INVESTMENT GUIDE.
Doing business in Italy.
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1. Country profile

1.1 Political system

Italy is a republic with a democratic parliamentary system.

Sovereignty belongs to the people, who exercise it in accordance with the principles enshrined in the Constitution that came into effect on 1 January 1948. The Italian Republic recognizes and guarantees the inviolable rights of human beings.

All citizens have equal social dignity and are equal before the law, without regard to gender, race, language, religion, political beliefs, and personal or social status.

The Constitution lays down the principles of a democratic system through the separation of powers: executive power is wielded by the Government, legislative power by the Parliament and judicial power by the judiciary.

The President of the Republic is the head of state, representing national unity, and is elected by a joint session of Parliament together with representatives of each region. The President serves for a seven-year term.

The President:

- promulgates laws, issues decrees with the force of law and issues regulations
- may ask Parliament to reconsider a law
- may dissolve one or both houses of Parliament and call new elections
- is the commander in chief of the armed forces and chairman of the Consiglio Supremo di Difesa (superior defence council)
- declares war on the basis of a decision of Parliament
- chairs the Consiglio Superiore della Magistratura (superior council of the judiciary)
- appoints senators-for-life
- appoints the Prime Minister and, on his advice, the ministers
- appoints one-third of the justices on the Constitutional Court
- has the power to grant pardons and commute punishments
- ratifies international treaties.

The President acts a mediator in the event of a political crisis.

The Parliament is composed of the Chamber of Deputies and the Senate. Although they have similar powers and functions, the two houses differ in several ways:

- number of representatives (630 in the Chamber of Deputies; 315 in the Senate plus senators-for-life)
- electoral system (except for six Senate seats assigned to the constituency of Italians abroad, Senate seats are allocated to competing lists of candidates in
the individual regional constituencies by distributing the seats in proportion to
the population and any allocation of a regional majority bonus. Except for twelve
seats assigned to the constituency of Italians abroad, seats in the Chamber of
Deputies are allocated on a national basis by distributing the seats
proportionally among competing lists of candidates and any allocation of a
majority bonus.

- voting age (18 years for the Chamber of Deputies, 25 years for the Senate)
- age of eligibility for election (to be eligible for election, Deputies must be at least
  25 years old, and Senators 40 years old).

The Parliament largely exercises legislative power.

The Government must enjoy the confidence of both houses. It consists of the
Prime Minister (officially the President of the Council of Ministers) and the
ministers jointly constituting the Council of Ministers.

The Prime Minister conducts and is responsible for the general policies of the
Government. He ensures the unity of general political and administrative policies,
promoting and coordinating the activities of the ministers.

The Government has the power to issue legislative decrees with the force of law,
acting on enabling authority granted by the two houses of Parliament. It also has
the power, in exceptional cases of necessity and urgency, to issue decree-laws
that must be ratified by Parliament within 60 days to have the force of law.

The Government has a number of major interministerial committees that
coordinate issues addressed by two or more ministries:

- Interministerial Committee for Economic Planning (Comitato Interministeriale
  per la Programmazione Economica - CIPE)
- Interministerial Committee for Credit and Savings (Comitato Interministeriale
  per il Credito e il Risparmio - CICR).

The Constitutional Court adjudicates disputes concerning the constitutionality of
laws and acts with the force of law adopted by the state or the regions, conflicts
arising over the attribution of powers between the state and the regions, and
between the regions themselves and charges brought against the President, in
accordance with the Constitution

1.2 The judiciary – jurisdiction

The legal system is organised into the following jurisdicational functions:

- ordinary, attributed to ordinary courts
- administrative, attributed to Regional Administrative Courts (Tribunali
  Amministrativi Regionali - TAR) and the Council of State (Consiglio di Stato)
- financial, attributed to the Court of Accounts (Corte dei Conti) in the area of
government accounting
- tax, attributed to provincial and regional tax commissions.

The judiciary is an autonomous branch of government, independent of all others.
1.3 Local governments

The Italian Republic consists of regions, provinces, municipalities and metropolitan areas.

There are twenty-fives regions, five of which are governed by special statute (Valle d’Aosta, Trentino-Alto Adige, Friuli-Venezia Giulia, Sicily and Sardinia). The regions, in turn, are divided into 112 provinces (of which two are not yet operative) and 8,101 municipalities.

1.4 Reforms

The Italian Government is committed to implementing a series of national and local reforms.

Federal reforms

Constitutional Law 3 of 3 October 2001 assigned new legislative powers to the regions in important areas, such as foreign trade, education and local administration.

The regions also have decision-making power in all areas in which European laws have an impact on regional issues.

The central government retains exclusive jurisdiction over the following matters:

- foreign policy
- immigration
- religion
- defence
- national currency
- electoral laws
- public administration
- public security
- citizenship
- justice
- minimum assistance provided by the National Health Service
- pensions
- civil defence.

Central government and the regions have concurrent legislative power over the following areas:

- the regions’ relations with the European Union and other foreign countries
- foreign trade
- education
• scientific and technological research and support for innovation
• land-use regulation and planning
• civilian ports and airports
• major transportation and navigation networks
• production, transportation and national distribution of energy
• harmonisation of public budgets and coordination of the public finances and the tax system.

In areas of concurrent legislation, the regions have legislative power except for the determination of fundamental principles, which is reserved to state legislation.

Article 119 of the Constitution grants municipalities, provinces, metropolitan areas and regions with financial autonomy. They therefore have the power to establish and collect taxes, transferring a share to central government.

Representatives of local governments participate in the work of the Parliament’s Committee for Regional Affairs.

National reforms

The Italian Government has implemented numerous structural reforms to encourage the long-term growth of the market and competition. These have encompassed company law, the tax system and the labour market.

It is also committed to promoting and supporting the international expansion of businesses, research and development and e-government initiatives to simplify bureaucracy.
2. Doing business in Italy

2.1 The background to starting a new business

In general, foreign investors wishing to start up a new business in Italy may do so on the condition of reciprocity, i.e. when a similar right is granted to Italian investors operating in the foreign investor's country of origin.

However, verification of such reciprocity prior to starting a business in Italy is not necessary if the foreign investor:

- is a citizen of one of the Member States of the European Union
- is a citizen of one of the countries of the European Economic Area (i.e. Iceland, Liechtenstein and Norway)
- is a citizen of a country for which there is a specific international agreement with Italy, such as an agreement governing international investment, treaty of friendship and trade, or other such agreement
- is a refugee or other stateless person.

In order to determine whether the reciprocity conditions are met, see the individual "country reports" prepared by the Italian Foreign Ministry, which are published on their web site:

http://www.esteri.it/MAE/IT/Ministero/Servizi/Stranieri/Elenco_Paesi.htm

For the official list of treaties with Italy, see the online database published by the Foreign Ministry here:

http://itra.esteri.it/default1.asp

Foreign investors can start a business in Italy by:

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

These options are discussed in more detail (except "sole traders" taking in consideration the target of the document) in the following pages.

Companies established in Italy by foreign individuals or organisations, as well as secondary offices of foreign companies, must be entered in the Company Register in the same manner as all Italian companies or secondary offices.

Sole Traders, Branches or representative offices of foreign companies must be entered in the Repertorio Economico-Amministrativo (REA), in the same manner as Italian companies.

The competent Company Register and the REA are maintained by the chambers of commerce of the place in which the company, secondary office, sole trader, branch, or representative office is located.
Notices and documentation to be filed with the chambers of commerce must be submitted electronically (only certain chambers of commerce also allow hard-copy filings). The electronic transmission of notices and documentation uses a system that enables the sender to use a digital signature, which the Italian government recognises as having the same validity as an authenticated signature.

In order to use a digital signature and send documentation and other communications electronically to the chambers of commerce, it is necessary to request and receive a smart card from the Italian government.

Alternatively, it is also possible to turn to certain professional service providers that have such smart cards, such as: notaries public (see p. 31) and accountants (see note on p. 24).

Regardless of the method selected by foreign investors to start a business in Italy, the investors will be supported by a legislative and regulatory framework that is considered one of the most advanced and most dynamic in Europe. The main pillars of the framework are primarily comprised of:

• the body of company law set out in the Italian Civil Code, which underwent an extensive reform in 2003
• the Consolidated Law on Financial Intermediation (“Testo Unico in materia di intermediazione finanziaria” – TUF, namely Legislative Decree 58/1998), which includes specific provisions for publicly listed companies. This law has also been amended on numerous occasions, first by Law 262/2005, which includes provisions to protect savings and to govern the financial markets, as well as by Legislative Decrees 164/2007 and 229/2007, which were issued in implementation of EU Directives 2004/39/EC and 2004/25/EC, respectively, aimed at harmonising the legislation of Member States concerning financial markets and takeover bids
• legislation concerning the liability of legal persons (Legislative Decree 231/2001)
• legislation concerning the protection of personal information (Legislative Decree 231/2001)
• legislation concerning workplace safety and hygiene (Legislative Decree 81/2008)
• legislation concerning fire prevention and the safety of electrical systems (Presidential Decree 577/82, Legislative Decree 139/2006 and Law 46/90, as amended) as well as environmental legislation (Legislative Decree 152/2006, also known as the Environmental Code, as amended).
2.2 Starting a business in Italy...

...by establishing an Italian company

One of the main distinctions in Italian company law is that between:

**partnership**
- partnerships, which are generally characterised by:
  - unlimited joint and several liability of the partners for the obligations of the company, where all the present and future assets of the partners secure such obligations
  - each partner is a director of the company with administrative powers
  - the non-transferability, either inter vivos or mortis causa, of the status of partner except as authorised by the other partners; and

**corporations**
- corporations, which are generally characterised by:
  - legal personality, separate from that of the company’s owners
  - limited liability for the owners of the company, with the liability of each owner limited to the cash or assets (s)he has contributed to the company
  - the separation of ownership and administrative powers, whereby the owners of the company are not necessarily also company directors and directors are not necessarily owners of the company
  - ownership is freely transferable, either inter vivos or mortis causa.

**limited liability company**
Easily the most common types of limited liability company in Italy are: Società per Azioni (company limited by shares - “S.p.A.”) and Società a responsabilità limitata (private limited liability company - “S.r.l.”).

Both types of company are established with a memorandum of association, which may be a unilateral instrument, when there is just one founder, or a contract, in the case of multiple founders. This document is accompanied by the articles of association (or bylaws) of the company, i.e. the set of rules that govern the company’s operations over the course of its existence. Where the company’s owners should decide to change one or more of these rules over the years, the articles of association must also be amended, whereas the memorandum of association remains unchanged over time. Accordingly, consideration must always be given to the articles of association actually in force for the company.

**Società per Azioni (S.p.A.)**
A società per azioni (company limited by shares - S.p.A.) is the primary form of corporation, in that it best meets the needs of enterprises that require significant levels of capital.

**Share capital and shares**
The share capital of an S.p.A. may not be less than € 120,000.00. The capital is divided into a certain number of shares.

The amount of share capital is determined at the time the S.p.A. is founded and must be subscribed to by those who are establishing the company. Thus, if there is just one founder of the company, there will be just one subscription; whereas in the case of multiple founders, all must subscribe (varying) portions of share capital until all the capital has been subscribed.
With the subscription of capital, each owner (or shareholder) undertakes to pay the portion of capital subscribed upon execution of the memorandum of association. The payment can take place by transferring to the S.p.A. (either to its cashier or a current account in the company’s name) a sum of money or, where expressly permitted in the memorandum of association, by payment in kind or by the transfer of receivables, the value of which shall be equal to the amount of capital subscribed.

In the case of multiple founding shareholders, those paying the subscription of capital in cash are not required to pay the entire amount of their share immediately, but may deposit just 25% initially, agreeing to pay the remaining 75% at a subsequent date when the administrative body (e.g. the board of directors) should request it.

Conversely, where the share capital is paid in kind or by the transfer of receivables, it must be paid in its entirety.

In the case of a single founder, the entire subscription of share capital must be paid up front, regardless of whether payment is in cash or in kind.

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

Once the memorandum of association has been filed with the competent Company Register and the company is thereby listed on such register, an S.p.A. may then issue shares representing its own share capital.

Shares can be
- “material”, i.e. physical securities issued by the company. As required by specific laws, such securities must be registered (i.e. bear the name of their holder)
- “immaterial”, in which case, while the shares must still be registered, the articles of association of the issuing company will call for various methods of validation and circulation.

Normally, the par value of each share corresponds to a fraction of the share capital. In the event the shares do not have a specified par value, such value is determined by dividing share capital by the number of shares issued.

Each shareholder is assigned a number of shares that is proportionate to the portion of share capital subscribed whose value is no greater than the amount contributed, except where the articles of association call for a different allotment of shares.

Generally speaking, shares must all be of equal value and provide their holders with equal rights. However, either at the time the company is established or subsequently, different categories of shares to which different rights are attached may be created (e.g. preference shares with priority in the distribution of earnings, in the postponement of losses, or in the event of company liquidation; shares with limited voting rights; shares in favour of employees; redeemed shares; shares with ancillary rights; tracking stocks; redeemable shares; savings shares, and so on). In such cases, the company may, within the limits of the law, freely determine the features of the various categories of shares, but all shares of a given category must bear the same rights.
In addition to shares, an S.p.A. may also issue bonds (i.e. securities that represent a debt the company has with the bondholders) up to a given amount. Italian law governs the terms of bond issues, the rights and obligations of the bondholders, and conversion ratios in the event of the conversion of bonds into shares.

Furthermore, following the company law reform, as of 1 January 2004, an S.p.A. may issue hybrid financial instruments, which grant property and participation rights, but not voting rights. In such cases, the company’s articles of association govern the procedures and conditions for the issue of these instruments, as well as the rights they grant to the holders, the penalties in the event of non-performance of obligations, and, if allowed, the rules governing their circulation.

The company law reform also established that, as of 1 January 2004, an S.p.A. may separate a portion of its equity and earmark it exclusively for a specific business deal ("segregated asset pool"), issuing financial instruments for participation in the deal and specifying the rights of the holders of such instruments, while limiting liability for the obligations arising in respect of the business deal to the segregated asset pool. It is also possible for the company to enter into financing agreements for specific business deals, specifying that all or a portion of the revenues generated by the deal shall be earmarked to repay the debt in whole or in part ("segregated financing").

Shareholders’ Meeting

This is the sovereign corporate body of an S.p.A., in that it is the forum within which the shareholders form their will with respect to the company, which is then implemented by the administrative body. The shareholders pass resolutions collectively. Resolutions that are legitimately passed during the meeting are binding for all shareholders, including those who were not in attendance and those who voted against the resolution passed, although in certain cases it is possible for such parties to withdraw from the company following procedures established by law.

The shareholders may meet in ordinary or extraordinary session, depending on the subject matter to be addressed, assuming that such issues are expressly specified by law or by the company’s articles of association. Matters that are the responsibility of the ordinary meeting of shareholders include the approval of the financial statements and, depending on the model of corporate governance adopted by the company, the appointment or termination of the administrative and control bodies, as well as shareholders’ suits involving such bodies. By contrast, extraordinary meetings of shareholders, regardless of the company’s form of corporate governance, are convened to resolve amendments to the articles of association (including those consequent upon extraordinary operations, e.g. mergers), the appointment, replacement and powers of liquidators, and on any other matter expressly assigned by law to extraordinary meetings of shareholders.

Finally, there may also be bondholders meeting and other special meetings for the holders of special categories of shares. If a resolution of shareholders (meeting in ordinary or extraordinary session) should compromise the rights of bondholders or holders of non-ordinary shares, the resolution must also be approved by the bondholders or by the holders of such special shares.

All meetings must be called with a specific notice, which is prepared in accordance with specific procedures. Participation in such meetings may also take place using audio or video conferencing systems, so long as this is expressly allowed by the
company’s articles of association. Only if all shareholders, as well as a majority of the members of the administrative and control bodies, are in attendance and the entirety of share capital is represented, may the meeting be deemed properly convened without prior notice (in such cases, the meeting is said to be a plenary session). Meetings may also include a specified second call (or subsequent calls if allowed by the articles of association) in the event that the necessary quorum is not reached in the previous call.

Resolutions passed during shareholders’ meetings are registered in the minutes by the person appointed to act as secretary for the meeting, except in the case of specific extraordinary meetings for which the minutes must be prepared by a notary public (see p. 31). The minutes are signed by the chairman and secretary of the meeting and preserved in the file of meeting minutes.

**Administrative body**
This is the body responsible for managing the company. In performing the ordinary and extraordinary management of the company, this body is not bound to seek approval from the shareholders for its actions except for such acts of corporate administration which the law expressly states are subject to shareholder approval.

This means that the administrative body may legitimately reject any unwarranted intervention by the shareholders and ignore related directives or instructions in discharging the obligations expressly defined by law or by the articles of association or when pursuing the interests of the company with due diligence.

However, the shareholders may revoke the appointments of members of the administrative body who fail to pursue the interests of the company, as well as initiate legal action against them in specified circumstances. This could result in the directors being required to pay damages to the company for losses resulting from their conduct or their failure to act, without prejudice to the possibility that such conduct could constitute a criminal offence.

