

DOING BUSINESS IN ITALY

Author: Marco Mazzeschi

www.mazzeschi.it – email: mm@mazzeschi.it

- 1 Introduction
- 2 The business environment
- 3 Establishing a presence in Italy
- 4 The legal nature of a subsidiary
- 5 Financing a company
- 6 Opening a bank account
- 7 Utilising office space
- 8 Immigration controls
- 9 Key employment laws
- 10 Contracting with third parties (business contracts)
- 11 Taxation Overview
- 12 Regulatory Compliance
- 13 Protecting key assets and employees
- 14 Useful Links

1. INTRODUCTION

Italy is a founding member of the European Union. It extends for 301,230 sq. km. and it has a strategic position of the heart of the Mediterranean Sea. It has a population of approximately 60 million people, with 196 people per square kilometer. The country's main cities and metropolitan areas are Rome (4 million), Milan (2,5 million), Naples (1,5 million), Turin (,51 million). The majority of the workforce (comprised of approximately 25 million people) is employed by the service industry (65.1%), followed by those engaged in industrial activities (30.7%) and agriculture (4.2%). The gross national income per capita is € 26,050 (2014 ISTAT – Italian National Institute for Statistics estimate).

Italy is a parliamentary republic with a perfect bicameral system. Presiding over the Government is the Prime Minister, who is the Head of Government. The Parliament is composed of two Houses: the Chamber of Deputies and the Senate. The President of the Republic nominates the Prime Minister, is elected by the Parliament and holds the position for 7 years.

Italy has a civil law system. Its sources of law are the Constitution, Statutes, Secondary regulations, Custom and EU regulations and directives.

Italy is divided in 20 regions which, according to the Constitution, are granted legislative autonomy in certain areas, such as public health, education, agriculture and tourism.

2. BUSINESS ENVIRONMENT

Italy is the world's 8th largest economy, the 5th manufacturing economy worldwide and 2nd in Europe. It has a Gross Domestic Product of EUR 1,560 billion, Exports for EUR 474 billion and Imports of EUR 436 billion (ISTAT 2013). Industrial activity is concentrated in the north in the area that runs from Turin in the west through Milan to Venice in the east. This is one of the most industrialized and prosperous areas in Europe and accounts for more than 50% of national income. By contrast, Italy's southern region is less developed. The economy is dominated by small, family owned companies (approximately 90% of Italian firms are small or medium size) that produce 70% of Italy's GDP.

Foreign firms have business opportunities in sectors such as telecommunications equipment and services, renewable energy, travel and tourism, life sciences, safety and security, airport and ground equipment. Sectors which are expected to have a high growth potential are fashion, home furnishings, capital goods, aerospace, robotics, pharmaceutical and biotech. Italy's changing demographics (the country's birthrate is low and its population is aging) and lifestyle also create opportunities. eCommerce is growing, but remains relatively less developed with respect to certain other EU countries. It is expected to grow substantially in the next few years. Italy will host the Universal Exposition *Expo 2015*, which will take place in Milan from May 1 to October 31, 2015. The theme chosen for the 2015 Milan Universal Exposition is Feeding the Planet, Energy for Life. This embraces technology, innovation, culture, traditions and creativity and how they relate to food and diet. Attendants to the Expo are expected to include over 140 countries plus a significant number of international organizations. It is expected that approximately 20 million people will visit Italy to attend the event.

Bilateral and multilateral investment treaties may protect and favour certain foreign investments. There are various incentives which can be requested by foreign investors willing to establish their business in Italy, granted both by the Government and by the Regions and also special funds provided by the European Union. Detailed information can be found in the websites of Invitalia and the Ministry of Economic Development (see Useful links).

3. ESTABLISHING A PRESENCE

Foreign investors can set up a business activity in Italy by: (i) Establishing as a partnership (*ditta individuale*); (ii) Establishing a company; (iii) Establishing a secondary registered office (*sede secondaria*) or branch (*filiale*) (iv) Opening a representative office (*ufficio di rappresentanza*).

The most common types of companies in Italy are: Società per Azioni – S.p.A. (companies with liability limited by shares) and Società a responsabilità limitata – S.r.l. (companies with liability limited by quotas).

Società per Azioni (S.p.A.): is the most common business form for companies with significant investments. Registered capital must be not less than € 50,000.00. The by-laws can provide for different types of shares, such as (i) *Ordinary Shares*, that grant their holders all rights in the company, except those rights specifically reserved for other classes of shares; (ii) *Preferred Shares*: the holder has a right of priority in the distribution of the company's net profits but limited voting rights may be established; (iii) *Employee Shares*: may be issued to distribute profits to employees; (iv) *Saving Shares*: do not give the holder the right to attend and vote at ordinary Shareholders' Meetings.

