Italy
Country Profile

EU Tax Centre

July 2015

Key tax factors for efficient cross-border business and investment involving Italy

EU Member State Yes

Double Tax Treaties With:

Albania	Finland	Luxembourg	Singapore
Algeria	France	Macedonia	Slovakia
Argentina	Gabon[b]	Malaysia	Slovenia
Armenia	Georgia	Malta	South Africa
Australia	Germany	Mauritius	Spain
Austria	Ghana	Mexico	Sri Lanka
Azerbaijan	Greece	Moldova	Sweden
Bangladesh	Hong Kong[b]	Mongolia[b]	Switzerland
Belarus	Hungary	Montenegro[a]	Syria
Belgium	Iceland	Morocco	Tanzania
Bosnia & Herzegovina[a]	India	Mozambique	Thailand
Brazil	Indonesia	Netherlands	Trinidad & Tobago
Bulgaria	Iran[b]	New Zealand	Tunisia
Canada	Rep. of Ireland	Norway	Turkey
China	Israel	Oman	Turkmenistan
Croatia	Ivory Coast	Pakistan	UAE
Cuba [b]	Japan	Philippines	Uganda
Cyprus	Jordan	Poland	UK
Czech Rep.	Kazakhstan	Portugal	Ukraine
Congo (Rep.)	Kenya[b]	Qatar	US
Denmark	Kuwait	Romania	Uzbekistan
Ecuador	Kyrgyzstan[c]	Russia	Venezuela
Egypt	Rep. of Korea	San Marino	Vietnam
Estonia	Latvia	Saudi Arabia	Zambia
Ethiopia	Lebanon	Senegal	
	Lithuania	Serbia[a]	

Notes:
(a) Treaty signed with former Yugoslavia applies.
(b) Treaty signed, but not yet in force.
(c) Treaty signed with former USSR applies.

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Forms of doing business	Joint-stock company (S.p.A.) Limited liability company (S.r.l)
Legal entity capital requirements	Minimum capital requirement of EUR 50,000 for S.p.A. and EUR 10,000 for S.r.l (an S.r.l. may have capital of less than EUR 10,000, and more than EUR 1, provided that contributions are made only in cash and fully paid up).
Residence and tax system	A company or entity, including a trust, is resident in Italy if, for the greater part of the fiscal year, its registered office, place of management, or main business purpose is in Italy. Foreign companies owning a controlling interest in Italian companies are deemed to be resident in Italy, unless otherwise proven, if they are controlled by an Italian resident company or individual, or, alternatively, if they are managed by a board of directors the majority of which are Italian resident individuals. Resident companies are taxed on their worldwide income, while non-residents are only taxed on their Italian source income, as provided in the domestic tax law. A non-resident company is also deemed to be resident in Italy (unless evidence to the contrary is provided) if its assets are mainly comprise units of Italian closed-end real estate investment funds and it is directly or indirectly controlled (subject to relevant influence) by an Italian resident person (company or individual). Undertakings for collective investment (CIVS) set up in Italy are resident in Italy for tax purposes and are liable to corporate income tax (IRES). Under certain conditions, however, they are exempt.
Compliance requirements for CIT purposes	The fiscal year consists of the year or management period of the company, determined by Law or by the article of association; if there are no specific provisions then the fiscal year is equal to the calendar year. Tax return has to be filed within the last day of the ninth month following the end of the fiscal year. Two advance payments have to be made by June 16 and November 30; the balance must be paid by June 16 of the following year.
Tax rate	The standard corporate income tax rate is 27.5 percent + 3.9 percent for Regional Income Tax. The standard rate can be increased by a surcharge of 4.97 percent or more for financial/insurance companies. For industrial holding companies, dividends are excluded from the taxable income for IRAP purpose.