The composition of the administrative body depends on the model of corporate governance adopted by the company (see the following section).

**Control body**
This body is responsible for overseeing management of the company and/or for auditing its accounts, although the latter may also be entrusted to an independent auditing firm.

In any event, the composition of the control body depends on the model of corporate governance adopted by the company (see the following section).

Following the company law reform, there are now three models of corporate governance that may be adopted when establishing an S.p.A.:

**Ordinary model**
This is the most similar to the model used prior to the reform and is the one that provides the greatest level of protection, in that there is a clear separation between management and control functions.
Under this model:

- Company management is entrusted to an administrative body, which may be composed of multiple directors, typically known as the board of directors, or of a single director, called a sole director. The board of directors may delegate certain of its powers of administration to an executive committee or to a chief executive officer (managing director).

Directors – whether members of the board of directors or a company’s sole director – are appointed by the shareholders to terms of no more than three financial years, which expire on the date of the shareholders’ meeting called to approve the financial statements for the final financial year of their term. Directors may be re-elected unless otherwise specified in the articles of association. They may also be removed from office at any time, although a director removed from office shall be entitled to seek damages in the event of termination without cause.

When appointing the members of the board of directors, the shareholders also appoint the chairman of the board.

Resolutions of the board of directors are approved on a collegial basis. The following is required for resolutions to be valid: (i) the presence of a majority of the directors in office, except where the articles of association should specify a larger quorum; and (ii) the favourable vote of an absolute majority of the members present, unless otherwise specified in the articles of association. Italian law also permits the use of a “casting vote” (i.e. a vote that counts twice) for the chairman of the board of directors in the event of a deadlock.

Resolutions of the board of directors are recorded in the minutes of the board meeting. Resolutions of a sole director are to be recorded in the file of minutes of the sole director.
• Management control is entrusted to a board of auditors composed of either 3 or 5 standing auditors and 2 alternates. At least one standing auditor and one alternate must be entered in the register of auditors maintained by the Ministry of Justice, whereas the other members of the board must be registered in the rolls of other professions as specified by the Ministry of Justice (e.g. for lawyers, accountants, employment consultants) or be full university professors in a legal or economic field.

The shareholders appoint both the members of the board of auditors and the chairman of that board. The members serve terms of three financial years, which expire on the date of the meeting of shareholders called to approve the financial statements for the final year of their term in office. The auditors may only be removed from office for good cause, and the resolution for removal must be approved by a court following a hearing with the party concerned.

The board of auditors must meet at least every 90 days, and the appointment of any standing auditor who misses two meetings of the board during a financial year without justification shall lapse.

The minutes of the meetings of the board of auditors are preserved in a specific file for such minutes.

• The accounts are audited by an external auditor or auditing firm entered in the register of auditors maintained by the Ministry of Justice. However, if an S.p.A. is not publicly listed or is not required to prepare consolidated financial statements, and only where the articles of association expressly allow it, the accounts may be audited by the board of auditors. In such cases, all members of the board of auditors (both standing and alternates) must be entered in the list of auditors maintained by the Ministry of Justice.

The shareholders’ meeting engages the external auditor or auditing firm to audit the accounts of an S.p.A. The appointment has a duration of three financial years, which expires on the date of the meeting of shareholders called to approve the financial statements for the final year of the engagement. The engagement may only be revoked for good cause after obtaining the opinion of the board of auditors. The resolution for revocation must be approved by a court following a hearing with the party concerned.

One-tier model.
This is an alternative to the ordinary model and the two-tier model (described below). Compared with the other structures, the one-tier model, whose adoption must be specifically indicated in the articles of association, facilitates the exchange of information between the management and control bodies and, therefore, has a simplified, more flexible structure.
Under this model:
- company management is entrusted to a board of directors
- management control is entrusted to a management control committee, appointed within the board of directors
- the accounts are audited by an external auditor or auditing firm entered in the register of auditors maintained by the Ministry of Justice.

The members of the board of directors, as well as the external auditor or auditing firm engaged to audit the accounts, are appointed by the shareholders’ meeting.

Two-tier model
This is an alternative to the ordinary model and the one-tier model. Once again, adoption of this approach must be specifically indicated in the articles of association.
Under this model:

- management of the company is entrusted to a management board, which may delegate certain of its administrative powers to one or more of its members. The members of the management board may not be appointed to the supervisory board (see below).
- management control is entrusted to a supervisory board, which appoints the members of the management board. The supervisory board plays a number of important roles that are performed by the shareholders under the ordinary model.
- the accounts are audited by an external auditor or auditing firm entered in the register of auditors maintained by the Ministry of Justice.

The members of the supervisory board, as well as the external auditor or auditing firm engaged to audit the accounts, are appointed by the shareholders’ meeting. However, other than making these appointments, decisions of the shareholders are limited solely to the most important matters concerning the company. As such, this structure is best suited to larger organisations led by a highly qualified, independent management team.

Currently, the ordinary model remains the most common form of corporate governance in Italy.

**Sole shareholder**

The company law reform made it possible for an S.p.A. to be established with a single shareholder. The sole shareholder benefits from the limited liability typical of corporations only if:

- share capital is wholly subscribed and paid up
- the legal obligations concerning the disclosure of the existence of a sole shareholder, the replacement of this shareholder or the establishment (or re-establishment) of multiple shareholders have been met.

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

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

**Capital and capital parts**

The capital of an S.r.l. may not be lower than € 10,000.00 and is divided into capital parts (also referred to as “shares”, for convenience). The amount of capital is determined at the time the S.r.l. is established and, as for an S.p.A., must be subscribed in its entirety by the founding shareholder(s).

In the same manner as for an S.p.A., in the case of multiple founders, those paying the subscription of capital in cash are not required to pay the entire amount of their share immediately, but may deposit just 25% initially, agreeing to pay the remaining 75% at a subsequent date when the administrative body should request it.

Conversely, sole shareholders are required to pay their capital contribution in its entirety, as are shareholders intending to make payment in kind or through the
transfer of receivables.

Any premium on the shares must always be paid in full up front.

Unlike the case of an S.p.A., shareholders may also contribute the value of services provided by one or more of them to an S.r.l.. Here, too, the subscribed capital must be paid in its entirety by those shareholders electing to contribute the value of services provided, and such contribution must take the form of a formal undertaking by the shareholder to provide such services to the S.r.l.

Each shareholder of an S.r.l. holds just one share, which represents a varying portion of subscribed capital. In the case of a sole shareholder, the share represents the entirety of the capital.

Unless otherwise specified in the memorandum of association, the value of each share is calculated in proportion to the value of the shareholder’s contribution to the company, and the rights pertaining to the shareholder (e.g. voting rights and the right to share in profits) are also proportionate (for example, if a shareholder holds 60% of the capital of an S.r.l., the shareholder is the owner of one share equal to 60% of total capital and is therefore entitled to 60% of the company’s earnings and the shareholder’s vote represents 60% of the quorum required for passing shareholder resolutions).

However, the shareholders may establish – either in the memorandum of association or, subsequently, in the articles of association – shares that are not proportionate to the value of the contribution to the company, and may also establish special rights for specific shareholders.

Shareholders’ meeting

In an S.r.l., the shareholders may take the decisions permitted by law or the articles of association in the collegial manner typical of shareholders’ meetings. However, the articles of association may also provide for such decisions (where they do not regard certain matters) to be taken through more streamlined procedures, such as written consultation or written consent.

In an S.r.l., no distinction is drawn between ordinary and extraordinary meetings of shareholders. The law establishes one quorum for the convening of meetings and one for passing resolutions, with meetings being called only once. Nevertheless, the articles of association can provide for meetings to be reconvened, electing to abide by the rules governing an S.p.A. as regards the various quorums. For an S.r.l., the procedures for convening a meeting of shareholders are much less formal (for example, it can be convened by fax or e-mail), and the minutes recording shareholder resolutions must only be taken by a notary public when they entail changes to the articles of association. Finally, plenary shareholders’ meetings (see discussion in section on S.p.A.s) for S.r.l.s are considered validly convened if, in addition to the requirement for all capital to be represented, all shareholders and members of the board of auditors are in attendance or that those who are not present have been duly informed and no objection has been raised regarding the matters to be discussed.

As mentioned above, with the exception of certain issues, the shareholders may take decisions through written consultation or written consent, the governance of which is left to the shareholders in the articles of association. Generally speaking, with the written consultation process, the shareholders vote in writing on the
propose being presented, while under the written consent method, a document is containing the proposal is distributed among the shareholders, who then sign the document if they consent.

For an S.r.l., the minutes of the meetings of shareholders and any decisions taken through written consultation or consent procedures must be preserved in a specific file for shareholder decisions.

Management body
Unless otherwise specified in the articles of association, company administration in an S.r.l. is entrusted to one or more shareholders appointed by the shareholders themselves. As such, an S.r.l. may be administered by a sole director or by multiple directors. In the latter case, the company may adopt one of the following systems of administration:

- **board of directors**: the board acts in a manner similar to the board of directors of an S.p.A. Moreover, for an S.r.l., the articles of association may specify that resolutions of the board shall be approved by written consultation or consent. As for an S.p.A., the board of directors of an S.r.l. may also delegate certain powers to a managing director

- **several administration**: management is entrusted to multiple directors acting individually with the exception of certain matters (the preparation of the financial statements, mergers, spin-offs, capital increases delegated by the shareholders’ meeting to the management body), for which decisions must be made collectively

- **joint administration**: management is entrusted to multiple directors who act unanimously in carrying out company operations. The requirement for joint administration may also be restricted to certain directors only.

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

Control body
For an S.r.l., management control and auditing of the accounts are entrusted to a board of auditors, which performs its duties in accordance with the same procedures established for an S.p.A. However, this body is not mandatory, except under the following circumstances:

- capital is greater than or equal to € 120,000.00

- at least two of the following thresholds are exceeded in two consecutive financial years:
  - total assets of € 4.400.000,00
  - revenues from sales and services of € 8.800.00,00
  - an average of 50 employees during the year.

If the board of auditors is appointed after these thresholds are exceeded, the requirement to maintain the board lapses if the limits are not surpassed for two
consecutive financial years.

Even prior to the reform of company law, Italian law permitted the establishment of an S.r.l. to be established by or have a single shareholder. This sole shareholder benefits from the limited liability typical of such companies under the same circumstances as discussed for an S.p.A. with a single shareholder (see p. 16).

Establishing an S.p.A. or S.r.l.

Please note that a new “single notification” procedure for starting a business is currently being tested. It was introduced with Decree Law 7/2007 (ratified with Law 40/2007) and significantly simplifies the various steps for opening a business: prospective entrepreneurs can start the process online with a single notification to the Company Register containing all of the information which previously had to be submitted to multiple agencies through different procedures.

Pending completion of the testing, the following is the standard practice currently in effect for establishing an S.p.A. or an S.r.l.

The shareholder(s) intending to establish a company in Italy must contact a notary public, who gathers the necessary information and prepares a draft of the memorandum and articles of association.

All founding shareholders must be present at the time the company is founded. If a founder is a foreign company, the company representative must have a power of attorney.

The power of attorney must be:

- authenticated by a notary public of the country in which the foreign company is registered. With the authentication, the notary certifies that the power of attorney has been issued by a party having the power to do so; and
- legalised by the Italian consular or diplomatic authority located in the country in which the foreign company is registered. Legalisation gives legal force to a foreign document in Italy. It consists in the official certification of the legal authority of the foreign notary public who authenticated the document, as well as of the authenticity of the notary public’s signature. However, legalisation is not necessary where:
  - the foreign country is a signatory to the Hague Convention of 5 October 1961 abolishing the requirement for legalisation of foreign public documents. This can be verified at: http://www.hcch.net/index_en.php?act=conventions.text&cid=41
    In such cases, the power of attorney will require an “apostille”, which is a simpler process than legalisation and is issued by the competent public authority; or
  - the foreign company is registered in Belgium, Denmark, France or Ireland, in which case the Brussels Convention of 25 May 1987 concerning the abolition of the legalisation of documents in the EC Member States shall apply (Law 106 of 24 April 1990); or
  - the foreign country has a bilateral convention with Italy abolishing the requirement for legalisation of foreign public documents
- translated into Italian, if drafted solely in a foreign language. This requirement
can be waived if the Italian notary public expressly declares that he or she has a sufficiently good knowledge of the foreign language. The translation must be sworn by the translator at the appropriate office of an Italian court.

Founders who are natural persons may also issue a power of attorney if they do not intend to appear in person before the notary public for the signing of the memorandum and articles of association.

Prior to the execution of the memorandum of association, the founders must establish the company’s share capital. Briefly, if share capital will be paid in cash, the shareholder(s) must open a temporary account with an Italian bank or an Italian branch of a foreign bank.

They must deposit:

- at least 25% of the future company’s share capital if there are multiple shareholders; or
- 100% of the future company’s share capital if there is a sole shareholder; and
- 100% of any share premium paid for the shares or capital parts of the company being created.

Once the deposit has been made, the bank with which the temporary account has been opened will provide the shareholder(s) with a receipt certifying that the deposit has been made and that the purpose of the deposit is the establishment of a company. The deposit is returned if the company is not established within 90 days.

If share capital is to be settled by payment in kind (either assets or receivables)

- the shareholder(s) establishing an S.p.A. must ask the court of the location in which the company will have its registered offices to appoint an expert appraiser
- the shareholder(s) establishing an S.r.l. must appoint an expert appraiser or auditing firm entered in the register of auditors or in the special register maintained by the Italy’s companies and stock exchange regulator, the Commissione Nazionale per le Società e la Borsa (CONSOB).

Once appointed, the expert provides the shareholder(s) with a sworn report containing a description of the assets or receivables to be transferred (or, for an S.r.l., the services to be provided), as well as certification that their value is at least equal to the value attributed to them for the purpose of determining share capital and any share premium and the measurement criteria adopted.

The shareholder(s) must then appear – either in person or through a representative with power of attorney – before the notary public, who, having

- examined the bank receipt certifying the deposit in the temporary account of the cash payment of subscribed share capital; and/or
- attached to the memorandum of association the sworn report of the expert appraiser concerning the assets or receivables contributed in payment of subscribed share capital; and
- verified that the appropriate government permits have been obtained and any
other requirements of special laws regarding the establishment of companies engaged in certain lines of business have been met then proceeds with the formal reading and execution of the memorandum and articles of association. By law, the memorandum of association must specify:

<table>
<thead>
<tr>
<th>S.p.A.</th>
<th>S.r.l.</th>
</tr>
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<tr>
<td>1) the identity of the shareholder(s), whether individuals or legal persons, as well as the number of shares assigned to each</td>
<td>1) the identity of the shareholder(s), whether individuals or legal persons, as well as the value of the capital parts assigned to each</td>
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<td>2) the name of the company and the municipality in which the company and any secondary offices are to be located</td>
<td>2) the name of the company and the municipality in which the company and any secondary offices are to be located</td>
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<td>3) the business of the company</td>
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<td>4) the amount of capital subscribed and paid up</td>
<td>4) the amount of capital subscribed and paid up</td>
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<tr>
<td>5) the number and par value (if specified) of shares, their features and the procedures for issue and circulation</td>
<td>5) the contributions of each shareholder and the value assigned to any assets and receivables transferred</td>
</tr>
<tr>
<td>6) the value assigned to the assets and receivables transferred where share capital is settled, in whole or in part, through payment in kind</td>
<td>6) the share held by each shareholder</td>
</tr>
<tr>
<td>7) the rules by which profits are to be allotted to shareholders</td>
<td>7) the rules governing the operation of the company, including administration and representation</td>
</tr>
<tr>
<td>8) any benefits granted to the sponsors or founding shareholders</td>
<td>8) the individuals entrusted with running the company and any parties appointed to audit the accounts</td>
</tr>
<tr>
<td>9) the governance system adopted, the number of directors and their powers, and an indication of which directors have powers to represent the company</td>
<td>9) at least a close approximation of the total start-up costs charged to the company</td>
</tr>
<tr>
<td>10) the number of members of the board of auditors/board of auditors</td>
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<tr>
<td>11) the appointment of the first directors and statutory auditors or the members of the supervisory board – depending on the corporate governance structure selected – and, where applicable, the party responsible for auditing the accounts</td>
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<tr>
<td>12) at least a close approximation of the total start-up costs charged to the company</td>
<td></td>
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<tr>
<td>13) the duration of the company or, for companies with an indefinite duration, the period of time (which shall not exceed one year) after which a shareholder may withdraw</td>
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The memorandum of association must also specify the director expressly charged with withdrawing the amounts deposited in the temporary account.

Once the memorandum and articles of association have been signed, the director with the power to represent the company brings a copy of the documents to the competent office of the Italian Revenue Agency to apply for tax ID number (codice fiscale) and VAT number for the company.

It is standard practice for the tax ID and VAT numbers for the company to be requested by the notary public [see p. 31] or the company’s accountant1, acting by proxy for the company representative. Such applications are normally processed immediately.

Finally, it is important to note that foreign directors of Italian companies need to obtain an Italian tax ID number. The number can be requested either from the Revenue Agency or the Italian consulate in the director’s country of origin.

The filing represents a request to register the company, after which the company is considered formally established2.