Any material decision regarding the company must be approved by the shareholder's meeting, which must be convened at least once a year to approve the company's financials. The managing body is responsible for company management. In performing ordinary and extraordinary management tasks, it is not bound to seek approval from shareholders for its actions, except for corporate administration acts expressly subject to shareholders' approval as by law.

In any event, the managing body composition depends on the corporate governance model adopted by the company. The most used is the so-called "ordinary" model under which the management of the company is given to a board of directors or to a sole director. The board of directors may delegate some of its administrative powers to an executive committee or to a managing director. The control body is responsible for overseeing company management and/or auditing its accounts, although the latter may also be entrusted to an independent auditing firm.

Società a responsabilità limitata (S.r.l.): has lower capital requirements (minimum share capital is be € 10,000) and shareholders have more freedom in setting up the rules for its functioning, management and organization. Unlike S.p.A.s, quotaholders may contribute, in lieu of cash capital, services to be provided. Quotaholders may also agree on allocating quotas in different proportion to the value of the capital contributed, and may also establish special rights for specific quotaholders. Statutory auditors must be appointed only if certain conditions are met, i.e. the capital is increased to € 50,000 or more, for two consecutive years total assets exceeds Euro 4,4 millions or revenues from sales and services exceeds Euro 8,8 millions Euros, 50 workers employed on average during three years.

New types of Srl have been recently introduced, which can be established with a capital lower than € 10,000 and can be registered with a simplified procedure and lower costs. However they have not been popular because banks and customers are hesitant to work with companies which have a lower financial support.

Unlimited Partnership (*Società in nome collettivo*): This entity is a partnership whose partners have unlimited liability for all the acts of, and transactions entered into by, the partnership. Any or all of the partners may be appointed as Directors of the partnership. Italian law generally restricts the transfer of a partner's interest in the partnership.

Limited Partnership (*Società in accomandita semplice*): This entity has a combination of limited and unlimited liability. There are two categories of partners: general partners who have unlimited liability, and special partners who are liable only up to the value of their capital contribution to the partnership. Only general partners can be appointed as Directors of the partnership.

Partnership Represented by Shares (*Società in accomandita per azioni*): The structure and characteristics of this type of business entity are similar to a limited partnership, except that shares represent the capital contribution of the partners and it is governed by the rules of limited liability companies.

Branch: is a separate unit of a company which does not have a legal autonomy. The company remains liable for all the activities carried out by the branch. For tax purposes branches are considered as permanent establishments and are therefore subject to taxation. They must keep their own books, submit VAT and income tax returns each year and file at the Companies House the yearly financials of the parent company.

Representative office: it does not have legal autonomy and can carry out only marketing and promotional activities or scientific or market research and may not conduct production-related or commercial activities. As such, for tax purposes, a representative office is not considered a “permanent establishment” of the foreign company and is therefore not subject to taxation.

Registration and formation

All types of companies are established in front of Notary Public by executing the Deed of Incorporation and Articles of Association of the company. The individuals who will sign the deed, if they act in the name of a foreign company, will need to submit a legalized proxy proving their powers. The legalization must certify that the signatory is duly empowered to sign the proxy and grant the powers. Notaries are public officers and despite being paid by the parties, must safeguard the public interests so that a validly enforceable deed is executed. Contrary to Notaries in common law countries, they are not solely responsible to certify that the signature on a deed are true, but they are liable also to check that the merit of the deed is compliant with the law. In addition to the being liable for registration of companies, Notaries are also granted powers to execute deeds for the sale of real estate, donations and many other deeds.

4. LEGAL NATURE OF A SUBSIDIARY

Companies must be incorporated in front of a Notary Public. The articles of association and bylaws are filed with the Companies' Register (Registro Imprese) and obtain a VAT and identification number (Tax Code). Upon registration, the company will be formed and considered a distinct legal entity. All relevant company documentation (appointment of directors, balance sheet, profit and loss account, etc.) will be subject to the same disclosure. The general public has access to the Registry and any person is entitled to have a copy of the documents filed. The registration process takes about seven to 15 days.

The company can be managed by a sole director or by a board of directors. Directors do not need to be Italian citizens but it can be requested that a director is an EU citizen or resident in Italy for companies which carry out specific activities, for example agents, brokers, financial services.

