

# Doing business in Italy









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# Foreword



This booklet has been drawn up with the aim to provide foreign investors with a general understanding of doing business in Italy. The contents of this booklet are not intended to be exhaustive and is designed to provide information on major issues that foreign investors should consider when investing in Italy.

The Italian laws are in constant state of change, both in legislation and taxation and, therefore, clients are advised to seek specific professional advice from any member firm of PKF International before entering into any activities involving Italy.

The main services we provide include:

- Audit and assurance advisory
- Corporate Finance
- Tax and Business Advisory
- Company Secretarial and Corporate Services
- Management Consultancy
- Legal and Labour Consultancy
- Bookkeeping

We have more than 100 partners and staff operating in the main Italian cities and wherever you do business, we can offer local expertise who can assist you adequately.

We are a member firm of PKF International Limited, a worldwide association of 230 legally independent firms in 400 locations in 120 countries.

Your next step should be talking to PKF. We have long experience of giving businesses a helping hand. As one of the leading firms of accountants and business advisers in Italy, with offices in all the major business centres, we provide a comprehensive range of services to inward investors based on a broad range of

business-sector expertise.

Italy can be a strange place for those not familiar with the way business is conducted and regulated. However, with PKF's assistance, it provides an excellent opportunity both as a market in its own right and as a staging post for those wishing to expand into Europe.

# Our services for inward investors



Establishing a presence in Italy, from a straightforward place of business or branch to the more complex joint-venture company or partnership, is a significant step for any business. You will want to focus on building a profitable business and maximising the return on your investment but will also have to deal with the many regulatory and administrative issues triggered by entering the Italian market.

Our main services are :

## Audit and Assurance advisory

All audits should provide assurance to users of accounts. Our partners and staff have amassed a wide range of knowledge, skill and experience working with large and small clients across a very broad range of industries and sectors. They can bring these to bear on your business to ensure that you get maximum value out of an audit, an advisory assignment or even a simple accounts preparation task.

## Corporate finance

We help with corporate transactions involving both public and private companies by advising borrowers and investors on fund raising and financial structures. This can include identifying sources of private-equity finance, arranging sales and purchases of businesses and helping business managers acquire their company from external investors.

## Consultancy

We provide a wide range of consultancy services to clients, ranging from small private companies to central government. Whether helping organisations to establish corporate objectives or manage change, review IT systems or raise project finance, we give objective advice that delivers real benefits.

## Taxation

Changes in tax law and practice constantly create new tax-planning opportunities but also increase the burden of bureaucracy on individuals and businesses. We help businesses and individuals to unravel the complexities of the tax system, select a sensible strategy to maximise their after tax returns and take care of the tax returns and paperwork.

## Business support services

Any new business trading in Italy will have a large number of tax and administrative requirements to meet in addition to internal accounting routines. We help inward investors to design, select and implement management information systems and accounting software to simplify and reduce administrative burdens. We also offer a fully outsourced accounting function that leaves your organisation free to focus on core business activities.

We can also take on specific tasks, including production of statutory financial statements, management accounts, international reporting packs, budgets and forecasts, and VAT and payroll tax administration.

## Company secretarial

Companies trading in Italy must comply with a number of legal requirements and complex procedures: breaching the rules can lead to a company being struck off, or its directors prosecuted. Our team of company secretaries can ensure that your business is set up correctly to meet regulatory obligations in Italy, through incorporation of limited companies, Sas, Snc, branches of overseas entities. We can then undertake the ongoing administration by acting as the companies' registered office and as company secretary, to ensure that annual returns, meetings and record keeping are completed correctly and on time.

# 1. Introduction



## 1.1 Geography

Italy is situated in a good strategic position in Southern Europe, surrounded by other European countries (Germany, Switzerland, France and Austria), while being relatively close to the Baltic countries, the Middle East and North Africa. It has a surface area of approximately 301,000 square kilometres and its capital is Rome. The latest census, at the end of 2004, put the population at 58.5 million. The main language is Italian but English is widely spoken.

Italy has been a member of the European Union since it was first established (as the EEC) in 1957.

## 1.2 Constitution

Italy is a constitutional Republic and has a parliamentary system. Parliament is chosen by general election every five years and it appoints the President of the Republic. Administrative power is held by the Prime Minister and the Council of Ministers, who are appointed by the President of the Republic after consultation with the various party leaders.