Once the company has been established, the person designated in the memorandum of association as having the power to withdraw the amounts deposited in the temporary account may make the withdrawal. The amount received, representing the company’s share capital, can then be deposited into a final account in the name of the company.

For an S.p.A. only, where capital has been paid in kind, the directors must verify the appraisals contained in the expert’s sworn report within 180 days of establishing the company and make any necessary changes to the estimates where there are demonstrable grounds for doing so. Until such time, the shares corresponding to payments in kind may not be transferred to third parties and must remain deposited within the company. In the event the value of the assets or receivables

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1) For obvious practical reasons newly established companies with foreign shareholders often engage an accounting firm to keep their books and perform the various formalities and obligations required by Italian government offices, and may even designate the offices of the accountants as the registered office of the company. For an extensive analysis of the accounting profession, see the website of the Consiglio Nazionale dei Dottori Commercialisti, www.cndc.it, and of the Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili, www.cndcec.it

2) Legislative Decree No. 185/2008 converted into Law No. 2/2009 requires that when a company is entering the Company Register they also have to communicate their “certified electronic mail address” (Legislative Decree No. 82 of 2005, commonly referred to as the “Digital Administration Code”) or in any case assure the use of technologies that certify date and hour of sending and receipt, content integrity and international interoperability. As such companies, public administration and any other bodies, that are registered in the Company Register, are enabled to send their communications via e-mail without the need to previously receive the permission of the addressee. Companies that registered in the Company Register before the 29th of November 2008 need to communicate their “certified electronic mail address” within the 29th of November 2011 to the competent chambers of commerce.
transferred is determined to be more than one-fifth less than the value estimated at the time of contribution, the company must reduce share capital proportionately and cancel a corresponding number of shares. However, it is also possible for the contributing shareholder to pay in the difference in cash or withdraw from the company, with the return of the contribution in kind where possible.

The company must then file a start-of-business notice (Denuncia di Inizio Attività) with the municipality in which it has its registered offices. The form used for the notice is generally available at the Commerce Office of the municipal government. Business may actually begin no sooner than 30 days from the date of receipt of the notice by the municipal government, assuming that no objections are raised. The Company Register must be notified once business has begun by submitting a copy of the start-of-business notice as registered by the municipal government.

In some cases, company must also obtain an administrative permit/license to begin operating from the competent administrative office. In these instances, business may only begin once the permit/license has been obtained. The Company Register must be notified once business has begun by submitting a copy of the permit/license along with the copy of the start-of-business notice.

...by opening a branch

Branches of a foreign company are separate, but not legally autonomous, units of the company itself. They have organisational independence and decision-making authority delegated from the head office of the overall company.

An Italian branch of a foreign company enables the company to operate in Italy with a more streamlined, cost-effective structure than it would have if it established a full subsidiary in the country. In addition, a foreign company can use a branch to conduct the same business in Italy that it conducts abroad, which would not be possible if the foreign company were merely to open a representative office, which would not be able to conduct any direct production-related activities.

As concerns internal organisation, we need to make a distinction between a branch proper and a secondary (registered) office.

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

Conversely, a branch proper, at least in principle, is administered and legally represented by the administrative body and legal representative of the foreign company, although, in practice, companies frequently appoint a local manager (institore) to run the branch.

For tax purposes, both secondary offices and branches are considered permanent establishments and are therefore subject to taxation. This means they keep their own books, submit VAT and income tax returns to the tax authorities each year and file the annual report of the foreign company with the chamber of commerce.
Opening a branch or secondary office
The standard practice for opening a branch or secondary office is as follows:

Before opening, the institore must have an Italian tax ID number (codice fiscale), even when not of Italian nationality. If the branch does not have a permanent representative, but is managed and represented by the director and legal representative of the foreign company, this person must have an Italian tax ID.

The number can be requested either from the Revenue Agency office for the area in which the branch or secondary office is to be opened or from the Italian consulate in the country in which the foreign company is registered.

The following documents must then be filed with the competent Company Register, if the establishment is a secondary office, or with the competent REA, if it is a branch:

- a copy of the memorandum and articles of association of the foreign company. This document must be authenticated by a notary public in the country of origin of the foreign company, legalised by the Italian consulate or other diplomatic authority in that country or provided with an apostille as appropriate, and translated into Italian if necessary

- a certificate (original, not a copy) issued by the competent body of the company’s country of origin [e.g. the chamber of commerce, Company Register, etc.] declaring that the company is a validly formed, existing company in accordance with the laws of that country. Such certificate must specify the representative of the foreign company and must be accompanied by a sworn translation in Italian certified by an Italian court or, if possible, by the Italian consulate or embassy to the country in which the foreign company is registered

- a copy of the document (which, depending on the legal system governing the foreign company, may be a resolution or other documented decision of the administrative body or shareholders, etc.) which substantiates the intention of the company to open a secondary office or branch in Italy. It shall indicate (i) the address where the secondary office or branch is to be opened; (ii) the person designated as institore; and (iii) the powers of management and representation with which this person is invested.

The information specified under points (ii) and (iii) above, which may also be specified in a procura institoria or general power of attorney, is not required if the foreign company does not intend to appoint a permanent representative for the branch.

The company document substantiating the foreign company’s decision [whether or not accompanied by a separate general power of attorney] must also be authenticated by a notary public in the country in which the foreign company is registered. Where necessary, it must also be legalised or accompanied by an apostille and a sworn translation in Italian.

Before being filed with the Company Register or REA, the document must also be filed by an Italian notary public with the Italian notarial archive. The Italian

3) See pp. 21 and 22 concerning legalization, apostilles, and sworn translations.
notary then certifies such filing with a document that is included in the
documents filed with the Company Register or REA

- a number of forms prepared by the chamber of commerce. These vary
  depending on whether the establishment is a secondary office or a branch.

Once these documents have been filed with the Company Register or REA, the
legal representative of the secondary office or branch must apply for tax ID and VAT
numbers for the new office from the Revenue Agency.

The establishment must then file a start-of-business notice with the municipality
in which the new secondary office or branch is located. The form used for the
notice is generally available at the Commerce Office of the municipal government.
Business may actually begin no sooner than 30 days from the date of receipt of the
notice by the municipal government, assuming that no objections are raised. The
Company Register must be notified once business has begun by submitting a copy
of the start-of-business notice as registered by the municipal government.

In some cases, the secondary office or branch must also obtain an administrative
permit/license to begin operating from the competent administrative office. In
these instances, business may only begin once the permit/license has been
obtained. The Company Register must be notified once business has begun by
submitting a copy of the permit/license along with the copy of the start-of-
business notice.

...by opening a representative office

If a foreign company wants to get a feel for the Italian market before locating a
business here or would like to promote its business, it can open a representative
office in Italy.

Current Italian legislation does not provide an official definition of “representative
office”, so it is standard practice to refer to the OECD Model Convention to avoid
double taxation and prevent tax evasion (incorporated in Article 162 of Presidential
Decree 917/1986, Italy’s uniform income tax code).

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

What is a “mere” representative office?

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

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

The establishment of a mere representative office only has to be reported to the REA after requesting a tax ID number from the Revenue Agency office with jurisdiction for the place in which the office is being opened. The filing is carried out by the legal representative of the foreign company either directly or by way of third party with a special power of attorney. The tax ID number can be requested abroad from the competent consular office.

What distinguishes a representative office that does not merely perform representation functions?

First, while such an office may not engage in production-related or commercial activities, it, unlike a mere representative office, may provide third parties with services of a non-commercial that are auxiliary or preparatory to the company’s business (i.e. display, purchasing and storing goods, gathering information, advertising, research, and other ancillary or preparatory activities). Of course, governance of the relationship between this kind of representative office and third parties must be agreed between the third party and the foreign company that established the office.

For this reason, it is standard interpretative practice to consider such an office to be a permanent establishment and, therefore, subject to taxation. As such, in addition to being registered with the competent REA and possessing a tax ID number, the office must also obtain a VAT number from the competent Revenue Agency office. Unlike a mere representative office, it must also keep separate books, file VAT and income tax returns each year and file the annual report of the foreign company with the chamber of commerce.
2.3 Notary publics in Italy

In Italy, a notary public is a public official, as the documents prepared by a notary public are public instruments, i.e. documents backed by public faith and credit and, as such, having special legal validity. A document certified by a notary public is considered proof (i.e. it must be considered true, including by the courts) unless it is found to be false.

Thus, a notary public certifies that the document is consistent with the intention of the parties and that it complies with mandatory laws (i.e. provisions of law that may not be superseded by the will of the parties). Notary publics also guarantee the veracity and legality of documents formed before them, providing personal assurance to clients as to the legal soundness of the contract or other instrument being executed.

In Italy, notaries public are self-employed professionals, providing impartial service for which they are legally responsible. They have extensive training in legal and fiscal matters and must pass a selective exam in order to practice their profession. It is therefore no coincidence that, as discussed in greater detail in previous sections, in the area of company law (as well as property and inheritance law), the Italian legal system requires notarisation for documents for which it is essential to ensure the highest degree of legality, the identity of the parties involved and the conformity of the contents with their intentions. In addition, as notarisation requirements are established by law, the rates for the notary services are also set by law.

To conclude, the notary public in Italy falls into the category of civil law notaries, rather than the common law notary typical of the Anglo-American tradition. The latter are merely responsible for authenticating the signatures of those appearing before them. This means that, because an Italian notary public is required by law to protect the interests of all parties involved in executing the instrument, such parties do not – unlike in common-law countries – need additional legal counsel in order to verify the legal validity of the document. This ultimately results in considerable savings on professional fees and a significant reduction in the risk of subsequent disputes over of the document’s validity.

4) For a detailed analysis of the profession of notary public in Italy, see the web site of the Consiglio Nazionale del Notariato, www.notariato.it.
3. Real estate law

3.1 Natural and legal persons

The persons bearing rights within the Italian legal system are as follows:

- natural persons: individuals
- legal persons: entities, of varying degrees of complexity, formed by natural or legal persons, with assets that are distinct from those of their components (for example, corporations).

3.2 Categories of property

Property regards things over which rights may be exercised. It is essential to make a distinction between the following categories:

- real estate (or real property): land (including water sources and water courses) and all things annexed naturally (for example, trees) or artificially (for example, buildings) to the soil
- personal property: all property other than real estate
- registered personal property: personal property that is recorded in a register (for example, ships recorded in the Italian shipping registry – RINA, Registro Italiano Navale - or automobiles in the Italian public automobile registry – PRA, Pubblico Registro Automobilistico).

3.3 Possession and detention of real estate

A natural or legal person may exercise the following over real estate:

- possession, where the power exercised over the property is such as to exclude a third party from exercising an analogous power
- mere detention, where one has use of the property while recognising that others have rights to the property.

Bearing this in mind, possession for a natural or legal person may consist of one of the following categories of real rights under civil law:

- the right of ownership
- the right of enjoyment of the property owned by another. This category includes:
  - superficie (superficies) which is a limited right of ownership under which a person may build and own works above or below the ground, which remains the property of another ("naked ownership");
  - enfiteusi (emphyteusis), which consists of the same power of enjoyment of real estate (usually for agricultural use) as the owner, except that the right-holder has the obligation to improve the land and pay the owner periodic rent;
INVESTMENT GUIDE

- usufrutto (usufruct), which is the right to enjoy real estate owned by another, retaining any product of the property with an obligation to preserve its original use;

- uso and abitazione (use and habitation) are types of limited usufruct. Specifically, use consists of the right to use another’s property and, if it is productive, to gather the fruits to the extent necessary for the needs of the right-holder and his family, while habitation consists of the right to inhabit a building owned by another within the limits of the needs of the right-holder and his family;

- servitù prediale (praedial servitude), which consists of an encumbrance on land (“servient tenement”) for the utility of other land (“dominant tenement”) belonging to a different owner. For example, a right-of-way gives the owner of the dominant tenement the right to pass over the servient tenement and the owner of the servient tenement cannot block such passage.

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

- **comodato** (gratuitous loan for use): a contract under which one party (“comodante”) delivers to another (“comodatario”) a thing for a specified time or for a specific use, with the obligation to return the thing received, with no payment of any consideration

- **locazione** (rental): a contract under which one party (“locatore”) undertakes to allow another party (“conduttore”) to use a given property for a specified period of time against payment of consideration

- **affitto** (rental of productive property): a type of rental where the scope of the contract regards the enjoyment of productive property (for example, a factory or a business). In this case, the person who enjoys the asset (“affittuario”) must manage the property in accordance with its economic purpose, enjoying the products and other benefits deriving from the property against payment of consideration

- **leasing**: a contract under which one party (the “lessor”) grants the enjoyment of a property to another (the “lessee”) for a certain period of time in exchange for a periodic payment. At the agreed termination date, the lessee may (as provided for in the contract, the contents of which may vary from contract to contract) do one of the following:
  - surrender the property
  - continue to enjoy the property, making a reduced payment
  - request replacement of the property
  - become owner of the property in exchange for payment of a price that is less than the amount that would have been paid had the lessee not already enjoyed the property.

In practice, there are two types of leasing arrangements:

- **finance leases**, which are characterized by a trilateral relationship involving the lessor (a company that acts as financial intermediary), the lessee (who
uses the asset] and the producer of the leased asset

- operating leases, under which the lessor is also the producer of the asset. Usually, the lease payment covers additional services such as assistance, maintenance and insurance coverage.

Special mention should be made of sale and lease back contracts. In this kind of transaction, the leased asset is purchased by the lessor directly from the lessee, to ensure that the lessee has the necessary liquidity at that moment as well as enjoyment of the asset.

Real estate may be possessed or detained by an individual natural or legal person or by a number of persons. Where a number of persons are co-owners of property or co-holders of a real right of enjoyment in real estate, there is common ownership (“comunione”), and, as a result, special rules with a common root apply: the right of each participant may be exercised only to the extent of the proportion attributable to such participant even though the participants have invested in the asset as a whole.

3.4 Purchasing real estate

Methods of acquiring property

Agreements to sell real estate or establish real rights of enjoyment in such property must be in writing. These instruments are enforceable against third parties once they are transcribed in local real estate registries.

Ownership or a real right of enjoyment in real estate can be acquired through usucaption (“usucapione”), i.e. by virtue of continued, open possession for twenty years, despite the absence of title.

Due diligence

Whenever one undertakes a real estate transaction, many factors must be considered and these may vary depending on the type and subject matter of the transaction. Some of more important ones include:

- recordation - Check that the property is recorded in local land registries, which also contain tax information
- encumbrances - Check whether there are any encumbrances on the property [in particular, mortgages, easements and other restrictive covenants] by doing a title search
- land use certification - Check the permitted use of the property established by the competent municipality.

Inter vivos acts for the transfer of real rights in property that covers at least 5,000 m² of land are null and void if entered into without the land use certification.

Any subsequent change to the use of the property requires prior authorisation

- building permits - Verify with or request from the competent authority the
necessary building permits. Permits are required for:
- constructing new buildings
- changing the use of existing buildings
- carrying out renovation work that changes certain constituent elements of the building.

For other types of works, usually those inside buildings, no prior authorisation is required provided that the competent local authorities are notified of the start of the works;

- environmental issues. Check whether there are any pollution-related problems with the property. If pollution levels exceed legally permitted limits, the owner, the holder of the real rights for the polluted area or the polluter must bear all the costs of reclaiming the polluted site or implementing safety measures aimed at eliminating the threat of future pollution. Reclamation must be carried out in accordance with an administrative procedure under the oversight of the competent authorities.

Failure to implement the reclamation plan may be punishable with an administrative penalty and result in criminal liability.

- pre-emption right of the Ministero per i Beni e le Attività Culturali – MIBAC [Ministry for Cultural Heritage] - Check whether there are any historic building restrictions or archaeological restrictions on the property. The MIBAC has a right of pre-emption in the case of sale for consideration (or contribution of assets to a company) of properties located in Italy that have historical or archaeological value. In such cases, the relevant deed must be filed (by the seller, except in certain cases) with the MIBAC within 30 days. The MIBAC then has 60 days from the date of filing to exercise its right of pre-emption.

Buildings to be built

Special rules introduced in 2005 apply to transactions involving the sale of a building yet to be built (this includes buildings that, at the time the contract is signed, have not yet been built or have not yet reached a stage of construction which would allow the certificate of occupancy to be issued).

The most socially important of these provisions include:

- a requirement for the builder to provide a surety bond to the buyer guaranteeing an amount equal to that paid by the buyer, which can be enforced if the builder runs into trouble (for example, bankruptcy)
- a requirement for the builder to provide an insurance policy to the buyer that protects the latter from any risks of, among other things, defects in the property
- the creation of a solidarity fund [in 2006] for buyers who have suffered a loss after their builder ran into trouble.

A building to be built can be purchased using a variety of contractual arrangements, all of which share the common feature that the property is not being immediately transferred. These include:
• preliminary contract – final contract arrangements. In this case, the parties sign a preliminary contract in which they mutually commit to signing a second contract – the final contract – at some time in the future, the essential terms of the final contract having already been determined. Ownership of the property is transferred only upon the signing of the final contract

• contract for the sale of future property. In this case, only one contract is signed, but the transfer of ownership is only perfected when the entire property comes into existence

• leasing.

