



COMMERCIAL LAW GROUP ITALIA

DOING BUSINESS IN ITALY



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Contents

DOING BUSINESS IN ITALY	3
INVESTMENTS IN ITALY	3
Starting a business by establishing an Italian company	3
Società per Azioni (S.p.A.).....	4
Società a responsabilità limitata (S.r.l.)	5
Starting a business by opening a branch	7
Starting a business by opening a representative office	7
Italy's Real Estate Law	8
Property Categories.....	8
Possession and Detention of Real Estate	8
Purchasing Real Estate.....	9
Due diligence	10
Intellectual and Industrial Property Rights.....	10
Italy's Tax System	11
Taxes and Withholdings	11
Municipal Property Tax Municipal Property Tax (IMU).....	12
Inheritance Tax	12
Donor's Tax.....	12
Taxation on Corporations Resident in Italy	12
Trusts	13
Taxable income.....	13
Taxpayer Requirements.....	15
Italy's Labour Law	15
Working Time	15
Absence from Work.....	15
Work contract termination.....	15
Social Security & Assistance	16
Workplace Safety.....	17
Living in Italy	17
Visitors, Work Permits and Residency.....	17
Healthcare	18

DOING BUSINESS IN ITALY

INVESTMENTS IN ITALY

In principle, foreign investors wishing to start up a new business in Italy may operate subject to conditions of treatment reciprocity, i.e. when a similar right is granted to Italian investors operating in the State of origin of the concerned foreign investor. Verification of such treatment reciprocity prior to starting a business in Italy is not necessary whereby the foreign investor:

- Is a citizen of a Member State of the European Union or is a citizen of one of the States of the European Economic Area (i.e. Iceland, Liechtenstein, and Norway)
- Is a citizen of a country holding a specific international agreement with Italy - i.e. agreement governing international investment, treaty of friendship and trade, or other such agreements

Starting a business Foreign investors can set up a business activity in Italy by:

- Establishing as a Sole Trader
- Establishing an Italian company
- Establishing a secondary (registered) office or branch of a foreign company
- Opening a representative office of a foreign company.

Further details on the above options are provided on the following pages.

Starting a business by establishing an Italian company

Italy's corporate law primarily differentiates between:

Partnership •

Partnerships, generally characterised by:

- Unlimited joint and several liability of partners for company obligations, hence all partners' current and future assets secure such obligations
- Each partner is a director of the company with administrative powers
- Non-transferability, either inter vivos or mortis causa, of the partner status except whereby authorised by all other partners; And

Corporations •

Corporations, generally characterised by:

- Legal personality, autonomous from company owners' personality

- Limited liability for company owners, i.e. each owner's liability is limited to the cash or assets he/she has contributed to the company
- Separation of ownership and administrative powers; hence company owners are not necessarily also company directors, and directors are not necessarily company owners
- Ownership as freely transferable, either inter vivos or mortis causa.

Limited liability company

The most widespread types of companies in Italy are: Società per Azioni – S.p.A. (joint stock company – JSC) and Società a responsabilità limitata – S.r.l. (corporation with shareholders whose liability is limited by shares – Ltd).

Both types of companies are to be established via a Memorandum of Association – either a unilateral instrument (whereby there is one founder only) or a contract (in the case of multiple founders). The document is complemented with the Articles of Association (or By-Laws) of the company, i.e. the set of rules governing the company's operations through its existence.

Società per Azioni (S.p.A.)

General description

A Società per Azioni (namely a joint stock company - JSC) is the primary form of corporation, i.e. it best meets the needs of enterprises requiring significant capital.

Share capital and shares S.p.A. share capital may not be lower than € 120,000.00, and is divided into "shares".

The share capital amount is determined at the moment the S.p.A. is founded and shall be subscribed by those establishing the company. In the event of a single founder, one subscription only will therefore exist; in the event of multiple founders, all shall subscribe (varying) portions of share capital until the whole capital has been subscribed.

Via capital subscription, each owner (or shareholder) undertakes to pay the share of capital subscribed upon execution of the Memorandum of Association. Payment can take place either by transferring a sum of money to the S.p.A. (to its cashier or onto a current account in the company's name) or, whereby expressly provided in the Memorandum of Association, via payment in kind or transfer of receivables, whose value shall be equal to the amount of capital subscribed.

In the case of multiple founding shareholders, those paying the capital subscription in cash are not required to pay the entire amount of their share(s) upfront. They are entitled to deposit 25% initially and agree to pay the remaining 75% at a subsequent date consistently with the administrative body's (i.e. board of directors) request.

Conversely, whereby paid in kind or via transfer of receivables, the share capital is to be paid in its entirety.

In the event of a single founder, he/she shall pay the entire share capital subscription up front, regardless of whether payment is in cash or kind (i.e. goods or receivables).

Any share premium the founding shareholders might wish to pay for the shares shall be paid in its entirety upon S.p.A. establishment.

Once the Memorandum of Association has been filed with the competent Business Register and the S.p.A. company has thereby been listed, shares representing its own share capital may then be issued.

