax authority has been notified of this fact in the taxpayer's return in Schedule RS.

In November 2020, the Italian Tax Agency issued revised Guidelines for transfer pricing documentation that modify the documentation that is required to provide the penalty protection referred to above in the event of a transfer pricing assessment. For a taxpayer's contemporaneous transfer pricing documentation to be considered complete, the taxpayer must include one or more master files (in those cases in which the group has varied business activities each governed by specific transfer pricing

policies) containing information on the group in its totality, and a country file containing information on the companies within the same country.¹¹²²

Italian resident companies may apply to the tax authority for an advance ruling on the arm's length pricing of intragroup transactions, i.e., an advance pricing agreement (APA).¹¹²³ Once a request for a ruling is filed with the tax authority, they have 30 days from receipt of the request to advise the taxpayer if the application has been accepted, or to ask, if needed, for additional information. If the additional information is not provided within that time, the application will be rejected. The ruling procedure must be completed within 180 days from receipt of the application or receipt of the additional information. If the Tax Authorities need information from another country, the time period for completion is suspended until that information is received. Upon completion of the procedure, the tax authority and the company will enter into an APA, which will be binding for the tax period underway at the time of its execution and the four successive tax years, unless there are significant changes in the facts and circumstances. As of January 1, 2021, an APA can also be rolled back to cover tax periods that are still open for tax assessments (generally five years from the filing of a tax return) provided the facts and circumstances underlying the APA are the same, and no tax assessments have been formally initiated against the taxpayer for those prior years.

For further discussion of Italy's transfer pricing rules, see also Chapter 85, 6955 T.M., *Transfer Pricing: Rules and Practice in Selected Countries (H-I)*.

2. Country-by-Country Reporting

The Budget Law of 2016¹¹²⁴ created new rules for transfer pricing documentation in Italy by introducing the country-by-country (CbC) reporting requirement, based on Action 13 of the Organization for Economic Co-operation and Development's Base Erosion and Profit Shifting (BEPS) Project.¹¹²⁵ The CbC report is to be used by the tax authorities to assess the rationality of a taxpayer's transfer pricing model and to evaluate other risks regarding the erosion of the local tax base in Italy.

Although the Budget Law of 2016 established the requirement to develop CbC report, it was left to the Ministry of Finance to issue the implementing regulations, which were issued on February 23, 2017, by means of a Ministerial Decree.

The Ministerial Decree lists the requirements which trigger the annual reporting obligation for Italian resident companies. Companies required to file CbC report are those which are (i) required to file consolidated financial statements, (ii) had a consolidated turnover of at least 750 million euros in the previous fiscal year, and (iii) which are not controlled by other companies or entities. Nevertheless, the duty to file a CbC report may be complied with by a controlled company resident in Italy when (i) the controlling company is resident in another country that has not introduced a CbC reporting requirement; (ii) the controlling company is resident in a state that does not have a

¹¹¹⁸ "Control" is presumed to exist where an entity holds (directly or indirectly) 50% of the capital, voting rights or rights to dividends of another entity, or both entities are held by a third entity; or one where one entity exercises a dominant influence over another entity as a result of shareholder agreements or contracts.

¹¹¹⁹ D. Lgs. No. 50, April 24, 2017, Art. 59, as converted with amendments by Law No. 96, June 21, 2017, and as implemented by Ministry of Finance Decree on May 14, 2018 and in force as of May 23, 2018.

¹¹²⁰ DPR No. 600, Sept. 29, 1973, Art. 31; D. Lgs. No. 471, Dec. 18, 1997; Art. 2(2-ter).

¹¹²¹ Law No. 208, Dec. 28, 2015, Art. 1(145).

¹¹²² Tax Agency Circular No. 360494, Nov. 23, 2020.

¹¹²³ DPR 600, Sept. 29, 1973 Art. 31-ter; Tax Agency Circular of March 21, 2016.

¹¹²⁴ Law No. 208, Dec. 28, 2015.

¹¹²⁵ DM, Feb. 23, 2017, Art. 2.

tax treaty with Italy with adequate exchange of information, or (iii) the controlling company is not compliant with its CbC reporting duties in its country of residence.¹¹²⁶

The CbC report must be filed within 12 months from the end of the reporting period.¹¹²⁷ It must contain aggregate data for each jurisdiction of all the group companies with respect to gross revenues and profit or loss, income taxes paid and accrued, equity, undistributed profits, number of employees, and tangible fixed assets, as well as the organizational and identifying information of each entity or PE in the group and the nature or principal activities carried out.¹¹²⁸

Italy automatically exchanges the CbC report with other EU Member States and non-EU countries with which it has exchange of information agreements in force within 15 months from the close of the reporting period to which the CbC report relates to.¹¹²⁹

The first CbC reporting period was for tax year 2016.¹¹³⁰

The failure to file the report or the filing of an incorrect CbCR is subject to a fine ranging from 10,000 to 50,000 euros.¹¹³¹

3. Public Country-by-Country Reporting

In order to align Italy's domestic law with EU Directive 2021/2101, which requires large multinational entities (MNEs) to publicly divulge income tax related information, on September 12, 2024, Italy enacted Legislative Decree No. 128. Accordingly, large Italian MNEs are required to publicly disclose income tax related information for each EU Member State jurisdiction, as well as for jurisdictions included in the EU list of noncooperative jurisdictions. Data regarding other jurisdictions may also be included.

Specifically, these reporting obligations apply to parent companies, standalone Italian companies, and Italian companies which have not exceeded the revenue threshold, but are part of a consolidated group not incorporated in a Member State that has exceeded the revenue threshold for the last two consecutive tax years.

A branch of a foreign corporation can be subject to these public reporting requirements if the company opening the branch is part of a group which does not include companies controlled by a parent company in a third country or is opened by an independent company whose revenues resulting from the consolidated financial statements, as of the closing date for each of the last two consecutive fiscal years, exceeds 750 million euros.¹¹³²

Companies exceeding the threshold but subject to industry-specific tax disclosure regulations, such those in the banking sector, are exempted from this reporting, as are independent companies and entities belonging to groups with a branch in only one EU Member State and in no other jurisdiction, and companies which though they have a parent company in a non-EU jurisdiction, said applies comparable disclosure obligations.¹¹³³

The information to be published must include:¹¹³⁴

- i. Name of the reporting company;
- ii. List of the consolidated companies, when the reporting company is the parent company;
- iii. Brief description of the business activities;
- iv. Number of employees;
- v. Total revenues;
- vi. Before tax profit or loss;
- vii. Income tax accrued and paid;
- viii. Retained earnings.

The report must be made publicly available at no cost on the parent company's website as well as that of any controlled company within 12 months of the close of the tax year. The report must also remain available for at least five years and be filed with the Italian Company Registry.

The public CbC reporting provisions apply to tax years beginning on or after June 22, 2024.

4. Unilateral Adjustments

Italy has also introduced a unilateral adjustment procedure for downward adjustments to income available after an international audit where the results are shared by cooperating companies; or pursuant to a taxpayer's application following an arm's length transfer price adjustment made in a country that has a tax treaty with Italy containing provisions for adequate exchange of information.¹¹³⁵ This procedure is in addition to the mutual agreement procedures (MAP) already available in Italy (see XIII.B., below). However, to implement this change and fully adopt the arm's length definition in TU, Article 110, the Ministry of Finance must provide regulations. On February 23, 2018, the Ministry of Finance opened a public consultation on the two draft guidelines needed. Following the closure of the consultation on March 24, 2018, the Ministry of Finance, on May 14, 2018, issued the decree containing the guidelines.¹¹³⁶

The first regulation addresses arm's length issues in accordance with OECD transfer pricing guidelines. It provides a definition of "related entities" for both legal and *de facto* control purposes that closely adheres to the OECD Model Convention definition. It introduces the five comparability elements for benchmarking: the terms of the contact; the functions, assets and risks to the parties from the transaction; the characteristics of the goods and services; the economic and market conditions; and the business strategies of the parties. It also introduces the criteria for selecting the most appropriate transfer pricing methods in line with OECD transfer price guidelines and international best practices.

The second regulation addresses the guidelines for implementing the unilateral adjustment procedure and provides that, to recover excess taxes paid in Italy, the primary adjust-

¹¹²⁶ DM, Feb. 23, 2017, Art. 2(2).

¹¹²⁷ DM, Feb. 23, 2017, Art. 5.

¹¹²⁸ DM, Feb. 23, 2017, Art. 4.

¹¹²⁹ DM, Feb. 23, 2017, Art. 6.

¹¹³⁰ Law No. 208, Dec. 28, 2015, Art. 1(144).

¹¹³¹ Law No. 208, Dec. 28, 2015, Art. 1(145).

¹¹³² D. Lgs. No. 128, Sept. 4, 2024, Art. 5(ter).

¹¹³³ D. Lgs. No. 128, Sept. 4, 2024, Art. 5(quarter).

¹¹³⁴ D. Lgs. No. 128, Sept. 4, 2024, Art. 5(quinquies).

¹¹³⁵ DPR No. 600, Sept. 9, 1973, Art. 31-quarter; Tax Agency Circular March 3, 2016.

¹¹³⁶ Linee Guide per l'applicazione delle disposizioni previste dall'art. 110 comma 7 del Testo Unico delle Imposte sui Redditi approvato con D.P.R. 22 dicembre 1917 in Materia di Prezzi di Trasferimento.

ment must be final, consistent with the arm's length procedure, and made by the appropriate authority in a country that has a tax treaty with Italy containing provisions for the adequate exchange of information. It also provides that the Tax Authorities have 180 days within which to accept or reject the application.

On May 24, 2022, the Italian Tax Agency published Circular 16/E clarifying the arm's length definition set forth in Article 6 of the Ministry of Finance Decree issued on May 14, 2018. The Circular affirms that the arm's length range is to be identified based on the OECD Transfer Pricing Guidelines. Specifically, the Circular provides that:

(i) If the analysis is shown to be reliable and all third-party transactions have the same degree of comparability, when applying the most appropriate method and the related financial indicator, the "full range" should be taken into account since all the values in the range are to be regarded as being arms' length values; and

(ii) If not all of the comparable transactions have a relatively equal degree of comparability, the range must be narrowed using the following statistical tools to eliminate outliers: the first tool — to be used in cases when certain comparables have comparability defects that can neither be quantified nor identified in a reliable manner — is the "narrow range" tool, which permits a point to be selected within an interquartile range, for example, from the 25th to the 75th percentile; the second statistical tool is to be used only in those instances when the range does not contain results with a sufficient degree of comparability, eliminating the option of the narrow range. This approach permits the use of the figure within the range that is closest to the centre, which may or may not be the median. The second statistical approach must be clearly justified.

B. Mutual Agreement Procedure

1. In General

As Italy has increased the aggressiveness of its transfer pricing audits, its involvement with mutual agreement procedures (MAP) has also increased. There are two types of MAPs available: MAP pursuant to a tax treaty ("TMAP") and MAP as per the EU Arbitration Convention ("CMAP").

For a discussion on the functions and procedures of the Italian competent authority, see Chapter 85 of 6890 T.M., *Income Tax Treaties: Competent Authority Functions and Procedures of Selected Countries (H–K)*.

2. MAP Pursuant to a Tax Treaty

The essential feature of TMAP is that the competent authorities involved in the dispute are to use their "best efforts" to eliminate taxation which is not in accordance with a tax treaty.¹¹³⁷ However, it does not require that the result be achieved.

The competent authorities for Italy are the Tax Agency and Ministry of Economy and Finance — Department of Fiscal Policy, Office for International Relations.

Generally, Italy's tax treaties provide that a taxpayer initiating a TMAP has two years to file a TMAP request from the date the assessment in which the taxpayer is assessed tax in violation of a tax treaty, resulting in double taxation, is received.¹¹³⁸ As the TMAP is a dispute resolution process between the two treaty countries, the taxpayer's role is limited. The taxpayer does have the right to be heard, be kept informed of the process, and may be asked to supply additional information.¹¹³⁹ The TMAP cannot be used as an alternative to domestic litigation. If a TMAP and litigation are occurring simultaneously, a final judgment (where no further appeals are possible) must be accepted by the taxpayer and the Tax Authorities.¹¹⁴⁰ If the TMAP concludes before the litigation is final, the taxpayer may opt to accept the TMAP, or may choose to reject it and continue with the litigation.¹¹⁴¹

There are no specific procedures to suspend tax collection while the TMAP is pending. The taxpayer may access the ordinary remedies available, such as an administrative suspension or the suspension granted by a tax court.¹¹⁴²

Once the competent authorities have reached an agreement, they may elect to extend the agreement to the tax years immediately following the dispute provided that the facts and circumstances have not changed and that the taxpayer expressly consents to the extension.¹¹⁴³

3. MAP Pursuant to the EU Arbitration Convention

The EU Arbitration Convention applies where double taxation occurs between enterprises of different Member States resulting from the upward adjustment of profits of an enterprise by one Member State. Unlike the TMAP, the Convention imposes a binding obligation on the competent authorities to come to a resolution. Should they fail to reach an agreement to eliminate the double taxation within two years from the date that the matter was submitted, the competent authorities are to convene an advisory committee to deliver an opinion on the issue. The competent authorities are generally expected to act in accordance with that opinion. Nevertheless, they may jointly decide to not adhere to the opinion, but the ultimate decision taken by the authorities must eliminate the double taxation.¹¹⁴⁴

Under the Convention, the "first notification of the action" must be filed within three years from the date of notification of the assessment that leads, or is likely to lead, to double taxation. Italian resident taxpayers should file the CMAP application with the Ministry of Economy and Finance, Finance Department — International Relations. As in Italy the administrative authorities cannot diverge from a decision of its courts, an advisory committee cannot be set up until either the time for appeal has expired, or the party has withdrawn its appeal before a decision has been rendered. Should a party file a CMAP request and a court issue judgment before the competent authorities have reached an agreement, an advisory committee cannot

¹¹³⁸ Tax Agency Circular, June 5, 2012, 21/E.