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Withholding tax rates	On dividends paid to non-resident companies 26 percent (1.375 percent for dividends to EU companies, 0 percent if EU Parent-Subsidiary Directive applies). On interest paid to non-resident companies 26 percent (0 percent if EU directive applies). On patent royalties and certain copyright royalties paid to non-resident companies 30 percent (applied to 75 percent of royalties paid if the beneficial owner is the author or if it acquired the patent by paying) No WHT if EU directive applies. On fees for technical services No On other payments No, in general. However, a 30% WHT applies to professional services if the recipient is a non-resident (including a non-resident company), unless the professional services are carried out abroad. Branch withholding tax No
Holding rules	Dividend received from resident/non-resident subsidiaries? Exemption (95 percent). Exemption does not apply if the dividends derive from blacklisted entities (unless the CFC rule applies or the resident shareholder is able to demonstrate, for instance through an advance ruling request, that, since the beginning of the holding period, the income derived from the shareholding investment has been taxed at least to the extent of 75% in a non-black list jurisdiction). Capital gains Capital gains realized by resident companies on the sale of shares are included in the taxable income. However, exemption (95 percent) is applicable if participation exemption applies (subject to conditions).
Tax losses	Tax losses can be carried forward and offset up to an amount equal to 80 percent of taxable income of each of the following fiscal years.
Tax consolidation rules/Group relief rules	Yes

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Registration duties

EUR 200 (flat amount)

Transfer duties

On the transfer of shares

Financial transaction tax (0.2%), usually applicable to purchase of shares issued by resident entities; is not applicable if the transaction occurs between related entities (parties are in a control relation or under common control).

On the transfer of land and buildings

Registration tax:

- 12 percent on transfer of land;
- 9 percent the transfer of real estate assets;
- 2 percent on transfer of immovable properties qualifying as first dwelling;

In addition, mortgage and cadastral taxes (imposte ipotecarie e catastali), currently levied at a total rate of 3% (4% in the case of commercial property), will be levied at a lump sum of EUR 50 each. However, if the transaction is subject to VAT (even though exempt), registration, mortgage and cadastral taxes are levied at a lump sum of EUR 200.

Stamp duties

Stamp duties (imposta di bollo) are levied on certain documents, contracts and registers (e.g. bank cheques, statements of accounts, bills, written contracts, judicial acts, accountancy books). No stamp duty is payable on the transfer of share.

Real estate taxes

Resident companies are subject to IMU (Imposta municipale propria) in respect of their immovable property (buildings, developable land, rural land) located in Italy. IMU is based on the cadastral value of the immovable property, which is confirmed by the tax authority. The standard IMU rate is 0.76%.

However, each Municipality has the right to make upward or downward adjustments to the base rate by a maximum of 0.3%. A Municipality can also decide to reduce the base rate down to 0.4% where an immovable property is owned by taxpayers subject to IRES.

Controlled Foreign Company rules

CFC rules apply in case of control of a black-listed company (a black list identifying countries considered tax havens is provided by a specific decree, recently amended). CFC rules also apply to black-listed affiliates (a bill is pending which could eliminate the application of the CFC regime to affilated entities), if at least 20 percent is owned by an Italian resident party (10 percent if listed).

Two alternative types of ruling can be obtained in order to disregard the application of the CFC rules. CFC rules also apply to non-blacklisted (e.g. EU)

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entities if more than 50 percent of the revenues derive from passive income and the effective tax rate is 50 percent lower than the Italian rate.The provision does not apply if the Italian controlling entity proves that the localization abroad does not constitute an "artificial scheme aimed at achieving undue tax advantages". A ruling can be sought in this case.

The Italian CFC law provision was recently amended with respect to the definition of "black-listed countries". Following the approval of the Stability Law for 2015:

- A jurisdiction with a "significantly lower" level of taxation than that of Italy for CFC purposes is defined as one where the level of taxation is lower than 50% of the Italian level of taxation. Therefore, the decree containing the "black list" has recently been amended in order to exclude some jurisdictions not compliant with this criteria (Malaysia, Philippines, Singapore).
- CFC rules apply to companies subject to special tax regimes that allow a level of taxation lower than 50% of that of Italy, even if the State where they are resident or established does not provide, in general, a level of taxation that is lower than 50% of the Italian one. Italian Tax Administration will issue a list of low-tax regimes for CFC purposes.