3.5 Rentals

a) for residential use

Residential rental agreements are governed by specific provisions that apply to most types of buildings (buildings of artistic or historical importance are excluded, for example).

The parties may create a rental arrangement through:

• free contracts - In this case, the parties can freely set the rent and its adjustments. Such contracts are valid for four years and, unless otherwise agreed, may be renewed for a further four years

• standardised contracts - In this case, the contracts follow the form agreed between the major property owners’ and renters’ organisations. These contracts may not have a term of less than three years and, at the end of the first term, unless the parties agree otherwise, they are automatically renewed for a further two years, with certain exceptions. In some circumstances, such as for work or health-related reasons, the parties may agree to a lease term of fewer than three years (“short-term contracts”).

In both cases, the tenant may, for good cause, withdraw from the contract at any time, with 6-month’s written notice to the owner.

b) for non-residential use

Rental contracts for non-residential use (for example, industrial or hotel properties) are governed by special rules.

The distinction between a rental for non-residential use and a rental for productive property lies in the fact that in the first case the contract concerns solely the enjoyment of the property, while in the second case it comprises enjoyment of the property together with the management of a business activity.

Contracts for rental of property for non-residential use have a minimum term of six years (nine for hotel property rentals) and are tacitly renewable for a further six years (nine years for hotel property rentals), unless one party gives the other twelve months’ prior written notice of its intention to withdraw from the agreement (eighteen months for hotel property rentals). In addition, owners, prior to the end of the first term, may refuse renewal only in certain circumstances, namely:
• they intend to use the property as their own residence, that of their spouse or certain relatives (descendents and ascendants to the second degree)
• they intend to use the property for a business activity of their own, of their spouse or certain relatives (descendents and ascendants to the second degree)
• to carry out substantial renovation works on the property.
The rent can be freely set by the parties, apart from the periodic increases provided for by law.

In the event of the termination of a rental agreement not due to breach, withdrawal or cancellation by the tenant, the tenant has the right to compensation equal to eighteen months’ rent (twenty-one months for hotel property) based on the amount of the last month’s rent paid.

This compensation is doubled in the event the property is used by the owner or a new tenant for an activity similar to that conducted by the outgoing tenant within one year of termination of the previous lease. However, there is no right to compensation where:
• the property is used for an activity that does not involve contact with the public
• the property is used for professional activities or activities of a temporary nature
• the agreement regards the rental of buildings serving railway stations, ports, airports, highways, service areas, hotels and resorts.

3.6 Business

A business (“azienda”) is an aggregate of property (real estate, personal property and registered personal property) organised by an entrepreneur in order to conduct the enterprise. In other words, a business is the set of assets through which entrepreneurs (whether as a sole proprietor or a company) carry out their activities.

A business (or a business unit - “ramo d’azienda”, i.e. a division with operational autonomy) may be transferred in the following ways:
• sale. In this case, the seller is prohibited for a period of no more than five years from engaging in a business that competes with that of the purchaser, unless the parties agree otherwise
• rental and grant of usufruct. In both cases, special rules apply, including:
  - the obligation of the tenant (“affittuario”) and the usufructuary to conduct the enterprise activity using the same firm (“ditta”) i.e. the trade name under which the business activity is conducted) that distinguishes the business
  - the obligation of the tenant and the usufructuary to manage the business without changing its purpose
  - the obligation of the owner and the grantor of the usufruct to refrain from engaging in an activity that competes with that of the tenant and the usufructuary for the duration of the rental or usufruct
• contribution to a company’s capital, as a result of which the transferor, in exchange for the business (or, business unit, as the case may be) receives a stake in the share capital of the transferee.

3.7 Investment funds

Asset management companies ("società di gestione del risparmio" or "SGR") establish and manage investment funds through which anyone can invest by subscribing units ("subscribers").

In the world of funds, an initial distinction is made between:

• open-end funds, which are characterised by the fact the subscribers may request redemption of the units at any time as provided for in the fund rules (i.e., the document that describes the characteristics of the fund, its operation, participation methods, redemption of units, etc.)
• closed-end funds, which are characterised by the fact that subscribers may request redemption of units only at certain, established dates.

A second distinction regards the type of investment made:

• securities investment funds, which invest in securities (equities, bonds, government securities)
• real estate investment funds (these can only be closed-end), which invest in real estate, real rights of enjoyment in real estate and shares in real estate companies.

3.8 Listed real estate investment companies

"Società di investimento immobiliare quotate – SIIQs", or listed real estate investment companies, were introduced in Italy in 2007, inspired by real estate investment trusts ("REITS") in the United States.

Companies that elect to adopt SIIQ status receive special tax treatment. To qualify, a company must meet certain requirements, specifically:

• they must be a corporation limited by shares ("società per azioni") domiciled in Italy for tax purposes and whose primary business is real estate rental
• the shares in the company must be traded on a regulated market in Europe
• no shareholder may directly or indirectly hold more than 51% of the voting rights and more than 51% of the rights to share in the profits
• at least 35% of the shares must be held by shareholders who do not directly or indirectly own more than 2% of the voting rights and more than 2% of the rights to share in the profits.
4. Intellectual and Industrial Property Rights

4.1 A Secure Setting for Innovation

Foreign companies investing in the Italian market can rely on the same legal protection of Intellectual Property Rights (IPR) granted to Italian companies. These rights extend to all the key areas – patents, trademarks, copyright and designs – that companies are used to enjoying in their home countries.

The foundations of this legal certainty rest on Italy’s membership of and respect for all the leading international agreements on IPR.

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

4.2 International IP Treaties ratified by Italy

<table>
<thead>
<tr>
<th>International IP Treaties ratified by Italy</th>
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<tbody>
<tr>
<td>Paris Convention for the Protection of Industrial Property (signed in 1883)</td>
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<tr>
<td>Bern Convention for the Protection of Literary and Artistic Works (signed in 1887)</td>
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<tr>
<td>Madrid Agreement Concerning the International Registration of Marks (signed in 1894)</td>
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<tr>
<td>Madrid Agreement for the Repression of False and Deceptive Indications of Source on Goods (signed in 1951)</td>
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<tr>
<td>Nice Agreement signed in 1957 concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (came into force on 1961)</td>
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<tr>
<td>Lisbon Agreement for the Protection of Appellations of Origin and their International Registration signed in 1958 (came into force on 1968)</td>
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<tr>
<td>European Patent Convention (EPC) (signed in 1973)</td>
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<tr>
<td>Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations signed in 1961 (came into force on 1975)</td>
</tr>
<tr>
<td>Locarno Agreement Establishing an International Classification for Industrial Designs signed in 1968 (came into force on 1975)</td>
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4.3 Basic Principles of the Italian IP System

**Patent Law**

Under the Italian system, one may patent new products or processes in any technological field.

One may not, however, patent methods for human or animal therapy, plant varieties or essentially biological methods for producing plants or breeding animals. It is not considered as an invention any discovery, scientific theory or mathematic method, neither any project, rule and method for intellectual or commercial activities, games and computer applications.

To be patented, any filed invention must have the following features:

- An industrial application, in one or more sectors
- A novelty: the filing party must not disclose any information before the filing date of the patent application
- An inventive step: the invention must represent a technological advance that would be non-obvious to an expert in the relevant field of industry.
The filing of an Italian patent can represent the basis for a claim in any member country of the Paris Convention.

Trademark Law

Italy’s trademark system grants trademark owners the exclusive right to use new, lawful and distinctive signs capable of graphical representation. This includes the right to request custom seizure of any counterfeited good, as set down in the TRIPs Agreement.

Under Italian law, three-dimensional signs, graphically represented sounds, color combinations and original shades of colours are also enforceable marks.

Using symbols to indicate that the trademark has been filed or is registered is not mandatory under Italian law.

A trademark enjoys protection once filed with the Italian Patent and Trademark Office.

Protection is also granted to non-registered trademarks, according to the Paris Convention on unfair competition.

Trademarks are valid for ten years from the filing date, renewable for an unlimited number of subsequent ten-year periods.

The international classification of goods and services in Italy is based on the Nice Agreement system.

One may transfer or license a trademark for all or part of the goods and/or services related to it.

Copyright Law

Italy’s copyright law is based on the principles of the Berne Convention for the protection of literary and artistic works.

An author’s original work is protected by copyright from the moment it is created. No application or other formalities are required to enjoy intellectual property protection.

Copyright protected works of authorship include literary works, motion pictures, musical works, sound recordings, software, databases, architectural works, and drawings amongst others.

Protection lasts for the lifetime of the author plus a further seventy years; different terms apply to secondary works of authorship.

Design Protection

A design qualifies for protection if it is:

- A novelty: no such design was available to the public before filing the application
- An individual character: the overall impression it gives to an informed user must differ from that of any other design publicly available before the
Following registration, the design is protected for one or more periods of five years from the filing date, renewable for a total of up to twenty five years. The registration of a design gives the holder the exclusive right of use (i.e., to make, offer, put on the market, import, export) and of preventing any third party from using it without their consent.

### 4.4 Recent Developments in Italy’s Intellectual Property Laws

In the past five years, Italy has further increased the protection of Intellectual Property Rights.

<table>
<thead>
<tr>
<th>New provisions</th>
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<tr>
<td><strong>Setting up of 12 Intellectual Property Tribunals</strong></td>
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<td><strong>Adoption of EC Directive 29/2001 on the harmonization of certain aspects of copyright and related rights in the information society (the “Information Society Directive”)</strong></td>
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<td>Italy was one of the first EU countries to amend its domestic copyright laws to keep pace with the provisions of the Information Society Directive, embodying the provisions of the WIPO (World Intellectual Property Organization) Copyright Treaty and the WIPO Performances and Phonograms Treaty of 1996. Law Decree No. 68 of April 9, 2003, brought the changes into effect.</td>
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<td><strong>Setting up of the “Alto Commissariato per la lotta alla contraffazione”</strong></td>
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<td>Law Decree March 14, 2005 converted by Law no. 80 dated 14 May 2005 established an Anti-counterfeiting Committee to co-ordinate the fight against piracy and counterfeited goods. Administrative sanctions for individuals who put into the market counterfeited goods have been increased by from Euro 1,032 up to Euro 20,000.</td>
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<tr>
<td><strong>“Made in Italy”</strong></td>
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<td>The 2004 Fiscal Law also recognized a new form of collective label to distinguish and increase demand for Italian-produced goods worldwide. Using the “Made in Italy” label on non-Italian originating goods and services is punishable by law. A National Fund of 35 million Euro in 2004, 55 million in 2005, and 35 million in 2006 has been available to encourage Italian companies to adopt the label.</td>
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Further, in May 2002 the Italian Parliament granted the Government law-making powers to reorganize and update the current patent and trademark rules into a ‘single law’ (Testo Unico).
On February 10, 2005 the Government has enacted Legislative Decree No. 30/2005 (the "Industrial Property Code") which provides for the following major changes to the previous regulation:

- The reorganization in a single law of the regulation applicable to trademarks, patents and designs
- The introduction of a wider definition of Industrial Property
- A reform of the regulation applicable to inventions created by employees and physicians in research
- The reorganization and the enlargement of the tasks entrusted with the Italian Patent and Trademark Office (PTO)
- A better definition of the competences of the 12 Intellectual Property Tribunals and the application to legal proceedings relating to Industrial Property Rights of dispute resolution mechanisms and special procedures for corporate disputes approved in 2003
- Stronger criminal sanctions for serious infringements of Industrial Property Rights
- New actions aimed to fight against piracy and counterfeiting goods.

The Industrial Property Code provides for a new definition of Industrial Property which expressly includes also designations of origin (denominazioni d’origine) geographical indications (indicazioni geografiche) and company confidential information. Company confidential information are deemed those information which are secret within the meaning they are not in their configuration known or easily accessible by experts in the same field of activity, have an economical value due to their secrecy, are subject to adequate control procedures aimed to keep such information as secret or which relate to tests conducted on products before their marketing.

With reference to inventions created by employees in accordance with the Industrial Property Code, they belong to the employer so long as they relate to the tasks defined in the employment contract and specific compensation is paid to the employee. If a specific compensation for the invention is not envisaged by the employment contract and the invention is created in the performance of the employment relationship, the invention, if patented, belongs to the employer but a fair compensation must be paid to the employee. If the above conditions are not met and the invention relates to the field of activity of the employer, the invention belongs to the employee but the employer is granted with an option right to use on an exclusive or not exclusive basis or to purchase the invention.

In case an agreement is not reached between the employer and the employee on the amount of the fair compensation or of the consideration for the invention, the assessment thereof is made by an arbitrators panel.

On line application and registration regarding utility models, trademarks, industrial and design patents is also admitted.

Criminal sanctions related to the infringement of Industrial Property Rights are stricter. Furthermore, in determining the amount of damages arising from a counterfeiting, the courts shall be entitled to consider also the proceeds obtained...
by the counterfeiter and the royalties he should have paid to be granted a license to use the Industrial Property Right infringed.

Moreover the Italian Government has enacted a stronger regulation aimed at protecting industrial property owners by means of corrective measures, injunctions and damage compensation.

Furthermore a new definition of piracy has been introduced. Based on such new definition, piracy acts on Industrial Property Rights are deemed those acts which are carried out with fraud and in a systematic way.

Art. 133 of the above mentioned Industrial Property Code provides a specific regulation for domain names, and, specifically, the possibility for the judge to grant a preliminary injunction as a consequence of an illegal use of a domain name, or, otherwise, for its temporary transfer.

The PTO will offer online users access to a new database of Italian patents and trademarks on file.
5. The tax system

5.1 Reform of the tax system

Italy’s corporate taxation system recently underwent a major reform, with subsequent additional amendments.

The main features of the new tax system are:

- reduction of the corporate income tax rate to 27.50%
- a partial exemption (95%) of capital gains on the sale of equity investments in Italian or foreign companies (“participation exemption”);
- the abolition of the tax credit system for dividends and introduction of partial tax exemption (95%) of dividends from equity investments in Italian or foreign companies;
- introduction of a ceiling on the deductibility of interest expense equal to 30% of the gross operating income of industrial or commercial companies;
- introduction of a ceiling on the deductibility of interest expense for financial companies, equal to 96% in 2009 and 97% in 2008;
- introduction of a group taxation mechanism under which Italian and foreign companies belonging to the same group may compute one taxable income for the parent company resident in Italy;
- tax exemption of capital gains reinvested in start-ups.

5.2 Types of tax and withholdings

**Direct taxes**

**Personal income tax IRPEF**

Personal income tax (Imposta sul Reddito delle Persone Fisiche - IRPEF)

Personal income tax is governed by Italy’s uniform income tax code (Testo Unico delle Imposte sui Redditi – TUIR).

Individuals resident in Italy for tax purposes are subject to IRPEF on income earned in Italy and abroad.

Individuals who are not resident in Italy for tax purposes are subject to IRPEF only on income earned in Italy.

Taxable income is taxed at progressive rates that currently rise from 23% to 43% .

**Corporate income tax IRES**

Corporate income tax (Imposta sul Reddito delle Società - IRES)

Corporate income tax is also governed by the TUIR.

6) For greater details, see Personal income tax (p. 7).
Companies resident in Italy for tax purposes are subject to IRES for income earned in Italy and abroad. Companies that are not resident in Italy for tax purposes are subject to IRES only on income earned in Italy. Taxable income is taxed at a rate of 27.50%.

Regional business tax (IRAP)
Regional business tax (Imposta Regionale sulle Attività Produttive - IRAP)
The regional business tax is a local tax levied on the value of production generated in each tax period in the Italian regions by persons engaged in business activities. Non-resident companies are subject to IRAP only on the value of production generated by permanent establishments in Italian territory.

Indirect taxes
Value added tax (VAT)
Italian rules governing value added tax comply with the relevant Community directives.
In principle, the system is designed to ensure the tax is only paid by final consumers, as businesses can generally deduct VAT paid at intermediate stages of production.
VAT is generally levied on each sale of goods and/or services carried out in Italian territory.
The ordinary VAT rate is 20%.

Registration fees and other property transfer duties
Registration fees are levied on specific written instruments made in Italy or written instruments made abroad where they regard the transfer of real property or enterprises located in Italian territory. The tax base and applicable rate vary in relation to the type of instrument and the parties involved.
Property transfers are also subject to other duties (imposta ipotecaria and imposta catastale). Such duties are due in respect of the formalities associated with the registration of transfers in public property registers.
Registration fees and other property transfer duties are either fixed (€168.00) or proportional to the value of the asset being transferred (with rates of between 3% and 15% for registration fees depending on the instruments or assets involved, 2% for the imposta ipotecaria and 1% for the imposta catastale).

Municipal property tax (ICI)
Municipal property tax (Imposta Comunale sugli Immobili - ICI)
Municipal property tax is due annually from holders (resident in Italy or abroad) of real rights in immovable property located in Italian territory, with the exception of households’ primary residence.
The tax base is the equal to the registry value of the property, which is given by the imputed property income multiplied by a given coefficient.
The rate is set by each municipality within a range varying from 0.04% to 0.07%.