¹¹³⁹ Tax Agency Circular, June 5, 2012, 21/E. Secs. 4.2.8, 4.2.9.

¹¹⁴⁰ Tax Agency Circular, June 5, 2012, 21/E. Sec. 4.2.10.

¹¹⁴¹ DPR No. 602, Sept. 29, 1973, Art. 39(1); D. Lgs. No. 546, Dec. 31, 1992, Art. 47.

¹¹⁴² Tax Agency Circular, June 5, 2012, 21/E. Sec. 4.2.11.

¹¹⁴³ Tax Agency Circular, June 5, 2012, 21/E. Sec. 5.

¹¹⁴⁴ Tax Agency Circular, June 5, 2012, 21/E. Sec. 5.6.

¹¹³⁷ See Art. 25 for MAP in the 1999 Italy-U.S. tax treaty.

be convened and the double taxation will not be eliminated, unless the competent authorities of the other country grant a corresponding adjustment.¹¹⁴⁵

Tax collection may be suspended under a CMAP by the Tax Agency pursuant to a request filed by the taxpayer with the Tax Agency, provided that the taxpayer withdraws any appeal filed. As with the TMAP, the role of the taxpayer in a CMAP is limited. The taxpayer has the right to be informed and to provide information.¹¹⁴⁶

C. *The Multilateral Instrument*

On June 7, 2017, Italy was one of 68 countries that signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Sharing (MLI). The purpose of the MLI is to provide signatory countries with a quick and efficient tool to combat tax planning strategies that exploit gaps and mismatches in tax rules which allow shifting profits to low (or no) tax jurisdictions. The MLI entered into force on July 1, 2018, upon ratification by five countries. However, its entry into force with respect to a specific tax treaty will only occur after both parties to the treaty have deposited their ratification instruments.

The MLI has measures to counter hybrid mismatch arrangements and treaty abuse. It also strengthens the definition of a PE and has measures to make MAPs more effective. Importantly, the MLI also allows the reforms under BEPS to be quickly implemented by subjecting certain provisions of an existing tax treaty to MLI provisions, thus saving countries the time and expense of renegotiating these treaties.

At the time it signed the MLI, Italy submitted a list of 84 treaties that it intended to designate as Covered Tax Treaties, as well as a provisional list of reservations and notifications regarding certain of the MLI articles. Italy's final MLI positions will be provided when Italy deposits its ratification of the MLI. Italy is among 25 countries that have elected for mandatory binding arbitration.

With respect to MAPs, the MLI in Part V¹¹⁴⁷ introduces minimum standards to improve dispute resolution. Among its provisional reservations, Italy has included its intent to opt out of the requirement that provides that a MAP may be presented to the competent authorities in either contacting jurisdiction regardless of the remedies provided domestically. However, it

has not opted out of the duty to file a MAP within three years of the initial assessment. Many of Italy's tax treaties have a two-year period, and thus it has notified its treaty partners represented in the list of Covered Tax Treaties.

The mandatory binding treaty arbitration provisions in Part VI of the MLI only apply between Contracting Jurisdictions that expressly elect for them to apply. As Italy has elected this provision, it will apply in all cases of double taxation contrary to a treaty, unless acceptance of arbitration is more limited in scope. There is flexibility as to the mode and form of arbitration, and if no agreement can be reached on this point, the MLI provides default rules. Italy's election includes a unilateral reservation under which an unresolved issue arising from a MAP, that would ordinarily be within the scope of the arbitration process, will not be submitted if the issue has already been decided by a court or administrative body of a Contracting Jurisdiction; or if after the time of submission, but before the arbitration panel has rendered its decision, the issue is decided by a court or administrative body of a Contracting Jurisdiction.

Italy has also submitted provisional reservations regarding cases eligible for arbitration. Accordingly, cases concerning the following issues are ineligible for submission to mandatory binding treaty arbitration:

- (1) Items of income or capital not taxed by a Contracting Jurisdiction as they are not part of the taxable base in that jurisdiction, are subject to an exemption, or to a zero tax rate;
- (2) Application of an anti-abuse rule on a Covered Tax Treaty or under Italy's domestic law;
- (3) Dual resident persons; and
- (4) Penalties for tax fraud, willful default, and gross negligence.

D. *Domestic Transfer Pricing*

The transfer pricing rules discussed above do not apply to Italian domestic groups. The tax authority can only examine the adequacy of the transfer pricing where other elements exist that call into question the legitimacy of the pricing, such as the presence of anti-competitive behavior which gives the group a tax advantage or lack of relevance in the transaction (e.g., invoices for a large sum containing only generic descriptions or a contract too brief for the transfer for which it purports to be used).

¹¹⁴⁵ Tax Agency Circular, June 5, 2012, 21/E. Secs. 5.4, 5.6.

¹¹⁴⁶ Tax Agency Circular, June 5, 2012, 21/E. Sec. 5.7.

¹¹⁴⁷ See MLI Arts. 16 and 17, and Part IV, Art. 14.

XIII. Special Provisions Relating to Multinational Operations

A. Foreign Base Company Income

Article 167 of the Italian Consolidated Tax Code (“TU”) provides for transparent taxation of shareholders of a controlled foreign corporation (“CFC”). CFC taxation is applicable when the CFC is located in a tax haven country as determined by Italy’s Black List¹¹⁴⁸ or in a country with a “privileged tax regime,” which is defined as a country where the effective rate of taxation is less than 15% of Italy’s taxation and more than one-third of its income is from passive income.¹¹⁴⁹

B. Exchange of Information

1. In General

Italy has been engaged in the development of an exchange of information system that adheres to international standards of transparency in tax matters.

Italy’s national framework on exchange of information is composed of:

- (i) Bilateral conventions with exchange of information clauses;¹¹⁵⁰
- (ii) Bilateral agreements for exchange of information, as per the TIEA model; and
- (iii) Multilateral conventions, such as the OECD Convention on Mutual Administrative Assistance and amending protocol and the Common Reporting Standard (“CRS”) adopted by the EU.

2. Exchange of Information Clauses in Bilateral Conventions

Italy has an extensive network of double taxation conventions, and all provide some form of administrative cooperation. While the majority of these treaties do meet international standards of information exchange as set forth by the OECD model, for those treaties that do not have adequate exchange of information, Italy is still willing to exchange information based on reciprocity.

The exchange of information article (Article 26) in the U.S.-Italy Tax Treaty is an example of a treaty provision that is drafted along the lines of the OECD Model. Article 26 provides that the competent authorities will exchange information necessary for carrying out the provisions of the treaty or the domestic laws of the United States or of Italy regarding the taxes covered by the treaty. Reference in the Article to information that is “necessary” is consistent with the OECD Model.

Article 26(1) further provides that information exchanges are not restricted by Article 1 of the Treaty (Personal Scope).

Thus, information may even be requested and provided under Article 26 for persons who are not residents of either Italy or the United States. The Article includes assurances that the information exchanged will be treated as secret, subject to the same disclosure constraints as information obtained under the laws of the requesting State. Information received may be disclosed only to persons, including courts and administrative bodies, involved with the assessment or collection of, enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes to which the information relates.¹¹⁵¹

The second paragraph of Article 26 provides for restrictions on information exchange where the request would require:

- (i) The carrying out of administrative measures that are at variance with the laws and administrative practice of the State;
- (ii) The supply of information that cannot be obtained under the laws or in the normal course of the administration of either State;
- (iii) That the information to be supplied would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

Nevertheless, these restrictions do not mean that the State receiving the request is prohibited from providing such information; it may do so at its discretion. The Treaty does not contain a paragraph corresponding to paragraph 3 of the OECD Model, which sets forth certain exceptions from the restrictions described in paragraph 2. The OECD Model, as in the Treaty, does not state explicitly in the Article that the requested State is obligated to respond to a request even if it does not have a direct tax interest in the information. The OECD Commentary, however, makes clear that this is to be understood as implicit in the OECD Model. Thus, it is also implicit in the Treaty. The Treaty also does not contain the first sentence of paragraph 3 of the OECD Model, which provides that information must be provided to the requesting State notwithstanding the fact that disclosure of the information is precluded by bank secrecy or similar legislation relating to disclosure of financial information by financial institutions or intermediaries. However, the United States received assurances from the Italian Ministry of Finance concerning Italy’s ability to exchange third-party information obtained from banks and other financial institutions. Given these assurances and the longstanding relationship with Italy regarding exchange of information under the prior Treaty, the Treasury Department concluded that the omission of the sentence would not affect the United States’ ability to obtain this third-party information from Italy. (See also XIV.B., below, for further discussion of the Treaty.)

¹¹⁴⁸ See DM March 30, 2015.

¹¹⁴⁹ TU, Art. 167 (4), (a)–(b). See V.C.2.b. Foreign-Source Dividends; O. Transactions between Resident Taxpayers and Resident Taxpayers and Residents of Tax Havens, and P. Controlled Foreign Corporations for complete discussion.

¹¹⁵⁰ DM Sept. 4, 1996, contains a list of countries that have consented to adequate exchange of information within conventions against double taxation with Italy.

¹¹⁵¹ Paragraph 20 of Article 1 of the Protocol to the U.S.-Italy Tax Treaty provides that information may also be disclosed to individuals or authorities involved in the oversight of such activities. The information must be used by these individuals in connection with these designated functions.

3. Tax Information Exchange Agreements (TIEAs)

Italy currently has 11 TIEAs in force with Andorra, Bermuda, Cayman Islands, Cook Islands, Guernsey, Gibraltar, Isle of Man, Jersey, Liechtenstein, Turkmenistan, and Monaco. These agreements are based on the OECD model TIEA and allow the signatory countries to exchange information upon request with respect to a specific criminal or civil tax investigation. These treaties are, overall, concise being composed in the majority of 13 articles (Turkmenistan has 14) and are similarly structured.

For example, the TIEA with Andorra, which entered into force on June 8, 2017, contains 13 articles. Article 1 provides that the purpose of the agreement is the exchange of information that is foreseeably relevant to the domestic laws of Andorra and Italy. Article 2 provides that neither party is duty bound to provide information that is not held by its authorities, nor in possession or control of persons within its territorial jurisdiction. Article 3 lists the taxes covered, and Article 4 provides the definitions of the terms used in the agreement. Article 5 provides that the information is to be provided by the competent authorities on request within the extent provided under its domestic laws, including banking and investment account information. Article 8 provides for confidentiality of the information exchange as it specifies that the information may only be disclosed to persons or authorities in the requesting party's country that are involved with assessment, collection, enforcement, prosecution or determination of appeals related to tax matters. Article 7 specifies that a request for information can be declined under certain circumstances, such as if commercial, trade or professional secrets or processes, would be disclosed; or if the information cannot be obtained in the country under its laws. Article 6 provides the framework for audits carried out by one country's authorities in the other country and Article 11 sets out the mutual agreement procedure for settling disputes for the implementation and interpretation of the agreement. Article 9 provides that costs are generally to be borne by the party making the request. Article 10 addresses the implementing legislation, and Article 12 and 13 establish respectively the terms for entry into force and for termination of the agreement.

4. OECD Mutual Administrative Assistance in Tax Matters

The Convention on Mutual Administrative Assistance in Tax Matters ("Convention") was developed by the OECD and the Council of Europe. It was opened for signature on January 25, 1988, to members of both organizations. It entered into force in 1995 and, in Italy, on January 31, 2006. It was amended by a Protocol in 2010 and the protocol entered into force in Italy on January 17, 2012.

The purpose of the Convention, as originally drafted, was to facilitate entering into bilateral tax information exchange agreements between countries. As amended, the Convention also facilitates international cooperation for the better operation of national tax laws, while maintaining respect for the fundamental rights of taxpayers. It also provides for all possible forms of administrative cooperation between countries in assessing and collecting taxes, to combat tax avoidance and evasion. Cooperation ranges from exchange of information, including automatic exchange, to recovery of foreign tax claims.

The Multilateral Competent Authority Agreement (MCAA), is a framework agreement that provides a standardized mechanism to automatically exchange information based on Article 6.¹¹⁵² The MCAA specifies the details of what information will be exchanged and when it is to be exchanged.

The MCAA ensures each signatory has ultimate control over exactly which exchange relationships it enters into and that each signatory's standards on confidentiality and data protection always apply.