Transfer pricing rules

General transfer pricing rules

Related party transactions must be at arm's length. Transfer pricing documentation is not mandatory; in case of a tax audit, penalties can be avoided if the taxpayer has drafted transfer pricing documentation in accordance with the required standards, and has communicated this to the tax authority. Further, the taxpayer needs to make such documentation available to the tax auditors within 10 days of the request. A unilateral Advance Pricing Agreement ("APA") procedure is provided for by Italian law. Transfer pricing rules are relevant both for IRES and IRAP purpose.

Documentation requirement?

Transfer pricing documentation is not mandatory; in case of a tax audit, penalties can be avoided if the taxpayer has drafted transfer pricing documentation in accordance with the required standards, has communicated this to the tax authority and makes such documentation available to the tax auditors within 10 days of the request. Ministerial Guidelines were issued in 2010.

Thin capitalization rules

Italian thin cap rule was repealed and since 2008 Italian tax law only provides an earnings stripping rule. Under applicable earnings stripping rules, the deductibility of net interest expenses is allowed up to 30 percent of the borrower's Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA). The excess can be carried forward (subject to the above conditions) with no time limitation. Any excess of EBITDA capacity can be used to increase the EBITDA capacity of the future tax periods. For banks and financial companies interest expenses are deductible up to 96% of their amount, and no

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other limitations apply.

Within a tax group the EBITDA of all the members can be pooled for deduction purposes.

General Anti-Avoidance rules (GAAR)

Italian tax law does not provide for a "general anti-avoidance" provision. However, it contains a "wide-scope" anti-avoidance measure (art. 37-bis of decree n. 600/73). Moreover, abuse of law principle has been established by Italian Supreme Court and extended from VAT to income taxes. The wide-scope anti-avoidance measure applies to transactions executed for no genuine business purposes, and aimed at circumventing tax obligations or obtaining unlawful tax reductions or reimbursements.

Under a draft decree for the reform of the Italian tax system, a new definition of “abuse of law” is introduced into Italian Law. The former wide-scope anti-avoidance provision (art. 37-bis of decree n. 600/73 or “tax assessment code”) is repealed. This new provision has a general scope (there is no longer an exhaustive list of transactions subject to the anti-avoidance measure), and it is applicable to all taxes (income and indirect taxes, except for custom duties). According to this new definition, abuse of law is characterized by the contemporaneous presence of the following elements:

- Absence of economic substance (in other words transactions, though formally valid, are inappropriate to reach the stated business goal);
- Achievement of an undue tax advantage;
- Tax advantage being the essential effect of the transaction.

The abuse of law principle is applicable only where a transaction cannot be assessed under a specific anti-avoidance measure. Where Italian Tax Revenue assesses an abusive transaction, the latter becomes ineffective for tax purposes and therefore the connected tax advantages are denied. Italian Tax Administration must prove that the transaction is abusive, while the taxpayer must demonstrate the business motivation underlying the transactions. Administrative sanctions, rather than criminal penalties apply.

Specific Anti-Avoidance rules/Anti Treaty Shopping Provisions

There are anti-avoidance rules specifically applicable to cross-border transactions (i.e. non-deductibility of expenses from transactions with "black-list" taxpayers; full taxation of dividends arising in a "black-list" country; CFC rules; TP rules; beneficial ownership clause; deemed residency rule).

According to art. 44 (2) a) of IITC, a financial instrument issued by a non-resident entity is deemed to be similar to shares for domestic tax purposes, and therefore deserves equal treatment (dividends are 95% exempt), if two conditions are fulfilled:

- Remuneration is wholly represented by a portion of profits of the issuer;
- Remuneration is not deductible in the State of residence of the issuer, and non-deductibility results from a declaration of the issuer or other certain and precise elements.