Directors have a general fiduciary duty to the company. They cannot become partners with unlimited liability in competing companies, or undertake any activities that might conflict with the company's activities, without specific authorization granted by a Shareholders' Meeting. In the case of a breach of this duty, directors may be removed from office and are liable for damages caused to the company. A director who has a conflict of interest regarding a specific transaction must notify the other directors and the Board of Statutory Auditors and shall not participate in decision-making on such matters. Directors may be liable to the company, the company's creditors, shareholders and third parties for breach of their duties. However, liability does not extend to any director who has registered his dissent with any board decision in the Minutes Book of the Directors Meetings and has given written notice of his dissent to the chairman of the Board of Auditors. Upon liquidation, the liquidator may bring an action for breach of duty against the directors.

5. FINANCING A COMPANY

A company can be financed by a third party or by the shareholders. Under Italian law shareholders can finance the company with a loan (which will accrue interest and will need to be reimbursed) or with non-interest bearing payments, that can have different purposes, namely:

Versamento in conto capitale o a fondo perduto: the payment can be done spontaneously by any shareholder and does not need to be pro-quota to the stock owned. The shareholder will renounce to be reimbursed and the funds shall be used to increase the patrimonial assets of the company. These funds shall be treated as reserves;

Versamento in conto futuro aumento di capitale: payments made in view of a future capital increase. These payments are treated as contributions to the capital;

Versamento in conto aumento di capitale: payments made upon a resolution of the shareholders to increase the company's capital;

Versamento a copertura delle perdite: payments made by the shareholders to cover company's losses.

Under certain conditions SPAs can issue bonds and other financial instruments. SRLs can do so with more limitations. Conditions and limitations are set forth in the Deliberation of the Interministerial Committee of July 19, 2005. Listed companies are subject to specific set of regulations issued by the Stock Exchange Commission (Consob) and the Bank of Italy.

6. OPENING A BANK ACCOUNT

All Italian and foreign residents are required to have their own Tax ID number (Codice Fiscale), even when they are not subject to Italian taxation. The number is used to identify persons and companies in their dealings with government departments and other parties, and can be requested at the local Revenue Agency offices (Agenzie delle Entrate) or at Italian Consulates for those living abroad. The Tax ID number can be requested also by foreign citizens not living in Italy and it is required, for example, for those who are appointed directors of an Italian company (even though they are not Italian residents) or those who purchase a real estate in the country, to rent a property and to open a bank account.

A company needs to be registered first with the Companies' Register (Registro Imprese) in order to be able to open an account. The officer of the company will need to provide the bank with proof of his powers (if the company has a board of directors, a specific board resolution shall be necessary) which are to be recorded with the Companies' Register. If the Italian company is owned by a foreign company (rather than by individuals) the bank – in order to comply with anti-money laundering provisions - will require evidence of the individual/s who is the original owner and the sole beneficiary. Any foreign documents will need to be duly legalized and only publicly recorded documents and certificates are generally accepted.

Foreign citizens resident in Italy can open an ordinary bank account. Non-residents (those in Italy who do not have a permit of stay and are registered as residents) can also open a special bank account for non-resident foreigners. A valid Tax ID number and identity document is required to open a current account. Some banks also require presentation of a residency certificate – although not a legal requirement.

7. UTILISING OFFICE SPACE

The average Italian lease contract is either 4 + 4 (four years with the option to renew for another four) or 3 + 2 (three years with the option to renew for another two). Under certain conditions (for example, a temporary transfer for a

worker) contracts for shorter periods can be stipulated. It is always advisable to ask the landlord for proof of ownership (visura catastale) to make sure the signatory of the lease has the right to execute the contract. Customarily, the annual rent is increased every year by the inflation index calculated by Government Office (ISTAT).

The tenant is entitled by law to terminate the contract at any time with a 6 month advance notice but only when serious grounds exist (to be proven by the tenant). Accordingly, it is always advisable to include in the contract a specific clause that empowers the tenant to an earlier termination also in the absence of serious reasons. All leases require a standard security deposit which can be either 2 or 3 months' rent, this only covers damage and not unpaid rent. There are often controversies at the end of the contract for the return of the deposit because landlords try to retain all or part of the deposit alleging damages. Accordingly, it would be preferable to offer a bank or insurance guarantee instead of paying a cash deposit.

Realtors' commission is normally one or two months' rent or 10–20% of the annual rent but can be negotiated. The rental contract must be filed with the Registry Office within 30 days from execution and this is usually the landlord's duty but the registry tax is shared 50/50 between the parties. The tenant is responsible for paying water, gas and energy bills (to avoid disputes upon termination of the contract, it is advisable to make sure that the relevant contracts are stipulated with the tenant) and also for all service charges pertaining to the property such as central heating, lift maintenance, stair cleaning, ordinary maintenance of the courtyard and garden, cold water from central systems, and any costs for the administration of the apartment building and waste tax. To assess the amount of such charges, it is advisable to request a copy of the previous year's bill from the landlord.