Shares can either be:

- "Material", i.e. physical securities issued by the company. As per specific laws, such securities shall be registered (i.e. bear the name of their holder/s); or

- “Immaterial”, i.e. they shall still be registered; nevertheless, the methods of validation and circulation will be defined by the Articles of Association of the issuing company.

Generally speaking, shares shall all be of equal value and provide their holders with equal rights. However, either at the time the S.p.A. is established or subsequently, different categories of shares to which different rights are attached may be created (e.g. preference shares with priority in earnings distribution, postponement of losses, or in the event of company liquidation; shares with limited voting rights; shares in favour of employees; redeemed shares; shares with ancillary rights; tracking stocks; redeemable shares; savings shares, and so on).

Administrative body

The administrative body is responsible for company management. In performing ordinary and extraordinary management tasks, it is not bound to seek approval from shareholders for its actions, except for corporate administration acts expressly subject to shareholders’ approval as by law. As a result, the administrative body may legitimately reject any unwarranted intervention by shareholders and ignore related directives or instructions in discharging the obligations expressly defined by law or by the Articles of Association or when pursuing the company’s interests with due diligence.

Shareholders may however revoke the appointment of administrative body members who fail to pursue company’s interests, as well as initiate legal action against them in specified circumstances.

The administrative body composition depends on the company’s corporate governance model (see the following section).

Control body

The control body is responsible for overseeing company management and/or auditing its accounts, although the latter may also be entrusted to an independent auditing firm. In any event, the control body composition depends on the corporate governance model adopted by the company (see the following section).

Società a responsabilità limitata (S.r.l.)

General description

A Società a responsabilità limitata (S.r.l.) – i.e. private limited liability company (Ltd) – has a much more streamlined corporate structure than an S.p.A., particularly due to the broader freedom that Italian law grants to the founding shareholder(s) in establishing its functioning, organisation and other features and adapting them to their specific needs. Indeed, the Memorandum and Articles of Association may derogate from much of the legislation governing an S.r.l.

Capital and capital shares S.r.l. capital may not be lower than € 10,000.00 and is divided into “shares”. The amount of capital is determined at the time the S.r.l. is established and (likewise S.p.A.s) shall be subscribed in its entirety by founding shareholder(s).

Equally to S.p.A.s, in the case of multiple founders, those paying the subscription of capital in cash are not required to pay the entire amount of their share up front; they may deposit 25% initially and agree to pay the remaining 75% at a subsequent date compliantly with the administrative body’s request. Conversely, sole shareholders are required to pay their capital contribution in its entirety, likewise shareholders intending to make payment in kind or via transfer of receivables.

Any premium on shares shall always be fully paid up front.

Unlike S.p.A.s, shareholders may also contribute the value of services provided to an S.r.l. by one or more of them. The subscribed capital shall be paid in its entirety by those shareholders electing to contribute the value of services provided; such contribution shall take the guise of a formal undertaking by the shareholder(s) to provide such services to the S.r.l.

Each S.r.l. shareholder holds only one share, which represents a varying portion of subscribed capital. In the case of sole shareholder, his/her share represents the whole capital.

Unless otherwise specified in the Memorandum of Association, the value of each share is calculated proportionately to the value of the shareholder's contribution to the company, and his/her rights (e.g. voting rights, and the right to share in profits) are also proportionate. For instance, if a shareholder holds 60% of an S.r.l. capital, he/she is the owner of a share equal to 60% of total capital, is entitled to 60% of the company's earnings, and his/her vote represents 60% of the quorum required for passing shareholders' resolutions.

Nevertheless, shareholders may establish – either in the Memorandum of Association or, subsequently, in the Articles of Association – shares not proportionate to the value of the contribution to the company, and may also establish special rights for specific shareholders.

Corporate bodies and Shareholders' Meeting governance.

Shareholders may take decisions provided for by law or company's Articles of Association in the collegial manner typical of Shareholders' Meetings. However, the Articles of Association may also provide for such decisions (unless related to specified matters) to be taken through more streamlined procedures, such as written consultation or written consent.

In an S.r.l., no distinction is drawn between ordinary and extraordinary Shareholders' Meetings. The law establishes one quorum for convening meetings and one for passing resolutions, with meetings being called only once. Nevertheless, the Articles of Association may provide for meetings to be reconvened, electing to abide by the rules governing an S.p.A. as to quorums. For an S.r.l., the procedures for convening a Shareholders' Meeting are much less formal (i.e. by fax or e-mail); nevertheless, the minutes recording shareholders' resolutions are to be drawn up by an ad-hoc notary exclusively when amendments to the Articles of Association are entailed. Finally, plenary Shareholders' Meetings (see section on S.p.A.s) for S.r.l.s are considered validly convened whereby - in addition to the requirement for the whole capital to be represented – all shareholders and members of the Board of Auditors are present or those absent have been duly informed and no objection has been raised on the items set on the agenda.

