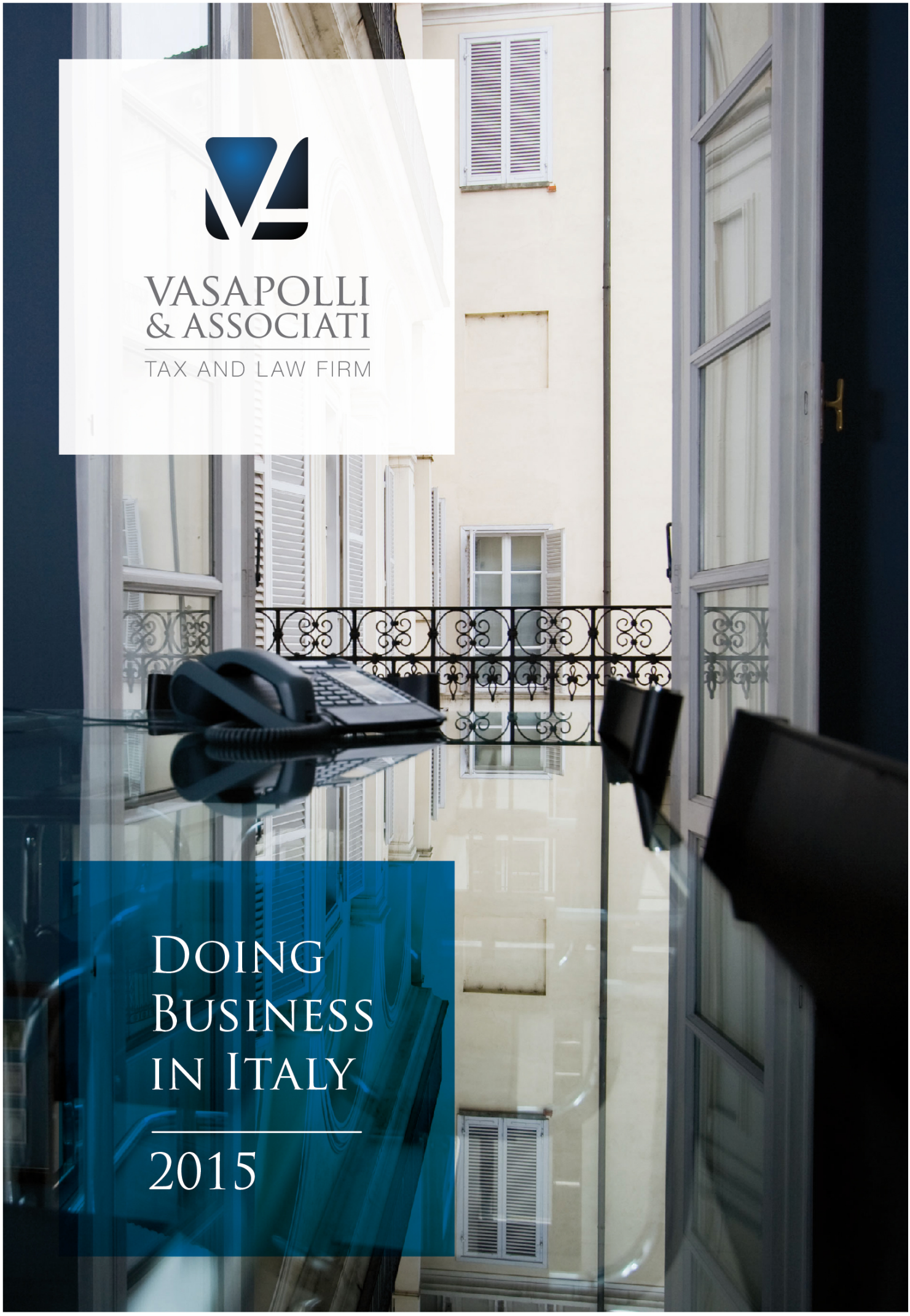

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2015

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KINDS OF CORPORATIONS

General Overview

Italy has a civil law legal system.

There are basically two forms of company with limited liability, i.e. "Società per Azioni" (S.p.A.) – Joint-Share Company (Incorporation) – and "Società a responsabilità limitata" (S.r.l.) – Limited Liability Company.

In the cases of a S.p.A. and a S.r.l., the Company is only answerable with its assets for the obligations of the Company. The liability of the Stockholders is limited to the amount of the participation subscribed by each of them.

In comparison with a S.p.A., a S.r.l. allows more flexibility and autonomy for its members. In fact, the members may regulate many features (e.g. the governance system) with great flexibility in the Articles of Association (By-laws).

A third form of corporation, which has not attained much success in business practice, is the "Società in accomandita per azioni" (S.a.p.a.) – Limited Partnership by Shares. It has some of the characteristics of both a Limited Partnership and a Joint-Stock Company. Like the former, there is a distinction between jointly and severally liable partners and limited partners who are liable within the limits of the portion of equity respectively subscribed. Apart from the differences connected with such distinction, the S.a.p.a. is similar to the S.p.A.

Capital Stock

The minimum capital of an S.p.A. is euro 50,000.

The minimum capital of an S.r.l. is euro 10,000.

At least 25% of the capital subscribed in cash must be paid in at the moment the company is formed. In the case of a Company founded by a single stockholder, 100% of the capital must be paid in at that time.

In an S.p.A., shares represent the participation of the Shareholders.

In an S.r.l., the participations are not represented by shares but rather by portions (quotas) which cannot be incorporated in certificates.

For contributions in kind, the value of the contribution must be determined on the basis of an appraisal made by an independent expert appointed by the local court. In the case of an S.r.l., the Stockholders may appoint the expert for the appraisal.

Starting from 2012, a new form of corposation has been introduced. It is the "Società a responsabilità limitata semplificata" (S.r.l.s.) – Simplified Limited Liability Company. It can be set up with a starting capital of 1 to 9.999 euro. Compared to the standard S.r.l., the simplified form has some restrictions concerning the company's structure and functioning.

Formation

A public Instrument of Incorporation, attested by a Notary Public, is necessary to set up both an S.p.A. and an S.r.l.

The Instrument of Incorporation consists of two parts: the first (Memorandum of Association) records the intent to incorporate the Company and some essential information in respect thereof; the second comprises the Articles of Association (By-laws) and indicates the rules concerning the operation, the organisation and the winding-up of the Company.

Stockholders

The minimum number of Stockholders is one. There are no limitations on maximum number, residence or nationality. However, there may be some exception to the latter (see Foreign Investors).

Governance

An S.p.A. may adopt three models of governance.

The "ordinary" system is based on the Shareholders' meeting, which appoints the administrative body (Board of Directors or Sole Director), the supervisory body (board of statutory auditors) and the registered auditor.