In 2014, the OECD developed an international standard to improve the automatic exchange of financial information (Automatic Exchange of Information, commonly known as Common Reporting Standard or "CRS"). The European Union adopted the CRS on January 1, 2016, after amending the part on administrative cooperation regarding taxation. First reporting was planned for September 2017, but on April 26, 2017, the Italian Revenue Agency extended the reporting period for Italy for tax year 2017 to June 20, 2018. See XIII.D., below.

Pursuant to the CRS, Italian financial institutions are required to collect information on an account holder that includes tax residence, foreign tax identification number, mailing address, telephone numbers, as well as any standing instructions for transfers to accounts in reportable jurisdictions. If these *indicia* indicate that the account holder is not resident in Italy then financial account information, which contains data on account balances, interest, dividends and sales proceeds from financial assets, is automatically reported to the Italian Revenue Agency, which will then exchange the information with its counterparts in participating jurisdictions. This will allow tax agencies to cross-reference what taxpayers have reported in their returns.

The account holder can provide a self-certification to the bank that he or she is not resident in the jurisdiction at issue.

In its cross-referencing activity, the Italian Revenue Agency will also look at the personal income tax return to ascertain if the following schedules have been included:

- Quadro RW, the schedule in which foreign accounts are reported in the Italian personal income tax;
- Quadro RM, the schedule that reports foreign dividends and interest and applies 26% Italian withholding to income reported therein; and
- Quadro RT, the schedule that reports foreign capital gains and taxes gains reported therein at 26%.

Should these schedules be missing from the return, the Tax Agency will contact the taxpayer to advise them to accurately report accounts and file an amended return to correct these discrepancies.

¹¹⁵² Article 6 of the Convention on Mutual Administrative Assistance in Tax Matters provides:

With respect to categories of cases and in accordance with procedures which they shall determine by mutual agreement, two or more Parties shall automatically exchange the information referred to in Article 4. Article 4 provides in relevant part as follows: "The Parties shall exchange any information, in particular as provided in this section that is foreseeably relevant for the administration or enforcement of their domestic laws concerning the taxes covered by this Convention."

Italy maintains a list of jurisdictions with which it exchanges information. The reporting requirements are divided between two schedules:

- (i) Schedule C: contains those jurisdictions to which the Italian Revenue Agency provides financial information (currently 87 jurisdictions); and
- (ii) Schedule D: contains those jurisdictions from which Italy receives financial information regarding its own residents (currently 110 jurisdictions). This is of much greater interest to the Italian Revenue Agency.¹¹⁵³

5. U.S. FATCA Intergovernmental Agreement

On January 10, 2014, Italy and the United States signed an intergovernmental agreement (U.S.-Italy IGA) for implementation of the U.S. Foreign Account Tax Compliance Act (“FATCA”). The U.S.-Italy IGA is a Model 1 IGA, with a few minor changes contained in Annex 11 with reference to certain Italian financial institutions exempted from reporting. Under this type of IGA, Italian foreign financial institutions report account information gathered on U.S. persons directly to the Italian Revenue Agency, which then transmits the account information on an automatic basis to the IRS, as per a process agreed to by the two agencies.

Foreign financial institutions that comply with the reporting requirements will not be subject to 30% withholding on their U.S. investments as defined by I.R.C. §1471. As of 2026, temporary relief is in place via IRS Notice 2024-78 regarding the reporting of U.S. Taxpayer Identification Numbers (TINs) for certain pre-existing accounts. It provides that for calendar years 2025–2027 accounts that were opened on or before June 30, 2014, Italian institutions will not be penalized for missing U.S. TINs on those accounts provided that the bank has carried out proper due diligence. Due diligence includes reporting the account holder’s date of birth, making annual TIN requests, and performing annual electronic searches. Additionally, for the 2025–2027 period, institutions must now also report the holder’s Foreign TIN, if available in their electronic records, and provide the city and country of residence using the required IRS TIN codes and Address Fix format.

Account holders who fail to comply with a foreign financial institution’s request for FACTA certification will be subject to closure of the financial account.

6. Multilateral Competent Authority Agreement on the Exchange of Readily Available Information on Immovable Property (IPI MCAA)

On December 4, 2025, Italy formally committed to the Multilateral Competent Authority Agreement on the Exchange of Readily Available Information on Immovable Property (IPI MCAA). This agreement marks an important expansion of global tax transparency. Its purpose is to automate the exchange of data regarding real estate held by residents in foreign jurisdictions. This agreement closes a loophole often used to shield wealth that was not covered by previous financial account reporting (CRS). Italy joined a group of 26 pioneer jurisdictions¹¹⁵⁴ in signing the joint statement. While the commit-

ment was made in late 2025, the first automatic exchanges of information are scheduled to begin in 2029, covering the 2028 tax year. Under this framework, tax authorities will automatically receive details on:

- (i) Ownership: identity of legal and beneficial owners of foreign property.
- (ii) Property details: location, type, and valuation of the assets.
- (iii) Income: rental income generated and capital gains from property sales.

For taxpayers, this means that real estate investments abroad will become visible to their home tax offices. For Italy, this tool is designed to ensure the correct payment of IVIE (Tax on the Value of Real Estate Abroad) and to prevent international tax evasion.

C. EU Anti-Tax Avoidance Directives

1. In General

The purpose of the EU Anti-tax Avoidance Directives, i.e., Directives 2016/1164 (ATAD 1) and 952/2017 (ATAD 2), is to combat aggressive tax planning that exploits the differences among national tax systems to the advantage of a corporation by adopting a common strategic approach and preventing fragmentation of the market and avoiding misalignments and distortions. The ATAD Directives also represented a further effort by the European Union to follow up on its commitments under the OECD/BEPS project.

On November 29, 2018, Italy implemented the Anti-tax Avoidance Directives with the enactment of Legislative Decree No. 142, which amends Italian domestic provisions in the areas discussed below.

2. Interest Expense Deductions

The provision in TU Article 96 was already in compliance with the earnings stripping rule. However, the amendments now provide that interest expenses can be deducted up to the total amount of interest income plus any interest income carried forward from previous tax years, with the excess being deductible within the limit of 30% of the current tax year’s earnings before interest, taxes, depreciation and amortization (EBITDA). (See further under V.G., above.)

3. Exit Taxation

Italy has long had an exit tax provision in its tax code, codified under TU Article 166 after the 2004 reform of the code.

Exit tax is applicable to Italian companies that:¹¹⁵⁵

- (i) Relocate their tax residence outside of Italy or maintain their residence in Italy, but transfer their assets to a permanent establishment outside of Italy;

¹¹⁵⁴ The 26 jurisdictions are: Belgium, Brazil, Chile, Costa Rica, Finland, France, Germany, Gibraltar, Greece, Iceland, Indonesia, Ireland, Italy, Lithuania, Malta, New Zealand, Norway, Peru, Portugal, Romania, Slovenia, South Africa, South Korea, Spain, Sweden, and the United Kingdom.

¹¹⁵⁵ TU, Art. 166 (1).

¹¹⁵³ Both of these Schedules were updated by the Decree of Ministry of Economy and Finance of May 2, 2024.

(ii) Have an indirect transfer of tax residence that occurs due to mergers, split-offs and business contributions when assets are not attributed to the Italian permanent establishment (PE);

(iii) Transfer the Italian permanent establishment out of Italy;

(iv) Transfer a going concern owned by an Italian permanent establishment (PE) of a foreign entity out of Italy.

Exit tax is calculated at the IRES tax rate of 24% with reference to the overall capital gain, which is based on the fair market value of the transferred business, going concern, or assets.

Before the passage of the Legislative Decree No. 142/2018, if an Italian resident company or an Italian PE transferred its tax residence to an EU Member State or a country in the (EEA) with which Italy had an adequate exchange of information, it could elect to either defer the taxation of the capital gain or to pay the exit tax in six equal yearly installments. Under current law, the tax deferral is no longer an option, and the installments must now be paid over a five-year period.¹¹⁵⁶

Tax losses realized up to the end of the company's residency period can be used to offset the taxable income of that last tax period and, subsequently, any gains without application of the 80% profit offset limit. Where the corporation only has a partial transfer of assets the tax losses carried-forward can be used to offset 80% of the taxable income of the last period of residence in Italy, but no limits apply to offset the gains.¹¹⁵⁷

4. *Controlled Foreign Companies*

The provisions on controlled foreign corporations (CFCs) under Italian law were already compliant with the principles set forth in the ATADs. The main change made by the Legislative Decree is that CFC treatment is automatically triggered when the effective rate of taxation in the country of the foreign corporation is less than 15% of Italy's taxation and more than one-third of the foreign corporation's income is passive income.

5. *Hybrid Mismatches*

As stated above, Legislative Decree No. 142/2018 transposed the ATAD I and ATAD II rules to counter tax-hybrid mismatches arising from double deductions and deductions without inclusion, with effect generally from 2020. Accordingly, in cases where an Italian company is the recipient of a payment from a foreign company and the payment is deducted by the latter, the Italian company cannot take the deduction. In turn, where the Italian company makes the payment, it can only deduct the payment if it proves that it was included in the tax base of the recipient foreign company. The hybrid mismatch rules apply to all IRES taxpayers, residents and nonresidents with a permanent establishment (PE) in Italy, operating in any economic sector, who engage in cross-border transactions.

To help taxpayers further reduce and manage the risk associated with hybrid mismatches, including imported hybrids, Legislative Decree No. 209/2023, issued December 27, 2023, introduced an optional penalty protection regime based on the

Italian Revenue Agency's program of cooperative compliance. This regime allows taxpayers to voluntarily submit supporting anti-hybrid documentation, disclosing their transactions that could potentially run afoul of the mismatch rules and the parties involved. It is intended to avoid situations whereby a tax-hybrid dispute could arise upon challenge by the tax authorities and result in both a higher tax for the taxpayer and the imposition of a steep administrative penalty for filing an "unfaithful" tax return.¹¹⁵⁸ The regime is also designed to compel taxpayers to formalize their internal risk assessment frameworks and procedures for identifying risky transactions.

In follow-up to Legislative Decree No. 209/2023, the Ministry of Finance, on December 20, 2024, issued a decree implementing the optional penalty protection regime, which consists of 13 articles and three annexes. Generally, the implementing decree defines what is considered qualifying anti-hybrid documentation and when and how it should be reported. More specifically, Articles 1 through 13 cover definitions, scope, survey criteria, the structure, content and form of the documentation, and various procedural requirements, whereas the accompanying annexes list the detailed information to be reported about the taxpayer, its group, and the covered transactions (Annex A), the procedure to follow to identify relevant transactions, including a special procedure for imported hybrid mismatches (Annex B), and guidelines on how to appropriately conduct investigations into the existence of hybrid arrangements (Annex C).

The anti-hybrid documentation must be prepared annually to serve as penalty protection, which extends to only the tax year concerned. The documentation may be prepared by a designated party resident or established in Italy; multinational groups may delegate the preparation to a single taxpayer in the group. Penalty protection is available provided the documentation is complete, truthful, and duly describes the relevant transactions to be shielded and the parties involved and is timely filed; minor inaccuracies and omissions should not result in a denial. If granted, penalty protection applies only with respect to the group and transactions covered by the supporting documentation. However, where the taxpayer is involved in an ongoing tax audit, penalty protection will not apply. Likewise, previously audited transactions that were entered into before December 29, 2023, are disqualified from protection.

Pursuant to Annex A of the implementing decree, qualifying anti-hybrid documentation of a taxpayer must contain the following:

- (i) Information on the multinational group which should include a description of its activities, its legal and participatory framework and location of its local offices; a list of the companies in the group, identifying for each company the shareholders and place of incorporation of each company; the tax status of each company, with the exception of PEs, in the country where it is incorporated and where its shareholders are resident; a precise description of its PEs (inclusive of the recognition or nonrecognition recognition

¹¹⁵⁶ TU, Art. 166 (9).

¹¹⁵⁷ TU, Art. 166 (96) (c).

¹¹⁵⁸ As of September 1, 2024, the penalty for filing a return with underreported income or a tax liability for less than the actual amount owed is 70% of the amount of the underpayment. For violations prior to September 1, 2024, the penalty ranges from 90% to 180% of the higher tax assessed.

or non-recognition of the existence of each PE in the State of residence of the enterprise and in the state of location of the PE); and advise whether it files consolidated returns in the jurisdictions in which it is active and the companies that participate in the consolidation.

(ii) Information on the taxpayer which should include the identifying information on the taxpayer; its tax residence; the tax status of each company (excluding its PEs) in the country where it is incorporated and where its shareholders are resident; the recognition of a PE in Italy as well as recognition of any PE abroad.

(iii) A description of the internal process for detecting and assessing significant transactions adopted by the multinational group.

(iv) The relevant transactions, numbered progressively, with an identification of the parties involved, the hybrid mismatch that resulted, and the analysis of the identification and response to the hybrid mismatch, documentary proof and for a “multiple relevant transaction” a description of the transaction must be provided, as well as the parties involved, and the analysis of the identification and response to the hybrid mismatch as well as documentary proof.

