

International Tax Italy Highlights 2018



Investment basics:

Currency – Euro (EUR)

Foreign exchange control – There are no foreign exchange controls or restrictions on repatriating funds. Residents and nonresidents may hold foreign currency within and outside the country, and direct and indirect investments may be made in any currency. However, funds held outside Italy or repatriated to Italy without a bank intermediary must be declared for tax purposes.

Accounting principles/financial statements – Italian GAAP and IFRS/IAS. Financial statements must be prepared annually. Consolidated accounts must be prepared if certain thresholds are exceeded.

Principal business entities – These are the joint stock company (SpA), limited liability company (Srl) and branch of a foreign company.

Corporate taxation:

Residence – A company is resident for tax purposes if its legal seat, place of effective management or main business activity is in Italy for the greater part of the fiscal period (i.e. at least 183 days). A foreign company that holds a controlling participation in an Italian company is deemed to have its place of effective management in Italy and, therefore, to be resident in Italy for corporate tax purposes if the foreign company is controlled by an Italian resident or managed by Italian residents representing the majority of its board of directors.

Basis – Resident companies are taxed on worldwide income; nonresident companies are taxed only on Italian-source income.

Taxable income – Taxable income for a resident company or an Italian branch of a foreign company is

business income, which consists of net income earned in a financial period. Business income encompasses all income derived by the company or branch, e.g. income from a trade, passive income (e.g. dividends, interest and royalties) and capital gains. Taxable income is based on the results shown in the profit and loss (P&L) account, with certain adjustments.

Certain companies that are loss-making or whose turnover is less than a defined percentage of the value of various classes of assets are referred to as “non-operating companies” and are taxed on a deemed minimum income at a higher corporate tax rate.

A company that records tax losses for five consecutive fiscal years—or in four out of the five years and that does not meet prescribed levels of profit, as determined on the basis of certain coefficients, in the remaining year—will be considered a non-operating company as from the sixth fiscal year. The non-operating company regime usually applies to small companies, but application of the regime may be avoided by requesting a ruling from the tax authorities.

Italian companies may opt for a branch exemption regime that provides for the taxation of a branch’s income in only the foreign country in which the permanent establishment (PE) is established. The option, which allows an exemption for the income deriving from the foreign PE, is irrevocable and must be applied to all PEs of the Italian company (“all in-all out”).

Taxation of dividends – See “Participation exemption,” below.

Capital gains – Capital gains normally are treated as ordinary income and taxed at the 24% corporate income tax rate. Capital gains derived from the sale of participations, however, are 95% exempt from taxation if

the following requirements are met: (1) the participation has been held for a minimum continuous period that may range between 12 and 13 months; (2) the participation is classified as a financial fixed asset in the first financial statement closed after the participation was acquired; (3) the company in which the participation is held is not considered a “black list” entity for purposes of Italy’s controlled foreign company (CFC) regime; and (4) the company in which the participation is held carries out a business activity (this requirement will not be met if assets are represented primarily by real property not used in the business activity). The last two conditions must have been satisfied continuously over the last three years or the life of the company, if shorter.

Capital gains realized by nonresident companies on the sale of “nonqualified participations” (see “Rates” under “Personal taxation”) ordinarily are taxed at a 26% flat rate. Sales of qualified participations are taxed at the ordinary corporate tax rate on 58.14% of the gains. As from 2019, the 26% flat rate also generally will apply to capital gains from qualified participations. In some cases, capital gains from qualified and nonqualified participations may be exempt, according to specific rules or a relevant tax treaty.

Losses – Losses may be carried forward and offset against corporate taxable income. However, 20% of taxable income in any year cannot be offset by carried-forward losses and will be subject to corporate tax in accordance with the “minimum tax” rule. Losses incurred by a company during its first three taxable periods may be carried forward and used to fully offset corporate taxable income, but only if the losses relate to a new business activity (e.g. the losses may not have been incurred in the course of a merger or business contribution). The carryback of losses is not permitted.