The other two models are the "dual" system and the "single" system. They have not attained much success in business practice and are not examined in this Guide.

In an S.r.l., the members define in the Articles of Association (By-laws) how the company is managed and controlled/supervised.

Directors

The management of the Company may be entrusted to a Sole Director or a Board of Directors.

Directors do not need to be Stockholders (in the case of an S.r.l., this must be stated in the By-laws) and there are no restrictions regarding their number, nationality or place of residence. However, the appointment of non-EU (European Union) nationals as Directors is subject to certain restrictions. In particular, non-EU nationals may be appointed as Directors of Italian entities based on reciprocity (i.e., the country of citizenship of the Foreign Director must allow the same benefit to Italian citizens).

The Board of Directors must elect a Chairman, unless he has been appointed by a Stockholders' resolution, and may elect one or more Managing Directors from among its members.

The Directors' remuneration is determined by the articles of incorporation or by the Stockholders' meeting. The Board of Directors may decide on special remuneration for Directors with special responsibilities.

Statutory Auditors and Registered Auditors

All S.p.A. must have a so-called "Board of Statutory Auditors" ("Collegio sindacale").

Members of the Board are entrusted with supervising the following areas:

- compliance with the law and the By-laws of the company;

- correct administration and internal controls;

- adequacy and reliability of the organisational and administrative structure;

- adequacy and reliability of the accounting system.

The Board of Statutory Auditors is comprised of three or five permanent members and two auxiliary members, at least one of whom must be listed on the Roll of Auditors at the Ministry of Justice.

The Board of Statutory Auditors is appointed by the Stockholders for a period of three years. It cannot be dismissed except for just cause and with the approval of the local court.

The Stockholders, in conformity with a fee schedule established by a specific Ministerial Decree, determine the remuneration of the Statutory Auditors.

When the appointment of the Board of Statutory Auditors is mandatory, the appointment of a Registered Auditor or an Audit Firm registered within the Roll of Auditors at the Minister of Justice is also compulsory.

Among other tasks, the Registered Auditor (or the Audit Firm) must perform a quarterly audit. In addition, he must prepare a report on the financial statements that includes an assessment on accounting, the reliability of the financial statements and the results of the audit performed during the financial year. This report must then be submitted to the annual general meeting.

In a S.p.A., the company's By-laws may entrust the audit to the Board of Statutory Auditors when the company does not have to draw up consolidated financial statements.

When the Board of Statutory Auditors is entrusted with the audit of the company, all its members must be registered auditors.

Also the remuneration of the Registered Auditors is established by the Stockholders.

With regards to the Italian limited liability companies (S.r.l. and S.r.l.s.), the incorporation deed may stipulate the appointment of a controlling body or a Registered Auditor. The controlling body will consist of a single Statutory Auditor or a board of three Statutory Auditors.

The appointment of a controlling body or a Registered Auditor is mandatory when one or more of the following conditions are met:

1. for two subsequent financial years, the company has passed two of the following three limits:
   a) total assets in the balance sheet: euro 4,400,000;
   b) earnings from sales and provisions of services: euro 8,800,000;
   c) staff employed as an average during the financial year: 50 units;
2. the company have to draw up consolidated financial statements;
3. the company controls another company that is subject to the accounting audit.

KINDS OF PARTNERSHIPS

Italian law regulates three types of partnership:

- the Simple Partnership ("Società semplice", S.s.). The simple partnership may not be used to carry out business activities and is not discussed here,
- the General Partnership ("Società in nome collettivo", S.n.c.), and
- the Limited Partnership ("Società in accomandita semplice", S.a.s.).

These kinds of Partnerships do not have a legal personality. The partners have unlimited liability, with the exception of the Limited Partners of a Limited Partnership. However, creditors' claims must be first applied to the assets of the partnership before invoking the liability of the partners.

A partnership is created by a contract between two or more partners. The partnership agreement must be drafted in the form of a public deed or a legalized private deed.

Corporate entities may be partners of Italian partnerships. No minimum capital is required and contributions can be made in cash, in kind or in personal activity of the partners.

FOREIGN INVESTORS

Investments made in Italy by nationals of other European Union (EU) Member States are treated in the same manner as those by Italian nationals.

Investments made by non-EU nationals are subject to certain restrictions. In particular, non-EU nationals may participate in Italian entities based on reciprocity (i.e., the country of citizenship of the foreign investor must allow the same benefit to Italian citizens or legal entities).

BRANCH VERSUS REPRESENTATIVE OFFICE

According to Italian legislation and to the OECD Tax Model Convention to avoid double taxation, if the Italian office of a foreign company performs any business activities (selling goods, providing services, etc.), it is considered a permanent establishment (branch).

The branch must apply for a VAT number, is subject to separate accountancy and bookkeeping in Italy, must draw up an annual balance sheet and is subject to taxation in Italy on the income that derives from its activities carried out in Italy.

However, a representative office does not have to apply for a VAT number and is not subject to separate accountancy and bookkeeping in Italy.

Neither the Italian branch nor the representative office of a foreign company are subject to any restriction when hiring employees or renting premises.

The establishment of a branch or a representative office by a foreign investor must be registered with the Registrar of Companies.

Subsidiary Versus Branch

A foreign company may perform any business activity in Italy through a subsidiary (company) or a branch (permanent establishment).

To set up a corporation in Italy it is necessary to go before a Notary Public. To set up a branch in Italy it is necessary to file the relevant documents with a Notary Public.

The taxation of an Italian branch is the same as the taxation of an Italian corporation.

In the case of a branch, the parent company is directly responsible for all the debts of the Italian branch. However, in the case of a subsidiary, the company is only answerable with its assets for the obligations of the company. The liability of the Stockholders is limited to the amount of the participation subscribed by each of them.

The procedure for the setting up of a subsidiary is simpler than the one necessary for the setting up of a branch, and both from an administrative and fiscal perspective, are equally difficult to manage.

The Italian branch must file its parent company balance sheet with the Registrar of Companies. Of course, the balance sheet of the parent company must be translated into Italian. This is not true for an Italian subsidiary.

The transfer of the profits from the Italian branch to the Parent company is not subject to any withholding tax. However, the payment of dividends from the Italian subsidiary to the Parent company may be subject to a withholding tax (see Payment of Dividends, Interest and Royalties – Withholding Taxes on Dividends).

Taxation of Resident Companies

At a Glance

- Corporate income tax (IRES): 27.5%.
- Regional tax on productive activities (IRAP): 3.9% (1).
- IRES taxable income: worldwide income.
- IRAP taxable income: added value produced in Italy.
- Losses: carry forward allowed for an unlimited number of fiscal periods; carry back not allowed.
- Domestic consolidation: allowed.
- Branch profit tax: not applicable.

(1) some costs are not deductible when determining the taxable income - the basic rate of tax can be increased or decreased at a regional level.