Furthermore, the anti-hybrid documentation must be drafted in Italian and digitally signed by the company’s legal representative (or by a delegate) and include a timestamp affixed no later than the due date for filing the IRES return for the tax year covered by the documentation. Separate to this, the taxpayer must also notify the Italian Revenue Agency in their IRES return that it has prepared the documentation. For tax years 2020 to 2024, the digital signature and timestamp deadline is October 31, 2025 (for calendar year taxpayers), as extended by Law Decree No. 84/2025.¹¹⁵⁹ Thus, to protect any covered transactions from tax years 2020 to 2024, the IRES return for the 2024 tax year should be used for this purpose.

Thereafter, a taxpayer must submit its anti-hybrid documentation within 20 working days from the date of a request from the tax authority. The documentation may initially be submitted in paper form, provided a compliant digital version is submitted later at a time requested by the tax authority. Further supplementary information may be requested by the tax authority, but taxpayers must be granted an additional 30 working days and up to another 60 working days to comply.

D. Directives on Administrative Cooperation in Direct Taxation

1. In General

Since 2011, the European Union has had a system for exchanging tax and financial account information between its Member States. Directive 2011/16/EU on administrative cooperation (“DAC”) was adopted to provide for spontaneous, automatic, and on request exchanges of information. The DAC established the basic mechanisms for the participation of Member States’ authorities in administrative reviews, and simultaneous

controls and mutual notifications of tax decisions. It also provided for the practical tools, such as a secure electronic system for information exchange.

The DAC has been amended several times incorporating further obligations on Member States by broadening of the scope of information to be reported. Each of the amending directives is colloquially referred to by a number. Thus, DAC2 (Directive 2014/107/EU) established the current exchange of information in the EU on financial accounts. DAC3 (Directive 2015/2376/EU) provided for the automatic exchange of advance cross-border tax rulings and advance pricing agreements. DAC4 (Directive 2016/881/EU) and DAC5 (Directive 2016/2258/EU) provided respectively for the automatic exchange of country-by-country reports (CbCR) and access to anti money-laundering information by Member State tax authorities. Subsequent Directives issued thus far include rules to require disclosure of aggressive cross-border tax arrangements (DAC6) and implement a reporting by digital platform operators (DAC7), both of which are discussed below.

2. Mandatory Disclosure of Aggressive Tax Arrangements (DAC6)

In Italy, EU Directive 2018/6822 (DAC6) was implemented by Legislative Decree No. 100 of July 30, 2020, and entered into effect on January 21, 2021. It provides for the automatic exchange of cross-border arrangements that are part of aggressive tax planning aimed at reducing taxation or gaining a tax advantage. Guidance was subsequently issued in the form of Ministerial Decree of November 17, 2020 and Regulation No. 364425, further specifying the scope and technical terms and criteria and the rules and procedures for complying with the mandatory disclosure regime. Practice-oriented guidelines were also issued on February 10, 2021.¹¹⁶⁰

Targeted arrangements must be disclosed to the Italian tax authorities by the following persons:

- (i) Financial intermediaries (e.g., banks, brokerage houses, asset management companies, and insurance companies);
- (ii) Professionals (e.g., tax advisors, lawyers, accountants); and
- (iii) Taxpayers, where there is no intermediary or professional involved, the intermediary is non-EU, or the intermediary is exempt.

Intermediaries and professionals must report the arrangement within 30 days after the day it has been implemented or after having provided consultation for the arrangement. Likewise, taxpayers must report the arrangement within 30 days after the day the arrangement has been made available for implementation or after it has been implemented.

The failure to disclose a reportable arrangement to the tax authorities is subject to fines ranging from 3,000 to 31,500 euros. Fines of 1,000 to 11,500 euros are also levied in cases of reporting that is incomplete or incorrect.

To trigger mandatory reporting, a cross-border arrangement must have a least one tax evasion or tax avoidance indica-

¹¹⁵⁹ Previously, for the 2020 to 2022 tax years, the deadline was June 30, 2025, which was six months after the implementing decree was adopted.

¹¹⁶⁰ For further information, see the Italian Revenue Agency website at <https://www.agenziaentrate.gov.it/portale/web/guest/scambio-informazioni-mechanismi-transfrontalieri-obbligo-notifica-dac6> (in Italian).

tor (“hallmark”). As discussed below, there are five categories of hallmarks.

a. General Hallmarks Subject to the Main Benefits Test

The main benefits test is met in Italy when the tax advantage that could be obtained by the parties by carrying out one or more cross-border arrangements is more than 50% of the sum of all the advantages that could result from that arrangement.

General hallmarks of the main benefits test include: (i) a condition of confidentiality that may imply not disclosing how the arrangement could provide a tax advantage; (ii) compensation being fixed to the tax advantages resulting from the arrangement; and (iii) the use of a standardized arrangement or structure that can bring a tax advantage.

b. Specific Hallmarks Subject to the Main Benefits Test

Specific hallmarks that are linked to the main benefits test include: (i) the use of a shell company for the arrangement; (ii) the conversion of income to capital, gifts or other categories of revenue that are subject to lower tax rates or are exempt from tax; and (iii) the use of circular transactions (“round-tripping”) which result in an offsetting or cancellation of the effect of the transaction.

c. Specific Hallmarks Related to Cross-Border Transactions

Hallmarks in this category comprise transactions which involve: (a) deductible cross-border payments between two or more associated entities in which the recipient entity benefits from preferential taxation or is exempt from taxation; (b) depreciation deductions on the same asset in multiple jurisdictions; (c) relief from double taxation on the same income or capital in more than one jurisdiction; (d) transfer of assets between different jurisdictions where there is a material difference in the amount treated as consideration paid for the assets in the jurisdictions involved.

d. Specific Hallmarks Related to Exchange of Information

These hallmarks comprise arrangements which may have as their result undermining reporting obligations under the U.S. FACTA or the CRS or where legal or beneficial ownership is not transparent.

e. Specific Hallmarks Related to Transfer Pricing

Transfer pricing hallmarks involve: (i) the use of unilateral safe harbor rules; (ii) transfer of difficult to value intangibles; and (iii) intragroup restructuring where the projected annual earnings before interest and taxes, in the three years after the transfer, are less than 50% of the projected annual earnings before interest and taxes if the transfer had not taken place.

3. Reporting Obligation for Digital Platform Operators (DAC7)

DAC7 (EU Directive 2021/514/EU), which sets out reporting obligations for digital platform operators carrying out business in Europe, was recently implemented in Italy with effect from January 1, 2023.¹¹⁶¹ DAC7 requires digital platform operators to report the revenue generated by sellers on their digital platforms and for EU Member States to exchange such in-

formation automatically. The platform activities monitored by DAC7 are e-commerce, real estate rentals, personal services, and the rental of any means of transport. Data regarding large accommodation providers in the hotel sector, for which the tax authorities have other means of obtaining information, and small advertisers, defined as sellers for whom the platform operator has facilitated less than 30 transactions and the total fees paid to the operator does not exceed 2,000 euros, do not come within the reporting obligation.

On November 20, 2023, the Italian Revenue Agency issued the procedures for platform operators to carry out tax due diligence procedures and other obligations imposed on them with respect to effective qualifying agreements.

Platform operators that are required to report in Italy are the following:

(i) Platform operators that are tax resident in an EU Member State, or if the platform operator does not have a residence for tax purposes in any EU Member State, it meets any of the following requirements:

- a) It is incorporated in Italy;
- b) It has its place of management (including effective management) in Italy;
- c) It has a permanent establishment in Italy and is not a qualified non-EU platform operator;¹¹⁶² and

(ii) Foreign platform operators (non-qualified or non-EU) that facilitate sales by a reportable seller or rentals in a EU member state.

Platform operators who also qualify in other EU Member States must inform the Italian Revenue Agency by January 31 of where they will be fulfilling their reporting obligations.

Platform operators are required to carry out due diligence procedures by identifying which sellers are to be included in the communication and verify the accuracy of the information that has been collected.

For individual sellers, the platform operator must collect: the individual’s name, main address, tax code number or place of birth, date of birth, VAT number, if available. For sellers that are legal persons, the platform operator must collect: the legal name of the business, main address, tax code number, VAT number, if available, business registration number, and the existence of any permanent establishment in any EU Member State. Sellers that fail to provide this information will have their accounts closed, will not be able to re-register on the platform and the platform operator may withhold payment of any sales.

The due diligence procedures are to be completed by December 31 of each year. By January 31 of the following year the information gathered is to be provided to the Italian Revenue Agency, by uploading via XML format to the Entratel section of the Italian Revenue Agency website. By the following February 29, the tax agency will share this information with au-

¹¹⁶¹ D. Lgs. No. 32, March 1, 2023.

¹¹⁶² A qualified non-EU platform operator is one which is a tax resident or is incorporated in or has its place of management in a non-EU jurisdiction that has an automatic exchange of information agreement with the competent authorities of all EU Member States identified as reportable jurisdictions by the non-EU jurisdiction.

thorities in other EU countries, based on the seller's country of residence. The tax agency will in turn receive the information relating to sellers (natural or legal persons) residing in Italy.

The first DAC 7 reporting deadline for platform operators was January 31, 2024 for the 2023 year.

On June 30, 2025, Italy signed the Multilateral Competent Authority Agreement on Automatic Exchange of Information on Income Derived Through Digital Platforms (DPI MCAA) under the OECD Model Rules for Reporting by Digital Platforms. Under the Model Rules, digital platform operators are required to collect information on the income earned by sellers offering accommodation, transport and personal services through their platforms and to report the information to the tax authorities.

By signing the DPI MCAA, Italy has undertaken the obligation to exchange automatically information regarding income and sales collected by digital platforms with 31 other signatory jurisdictions. This is to help tax administrations in signatory countries ensure the correct taxation of digital economy income.

4. Reporting Obligation for Crypto-Asset Service Providers and Operators (DAC 8)

On October 25, 2024, the Italian Ministry of Finance published the draft for the implementation of the eighth amendment to the EU's Directive on Administrative Cooperation in Direct Taxation (DAC 8.) which focuses on improve tax transparency and cooperation with respect to crypto-assets and high-net-worth individuals. The EU requirement for Member States to transpose DAC 8 was December 31, 2025. On December 10, 2025, Italy formally transposed DAC 8 into domestic law through Legislative Decree No. 194 of December 10, 2025.¹¹⁶³ The decree establishes a comprehensive framework for tax transparency regarding crypto-assets and high-net-worth individuals. As of January 1, 2026, Member States will be required to automatically share information related to crypto assets and tax rulings issued for individuals regarding high net worth transactions, including those which establish the tax residency of an individual.

a. Crypto-Asset Information Exchange

While many countries now have legislation regulating cryptocurrencies, their international nature and associated complexities make monitoring and taxation difficult. To address such challenges, DAC 8 introduces specific measures, such as the mandatory and systematic exchange of information and the creation of a centralized database by December 31, 2026, to enable more effective monitoring of crypto-assets.

This information exchange is part of the broader context of global collaboration, as outlined in the OECD's initiative on the Crypto-Asset Reporting Framework and Amendments to the Common Reporting (CARF) Standard, approved in August 2022.

The directive requires payment service providers to adhere to these reporting requirements, with national governments tasked with imposing sanctions to ensure compliance. Current-

ly, this obligation is considered essential by member countries, although it has not yet been fully implemented at the OECD level.

b. Cross-Border Rulings on High-Net Worth Individuals

One of the objectives of the directive is to introduce a common set of mandatory reporting obligations for the automatic exchange of information regarding cross-border advance rulings by focusing on actions of high-net worth individuals. Beginning on January 1, 2026, automatic exchange of information will be required in the following instances:

- (i) Cross-border rulings regarding transactions or sequences of transactions exceeding 1.5 million euros (or equivalent currency);
- (ii) Cross-border prior rulings that establish an individual's tax residence in the country that issued the ruling.

In addition, DAC 8 amends the current rules under DAC 1 to ensure that details of non-custodial dividend income will now be subject to exchange between Member States.

c. Exchange of Tax Identification Numbers

To facilitate the work of tax authorities in identifying taxpayers and calculating taxes due provisions have been included in DAC 8 for the increased sharing of Tax Identification Numbers (TINs) between Member States by establishing a program to require that TINs be provided in all exchanges of information between the member states. This obligation will apply between 2028 and 2030 to all tax data transmissions, thus ensuring the accurate identification of persons or entities involved in specific financial transactions or recipients of certain types of income.

Finally, a revision of the DAC regulations is planned with respect to penalties that Member States must levy on individuals for non-compliance with national rules on reporting obligations, as established by the DAC itself.

E. Global Minimum Tax

1. Current Status of Legislation and Regulations

In 2023, Italy passed Law No. 111 of August 9 providing for the transposition into Italian law of Council Directive (EU) 2022/2523 of December 14, 2022, to ensure a global minimum level of taxation. The law enables the government to implement a qualifying domestic minimum top up tax (QDMTT).¹¹⁶⁴

On September 11, 2023, the Italian government issued a draft legislative decree, which was subject to a public consultation process with comments to be submitted by October 1, 2023, and on January 1, 2024, Legislative Decree No. 209 of December 27, 2023, entered into effect. Italy's legislation generally follows the EU Pillar Two Directive and the OECD model rules. On May 24, 2024, the Ministry of Economy and Finance issued a decree to implement the transitional country-by-country reporting (CbCR) reporting safe harbor for Pillar Two purposes. On October 11, 2024, the Ministry of Economy and Finance issued a decree with guidance on the application of the

¹¹⁶³ Legislative Decree 194 of December 10, 2025 was published in the Official Gazette No. 296 on December 22, 2025.