## 1.3 Economics

Italy is among the seven most industrialised nations and has a highly developed trading activity. The Italian economy is broad-based, encompassing almost every type of industry, particularly motor vehicles, electronics, fashion products and machinery. It

is a mixed economy dominated by a few large businesses (some of which are State-owned), confined mainly to manufacturing, utilities, banking, insurance and more than 3 million small businesses operating through various forms of business entities. Most businesses in Italy are owned by a family or a partnership.

Another important factor is agriculture, the main products being wine, olive oil, wheat, milk, fruit and vegetables. The major trading partners are the other EU member countries, although 7.5 % of total exports go to the USA.

## 1.4 Communications

The standard of Italian infrastructure is very high and considerable ongoing investment is made to improve it.

## 1.5 Exchange controls

Italy has adhered to the European Monetary System and the monetary unit is Euro, denoted by the symbol €. There are no foreign exchange controls in Italy; however, banks and financial institutions are obliged to monitor all inbound and outbound movements exceeding 12.5 K € for statistical purposes on behalf of the Italian Exchange Office (Ufficio Italiano Cambi). There are other controls, but they are aimed at preventing the laundering of money deriving from drug dealing and other criminal actions. Anti-money laundering controls have recently been extended to auditing firms and other professionals.

## 1.6 Legal system

Parliament has legislative power. Judicial authority is exercised by independent courts. The constitution of the Italian Republic is the fundamental law of the country and all the other laws have to comply with it. The Constitutional Court is appointed to control the constitutionality of the laws passed by Parliament.

# 2. Basic business structure



## 2.1 Business enterprises

Legislative Decree no. 6 of 17<sup>th</sup> January 2003 (effective 1st January 2004) drastically amended the Italian Civil Code, in particular the incorporation and the governance of the two main types of companies:

- Limited liability companies (società a responsabilità limitata, Srl) whose capital is represented by quotas;
- Joint stock companies (società per azioni, Spa) whose capital is represented by shares.

The majority of medium size businesses in Italy are set up as limited liability companies.

Other main legal forms of business enterprise are:

- Branch of a foreign company
- General partnership (società in nome collettivo, Snc)
- Limited partnership (società in accomandita semplice, Sas)
- Sole proprietorship
- Joint ventures. These are not specifically regulated, but Italian law does provide for certain types of contract that can be used to establish a joint venture. A European Economic Interest Grouping (EEIG) is a joint venture form to facilitate cross-border cooperation between two or more companies or individuals located in different EU countries.

A company registered in Italy is considered resident there for tax purposes, even though the management or control of the company is exercised abroad. In this case, the company will be liable to taxation in Italy on a world-wide basis.

## 2.2 Forming an Srl or Spa

A company may be established by contract or unilateral deed. To incorporate a new company it is necessary to draw up the by-laws by public deed before a notary, who then has to deposit them within 20 days at the Register of Enterprises (RE) for the place where the company has its registered offices.

To incorporate a company:

- the company's capital has to be fully subscribed and a minimum of 25% paid in (100% in case of a sole shareholder);
- the rules on contributions in kind have to be complied with: this involves having a sworn report drawn up by an expert designated by the President of the local Court (in case of an Spa), containing the description and value of the property contributed, as well as a declaration that the value ascribed is not lower than the nominal value. In case of Srl, those who contribute assets in kind must file an expert's affidavit containing the same elements as for an Spa;
- the authorizations and other conditions required by special laws for the formation of a company in relation to its specific object have to be met.

On registration with the RE, the company acquires legal personality. For any transactions undertaken in the name of the company before its registration, the individuals who acted towards third parties have joint and unlimited liability.

The company can be formed by one or more shareholders. In the event of the company's insolvency during the period when the shares were held by a sole shareholder, this shareholder will be liable to an unlimited extent if the contributions have not been made in accordance with the above conditions or the required public

announcement has not been made as prescribed by article 2362 (registration at the RE of the sole shareholder).

Companies or entities that exercise coordination and strategic direction of other companies and which operate in their own interest or in that of another entity in breach of the principles of correct corporate and entrepreneurial management of these companies are directly liable to the shareholders of such companies for any damage caused to the profitability and value of the corporate holding, as well as to the creditors of the company for any harm caused to the integrity of the company's assets. The company must indicate the company or entity that exercises coordination and strategic direction over it in its official deeds and correspondence, as well as through filing in the special section of Register of Enterprises.