Corporations

Corporate profits are subject to two taxes: IRES, a state tax, and IRAP, a regional tax. As a rule, IRAP paid on labour expenses and IRAP paid on interest expenses (10% flat rate deduction) are deductible in determining the taxable base for IRES.

Partnerships

Partnerships other than Limited Partnerships by Shares are treated as transparent entities and are not subject to IRES. However, they are subject to IRAP.

In the case of partnerships, the taxable income is computed in the hands of the partnership (which must keep the books and accounts), but is taxed in the hands of the partners in proportion to their entitlement to the partnership's profits.

Non-resident Companies

Non-resident companies and entities of every kind (including partnerships) are subject to IRES on income derived from Italy. They are also subject to IRAP on income derived from a permanent establishment maintained in Italy for at least three months (see Taxation of Non-Resident Companies).

Residence

Resident companies are those that for the greater part of the tax year have had their legal headquarters, place of effective management or main business purpose in Italy. The place of incorporation is not relevant.

IRES Taxable Income

Resident companies are subject to IRES on their worldwide income. Foreign income is therefore included in the taxable base.

IRAP Taxable Income

IRAP is levied only on the added value produced in Italy; added value produced abroad is excluded from the taxable base. In particular, IRAP is levied on the net value of the production derived in each Italian region.

Taxpayers carrying out business activities in more than one region by employing personnel in each region for more than 3 months must apportion their taxable base between the regions on the basis of the remuneration paid to personnel employed in each region.

Taxable income and deductible items are determined according to the profit and loss account (they are not influenced by the rules applicable for IRES). However, in assessing the taxable base of IRAP, you must consider the following:

- part of the cost of employees (1), the directors' fees, the provisions for liabilities and charges, the amounts written off receivables and tangible and intangible fixed assets, the financial charges, including interest payable, are not deductible;
- the financial profits, including dividends and interest received, are not taxed;

- depreciation and amortization are deductible according to the General Accepted Accounting Principles adopted for the drawing up of the balance sheet. However, trademarks and goodwill may be depreciated up to one eighteenth for each fiscal year.

(1) Cost of employees with an open-ended contract are fully deductible.

Depreciation and Amortization

Depreciation of tangible assets is permitted on a straight-line basis. In particular, depreciation is determined by applying the coefficients established by the Ministry of Finance to the cost price, reduced by half for the first fiscal year.

In general, land is not depreciable. For the purposes of depreciation of buildings, the land on which the building has been built and the land that is considered part of the building are not depreciable. The value of such land is determined as the higher of (a) the value written in the balance sheet in the year of purchase and (b) 20% of the aggregate value of the building (increased to 30% in the case of industrial buildings). However, if the land has been purchased separately before the construction of the building, the above value of the land is equal to the price that was paid for it.

If the cost of tangible assets is less than euro 516.46, it can be deducted entirely in the financial year of acquisition.

Trademarks may be depreciated up to one eighteenth for each fiscal year. Patents, know-how and other intellectual property may be depreciated up to one half for each fiscal year.

Goodwill may be depreciated only up to one eighteenth of the value for each fiscal year.

Concession rights may be depreciated according to the period of use set by law or by contract.

Valuation of Inventory

The valuation of the inventory is left up to the taxpayer, provided the value is not lower than the value determined by tax law.

The minimum value for tax purposes is the lower of the cost or market value. Goods in stock are grouped in categories, depending on their value and characteristics.

In addition to the LIFO (last in, first out) method, the FIFO (first in, first out) and the average cost methods are also accepted when determining the cost value if the company uses such methods for company law purposes.

Research and Development

Research and development costs are deductible in the fiscal year in which they are incurred, or in equal portions in that year and the following years, but not after the fourth following year.

Advertising and Other Publicity Expenses

Advertising and other publicity expenses are deductible in the fiscal year when they are incurred or in equal portions in that year and the 4 years that follow.

Entertainment Expenses

Entertainment expenses are fully deductible in the year in which they are accrued provided that they are inherent to the business activity and their amount is appropriate pursuant to the criteria set with a Ministerial Decree.

As a rule, entertainment expenses are deductible within the following limits:

- 1.3% of the revenues up to euro 10,000,000;

- 0.5% of the revenues between euro 10,000,000 and euro 50,000,000;

- 0.1% of the revenues beyond euro 50,000,000.

Costs of Vehicles

The costs incurred for the acquisition, maintenance, repair and operation of trucks/lorries, autobuses, caterpillars and such are fully deductible.

The costs incurred for the acquisition, maintenance, repair and operation of motor vehicles (cars, motorcycles and mopeds) that are used directly in, and absolutely necessary for, the business purpose of the company (e.g., the cars of a rental company) are fully deductible.

The other expenses related to motor vehicles (cars, motorcycles and mopeds) are deductible with the following limitations:

a) vehicles put at the disposal of employees for the greater part of the fiscal year are deductible by up to 70%;
b) vehicles used by companies acting as sales agencies are deductible by up to 80%;
c) vehicles used for other business purposes and in other situations are deductible by up to 20%.

In the above cases b) and c), the costs incurred for the acquisition of cars are allowed up to a limit of euro 18,075.99 (euro 4,131.66 for motorcycles and euro 2,065.83 for mopeds). Long-term rental fees for cars are limited to euro 3,615.20 (euro 774.69 for motorcycles and euro 413.17 for mopeds) per fiscal year .

Costs of Telephones and Internet Connections

The costs incurred for the acquisition, maintenance, repair and operation of fixed and mobile telephones and Internet connections are deductible by up to 80%.

Directors' Fees

Directors' fees, both in fixed amount or as a proportion of profits, are fully deductible on a cash basis.

Finance Leasing Fees

Leasing fees are deductible by the lessee only if the contract lasts for more than half of the relevant depreciation period (or the whole relevant depreciation period in the case of leasing of cars, motorcycles and mopeds described in points b) and c) of the paragraph Costs of Vehicles). Leasing fees concerning immovable property are deductible with a minimum of 12 years. The

relevant depreciation period is that determined by applying the coefficients established by the Ministry of Finance (see above Depreciation and Amortization).

In the case of leasing of immovable property, the portion of leasing fees that represents the repayment of the principal attributable to land, determined as described above with reference to depreciation, is not deductible.

Credits and Debits in Foreign Currencies

The evaluation of credits and debits in foreign currencies according to the exchange rates as of the last day of the financial year is not relevant for tax purposes, unless hedging contracts exist and are also evaluated according to the exchange rates as of the last day of the financial year.

Companies that have regular transactions in foreign currencies may keep accounts in various currencies. The balance of such accounts must be evaluated according to the exchange rates of the last day of the financial year.

Participation Exemption

Dividends

Dividends received by resident companies from other resident companies are tax exempt for 95% of their amount.