¹¹⁶⁴ Law No. 111, Aug. 9, 2023, Art. 3.

substance-based income exclusion (SBIE) provisions. On January 23, 2025, the Ministry of Finance published on its site the OECD list of countries that have received transitional qualified status. Publication of the list is also important for determining whether and to what extent top-up tax may need to be collected in Italy (under the IIR or the UTPR) with respect to foreign low-taxed jurisdictions.

On June 30, 2025, Italy signed the Multilateral Competent Authority Agreement on the Exchange of GloBE Information (GIR MCAA) making it one of 21 country signatories. The GIR MCAA provides a standardized mechanism for the automatic exchange of GloBE Information between tax administrations, facilitating the implementation of the global minimum tax. Its purpose is to reduce tax avoidance by increasing transparency and simplify compliance for multinational enterprises by allowing them to file their GloBE information centrally with one tax authority. This agreement ensures countries automatically share financial information regarding large companies' operations and taxes and minimizes profit-hiding opportunities between jurisdictions.

In April 2025, the EU adopted Directive (EU) 2025/872 (DAC 9), which extends cooperation and information exchange in the context of the effective minimum taxation of companies and implements specific provisions from Pillar Two of the G20/OECD global agreement on international tax reform. The purpose is to limit the corporate tax rates race to the bottom, reduce the risk of tax base erosion and profit shifting, and ensure that the largest multinational companies pay tax at the agreed global minimum corporate rate. The Pillar Two Directive ensures that profits of the largest multinational and domestic groups or companies (with a combined annual group turnover of at least 750 million euros) are taxed at a minimum effective rate of 15%.

DAC 9 simplifies reporting and disclosure requirements for large companies by allowing for the bundled, centralized filing of a GloBE Information Return (GIR) (instead of multiple filings being made by each constituent entity of an enterprise group at local level). It contributes to the European Union's efforts to rationalize reporting obligations and reduce the burden on EU businesses and extends the framework for automatic exchange between EU Member States to the top-up tax return. Member States are required to transpose the Directive into national law by December 31, 2025.

Following the adoption of DAC 9 in April 2025, Italy formally transposed the new requirements into national law through Legislative Decree No. 192 of December 18, 2025. This legislation, working in tandem with the Ministry of Economy and Finance decree of October 9, 2025, fully implements the DAC 9 rules and the Pillar Two global minimum tax reporting framework for multinational companies.

The combined regulatory framework establishes a standardized information return form and a mandatory XML format for electronic filing to simplify compliance and ensure a uniform single entry point for group reporting. These measures mandate the automatic exchange of information between tax authorities and introduce a deterrent penalty framework, including fines up to 100,000 euros for failure to comply with reporting obligations. By aligning Italian law with the latest EU and OECD standards, these decrees rationalize reporting requirements, allowing for bundled, centralized filing while en-

suring that the Italian Revenue Agency receives all necessary data to verify the minimum 15% effective tax rate.

On January 5, 2026, the OECD released the Side-by-Side (SbS) Package, a set of rules designed to harmonize the Global Minimum Tax (GMT) with domestic minimum tax regimes, most notably the U.S. GILTI system. This was followed on January 12, 2026, by EC Notice C/2026/253, which formally recognized these OECD safe harbors as compliant with EU Law. The package introduces a new Permanent Simplified ETR Safe Harbour and a specific SbS Safe Harbour, both effective for fiscal years beginning on or after January 1, 2026.

Italy will need to make amendments in its domestic legislation to incorporate these specific safe harbors into its national framework. While the core structure of the 15% tax remains, Italy will need to update its technical reporting specifications and the GIR format to allow taxpayers to claim these simplified treatments. For Italian parent groups with U.S. subsidiaries, these changes are critical as they provide a mechanism to treat the U.S. GILTI as an eligible "side-by-side" system, effectively reducing the administrative burden and the risk of top-up tax being levied in Italy on U.S. profits. However, Italy must ensure that its QDMTT (Domestic Minimum Tax) remains the primary collection tool to protect its domestic tax base from foreign IIR/UTPR claims.

2. Overview of Global Minimum Tax

The GMT is levied at a rate of 15% and applies to multinational corporations that have combined revenues of more than 750 million euros in two of the last four tax years. It is comprised of a group of three taxes to be applied in the following order:

(i) Qualifying domestic minimum top-up tax (QDMTT): This is a minimum domestic charge payable by companies in a multinational or national group that are subject to low taxation and are located in Italy. The QDMTT applies for tax years beginning on or after December 31, 2023. This tax is to be calculated using local accounting standards to maintain its qualified status.

(ii) Income inclusion rule (IIR): This also applies for tax years beginning on or after December 31, 2023. Under the IIR, the Italian parent company of a multinational or national group will be required to pay for group companies subject to low taxation (i.e., less than 15%). This tax represents a top-down approach as it assigns priority in applying this top-up tax to the company placed in the highest position in the shareholding chain.

(iii) Undertaxed payments rule (UTPR): For tax years beginning on or after December 31, 2024. It is levied on one or more companies in a multinational group located in Italy with respect to group companies subject to low taxation when the equivalent minimum top-up tax in other countries has not been imposed, either in whole or in part. All Italian group entities are jointly and severally liable for this charge.

As per Ministerial Decree of November 7, 2025, the top-up tax must be paid via the F24 form in two installments:

- An estimated payment of 90% will be due by the end of the 11th month following the end of the fiscal year; and

- A balance payment of 10% is due within one month of the deadline for filing the relevant tax return.

3. Application of the Income Inclusion Rule and Undertaxed Payments Rule

Under the Income Inclusion Rule (IIR), as amended by Article 9 of Legislative Decree No. 192 of December 18, 2025, to align with OECD standards, the Italian parent company of a multinational or national group is required to pay a top-up tax for any group companies subject to low taxation (i.e., an effective rate lower than 15%). This follows a “top-down” approach, assigning primary taxing priority to the entity at the highest level of the shareholding chain.

The Undertaxed Payments Rule (UTPR) serves as the back-up mechanism for the IIR. It applies to Italian group entities when the equivalent minimum tax has not been imposed elsewhere, ensuring no low-taxed income escapes the 15% threshold. Following the 2025 amendments, all Italian companies within the group are jointly and severally liable for the UTPR charge; the group must appoint a specific Italian entity to settle the payment and allocate the liability among the local group members.

For both the IIR and UTPR, the calculation of “covered taxes” must now account for specific accounting adjustments, including the treatment of qualified refundable tax credits (as income) and deferred tax recaptures (the 5-year rule). Furthermore, the resulting tax liability must be settled in full by the filing deadline (15 months after year-end, or 18 months for the first transitional year). For the first transitional year (FY 2024), the Pillar Two information return, and final tax payment must be completed by June 30, 2026. Starting from the post-transitional period, the liability is settled via a dual-installment system: an advance payment equal to 90% of the estimated tax due by the 11th month of the following fiscal year, with the remaining balance due upon filing the return (15 months after year-end, or 18 months for the first year).¹¹⁶⁵

4. Qualifying Domestic Minimum Top-up Tax

The QDMTT is a minimum domestic charge payable by companies in a multinational or national group located in Italy with consolidated annual revenues of 750 million euros or more that are subject to low taxation. The calculation of the QDMTT is made by reference to the qualified net income or loss of an Italian group company. The Italian QDMTT calculation must be based on local Italian accounting standards (Italian GAAP/OIC or IFRS as adopted in Italy) to satisfy the qualified status requirements set by the OECD. This mandatory use of local standards ensures that Italy benefits from the QDMTT Safe Harbor, preventing other jurisdictions from collecting additional tax on Italian-source income. The financial accounting standard adopted by the ultimate parent entity (UPE) may now be used only in strictly limited circumstances, such as when Italian constituent entities have non-aligned tax years or when the preparation of local financial statements would impose an unreasonable administrative burden. Furthermore, the QDMTT computation must incorporate specific mandatory adjustments, such as the reclassification of Qualified Refundable Tax Cred-

its (QRTCs) as income and the application of the five-year recapture rule for deferred tax liabilities, ensuring the domestic ETR calculation remains aligned with GMT standards.¹¹⁶⁶

5. Computation of GloBE Income and Loss

The legislative decree provided that the effective tax rate (ETR) is to be calculated for each tax year and each tax jurisdiction using a jurisdictional blending approach. Thus, the ETR is calculated by dividing the adjusted covered taxes by the net income or loss of all the group companies in the country concerned. If the ETR is lower than 15%, the top-up tax will be imposed.

There is a *de minimis* exclusion for multinational or national group companies located in the same jurisdiction whose revenue and income do not exceed the following thresholds:

- The average revenue of all companies located in the same country is less than 10 million euros over a three-year period; and
- The average income of all companies located in the same country is a loss or is less than 1 million euros over a three-year period.

Multinational groups with revenue and income below these limits are not liable for the global minimum tax, even where the effective tax rate is lower than the minimum rate of 15%. This provision was inserted to avoid the complexities that arise from the calculation of the effective tax rate where the amount of additional taxation does not appear to justify the administrative burdens placed on taxpayers.

On October 11, 2024, the Ministry of Economy and Finance issued a decree providing guidance on the substance-based income exclusion (SBIE) carve out for expenditure on tangible fixed assets and salary costs in calculating the excess profits subject to global minimum taxation. The decree basically incorporates the clarifications provided in the OECD Commentary and the December 2023 administrative guidance thereon.

The decree makes it clear that a group may elect out of the requirement to apply the exclusion on a jurisdiction-by-jurisdiction basis. With a view to reducing the administrative burden related to the calculation of the SBIE, a group may elect to claim the SBIE only partially, as there is no requirement to claim the maximum amount. The decree also provides that the excess of the SBIE amount over net GloBE income can neither be carried forward nor carried back to reduce GloBE income in other tax years.¹¹⁶⁷

For purposes of the IIR and UTPR, the SBIE amount is to be calculated based on the payroll and tangible asset data as recorded for purposes of preparing the consolidated financial statements of the UPE.¹¹⁶⁸ The decree expressly states that certain adjustments may need to be made to payroll expenses where, for example, expenses are recognized as part of the tangible asset carve-out (such as expenses capitalized into the carrying value of eligible tangible assets); are attributable to income excluded from GloBE income (for example, maritime

¹¹⁶⁵ Ministerial Decree of Nov. 7, 2025, Art. 6.

¹¹⁶⁶ Ministerial Decree, July 1, 2024; see also Legislative Decree No. 192, Dec. 18, 2025, Art. 9.

¹¹⁶⁷ Ministerial Decree, October 11, 2024, Art. 2 (4)–(6).

¹¹⁶⁸ Ministerial Decree, October 11, 2024, Art. 2 (2).

shipping income); are incurred with respect to employees who work in different jurisdictions. The decree also states that adjustments may need to be made with respect to the tangible asset carve-out, for example, where an asset is located in multiple jurisdictions, where property is held for lease, where an asset is acquired or disposed of during the tax year or where an asset is attributable to income excluded from GloBE income.¹¹⁶⁹ The payroll and tangible asset carve-outs may also be adjusted in accordance with the special allocation rules for permanent establishments (PEs) and tax transparent entities.¹¹⁷⁰

6. Transitional Safe Harbor

The transitional safe harbor (TSH) rules are optional OECD-level measures that can be used by large business groups to limit their administrative and compliance burdens in the initial years of application of the Global Minimum Tax rules. As provided by the OECD rules, the transitional period comprises tax periods beginning on or before December 31, 2026, and will not include any tax period ending after June 30, 2028. In the case of companies with a calendar year tax year, the transitional period will cover years 2024–6 for purposes of the IIR and years 2025–6 for purposes of the UTPR. Under the simplified rules, a jurisdiction that passes one of three tests in a given year will be considered a low-risk jurisdiction, with the result that the groups' top-up tax will be zero in that jurisdiction for that tax year without the ETR or the top-up tax having to be calculated. The three alternative tests are:

- (i) The *de minimis* test — the multinational or domestic group, as a whole, has total revenue of less than 10 million euros, and before-tax profits of less than 1 million euros or a before-tax loss;
- (ii) The simplified ETR test — the multinational or domestic group has an effective group tax rate (calculated as the ratio of simplified relevant taxes to profit before taxes) that is at least equal to the “transitional tax rate” of 15% for 2024, 16% for 2025 and 17% for 2026; or
- (iii) The routine profit test — the group's profit before taxes does not exceed the amount of the SBIE for enterprises located in a specific country.

Legislative Decree No. 192 of December 18, 2025, aligned these measures with the latest OECD Administrative Guidance (including the June 2024 updates). The Decree introduced anti-arbitrage switch-off rules that disqualify a group from using the safe harbor in a jurisdiction if it has entered into specific hybrid arbitrage arrangements, such as deduction/no-inclusion or double-deduction schemes, designed to artificially meet the safe harbor thresholds. These anti-abuse provisions apply retroactively to arrangements entered into after December 15, 2022.

Furthermore, the Decree clarifies the QDMTT Safe Harbor switch-off mechanism prevents the application of the domestic safe harbor if the local tax regime allows for non-qualified tax credits or lacks sufficient enforcement standards.