The following are considered subsidiary or "controlled" companies:

- companies in which another company has the majority of the votes exercisable at an ordinary shareholders' meeting;
- companies in which another company has sufficient votes to exercise a dominant influence at an ordinary shareholders' meeting;
- companies which are under the dominant influence of another company by virtue of particular contractual undertakings with it.

For the purposes of points 1) and 2) above, the votes belonging to subsidiaries, fiduciary companies and nominees are also to be included in the computation: the votes available on behalf of third persons are not included in the computation.

Companies on which another company exercises a considerable influence are considered associated companies. Such influence is presumed when at least one fifth of the votes can be exercised at an ordinary shareholders' meeting (one tenth if the company has shares listed on a regulated market).

There are no restrictions as to the nationality of the founders or managers.

Shelf companies are not usually available in Italy.

## 2.3 Joint stock company (Spa)

The minimum capital required for an Spa is € 120,000. The participation in a company is represented by shares and shall be of equal value and confer equal rights to their holders. However, the by-laws may create categories of shares with different rights, also as far as the losses are concerned. In such cases, the company may freely determine the content of the shares for the various categories. All shares belonging to the same category attribute equal rights.

Shares cannot be issued to the bearer until they have been fully paid in.

An Spa can issue bearer or registered bonds for an aggregate amount not exceeding twice the capital, the legal reserve and the available reserves shown in the latest approved set of financial statements.

The company may create one or more pools of business assets, each of which is allocated in priority and exclusively to a specified business activity.

If it appears that the company's capital has fallen by more than one-third as a result of losses, the directors or management board, or if they fail to do so, the board of statutory auditors or supervisory board, have to call a meeting without delay to take appropriate action. If, within the following, the loss has not been reduced to less than one-third of capital, the shareholders' meeting that approves the annual accounts for that period has to reduce the capital in proportion to the losses that have been ascertained.

If by reason of the loss of over one-third of the capital, it falls below the minimum (i.e. € 120,000), the directors or management board or if they fail to do so, the supervisory board have to call a meeting without delay to decide on a reduction of capital and to reconstitute it at an amount not less than the said minimum; alternatively, the company has to be reorganized.

The category of Spa can include:

- companies that have recourse to the capital market, in which case they issue shares listed on regulated markets (so-called “open or public companies”);
- companies that do not have recourse to the capital market because owned by a family or partnership (so-called “closed companies”).

Reference will be made to the above classification in dealing mainly with the company’s governance and control.

One of three different governance systems can be chosen at will by joint stock companies:

- the “ordinary” (or “latin” or “traditional”) system
- the “dualistic” system
- the “monistic” system

## a) Ordinary system

### Directors

Under the ordinary system, the company is managed either by a sole director or by a board of directors elected by the shareholders at a general meeting. Directors do not have to be shareholders.

Directors can only be appointed for a three-year period, completing their term of office on the date of the meeting called to approve the financial statements for their third and last year.

The board of directors selects the chairman from among its members, unless he is appointed by the shareholders. The board of directors may delegate its functions to an executive committee formed by certain of its members.

### Statutory Auditors

Companies with a capital of at least € 120,000 must have a board of statutory auditors. This is composed of three effective members and two deputies. At least one effective and one deputy member are required to be registered with the Register of Chartered Accountants ("Registro dei Revisori") held by the Ministry of Justice. The shareholders' ordinary meeting appoints the statutory auditors for three years.

The following duties relating to the control and supervision of the company's management are entrusted to the board of statutory auditors :

- monitoring compliance with the law and the by-laws;
- monitoring respect for correct management principles and in particular the adequacy of the organizational, administrative and accounting structure adopted by the company, as well as the way that it functions in practice;
- verification that the company's annual financial statements have been prepared in conformity with the relevant provisions of the Civil Code and other pertinent legislation;

The board of statutory auditors has to attend board meetings and shareholders' meetings and has to meet at least every three months. They are required to issue a report (there is no standard form) on the results for the financial year and the activities performed in the fulfilment of their duties, making any observations or proposals regarding the accounts, together with their favourable or adverse opinion.