As mentioned - with the exception of specified issues - shareholders may take decisions through written consultation or written consent, compliantly with the company's Articles of Association. Generally speaking, within a written consultation procedure, shareholders vote in writing upon the proposal being presented; on the contrary, within the written consent procedure, the document containing the proposal is distributed among shareholders, who then sign the document whereby they approve it.

Management body

Unless otherwise specified in the Articles of Association, S.r.l. administration is entrusted to one or more shareholders appointed by the shareholders themselves. As such, an S.r.l. may be administered by a Sole Director or by multiple Directors. In the latter case, the company may adopt one of the following administration systems:

- Board of Directors – The Board acts similarly to an S.p.A. Board of Directors. Moreover S.r.l. Articles of Association may specify that Board resolutions shall be approved by written consultation or written consent. Likewise S.p.A.s, the Board of Directors of an S.r.l. may also delegate specific powers to a Managing Director.
- Several Administrators – Management is entrusted to multiple directors acting individually with the exception of specified matters (i.e. preparation of financial statements, mergers, spin-offs, capital increases delegated by Shareholders' Meeting to management body) requiring decisions to be made collectively.
- Joint Administration - Management is entrusted to multiple directors who decide company operations unanimously. The requirement for joint administration may also be restricted to specific directors only.

The Articles of Association may establish that multiple administration systems be used, each for a specific set of issues for which the administrative body is called upon to decide. In any event, all directors' decisions shall be documented in a dedicated file.

Control Body

S.r.l. tasks such as management control and accounts auditing are entrusted to the Board of Auditors compliantly with the same procedures established for S.p.A.

Control Body is not mandatory, except under the following circumstances:

- Capital is equal to or greater than € 120,000.00
- At least two of the following thresholds are exceeded in two consecutive financial years:
 - Total assets equal to € 4,400,000.00
 - Revenues from sales and services equal to € 8,800,000.00
 - Average of 50 employees over the year.

If the Board of Auditors is appointed after such thresholds have been exceeded, the requirement to maintain the Board elapses if the two of the above thresholds are not exceeded in two consecutive financial years.

Starting a business by opening a branch

Foreign company branches are separate – though not legally autonomous – units of the company itself. They enjoy organisational autonomy and decision-making authority delegated from the company head office.

An Italian branch of foreign company enables the company to operate in Italy with a more streamlined, cost-effective structure than if a full subsidiary were established in the Country. Furthermore, a foreign company can utilise a branch to conduct the same business in Italy as abroad – impossible whereby the foreign company were merely to open a representative office, unable to conduct any direct production-related activities.

As far as internal organisation is concerned, we need differentiate between a branch proper and a secondary (registered) office.

Secondary office

A foreign company secondary office is usually managed and represented by a permanent company representative having general power of attorney (known as an “institore”, as invested with a “procura institoria”), who conducts business for the secondary office on behalf of the company and handles its external relations in the Country.

Branch Proper

Conversely, a branch proper – at least in principle – is administered and legally represented by the administrative body and legal representative of the foreign company, although, in practice, companies frequently appoint a local manager (institore) to run the branch. For tax purposes, both secondary offices and branches are considered as permanent establishments and are therefore subject to taxation. They shall thus keep their own books, submit VAT and income tax returns to tax authorities (Revenue Agency) each year, and file the annual report of the foreign company with the relevant Chamber of Commerce.

Starting a business by opening a representative office

Whereby a foreign company wishes to get a feel for the Italian market before locating a business or aim to promote its business, a representative office may be opened in Italy.

Current Italian legislation does not provide an official definition of “representative office”. It is therefore standard practice to refer to the OECD Model Convention so as to avoid double taxation and prevent tax evasion.

It is also standard interpretative practice to distinguish between a “mere” representative office and a representative office that does not merely perform representation functions.

What is a “mere” representative office?

It is the fixed place of business of a foreign company in Italy engaged only and exclusively in marketing and promotional activities, or scientific or market research, or other information gathering activities. In other words, a “mere” representative office merely plays an auxiliary or preparatory role for the foreign company to enter the Italian market, and may not conduct production-related or commercial activities.

As such, for tax purposes, a “mere” representative office is not considered a “permanent establishment” of the foreign company and is therefore not subject to taxation. Accordingly, such an office is not required to keep books, publish financial statements or file income tax or VAT returns. It is, however, required to maintain ordinary accounts in order to document expenses (e.g. personnel costs, office equipment, etc.) to be covered by the foreign company’s head office.

Italy’s Real Estate Law

Property Categories

Property is intended as items/assets over which rights may be exercised. It is essential to differentiate among the following categories:

- Real estate (or real property - immovable assets): land (including water sources and water courses) and all items annexed to the soil either naturally (e.g. trees) or artificially (e.g. buildings).
- Personal property (movable assets): all property assets other than real estate
- Registered personal property: personal property assets recorded in ad-hoc registers (e.g. ships recorded in the Italian shipping register – RINA, Registro Italiano Navale; or automobiles recorded in the Italian automobile public register – PRA, Pubblico Registro Automobilistico).