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Advance Ruling system

Ordinary ruling and specific advance rulings (e.g. APAs)

IP / R&D incentives

Finance Law for 2015 has replaced the previous R&D incentive and introduced the following system.

From 2015 to 2019 an R&D tax credit will be available to any enterprise irrespective of its legal form, business sector, accounting standards and size.

The R&D tax credit will generally be 25% of the enterprise's extra spending on R&D, measured against its average spending of the three tax periods preceding that in progress on December 31, 2015 (i.e. 2012, 2013 and 2014 for calendar-year taxpayers).

The R&D tax credit will be 50% for some types of spending.

There is a minimum spending requirement of at least EUR 30,000 per year and a maximum credit of EUR 5,000,000 per year (previously the thresholds were EUR 50,000 and EUR 2,500,000 respectively). Eligible activities include fundamental research, industrial research and experimental development, according to the classification found in the 'Community Framework for State Aid for Research and Development and Innovation'.

With effect from the 2015 tax year resident taxpayers deriving business income and foreign entities resident in a treaty country that allows an adequate exchange of information may opt for a new patent box regime if carrying on R&D activities. Under the new regime, 50% of income deriving from the exploitation or the direct use of a qualifying IP (intellectual works, patents, trademarks, designs, models, processes, secret formulas and industrial, commercial or scientific knowledge) will not be included in taxable income for corporate income tax (IRES) and IRAP purposes. However, the exemption will be reduced to 30% for tax year 2015 and to 40% for tax year 2016. The election applies, irrevocably, for 5 years and is renewable. When income is attributable to direct use of the intangibles, its amount will have to be agreed with the tax authorities through the international tax ruling procedure implemented by article 8 of Law Decree no. 269/2003. The eligible portion of the tax base is given by the ratio of the R&D costs incurred in maintaining and developing the intangible asset to the total costs of producing that asset (in compliance with the OECD "nexus approach").

Other incentives

ACE (Allowance for Corporate Equity). Starting from fiscal year 2011 companies will be entitled to a reduction from their taxable profit of an amount equal to the notional return of the new equity.

The notional return of the new equity is set on an annual basis by the Ministry. Thereafter, the notional return rate will be set by a decree prior to January 31 of each year, which will take account of the return on sovereigns bonds increased up to 3 percent.

The notional return rate was equal to 3 percent for tax periods 2011-2013. The

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notional return has been increased to 4.00% in 2014; 4.50% in 2015 and 4.75% in 2016.

"New equity" is defined as the equity increase resulting from the comparison between the equity at year-end with that resulting from the 2010 financial statements, net of the annual profits for 2010.

The new equity only counts if derived from capital contributions in cash, as well as by profits allocated into distributable reserves, and may be decreased by distributions of equity and profit. The notional return exceeding the taxable income may be carried forward for use in subsequent tax periods.

VAT

The standard rate is 22%. Reduced rates are 10 and 4 percent.

Other relevant points of attention

Delegation Law n. 23 of March 11, 2014 (still a draft decree) contains measures aimed at reforming the Italian tax system. One of the aspects dealt with is the amendment of tax provisions concerning international transactions and abuse of law. On April 21, 2015 the Italian Ministry Council approved a draft implementing decree aimed at growth and internationalization of companies, that contains provisions that may significantly amend the main international tax law rules mentioned above (i.e. CFC rule, black list expenses, but also tax consolidation, earning stripping rule etc). The draft legislation decree is expected to receive final parliamentary approval by the end of June 2015 (At the time of publication of the 2015 update of the ETG further information was not available.) Please note that during parliamentary consideration of the draft legislative decree, it is possible that changes could be made to these proposals.

Moreover, another draft decree contains a new definition of abuse of law and repeals the former wide-scope anti-avoidance measure.

Source: Italian tax law and local tax administration guidelines, updated 2015.

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