Foreign dividends are treated in the same manner as domestic dividends. However, the 95% exemption is subject to the condition that the distributing company is not a resident of a state or territory that has a privileged tax regime for Controlled Foreign Companies (CFC) purposes (see Taxation of Resident Companies – Controlled Foreign Companies (CFC) Rules). This holds true unless a ruling has been obtained that the holding of the shares in the controlled foreign company does not achieve the localization of income in a state having a privileged tax regime.

Capital Gains and Losses

Gains on the alienation of shares, financial instruments assimilated to shares and interests in resident companies or partnerships are tax exempt for 95% of their amount under the "Participation Exemption" regime. The exemption applies, provided that (i) the participation has been continuously held for at least 12 months (the LIFO method applies), (ii) the participation is classified as a financial asset in the first balance sheet closed after the acquisition and (iii) the participated company is engaged in a business activity (companies whose assets are mainly represented by real estate not used in the business activity are not deemed to perform a real business activity). Corresponding capital losses are not deductible however.

Capital gains on shares in non-resident companies are treated in the same manner as domestic gains. However, the exemption is subject to the condition that the participated company is not a resident of a state or territory that has a privileged tax regime for Controlled Foreign Companies (CFC) purposes (see Taxation of Resident Companies – Controlled Foreign Company (CFC) Rules). This holds true unless a ruling has been obtained that the holding of the shares in the controlled foreign company does not achieve the localization of income in a state having a privileged tax regime.

Interest expenses

The part of interest expenses that exceeds interest income (net interest expenses) is deductible up to an amount equal to 30% of the "gross operating income" (EBITDA). The EBIDTA is calculated as the difference between (i) revenues and (ii) costs of production, excluding depreciation, amortization and financial leasing instalments.

Non-deductible interest expenses of a fiscal period may be carried forward and deducted in the following fiscal periods, provided and in the limits that in the following fiscal periods the net interest expenses accrued are lower than 30% of EBITDA.

The excess EBITDA (i.e., the amount of the EBITDA that exceeds the net interest expenses) of a fiscal period can be brought forward and added to the EBITDA of the following fiscal periods.

If a company joins the domestic consolidation regime (see Domestic and Worldwide Consolidation), non-deductible interest expenses may be offset against the taxable income of another company included in the domestic consolidation, provided and in the limits that the latter company has an excess EBITDA.

Anti-Tax-Haven Legislation

Anti-tax-haven legislation is applied to prevent the use of tax haven jurisdictions. In particular, costs and expenses are not deductible if they arise from transactions with companies resident in a non-European Union (EU) Member State with a preferred tax regime. The Ministry of Finance has issued a list of states and territories with a preferred tax regime. The deduction is allowed, however, if the resident company can prove that the non-resident company actually and primarily carries out a business activity, or that the transactions have a business purpose and have in fact been concluded.

Taxpayers may ask for advance rulings on the applicability of this anti-avoidance provision.

Transfer Pricing

Business income of a resident enterprise that arises:

- (i) from transactions with non-residents that have direct or indirect control over the resident enterprise,

- (ii) from transactions with non-resident companies controlled (directly or indirectly) by the resident enterprise, and

- (iii) from transactions between resident and non-resident companies that are under the common control of a third company,

is assessed on the basis of the "normal value" of the goods transferred, services rendered or services received if an increase in taxable income derives from it. In principle, the definition of "normal value" is the same as the definition of arm's length price.

The provision also applies if a decrease in taxable income derives from it, but only if the mutual agreement procedure provided in double tax treaties is used. A circular of the Minister of Finance indicates the different methods of valuation (arm's length principle) to be used for each type of transaction.

From 2010, if the taxpayer maintains proper documentation as to how the transfer prices were set, no penalty will be charged if the tax authorities contest the transfer prices that have been applied. The standards of this documentation have been set by a Ministerial Decree.

As an alternative, the taxpayer may recur to the International ruling system under which advance pricing agreements may be concluded with the tax authorities regarding:

- specific transfer pricing issues, including the attribution of income or losses to Italian permanent establishments of foreign taxpayers and to foreign permanent establishments of Italian taxpayers, and
- the application of tax treaties to dividend, interest and royalty flows.

The ruling is binding on both parties for 3 fiscal years.

Controlled Foreign Company (CFC) Rules

Under CFC legislation, profits of a non-resident entity are deemed to be profits of an Italian resident (individual or company) if (i) the resident controls, directly or indirectly, the non-resident entity and (ii) the non-resident entity is resident in a tax haven as defined in a blacklist issued by the Ministry of Finance. The profits of the foreign controlled entity are taxed at the resident's average tax rate (not lower than 27%).

The application of the CFC rules can be avoided if the resident company proves that the non-resident entity predominantly carries on an actual business in the market of the country in which it is resident, or that the participation in the non-resident entity does not achieve the localization of income in tax haven countries or territories.

The CFC rules are also extended to "related entities", i.e. those in which the Italian resident directly or indirectly holds a profit entitlement exceeding 20% (10% in the case of listed companies). Under the rule, the profits of the non-resident related company flow proportionally through to the Italian resident taxpayer, which will be liable to tax in Italy on the higher of the profits of the related foreign company as determined in its books, or a deemed income to be determined on the basis of coefficients of return.

Taxpayers may ask for advance rulings on the applicability of this anti-avoidance provision.

Losses

For IRES purposes only, losses may be carried forward and deducted from income of the subsequent fiscal periods up to 80% of the taxable income of each fiscal period.. Losses incurred in the first three fiscal periods may be carried forward and deducted from 100% of the taxable income of the subsequent fiscal periods, provided that the losses are generated in an new activity (i.e. an activity that was not previously carried out by another entity). Carrying-forward losses can be restricted, however, if ownership of the company is transferred and the company changes its activities.

Losses may not be carried back.

Allowance for corporate equity (ACE)

The "ACE" incentive allows a company to deduct from the taxable income an amount equal to the notional return of the new capital invested into resident corporations.

The deductible amount is computed as a percentage of the net equity increase (i.e. new shareholders' contribution and allocation of the profits to reserves, net of distributions) against the opening equity fund as at 31/12/2010.

Under no circumstances, however, the net equity increase can exceed the company's equity at the end of the given fiscal year.

The rate to be applied to the net equity increase, as defined above to determine the deductible amount, is fixed by a Ministerial Decree and it takes into consideration the average yield of the public securities plus a premium risk. Currently, the applicable rate has been determined as 4% for the fiscal year 2014, 4,5% for 2015 and 4,75 for 2016.

IRES and IRAP Rates

IRES is applied at the rate of 27.5%.

IRAP is applied at the rate of 3.9%. However, regional authorities may decide to lower the taxation up to 2.98% or to increase it up to 4.82%.