Inheritance tax
Inheritance tax is applied to transfers of assets or rights as a result of death (with

7) For greater details, see Taxation of resident companies (p. 11) and Taxation of non-resident companies (p. 20).
the exception of the transfer of Italian government securities, receivables from the
Italian State or units in investment funds in the amount of any Italian government
securities held). It is levied on the value of the individual shares assigned to each
heir at a rate varying from 4% to 8%.

Gift tax is applied to transfers of assets or rights as a result of donations or other
gratuitous transfers and to the establishment of restrictions on use. The tax is levied on
the value of the individual shares assigned to each beneficiary at a rate varying from 4% to 8%.

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

Transfers of enterprises or controlling stakes in enterprises to descendants or
spouses are exempt from inheritance or gift tax. The beneficiary is required to
continue the business activity or retain control for five years from the transfer date.

Withholding tax

The three main withholding taxes are those levied on dividends, interest and
royalties.

Dividends distributed by Italian or non-resident companies received by individuals
outside the scope of a business activity are subject to a withholding tax in
settlement of 12.5% where they regard non-qualifying holdings. Qualifying holdings consist of shares (other than savings shares) and any other investment in the capital or equity of a company to which are attached voting rights in the ordinary shareholders’ meeting exceeding 2% or 20% if the securities are traded on a regulated market or 5% or 25% in other cases.

Dividends received by individuals outside the scope of a business activity regarding a qualifying holding in Italian companies are not subject to withholding tax, whereas those regarding foreign companies are subject to a 12.50% withholding tax on account for the taxable portion of profit, namely 49.72% of the total (with a consequent filing requirement and deduction of any credit for taxes paid abroad), net of any withholding tax applied in the foreign country. In applying the withholding, account is taken of double taxation agreements which could provide for the reduction or elimination of the tax.

Where the dividends are distributed by a foreign company resident in a country with a privileged tax regime (tax havens), the dividend shall be subject to taxation in full unless the taxpayer does not receive a positive response to an opinion request (interpello) from the Revenue Agency.

Dividends received by parties, other than individuals, who are not resident in Italy are generally subject to a withholding tax in settlement of 27% (the rate is reduced to 12.5% for dividends paid to holders of savings shares). However, where the non-resident parties are companies or entities subject to corporate income tax in the countries entered in the white list, the rate is equal to 1.375%.

8] See Opinion requests (p. 29).
Withholding tax on interest

In principle, interest on current accounts and deposit accounts with banks, as well as bonds and similar securities, received by persons who are residents of Italy for tax purposes is subject to a withholding tax of 27% or 12.5%, generally applied on account (gross interest is included in taxable income and the withholding is deducted from the gross tax). However, if the interest is received by residents outside the scope of a business activity, the withholding tax is applied in settlement and the interest does not form part of overall taxable income.

Interest on current and deposit accounts, as well as bonds and similar securities, received by non-residents is not subject to any withholding tax with the exception of persons resident in tax havens, for whom a withholding tax of 12.50% applies.

In general, interest on loans is subject to a withholding tax of 12.5% on account if received by persons resident in Italy for tax purposes other than persons engaged in a business activity. If the interest is received by persons not resident in Italy for tax purposes, the withholding is applied in settlement.

The withholding tax rises to 27% where the recipient is resident in a tax haven as identified in a specific ministerial decree.

The withholding tax may be applied at a lower rate if so provided for in any double taxation agreement between Italy and the country of residence of the recipient.

In line with the provisions of the EU’s Interest and Royalties Directive, withholding tax is not due on interest paid by companies residents in Italy for tax purposes or by permanent establishments in Italy of companies resident in the European Union to (i) resident companies or (ii) permanent establishments of companies resident in other Member States of the European Union. In accordance with the Directive, the benefit is applicable if all requirements concerning minimum holdings are met.

Withholding tax on royalties

Royalties generated in Italy and received by a person who is not resident in Italy for tax purposes are subject to a withholding tax of 30% in settlement.

In certain cases, the taxable amount is reduced by 25% of total royalties. The withholding may be applied at a lower rate if so provided for in any double taxation agreement between Italy and the country of residence of the recipient.

In line with the provisions of the European Union’s Interest and Royalties Directive, withholding tax is not due on royalties paid by companies residents in Italy for tax purposes or by permanent establishments in Italy of companies resident in the European Union to (i) companies resident for tax purposes or (ii) permanent establishments of companies resident in other Members States of the European Union. In accordance with the Directive, the benefit is applicable if all requirements concerning minimum holdings are met.

9) See International treaties (p. 22).
10) ibidem
5.3 Taxation of corporations resident in Italy

Corporate income tax (Imposta sul Reddito delle Società – IRES)

Entities subject to corporate income tax, rate and tax period

Corporate income tax applies to corporations resident or not resident in Italy.

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

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

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

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

Also considered Italian residents are foreign companies and entities that have their administrative headquarters or their main activities in Italian territory for the majority of the tax period. In certain circumstances, the administrative headquarters of foreign companies and entities is presumed to be located in Italy in any case.

Partnerships (società in nome collettivo, società in accomandita semplice) are not subject to IRES. The income produced by such entities is normally taxed using the rules envisaged for personal income tax (IRPEF)\(^\text{11}\), with the income being attributed directly to the partners on the basis of their percentage holding in the entity. However, as from the 2008 tax period, partners may elect to tax such income separately at the same rate as that envisaged for corporate income tax (27.50%). This option may be exercised on the condition that such income is not distributed (a ministerial decree will establish the relevant implementing provisions).

For tax purposes, the tax period coincides with the financial year, as established in the articles of association or law. If not otherwise specified, the tax period coincides with the calendar year. As from the tax period beginning on 1 January 2008, the IRES rate is equal to 27.50%.

Trusts

As from 1 January 2007, trusts whose registered office is in Italy and foreign trusts whose administrative headquarters or primary business are in Italy, are also subject to IRES.

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

- at least one of the trustors and at least one of the beneficiaries are resident in Italy for tax purposes;

\(^{11}\) For greater details, see Personal income tax (p. 7).
or

• an Italian resident makes a contribution to the trust that involves transfer of ownership of real property or the establishment of restrictions on use of such property.

Taxable income

Taxable income is determined using the rules set out in the TUIR. Generally speaking, all income received by corporations resident in Italy for tax purposes is considered corporate income (redditi d’impresa), regardless of the nature of such income, and is taxed in accordance with the rules governing this category of income.

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

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

Positive components of income

• Revenues

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

• Capital gains

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

Capital gains are included in taxable income for the tax period in which they are realised or, if the assets have been held for at least three years, in equal instalments over five years beginning in the year in which they are realised. These rules also apply to capital gains generated by the realisation of equity investments (other than those qualifying for the participation exemption) recognised under non-current financial assets in the last three financial years.

Partial exemption of capital gains on the disposal of equity investments

As from the tax period beginning 1 January 2008, 95% of capital gains realised by companies resident in Italy for tax purposes on the disposal of equity investments in corporations/partnerships resident in Italy or abroad are IRES-exempt.

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

Capital losses, writedowns and expenses in respect of the disposal of equity investments that qualify for the participation exemption are not deductible.

**Exemption of capital gains on the disposal of equity investments reinvested in start-ups**

As from 25 June 2008, capital gains earned by resident individuals and non-residents of any nature on the disposal of equity investments in partnerships and corporations established no more than seven years earlier and held for at least three years do not form part of taxable income if they are reinvested in companies engaged in the same business within two years of their realisation.

**Partial exemption of dividends**

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

**Negative components of income**

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

- are related to the business, i.e. contribute to producing taxable income;
- are recognised in the income statement.

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

**Interest – Ceiling on deductibility**

As from 1 January 2008, industrial and commercial companies can fully deduct interest expense and similar charges (not capitalised in the cost of assets) in an amount equal to interest income and similar revenues. The excess may be deducted up to a ceiling of 30% of gross operating profit (Risultato Operativo Lordo - ROL). ROL is equal to the difference between item A (Value of Production) and item B (Production Costs) in the income statement increased by depreciation and amortisation of property, plant and equipment and intangible assets and lease payments. This limit is increased by € 10,000 for 2008 and € 5,000 for 2009.

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

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

Specific rules apply in the case of companies participating in the consolidated taxation mechanism.
A ceiling on the deductibility of interest expense was also introduced for financial companies as from 2008 (97% in 2008 and 96% in 2009).

**Tax losses, withholding taxes and tax credits**

**Tax losses**

A tax loss arising in a given tax period can be deducted from taxable income in subsequent periods up to a maximum of five years. Tax losses may not be deducted from taxable income generated in previous tax periods.

Tax losses arising in the first three tax periods following the date a company is formed may be deducted from total income in subsequent tax periods with no time limit, on the condition that the losses regard a new business.

**Withholding taxes**

Income received by corporations resident in Italy for tax purposes are subject to withholding tax in a limited number of situations (e.g. interest on current and deposit accounts, interest on certain bonds and similar securities).

Dividends and royalties are not subject to withholding tax.

Withholdings on income received by companies resident for tax purposes in Italy are generally made on account, and thus represent an advance payment of IRES. Income subject to withholding tax is included in the taxable income of the recipient and the withholdings are subsequently deducted from gross IRES.

**Credits for taxes paid abroad**

If taxable income includes income earned abroad, corporations resident in Italy for tax purposes are entitled to deduct any tax effectively paid on such income abroad from their gross IRES liability.

The tax credit for taxes paid is equal to the lesser of:

- the tax paid abroad;
- the portion of Italian tax related to the income earned abroad (determined on the basis of the ratio of foreign income to total income).

A number of double taxation agreements entered into by Italy give persons resident in Italy for tax purposes a specified tax credit, even if the tax levied in the original country is less than the credit or no taxes are levied at all.

**Taxation on a consolidated basis**

Companies resident in Italy for tax purposes belonging to the same group may elect to adopt the consolidated taxation mechanism.

Under this mechanism, the income of the subsidiaries is attributed to the parent company.

Exercising the consolidated taxation option therefore involves calculating a single taxable income for the entire group, represented by the algebraic sum of the net...
profit or loss of the companies included within the scope of consolidation.

Regardless of the size of the stake held by the parent company, the consolidation process considers the entire net income of the subsidiaries.

This taxation mechanism makes it possible to offset the taxable income of some group companies against the tax losses generated by other group companies.

The option of electing consolidated taxation is subject to compliance with a number of conditions:

- the parent company must be resident in Italy for tax purposes or, if resident abroad, must be resident in a country with which Italy has a double taxation agreement. In addition, its holdings in the companies included in the scope of consolidation must be attributable to a permanent establishment in Italy;
- the subsidiaries must be resident in Italy for tax purposes, subject to the ordinary IRES system and not benefit from any reduction in tax rates;
- the consolidated companies must be controlled by the parent company. To this end, from the start of each tax period the parent company must directly or indirectly hold a majority of voting rights in the ordinary shareholders’ meetings of the subsidiary and must be directly or indirectly entitled to more than 50% of the profits of the subsidiary;
- the parent company and the subsidiaries must have the same financial year, i.e. the same tax period, and must exercise the option for consolidated taxation jointly.

The election of the option has a duration of three years and may not be revoked.

It is not necessary for the consolidated taxation mechanism to be adopted by all subsidiaries.

Group taxable income is determined by the parent company as the algebraic sum of the taxable income of each consolidated company.

Non-deductible interest expense and similar charges attributable to a participant in the consolidated taxation mechanism (i.e. expense exceeding 30% of ROL) can be used to reduce group taxable income if and to the extent that other participants in the consolidated taxation mechanism have not entirely used the available ROL for the deduction. This rule also applies for any excess carried forward, with the exception of that generated prior to participation in the consolidated taxation mechanism. For this purpose, under certain conditions the ROL attributable to the group’s foreign companies may also be computed if they would satisfy the requirements for participation in the consolidated taxation mechanism if they were resident in Italy.

**Taxation on a pass-through basis**

Under the rules governing taxation on a pass-through basis, shareholders of corporations resident in Italy for tax purposes can elect to include the income of the companies in which they have a stake in their own taxable income.

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13) For greater details, see Personal income tax (p. 7).
More specifically, under the pass-through taxation mechanism, the taxable income of the corporation is directly attributed to each shareholder in proportion to its holding in the company.

The option of electing pass-through taxation may only be exercised if a number of conditions have been met, including:

- the shareholders must be corporations resident in Italy or resident abroad if the latter are not subject to withholding tax at source on dividends
- the percentage holding in profits and voting rights in the shareholders’ meeting held by each shareholder must be no less than 10% and no greater than 50%
- the option must be elected jointly by the company and all the shareholders.

The election of the option has a duration of three years and may not be revoked.

Regional business tax (Imposta Regionale sulle Attività Produttive - IRAP)

The regional business tax (IRAP) is a local tax levied on the value of production generated in each tax period in the Italian regions by, among others, corporations resident in Italy for tax purposes.

The Reform required the Government to gradually eliminate IRAP. This must be implemented progressively by first permitting the gradual deduction of labour costs and other currently non-deductible costs from taxable income as calculated for IRAP purposes.

Taxable income and tax rate

Taxable income for IRAP purposes is equal to the net value of production generated in each Italian region and is calculated as the difference between the macro-categories A and B (with the exception of a number of items) of the income statement as drawn up on the basis of Italian GAAP (for entities that draw up their financial statements in accordance with international accounting standards – IAS – the corresponding items are considered).

For industrial and commercial enterprises:

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

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

As from 1 January 2008 industrial and commercial companies are subject to an ordinary IRAP rate of 3.9%. However, the regions may change the rate by up to one percentage point for certain sectors. Where the rate is changed by the regions, it is adjusted on the basis of a coefficient of 0.9176.

The value of production is considered to be produced in a given region if the company has a fixed office in the region for at least three months of the tax period.
The net value of production is allocated among the regions in which the company’s business is conducted on the basis of the labour costs attributable to each region. A number of deductions from IRAP taxable income are envisaged for

- New hiring
- Research and development personnel
- Employees hired on permanent contracts

in order to reduce the “tax wedge”, i.e. the difference between the overall cost incurred by the enterprise for employees and the net compensation received by those employees.

5.4 Taxation of non-resident corporations with a permanent establishment in Italy

Corporate income tax (IRES)

The income earned by companies not resident in Italy for tax purposes through a permanent establishment in the country is considered income produced from an Italian source and is therefore subject to IRES. Except for a number of specific exceptions, the definition of permanent establishment used by the TUIR is that same as that envisaged in the OECD Model Double Taxation Convention.

In general, comprehensive income produced by non-resident companies through a permanent establishment in Italy must be calculated on the basis of a specific income statement for the operations of the permanent establishment, using the same rules governing the accounts of companies resident in Italy for tax purposes.

However, for the permanent establishments in Italy of non-resident companies, a number of components of income generated in Italy and received directly by the foreign company (i.e. without the participation of the permanent establishment) are nevertheless included in the taxable income of the permanent establishment (the doctrine of the “force of attraction” of the permanent establishment).

More specifically, the force of attraction operates for:

- capital gains and losses of assets associated with commercial activities conducted in Italian territory;
- profits distributed by corporations and entities resident for tax purposes in Italy;
- capital gains on the disposal of assets located in Italy and equity investments in companies resident for tax purposes in Italy.

Generally speaking, the force of attraction of the permanent establishment does not operate in cases in which the foreign company is resident for tax purposes in a country with which Italy has a double taxation treaty\textsuperscript{14}. In this case, the income attributable to the permanent establishment is limited solely to the corporate income actually produced by that establishment.

14) See International treaties (p. 22).
Regional business tax (IRAP)
Non-resident companies are subject to IRAP only on the value of production generated by permanent establishments located in Italian territory. The value of production is calculated in accordance with the same rules applied to resident companies.

Branch tax
Italian tax legislation does not establish any additional tax on the repatriation of income earned by non-resident companies through permanent establishments in Italy.

5.5 International treaties and Community directives
Italy has established agreements to avoid double taxation with the following countries:

<table>
<thead>
<tr>
<th>Double taxation treaties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
</tr>
<tr>
<td>Algeria</td>
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<tr>
<td>Argentina</td>
</tr>
<tr>
<td>Australia</td>
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<tr>
<td>Austria</td>
</tr>
<tr>
<td>Bangladesh</td>
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<tr>
<td>Belgium</td>
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<tr>
<td>Brazil</td>
</tr>
<tr>
<td>Bulgaria</td>
</tr>
<tr>
<td>Canada</td>
</tr>
<tr>
<td>Czechoslovakia*</td>
</tr>
<tr>
<td>China**</td>
</tr>
<tr>
<td>Cyprus</td>
</tr>
<tr>
<td>South Korea</td>
</tr>
<tr>
<td>Ivory Coast</td>
</tr>
<tr>
<td>Denmark</td>
</tr>
</tbody>
</table>

* The agreement between Italy and Czechoslovakia applies to the Czech Republic and the Slovak Republic.
** The agreement between Italy and China does not apply to Hong Kong or Macao.
*** The agreements between Italy and Yugoslavia apply to Serbia and Montenegro, Croatia, Slovenia and Bosnia Herzegovina.
**** The agreement between Italy and the Soviet Union applies to the following countries: Belarus, Moldova, Armenia, Azerbaijan, Kyrgyzstan, Tajikistan and Turkmenistan.
The agreements generally establish more favourable tax treatment for persons not resident in Italy than would normally apply under domestic legislation.