Rate – The corporate tax (IRES) rate is 24%, plus the regional tax on productive activities (IRAP, 3.9% in general)—see “Other taxes on corporations” below. For banks and other financial institutions (excluding SGRs and SIMs), the corporate tax rate is 27.5%. “Non-operating” entities are subject to a 34.5% corporate tax rate.

Surtax – No

Alternative minimum tax – There is no AMT, but a presumptive taxable income applies to non-operating companies under certain conditions—see “Taxable income,” above.

Foreign tax credit – A tax credit is allowed against Italian net tax for final foreign taxes paid on foreign-source earnings in the year in which the taxes were paid. The amount of the foreign tax credit may not exceed the amount of Italian tax due.

Participation exemption – Domestic and foreign-source dividends paid by subsidiaries to Italian resident corporate taxpayers are 95% exempt from corporate income tax. There is no holding period or minimum ownership percentage to qualify for the exemption. (Different rules apply for the participation exemption for capital gains, see under “Capital gains,” above.) The same exemption applies to income from some hybrid financial instruments. However, the exemption does not apply if the foreign subsidiary is a black-list entity and, in some cases, where the dividends are distributed by a black-list entity through an interposed foreign non-black-list entity. Under certain conditions, the dividends distributed by a black-list entity are 50% exempt. Provided specific requirements are met, a foreign tax credit is granted for taxes paid abroad on the same profits by the black-list entity. The tax period in which the dividends accrued is relevant in determining the nature of the dividends received (from a black-list entity or not) and the applicability of the related exemption.

Holding company regime – There is no specific holding company regime, although, as described above, dividends and capital gains on the sale of a participation may benefit from a 95% exemption.

Incentives – Incentives are available in the form of capital grants, “easy-term” loans, tax credits or super/hyper depreciation. Some incentives are granted automatically if specified requirements are met; others require the completion of evaluation procedures. Certain incentives must be negotiated.

Italian companies and Italian branches of foreign companies may apply for an optional patent (intellectual property (IP)) box regime, provided certain conditions are satisfied. The regime provides an exemption (for both IRES and IRAP purposes) for a percentage of the revenue deriving from the licensing or direct exploitation of qualifying IP (excluding trademarks), and an election into the regime is irrevocable for five years. The exemption is equal to 50% as from 2017.

Withholding tax:

Dividends – Dividends paid to a nonresident corporation generally are subject to a 26% final withholding tax (with a potential refund of the foreign tax paid on the dividend by the recipient, up to 11/26ths of the Italian withholding tax) unless the rate is reduced under a tax treaty or the dividends qualify for an exemption under the EU parent-subsidiary directive. A domestic final withholding tax of 1.20% applies to dividends distributed to shareholders resident in an EU/European Economic Area (EEA) country.

Interest – Italian-source interest payable to a nonresident generally is subject to a 26% final withholding tax. Interest derived from a direct/indirect investment in government bonds and similar securities is subject to a 12.5% substitute tax (domestic exemptions apply). The withholding tax may be reduced under a tax treaty or eliminated under the EU interest and royalties directive.

Royalties – Royalties paid to a nonresident company are subject to a 30% withholding tax calculated (generally) on 75% of the gross royalty, resulting in an effective tax of 22.5%. The withholding tax may be reduced under a tax treaty or eliminated under the EU interest and royalties directive.

Technical service fees – Fees paid to a nonresident for the use of industrial, commercial or scientific equipment located in Italy are subject to a final 30% withholding tax, unless reduced under a tax treaty. Management fees are exempt from withholding tax.

Branch remittance tax – No

Other taxes on corporations:

Capital duty – A negligible fixed registration tax is levied on contributions of cash in exchange for shares. Other assets contributed may be subject to a registration tax or VAT, depending on the situation.

Payroll tax – No

Real property tax – The municipal authorities levy tax on the possession of immovable property at various rates, depending on the municipality. Under certain conditions, construction companies are not subject to the real property tax.