Taxable Period

The fiscal year for corporate income tax purposes is the financial year of the company, as determined by the articles of incorporation.

The fiscal year for partnerships is the calendar year.

Tax Returns

Resident companies must file their corporate income tax return electronically by Internet within 9 months of the end of the financial year.

Payment of Tax

Corporate income tax is normally paid as two advance payments for the current tax year, based on the tax paid for the preceding tax year, the balance being payable:

- by the 16th day of the 6th month following the end of the financial year for companies approving the balance sheet within the statutory 120-day period;

- by the 16th day of the month following the approval of the balance sheet for companies approving the balance sheet later than the statutory 120-day period (thus benefiting from the 180-day term).

As a rule, advance payments are almost equal to the amount of taxes paid for the previous fiscal year. Reduced amounts can be paid if the company expects to realize a lower taxable income.

Advance payments must be paid in two instalments, the first due at the time a company pays the balance for the previous financial year and the second due by the end of the 11th month of the financial year.

All payments must be made electronically by Internet.

Rulings

If there is uncertainty regarding the correct interpretation of the tax provisions, a taxpayer may obtain a private ruling by filing a written request with the tax authorities.

In addition, special ruling procedures are provided with respect to:

- the application of the anti-avoidance provision;

- the application of the provision on fictitious interposition;

- the deductibility of advertisement and entertainment expenses;

- the application of the anti-tax haven legislation;

- the application of the Controlled Foreign Company Rules;

- the application of the arm's length principle of the transfer pricing rules.

Double Taxation Relief

Unilateral relief

In general, tax credit covers only direct foreign taxes, i.e. withholding taxes and taxes on business income.

In particular, unilateral relief from double taxation of income derived from abroad is granted in the form of:

- an ordinary tax credit for foreign income or withholding tax offset against Italian corporate income tax, and
- an exemption for the value of production derived abroad for the purposes of IRAP.

The foreign tax credit, calculated on a per-country basis, is limited to an amount equal to that part of the Italian tax that is attributable proportionally to that foreign-source income. In the case of partially exempt income, the foreign tax is reduced proportionally to the income taxable in Italy.

You must claim the tax credit in the tax return for the year in which the foreign tax is paid. If not, the right to the tax credit is lost.

Treaty relief

The double taxation treaties concluded by Italy normally provide for the avoidance of double taxation in accordance with the OECD Model Convention. The general method for avoiding double taxation is the credit method, which corresponds to the foreign tax credit provided under domestic law.

Domestic and Worldwide Consolidation

Both domestic and worldwide consolidation is available.

Both the controlling company and the controlled companies included in the consolidation must exercise the option for domestic consolidation. Once exercised, the option is irrevocable for a period of 3 fiscal years.

In order to exercise the option, the fiscal year of the consolidated controlled companies must be the same as that of the controlling company.

The effect of the domestic consolidation is that all taxable income of the controlled companies is aggregated and taxed at the level of the controlling company, with certain adjustments.

Worldwide consolidation is also available, but it is rarely applied because its rules are excessively strict.

General Anti-Avoidance Rule

The tax authorities may disallow the tax advantages achieved by any act or transaction that is carried out, without valid economic reasons, to avoid obligations or prohibitions contained in Italian law and obtain a tax saving. This applies only if the tax advantage results from (among others):

- mergers, divisions, transformations, voluntary winding-ups and distributions to shareholders of reserves not consisting in profits;
- contributions to the capital of companies and transactions concerning branches of activity;
- transfers of debt claims and excess tax credits;
- European Union (EU) mergers, divisions, transfers of assets and exchanges of shares;
- transfer abroad of the registered office of an Italian company;
- transactions concerning securities and financial instruments;
- payments of interest and royalties eligible for the exemption under the EU Interest and Royalties Directive (2003/49/EC), if made to a person directly or indirectly controlled by one or more persons established outside the European Union;
- transactions between resident entities and their affiliates resident in tax havens and concerning the payment of an amount under a penalty clause.

Mergers and Divisions

The merger of two or more companies is tax neutral and does not constitute either the realization or distribution of capital gains or capital losses by the merged companies.

The division of a company is tax neutral and does not constitute either the realization or distribution of capital gains or capital losses by the divided company.

Taxation of Non-Resident Companies

Non-resident Companies

Non-resident companies are those that for the greater part of the tax year do not have their legal headquarters, place of effective management or main business purpose in Italy.

IRES Taxable Income

Non-resident companies and entities of each kind (including partnerships) are subject to Corporate income tax (IRES) only on income derived from Italy.

IRAP Taxable Income

Non-resident companies and entities of each kind (including partnerships) are also subject to the Regional tax on productive activities (IRAP) if they maintain a permanent establishment in Italy for at least 3 months. The computation of the Regional tax on productive activities follows the rules for resident companies.

Business Income

Business income is taxable in Italy only if derived through a permanent establishment. If a permanent establishment exists, all Italian-source income is taxable under a force-of-attraction principle. Income is taxed according to the same rules as those applicable to resident companies.

Branch Profit Tax

Italy does not levy any tax on branch profits paid to the parent company (except for the normal IRES and IRAP taxation).

Other Income

If a non-resident company does not have a permanent establishment in Italy, it is taxed separately on all sources of income derived from Italy.

Income and capital gains from immovable property

Capital gains from immovable property are taxable in Italy if the property is situated in Italy. However, such capital gains are subject to the corporate income tax only if the sale takes place within 5 years from the purchase or construction of the immovable property.

Rental income from immovable property is taxable in Italy if the property is situated in Italy. Such income is determined according to the higher of the cadastral value (deemed rental value) of the property or the actual rental income reduced by 5%.

Capital gains on the sale of shares and other participations

Capital gains from the selling of participating interests are subject to taxation in Italy only if the participation is in an Italian company.

In the case of participations in listed companies, however, if the amount of participation sold during a 12-month period does not exceed 2% of the voting rights, or 5% of the capital, the capital gain is not regarded as Italian-source income (the capital gain is not subject to taxation in Italy).

In the case of non-listed participations, if the amount of participation sold during a 12-month period does not exceed 20% of the voting rights, or 25% of the capital, the capital gains are subject to a 26% (as of 1 July 2014, previously 12.5%) substitute tax (these participations are referred to as "non-qualified participations"). However, such capital gains are not subject to taxation if the seller is a resident of a country that Italy has an adequate exchange-of-information system with (a whitelist of the states and territories that have an adequate exchange-of-information system has been issued by a ministerial decree).

If the size of the participation sold during a 12-month period exceeds:

- 2% of voting rights, or 5% of capital, in the case of participations in listed companies, or

- 20% of voting rights, or 25% of capital, in the case of other participations,

the capital gain is included in taxable income for 49.72% of its amount. In such a case, capital losses are deductible by the same percentage.