Most of these agreements are based on the OECD Model Double Taxation Convention.

**The EU Parent-Subsidiary Directive**

Italy has transposed the provisions of the EU’s “Parent-Subsidiary Directive”, which is intended to prevent double taxation of the profits produced by companies resident for tax purposes in an EU Member State [subsidiary companies] and distributed to companies resident for tax purposes in another Member State [parent companies].

Under the new rules governing dividend taxation, dividends received by parent companies resident for tax purposes in Italy are IRES-exempt in the amount of 95%, regardless of the percentage holding in the subsidiary and period for which the investment has been held.

Under certain circumstances, dividends received by a parent company resident in another Member State are exempt from withholding tax or are entitled to reimbursement of any withholding applied.

In order to be eligible for the exemption, the parent company must, among other things, hold a direct shareholding in a subsidiary resident in Italy for tax purposes of at least:

- 15% for dividend distributions between 1 January 2007 and 31 December 2008;
- 10% for dividend distributions as from 1 January 2009.

In order to be eligible for the withholding exemption, the minimum shareholding in the Italian subsidiary must have been held without interruption for at least one year as of the dividend payment date. Otherwise, the parent company may request reimbursement of the withholding tax paid once the minimum holding period has elapsed.

**The EU Merger Directive**

Italy has transposed the provisions of the EU’s directive on a common system of taxation of mergers, divisions, transfer of assets and exchanges of shares among companies resident for tax purposes in different Member States.

In line with the provisions of the directive, Italian tax law governs the conditions under which the tax neutrality envisaged for such restructuring operations shall apply.

**The EU Interest and Royalties Directive**

This directive abolishes withholding tax at source on payments of certain forms of interest and royalties between associated companies resident in different Member States of the European Union. The directive establishes an exemption from all withholding taxes on interest and royalty payments in the source Member State, with taxation only in the Member State in which the beneficial owner of the payments is resident.
The Italian Government implemented the directive with Legislative Decree 143 of 30 May 2005 (entering into force on 26 July 2005).

Entitlement to the exemption from withholding tax on payments made to companies resident in EU Member States is subject to the following conditions:

• the companies that receive the payments are final beneficiaries, not mere intermediaries;

• the company that makes (receives) the payment has a direct minimum holding of at least 25% of the voting rights in the company that receives (makes) the payment or a third company has a direct minimum holding of at least 25% of the voting rights in both the company that makes the payment and the company that receives the payment;

• the shareholdings to which the voting rights indicated in the previous point are attached have been held without interruption for at least one year.

Satisfaction of the conditions and qualifications necessary to be eligible for the exemption must be established by way of supporting documentation at the time the payment is made.

The implementing decree establishes that the new provisions shall apply to interest and royalties accruing as from 1 January 2004.

The implementing decree also introduces a withholding tax of 30% on compensation paid to non-residents for the use or grant for use of industrial, commercial or scientific equipment located in Italian territory.

5.6 Transfer pricing

Transfer pricing refers to the set of rules that, for tax purposes, govern the determination of prices in international transactions between companies belonging to the same group.

Italian tax legislation establishes that the components of income generated by transactions with foreign companies belonging to the same group must be measured at their so-called “normal value”, i.e. on the basis of the average price of the same or similar goods and services in a free market at the same stage of commercialisation.

In 1980, the tax authorities issued a circular illustrating the methodologies and criteria for the correct determination of transfer prices. In general, such criteria are in conformity with the instructions issued by the OECD.

Taxpayers can ask the tax authorities in advance to assess the appropriateness of the methodologies they have adopted.

The “International Ruling” procedure is completed with the signing of an agreement with the tax authorities that is binding for a maximum of three years.
5.7 Foreign subsidiaries and associates

Italian law establishes provisions applicable to certain foreign subsidiaries and associates (CFCs\(^{15}\)). These rules are intended to prevent the allocation of taxable income to companies resident for tax purposes in countries with privileged tax regimes [tax havens], which are identified on the basis of a specific ministerial decree.

More specifically, under certain conditions (for example, the percentage of holdings in the foreign company that benefits from the privileged tax regime), the income generated by the CFC, regardless of actual receipt, is attributed to the Italian shareholders in proportion to the size of the shareholding. In other words, regardless of the actual distribution of profits, the income generated by the CFC is included in the taxable income of the controlling party resident in Italy and as such subject to Italian taxation.

The CFC rules do not apply if:

- the CFC actually engages in an industrial or commercial activity in the country in which it is located;
- the shareholding does not give rise to a transfer of income to countries in which such income would be subject to a privileged tax regime.

In order to claim exemption from the CFC rules, the parent company resident in Italy for tax purposes must submit a request in advance to the Revenue Agency.

5.8 Taxpayer requirements

Income tax returns

Each year taxpayers must declare their taxable income by submitting a tax return to tax authorities.

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

Individuals resident for tax purposes in Italy must submit their tax return by 31 July if they do so electronically. Individuals who submit their returns on a paper form through an authorised intermediary [bank or post office] must do so by 30 June.

IRAP returns

As from the 2008 tax period, taxpayers subject to the regional business tax must submit a separate IRAP return [no longer in unified format with their income tax return].

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\(^{15}\) Controlled foreign company rules, pursuant to Article 127-bis of the TUIR.
Payment deadlines

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

More specifically, for a given tax period:

- the first advance payment is due by the 16th of the sixth month following the first month of the tax period;
- the second advance payment is due by the final day of the eleventh month following the first month of the tax period;
- the balance is due by the 16th of the sixth month following the first month of the tax period.

In general, the same rules for payment of IRPEF and IRAP also apply to individuals resident in Italy for tax purposes.

5.9 Audits and disputes

Audits

The tax authorities conduct both formal and substantive audits of income tax returns.

Formal audits are designed to correct material errors and calculation mistakes made by taxpayers. The outcome of the check is notified to taxpayers, with a specification of the reasons for the adjustment to the amounts declared, which also enable the taxpayer to correct the data reported or settle the discrepancy quickly.

Substantive audits are intended to adjust taxable income or the VAT turnover reported by the taxpayer.

In such audits, the tax authorities may carry out inspections at the taxpayer’s premises.

Where omissions or violations are found following such checks, the competent tax authorities issue an assessment.

Deadlines for assessments

For the purposes of assessments related to income tax and VAT, the deadline is 31 December of the fourth year following that in which the tax return was submitted.

If no tax return was submitted, the deadline is extended until 31 December of the fifth year following that in which the return should have been submitted.

These deadlines are doubled (31 December of the eighth year following that in which the tax return was submitted or 31 December of the tenth year following that in which the return should have been submitted) where the taxpayer has committed a violation for which the authorities are required to file a complaint accusing the taxpayer of one of the offences envisaged in Legislative Decree 74/2000.
Disputes

Notices of assessments and/or penalties issues by the tax authorities can be appealed to bodies responsible for adjudicating tax disputes.

Appeals against notices of assessments and/or penalties must be lodged with the Provincial Tax Commission within 60 days of notification. Rulings of the Provincial Tax Commission can be appealed by the tax authorities and by taxpayers to the Regional Tax Commission. The rulings of the latter can be appealed to the Court of Cassation (supreme court of appeal) by the tax authorities and by taxpayers only for questions of legality.

Opinion requests

Taxpayers can request an opinion from the tax authorities concerning interpretative uncertainties in the application of tax regulations to specific cases.

Taxpayers may also request a special type of opinion (a pre-filing opinion) to govern international issues concerning transfer prices, royalties and dividends.

The response to the request is valid for three years and, assuming no change in the factual or legal circumstances, is binding on the tax authorities.

5.10 Taxation of individuals

Natural persons resident in Italy are subject to personal income tax (IRPEF) on income produced in Italy and abroad.

Non-residents are only subject to IRPEF on their Italian income.

The tax period coincides with the calendar year.

Tax residence

Residents are individuals who, for more than half of the tax period, are:

- entered in the register of Italian residents;
- or
- have their domicile or residence in Italian territory.

Pursuant to the Italian Civil Code, residence is the place in which individuals have their habitual abode, while domicile is the place in which their affairs are primarily conducted (the centre of their vital interests).

Unless otherwise demonstrated, residents also include Italian citizens removed from the register of Italian residents who have emigrated to a country or territory with a privileged tax regime, as identified on the basis of a specific ministerial decree.

Categories of income and taxable income

IRPEF is applied to individuals with income falling into one of the following categories:
• real property income
• investment income (e.g. dividends, interest)
• compensation of employees (e.g. salaries)
• income from self-employment (e.g. professional fees)
• corporate income
• other income (e.g. capital gains on the sale of shares or similar securities).

Each of these categories has different rules for determining taxable income.

Exempt income and income subject to withholding tax in settlement (e.g. interest on bonds, dividends) are excluded from the calculation of taxable income.

Certain components of income are taxed separately (except where the taxpayer elects to include such income in ordinary income if this is envisaged as an option). These include severance pay, capital gains on the disposal of enterprises owned for more than five years, income from withdrawal from a partnership, etc.

Separation taxation takes account of the fact that certain forms of income are formed over a number of years, and therefore instead of the ordinary marginal IRPEF rate, it is taxed at a rate equal to that which would apply to half of total income in the two previous years.

Compensation of employees earned from an activity performed abroad is taxed on the basis of a notional income set annually in a ministerial decree (for 2008, Ministerial Decree of 16 January 2008), regardless of the compensation actually received.

**Tax rates**

As from 1 January 2007 tax rates (by income bracket) are as follows:

<table>
<thead>
<tr>
<th>Taxable income</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to € 15,000</td>
<td>23%</td>
</tr>
<tr>
<td>€ 15,001 - € 28,000</td>
<td>27%</td>
</tr>
<tr>
<td>€ 28,001 - € 55,000</td>
<td>38%</td>
</tr>
<tr>
<td>€ 55,001 - € 75,000</td>
<td>41%</td>
</tr>
<tr>
<td>Over € 75,000</td>
<td>43%</td>
</tr>
</tbody>
</table>

The gross tax is determined by applying the IRPEF rates to global income, i.e. to the sum of all the incomes in the above categories, net of certain deductible expenses (medical expenses, alimony payments, pension and welfare contributions).
The net tax liability is determined by subtracting from the gross tax:

- exemptions for dependants (the amount declines as income increases)
- standard deductions for certain categories of income [compensation of employees and similar income, income from self-employment and corporate income for persons qualifying for simplified accounting]
- other deductions [e.g. primary residence and medical expenses].

The tax to be paid is calculated by subtracting any tax credits and withholding tax on account from the net tax.

The global income calculated for tax purposes, net of deductible expenses, is also subject to a regional IRPEF surtax, which can range from 0.9% to 1.4%, and a municipal IRPEF surtax, the rate for which is set by the State with a consequent reduction of the IRPEF rates (to date, the State has never established any rate). Individual municipalities can adjust the base rate up to a maximum of 1.2%.

### 5.11 International accounting standards (IAS)

Article 25 of Law 306 of 31 October 2003 concerning the exercise of the options provided for by Regulation (EC) 1606 of 2002 granted the Italian Government enabling authority to extend the adoption of international accounting standards to the separate financial statements of listed companies in Italy as well as to the separate and consolidated financial statements of other companies whose securities are not listed on regulated markets in the European Union. The decree also provided for the option of permitting the adoption of international accounting standards by commercial companies.

In implementation of the enabling authority, the Government issued Legislative Decree 38 of 28 February 2005. In addition to regulation the accounting aspects, the decree also introduced legislative amendments governing the tax effects of the transition to/adoption of international accounting policies. These amendments were designed to ensure the neutrality of the transition/adoption, especially the need to prevent the transition to/adoption of the IAS from creating a benefit or disadvantage in respect of companies that draw up their accounts on the basis of the accounting standards ordinarily applicable to commercial companies.

However, with the 2008 Finance Act, the principle of tax neutrality has given way to differential treatment depending on the tax involved.

In particular, entities that have adopted the IAS are required:

- for income tax purposes, to apply the qualification, recognition and classification criteria envisaged in international accounting standards;
- for IRAP purposes, to calculate taxable income on the basis of the items corresponding to those adopted by persons applying Italian GAAP.

In addition, the 2008 Finance Act introduced numerous specific tax rules for IAS adopters. For example:

- the changes (increases or decreases) in values recognised in application of the IAS in respect of shares, bonds and similar financial instruments held for
trading (not recognised under non-current assets) are now material for the purposes of direct taxation. Dividends received in respect of shares, units and similar instruments held for trading are fully taxable for the beneficiary. Conversely, no changes were made concerning the immateriality for tax purposes of changes in values recognised from the measurement of shares, units and similar instruments held as non-current assets (“not held for trading”);

• the rules governing dividend washing\(^\text{16}\) do not apply to IAS adopters, who are instead subject to specific rules under which the tax cost of shares, units or instruments comparable to shares meeting the requirements of the application of the participation exemption, with the exception of the holding period, is reduced by an amount equal to the tax-exempt share of dividends received during the holding period.

The implementing and coordination provisions governing these changes will be established with a specific ministerial decree.

\(^{16}\) See Participation exemption (p. 14).
6. Incentive programmes

6.1 Introduction

The incentive programmes run by the European Union and national and local institutions help sustain regional development and enhance local competitiveness by supporting business, strengthening initiatives already under way or being launched, providing enterprises with support services and promoting and sustaining research, innovation and training.

National investment incentives include a range of measures designed to encourage:

- the creation of new production plants and the expansion of existing ones (e.g. Development Contracts)
- investments to revive industrial areas (e.g. Law 181/89)
- technology research and innovation (e.g. Industria 2015, the Technology Innovation Fund – FIT and the Research Incentive Fund – FAR)
- new investments and jobs creation (e.g. tax credits).

Other opportunities are offered by European cohesion policy for 2007-2013 focused on boosting growth and employment in Member States on regional basis.

European policy focuses on specific priority areas, including knowledge and innovation, transport, environment protection, human capital, entrepreneurship and economic modernisation.

To strengthen the subsidies’ effectiveness and impact the Italian Government has merged the planning of the national and European funds. About € 125 billion will therefore be available in Italy during the period 2007 - 2013 to support investment, mainly focusing on the country’s southern regions.

Community policy, with its seven-year programming periods, is implemented through national, regional and inter-regional Operational Programmes, which plan expenditure under the Structural Funds, such as:

- European Regional Development Fund (ERDF), which finances infrastructure development and productive investments to generate employment, with special emphasis on enterprise support;
- European Social Fund (ESF), which seeks to improve employment potential for the unemployed mainly supporting training programmes.
### Table 1 - Distribution by sector of Structural Funds in Italy

#### European Regional Development Fund 2007-13

<table>
<thead>
<tr>
<th>Sector</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Culture</td>
<td>2.9%</td>
</tr>
<tr>
<td>Energy</td>
<td>9.1%</td>
</tr>
<tr>
<td>Environmental protection and risk prevention</td>
<td>11.2%</td>
</tr>
<tr>
<td>Improving access to employment and sustainability</td>
<td>0.4%</td>
</tr>
<tr>
<td>Improving human capital</td>
<td>1.5%</td>
</tr>
<tr>
<td>Improving the social inclusion of less-favoured persons</td>
<td>0.2%</td>
</tr>
<tr>
<td>Increasing the adaptability of workers and firms, enterprises and entrepreneurs</td>
<td>0.0%</td>
</tr>
<tr>
<td>Information society</td>
<td>7.7%</td>
</tr>
<tr>
<td>Investment in social infrastructure</td>
<td>5.2%</td>
</tr>
<tr>
<td>Mobilisation for reforms in the fields of employment and inclusion</td>
<td>0.2%</td>
</tr>
<tr>
<td>Research and technological development (R&amp;TD), innovation and entrepreneurship</td>
<td>9.5%</td>
</tr>
<tr>
<td>Strengthening institutional capacity at national, regional and local level</td>
<td>0.7%</td>
</tr>
<tr>
<td>Technical assistance</td>
<td>2.8%</td>
</tr>
<tr>
<td>Tourism</td>
<td>3.3%</td>
</tr>
<tr>
<td>Transport</td>
<td>18.7%</td>
</tr>
<tr>
<td>Urban and rural regeneration</td>
<td>6.6%</td>
</tr>
</tbody>
</table>

#### European Social Fund 2007-13

<table>
<thead>
<tr>
<th>Sector</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Improving access to employment and sustainability</td>
<td>34.2%</td>
</tr>
<tr>
<td>Improving human capital</td>
<td>34.0%</td>
</tr>
<tr>
<td>Improving the social inclusion of less-favoured persons</td>
<td>8.7%</td>
</tr>
<tr>
<td>Increasing the adaptability of workers and firms, enterprises and entrepreneurs</td>
<td>5.2%</td>
</tr>
<tr>
<td>Mobilisation for reforms in the fields of employment and inclusion</td>
<td>1.5%</td>
</tr>
<tr>
<td>Strengthening institutional capacity at national, regional and local level</td>
<td>2.8%</td>
</tr>
<tr>
<td>Technical assistance</td>
<td>3.6%</td>
</tr>
</tbody>
</table>
6.2 Areas eligible for incentives

European funds are intended to finance regional policy during the period 2007 - 2013 with the three new objectives, namely:

- the “Convergence” objective (areas under Art. 87.3.a), aiming to speed up the convergence process in the EU’s less developed Member States and Regions by improving growth and employment conditions

- the “Regional Competitiveness and Employment” objective (areas under Art. 87.3.c), to anticipate economic and social changes and promote innovation, entrepreneurship, environment protection and labour market development, including the regions not covered by the “Convergence” objective

- the “European Territorial Cooperation” objective, designed to improve cross-border, transnational and interregional cooperation in sectors involved in urban, rural and coastal development and to promote the development of economic relations and networking of small and medium-sized enterprises (SME).