The statutory auditors are personally liable for the accuracy and truthfulness of their statements and, together with the directors, are jointly liable for the directors' actions or omissions whenever it can be shown that a loss could have been avoided if the auditors had performed their duties properly.

## Accounting control

Following the 2004 reform of Italian company law, accounting control is performed by a registered auditor or auditing firm with.

However, the by-laws of a company that does not have recourse to the capital market (“closed companies”) and which is not required to prepare consolidated accounts can have their accounting control performed by the statutory auditors. However, accounting control is normally entrusted to an auditing firm, especially in the case of companies that are required to draw up consolidated financial statements. The auditors are appointed by the shareholders’ meeting for three years and are chosen from the firms registered with the Ministry of Justice.

In companies that have recourse to the capital market i.e. with shares listed on regulated markets, (“public companies”), accounting control can only be performed by a registered auditing firm. Currently, there are 21 registered auditing firms, which are supervised by Consob (the Italian equivalent of the SEC).

The shareholders’ meeting of “public companies” appoints the auditors for three years, renewable for two further mandates (nine years in total).

The audit report has to certify that the financial statements agree with the company’s books, that they have been prepared in the prescribed form and reflect the operations of the business in compliance with generally accepted accounting principles (Italian GAAP or IFRS in the case of listed companies and certain categories of unlisted companies).

Auditing firms are required to be independent of the companies they audit, they must carry out all work that they consider necessary to enable them to fulfil their duties and they can not accept any restrictions on their work.

## **b) Dualistic system**

The by-laws can provide for the company’s management and control to be exercised by a management board and a supervisory board.

### **Management board**

The management board (“consiglio di gestione”) operates in much the same way as the board of directors (see “ordinary system” above), but its members are appointed by the supervisory board within the limits laid down in the by-laws.

## Supervisory board

The supervisory board consists of at least three members though the by-laws can provide for a greater number. The members of the supervisory board are appointed by the shareholders and remain in office for three years. At least one member has to be selected from those registered with the Ministry of Justice.

Among its other duties, the supervisory board:

- approves the financial statements (unless the by-laws establish otherwise)
- exercises the functions of the statutory auditors
- reports at least once a year in writing to the shareholders on its supervisory activities, on censurable omissions and acts found.

## Accounting control

The accounting control is exercised in accordance with the same rules as for the ordinary system

## c) Monistic system

The by-laws can provide for the company’s management and control to be exercised by a board of directors and by a committee established within the board.

## Directors

The company’s management pertains exclusively to the board of directors, which operates according to the same rules as under the ordinary system.

At least one third of the members have to satisfy certain independence requirements.

### Supervisory Committee control

It is up to the board of directors to quantify and appoint the members of the (supervisory) committee.

The committee is made up of directors that satisfy the requirements of ethics, professionalism and independence (as for the statutory auditors). They cannot be given executive powers.

### Accounting control

Accounting control is performed in the same way as under the ordinary system.

## 2.4 Limited liability company (Srl)

The minimum capital required for a Srl is € 10,000. The participation in such a company is represented by quotas.

In case of losses the same rules apply as for an Spa.

### Directors

The company is managed by either a sole director or a board of directors elected by the quota-holders' meeting. The directors, who do not have to be quota-holders, are appointed either for a fixed term such as three years, or for an unlimited period.

Quota-holders not involved in running the company have the right to receive news on the company's performance from the directors and to consult the company's books and documents relating to its management.

## Statutory auditors

A board of statutory auditors has to be appointed if the company has the minimum amount of capital required for joint stock companies. Regardless of the amount of capital, statutory auditors also have to be appointed if two of the following limits are exceeded for two consecutive years:

total assets of € 3,650,000

revenues of € 7,300,000

average employees during the year: 50

## Accounting control

Accounting control is performed in the same way as under the ordinary system.

## 2.5 Branch of a foreign company

### General information

A branch (“sede secondaria”) may be defined as a permanent place of business having a certain degree of independence in its operations and dealings with third parties but no separate legal existence from the company creating it. Generally, the corporate formalities required for a branch are less burdensome than those for a subsidiary. For example, a branch is obviously not required to hold shareholders’ meetings, nor is it required to appoint statutory auditors. It may also repatriate profits at any time. On the other hand, since the branch and the foreign company of which it is part are considered the same legal entity, the foreign company is not isolated from the liabilities of the branch. For instance, it may be held liable for damages arising out

of the operations of the branch, including product liability claims.