Within 36 months of the exercise of a transitional safe harbor option, the Italian tax authorities can request information from Italian constituent entities relating to the application of the

TSH rules and supporting calculations. An Italian constituent entity receiving such a request must respond within six months. If the entity fails to respond or where the response contains substantial errors, which now explicitly includes the misclassification of tax credits or deferred tax adjustments, the TSH will be considered inapplicable, triggering an obligation to perform the full-scope GloBE computations.

7. Compliance Requirements

Legislative Decree No. 209 of December 27, 2023, also provides for the following returns to be filed:

(i) A top-up tax information return based on the OECD Global Information Return (GIR) template. This filing is designed to furnish tax data needed to assess the accuracy of the tax liability of the companies in a group. The return may be filed by each company in the group or by a specifically designated company within 15 months following the last day of the tax year being reported (extended to 18 months for the first year of application, e.g., June 30, 2026, for the 2024 fiscal year). The fine for failure to file or filing after three months after the return due date was originally 10,000 euros, but it was increased to 100,000 euros. For delays of less than three months or for providing incomplete or incorrect data, the penalty ranges from 10,000 euros to 50,000 euros.¹¹⁷¹ On February 25, 2025, the Ministry of Finance issued the decree that sets out the requirements for the GloBE Information Return (GIR) notifications that the Italian tax authority can require Italian constituent entities to provide. The decree describes what Italian constituent entities must include in notifications sent to the Italian Revenue Agency when reporting that the GIR will be received through an exchange of information under a Qualifying Competent Authority Agreement. These instructions are based on the OECD guidelines on the GIR published on January 15, 2025.

(ii) An annual QDMTT, IIR and UTPR return is to be filed 15 months after the last day of the tax year being reported, subject to the provision that, in the first year of application of the Global Minimum Tax, the return may be filed within 18 months after the end of the tax year. Following the updates provided by Article 9 of Legislative Decree 192 of December 18, 2025, the top-up tax must be paid in full by the filing deadline. In the first three years of the application of the tax, no penalties will be levied for failure to file unless gross or criminal negligence is involved.

8. Differences in Interpretation and Application: Coordination with Controlled Foreign Company Taxation

Legislative Decree No. 209 of December 27, 2023 implemented the global minimum level of taxation, amended Article 167 of Italy's Tax Code and simplified the controlled foreign company (CFC) taxation rules to align with the global minimum tax rules under the Pillar Two provisions.

Prior to the amendment, CFC income was attributed to an Italian parent company under a flow-through taxation principle

¹¹⁶⁹ Ministerial Decree, October 11, 2024, Arts. 3–4.

¹¹⁷⁰ Ministerial Decree, October 11, 2024, Arts. 7–8.

¹¹⁷¹ D. Lgs. No. 209, Dec. 27, 2023, Art. 51 (as amended by D. Lgs. No. 192, Dec. 18, 2025, Art. 9 (1)).

when a foreign subsidiary of the parent (i.e., a CFC) satisfied two negative criteria:

- (i) The CFC was subject to an effective tax rate (ETR) lower than 50% of the Italian ETR that would have applied to it had it been a resident corporation; and
- (ii) More than one-third of the CFC's revenues consisted of passive income.

This rule required a complex computation to redetermine the CFC's taxable income under Italian tax rules. If both criteria were satisfied, the CFC income was taxed in the hands of the Italian parent at the 24% Italian corporate income tax rate. This test has now been simplified by providing for a 15% ETR based on the accounting results of the CFC. This option allows the parent company to satisfy the adequate taxation test by paying an amount equal to 15% of the subsidiary's net accounting profit, calculated net of taxes, write-downs and provisions for risks or charges. The payment option is binding for the next three tax years and will be renewed unless revoked and must apply to all CFCs in the group that fall within the regulations. The 15% payment is not deductible from a company's taxable income when calculating its IRES and IRAP liability. The explanatory report states that the option represents a "safe harbor" mechanism: in exchange for a certain measurable outlay on the foreign balance sheet, the taxpayer avoids a detailed ETR analysis and protects dividends from future blacklist disputes.

These reforms aim to ensure that the 15% ETR test is vigorous enough to interact correctly with the QDMTT so that no additional top-up tax is due in Italy when this option is chosen.

9. Decrees for Deferred Tax Transition Rules and Miscellaneous Provisions

a. In General

At the end of 2024, the Ministry of Finance issued two decrees to implement specific portions of the Pillar II GloBE rules:

- Ministerial Decree of December 20, 2024, which covers various aspects of the GloBE rules, including their application to sovereign wealth funds, calculation methods for ancillary activities of subsidiaries, treatment of debt cancellation, short-term portfolio shareholdings, other tax-related clarifications, and also outlines transitional provisions for the allocation methodology of relevant taxes associated with blended CFC tax regimes (Miscellaneous Decree);
- Ministerial Decree of December 27, 2024, which provides for the treatment of deferred taxation generated in the period prior to the implementation of the GloBE rules (Deferred Taxation Decree).

b. The Miscellaneous Decree

The Miscellaneous Decree provides that a sovereign wealth fund that meets the definition of a state entity cannot be a parent company and cannot be part of an MNE or domestic group. Nor will a sovereign wealth fund be deemed to hold a controlling interest in any entity in which it holds a share, and

identification of the parent company is carried out without taking into account the shares held by the sovereign wealth fund.

As provided by the OECD Guidelines, non-profit entities and their affiliates are excluded entities. Because many non-profits set up subsidiaries to carry out limited commercial ancillary activities, Italy adopted the OECD bright-line test to avoid unintended top-up tax consequences in respect of these ancillary activities. Thus, the activities of a non-profit organization's wholly owned subsidiary are ancillary if the aggregate revenue of all group entities (excluding income derived by the non-profit entity or by an excluded entity) is less than 750 million euros or 25% of the revenue of the MNE group to which the non-profit organization belongs, if lower.

Articles 4–7 of the Miscellaneous Decree contain the following elections to prevent an undue impact on the calculation of GloBE income:

- i) The foreign exchange election allows foreign exchange gains or losses related to a hedging instrument to be treated as an excluded equity gain or loss;
- ii) The debt release election allows certain debt released under various corporate rescue situations to be excluded income subject to an election by the filing constituent company where the procedure is insolvency or bankruptcy proceedings; where the creditor to the debt release is a third-party and it is reasonable to conclude that the debtor would be insolvent within 12 months but for the release of the third-party debts under an arrangement; or where the creditor of the debt release is a third-party and, immediately before the debt release, the debtor's liabilities are in excess of the fair value of its assets. Where this is the case but the requirements above are not met, relief will apply to third-party debts but only to the extent of the lesser of (i) the excess of the debtor's liabilities over the fair value of its assets (determined immediately before the debt release), or (ii) the reduction in the debtor's attributes under the tax laws of the debtor's jurisdiction resulting from the debt release;
- iii) The portfolio shareholding election allows the reporting entity to exercise an option, for each enterprise or jointly controlled entity in the MNE or domestic group, to include in the calculation of the income or loss of that enterprise or jointly controlled entity dividends received from all portfolio holdings held, including long-term portfolios. This election is valid for five years;
- iv) The mutual insurance company election allows the application of tax transparency to the investment entities of mutual insurance companies, thereby bringing the treatment of their financial accounting net income or loss under the GloBE rules and into line with local tax treatment.

Article 8 provides for substitute loss carry forwards which arise due to different tax treatment of foreign source income amongst jurisdictions to provide "functionally equivalent outcomes" provided that (i) the country where the loss is incurred requires that foreign source income offset domestic source losses before foreign tax credits may be applied against tax imposed on foreign source income; (ii) the constituent entity has a domestic tax loss that is fully or partially offset by foreign source income; and (iii) the domestic tax legislation allows for-

eign tax credits to be used to offset a tax liability in a subsequent year to that in which the income is included in the computation of the constituent entity's GloBE income or loss.

Article 9 sets out currency conversion rules, providing that all calculations required to determine the top-up tax must be carried out in the currency used to prepare its consolidated financial accounts. The conversion rules are the rules in the authorized accounting policy used for the preparation of the consolidated financial statements. If the currency used by the MNE group for the consolidated financial statements is not the euro, the euro thresholds used in the Global Minimum Tax Law are converted into euros on the basis of the average exchange rate for the month of December of the calendar year immediately prior to the beginning of the MNE group's financial year.

Article 10 provides an allocation for taxes arising under blended CFC tax regimes. A blended CFC regime arises when the tax charge under the CFC regime is based on a blend of income, loss and/or creditable taxes of multiple CFCs. For tax years that begin on or before December 31, 2025, but not ending after June 30, 2027, "keys" have been provided using an effective tax-weighted income allocation mechanism.

c. *The Deferred Taxation Decree*

Article 2 of the Deferred Taxation Decree sets out the treatment of deferred tax assets and liabilities in existence at the beginning of the transition year in the financial statements of companies and jointly controlled companies located in a country (Italy or other country), for the purpose of calculating the numerator of the effective tax rate.

Pillar II treatment basically follows financial accounting treatment which usually values the asset at fair value, meaning that the gain or loss would flow through to the GloBE income calculation. For deferred tax assets existing at the beginning of the transition year, the value will not be fair value, but the historical value of the asset. Under the 2026 Budget Law, for Italian financial and insurance entities, the actual tax deductibility of these assets is subject to a new staggered schedule: for FY 2026, deductibility is limited to 3.25%; for FY 2027 to 8.22%; for FY 2028 to 19.76%; and for FY 2029 to 19.77%. This creates a temporary misalignment where accounting changes are recognized for GloBE at the 15% recast rate, while the cash tax impact is deferred. Resolution No. 73 of December 29, 2025, further clarifies that if these deferred tax assets are transferred to third parties these transferees are restricted to requesting a refund and cannot use the credits for tax offsetting. While this aims to maintain tax consistency, the transfer remains subject to the original staggered schedule, and entities must carefully monitor the impact on the ETR numerator to ensure that such deferrals do not lead to unintended GloBE top-up tax liabilities. Accounting changes related to tax losses or deductible temporary differences prior to the transition year will not be taken into account. This is to prevent an increase in the basis of the assets, with potential additional tax relief and reduced gains on a future disposal, when any original gain on the intra-group transfer was not taken into account for GloBE purposes as the group was not subject to the rules. Further, as a general rule, deferred tax expenses in the accounts at the beginning of the transition period will not be subject to any adjustment which would otherwise ordinarily be required. Tax credits of any kind accrued

before the beginning of the transition period when used will not be considered as a reduction of the adjusted taxes.

Article 3 of Deferred Taxation Decree deals with the issue of valuation of deferred tax assets and liabilities prior to implementation of the global minimum tax by providing that these be recast at the lower of their value calculated by applying the minimum tax rate of 15%. For financial entities, the 2026 Budget Law temporarily increases the IRAP rate by two percentage points for the years 2026–2028 (reaching 6.65% for banks and 7.90% for insurers), which may necessitate a recalculation of the local tax rate component in the recasting formula for these years.

Where there have been changes to the scope of consolidation before the start of the transition year, the deferred tax assets and liabilities of the acquired company, existing at the start of the transition year, are recognized by reference to their carrying value before the transfer.

Article 3(3) prohibits the use of the pre-global minimum tax that emerged in application of the acquisition method arising from mergers, contributions, demergers, purchases of businesses and acquisition of control through equity investments that occurred in the period between December 1, 2021, and the last day of the tax year prior to the transition tax year. For the purpose of calculating 2026 tax installments, the 2026 Budget Law requires that the 2025 taxes be recalculated as if this staggered deductibility regime were already in effect.

Article 4 specifically addresses the value of prior tax credits. All types of tax credits accrued before the beginning of the transition are relevant when calculating the ETR in the transition year, or in subsequent years, and their value is equal to that reflected in the accounts if the rate used for their calculation is less than 15%. Otherwise, they are restated at the rate of 15%. The 2026 Budget Law lowers the threshold for the prohibition of tax credit offsetting from 100,000 euros to 50,000 euros for taxpayers with overdue liabilities, potentially restricting the immediate usability of these credits in the transition year. If the tax rate applicable to the company or jointly controlled company in the group undergoes a change in a subsequent year, the formula used must be reapplied to the amount of credits not yet used, considering the new rate.

Article 5 addresses the prohibition on the creation of deferred tax assets from excluded income components. Thus, Article 5(2) of the Deferred Taxation Decree provides that for purposes of computing the ETR in the transition and subsequent periods, the deferred tax assets originating from transactions entered into after November 30, 2021, related to tax losses caused by permanent differences or income items that would not have contributed to the determination of relevant income or loss had they been in effect at the time of the transaction, are excluded. The 2026 Budget Law complements this by allowing companies to remove tax-deferred status on certain reserves by paying a substitute tax of 10%, which may alter the opening balance of relevant deferred tax liabilities.

Article 5(1) provides another exception to the admission of deferred taxation from a pre-global minimum tax year when these are related to a foreign subsidiary tax regime not applied on an individual basis and with a tax rate below 15%, specifying that these also shall not be taken into account. This is an application of the June 2024 OECD Administrative Guidance on this point.