Possession and Detention of Real Estate

A natural or legal person may exercise the following rights over property assets:

- Possession - The power exercised over the property asset is such as to exclude a third party from exercising an analogous power
- Mere detention - Use of the property asset by one party, while recognising that other parties exert property rights.

Possession for a natural or legal person may consist of one of the following categories of real rights under civil law:

- Ownership right
- Right of enjoyment of the property owned by another party. The category includes:
 - Superficie (Superficies) – Limited right of ownership under which a person may build and own works above or below the ground level, which remain the property of another party (“nuda proprietà”)
 - Enfiteusi (Emphyteusis) – A party has the same power of enjoyment of real estate assets (usually for agricultural use) as the owner; nevertheless the rightholder has the obligation to improve the land and pay the owner a periodic rent
 - Usufrutto (Usufruct) – Right to enjoy real estate assets owned by another party, retaining any property product with an obligation to preserve its original intended use
 - Uso e Abitazione (Use and Habitation) – Limited usufruct. Specifically: “Use” consists in the right to use another party’s property and, whereby productive, to gather the fruits to the extent necessary for the needs of the

rightholder and his/her family; “Habitation” consists in the right to inhabit a building owned by another party within the limits of the needs of the rightholder and his/her family

- *Servitù Prediale (Praedial Servitude)* – Encumbrance on land (“servient tenement”) for the utility of other land (“dominant tenement”) belonging to a different owner. For instance, a right of way entitles the owner of the dominant tenement to pass over the servient tenement, and the latter owner is not entitled to prevent it.

On the other hand, a natural or legal person enjoys mere detention of real property assets in the following cases:

- *Comodato (Gratuitous Use)* – Contract under which one party (comodante) delivers to another party (“comodatario”) an asset/property for a specified time or use, with the obligation to return it but with no due payment of any consideration
- *Locazione (Rental)* – Contract under which one party (locatore) undertakes to allow another party (conduttore) to use a given property assets for a specified period of time against payment of consideration
- *Affitto (Rental of productive property)* – Type of rental where the contract scope consists in productive property asset enjoyment (e.g. factory or business). In such case, the person enjoying the asset (affittuario) shall manage the property in accordance with its economic intended use, also enjoying the products and other benefits deriving from the property against payment of consideration
- *Leasing* – Contract under which one party (lessor) grants the enjoyment of a property asset to another party (lessee) for a certain period of time in exchange of periodic payments. At the agreed termination date, the lessee may (pursuant to contract terms) either:
 - Surrender the property
 - Continue to enjoy the property, paying a reduced fee
 - Request property replacement, or
 - Become owner of the property asset upon payment of a price lower than the amount paid had the lessee not already enjoyed the property.

Two types of leasing arrangements are applied:

- *Finance leases* - A trilateral relationship involving the “lessor” (a company acting as financial intermediary), the “lessee” (utilising the asset) and the producer of the leased asset - *Operating leases* - The lessor is also the asset producer. The lease payment usually covers additional services such as assistance, maintenance and insurance.

Real estate assets may be possessed or detained by a single natural or legal person or by a number of persons. Whereby a number of persons are property coowners or co-holders of real right of enjoyment of assets, common ownership (comunione) occurs and, as a result, ad-hoc rules – having a common root – apply: the right of each participant may be exercised only to the extent of the proportion specifically attributable to him/her, even though participants have invested in the asset as a whole.

Purchasing Real Estate

Property acquisition methods

Agreements to sell real estate assets or establish real rights of enjoyment thereof shall be in writing. Such instruments are enforceable against third parties once they have been recorded in local real estate registers.

Due diligence

Whereby a real estate transaction is undertaken, several factors shall be considered, varying consistently with the specific transaction type and item.

Among major factors:

- Cadastral Registration – Check the property is recorded in cadastral registers, which also contain tax information on the asset
- Encumbrances – Check whether any encumbrance is set on the property (notably, mortgages, easements and other restrictive covenants) via title search of real estate registers
- Land and urban-planning intended use certification – Check the intended use of the property assets as established by the competent municipality. Inter vivos acts for transfer of real rights on real estate assets covering at least 5,000 square metres of land are null and void if stipulated without the land and urban-planning intended use certification. Any subsequent change to the intended use of the asset requires ad-hoc prior authorisation
- Building permits – Verify with or request from the competent authority the building permits required for:
 - Constructing new buildings
 - Changing the intended use of existing buildings
 - Carrying out renovation work that modifies constituent elements of a building.

For other types of works (usually inside buildings), no prior authorisation is required, provided that the competent local authorities are notified of the start of- work date.