Social security – Mandatory social charges are payable by the employer and vary depending on the employee's job and the size of the workforce. Specific exemptions apply, provided certain conditions are satisfied.

Stamp duty – Stamp duty is levied on legal and banking transactions, at varying rates.

A "Tobin tax" applies in the form of a stamp duty on transfers of shares and other financial instruments issued by Italian joint stock companies (including derivative instruments, if one of the parties to the transaction is an Italian tax resident). The tax rate is 0.2% of the transaction value, reduced to 0.1% where the sale takes place on a listed market (a flat tax is applied on the value of derivative instruments).

Transfer tax – The transfer/contribution of real property situated in Italy is subject to transfer tax (registration, mortgage and cadastral tax) and/or VAT, with the rate depending on the property transferred, the status of the transferor and other factors.

Other – IRAP, the regional tax on productive activities, is levied on the net value of the production derived in each Italian region by resident companies. IRAP is calculated on the "net added value" of production, as defined by the relevant tax rules (but basically derived from the statutory accounts).

The ordinary IRAP rate applicable for manufacturing/trading companies is 3.9%. For banks and other financial institutions/companies (including holding companies), the ordinary IRAP rate is 4.65%, and for insurance companies, the rate is 5.9%.

If the taxpayer has net interest expense, 10% of the annual IRAP paid is deductible from the IRES taxable base. IRAP paid in connection with nondeductible employment expenses also is deductible from the IRES taxable base.

A 3% equalization tax will have to be withheld by Italian residents on the price paid (net of VAT) in relation to specific business-to-business services that qualify as digital transactions (i.e. those carried out through electronic means), according to a specific ministerial decree (to be issued by 30 April 2018), regardless of where the transaction is concluded and to the extent the services carried out by the provider (resident or nonresident) exceed 3,000 transactions in a calendar year. The new equalization tax is likely to be applied as from 2019.

Anti-avoidance rules:

Transfer pricing – The business income of a resident enterprise arising from transactions with nonresidents that directly or indirectly control the resident company, are under the control of the resident company or are controlled by the same entity that controls the resident company is assessed on the basis of the arm's length value of the goods transferred, services rendered or services received.

OECD guidelines generally are followed to determine the arm's length price, and both traditional methods (comparable uncontrolled price, cost-plus and resale price methods) and profit-based methods (e.g. the transactional net margin method) are used and may be acceptable based on the specific circumstances.

A withholding tax exemption or a reduced rate under an applicable tax treaty may be denied to the extent the price paid is higher than arm's length.

Transfer pricing documentation is not mandatory (but see under "Disclosure requirements"), but a taxpayer can obtain protection against penalties in the event of a transfer pricing adjustment by maintaining appropriate

documentation and disclosing the existence of that documentation in the annual income tax return.

Thin capitalization – Italy does not have thin capitalization rules per se, but net interest expense is deductible only up to an amount equal to 30% of EBITDA (plus financial leasing installments). Both excess net interest expense and EBITDA may be carried forward indefinitely to increase the deduction of interest expense in a subsequent year.

In addition, a corporate income tax deduction (the ACE) is permitted for a notional yield of the annual increase in a company's equity (with certain exclusions and deductions). The notional yield is 1.5% from the 2018 fiscal year (reduced from 1.6% for the 2017 fiscal year). The deduction is available each year, provided the equity increase is not diminished. The amount for the computation of the ACE deduction may be reduced by an amount equal to the increase of investments in financial instruments (other than participations) as compared to the amount shown in the financial statements for 2010, and to avoid the risk of doubling the ACE deduction in certain other cases.