The taxpayer must report the capital gains and losses in the annual tax return. However, the 26% substitute tax may be paid through a resident-authorized intermediary (normally a bank or other financial institution) on each single capital gain and, in this case, the capital gain is not reported in the annual tax return.

A double taxation treaty between Italy and the transferor's country of residence, containing a provision similar to Art. 13 of the OECD Model Convention (adopted in most of the tax treaties concluded by Italy), generally prevents capital gains on the sale of movable property from being taxed in Italy.

Dividends, interest and royalties

Dividends, interest and royalties paid by Italian resident companies to non-resident companies without a permanent establishment in Italy are normally subject to a final withholding tax, subject to reduction under the relevant treaty provisions (see Payment of Dividends, Interest and Royalties).

Tax Returns

Resident-authorized intermediaries generally satisfy the Italian tax liability of non-resident companies by way of a final withholding tax, or through the application of a substitute tax. If this is not the case (e.g. business income derived through a permanent establishment, income and capital gains from immovable property), the non-resident company must file a tax return and appoint a tax representative in Italy. The assessment procedures are the same as for resident companies.

International Ruling

Multinational companies may request a ruling from the Italian tax authorities with particular reference to transfer pricing and the payment of dividends, interest and royalties. A ruling is binding on both parties for 3 fiscal years. The Italian tax authorities send a copy of the ruling to the competent authorities in the state where the taxpayers involved in the ruling are residents or where they are established.

Municipal Tax on Immovable Property

Non-resident companies owning immovable property in Italy are subject to the Municipal tax on immovable property (see Taxes on Capital - Municipal Tax on Immovable Property).

PAYMENT OF DIVIDENDS, INTEREST AND ROYALTIES

Withholding Taxes on Dividends

Dividends paid by resident companies to other resident companies are not subject to withholding tax.

However, a final withholding tax of 26% is applied to dividends paid by a resident company to a non-resident company or individual without a permanent establishment in Italy. A partial refund may be claimed by a non-resident recipient who demonstrates, by means of proper documentation issued by the tax authority in his country of residence, that a final tax on the same dividends has been paid. The Italian authorities refund this final tax in the amount of up to 11/26 of the Italian withholding tax. As a result, the effective Italian withholding tax may be reduced up to 15%.

You must also consider that tax treaties usually reduce the above percentage of the withholding tax.

However, the above withholding tax on dividends is reduced to 1.375%, provided that the beneficial owner of the dividends is a company that is subject to corporate income tax in another European Union Member State, or in another State of the European Economic Area that allows an adequate exchange of information with the Italian tax authorities.

In addition, under the provisions that make the European Union (EU) Parent-Subsidiary Directive effective in Italy, no withholding tax is levied on dividends paid to a parent company in another Member State if:

- both the parent and the subsidiary are qualifying companies under the Directive (corporations);
- the parent is subject to corporate tax in a Member state without any exemption or limitation;
- the parent has held at least 10% of the capital of the subsidiary for a period of at least 1 year.

Documentation issued by the competent authority of the Member State is required, certifying that the European Union (EU) company meets the conditions necessary to benefit from the withholding tax exemption.

The parent-subsidiary regime is not available for dividends received by EU companies controlled by persons who are not residents of an EU Member State, unless such persons can prove that the participating interest is not held for the sole purpose of benefiting from the special regime for EU outbound dividends.

Under art. 15 of the agreement (Savings Agreement) of 26 October 2004 between the European Union and Switzerland providing for measures equivalent to those set forth in the EU Savings Directive, the EU Member States must exempt dividend payments to companies resident in Switzerland under essentially the same conditions as those set forth in the EU Parent-Subsidiary Directive, except that a minimum holding of 25% for at least 2 years is required.

Withholding Taxes on Interest

Interest paid by resident companies to other resident companies is not subject to withholding tax.

No withholding tax is levied on interest paid to non-resident companies on deposit accounts and current accounts with banks and post offices.

Interest paid to non-residents on bonds issued by the state is exempt from withholding tax if the recipient is a resident of a country with which Italy has an adequate exchange-of-information system (a whitelist of the states and territories that have an adequate exchange-of-information system has been issued by a ministerial decree). The same provision applies to interest on bonds issued by banks or quoted companies. In order to benefit from this exemption, the non-resident must deposit the bonds with a resident bank or other approved intermediary. The non-resident must submit a special statement to the resident bank or intermediary to certify the above requirements.

Interest on bonds other than the above is subject to a 26% withholding tax.

Other types of interest paid to non-resident companies, including interest on loans, are subject to a 26% withholding tax.

The withholding tax on payments to non-resident companies is always final. In addition, you must consider that the percentage of the withholding tax may be reduced by tax treaties.

Under the domestic law provisions implementing the European Union (EU) Interest and Royalties Directive (2003/49/EC), interest payments arising in Italy are exempt from any Italian tax imposed on those payments, whether by deduction at source or by assessment, provided that the beneficial owner of the interest is a company of another EU Member State or a permanent establishment situated in another EU Member State of a company of an EU Member State.

The exemption applies if the person making the payments and the beneficial owner of the payments are companies (or permanent establishments of companies) that fulfill the requirements set forth in Annexes A (legal form) and B (subject to tax) of the domestic law, which correspond to the requirements of the Directive.

A further condition requires that the company that makes the payment and the company that benefits from the payment must be "associated" as per the wording of the Directive. More specifically:

- the first company directly holds a participation equal to at least 25% of the voting rights in the second company, or

- the second company directly holds a participation equal to at least 25% of the voting rights in the first company, or

- a third company, fulfilling the requirements under Annexes A and B of the domestic law, directly holds a participation equal to at least 25% of the voting rights in both the first and the second companies.

The above-mentioned participations must be held for an uninterrupted period of at least 1 year.

The request for the application of the exemption regime must be substantiated by (1) an attestation by the tax authorities in the beneficial owner's residence state and (2) a declaration by the beneficial owner regarding the fulfilment of the legal form and subject-to-tax requirements.

As regards the definition of "interest", the domestic law follows the Directive. Accordingly, the term includes income from debt claims of all kinds, whether or not secured by mortgage, and, in particular, income from securities and income from bonds or debentures, including premiums attached to such securities, bonds or debentures.

The exemption does not apply where the amount of the interest exceeds the amount that would have been agreed upon by the payer and the beneficial owner in the absence of a special relationship between the two parties (i.e. "Fair Value"). Such a special relationship exists when one party directly or indirectly controls the other, or when both parties are directly or indirectly controlled by the same third party.

In addition, the exemption may be denied by virtue of the general anti-avoidance rule (see Taxation of Resident Companies - General Anti-Avoidance Rule).