Articles 6 and 7 provide rules for anti-tax avoidance dealing with asset transfers in the pre-GloBE period. The 2026 Budget Law introduces 180% hyper-amortization for certain digital and energy transition investments. The prerequisite in these articles is the “transfer of a fixed asset” between companies in the same domestic or international group. The policy intention is to limit the ability to enter into tax-free, or low-tax, transactions during the pre-GloBE period that increase an asset’s carrying value. With such transactions, an MNE Group can use the higher carrying value to reduce its GloBE income, through depreciation, during the GloBE years without any risk of Top-up Tax on the corresponding gain because the asset was transferred in the pre-GloBE period. The purpose of the rule is to prevent revaluations of assets that were not subject to congruous taxation during the pre-GloBE period. The phrase “transfer of a fixed asset” represents either the nonrecognition of a fixed asset by one company (transferring enterprise or en-

tity) and its simultaneous accounting recognition in the hands of another company (transferring enterprise or entity). Thus, in determining the ETR, the deferred tax asset or liability which emerge as a consequence of the fixed asset after November 30, 2021, will be disallowed. Article 6 does provide for the recognition of the deferred tax asset arising from the transfer if and to the extent that the transferee company incurred an appropriate tax burden related to the transfer.

Article 7 specifically governs the transfer of fixed assets accounted for at fair value by the transferee company. It may use the carrying value of that asset for GloBE purposes in all subsequent years if it would otherwise be entitled to take into account a deferred tax asset equal to the minimum rate multiplied by the difference in the local tax basis in the asset and the GloBE carrying value of the asset determined at fair value in its financial accounts.

XIV. Avoidance of Double Taxation

A. Foreign Tax Credit

1. General

Italy grants a foreign tax credit (FTC) with respect to income derived outside Italy, subject to the fulfillment of certain conditions. For both IRPEF and IRES purposes, an FTC will be granted only for final taxes that are directly paid to a foreign country. The credit may not exceed the Italian tax that would otherwise have been due on the income. A separate calculation must be made for tax paid to each country, i.e., Italy applies a per-country limitation for FTC purposes.¹¹⁷²

If the income derived abroad is only partly included in the aggregate income reported in Italy, the FTC will be reduced proportionally. FTCs are permitted up to the amount of the percentage of tax corresponding to the ratio of foreign-source income to aggregate income, net of losses carried over from prior tax periods allowed as reductions.¹¹⁷³

The basic calculation is as follows:

Foreign income	12,000
Italian income	33,000
Total income	45,000
Total foreign tax	3,840
Gross Italian tax	11,250
Foreign tax credit available	$(12,000/45,000 \times 11,250) = 3,000$

Unlike under the original rule, where aggregate income did not take into account losses carried forward from previous years, Article 165 of the TU takes losses into account. This reduces the amount of FTCs that can be used. Tax Agency Circular 9/E of March 5, 2015 specifies that:

- (i) If the amount of prior year losses is less than the amount of Italian-source income, an FTC can be taken without being reduced by the amount of the losses;
- (ii) If the losses are equal to or more than total net income, no FTC will be allowed; and
- (iii) If the losses are more than Italian-source income, the ratio of foreign-source income to total net income will be equal to one and a full FTC will be allowed.

Foreign income and tax paid is to be converted into euros at the day rate provided by the Bank of Italy. If a day rate is not available, the Bank of Italy monthly rate may be used.

As Italy's FTC system is exclusively a direct credit system, taxes paid by a subsidiary of an Italian taxpayer do not give the Italian taxpayer a right to the credit. In practice, credits are available for taxes paid by branch operations and for withholding taxes on dividends, license fees and interest received.

When identifying foreign-source income, it is important to ascertain whether there is a tax treaty between Italy and the foreign jurisdiction in question. If there is such a treaty, where the treaty allows for source-country taxation, then the treaty source rules will determine where income is to be sourced. Italy's treaties may also exempt someone who is tax resident in one treaty-partner country from source country taxation on income sourced in the other treaty-partner country. An example of this would be Article 18(2) of the Italy-United States tax treaty, which deals with social security payments. Under Article 18(2), payments made under U.S. social security legislation to a dual citizen of Italy and the United States who is resident in Italy are specifically exempted from tax in the United States and are taxable only in Italy.

Treaties may also reduce the rate of withholding tax applied to certain kinds of income.

Where there is no applicable tax treaty between Italy and the other jurisdiction concerned, the sourcing of income is determined by reference to the Italian domestic law sourcing rules provided for nonresidents in Article 23 of the TU. If income earned by a nonresident were considered to be sourced in Italy, the same income earned abroad by a resident of Italy would be considered foreign-sourced.

2. Excess Foreign Tax Credits

Excess foreign tax that is not set off against Italian tax paid on foreign-source income (including income derived from a PE) may be carried back eight years preceding the assessment year or forward for eight years following the assessment year. The excess is converted into a tax credit that may be set off against Italian tax in the preceding eight years, up to the amount of the excess on a per country basis. In other words, the tax excess credit from Country A cannot be used to offset Italian tax due on income from Country B. If there is no Italian tax in the preceding eight years against which the credit may be set off or there is excess foreign tax credit remaining after the carryback set off, the excess amount may be carried forward for eight tax years and may be used as a tax credit if there is excess Italian tax.¹¹⁷⁴

3. Availability of Foreign Tax Credits on Dividends

The use of FTCs in Italy is also affected by the domestic definition of income considered part of the taxable income base. This is income reported in a taxpayer's income tax return subject to ordinary income tax rates. For example, in Italy dividends are generally subject to withholding at source at the rate of 26% and do not form part of the taxable base in a taxpayer's return. Dividends included in a taxpayer's return are generally reported in a separate schedule (*Quadro RM*) that is used to report items subject to "separate taxation" that are not part of the taxable base. The gross amount of the dividends is subject to the flat tax of 26% in *Quadro RM* and, where the dividends are foreign-sourced, no FTC is granted for foreign tax paid on them. Moreover, in the case of an individual taxpayer, the Italian Tax Authority has consistently taken the position that the domestic rules provide that an FTC is available only with respect to foreign-source income that is part of the taxpayer's

¹¹⁷² TU, Art. 165.

¹¹⁷³ TU, Art. 165.

¹¹⁷⁴ TU, Art. 165.

er's ordinary taxable base and denied an FTC with respect to dividends subject to Italian withholding tax.

In contrast to domestic law and the interpretation of the Tax Authority, Italy's Court of Cassation has recently held in two separate cases¹¹⁷⁵ that any applicable tax treaty must first be reviewed to determine whether a recipient of foreign-source dividends should be able to claim a FTC for foreign taxes paid on the dividends. If the treaty concerned precludes the granting of a tax credit only where withholding tax is the result of a choice made by the taxpayer, when withholding tax is imposed under the relevant domestic law (as is the case with dividends) an FTC must be granted. Conversely, if the treaty explicitly precludes the granting of a credit, where even where the income concerned is subject to taxation under the domestic law of the country of residence of the recipient, an FTC will not be granted.

In contrast, foreign dividends paid into a portfolio managed through an Italian bank will benefit from an FTC. The Italian bank, as the withholding agent, will apply Italian withholding tax to the net amount, i.e., the dividend reduced by the foreign withholding tax. This effectively allows the taxpayer the benefit of the FTC.

4. Claiming Foreign Tax Credits

FTCs must be claimed in the tax return of the year in which the foreign taxes concerned were actually paid.¹¹⁷⁶ The tax form used to request the tax credit will depend on the type of tax return filed. An individual who files a Form 730 will need to attach a Quadro G to the return. A taxpayer that files either the PF or IRES corporate tax return will attach a Quadro CE to the return. If required, a taxpayer must retain a copy of the relevant foreign tax return. Alternatively, a taxpayer may make a declaration in lieu of an affidavit attesting to the foreign income and the foreign tax paid. This should be kept with the records for the tax year. Taxpayers should also keep receipts for the taxes paid.

With respect to claiming a FTC for IRAP purposes, in July 2023, Italy's Court of Cassation held in decision No. 21047/2023 that the provisions of a tax treaty relating to the granting of tax credits take precedence over domestic rules. This applies for both corporate income tax (IRES) purposes and regional income tax (IRAP) purposes, provided the IRAP is covered by the treaty in question. To the extent certain requirements are met, if an applicable tax treaty covers IRAP and includes provisions that would allow a foreign tax credit for IRAP purposes then foreign tax paid by an Italian resident entity is creditable against IRAP.

B. Tax Treaties

1. Entering into a Tax Treaty Relationship

Double taxation agreements between Italy and various foreign countries result in modification of many of the provisions of Italian tax law described above. For a list of Italy's tax

treaties and other tax-related agreements, see International Tax Treaties.

Italy has concluded numerous treaties for the avoidance of double taxation. Italy generally adheres to the periodically updated OECD Model Convention¹¹⁷⁷ and also generally follows the Vienna Convention on the Law of Treaties of May 23, 1969 (VCLT)¹¹⁷⁸ in its negotiation, authentication and interpretation of tax treaties.

The procedure for concluding a bilateral tax treaty begins with a feasibility study to assess the political and economic expediency of entering into such a treaty with the country concerned. Because a series of diplomatic contacts is involved, the feasibility study falls within purview of the Ministry of Foreign Affairs. Once political and economic expediency has been ascertained, responsibility passes to the tax administration, which liaises with its counterpart in the other country to assess the technical feasibility of the treaty.

During these initial meetings, an exchange of draft agreements takes place, in which both tax administrations highlight their preferences for the tax treatment to be given to various categories of income and, possibly, assets. A draft is then provided to experts within the tax administration for review. If none of the draft provisions are significantly incompatible with the Italian and EU legal systems, the General Directorate of International Relations at the Ministry of Economy and Finance and a diplomatic representative will begin formal negotiations.

Once formal negotiations begin, one of the two country drafts is taken as a starting point; articles will be reviewed amended, and approved one at a time until the final treaty is drafted and initialed by the heads of the delegation (referred to as "*parafattura*" or "authentication").

The authenticated text is submitted to the Minister of Economy and Finance for signature and then to the Parliament for ratification. However, a tax treaty does not enter into force on the enactment of the ratifying law; entry into force requires the exchange of instruments of ratification, which consists of an exchange, through official diplomatic channels, of the details of the respective ratification laws.

2. Unilateral Suspension of a Tax Treaty by a Partner

Italy has recently introduced new rules to handle the unilateral suspension of double taxation treaties by a contracting state. Italy can now apply a corrective measure to restore tax symmetry when the other contracting party has suspended the provisions of a tax treaty. Thus, if a contracting state unilaterally suspends treaty provisions, Italy is entitled to suspend corresponding provisions within its own legal system. The suspension by Italy will be communicated through diplomatic channels and published in Italy's Official Gazette. The suspension measures will be designed to mirror the commencement, extent (full or partial), and duration of the contracting state's actions. During the suspension period outbound income flows (such as dividends, interest, or royalties) from Italy to residents of the affected state are subject to full domestic withholding tax rates

¹¹⁷⁵ Case nos. 25698/2022 and 10204/2024.

¹¹⁷⁶ TU, Art. 165, as amended by D. Lgs. No. 344, December 12, 2003, Art. 1, point 1, and by D. Lgs. No. 247, November 18, 2005, Art. 11 (1), and as further amended by D. Lgs. No. 147, September 14, 2015. See also Circular No. 9/E, March 5, 2015.

¹¹⁷⁷ Current and past editions of the OECD Model Tax Convention on Income and on Capital are available on the Bloomberg Tax platform: https://www.bloomberglaw.com/product/tax/page/model_treaties.

¹¹⁷⁸ Vienna Convention on the Law of Treaties of 1969. Adopted and opened for signature on May 23, 1969. Entered in force on January 17, 1980.

instead of treaty-reduced rates. Thus, for example, dividends paid to non-residents are typically subject to a 26% domestic withholding tax.¹¹⁷⁹

3. Administrative Measures Dealing with Tax Treaty Provisions

The Mutual Agreement Procedure (MAP) is an instrument designed to resolve international tax disputes when a party considers that the actions of one or both contracting states' tax administrations result or will result in taxation that is not in accordance with the provisions of the applicable tax treaty. To this end, the MAP allows the designated competent authorities of the contracting states to interact in order to resolve the dispute.

A MAP can be initiated under a tax treaty in force between Italy and a treaty partner. The essential feature of a MAP is that it requires the competent authorities concerned to endeavor to eliminate, by mutual agreement, taxation that is not in accordance with the treaty provisions. A MAP can also be initiated under the European Arbitration Convention 90/436/EEC on the elimination of double taxation in connection with the adjustment of profits of associated enterprises. The scope of the European Arbitration Convention 90/436/EEC is limited to transfer pricing cases and the attribution of profits to a permanent establishment (PE).¹¹⁸⁰

Because of the difficulty in accessing the MAP and the absence of a requirement for the competent authorities to reach an agreement, the European Union created the Dispute Resolution Mechanism (DRM), which Italy implemented.¹¹⁸¹ The DRM is a binding procedure that can be used to resolve disputes between EU Member States in the areas of: transfer pricing; the tax residence of individuals, companies and other entities; hidden PEs; quantification of foreign tax liabilities under a tax treaty to allow the taxpayer concerned to benefit from foreign tax credits, for example, under Article 165 of the Italian Consolidated Income Tax Law (TUIR); and beneficial ownership status in connection with dividends, interest, and royalties.