Controlled foreign companies – Under the CFC regime, profits of a nonresident entity are attributed to an Italian resident where the resident directly or indirectly controls the nonresident entity and the nonresident is considered a black-list entity for purposes of Italy's CFC rules. An entity is considered a black list entity if it is resident in a jurisdiction other than an EU/EEA country that has concluded an exchange of information agreement with Italy, if: (1) the jurisdiction has a nominal corporate income tax rate lower than 50% of the Italian rate; or (2) the entity benefits from a special tax regime that grants favorable structural treatment for tax purposes that leads to a reduction of the nominal tax rate below the 50% threshold. The CFC regime also is applicable when the foreign entity is not considered a black-list entity if the entity is subject to an actual tax rate lower than 50% of the Italian rate and more than 50% of its income is passive or derived from intercompany services.

The income of a CFC is attributed to the Italian resident in proportion to its participation in the CFC, and the profits of the CFC are taxed in the hands of the Italian resident at its average tax rate. However, for companies, the average rate cannot be lower than the ordinary corporate income tax rate of 24%. Taxes definitively paid abroad (i.e. underlying taxes) may be credited against the Italian tax levied on the CFC income.

Application of the CFC regime may be avoided by obtaining a ruling from the tax authorities. In the absence of a ruling, the taxpayer may avoid the application of the CFC regime by providing evidence that certain conditions

are satisfied (e.g. demonstrating that its participation in the CFC is not designed for the purpose of allocating income to a black-list entity).

Disclosure requirements – A country-by-country reporting obligation has been introduced requiring certain multinational entities to submit an annual report showing the amount of their revenue, gross profit, taxes paid and accrued and other indicators of actual economic activity.

Other – Other specific anti-abuse provisions may apply. These primarily target tax havens, losses, excess ACE and interest expense carryforwards in the case of extraordinary transactions (e.g. mergers and demergers), withholding tax exemptions under EU directives and the assessment of Italian tax residence for foreign entities.

Compliance for corporations:

Tax year – Taxpayers may use the calendar year or a financial year.

Consolidated returns – Tax consolidation is available to domestic groups, i.e. an Italian parent company and its resident subsidiaries that are under its direct or indirect control. The control requirement is met when the parent company holds more than 50% of the share capital of another company and is entitled to more than 50% of the profits of that company.

Domestic consolidation also may be adopted if the controlling entity or a subsidiary (with an Italian branch) is a nonresident company, provided certain conditions are satisfied.

Under domestic consolidation, a single taxable income is calculated for all consolidated companies. Once an election for consolidation is made, it may not be revoked for three years unless the subsidiary ceases to be controlled by the parent company. Domestic tax consolidation is not available to companies benefiting from a reduction of the corporate tax.

If certain requirements are met, a worldwide tax consolidation regime is available, under which all foreign controlled companies must be included in the tax group (i.e. the "all in-all out" principle).

Tax consolidation is not available for IRAP purposes.

Filing requirements – A company must file the annual corporate income tax returns (IRES and IRAP) electronically within nine months following the end of the financial year. However, companies with a calendar year end have until the end of October 2018 to file the tax return for the 2017 fiscal year.

Two advance payments of corporate income tax must be made: the first installment is 40% of the amount of corporate income tax paid in the previous year, and the second is 60% of the previous year's tax. A company

must make these advance payments by the end of the sixth month and by the end of the 11th month of the financial year.

Penalties – The tax rules include a comprehensive set of penalty and interest provisions for failure to pay and failure to file, with the amounts ordinarily determined based on the specific violation (above specific thresholds, tax violations are criminal offenses).

Rulings – Advance rulings relating to transfer pricing may be obtained from the tax authorities. Such rulings also may apply to dividends and royalties. A ruling also may be requested from the authorities for other reasons, such as to avoid application of the CFC and the non-operating company regimes or anti-abuse provisions, or to obtain the correct interpretation of an unclear tax provision.

Personal taxation:

Basis – Residents are taxed on worldwide income; nonresidents are taxed only on Italian-source income.

Residence – For income tax purposes, an individual is deemed to be resident if he/she is registered at the civil registry or is domiciled in Italy for more than 183 days in a year.

Filing status – Joint filing is possible under specific circumstances.