## Establishment of a branch

The following documents (together with an application for opening a branch office) must be filed with the Register of Enterprises for the place where the branch office is to be located:

- an updated version of the foreign company's deed of incorporation and by-laws;
- the minutes of the foreign company's shareholders' (or board) meeting authorizing the establishment of the branch;
- the names of the people representing the foreign company in Italy on a "permanent" or ongoing basis i.e. the branch manager(s), together with their notarised signatures.

Before filing them, these documents should also be translated into Italian and sworn before the Court.

## Bookkeeping and taxes

While carrying on business in Italy, the branch is subject to all Italian laws on bookkeeping and taxes, in the same way as a limited liability company.

The branch will therefore need its own books (separate from those of the foreign company) and will have to draw up its own annual financial statements and income tax return. The branch will also be required to file a translation of its head office's financial statements with the Register of Enterprises .

The rules on impairment of capital are not applicable to a branch.

## De-registering

There are no specific rules for closing a branch. If the company's activity involves a

considerable dealings with third parties and the branch has a large number of assets and liabilities, it is assumed that the standard liquidation procedure would be applied to protect any third parties. Otherwise, no formalities are required as the foreign company remains liable for any unfulfilled obligations of its Italian branch.

## 2.6 Partnership

There are two main types of partnership:

- a general partnership (*società in nome collettivo*, s.n.c.) in which the partners are jointly liable for the partnership's obligations without limit;
- a limited partnership (*società in accomandita semplice*, s.a.s.) composed of at least one partner with unlimited liability (usually the managing partner) and at least one partner with liability limited to the amount of capital that they have paid in.

The partnership contract between the partners (at least two) must be drawn up before a notary.

The bookkeeping rules are the same as for companies, but partnerships do not have to file their financial statements with the Register of Enterprises.

Partnerships do not have a body called the "general meeting", as partners are free to meet whenever they want and to take decisions even on matters not included on the agenda. Their decisions are taken unanimously, but the by-laws can indicate certain matters on which decisions can be taken by a majority of the partners.

The partnership is a taxable entity only for the purpose of IRAP (local income tax). Once the income has been determined, it is allocated to the individual partners who will then pay corporate (IRES if the partner is a company) or personal (IRE) income tax on the amounts allocated. The taxable income for IRAP purposes and the allocation of the individual income must result from the tax return that the partnership has to file each year.

Management rules are similar to those of companies, although they tend to be less strict.

## 2.7 Sole proprietorship

A sole proprietor is required to report to the Register of Enterprises within 30 days of setting up in business.

# 3. Reporting requirements, accounting principles and auditing



## 3.1 Financial statements

An annual general meeting must be held by an Spa or Srl within 120 days of each year end to approve the financial statements. Under particular circumstances, companies are allowed to hold their general meeting within 180 days of the year end. The financial statements have to be filed with the Register of Enterprises within one month of approval.

The financial year cannot last more than twelve months. A company is allowed to have shorter financial years under specific and exceptional circumstances. The year end is established in the by-laws and can be altered by an extraordinary shareholders' meeting. Companies usually close their financial year either on December 31<sup>st</sup> (which coincides with the tax year) or June 30<sup>th</sup>, but this is not compulsory.

## 3.2 Accounting principles

Italian accounting law complies with the EU's fourth directive. Moreover, the Stock Exchange Market Authority (Consob) prescribes that all public companies, banks and

insurance companies are obliged to comply with the International and Financial Statements Principles (IAS/IFRS). It is envisaged, in the near future, that the above obligation will be extended to all company legal forms.

### 3.3 Auditing

There is no general provision for companies to be audited in Italy, except for those:

- with a share capital of more than Euro 120,000
- exceeding certain balance sheet limits
- listed on the Stock Exchange (as well as certain companies in the financial services sector)

See the paragraphs 2.3 and 2.4 above for further details.

# 4. Taxation of business operations



## General information

As a rule, corporate income tax (called IRPEG up to 2004, IRES thereafter) is applicable to all resident companies on income from any source, whether produced in Italy or abroad (“world-wide basis”). Non-resident companies are subject to IRES only on income earned in Italy. IRES is normally charged on the net of revenues less business costs, except for some non-deductible expenses. Both resident and non-resident companies are subject to regional income tax (IRAP), but only on income arising in Italy.