Under art. 15 of the agreement (Savings Agreement) of 26 October 2004 between the European Union and Switzerland providing for measures equivalent to those set forth in the EU Savings Directive, the EU Member States must exempt interest payments to companies resident in Switzerland under essentially the same conditions as those set forth in the EU Interest and Royalties Directive (however, the participations must be held for an uninterrupted period of at least 2 years).

Withholding Taxes on Royalties

In this context the term "royalties" means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, and films or tapes for radio or television broadcast), any patent, trade mark, design or model, plan, secret formula or process. or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

Royalties paid by resident companies to other resident companies are not subject to withholding tax.

Royalties paid by a resident company to a non-resident company without a permanent establishment in Italy are subject to a final 30% withholding tax. However, except for the royalties for the use of, or the right to use, industrial, commercial or scientific equipment, the tax is generally applied to 75% of the gross amount of the payment, resulting in an effective rate of 22.5%.

You must also consider that tax treaties may reduce the percentage of the withholding tax. However, the rates under tax treaties apply to 100% of the gross royalties.

Under the domestic law provisions implementing the European Union (EU) Interest and Royalties Directive (2003/49/EC), royalty payments arising in Italy are exempt from any Italian tax imposed on those payments, whether by deduction at source or by assessment, provided that the beneficial owner of the royalties is a company of another EU Member State or a permanent establishment situated in another EU Member State of a company of an EU Member State.

The exemption applies if the person making the payments and the beneficial owner of the payments are companies (or permanent establishments of companies) that fulfil the requirements set forth in Annexes A (legal form) and B (subject to tax) of the domestic law, which correspond to the requirements of the Directive.

A further condition requires that the company that makes the payment and the company that benefits from the payment must be "associated" as per the wording of the Directive. In other words:

- the first company directly holds a participation equal to at least 25% of the voting rights in the second company, or

- the second company directly holds a participation equal to at least 25% of the voting rights in the first company, or

- a third company, fulfilling the requirements under Annexes A and B of the domestic law, directly holds a participation equal to at least 25% of the voting rights in both the first and the second companies.

The above-mentioned participations must be held for an uninterrupted period of at least 1 year.

The request for the application of the exemption regime must be substantiated by (1) an attestation by the tax authorities in the beneficial owner's residence state and (2) a declaration by the beneficial owner regarding the fulfilment of the legal form and subject-to-tax requirements.

The term "royalties" includes:

- payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films and software, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, and

- payments for the use of, or the right to use, industrial, commercial or scientific equipment.

The exemption does not apply where the amount of the royalties exceeds the amount that would have been agreed upon by the payer and the beneficial owner in the absence of a special relationship between the two parties (i.e. "Fair Value"). Such a special relationship exists when one party directly or indirectly controls the other, or when both parties are directly or indirectly controlled by the same third party.

In addition, the exemption may be denied by virtue of the general anti-avoidance rule (see Taxation of Resident Companies – General Anti-Avoidance Rule).

Under art. 15 of the agreement (Savings Agreement) of 26 October 2004 between the European Union and Switzerland providing for measures equivalent to those set forth in the EU Savings Directive, the EU Member States must exempt royalty payments to companies resident in Switzerland under essentially the same conditions as those set forth in the EU Interest and Royalties Directive (however, the participations must be held for an uninterrupted period of at least 2 years).

Tax Treaties

You must consider that tax treaties may reduce the percentage of the domestic withholding tax.

If a tax treaty reduces the domestic withholding tax rate, the withholding agent may apply the lower treaty rate directly, but under its own responsibility. The reduced rate may only be applied if the recipient provides the agent with a residence certificate, validated by the tax authorities of its country of residence on the bases of information they have available, stating that the recipient:

- is a resident of the treaty partner state,
- is the beneficial owner of the payment, and
- does not have a permanent establishment in Italy to which the payment is attributable.

Taxes on Capital

Net Worth Tax

There is no net worth tax.

Business Tax on Capital

No business tax on capital is levied in Italy.

Municipal Tax on Immovable Property (IMU) and Local Service Tax (TASI)

Both the municipal tax on immovable property and the local service tax are levied on the possession of immovable property (buildings, development land, rural land) located in Italy. A small portion (up to 30%) of TASI may be payable by the occupant of a building. For both IMU and TASI, the taxable base is the cadastral income, as determined by the immovable property registry, multiplied by a coefficient equal to 160 for residential property and to 65 for business property (with some exceptions).

The combined rate for IMU and TASI ranges from 0.46% to 1.06% depending on the municipality. This tax is partially deductible for corporate income tax purposes.

Taxes on Payroll

Payroll Tax

There is no payroll tax.

Social security and pension scheme contributions

In Italy the following contributions in favour of the employees are mandatory by law:

- contributions for pension schemes;
- contributions for social security covering life insurance, health, maternity, disability, unemployment and family allowances.

All the above contributions must be paid by the employer to the public body "I.N.P.S.".

Employers must withhold social security and pension scheme contributions due by the employee (part of the contributions for the employee is due directly by the employer). The amount of social security and pension scheme contributions depends on the type and size of the business and the rank of the employee.

The aggregate contributions range from approximately 40% to 45% of the aggregate remuneration accrued in the relevant year. The aggregate contributions are normally borne by the employer for 80% to 85% of their amount; the rest is borne by the employee and must be withheld by the employer.

Social security contributions are deductible for corporate income tax purposes.

VALUE ADDED TAX (VAT)

General Overview

The Value Added Tax (IVA in Italian) is a general tax on consumption that is applied in Italy and in all other European Union states.

A transaction is subject to VAT in Italy only if it is deemed to take place in Italy.

A VAT invoice must be issued for all taxable transactions (for which an invoice is required) at the time the transaction takes place. The buyer pays the VAT to the supplier in addition to the cost of the goods or services acquired. In the case of imports, the VAT is paid to customs.

However, for certain supplies of goods and services the reverse charge mechanism applies. Under the reverse charge mechanism the supplier does not charge any VAT, as it is the purchaser who accounts for it.

VAT is applied on an accrual basis. The supplier owes the tax to the tax authorities when he issues an invoice and not at the time he receives payment. However, the supplier is entitled to a credit for the VAT shown on his own suppliers' invoices, or for the VAT paid on imports, regarding any goods and services he has acquired for his business needs. The buyer is entitled to the VAT credit at the time he receives the invoice from his supplier and not at the time he makes payment.

This VAT mechanism means that the actual tax burden is only borne by the end user, who has no right to recover the VAT he has paid.

Taxable Persons

Individuals and companies are taxable if they carry out a business, a profession or an artistic activity. Importers are taxable regardless of their activity.

The Italian permanent establishment of a foreign mother company is a VAT taxable person in Italy, while a representative office is not.

Taxable Transactions

VAT is levied at all levels of the supply chain of goods and services taking place in Italy.

VAT is also levied on the importation of goods from outside the European Union.