Taxable income – Individual income tax is imposed on employment income, income from independent activities, income from capital, business income, income from immovable property and other miscellaneous income.

A special regime is applicable for inbound employees under certain circumstances—if all relevant requirements are met, 50% of their Italian-source income from employment is tax exempt. Another special regime is applicable specifically for inbound researchers and highly skilled employees—if all the relevant requirements are met, 90% of their Italian-source income from employment may be tax exempt.

Capital gains – Capital gains derived by an individual on the disposal of Italian immovable property normally are taxed as miscellaneous income, but are exempt from tax if the individual held the property for more than five years. Gains derived from the sale of a principal residence are not subject to tax. For capital gains on the disposal of shares, see “Rates,” below.

Deductions and allowances – Deductions for dependents, employment income, social security contributions and other specific expenses (e.g. family charges, medical expenses) are available in calculating taxable income.

Rates – The personal income tax is progressive, rising to a top rate of 43% for income exceeding EUR 75,000. The other rates are: 23% on income up to EUR 15,000; 27% on EUR 15,001-EUR 28,000; 38% on EUR 28,001-EUR 55,000; and 41% on EUR 55,001-EUR 75,000.

Additional regional tax applies at rates ranging from 0.7% to 3.33%, depending on the region in which the individual is domiciled. An additional municipal tax ranging from 0% to 0.9% also may apply, depending on the taxpayer’s municipality.

Under certain circumstances, private employees may apply a flat tax of 10% on bonuses earned up to EUR 3,000. Bonuses in kind are exempt from tax and social charges in certain instances.

Resident individuals are taxed on interest at a flat 26% rate (12.5% for interest on Italian treasury bonds or similar bonds).

The 26% flat rate also ordinarily applies to dividends and capital gains related to nonqualified participations. For listed companies, a participation representing more than 2% of the voting rights or more than 5% of the share capital is treated as a qualified participation; for other companies, a qualified participation is one representing more than 20% of the voting rights or more than 25% of the share capital.

As from 1 January 2018, the 26% flat rate also generally applies to dividends related to qualified participations. In relation to profits generated up to the end of 2017 and distributed from 2018 to 2022, the regime described below will apply. As from 2019, the 26% flat rate generally will apply to capital gains related to qualified participations.

Resident individuals holding qualified participations generally are taxed at the ordinary income tax rate on 58.14% of the dividends received that were generated before 2018 (40% for profits generated before 2007 and 49.72% for profits generated after 2007 but before 2017), or 58.14% of the capital gains realized before 2019.

Nonresident individuals generally are taxed at the ordinary income tax rate on 58.14% of Italian-source capital gains related to qualified participations; the taxable percentage was 49.72% for gains realized before 2018. (If a sale was carried out before 2018 but the payment is not received until 2018, the taxable percentage is 49.72%.) The 26% flat rate generally will apply to gains realized as from 2019.

Nonresident individuals ordinarily are taxed at the 26% flat rate on dividends (with a potential refund up to

11/26ths, see above), capital gains related to nonqualified participations (in some cases an exemption may apply based on a relevant tax treaty) and interest. Nonresident individuals resident in a "white list" country (as identified by a specific decree), however, are not taxed on capital gains related to nonqualified participations, and the same capital gains realized by nonresidents on the disposal of shares listed on a stock market are exempt.

Under certain conditions, nonresident individuals moving their tax residence to Italy may apply an EUR 100,000 lump-sum tax on their income earned abroad.

Other taxes on individuals:

Capital duty – A negligible fixed registration tax is levied on contributions of cash in exchange for shares. Contributions of other assets may trigger registration tax at various rates.

Stamp duty – Stamp duty is levied on legal and banking transactions at varying rates.

The Tobin tax applies in the form of a stamp duty on transfers of shares and other financial instruments issued by Italian joint stock companies (including derivative instruments, if one of the parties to the transaction is an Italian tax resident). The tax rate is 0.2% of the transaction value, reduced to 0.1% where the sale takes place on a listed market. A flat tax applies on the value of derivative instruments.