With the 2004 reform of Italian company law, all fiscal interference in the way that financial statements are to be drawn up has been eliminated (“double track”). As a result, financial statements now have to be drawn up solely on the basis of Statutory and/or IAS/IFRS principles, while all tax considerations have to be made in the tax return.

A company is resident in Italy for tax purposes when it is registered or when it has its administrative offices or main scope of business in Italy.

## 4.1 Taxation of profits

Corporate income tax (IRES) is levied on the world-wide income of companies resident in Italy. The same tax is levied on the income of the permanent establishment in Italy of a foreign company (in this case only the income arising in Italy is taxable). In addition to that a local tax (IRAP) is levied on earned income.

IRES is currently (2008) levied at a rate of 27,5%. The current rate of IRAP is 3,90% and it is not deductible from for IRES purposes. The gradual elimination of IRAP is envisaged in the near future.

Taxable income is based on the net income of the company, branch or partnership for the year as shown in the statement of income, as adjusted in accordance with current tax legislation.

### Depreciation

#### Machinery and equipment

Machinery and equipment worth less than € 516 may be depreciated entirely in the year of purchase.

All other equipment and machinery is depreciated at a rate no higher than that established by the tax authorities and the depreciation is deductible from the year in which it starts to operate. From the 1<sup>st</sup> January 2008 the accelerated depreciation is no longer allowed.

#### Land and buildings

These rules also apply to buildings whose normal depreciation rate is 3%. No depreciation is charged on land.

## Intangible assets

The cost incurred for the acquisition of patents and the like connected with the utilization of know-how, industrial inventions, etc. can be amortized on a straight-line basis at a rate not higher than 50% for each year. Trademarks and goodwill are amortized over a period of 18 years.

## Inventories

Inventories can be valued at FIFO, LIFO or average cost, providing the method is not changed from year to year. Long term contracts are valued at cost plus mark-up according to the stage of completion of each contract.

## Dividends

Dividends received by a resident company or resident shareholder are not subject to withholding tax, except in certain circumstances.

From January 2004, the tax credit applicable to resident recipients of dividends, has been abolished.

Under the new rules:

- (a) companies are taxed at 5% of the dividends received from resident distributing companies;
- (b) individuals and partnerships are taxed at 40% of the dividends received if they own more than 20% of the share capital; if they own less than 20%, the full dividend is taxed at a fixed rate of 12.5%.

Unless ruled otherwise, from 4th July 2006, dividends deriving directly or indirectly from black-listed companies will be subject to taxation in full.

Dividends from “controlled foreign companies” are only liable to IRES at 5% of the dividend received. The 95% exemption is not available if the source of the dividends is a company resident in a “privileged tax regime” outside the EU.

## Interest

Generally speaking, interest is tax deductible, but where total revenue includes exempt income, part of the interest is considered non-deductible. From 1st January 2008, the “thin capitalization” rule has been abolished. The new rule is the following:

- a. Maximum amount deductible: 30% of the gross operating profit (before depreciation/amortization, financial leasing costs and contingency provisions)
- b. Interest received can be deducted from interest paid to determine the base for the calculation

The excess amount can be carried forward and deducted in the following 5 years under condition (a ) above

## Losses

Tax losses can be carried forward to reduce taxable income for the next five years. This rule only applies for IRES purposes, not for IRAP. Losses accumulated in the first three years may be carried forward indefinitely, subject to certain conditions (from 4th July 2007).

## Capital gains

Capital gains realized by the company are generally taxable as normal business income subject to IRES and IRAP, and capital losses are generally deductible. Capital gains, arising from stock transfer, may be considered exempt under specific conditions, e.g. participation exemption.

## Fringe benefits

Fringe benefits are included in the taxpayer's total aggregate income.

## Non deductible expenses

Certain expenses, like entertainment, company cars, gifts, etc. are partially or non deductible for tax purposes.

## 4.2 Tax consolidation of corporate groups

Since 2004 there is provision for the group taxation of a company controlling other resident and non-resident companies.

The option applies for 3 years for domestic consolidations and 5 years for international consolidations and is irrevocable (with certain exceptions).

The companies taking part in this group taxation system are jointly liable for taxes, penalties and interest assessed on their aggregate income.