Figure 1 - EU Regional Policy Objective Areas for the Period 2007 - 2013
6.3 Beneficiaries and intensity of aid

Regardless of the type of financial aid, whether drawing on European or national funds, the size of the subsidy may not exceed the level set by the European Union in accordance with geographical area and size of the business concerned (see Tables 2 and 3). The business size, small, medium-or large, is established on the basis of specific parameters fixed by the European Union, as shown in the table below.

Table 2 - EU Parameters for Defining Micro, Small and Medium-Sized Enterprises

<table>
<thead>
<tr>
<th></th>
<th>Medium-Sized Enterprise</th>
<th>Small Enterprise</th>
<th>Micro Enterprise</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employees - fewer than</td>
<td>250</td>
<td>50</td>
<td>10</td>
</tr>
<tr>
<td>(number)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Turnover not exceeding</td>
<td>50</td>
<td>10</td>
<td>2</td>
</tr>
<tr>
<td>(million euros)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Balance sheet total</td>
<td>43</td>
<td>10</td>
<td>2</td>
</tr>
<tr>
<td>not exceeding (million</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>euros)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Businesses that do not meet the above parameters are considered as large enterprises.

Where aid is small with no significant impact on competition among the Member States, the de minimis rule applies: the enterprise may be granted a maximum of € 200,000 over three years with no requirement to give the European Commission\(^{17}\) prior notice.

The following table provides a breakdown of incentives available for investments Italy.

---

17) In accordance with Commission Regulation (EC) 1998/2006 of 15 December 2006, the rules governing state aid do not apply to minor aid (de minimis). The overall sum of de minimis aid granted to the same undertaking shall not exceed € 200,000 over three financial years.
### INCENTIVE PROGRAMMES

#### Table 1 - Distribution by sector of Structural Funds in Italy

<table>
<thead>
<tr>
<th>Areas in 87.3.a)</th>
<th>LE</th>
<th>ME</th>
<th>SE</th>
<th>LE</th>
<th>ME</th>
<th>SE</th>
</tr>
</thead>
<tbody>
<tr>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Calabria</td>
<td>40%</td>
<td>50%</td>
<td>60%</td>
<td>30%</td>
<td>40%</td>
<td>50%</td>
</tr>
<tr>
<td>Campania, Puglia, Sicily</td>
<td>30%</td>
<td>40%</td>
<td>50%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>until 31.12.2013</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basilicata</td>
<td>30%</td>
<td>40%</td>
<td>50%</td>
<td>20%</td>
<td>30%</td>
<td>40%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Areas in 87.3.c)</th>
<th>LE</th>
<th>ME</th>
<th>SE</th>
<th>LE</th>
<th>ME</th>
<th>SE</th>
</tr>
</thead>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sardinia</td>
<td>25%</td>
<td>35%</td>
<td>45%</td>
<td>15%</td>
<td>25%</td>
<td>35%</td>
</tr>
<tr>
<td></td>
<td>Abruzzo,</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Friuli V.G., Lazio, Molise</td>
<td>15%</td>
<td>25%</td>
<td>35%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lazio</td>
<td>-</td>
<td>25%</td>
<td>35%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Emilia Romagna, Lazio, Liguria, Piedmont, Valle d’Aosta, Veneto</td>
<td>10%</td>
<td>20%</td>
<td>30%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lazio, Marche, Tuscany, Umbria</td>
<td>-</td>
<td>20%</td>
<td>30%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>until 31.12.2013</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Areas in 87.3.c) being phased out</th>
<th>LE</th>
<th>ME</th>
<th>SE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Abruzzo, Emilia Romagna, Lazio, Liguria, Lombardia, Marche, Molise, Piedmont, Tuscany Umbria, Valle d’Aosta, Veneto</td>
<td>10%</td>
<td>20%</td>
<td>30%</td>
</tr>
<tr>
<td></td>
<td>until 31.12.2008</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
6.4 Support measures

The main forms of subsidies include:

- Capital grants: the financial aid is granted in two or three instalments and paid directly to the enterprise after the presentation of all documentation regarding the costs borne in implementing the investments. Beneficiaries will not be required to repay the received amount.

- Operating grants: these include grants to cover operating expenditures.

- Interest-rate subsidies: in the form of lower-than-market interest rates on the loan obtained.

- Tax credits: a form of tax relief for new investments (tangible and intangible assets) and employment. It consists in a reduction in tax liabilities to be calculated on the basis of parameters defined by law.

- Equity participation: to provide support to enterprises operating in industrial and service sectors for initiatives involving new facilities, expansions and modernisations in given geographical areas.

- Guarantees: the State or another entity covers the cost of guarantees that the beneficiary is required to pledge in order to obtain a medium/long-term loan.

6.5 Procedures

Incentives to foster enterprise development are awarded using three different procedures:

- Automatic: apply to measures not requiring prior project assessment. No technical, economic or financial evaluation of the expenditure programme is required before the measures can be activated. The support is approved provided the applicant meets the requirements rendering it eligible for the programme (e.g. tax credits).

- Assessment-based: apply to broader and more complex investment programmes which will undergo technical, economic and financial viability evaluation (profitability, financial plan for covering expenses, future cash flows, objectives to be achieved, etc.) in consideration of the objectives being pursued. These subsidies may be awarded via “tender” procedures based on merit rankings, or on the basis of “first come, first served” mechanisms, where no comparative assessment of the investment programmes is conducted and cases are examined in chronological order of receipt of applications and as long as funds last (e.g. Law 181/89).

- Negotiated: apply to projects involved in broader territorial or sectorial development programmes. The content of the programmes to be implemented are agreed upon with the competent public administration, defining total investment and details of financial support within the framework of a full-fledged multilateral, programmed negotiation (e.g. Development Contracts and Programme Contracts).
6.6 Incentives

The national investment support system offers a variety of incentives, including tax relief, to support investments in productive activities research and development and training programmes.

Incentives for industrial development

A Programme Contract is an agreement between the Ministry for Economic Development, acting through the Agenzia nazionale per l’attrazione degli investimenti e lo sviluppo d’impresa [the National agency for inward investment promotion and enterprise development, or Invitalia], and the companies involved with a view to implementing an industrial project with associated research activities (experimental development).

The total amount of eligible expenditures and costs for the project must be at least € 40 million. Within the scope of the project, the productive investment plan proposed by the sponsoring entity must foresee eligible expenditures of at least € 25 million.

Investment programmes falling within the manufacturing, mining, power generation and fish processing industries are eligible. Support is provided in the form of grants or interest subsidies, as well as combinations of the two forms. Invitalia is responsible for the technical management of the Programme Contract.

Within the broader effort to simplify the tools for attracting private investment, mainly in the South, which are crucial for strengthening Italy’s productive capacity, Invitalia will shortly (as established with Article 43 of Legislative Decree 112/2008, ratified with Law 133/2008) assume responsibility for managing a measure to support industrial projects, the “Development Contract”. This mechanism is designed to help attract foreign investment and facilitate the implementation of corporate development plans.

The Agency will handle all the stages of the procedure, from receipt of applications to the granting of funding. Fast-track authorisation procedures will also be put in place for the investment projects approved. The Development Contract will replace the Programme Contract as an incentive tool.

Law 181/89 establishes a support mechanism for re-industrialising and revitalising industrial areas. The funds are managed directly by Invitalia, which is responsible for assessing projects and distributing the funds.

In order to apply for the subsidies it is necessary that the shareholders of the beneficiary company invest at least 30% of the planned overall investment using their own capital. Investments involving the building of new production facilities, expansions, modernisations, relocations, restructurings and reactivations of existing facilities, only when generating new jobs, are eligible for support.

Companies of all sizes operating in mining, manufacturing, power generation and service industries and those active in the processing and marketing of agricultural products, that invest in subsidized under law 181/89 areas can take advantage of this mechanism (see Figure 2).
Figure 2 - Subsidies Under Law 181/89 – Eligible Areas

A full list of the eligible municipalities and related gross grant equivalent (GGE) may be consulted online at the following address:
http://www.invitalia.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/33

The subsidies consist of grants to cover up to:
- 25% of eligible investments in central and northern Italy
- 40% of eligible investments in the South.

Initiatives located in the South may also obtain soft loans covering up to 30% of eligible investments.

Grants and subsidised financing are awarded on the condition that Invitalia acquires a temporary minority stake in the beneficiary company, which can be repurchased over a period of five years.

Incentives for technological innovation and research

Inspired by Italy’s new industrial policy, this programme establishes strategic guidelines for ensuring the development and competitiveness of the country’s economic system. It defines new tools for encouraging investment: Industrial Innovation Projects, Enterprise Networks and the Fund for Corporate Finance.

Industry 2015

These support measures are aimed at promoting investment in high-innovation
programmes in sectors that are strategic for the country’s development, such as energy efficiency, sustainable mobility, new technologies for living, new technologies for Italian export industries and innovative technologies for cultural heritage. A total of €1.1 billion has been appropriated for the 2007-2009 period. Enterprises can choose the type and form of financial support that best meets the needs of their programmes. Calls for applications were published starting in March 2008 for energy efficiency, sustainable mobility and technologies for Italian exporting industries.

Enterprise Networks
An enterprise network is a form of contractually-based coordination among enterprises. It is specifically designed for SMEs seeking to achieve critical mass and greater market power without being forced to merge under the control of a single entity.

Fund for Corporate Finance
The Fund for Corporate Finance is intended to make it easier for enterprises, particularly SMEs, to obtain credit and risk capital. The Fund will participate in operations involving the adoption of new credit risk mitigation instruments and private equity initiatives proposed by banks and/or financial intermediaries. The criteria and priorities for carrying out the deals are determined in accordance with guidelines established by the Ministry for Economic Development.

Established by Law 46/82, the Fund seeks to finance programmes in advanced high-tech sectors, supporting industrial research projects and the establishment of research centres.

The Fund can also be used in conjunction with Programme Contracts. In such cases, the Fund is available to enterprises that undertake a comprehensive investment programme that envisages the industrialisation of research results. This mechanism is administered by the Ministry for Economic Development.

Created with Legislative Decree 297/99, the Fund supports applied research programmes for the development of new products, production processes and services and to promote existing technologies. It is administered by the Ministry for Education and Research (MIUR).

Research and development activities financed with this tool fall into the following two categories:

- Industrial research, defined as “research or studies aimed at acquiring new knowledge for the development of new products, production processes or services or to significantly improve existing products, production processes or services. It includes the creation of complex components for complex systems required for industrial research, especially designed for the validation of generic technologies”

- Experimental development, which consists in the acquisition, combination, organisation and use of existing scientific, technological, commercial and other knowledge and skills to produce plans, projects or designs for new, modified or improved products, processes or services. This can include any other activity aimed at conceiving, planning and documenting new products, processes and services which may include the preparation of designs, drawings, plans and
other documentation not intended for commercial use. Experimental
development also includes the construction of prototypes for commercial
purposes and pilot programmes for technological or commercial testing where
the prototype is the finished commercial product where its manufacturing cost
is too high for it to be used only for demonstration or validation purposes.

Territorial Research and Development Initiatives

The aim of this programme is to enhance the competitiveness of high-export productive areas through research and development to strengthen key technologies, products and innovative processes.

To pursue this objective, the Italian government has developed a policy focused on the formation of technology districts. Currently there are 25 districts throughout the country, specializing in different areas (e.g. nanotechnologies, wireless technologies, biotechnologies, logistics, cultural heritage, mechatronics).

7th Framework Programme

The 7th Framework Programme for research and technological development (FP7) is the European Union’s primary tool for funding research for the 2007-2013 period. The Programme is aimed at research centres, scientific or technological organisations, governments and companies. Any organisation operating in one of the EU Member States may take part in the programme, which provides a variety of grants that can cover up to 100% of eligible investment costs.

Competitiveness and Innovation Framework Programme (CIP)

The CIP aims to encourage the competitiveness of European enterprises, particularly small and medium-sized enterprises, by supporting innovation activities through the granting of better access to financing, delivering regional support services and promoting better use of information and communications technologies (ICT) to develop the information society. It also promotes the use of renewable energies and energy efficiency.

Tax incentives

Tax credit for investments

This incentive is available to enterprises that acquire new capital assets for production facilities in the regions of Calabria, Campania, Puglia, Sicily, Basilicata, and for eligible areas within Sardinia, Abruzzo and Molise. Aid will be granted in accordance with the general rules governing state aid for regional development (see Table 2).18

Tax credit for research

This measure regards costs borne by enterprises in researching and developing new products. Enterprises are eligible for a tax credit equal to 10% of the costs faced for industrial research and precompetitive development. The figure can rise to up to 40% if the costs refer to projects conducted with universities and public research entities. In any event, costs cannot exceed €50 million in any given tax period for the purposes of calculating the tax credit.

Tax credit for employment

This programme aims to encourage employment in the regions of southern Italy (Calabria, Campania, Puglia, Sicily, Basilicata, Sardinia, Abruzzo and Molise). The incentive takes the form of a tax credit for companies that expand their permanent workforce.19

Training incentives

For an enterprise to grow, it must develop its human capital. continuous career

18) The amount of funding is currently under redefinition.
19) The amount of funding is currently under redefinition.
training addresses this need for personnel who will be ready to face the ever-changing labour market.

Law 236/93

Law 236/93 funds individual and corporate training programmes throughout Italy. Projects may involve training needed within the enterprise as part of an overall transformation process, or individual training to improve personal skills. Projects regarding training in technological and organisational innovation, safety and quality and environmental protection will be eligible, particularly if the projects improve the enterprise’s competitiveness and employment levels. The programme is run by local bodies which are in charge of publishing the calls for applications.

European Social Fund

As noted, the ESF is implemented through specific Regional Operational Programmes.

Applications for funding for training programmes are submitted in response to calls for applications either through the Ministry of Labour or through the regional government’s labour offices. Each project (or set of projects submitted jointly or in response to the same call) must be presented using the application forms available from the regional or provincial government, following the directions contained in the call.
7. Labor Law

7.1 New Flexibility for Employers

Italian Labor Law has become a significant factor in attracting foreign investors to Italy. Decree 276/03 introduced major changes to employment rules increasing flexibility in the market to help reduce unemployment.

Two major changes stand out:

- New types of contracts have been created to enable companies to upfront special growth trends for limited periods, and to allow them to reduce labor costs significantly in periods of reduced output.
- A new regime for independent contractors now permits job placements only where necessary for the performance of a specific project.

Some of these new provisions are already in force and being used successfully by companies.

Work employment relationships are regulated by the Constitution, the Civil Code, the Workers Bill of Rights [Statuto dei Lavoratori] and other Laws and Decrees. Terms and conditions of employment are also periodically fixed by collective labor agreements in different professional categories.

7.2 The New Italian Labor Market

New types of Contracts

Job Sharing

Job Sharing involves two or more employees sharing joint responsibility for a single position. Job sharers can choose their own schedules at their own discretion. Each person’s pay is directly proportional to the personal performance. The contracts must be put in writing.

Job on Call

Job on Call relates to a professional activity performed on a discontinued or intermittent basis. Job on Call contracts must be put in writing, and may be on fixed or open terms. Regardless of the nature of the professional activity it may be entered into by employees younger than 25 years and older than 45 years also retired. They must also make provisions for a stand-by allowance which must be equal to at least 20% of the salary envisaged by the applicable collective labor agreement.

Staff Supply

Staff Supply enables clients of the employment agencies to avail of the labour activity of workers who have entered into an employment agreement with an employment agency. The clients and the employment agencies are jointly liable towards the employee for payment of wage and social security contributions and for the compliance with the employee’s safety regulation. Staff Supply contracts set down the rights and obligations of employment agencies and their clients. They can be both open term or fixed-term contracts.

Open-term contracts (so-called ‘staff leasing’ contracts) are used frequently for
porter and cleaning work, transportation and warehouse services, managerial consultancy services (including human resources management) and call center management. With reference to the agreement between the employment agency and the employee they may be entered into under the form of job sharing, part-time, job on call, training employment and entrance contracts.

Generally, technical, production-related, organizational and stand-in positions require fixed-term contracts. Italian Ministry of Labor, referring to the regulation provided by Legislative Decree 6 September 2001, no. 368, has extended the scope of application of fixed - terms contracts.

