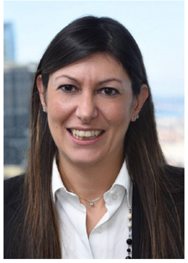
Italy



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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. Funds held outside Italy or repatriated to Italy without a bank intermediary must, however, 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 (i.e. at least 183 days) of the fiscal period. 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 either are loss-making or whose turnover is less than a defined percentage of the value of various classes of asset 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.

Starting from 2016, Italian companies may opt for a branch exemption regime, which 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 generally are treated as ordinary income and taxed at the 27.5% 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 less.

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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 27.5%, plus the regional tax on productive activities (IRAP, generally 3.9%)—see "Other taxes on corporations" below. "Non-operating" entities are subject to a 38% corporate tax rate. (Italy's stability law for 2016 provides for a reduction of the corporate income tax rate from 27.5% to 24% as from 1 January 2017. For banks and other financial institutions, the tax rate will remain 27.5%.)

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. However, the exemption does not apply if the foreign subsidiary is resident in a listed tax haven country and, in some cases, where the dividends are distributed by a black list country through an interposed nonblack list country. There is no holding period or minimum ownership percentage to qualify for the 95% exemption. (See also under "Capital gains," above.)

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 or tax credits. Some incentives are granted automatically if specified requirements are met; others require the completion of evaluation procedures. Certain incentives must be negotiated.

Starting from 2015 (i.e. from the 2015 fiscal year, for calendar year taxpayers), Italian companies and Italian branches of foreign companies may apply for a new, 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, and an election into the regime is irrevocable for five years. The exemption amounted to 30% for 2015, and is 40% for 2016 and 50% in subsequent years.

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 1.375% (to be reduced to 1.20% as from fiscal year 2017) applies to dividends distributed to shareholders resident in the EU and to qualified shareholders resident in a 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.

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 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 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, or 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 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 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.

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 the traditional methods (comparable uncontrolled price, cost-plus and resale price methods) and profit-based methods (such as the transactional net margin method) are used and may be acceptable based on the specific circumstances.

Transfer pricing documentation is not mandatory (but see under "Disclosure requirements," below), 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 and dividends paid by foreign controlled companies). Both excess interest and EBITDA may be carried forward indefinitely to increase the deduction of interest expenses in a subsequent year.

In addition, a deduction (the ACE) is permitted from corporate tax for a notional yield of the annual equity increases (with certain exclusions and deductions). The notional yield was 4.5% for the 2015 fiscal year; it is 4.75% for the 2016 fiscal year; and it will be determined annually as from the 2017 fiscal year. The deduction is available each year, provided the equity increase is not diminished.

Provided that Italy obtains the EU Commission's authorization, an increase equal to 40% of the equity could temporarily apply for listed companies with shares traded on an EU stock market.

Controlled foreign companies

Under the CFC regime, profits of a nonresident entity are attributed to an Italian resident where the resident controls, directly or indirectly, the nonresident entity and the nonresident is considered a black-list entity — i.e. an entity resident in a jurisdiction (other than an EU or EEA country that has concluded an exchange of information agreement with Italy) with a nominal corporate income tax rate lower than 50% of the Italian rate — for purposes of Italy's CFC rules. 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 27.5%. 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).

From 7 October 2015, the CFC rules no longer apply to Italian residents owning a noncontrolling participation of 20% (10% for companies listed on the stock market) or more (but not meeting the control requirements — see above) in an entity located in a tax haven.

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 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.

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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.

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 whose financial year does not correspond to the calendar year must make advance payments by the 16th day of the sixth month and by the end of the 11th month after the end 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 relevant amounts generally 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 may be requested from the authorities 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.

Capital gains

Capital gains derived by an individual on the disposal of Italian immovable property generally 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.

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

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The 26% flat rate also 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.

Resident individuals generally are taxed at the ordinary income tax rate on 49.72% of dividends. Both resident and nonresident individuals are taxed at the ordinary income tax rate on 49.72% of capital gains related to qualified participations.

Nonresident individuals generally are taxed at the 26% flat rate on dividends, capital gains related to nonqualified participations 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 all capital gains realized by nonresidents on the disposal of shares listed on a stock market are exempt.

Other

An additional 3% solidarity surtax on income exceeding EUR 300,000 is payable until the 2017 fiscal year.

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 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 generally 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 generally 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 46,123 up to a cap of EUR 100,324) 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.

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 taxpayers, both resident and nonresident, who derive income subject to individual income tax must file an annual tax return, except for individuals deriving 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 7 July of the calendar year following the relevant fiscal year; while the “Modello UNICO” tax return must be filed by 30 September of the year following the relevant fiscal year.

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.

Rates

The standard VAT rate is 22%, with reduced rates of 4%, 5% (applicable as from 1 January 2016) 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

From fiscal year 2016, taxpayers are required to submit a VAT return electronically by the end of February of the following calendar year. For 2015, if the taxpayer does not submit its VAT return by the end of February 2016, it must submit an annual VAT declaration by the same deadline.

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

Tax treaties: Italy has concluded more than 100 tax treaties.

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