The tax consolidation does not require the preparation of consolidated financial statements pursuant to Italian accounting principles.

## 4.3 Controlled foreign companies

Italian tax law includes a comprehensive set of rules on Controlled Foreign Companies (CFC). These rules aim to avoid the allocation of income to foreign subsidiaries located in certain low tax jurisdictions, i.e. those countries blacklisted as tax havens by a ministerial decree.

## 4.4 Minimum taxable income

Companies with annual revenues of less than 5 million Euro are subject to automatic evaluation of their business activity in accordance with certain parameters (“Studi di Settore”) in order to determine a minimum revenue and the taxable income that ought to be declared as a result. If the company’s revenues are lower than the parameters, it is possible to integrate them in the company’s tax return; otherwise, the tax authorities have the right to make an inductive assessment.

If a company cannot be classified in one of the standard business sectors, presumptive parameters (“parametri presuntivi”) are applied.

## 4.5 Non operating or dormant companies

A company that is considered dormant may be subject to an estimate of its minimum income for IRES, IRAP and VAT purposes. The principal consequence for a company that is considered dormant is that it has a duty to declare an income that cannot be lower than the amount deriving from the application of specific percentages to certain balance sheet items. This test compares the actual values reported in the statement of income with presumptive values in accordance with the above percentages. If the actual values are below the presumed ones, the company is deemed to be dormant. In this latter case, any VAT receivable cannot be refunded if the non operative condition persists for at least three years.

## 4.6 Withholding Tax

Domestic companies making certain types of payments (e.g. interest, royalties, professional fees, etc.) are required to withhold taxes at varying rates.

Italian legislation has implemented EC Directive 2003/49/CE, which means that all payments of interest and royalties between EU companies are exempt from withholding tax.

## 4.7 Value Added Tax

VAT is levied on transfers of goods and services by enterprises in the course of their business or profession within Italy, as well as on all imports into Italy.

The standard VAT rate is 20%. Other rates applied are 4% and 10%. Items exported or destined for export are not subject to VAT. A new VAT regime has recently been introduced for real estate transactions, whether sales, purchases or rentals negotiated by companies, that differs from the general rules.

Non-resident EU companies can apply for “direct VAT identification” as an alternative to “VAT representative” for VAT-able transactions carried out in Italy. This enables the non-resident to settle any VAT payment directly in Italy or claim back any VAT credit. The difference between the two procedures is designed to facilitate the payment of VAT in Italy by the non-resident.

## 4.8 Tax Claims

The taxpayer has the right to seek recourse against assessments, undue payment demands, etc. by appealing to two levels of tax tribunal and then, if necessary, to a court of justice. In addition, a tax conciliation system allows taxpayers to settle their tax liability directly with the tax office or with any of the tax tribunals or court of justice.

## 4.9 Payments due by VAT registered entities

As of 1st October 2006, VAT registered persons are required to make all tax and social security payments electronically, either directly or through an intermediary, by means of a standard form called the F24.

## 4.10 Other Taxes

### Local tax on real estate property

All local authorities impose an annual tax on real estate called “Imposta Comunale sugli Immobili – I.C.I.” which has to be paid by all property owners, whether they are individuals or legal entities.

This tax is levied on the cadastral (i.e. taxable) value of the property at a rate that is determined each year by the local authority, varying between 0.4% and 0.9% of the taxable value.

### Registration tax

Registration tax is levied on all registered contracts or deeds. The percentage varies from 1% to 3% depending on the type of deed. A higher rate (8%) applies to contributions or transfers of real estate. Registration tax is not applicable if the contract is subject to VAT, except for property rental contracts where VAT and 1% registration tax are applicable.

### Gift and inheritance taxes

Inheritance tax is payable on any inheritance from a deceased person’s estate in Italy. Gifts are subject to a gift tax at the same rate as inheritance tax. Rates depend on the relationship of the donor to the donee.

### Stamp duty

Stamp duties are imposed on a wide range of deeds, documents and records. Promissory notes, bills of exchange and drafts circulating in Italy must be stamped at the rate of 1.2% on face value. Where these are payable abroad, the rate is 0.9%.

## 4.11 Tax treaties

Italy has entered into double taxation agreements with many countries in order to reduce the burden of double taxation.