- Environmental issues – Check whether pollution-related problems exist with the property. Whereby pollution levels exceed legally allowed limits, the owner, the holder of the real rights for the polluted area and/or the polluter shall bear all the costs of reclaiming the polluted site or implementing safety measures aimed at eliminating future pollution threat. Reclamation shall be carried out in accordance with administrative procedures under competent authorities' oversight. Failure to implement the reclamation plan may be punishable with an administrative penalty and result in criminal liability
- Pre-emption right by MIBAC – Ministero per i Beni e le Attività Culturali (Italy's Ministry for Cultural Heritage) – Check whether historic building restrictions or archaeological restrictions are set on the real estate asset. MIBAC holds pre-emption right in the event of sale (or contribution of assets to companies) of properties located in Italy and having historic/archaeological value. In such cases, the relevant deed shall be filed (by the seller, except in specified cases) with MIBAC within 30 days. MIBAC may exercise its pre-emption right within 60 days from the filing date.

Intellectual and Industrial Property Rights

A Secure Setting for Innovation

Foreign companies investing in the Italian market can rely on the same legal protection of Intellectual Property Rights (IPR) granted to Italian companies, and covering all the key areas (patents, trademarks, copyright and designs) that foreign companies are used to enjoying in their home countries. The foundations of this legal certainty rest on Italy's membership of and respect for all the leading international agreements/treaties on IPR.

As a founding member of the European Union, Italy is at the forefront of European IPR developments and provides some of the most modern and up-to-date intellectual property practices in the world. Recently introduced innovations include new measures to combat counterfeiting, protection for internet-related intellectual property rights, merging and simplifying patent and trademark rules, and the advent of online filing options for applications.

Italy's Tax System

Italy's corporate taxation system in recent years underwent a major reform, with subsequent additional amendments.

The main features of the new tax system are:

- Reduction of corporate income tax rate (IRES) to 27.50%
- Partial exemption (95%) of capital gains on the sale of equity investments in companies registered either in Italy or abroad (so-called "Participation Exemption")
- Abolition of tax credit system for dividends and introduction of partial tax exemption (95%) of dividends from equity investments in companies registered either in Italy or abroad
- Introduction of a ceiling on the interest expense deductibility equal to 30% of the gross operating income of industrial or commercial companies
- Introduction of a ceiling on interest expense deductibility for financial companies (96%)
- Introduction of a group taxation mechanism under which Italian and foreign companies belonging to the same group may compute a single taxable income for the parent company resident in Italy
- Tax exemption of capital gains reinvested in start-ups.

Taxes and Withholdings

Direct Taxes

Individual Income Tax Individual Income Tax (IRPEF) is governed by Italy's Income Tax Consolidated Text (Testo Unico delle Imposte sui Redditi – TUIR). Individuals resident in Italy for tax purposes are subject to IRPEF on income earned either in Italy and abroad.

Individuals not resident in Italy for tax purposes are subject to IRPEF only on income earned in Italy. Taxable income is taxed at progressive rates currently ranging between 23% and 43%.

Corporate Income Tax Corporate Income Tax (IRES) is also governed by TUIR. Companies resident in Italy for

- IRES tax purposes are subject to IRES for income earned in Italy and abroad. Companies not resident in Italy for tax purposes are subject to IRES only for income earned in Italy. Taxable income is taxed at a 27.50% rate.

Regional Business Tax The Regional Business Tax (IRAP) is a local tax levied on the value of production generated

- IRAP in each tax period in Italian Regions by subjects engaged in business activities.

Non-resident companies are subject to IRAP only on the value of production generated by permanent establishments in Italian territory.

Indirect Taxes

Value Added Tax (VAT) Italian rules governing Value Added Tax (VAT - IVA) comply with the relevant Community directives. In principle, the system is designed so as to ensure such tax is only paid by final consumers, as businesses can generally deduct VAT paid at intermediate stages of production. VAT is generally levied on each sale of goods and/or services carried out in Italian territory. The ordinary VAT rate is 21%.

Registration fees and other Registration fees are levied on specific written instruments made in Italy or written property transfer duties instruments made abroad whereby they regard the transfer of real property or enterprises located in Italian territory. The tax base and applicable rate vary in relation to the type of instrument and the parties involved.

Property transfers are also subject to other duties (namely: imposta ipotecaria and imposta catastale), due in respect of the formalities associated with the registration and/or transfers in public real estate/cadastral registers.

Municipal Property Tax Municipal Property Tax (IMU)

is annually due from owners and holders (resident in Italy or abroad) of real rights in immovable property located in Italian territory, with the reduction of households' primary residence. The tax base is equal to the value in the relevant property registers, stemming from the imputed property income multiplied by a given coefficient. The rate is set by each municipality within a range varying between 0.04% and 0.07%.

Inheritance Tax

Inheritance Tax is applied to transfers of assets or rights as a result of death (with the exception of transfer of Italian government securities, receivables from the Italian State, or units in investment funds in the amount of any Italian government securities held). Inheritance Tax is levied on the value of the individual shares assigned to each heir at a rate varying between 4% and 8%.

Donor's Tax

Donor's Tax is applied to transfers of assets or rights as a result of donations or other gratuitous transfers, and to establishment of restrictions on intended use. Donor's Tax is levied on the value of individual shares assigned to each beneficiary at a rate varying between 4% and 8%.