The tenant is also responsible for costs pertaining to repairs to the sanitary fittings, electrical system, plumbing, gas and hot water systems, including an annual emissions check on the boiler. The landlord is responsible for all extraordinary expenses, such as the change of the roof, repainting of the building, etc.

On expiry of the contract the property must be returned to the owner in the same condition, without prejudice to normal wear and tear. It is advisable to take photographs of the interior of the property before taking up occupation and exchange them with the landlord. Many landlords hold the tenant responsible for repainting the interior of the property at the end of the lease alleging that this is not to be considered normal wear and tear. Therefore, the repaint clause, if included, must be carefully evaluated and the tenant should make sure that a complete repainting is not requested.

8. IMMIGRATION CONTROLS

Italy is a member State of the EU and EU citizens can live and work in Italy without need of a work permit, but they do need to register with the local town-hall.

Non EU citizens who wish to live and work in Italy need to obtain a long-term visa. Different kind of work visas can be obtained:

- 1) The hiring of non EU workers by Italian companies is subject to the specific quotas released annually by the Government. An exception to the quota system is for highly skilled workers (those who have a 3 year University diploma, are offered a minimum 1 year contract and a salary of not less 25,000 Euro/year) who can obtain the so called Blue Card permit (which after 18 months from issuance can be used – under certain conditions – also in other EU countries).
- 2) Autonomous workers visa are also subject to quotas and can be granted to individuals who set up in Italy to independently work as a consultants, to practice a licensed profession (i.e., doctors, architects or attorneys), set up a company or be appointed as legal representative of an Italian company (provided that the company has been in business for at least 3 years).
- 3) The visa for assigned workers ("*lavoratori distaccati*"):- not subject to quotas - can be issued when a worker is assigned to work at an Italian company for a fixed period of time (initially no more than 2 years, that can be extended up to 5 years), though remaining on the payroll of the foreign company (eg intra-company transfers);
- 4) In addition to the categories listed above, there are a number of special categories of workers who can work in Italy on assignment for temporary periods, e.g., journalists, athletes, artists, and nurses. Individuals who have a work permit (and who are hired locally) issued by another EU country can be transferred to Italy based upon a service agreement between their employer and an Italian company. Finally, workers who meet the conditions for an intra-company assignment (i.e. 6 month seniority in the same field, the host and sending company are part of the same group) who carry out some "freelance" activities also for the benefit of the Italian host company, can obtain a "self employee" work permit.

An elective residence visa can be obtained by individuals who have a significant amount of money and savings in the country of origin and who intend to live in Italy without working. If the applicant has purchased a property in Italy there is a higher chance of obtaining the visa, but property ownership is not a mandatory requisite since a rented property can suffice. The applicant's income cannot derive from current employment or any other work activities. Applicants need to show a stable source of income deriving, for example, from owned real estate, saving accounts or a portfolio. The deciding factor is showing established wealth that would allow the applicant to live in Italy without working. The minimum threshold set forth by the law is €31,000/year. However, Consulates have full discretion to request a much higher income, and they usually do.

9. LABOR LAWS

Employment relationships are regulated by Civil Code, the Workers' Bill of Rights (Statuto dei Lavoratori) and by collective labor agreements (CLA) stipulated between the Unions and Industry Associations. Rules vary depending on employee type.

A) Normal workforce and white collars (quadri)

Hiring procedure: (a) Identify classification level of employee to be hired as set out in the CLA; (b) notify Labour Authorities (“Centro Unico per l’impiego”) one day before the hiring. The notice shall automatically be sent also to the Social Security Agency (INPS) and to the National Insurance Agency (INAIL).

Trial period: the duration of the trial period is subject to the employee’s classification level. This can range from a 30 day trial period for levels 6 & 7, to a 6 month trial period for level 1. Trial period can be shortened at the parties’ consent, but cannot be increased.

Classification levels: employees are classified into 7 different categories. Level one is the highest and level seven the lowest. Classification within a category will determine minimum salary levels, holiday allowances, notification periods in the case of termination of an employment relationship, and duration of the trial period.

Salary: minimum salary levels are fixed according to the classification level outlined in the CLA. In reality, market salaries often by far exceed the minimum salary levels fixed by the CLA. Salary is paid on a monthly basis and most of CLAs provide for double pay in July and December.

Change in duties: changes in the duties of the employee during the normal course of his employment are allowed, provided these are favourable to the employee. The employer may not assign the employee to duties that would lower his status within the company or decrease his salary. The duration of the working week may not normally exceed 40 hours.

Competition and confidentiality: employees shall 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.