Ancillary Work

Ancillary Work covers:
• Voluntary sector
• Occasional work by those at risk of social exclusion
• Regularly-performed domestic help.

The following people can carry out ancillary work: a) unemployed over a year; b) the housewives, students; the retired, the disabled and people in the recovery community; c) the non-EU workers regularly living in Italy and having lost job.

Training Employment Contracts

There are three categories of On-the-job Training Contracts [contratti di apprendistato] covering:
• Training and learning rights and duties obligations
• Apprenticeship leading to a professional qualification following on-site training and learning professional skills
• Training leading to a diploma or other types of professional qualification.

Entrance Contracts

Entrance Contracts [contratti di inserimento] cover individual projects for developing a worker’s skills in a specific field for later reintegration in the job market.

In the entrance contracts workers cannot receive a salary scheme lower than two levels compared with those envisaged by the applicable collective labour agreements for workers who require a qualification corresponding to the qualification aimed by the individual project which is the subject of the individual project.

Part-Time Work

Part-time work describes a working week of shorter duration than the full working week. It may be horizontal (reduced daily working time), vertical (full time but for limited periods with reference to weeks, months or years) or mixed (a combination of both). Part-time work requires the prior consent of the worker if the relevant collective labor agreement does not already permit the practice.

Secondment

Secondment happens when an employer, in order to satisfy its own interest, makes one or more employees temporarily at the disposition of another subject for carrying out a certain work activity.
Secondment involves the transfer of an employee, the ‘secondee’, to a different production unit located at least 50 km away from his usual work site. It is allowable only for technical reasons or needs related to production, organization or replacement. The employer remains liable for the legal and economic treatment of the secondee.
Autonomous or “Atypical Workers”

Project-Based Collaboration Contracts (contratto a progetto) concern one or more specific projects, work plans or development phases, which an independent collaborator manages autonomously to achieve a specific result. The collaborator carries out the required activity at his own discretion in line with the overall project development.

Collaboration contracts for specific projects must detail in writing the duration of the relationship (either fixed or indeterminate) and the remuneration package. The remuneration must be proportional to the quantity and quality of the work performed.

Employment Agencies

The Ministry of Labor has established and keeps a register of all authorized employment agencies. A specific regulation has been enacted in order to set forth the requirements applicable to the agencies in terms of professional skills. Divided into various categories by function, these agencies operate on a sole ministerial authorization. These new rules also allow the setting-up of multi-functional agencies.

Employment Services

Employment services are public structures that have substituted the old placement offices. They have been created to facilitate the match of job demand and offer, to prevent unemployment and facilitate those who are at the risk of unemployment to enter the job market.

The employment services offer various types of services such as:

- welcome, provide information and orientation for those looking for a job;
- Intermediation between job demand and offer
- Consultancy to companies.

Outsourcing and Transfer of Business

A ‘transfer of business’ refers to contractual (re)assignments, mergers, lease agreements or usufruct. It may also refer to transferring a going concern identified by transferor and transferee at the point of transfer.

Following a partial or complete transfer of business employment relationships pass to the transferee with employees maintaining all their rights and obligations. Accordingly, the new controller cannot terminate or otherwise amend the terms and conditions of the employment contracts of the transferred business.

Transferor and transferee are jointly liable to the employees for any and all debts owed them at the date of transfer (including severance pay).

The transferor and transferee of a business with fifteen employees or more must give joint notice to the relevant trade unions, at least 25 days prior to its transfer. Notice should specify the reasons for the transfer, the possible consequences for the employees and any subsequently planned action which may affect them.
Trade unions may request an assessment of the transfer’s impact on the employees, jointly together with the transferor and the transferee. Non-compliance constitutes an “unfair unions practice” and may cause workers’ representatives to take legal action before the Labor Court. The Court can impel the transferor and/or the transferee to comply with the consultation requirement.

**Employment Regulation**

Some general employment regulations are summarized hereinafter.

**Hiring**

There is no general requirement for an employment contract to be in writing although most collective labor agreements do so. Contracts for fixed-term and part-time employment must be in writing. Fixed-term contracts are permissible under certain circumstances, such as for seasonal work or for the replacement of temporary vacancies.

**Competition and Confidentiality**

Employees must not conduct business in direct competition with their employer, divulge confidential or classified information about their employer’s business or production methods, or use such information to cause prejudice to the employer.

**Inventions**

With reference to inventions created by employees, in accordance with the Industrial Property Code enacted on February 10, 2005, they belong to the employer so long as they relate to the tasks defined in the employment contract and specific compensation is paid to the employee.

If a specific compensation for the invention is not envisaged by the employment contract and the invention is created in the performance of the employment relationship, the invention, if patented, belongs to the employer but a fair compensation must be paid to the employee.

If the above conditions are not met and invention relates to the field of activity of the employer, the invention belongs to the employee but the employer is granted with an option right to use on an exclusive or not exclusive basis or to purchase the invention. In case an agreement is not reached between the employer and the employee on the amount of the fair compensation or of the consideration for the invention, the assessment thereof is made by an arbitrators panel.

**Pay and Benefits**

There is no minimum wage as such, but the Italian Constitution guarantees the right to fair pay. Collective agreements regularly define minimum levels of wages and benefits.

**Working Time**

Averagely, there are eight working hours per day. The maximum working week is 48 hours (including overtime) over a reference period of maximum four months.

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

**Holidays & vacation**

In Italy there are eleven religious and national holidays. The Constitution guarantees everyone the right to one day of rest per week (usually Sundays). Employees are entitled to an annual vacation period of four weeks.
Absence from Work

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

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

Maternity Leave
Women may take maternity leave with 80% pay in the two months before delivery and the three months afterwards. Italy’s social security system bears the cost. Should a child’s mother die or become seriously ill, the father, a male employee, may take paternity leave with the same conditions as the maternity leave.

Termination of work contract

Dismissal
Under the Italian Law an employee is dismissible for:

• Just Cause (Giusta Causa) meaning a serious breach of the employee by his/her duties or other behaviour that makes continuation of the working relationship unfeasible

• Justified Grounds (Giustificato Motivo) meaning:

1. A breach by the employee of his/her duties which is not serious enough to constitute Just Cause, and which may consist, for instance, in failure to follow important instructions given by the management, material damages to machinery and equipment, low performance (the grounds for dismissal being “subjective reason”)  

2. An objective reason whereby the employer needs to reorganize production or the labor force (i.e., making redundancies).

Dismissals must always be in writing and detail the reasons for dismissal. Failure to do so makes the dismissal ineffective.

Should the employee believe to have been unfairly dismissed, he/she can challenge the decision in court and the employer must observe the following rules:

• If the company employs up to 60 workers in total throughout Italy, or up to 15 in a single working unit, the employer may choose between reinstating the dismissed employee or paying an indemnity (between two and half, and six months pay)

• Under all other circumstances, the employee is entitled to reinstatement and compensation for damages amounting to five months salary at least.

Failure to reinstate an unfairly dismissed employee results in an award of 15-months salary plus compensation for damages against the employer.

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

• Severance Pay (Trattamento di Fine Rapporto - TFR) – the amount is calculated by dividing each annual gross salary by 13.5; severance pay is taxable and free of social security contributions
Collective Redundancy

If redundancy involves at least 5 employees within a 120 day period and an employer with 15 or more employees, the company must consult with trade unions under the “collective dismissal procedure”.

Employees made redundant by certain companies (e.g. industrial, employing 15 or more workers), and having at least 12 months seniority there receive for a certain period an unemployment allowance from the Italian Social Security Agency (INPS - Istituto Nazionale della Previdenza Sociale).

For each employee made redundant, employers must pay a financial contribution in 30 monthly installments to INPS. Pending the outcome of any dismissal proceedings, the employer must provide advance payment of this contribution.

7.3 Social Security & Assistance System

Costs

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

INPS (the National Institute for Social Security) and INAIL (the National Institute for Insurance against Accident at Works and Occupational Diseases) carry out such functions. The two bodies provide services such as pension, indemnity and allowance for accidents, diseases, termination of work contract in case of reaching age limit or invalidity.

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

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

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

Compulsory insurance includes cover in the event of damages incurred between the employee’s home and workplace, or between different work places.

20) For further information: www.inps.it
Retirement Provisions

The Italian compulsory state pension system is financed by social contributions paid by the employer during one’s working life, and is based on actuarial fairness. The retirement age ranges between 57 and 65 years.

On July 28, 2004 the Italian Parliament approved a regulation envisaging substantial changes to the present pension system.

Starting from January 2008, the reform envisages retirement:

• After 40 years of contributions, or
• At 65 years of age (60 for woman).

Such years of age requirement shall be increased of one year in 2010 and of an additional year in 2014.

The reform includes incentives for workers who decide to continue working, although currently eligible for a public pension. Such incentives provide for a compensation equal to 32.7% of the salary of the worker who has decided to continue working.

Integrated Pension Funds

Supplementary pension provision in Italy is voluntary for workers and companies alike. The law guarantees freedom for individuals to subscribe to supplementary pension schemes whilst leaving companies free to chose whether to set up their own funds. Nearly all funds are based on a pre-established contribution rate. Regarding disbursement, beneficiaries can generally withdraw up to 50% as a lump sum then the entire or remaining amount as an annuity.

On 5 December 2005 the Italian Government has approved Legislative Decree no. 252 aimed to redefine, starting from January 1, 2007 the entire regulation applicable to supplementary pension schemes for employees of private companies.

The main features of the new regulation are the following:

• an increase in the amount of financing flows dedicated to supplementary pension schemes
• an homogeneity in the supervision system applicable to the entire supplementary pension sector
• a new taxation regime applicable to pension funds
• a monitoring of the management of the financial resources arising from the workers contributions
• a new financing system through the contribution by the employee of its severance pay (Trattamento di fine Rapporto). In this respect the new regulation provides that, starting from January 1 2007, the employee shall be entitled to elect within a six months term, at his discretion, (i) to leave the accrued severance pay within the employing company or (ii) to contribute it to a pension fund. If such six months period elapses without any election by the employee, the accrued severance pay shall be contributed by the employing company to
the pension fund mentioned in the relevant labour agreement based on an implicit consent mechanism (silenzio assenso).

On February 6, 2007 the Italian Government has approved legislative decree n. 28 aimed at enhancing the regulation of supplementary pension founds.

Each pension fund shall define its investment policy and its members shall be informed; on a three years basis, the fund shall ensure that its investment policy meets the interest of subscribers.

### 7.4 Compulsory Hiring of Person with Disabilities

Undertakings with 15 or more employees are required to recruit personnel from “protected categories” like widows, orphans, refugees and disabled persons.

### 7.5 Safety in the Workplace

Employers must adopt all necessary measures, considering the specific features of the job and workplace, to preserve the physical integrity and personality of the employees.

By law employers must carry out dedicated risk assessments and organize prevention and protection systems. Employees and their representatives have the right to check the implementation of health and safety standards.

### 7.6 Labor Proceeding

Special provisions of the Italian Code of Civil Procedure apply to labor proceedings. Labor proceedings are faster than ordinary proceedings since allegations and evidence are submitted with the first statement of defense.
8. Living in Italy

8.1 Visitors, work permits and residency

Business visits up to 90 days

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

Work permits and residency (beyond 90 days)

Non-EU citizens

To work in Italy, non-EU citizens must obtain specific permission (nulla osta), which the future employer must apply for with the immigration office (Sportello Unico per l’immigrazione). The immigration office issues the nulla osta in accordance with the decree establishing immigration quotas. After receiving the nulla osta, prospective workers must go to the Italian consulate in their home country. The consulate notifies them of the proposed contract and issues a visa within 30 days. The nulla osta is valid for 6 months from the date of issue, during which time the worker must enter Italy. Within 8 days of arrival in Italy, foreign citizens must go to the immigration office that issued the nulla osta to sign the work contract (contratto di soggiorno) and apply for the permit to stay in the country (permesso di soggiorno).

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

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

European Union citizens

No permit is required for European Union citizens to stay in Italy. If you plan to stay in the country for more than three months, you have to register with the anagrafe (register of births, deaths and marriages) of the municipality in which you are domiciled and request the related certificate. In order to register, you must present documentation proving that you are employed, studying or engaged in vocational training. Otherwise, you must demonstrate that you have sufficient financial resources to cover your stay and that you have health insurance.
**Italian residency**

After receiving your permit to stay, you must register with the anagrafe of the municipality in which you reside.

Documents required:
- permit to stay
- valid passport.

Time required for issue: about 2 months.

All Italian and foreign citizens must have a tax ID number, even if they are not subject to Italian taxation. The number is used to identify people in their dealings with government departments and other public entities. It can be requested at immigration offices (Sportelli Unici per l’Immigrazione), police headquarters (Questure) and local Revenue Agency offices (Agenzie delle Entrate).

**8.2 Banking services and bank accounts**

**How to open a current account**

Foreign residents can open an ordinary bank account.

Non-residents (those in Italy for fewer than six months per year) can, in principle, open a special bank account for foreigners.

You need a valid tax ID number to open a current account. Some banks also require presentation of a residency certificate, but this is not a legal requirement.

Documents required:
- tax ID number
- permit to stay
- valid identity document.

Current accounts earn interest. Interest is calculated based on the bank statement date, not the transaction date. Bank charges include a conventional fee expressed in value date days. This fee can vary from bank to bank (in general, it is one day for cash deposits, three days for in-town checks and between 8 and 20 days for out-of-town checks).

**Payment cards**

Debit cards are widely used and accepted throughout the country. They may be used with automatic teller machines (ATMs) and for making payments in most stores, restaurants or similar commercial establishments.

**Cheques, cash and bearer passbooks**

New rules for governing the use of cheques, cash and bearer passbook savings accounts were introduced with Legislative Decree 231/2007, as amended by Decree Law 112/2008, which went into effect on 25 June 2008.
The most significant change is the fact that banks and Poste Italiane SpA now issue non-transferable cheques.

Transferable cheques can only be issued upon written request made to the bank. A stamp duty of € 1.50 is due on each cheque. Cheques must always bear the tax ID number of endorsers, otherwise the cheque cannot be honoured.

All cheques (transferable or not) for amounts equal to or greater than € 12,500 must specify the beneficiary and be non-transferable.

The rules for transferable cheques apply to cheques already in circulation.

In addition, a limit of € 12,500 applies to cash transfers. Transfers of larger amounts can only be made through banks, Poste Italiane SpA and electronic money institutions. These rules also apply to transfers of bearer passbooks (bank and postal accounts) and bearer securities. The balance on bank and postal bearer passbooks must be less than € 12,500.

**Level of protection**

All Italian banks participate in an official deposit protection system. The branches of banks registered in EU countries can also elect to participate in the Italian deposit protection system to supplement the protection afforded by their home country systems.

Branches of non-EU banks that are authorised to operate in Italy must participate in the Italian deposit protection system unless they participate in an equivalent foreign system.

**8.3 Health care**

**National Health Service**

The National Health Service operates through local health authorities (aziende sanitarie locali) and provides treatment to all EU citizens under reciprocity agreements for health care.

In order to receive medical treatment, EU citizens must obtain the European Health Insurance Card prior to departing their home country. The card replaces the old form E111 in use prior to 2006.

Non-EU citizens visiting Italy must have private insurance coverage (Italian or foreign). The coverage must be approved by the local police department within 8 days of arrival. Coverage must last for the entire duration of the visa.

**How to obtain treatment**

Foreign workers (whether EU or non-EU citizens) must go the nearest local health authority office to choose a general practitioner. By registering, a worker receives the right to receive a health insurance card and number.
Pharmaceuticals
General practitioners issue prescriptions for pharmaceuticals where necessary. In some cases, these are partially or entirely paid for by the state.

8.4 Schools
Foreign families in Italy have a wide array of Italian and international schools to choose from. The Italian school system is divided into three main cycles:
- elementary school, 6-10 years of age (compulsory)
- middle school, 11-13 years of age (compulsory)
- high school, 14-19 years of age.
The international schools in Italy are mostly American or British. Many of the international schools follow the British school system and about 30 of these are members of the European Council of International Schools.

American colleges, universities and research programmes
There are some 90 American educational institutions operating in Italy, of which 36 are based in Rome and 30 in Florence. Most of these are members of the Association of American College and University Programs in Italy (AACUPI).
Other international schools, which can be found in many of Italy’s major cities, adopt the course curricula used in France, Spain, Germany and Japan.

International Baccalaureate
Most of the international schools in Italy offer this university-prep programme (recognised by over 600 universities throughout the world) during the last two years of high school.

8.5 Driver’s license
A driver’s license issued by another EU Member State can be used in Italy.
Non-residents with a permit to stay in the country can drive using their foreign or international driver’s licenses until they obtain Italian residency.
After one year of Italian residency, a person can apply for an Italian driver’s license. Specifically:
- non-EU citizens holding a foreign driver’s license issued by a country with which Italy’s Department of Motor Vehicles (Ispettorato generale della motorizzazione) does not have a reciprocal recognition agreement must obtain an Italian driver’s license
- non-EU citizens holding a foreign driver’s license issued by a country with which Italy’s Department of Motor Vehicles does have a reciprocal recognition agreement can exchange their driver’s licenses for an Italian license without being required to take any driving exam.
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