In the case of immovable property, the imposta ipotecaria (2%) and the imposta catastale (1%) are due in addition to inheritance or donor's tax, without prejudice to the benefits applicable to primary residences.

Taxation on Corporations Resident in Italy

Corporate Income Tax - IRES (Imposta sul Reddito delle Società)

Entities subject to corporate income tax, rate and tax period Corporate Income Tax (IRES) applies both to corporations either resident or not resident in Italy.

Companies resident in Italy for tax purposes are subject to IRES both for income earned in Italy and income earned abroad.

Companies not resident in Italy for tax purposes are subject to IRES only for income earned in Italy.

For tax purposes, the following forms of corporation are considered resident in

Italy:

- Società per Azioni (S.p.A.)
- Società a responsabilità limitata (S.r.l.)
- Società in accomandita per azioni (S.a.p.a.).

Also considered Italian residents are foreign companies and entities having their administrative headquarters or their main activities in Italian territory for most of the tax period. In specific circumstances, the administrative headquarters of foreign companies and entities is presumed to be located in Italy in any case. Partnerships (società in nome collettivo, società in accomandita semplice) are not subject to IRES. The income produced by such entities is usually taxed pursuant to the rules envisaged for Individual Income Tax (IRPEF)¹⁴, with the income being directly attributed to partners on the basis of their percentage holding in the entity. However, partners may elect to tax such income separately at the same rate envisaged for IRES (27.50%). The option may be exercised on the condition that such income is not distributed (pursuant to ad-hoc ministerial decree establishing the relevant implementation provisions).

For tax purposes, the tax period coincides with the financial year, as established in the Articles of Association or By-Laws. If not otherwise specified, the tax period coincides with the calendar year. The IRES rate is equal to 27.50%.

Trusts

Trusts whose registered office is in Italy and foreign trusts whose administrative headquarters and/or primary business are in Italy, are also subject to IRES.

The headquarters of foreign-registered trusts are presumed to be located in Italy if the trust is established in a country on the black list and:

- At least one of the trustors and at least one of the beneficiaries are resident in Italy for tax purposes; or
- An Italian resident makes a contribution to the trust involving transfer of ownership of immovable property or establishment of restrictions on the intended use of such property.

Taxable income

Taxable income is determined pursuant to TUIR provisions. Generally speaking, all income received by corporations resident in Italy for tax purposes is considered as corporate income (redditi d'impresa), regardless of its nature, and is taxed in accordance with the rules governing its specific category.

Taxable income is composed of net income produced (anywhere) over the tax period, as reported in the income statement, adjusted up or down in accordance with TUIR provisions. Taxable income does not include exempt income and/or income subject to withholding tax in settlement.

Without prejudice to a number of specific exceptions, the positive and negative components of income are considered on an accruals basis for tax purposes (one exception concerns dividends, included in taxable income on a cash basis). In order to determine taxable income for IRES purposes, it is necessary to distinguish between positive and negative components of income.

Positive components of income

- Revenues

Revenues include proceeds from: a) sale of goods and services whose production or exchange is the business focus; b) sale of raw and ancillary materials and semi-finished goods; c) sale of shares, bonds and similar securities not classified as non-current financial assets.

- Capital gains

Capital gains include the positive income components generated by the sale of company assets other than revenue-generating assets (typically, capital gains are generated by the sale of non-current assets).

Capital gains are included in taxable income for the tax period in which they are performed or, whereby the assets have been held for at least three years, in equal instalments through five years beginning in the year they are performed.

Such rules also apply to capital gains generated by equity investments (other than those qualifying for participation exemption) recognised under noncurrent financial assets in the last three financial years.

Participation Exemption Partial exemption of capital gains on the disposal of equity investments 95% of capital gains realised by companies resident in Italy for tax purposes on the disposal of equity investments in corporations/partnerships resident in Italy or abroad are IRES⁻ exempt.

Equity investments eligible for such treatment are those classified as non-current financial assets, engaged in commercial activities, held continuously for at least twelve months and resident for tax purposes in a country or territory other than a tax haven (white list countries).

Capital losses, write-downs and expenses related to the disposal of equity investments qualifying for the participation exemption are not deductible.

Exemption of capital gains on the disposal of equity investments reinvested in start-ups Capital gains earned by resident individuals and non-residents of any nature on the disposal of equity investments in partnerships and corporations established no more than seven years earlier and held for at least three years do not form part of taxable income whereby they are reinvested in companies engaged in the same business within two years of their performance.

Partial exemption of dividends

Dividends received from corporations resident for tax purposes in Italy or a State or territory other than a tax haven are excluded from taxable income for IRES purposes in the amount of 95%.

Negative components of income

In general, negative components of income (costs and expenses) can be deducted from taxable income as long as they:

- Are related to the business, i.e. contribute to producing taxable income
- Are acknowledged in the income statement.

Costs and expenses generally related to the production of exempt income and taxable income can be deducted in an amount corresponding to the ratio of taxable revenues to total revenues.