Termination and dismissal: severance notice is normally required in the case of dismissal by employer, or of resignation by employee. The required notice period is indicated in the CLA and varies upon the employee’s level and seniority. Severance compensation is calculated on the basis of the employee’s salary, the length of employment relationship, and on normally accrued bonuses. Rules for dismissal depend on the number of workers employed, and there are various types of dismissal:

(i) dismissal for just cause: should an employer suspect that there is a just cause for dismissing an employee – namely for misconduct that “renders the continuation of the employment relationship impossible” (Art. 2119 Civil Code), such as theft, riot, or serious insubordination – then a formal notice of suspected misconduct must be served to the employee, allowing him/her the right to justify or explain his/her behaviour. If the employee cannot justify such alleged misconduct, the employer is entitled to terminate the employment relationship without further notice, and without observing the normal severance notice period, although severance compensation is due;

(ii) Dismissal for valid reason: can take for reasons less serious than just cause (for example unjustified and repeated absences or sickness, installation of new equipment that renders worker’s role redundant; closing of branches or

product lines that render worker's role redundant). In such cases, the employee is entitled to normal severance notice period and severance compensation.

In both cases, the employee is entitled to challenge the dismissal within 60 days of receiving notice and is entitled to request the reinstatement of the work relationship and an indemnity between 2.5 and 6 monthly salaries. For companies with 15 or less employees, workers are entitled to request an indemnity only.

Collective dismissals procedure can be followed by companies with more than 15 employees when at least 5 employees from the same facility are terminated during a 120 day period, for one of the following reasons: (i) reduction or change of employer's activity (ii) closure of business. Only employers with more than 15 employees on their payroll may carry out a collective dismissal. The procedure provides for the involvement of the Unions and the payment by the company of a contribution to the Social Security Agency (INPS), ranging between 1 and 9 monthly salaries for each employee.

B) Executive contracts (dirigenti): Employment contracts concerning executives are governed by specific CLAs. The contract can be for an indefinite period or fixed-term (providing the length does not exceed 5 years). Trial period must not exceed 6 months. Each CLA states the minimum contractual salary, plus travelling expenses, seniority increases and production bonuses. As a general rule, however, the employer provides a basic wage which is higher than that stated in the CLA. Change of duties and transfer can only occur when there are proven technical, organisational and productive reasons. The executive must be notified of this step in writing and with advance notice. The dismissal must be communicated in writing stating the grounds and with an appropriate notification period. This period can have a duration of between 6 to 12 months. Failure to give mandatory notice entitles the worker to receive an additional indemnity. If the dismissal is not justified, a supplementary indemnity is owed. The amount of the supplementary indemnity ranges from a minimum indemnity of 8 monthly to a maximum indemnity of 22 monthly salaries. Such indemnity is increased (by 2 to 7 monthly salaries) if the executive is aged between 47 and 60.

For job contracts stipulated as of Jan. 1, 2015, the Government has introduced new rules. Most important changes are:

(a) employees of large size companies (more than 15 employees) are no longer entitled to request the reinstatement in case of dismissal but they will only be entitled to a monetary compensation. This unless the dismissal is due to discrimination or retaliation, or dismissals which are "null and void" such as dismissal during maternity leave or sickness leave. The compensation shall be of 2 months' salary for each year of service, with a minimum of 4 and a maximum of 24 months. Companies with less than 15 employees shall be liable to pay only 50% of the said compensation.

(b) The law introduced a new "fat track" procedure that can be followed in case a dismissal is disputed. Both the employer or the employee can make an offer, within 60 days from the date of dismissal, for a compensation that must range from two to 18 months' salary. If the offer is accepted, the dismissal can no longer be challenged in Court. The compensation is not subject to social security payments or taxes.

(c) The new rules will be applicable also in the case of single dismissals or collective dismissals for redundancy. However, in case some procedural steps are not complied with by the employer, the employee/s shall be entitled to request the reinstatement in the job.

(d) An employee dismissed under the new rules will receive a voucher the Job Agency so that he can be assisted to find a new job. The employee is however committed to cooperate with the Agency.