A taxpayer can submit a complaint in order to access the DRM procedure, whether or not it has recourse to remedies available under the domestic law of any of the Member States concerned. The DRM procedure applies to MAPs filed on or after July 1, 2019, and relating to tax periods commencing on or after January 1, 2018.

4. Treaty Interpretation

Italy's general approach to interpreting treaty provisions is to apply the principles of Articles 31–33 of the Vienna Convention of 1969. Article 31 provides that “a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.” This means that an interpretation will not only comprise the text of the treaty with its preamble and annexes but also: (i) any agreement relating to the treaty made between the parties in connection with the

conclusion of the treaty; and (ii) any instrument drawn up by one or both of the parties in connection with the conclusion of the treaty and, if applicable, accepted by the other party as an instrument related to the treaty. Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions, any subsequent practice in the application of the treaty that establishes the agreement of the parties regarding its interpretation and any relevant rules of international law applicable in the relations between the parties are to be taken into account. Special meanings are to be given to terms if it is established that the parties so intended.

Article 32 provides that if, when applying the interpretation principles above, the meaning is manifestly absurd or obscure, recourse may be had to supplementary means of interpretation, including using the preparatory work with respect to the treaty (*travaux préparatoires*) and the circumstances of its conclusion, in order to determine the meaning.

Article 33 provides that when a treaty is authenticated in more than one language each text is to be considered equally authoritative, unless the treaty provides differently. An example of such a clause can be found in the 1999 Italy-United States tax treaty: “DONE at Washington, in duplicate, in the English and Italian languages, the two texts having equal authenticity, this twenty-fifth day of August, 1999.”

Since Italy follows the OECD Model Convention, its tax treaties will generally contain a Definitions Article, such as Article 3 of the 1999 Italy-United States tax treaty. The Definitions Article will generally contain a provision regarding undefined terms. The OECD Model provision addressing undefined terms provides that:

... any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a different meaning pursuant to the provisions of [the MAP Article], have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.¹¹⁸²

While Italy generally adheres to the principle of the primacy of a tax treaty provision over its domestic law, in cases where its domestic tax law is more favorable than the treaty position, Article 169 of the TUIR expressly provides that the domestic law will prevail.

C. 1999 Italy-United States Tax Treaty

The 1999 Italy-U.S. tax treaty entered into force on December 16, 2009, and into general effect on January 1, 2010 (February 1, 2010, for withholding taxes), replacing the 1984 tax treaty. The 1999 treaty and accompanying protocol were signed on August 25, 1999, and were ratified by the U.S. Senate on November 5, 1999, subject to a reservation, a declaration, an understanding, and a proviso. The treaty was also ratified by the Italian government.¹¹⁸³ The main provisions of the 1999 treaty are discussed in 1. to 12., below.

¹¹⁷⁹ D. Lgs. No. 192, Dec. 18, 2025, Art. 10.

¹¹⁸⁰ The Italian Tax Agency, *Mutual Agreement Procedure (MAP)*, <https://www.agenziaentrate.gov.it/portale/web/english/nse/individuals/double-taxation-relief/mutual-agreement-procedure>.

¹¹⁸¹ Legislative Decree No. 49, Jun. 10, 2020, implementing EU Directive 2017/1852.

¹¹⁸² OECD Model Convention [as it read on 21 November 2017], Art. 3(2).

¹¹⁸³ See the Worksheets.

1. Taxes Covered

The 1999 Italy-U.S. tax treaty covers all income taxes, with the exception of income taxes levied by the states of the United States. Unlike the 1984 Italy-U.S. tax treaty, the 1999 treaty also covers the regional tax on productive activities (*imposta regionale sulle attività produttive* or IRAP). IRAP was enacted in 1998 to replace the local income tax (*imposta locale sui redditi* or ILOR). IRAP, which is a tax based on production, was not considered substantially similar to ILOR and therefore not creditable under the 1984 treaty. To provide temporary relief to taxpayers, the competent authorities of the two countries had agreed that a portion of IRAP paid or accrued should be allowed as a credit against U.S. income tax.

Under the 1999 Italy-U.S. tax treaty, that portion of IRAP that relates to the taxation of a taxpayer's business profits is now covered. Under paragraph 2(c) of Article 23 of the 1999 treaty, the portion covered is calculated as follows:

$$\text{portion considered under subpara. 2(c)} = \text{Applicable ratio} \times \text{total amount of IRAP paid or accrued}$$

The “applicable ratio” is calculated as follows:

$$\text{applicable ratio} = \frac{\text{adjusted base}}{\text{total tax base upon which IRAP is actually imposed}}$$

The “adjusted base” equals the greater of:

- (i) Zero; or
- (ii) The total tax base upon which IRAP is actually imposed, less the total amount of labor and interest expense not otherwise taken into account in determining the total tax base upon which IRAP is actually imposed.

The U.S. personal holding company and accumulated earnings taxes are added to the taxes that were already covered by the 1984 Italy-U.S. tax treaty.

2. Permanent Establishment

The 1999 Italy-U.S. tax treaty provides a definition of permanent establishment (PE) substantially similar to that in the Organisation for Economic Cooperation and Development (OECD) Model Convention. However, there are some differences between the two definitions. For example, under the 1999 treaty, drilling rigs and research vessels are deemed to be PEs only if they remain in a Contracting State for a 12-month period.

3. Business Profits

Under the 1999 Italy-U.S. tax treaty, business profits of a PE of an enterprise of one state in the other state may be taxed by the other state on a net basis and only on the income attributable to the PE. Profits attributable to a PE may be from sources within or without the Contracting State.

4. Shipping and Air Transport

Like Article 8 of the 1984 Italy-U.S. tax treaty, the 1999 treaty contains the usual provision to the effect that profits of an enterprise of a state from the operation in international traffic of ships or aircraft will be taxable only in that state. However, paragraph 6 of Article 1 of the Protocol states that:

For purposes of Article 8 of the Convention, and notwithstanding any other provision of the Convention, profits which a national of the United States not resident in Italy or a United States corporation derives from operating ships documented or aircraft registered under the laws of the United States shall be exempt from tax in Italy.

Paragraph 7 of Article 1 of the Protocol specifies that profits from containers and the rental of ships and aircraft are profits from the operation of ships and aircraft.

Profits from rentals on a bareboat basis of ships or aircraft, when not incidental to other profits from the operation of ships or aircraft in international traffic, are taxed as royalties under Article 12 of the 1999 treaty.

5. Dividends

The standard rate of withholding tax under the 1999 Italy-United States tax treaty is 15%.¹¹⁸⁴ This is reduced to 5% if the beneficial owner is a company that has owned more than 25% of the voting stock of the paying company for the 12-month period ending on the date on which the dividend is declared. 50% ownership was required for a reduction under the 1984 treaty.

In the event that dividends are subjected to withholding tax in excess of the amount provided for in the 1999 Italy-U.S. tax treaty, the effect of the treaty rate limitation can be achieved by a refund. It is already settled practice in Italy that treaty terms can be achieved by reduced withholding at the time of the payment of the dividend, subject to proper documentation, thus avoiding the need for a refund.¹¹⁸⁵ Exceptions to the above general rules exist with respect to government-owned financial entities holding less than 25% of voting shares, which are granted full source exemption, and U.S. regulated investment companies (RICs) and real estate investment trusts (REITs). A RIC can qualify for the 50% reduction, while a REIT is held to the normal 30% U.S. withholding level, unless certain criteria are met.

Article 10(9) of the Italy-U.S. tax treaty introduces new provisions following the U.S. Model Tax Treaty of 1996 to prevent, in the case of a RIC, eligibility for the use of the 5% reduced withholding rate, although the treaty does allow it to qualify for the 15% rate. REITs, however, are denied both the 5% and 15% rates. Thus, dividends from REITs will generally

¹¹⁸⁴ The Supreme Court of Cassation, in a recent case in which U.S. mutual funds filed refund claims for the difference between the treaty dividend withholding rate of 15% and the Italian statutory withholding rate of 12.5% for Italian investment funds, found that the taxpayers were due refunds on the difference. The Court held that despite the fact the taxpayers were not resident in the European Union, the right to the free movement of capital (as set out in Treaty on the Functioning of the European Union (TFEU), Art. 63) was nonetheless applicable and that applying the higher treaty rate would be a restriction on this right. Supreme Court of Cassation Nos. 21454, 21475, 21479, 21480, 21481, and 21482, July 6, 2022.

¹¹⁸⁵ Circ. Min., March 25, 1981, No. 7/12/345.

be taxed at the 30% rate. However, the dividend may be taxed at the 15% rate where the beneficial owner of the dividend satisfies one of the following conditions:

- (i) The beneficial owner is an individual who does not hold more than a 10% interest in a REIT;
- (ii) The dividend is paid with respect to a class of stock that is publicly traded and the beneficial owner of the dividend is a person holding an interest of not more than 5% of any class of the REIT stock; or
- (iii) The beneficial owner of the dividend is a person holding an interest of not more than 10% of the REIT and the REIT is diversified.

6. Interest

Article 11 of the 1999 Italy-U.S. tax treaty limits the tax on interest paid to a resident of the other Contracting State to 10%; the 1984 treaty had limited the tax on interest to 15%.

Interest on extended payments with respect to the supply of goods, services and industrial equipment is now exempt from withholding tax. This is the Italian domestic rule, but whereas such interest is ordinary income in the hands of a resident, it is totally untaxed when received by a nonresident that does not have a PE in Italy.

7. Royalties

While the 1984 Italy-U.S. tax treaty provided for three separate categories and rates of royalties, the 1999 treaty completely excludes the taxation of payments with respect to the use of or the granting of the right to use copyrights of literary, artistic or scientific works.

A tax of 5% can be levied on the use of or the right to use software or industrial, commercial or scientific equipment. In all other cases, including the most frequent types of leasing and other temporary use arrangements, the withholding rate is 8%.

8. Capital Gains

The 1999 Italy-U.S. tax treaty preserves the nonexclusive right of the state of source to tax gains attributable to transfers of real property located in that state. It also regulates the taxation of certain gains from the sale of movable property forming part of business property of a PE or fixed base, including the sale of the PE or fixed base. These gains may be taxed in the state where the PE or fixed base is located.

9. Correlative Adjustment Procedure

The principle of correlative adjustment follows from the OECD Model Convention and addresses cases in which one

of the Contracting States, in determining arm's length pricing, taxes profits that have already been subjected to taxation in the other state. If the other state agrees to the adjustment, it must make a correlative adjustment.¹¹⁸⁶ In this connection, the other provisions of the treaty must be taken into account, especially the mutual agreement procedure. The 1999 Italy-U.S. tax treaty covers all situations envisaged in the OECD Model Convention, while the 1984 treaty covered only two. The 1999 treaty also contains a provision in Article 25(5) for arbitration should both nations and the taxpayer agree to be bound. However, either country or the taxpayer can refuse arbitration. This provision is in sharp contrast to the EU provision, which makes arbitration obligatory.¹¹⁸⁷

10. Branch Profits Tax

The U.S. branch profits tax imposes on the remission of branch profits a treatment equivalent to that applying to the distribution of dividends.

In keeping with recent U.S. tax treaties, the 1999 Italy-U.S. tax treaty provides in Article 10(6) that a branch may be subjected to taxation additional to that envisaged by the other provisions of the treaty. It goes on to define the taxable profits with respect to which an Italian corporation can be subject to U.S. branch profits tax, limiting them to profits produced by a PE or deriving from real property or capital investment. Tax is withheld at the rate of 5%. It appears that, in contrast to the position under other recent U.S. treaties, there is no temporal limitation on taxability, and thus profits accumulated prior to the effective date of the 1999 treaty can be subjected to taxation.

11. Government Entities

Article 10(8) of the 1999 Italy-U.S. tax treaty provides that dividends distributed to a recognized government entity holding less than 25% of the voting shares of the distributing company can only be taxed in the state of residence of the recipient.

12. Treaty Shopping and Avoidance

There are specific anti-avoidance provisions in the articles of the 1999 Italy-U.S. tax treaty dealing with dividends, interest, royalties, and miscellaneous income. Generally, these provide that the terms of these articles are not to apply if one of the principal purposes of the transaction in question is to obtain the benefit of the relevant treaty article. The inclusion of these provisions is based on the substance over form. These clauses have not been used in the past in Italy's tax treaties.

¹¹⁸⁶ OECD Model Convention, Art. 9(2).

¹¹⁸⁷ 90/436/EEC.

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Worksheet 11	Withholding Agent Return Form 770. Available at: https://www.agenziaentrate.gov.it/portale/770-2026/modello-e-istruzioni .
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Worksheet 13	Tax Payment Form F24. Available at: https://www.agenziaentrate.gov.it/portale/schede/pagamenti/f24/modello-e-istruzioni-f24 .

Working Papers for this Portfolio can be found at <https://bloombergtax.com>.

Additional Resources

- For further information in English, refer to the Italian Revenue Agency website at: <https://www.agenziaentrate.gov.it/portale/web/english/nse/>.
- Country-specific tax forms are also available at **International Tax Forms**.