Capital acquisitions tax – No

Real property tax – Property owners, whether or not resident in Italy, are liable for a property tax on buildings and land owned in Italy for their own use or as investments. The tax comprises three different elements: IMU (wealth tax), TASI (tax for services) and TARI (tax on refuse). The basic rate of IMU is 0.76% of the taxable value of the property, but the competent municipality can increase or reduce the basic rate by up to 0.3%. IMU normally does not apply to an individual's main residence. TASI rates range from 0% to 3.3% depending on the municipality in which the property is situated. The TARI rates also vary depending on the municipality.

Inheritance/estate tax – The taxable amount generally is represented by the value of the assets and rights inherited. Rates are 4%, 6% or 8%, depending on the relationship between the deceased and the beneficiaries. Exemptions up to EUR 1 million may apply for bequests to close relatives.

Net wealth/net worth tax – Financial assets held abroad by a resident individual (i.e. bank accounts, participations, etc.) are taxed at 0.2% of the market value. Immovable property outside Italy owned by a

resident individual is subject to tax at a rate of 0.76% of the original cost or market value of the property (cadastral value of the property owned in an EU or EEA country). A lower 0.4% rate may apply to principal residences.

Social security – Individuals working in Italy normally are subject to social security contributions, with rates depending on the sector and the employee's job title. Social security in respect of the state pension fund borne by the employee generally is equal to 9.19%, plus 1% over EUR 46,630 (up to a cap of EUR 101,427) for employees who started contributing to an obligatory social security scheme after 1 January 1996. For those who started contributing before that date, contributions are calculated on the total amount of employment income received (new rates could be approved during 2017).

Other – An additional 10% tax is levied on bonuses, stock options and variable payments paid to directors operating in the financial sector. The tax is payable only on the portion of variable compensation exceeding the fixed remuneration.

Compliance for individuals:

Tax year – Calendar year

Filing and payment – All resident and nonresident taxpayers who derive income subject to individual income tax must file an annual tax return, except for individuals deriving only exempt income or income subject to a final withholding tax and other specific categories of income.

The "Modello 730" tax return must be filed by 23 July of the calendar year following the relevant fiscal year; while the "Modello UNICO" tax return must be filed by 31 October of the year following the relevant fiscal year (deadlines not falling on working days are postponed to the next working day).

Salaries and professional fees are subject to deduction of tax at source.

Penalties – Penalties and interest apply for late filing, failure to file and tax avoidance and evasion.

Value added tax:

Taxable transactions – VAT is levied on the supply of goods and services, and on imports.

Where deductible input VAT is charged on purchases of goods and/or services, the deduction must be taken in the VAT return for the year in which the related right arises or, at the latest, in the VAT return for the year in which the relevant invoice is received.

Rates – The standard VAT rate is 22%, with reduced rates of 4%, 5% and 10%. VAT exemptions apply to

financial services, medical services, gaming and gambling, export sales and the contribution of assets to a company (e.g. purchases of capital goods).

Registration – A taxpayer carrying out taxable supplies in Italy is required to register for VAT purposes.

Filing and payment – Taxpayers are required to submit a VAT return electronically by the end of April of the following calendar year.

Taxpayers also are required to submit quarterly reports on invoices and customs bills—although a taxpayer may opt for semiannual filing—and a quarterly report on their VAT calculations, by the end of the second month following the relevant quarter/half-year.

Source of tax law: Corporate Income Tax Law, Regional Tax on Productive Activities Law, Individual Income Tax Law and VAT Law, and decrees and instructions issued by the Ministry of Finance

Tax treaties: Italy has concluded more than 100 tax treaties. Italy signed the OECD MLI on 7 June 2017.

Tax authorities: Ministry of Finance, Tax Income Agency (*Agenzia delle entrate*)

Contact:

Francesca Muserra (fmuserra@sts.deloitte.it)

Stefano Schiavello (stschiaavello@deloitte.com)

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