10. CONTRACTING WITH THIRD PARTIES

The main source of contract law is the Civil Code but some contracts (such as rental contracts) are regulated by specific laws. Italy is a civil law country and judicial precedents are not binding but are nevertheless important for the implementation and interpretation of the laws. The Civil Code sets forth first the general rules for contracts (requirements, rescission, assignment) and then sets forth specific provision for the so called “typical” contracts which are those listed and regulated by the Code such sale contracts, lease, agency, deposit. Parties are however free, pursuant to art. 1322 of the Code, to stipulate “atypical” contracts provided that they are not contrary to the general principles of the law (for example distribution, licensing and franchising agreements are not specifically regulated in the Code). Courts generally interpret “atypical” contracts by making reference to the rules governing the typical contract which is closer to the contract to be interpreted. Parties have a duty to behave with fairness (art. 1175) and must act in good faith in the performance of the contract (art. 1375). Parties have also a specific obligation to act in good faith during negotiations, for example the obligation to disclose to the other party, if known, the grounds for invalidity of the contract. Art. 1427 Civil Code sets forth that the contract can be annulled if consent was given by mistake, extorted by duress or obtained by deceit. A contract can be terminated for breach (when a party does not fulfil its obligations), for supervening impossibility (when one party’s performance has become impossible) and for supervening excessive hardship. Consumers (entrepreneurs and companies are not included) have a special protection under Italian law, i.e. particularly burdensome clauses (such as penalties) must be specifically approved and in some cases are considered to be null and void. Extra-contractual damages can be recovered by a party under as per art. 2043 Civil Code whereby a party is liable to pay damages for any fraudulent, malicious or negligent act that causes an unjustified injury to others. Contractual and tort liability can be concurrent but the former has a 10 year statute limitation (art. 2496 Civil Code) while the latter has a shorter 5 year limitation (art. 2497).

11. TAXATION OVERVIEW

Direct Taxes

Individual Income Tax (IRPEF): Individuals not resident in Italy for tax purposes are subject to IRPEF only on income earned in Italy. Taxable income is taxed at progressive rates currently ranging between 23% and 43%, to which it is

necessary to add 3% for income exceeding 300.000,00 € (from 2011 to 2013, the additional 3% tax will most likely be confirmed also for 2014).

Corporate Income Tax (IRES): Companies resident in Italy are subject to IRES for income earned in Italy and abroad. Companies not resident in Italy for tax purposes are subject to IRES only for income earned in Italy. Taxable income is taxed at a 27.50% rate. Italian law establishes provisions applicable to certain foreign subsidiaries and associates, namely Controlled Foreign Companies (CFCs). Such rules are intended to prevent the allocation of taxable income to companies resident for tax purposes in Countries with privileged tax regimes (tax havens), identified on the basis of an ad-hoc ministerial decree. The components of income generated by transactions with foreign companies belonging to the same group shall 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 the market.

Regional Business Tax (IRAP): The Regional Business Tax (IRAP) is a local tax levied on the value of production generated in each tax period in Italian Regions by subjects engaged in business activities. Tax rate is generally 3.9% but can slightly vary in each region. 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): VAT is generally levied on each sale of goods and/or services carried out in Italian territory. The ordinary VAT rate is 22%. For some products and services there are lower rates.

Registration fees and other property transfer duties: Registration fees are levied on specific written instruments made in Italy or written instruments made abroad whereby 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 (namely: imposta ipotecaria and imposta catastale), due in respect of the formalities associated with the registration and/or transfers in public real estate/cadastral registers. Registration fees and other property transfer duties are either fixed (€ 200.00) or proportional to the value of the asset being transferred – i.e. 2% - 12% rates for registration fees depending on the instruments or assets involved and cadastral tax from € 50.00 to € 200.00 when the fixed rate is applied otherwise it is applied a variable rate of 4% (imposte ipotecarie e catastali).

Withholding Taxes

Dividends: Dividends received by individuals outside the scope of a business activity are subject to a 20% withholding tax in settlement of whereby they concern nonqualifying holdings. Dividends 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 20% withholding tax on account for the taxable portion of profit – i.e. 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.

Interests^[SD2]: Interests on current accounts and deposit accounts with banks, as well as bonds and similar securities, received by people resident in Italy for tax purposes is subject to a withholding tax of 20%. Interests 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 20% withholding tax applies.

Royalties: Royalties generated in Italy and received by subjects not resident in Italy for tax purposes are subject to a 30% withholding tax in settlement. The withholding may be applied at a lower rate if so provided for in any double taxation agreement between Italy and the recipient's residence State.

Taxes on real estate transfer

Seller/Subject	Buyer	VAT	Kind of building	Registration tax	Mortgage/Cadastral tax
RESIDENTIAL BUILDINGS⁽¹⁾					
Real estate sold by the builder or by the company who carried out the refurbishment (sold before 5 years since the works of construction or refurbishment were closed)	Subject to VAT				
	any	4%	First house ⁽³⁾	€ 200	€ 200 + 200
		10%	Other houses		
		22%	Luxury house		
Real estate sold by the builder or by the company who carried out the refurbishment (sold after 5 years since the works of construction or refurbishment	Exempt or subject to VAT as option ⁽⁴⁾				
	any	exempt		2% first house or 9% other houses)	€ 50 + 50
		4%	First house ⁽³⁾	€ 200	€ 200 + 200
		10%	Other houses		
		22%	Luxury house		