Interest – Deductibility ceiling

Industrial and commercial companies can fully deduct interest expense and similar charges (not capitalised in the cost of assets) in an amount equal to interest income and similar revenues. The excess may be deducted up to a ceiling of 30% of Gross Operating Profit – GOP (Risultato Operativo Lordo - ROL). GOP (ROL) is equal to the difference between item A (Production Value) and item B (Production Costs) in the income statement, increased by depreciation and amortisation of property, plant and equipment, and intangible assets and lease payments.

Interest expense that cannot be deducted (due to limit exceeding) can be carried forward to subsequent tax periods if and to the extent in which the amount of interest expense and similar charges for such periods is less than 30% of GOP (ROL).

As from 1 January 2010, the GOP (ROL) portion not used in a given tax period as it exceeds interest expense may be carried forward to increase GOP (ROL) in subsequent years.

Taxable income for IRAP purposes is equal to the net value of production generated in each Italian Region and calculated as the difference between the macro-categories A and B (with the exception of a number of items) of the income statement as drawn up on the basis of Italian National Accounting Standards (for entities drawing up their financial statements in accordance with International Accounting Standards - IAS, the corresponding items are considered).

For industrial and commercial enterprises:

- Positive components include all income, with the exception of: a) capital gains generated by the disposal of companies and equity investments); b) specified extraordinary income components; c) financial income (dividends, interest)
- Negative components include all costs and expenses, with the exception of: a) labour costs (with some exceptions); b) interest and finance charges; c) specified capital losses and negative components of extraordinary income.

IRAP is not deductible from taxable income as calculated for IRES purposes.

Industrial and commercial companies are subject to an ordinary IRAP rate of 3.9%. Regions may however change the rate by up to one percentage point for some specific sectors.

Taxpayer Requirements

Income tax returns

Each year, taxpayers shall declare their taxable income by submitting a tax return to the relevant tax authorities.

Corporations resident in Italy for tax purposes shall submit their tax returns electronically by the end of the seventh month following the final month of their tax period.

Individuals resident in Italy for tax purposes shall submit their tax returns by 31 July, if electronically. Alternatively, individuals shall submit their returns in hardcopy (paper form) through an authorised intermediary (bank or post office) by 30 June.

IRAP returns

Taxpayers subject to the Regional Business Tax (IRAP) shall submit separate corporate income tax returns compliantly with the same procedure followed for personal income tax returns.

Payment deadlines

In general, payment of IRES and IRAP for each tax period is broken down into two advance payments and one final balance payment.

Italy's Labour Law

Labour is regulated by Italy's Constitution, Civil Code, the Workers' Bill of Rights (Statuto dei Lavoratori), and other relevant laws and decrees. Employment terms and conditions are also periodically fixed by collective labour agreements within the various professional categories.

Working Time

Averagely, 8 working hours per day are established. The maximum working week consists of 48 hours (including overtime) over a reference period of maximum 4 months.

Overtime Rules on overtime are set by collective labour agreements. If not specified otherwise, overtime cannot exceed 250 hours per year. Failure by the employer to comply with such limits may result in the levy of administrative fines.

Holidays & Vacation In Italy there are 11 religious and national holiday days. The Constitution guarantees everyone the right to one rest day per week (usually Sundays).

Employees are entitled to an annual vacation period of 4 weeks.

Absence from Work

Sick Leave Sick employees have the right to retain their position, seniority and, for some categories of workers, regular pay for a period of up to 6 months or more, depending on the applicable collective labour agreement.

Personal Leave Employees are entitled to 15-day fully-paid leave for getting married and occasional off-days for family responsibilities, including the death of a relative or child's sickness

Maternity / Parental Leave Women may take maternity leave with 80% pay in the 2 months before delivery and the 3 months afterwards. Italy's social security system bears the costs. Should a child's mother die or become seriously ill, the father (male employee) may take paternity leave under the same conditions envisaged for maternity leave.

Work contract termination

Dismissal Under the Italian Law an employee is dismissible for:

- Just Cause (Giusta Causa), meaning a serious breach by the employee of his/her duties or other behaviour that makes continuation of the working relationship unfeasible; or
- Justified Grounds (Giustificato Motivo), namely:
 - A breach by the employee of his/her duties which is not serious enough to constitute Just Cause – e.g. failure to follow important instructions given by the management, material damages to machinery and equipment, low performance (the grounds for dismissal being “subjective reasons”)
 - An objective reason, whereby the employer needs to reorganise production or labour force (i.e. making redundancies).

Dismissals shall always be in writing and detail the reasons thereof. Failure to comply with such provision makes the dismissal ineffective. Should the employee deem to have been unfairly dismissed, he/she may appeal to the relevant court.

Following dismissal, whatever the cause or status (e.g. executive, white collar, or blue collar), employees are entitled to the following mandatory payments:

- Severance Pay (Trattamento di Fine Rapporto - TFR) – The amount is calculated by dividing each annual gross salary by 13.5. Severance pay is taxable and free of social security contributions
- Other sums – Whereby applicable, employees are entitled to indemnity for unused holidays, permits, and 13th and/or 14th monthly pay
- Notice period – Employees dismissed for reasons other than Just Cause are entitled to a notice period. Employers may exempt the employee from working during the notice period by paying him/her an indemnity equal to the salary payable for the whole notice period. Such indemnity is liable to social security charges.