However, as of 1 January 1993, when goods are transported from one EU Member State to another, and both the supplier and the recipient are entrepreneurs for VAT purposes, it is no longer considered an import, but an intra-Community acquisition.

VAT is not levied on the exportation of goods outside the European Union and on intra-Community supplies (they are both zero-rated).

Taxable Amount

The taxable amount for VAT is the consideration received for goods and services. For imported goods, the taxable value is the value for purposes of customs duty increased by the customs duty itself.

Rates

The general rate is 22%. Reduced rates of 10% and 4% apply in certain cases. Exports and intra-Community supplies are zero-rated.

VAT Settling

Generally, VAT paid on goods and services acquired or imported within Italy by a taxable person (input VAT), to be used for the purposes of his business, may be offset against the VAT due on sales (output VAT). In other words, the input VAT on the acquisition and importation of goods and services is deductible against the output VAT.

The general rule is that all taxable persons pay the VAT balance (the excess of the output VAT over the input VAT) on a monthly basis. However, "minor taxpayers" may opt to pay tax quarterly.

If the entrepreneur's output VAT for a particular declaration period is less than his input VAT deduction for that period, the balance is carried over to the following declaration period. Any credit balance remaining at the end of the calendar year may, at the option of the taxable person, be refunded (under certain specified circumstances), carried over to the next year or transferred to another taxable person.

Registration

Each entrepreneur must register with the tax office of the district in which the entrepreneur commences operations within 30 days of establishing a business enterprise or permanent establishment in Italy. The entrepreneur is then issued a VAT registration number. The registration number should appear on all documents relating to VAT.

Non-residents

VAT is due by all persons making taxable supplies of goods or services in Italy, regardless of their residence.

If a foreign taxable person, that does not have a permanent establishment in Italy, makes a supply that is taxable in Italy to a purchaser who is a taxable person in Italy, the VAT obligation of the foreign taxable person is fulfilled by the Italian taxable person through the reverse charge mechanism. Under the reverse charge mechanism the foreign supplier does not charge any Italian VAT, as it is the Italian purchaser who accounts for the Italian VAT. However, when the purchaser is not a taxable person in Italy, the foreign supplier has to charge the Italian VAT.

Non-residents that have no permanent establishment in Italy may appoint a representative to exercise their rights and fulfil their obligations under the VAT law. If a tax representative is

appointed, he is responsible for completing all the formalities that the entrepreneur himself would be required to fulfil.

Residents of other European Union Member States may directly exercise their rights and fulfil their obligations in Italy. In this case, the competent authority (the VAT office in Pescara) will provide a VAT number to the non-resident. However, before effecting any taxable transactions in Italy, the non-resident must first submit a declaration to the competent authority. The regime also applies to residents of non-EU states with which Italy has signed an agreement about mutual assistance regarding indirect taxes. However, no such agreements have been signed thus far.

The deduction for the VAT charged by the suppliers is available to entrepreneurs whether they reside in Italy or not. A non-resident entrepreneur, however, must have either a permanent establishment or a fiscal representative in Italy in order to be eligible for the deduction.

Nonetheless, a non-resident entrepreneur who:

- does not have a permanent establishment or a fiscal representative in Italy, and
- has not supplied taxable goods or services in Italy (unless the supply referred to goods or services for which the reverse-charge mechanism is applied, or unless the services supplied were zero-rated transportation services),

can, under certain circumstances, still request a refund of previously paid VAT on the acquisition of goods and services in Italy. However, taxable persons resident outside the European Union may claim a refund only if their country of residence grants a similar refund to Italian taxable persons (currently only Switzerland, Israel and Norway).

Only VAT on business expenditures, which would be recoverable by an Italian registered taxable person, qualifies for a refund.

Taxable persons who are residents of other European Union Member States have to apply for the refund of the Italian VAT to the tax authorities of the Member State where they are residents. On the contrary, taxable persons resident outside the European Union have to apply for the refund to the VAT office in Pescara (Italy) by 30 September of the year following the year in which the VAT was incurred.

A non-resident taxable person with a permanent establishment in Italy must claim the VAT refund through its Italian permanent establishment, even if the VAT refund does not concern a transaction carried out by that permanent establishment (i.e., a transaction carried out directly by the foreign mother company).

Personal Income Tax

General Overview

The income taxes applicable to individuals are IRPEF, a State tax, and IRAP, a regional tax. IRAP is not deductible in determining the taxable base for IRPEF.

IRPEF is a progressive individual income tax that applies to the aggregate total income of the taxpayer, while IRAP applies to adjusted income from professional and business activities (for IRAP see Taxation of Resident Companies).

IRPEF applies to both resident and non-resident individuals. Resident individuals are subject to tax on their worldwide income and a credit is provided for taxes paid abroad.

Residents

For income tax purposes, residents of Italy are those persons, whether nationals or not, who for the greater part of the tax period are registered in the Civil Registry or who are resident or domiciled in Italy as defined in the Civil Code.

According to the Civil Code, the domicile of a person is the place where he has established the principal centre of his business and interests (centre of vital interests), while his residence is the place where he has his habitual abode.

Non-residents

Non-resident individuals are only subject to IRPEF on income that is considered to arise in Italy. They are obliged to file a tax return regarding the income that is considered to arise in Italy, unless such income is subject to a substitute tax or to a final withholding tax deducted by the payer of the income.

Under domestic law, compensation for independent work carried out in Italy by non-residents is subject to a final 30% withholding tax. This includes directors' fees paid by an Italian company. However, you must consider that tax treaties may change such taxation.

IRPEF Rate Structure

The current IRPEF rate structure is as follows:

- up to euro 15,000: 23%;

- from euro 15,001 to euro 28,000: 27%;

- from euro 28,001 to euro 55,000: 38%;

- from euro 55,001 to euro 75,000: 41%;

- over euro 75,000: 43%.

The above rates must be increased by a regional surtax ranging from 0.9% to 1.4%. The rate may be further increased by the municipal and provincial surtax, determined by each municipality and province at an aggregate rate of up to 0.8%.

It is also provided a special contribution of 3% on taxable income exceeding the amount of 300.000,00 euro per annum.

WORK VISA

Hiring people is unproblematic if the staff is made up of Italian or European Union (EU) citizens. Only the registration at the local Population Registry Office (Anagrafe) is required for EU citizens.

However, non-EU citizens wishing to work in Italy, either temporarily or permanently, must be provided with a work permit obtained by the prospective employer, and must get a work visa from the Italian Consular authorities before coming to Italy.

The granting of the work visa is dependent on a particular work capacity, for example knowledge of the local language of the investor and specific market or technical knowledge.

The foreign company that wishes to get a work permit for one of its employees must first set up its Italian subsidiary/branch/representative office. This Italian entity may then apply for the work permit.