were closed)					
Other kind of sellers (real estate companies, other company with VAT)	any	exempt	Art. 10, n. 8-bis D.P.R. 633/1972	2% first house or 9% other houses	€ 50 + 50
Private	any	NO VAT	Art. 1 D.P.R. 633/1972	2% first house or 9% other houses	€ 50 + 50
COMMERCIAL BUILDINGS					
Seller/Subject	Buyer	VAT	Kind of building/rate	Registration tax	Mortgage/Cadastral
Real estate sold by the builder (sold before 5 years since the works of construction were closed)	any	subject	22% ⁽⁷⁾ Art. 10, n. 8-ter D.P.R. 633/1972	€ 200	3% + 1%
Other kind of seller (real estate company, other companies, and building and refurbishment companies, with works closed more than 5 years ago)	any	exempt or subject to vat as option	Exempt or VAT 22%	€ 200	3% + 1%
Private	any	No vat	Art. 1 D.P.R. 633/1972	9%	€ 50 + 50

Income and Property tax (yearly)

Tax on income (rentals): 31,7% (27,5% IRES on EBT + 4,2% IRAP on EBITDA) – It is calculated on rentals, maintenance and other operative costs are deducted

Property tax (IMU^[SD3]): The rate amounts to 0,4% for primary residences and to 0,76% for all other buildings. Moreover, each Municipality can decide to increase or reduce the rates, up to a maximum of 0,3%. 30% is deductible from Tax on Income.

12. REGULATORY COMPLIANCE

Anti-trust and merger controls

The Italian Competition Authority (Autorità Garante della Concorrenza e del Mercato), better known as the Antitrust Authority, was established in Italy in 1990. It is an independent body which cannot be influenced by the Government or by any political parties. The Authority has jurisdiction on anticompetitive agreements, abuse of dominant position as well as any possible mergers which may create or strengthen dominant positions detrimental to competition. As of 2007, the Antitrust has been in charge of protecting consumers from any unfair commercial practices as well as from all misleading advertising. In order to guarantee fair market competition, it can also intervene against all illicit comparative advertising. It has the duty of enforcing laws against conflicts of interest for Holders of Public Office

Consumers' protection

In Italy all EU consumer protection legislation has been unified into a consolidated Act called "Codice del Consumo" (Decree n. 206/2005). The Consumer Code regulates all stages in the consumer dealings, from advertising to correct information, from consumer contracts in general to product safety, access to justice and consumer organizations.

Privacy - Treatment of data in Italy (including EU countries) and outside the EU

The use of personal data by a third party must comply with Decree 196/2003 (Privacy Code). Any person who engages in data processing operations shall adopt minimal security measures in order to guarantee complete confidentiality of the personal data processed. The transfer of sensitive data to non EU countries are subject to particular rules set forth by Art. 43 of the Decree, which provides that the transfer of personal information, even temporary and by any means, from Italy to any country outside the European Union, is permitted when: (i) the interested party has expressed consent (in case of transfer of sensitive data, the consent has to be stated in writing); (ii) the transfer is necessary for the execution of contractual duties or for the fulfillment of specifications requested by the interested party before the conclusion of the contract or for the conclusion or the execution of a contract stipulated on behalf of the interested party. The transfer is also permitted when it is authorized by the Guarantor, based on adequate guarantees provided for the interested party. The transfer, even temporary and by any means, from Italy to any country outside the European Union, is forbidden when the destination Country does not grant an adequate level of preservation for the sensitive data.

Money Laundering Provisions

Money laundering provisions were implemented in Italy by Decree 231/2007 which include the obligation to identify the client, track the transactions conducted by the client, keep a copy of all relevant documents for 10 years and inform the authority of any suspicious transactions whenever they conduct any financial or real estate transaction directly or when they assist clients with: (i) the transfer at any title of real estate or going concerns; (ii) the management of money and any other financial and monetary instruments; (iii) the opening and management of bank accounts and deposit of funds; (iv) any transaction concerning the transfer of funds required for establishment and operation of companies; (v) the establishment, management and operation of companies, trust and similar entities.