Almost all the existing treaties are based on the OECD model convention, but there are substantial differences between the different treaties and advice should be sought in advance before investing in Italy.

Foreign taxes can generally be credited against the Italian IRES liability, providing there is reciprocity with the other country. Any excess of foreign credits can be carried forward or carried back.

## 4.12 Grants and incentives

Italian law provides for various forms of incentives to support economic investment in the South of Italy, other depressed areas in the Centre/North and in those areas struck by catastrophes such as earthquakes or floods.

# 5. Individuals



## 5.1 Taxation

Individuals resident in Italy are liable to Italian income tax (IRPEF) on a world-wide basis and to local taxes on real estate (ICI). Residence in Italy is presumed if the individual is registered as an Italian resident, if they lived in Italy for more than 183 days during the tax year or if they have the centre of their economic interests in Italy.

Non-residents are taxed only on the income arising in Italy.

Taxable income is determined by aggregating earnings from the following six sources. If the income cannot be classified in one of the following categories, it is not taxable in Italy.

## 5.2 Earned income

Earned income includes all remuneration received from employers, whether in cash or in kind, such as free food, free lodging, free use of car etc.

Company payments into pension schemes are also considered earned income in the hands of the employee.

## 5.3 Real estate income

This includes all income arising from property, land or buildings. Note that, with the exception of rented buildings, the tax is levied on the cadastral income of the real

estate.

## 5.4 Investment income

Investment income includes interest income, dividends etc. The tax is levied on the gross income.

## 5.5 Professional income

This is income derived from carrying on a profession. The taxable income is determined by deducting all of the expenses incurred by the individual in generating the income.

## 5.6 Business income

This income is in every aspect similar to that of companies and partnerships etc.

## 5.7 Capital gains

Capital gains are only taxable if they arise from the sale of shares or other participations. The tax is levied either on the price at a rate of 12.5% or on the difference between the purchase and selling price at a rate of 27% applicable at 40% of the gain.

The choice between the two is possible only if the percentage of the participation sold is below 25% (quotas and/or shares) or 5% (stock exchange-listed shares), otherwise the income is always taxed at 27%.

## 5.8 Inheritance and gift tax

An Italian resident receiving an inheritance or a gift is liable for tax.

The rate is progressive and is linked to the value of the inheritance or gift and to the relationship between the donor and the donee.

## 5.9 Wealth tax

There is no wealth tax in Italy.

# 6. Employment in Italy



## 6.1 Visas and work permits

Residents of EU countries have the same rights as Italian residents, so they do not require a visa.

Visas are required for most non-EU citizens and are generally issued for tourism, education, work or family reunion.

Work permits are generally required for persons from non-EU countries hired or seconded to work in Italy.

There are a few more restrictions for certain countries, such as those in North and Central Africa.

## 6.2 Labour relations

Italian labour law is similar to that of other European countries.

The main legal sources are the Workers' Statute (Statuto dei Lavoratori), the civil law code and the various collective labour contracts agreed between labour unions and employer organisations.

The following is a summary of the main regulations:

- Employees' wage cannot be lower than the minimum laid down in the pertinent collective labour contract.
- Employees usually have to be hired under a labour contract "with no time limit". But flexible contracts, such as part-time or for single projects, are also possible.
- Employees cannot be dismissed without sound objective reasons.
- All employees are entitled to a fully paid annual vacation period whose length varies according to their contract and rank.
- Pregnant women are entitled to two months leave before the birth.
- Parents are entitled to three months fully paid leave and a further six months leave at half-pay (or additional hours leave each day).
- Italian law prohibits any discrimination between sex or race.
- Accident insurance is compulsory and paid for entirely by the employer; the premium varies according to the risk profile of the job.

## 6.3 Payroll taxes

As in many other countries, in Italy all employers have the legal responsibility to withhold tax from salaries paid to their employees. They also have to pay social security contributions.

The current IRPEF rates are the following :

Annual income in €	Rate %
Up to 15,000	23
From 15,000 to 28,000	27
From 28,000 to 55,000	38
From 55,000 to 75,000	41
Above 75,000	43

Social security contributions vary according to the National Labour Contract and the category of employment.

The average burden for the pension scheme and accident insurance ranges between 35% and 37%.

# List of offices

## Audit practice offices

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PKF Consulting Srl | business adviser

Sintema Srl | accounting and payroll outsourcing

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