Collective Dismissal If redundancy involves at least 5 employees for a 120-day period and an employer for Redundancy with 15 or more employees, the company shall duly consult with trade unions and comply with the “collective dismissal procedure”. Employees made redundant by certain categories of companies (e.g. industrial, employing 15 or more workers), and having at least 12-month seniority in the concerned company, shall receive an unemployment allowance from Italy’s National Social Security Institute (INPS, Istituto Nazionale della Previdenza Sociale) for a specified period.

For each employee made redundant, employers shall pay a financial contribution equal to thirty monthly instalments to INPS. Pending the outcome of any dismissal judiciary proceedings, the employer shall provide advance payment of the above contribution.

Social Security & Assistance

Costs

Adequate means for life needs are guaranteed to every resident (thus including also foreigners working in Italy) in case of accidents, diseases, invalidity, old age, and involuntary unemployment.

INPS (the National Institute for Social Security) and INAIL (Workers’ Compensation Authority, Istituto Nazionale Assicurazione contro gli Infortuni sul Lavoro) carry out such functions. The two Bodies provide services such as pension, indemnity and allowance for accidents, diseases, termination of work contract in case of reaching age limit or invalidity.

Employee and employer contributions jointly finance social security costs, calculated on gross earnings. Employers pay two-thirds of contributions whilst employees pay the remaining third.

Different calculation methods, contribution rates and terms of payment apply for dependent work or autonomous work.

INAIL manages mandatory insurance to protect employees against work accidents and occupational diseases. In particular, it guarantees economic allowance, sanitary and integrated services, provides information and training to SMEs with regard to workplace prevention, and ensure rehabilitation and indemnity to employees.

Compulsory insurance includes coverage in the event of damages incurred while commuting between the employee's home and workplace, or between different workplaces.

Workplace Safety

Consistently with the specific features of job and workplace, employers shall adopt all necessary measures to preserve the psycho-physical integrity of employees.

As per law, employers shall carry out dedicated risk assessments and accordingly ensure adequate prevention and protection systems. Employees and their representatives are entitled to check the effectiveness of the implemented health and safety standards.

Living in Italy

Visitors, Work Permits and Residency

Business visits up to 90 days

A visa is required for business visits of fewer than 90 days. Citizens of EU Member States and certain other countries, such as the United States, Canada, Argentina, Brazil and Japan, are exempt.

Work permits and residency (beyond 90 days) Non-EU citizens In order to work in Italy, non-EU citizens shall obtain specific permit (*nulla osta*), which the future employer shall apply for with the One-Stop Shop for Immigration (*Sportello Unico per l'immigrazione*). The One-Stop Shop for Immigration will issue the above permit in accordance with the decree establishing immigration quotas.

After receiving the permit, prospective workers shall go to the Italian consulate in their home countries. The consulate will notify them of the proposed contract and issue a visa within 30 days.

The permit is valid for 6 months from the issue date, within which the worker shall enter Italy. Within 8 days of arrival in Italy, foreign citizens shall go to the One-Stop Shop for Immigration that issued the permit to sign the work contract (*contratto di lavoro*) and apply for the permit to stay in the country (*permesso di soggiorno*).

Non-EU citizens Regardless of immigration quotas, Article 27 (I) of the Consolidated Immigration Act - Consolidated Act (Legislative Decree 286/98) governs the procedures and conditions for issuing Immigration Act permits to work, entry visas and permits to stay in the country for certain categories of workers, including:

- Executives and highly-trained personnel of companies with their headquarters or branches in Italy
- Exchange or mother-tongue university lecturers; university professors and researchers aiming to work within academia or other income-producing activity in Italy
- Employees of employers headquartered abroad who are temporarily transferred to Italy.

European Union citizens No permit is required for European Union citizens to stay in Italy. If you plan to stay in Italy for longer than three months, you have to register with the *Anagrafe* (Register of births, deaths and marriages) of the municipality in which you are domiciled and request the related certificate. In order to register, you are required to present documentation proving you are employed, studying or engaged in vocational training. Alternatively, you are required to demonstrate you have sufficient financial resources to support your own stay as well as health insurance.

Healthcare

National Healthcare Service

The National Health Service operates through local healthcare authorities (ASL - Aziende Sanitarie Locali) and provides medical treatment to all EU citizens under reciprocity agreements for healthcare. In order to receive medical treatment, EU citizens shall obtain the European Health Insurance Card prior to departing their home country. The Card replaces the old E111 Form in use prior to 2006.

Non-EU citizens visiting Italy shall have private insurance coverage (Italian or foreign). The coverage shall be approved by the local police department (Commissariato di Polizia) within eight days of arrival. Coverage shall last for the entire visa duration.



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