13. PROTECTING KEY ASSETS AND EMPLOYEES

Right	Registration required	Brief description
Patent	Yes	The <i>Code of Intellectual Property</i> confers upon the owner of standard patents the exclusive right to make, use, sell, and otherwise exploit a patented invention for a period of 20 years from the date of filing the patent. The duration of pharmaceutical patents can be extended by up to 5 years beyond the 20-year term. In order to sustain a valid patent, an invention must be novel, not obvious when compared to the prior art base, suitable for application in the industrial field, and lawful.
Trademark	No, but advisable	The <i>Code of Intellectual Property</i> confers protection on the owner of distinctive signs registered or used in connection with particular goods and services. 'Signs' are broadly defined and include words, numbers, logos, names, colors, shapes, sounds and smells. Although trade mark registration is not mandatory, the benefits are significant. The basic requirements for protection are (i) distinctive character, (ii) novelty (i.e. the sign must not be identical with, or similar to, a sign which is already being registered or used by a third party), (iii) legitimate (ie must not be contrary to public policy or to accepted principles of morality). Additionally, a sign must not be <i>deceptive</i> , i.e. likely to deceive the public as to the geographical source, the nature or quality of the products. Registration is renewable every 10 years.
Copyright	No	Owners of certain original works and other copyright subject matter have various rights under the Law no. 633 of 22/1941. Certain fundamental provisions are also found in the Italian Civil Code of 1942, Arts. 2575–2583. Law no. 633 has been supplemented to include computer programs

Right	Registration required	Brief description
		<p>and databases.</p> <p>Italian copyright law is based strongly on author's rights. Exceptions to authors' exclusive rights are limited — there is no provision equivalent to fair use or fair dealing — and are generally interpreted restrictively by the courts.</p> <p>The protection for most works and for photographs is 70 years from the death of the author (Art. 28). Law no. 633 provides for civil remedies such as injunction, damages (including non-pecuniary), destruction of infringing specimens, and destruction of copying equipment and devices primarily designed to circumvent technological protection measures (Arts. 156–161). A rights holder may also apply for an interim injunction for the infringement of economic rights (Art. 163). Criminal penalties for infringers include fines and imprisonment (Art. 171). If the infringement is done with gainful or commercial intent the penalties are increased (Art. 171-ter).</p>
Registered designs	Yes	<p>Design registration is used to protect the visual appearance of products. Design features of products, such as shape, configuration, pattern or ornamentation may be protected from imitation by registration of those features as 'designs' under the <i>Code of Intellectual Property</i>. The law confers upon the registered owner of a design the right to use, and authorize others to use, the design. To be valid, a design registration must be for a design that is new and has individual character (that is, which the “informed user” perceives as different from previously disclosed designs). The term of registration of a design is 5 years from the filing date, with the right to renew the registration for further five-year periods up to a total of 25 years.</p>
Confidential information/trade secrets	No	<p>According to art. 98 of the Code of Intellectual Property, corporate information and technical / commercial expertise, subject to the legitimate control by the holder, may all be protected where such information (i) is secret, ie it is not generally known or readily accessible to experts in the industry , (ii)) has economic value, i.e. provides a</p>

Right	Registration required	Brief description
		<p>business advantage for the company over its competitors, and (iii) is subject to measures that can be considered reasonably adequate to keep it secret.</p> <p>Additionally, may also be protected data relating to tests or other secret data if processing them would involve a substantial work, and the presentation of which is subject to an authorization for marketing chemical, pharmaceutical or agricultural products involving the use of new chemical substances.</p>

Inventions created by employees belong to the employer as 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 provided for by the employment contract and the invention is created in the execution of the employment relationship, the invention – whereby patented – belongs to the employer but a fair compensation shall be paid to the employee. Whereby the above conditions are not met and the invention relates to the employer’s field of activity, the invention belongs to the employee, but the employer is granted with an option right to either use the invention on an exclusive/not exclusive basis or to purchase it.

Non competition covenants after termination of employment: If an employer wishes to extend protection against competitive conduct even after the termination of an employment relationship, it must provide an ad hoc non-competition covenant within the employment contract or in a separate stand-alone document. Pursuant to Article 2125 of the Italian Civil Code a non-competition covenant must comply with certain requirements, namely it must be specifically indicated the activity to which the limitation refers to, it can be for maximum 5 years for executives and 3 years for the other workers, it must have a geographical limitation and provide for a compensation. Compensation must be “congruous”, i.e. it must be proportionate to the sacrifice requested to the employee and compensate him for his loss and reduced earning capability.

14. USEFUL LINKS

www.invitalia.it
www.esteri.it
www.ice.it
www.agcm.it/en

Government agency for the promotion of inward investments
Ministry of Foreign Affairs
Italian Trade Agency
Antitrust and merger controls

www.sviluppoeconomico.gov.it Ministry for Economic Development

www.agenziaentrate.gov.it

Tax office

www.lavoro.gov.it

Ministry of Labour

www.interno.it

Ministry of internal affairs

www.governo.it

Government

www.expo2015.org

World Expo 2015

www.registroimprese.it

The Companies' Register

www.istat.it

Italian Institute of Statistics

Marco Mazzeschi - mm@mazzeschi.it

January 2015