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# DOING BUSINESS IN ITALY



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# Foreword

This booklet has been prepared for the use of clients, partners and staff of HLB International member firms.

It is designed to give some general information to those contemplating doing business in Italy and is not intended to be a comprehensive document.

You should consult us therefore, before taking further action. Synergia Consulting Group S.r.l., H Audit S.r.l. and HLB International cannot be held liable for any action or business decision taken on the basis of information in this booklet.

The information contained in this booklet is believed to be correct at the time of going to print in November 2004.

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HLB International is a world-wide organisation of professional accounting firms and business advisers, each providing clients with a comprehensive and personal service relating to auditing, taxation, accounting and general and financial management advice.

Formed in 1969, HLB can assist clients to do business in over 100 countries, with more than 1,600 partners and 10,440 staff in over 430 offices.

Up-to-date information and general assistance on international matters can be obtained from any of the partners of HLB Italy listed in this booklet or from the Executive Office in London.

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## 2. General Information

### 2.1 Geography and population

Italy is a long peninsula (1,300 kilometres from north to south) situated in Southern Europe, in the centre of the Mediterranean Sea, bordering France, Switzerland, Austria and Slovenia to the north, while the rest of the State is surrounded by sea. Italian territory includes numerous islands, the largest of which are Sicily and Sardinia.

Italy has a total area of 301,336 km<sup>2</sup>, a population of 57.3 million in 2003 and an average density of 192 inhabitants per square kilometre.

The climate is mild and temperate, with well-defined seasons, owing to the Alps that constitute a natural barrier from Northern Europe.

Northern Italy has a fairly harsh winter and warm summer climate, while the South and the islands have a drier and hotter climate, with mild winters.

Italian is the official language: there are bilingual regions, where German, French and Slovenian are spoken. The religion most widely practised is the Catholic religion.

Roma is the capital: other major cities include Milan, Turin, Naples, Bologna, Florence, Catania and Genoa.

The currency is the Euro.

### 2.2 Political institutions

Italy is a Parliamentary Republic, subdivided administratively into 20 regions, 103 provinces, and over 8,000 communes.

The President of the Republic, the Head of State, is elected by Parliament and remains in office for 7 years. His duties include holding elections, enacting laws, ratifying international Treaties and maintaining

command of the Armed Forces.

Italy adopts a civil law system. The national legislative power is assigned to Parliament, composed of two Chambers (Chamber of Deputies and Senate of the Republic) elected by universal suffrage by the people every 5 years; only in exceptional cases can the Government legislate directly.

The local bodies of the State may legislate within the scope of the powers assigned by the Constitution, and within the limits of the national regulations.

Executive power is in the hands of the Government, composed of a Chairman of Council (elected by Parliament and appointed by the President of the Republic), a Vice Chairman and 23 Ministers: executive activities are conducted jointly by the Council of Ministers, chaired by the Chairman of Council.

The judicial power is shared between:

- *ordinary jurisdiction*, exercised by the ordinary magistrates and operating in the civil and criminal sectors;
- *administrative jurisdiction*, exercised by the regional administrative courts (TAR) and by the Council of State;
- *tax jurisdiction*, exercised by the provincial and regional Tax Commissions;
- *accounting jurisdiction*, exercised by the Audit Office on public accounts;
- *military jurisdiction*.

The highest level of judgment of the judicial power is the Court of Cassation, which acts as judge on legal issues and not on the facts of the case.

Finally, the Constitutional Court gives its opinion on any conflict between the laws and the Italian Constitution.

In the international context, Italy is a founder country and member of the European Community (Treaty of Rome 1957).

### 2.3 Economy

Italy is the sixth world economic power in terms of gross domestic product, which in 2003 amounted to 1,301 billion Euros: the per capita income in 2003 amounted to 22,380 Euros.

Inflation in 2003 stood at 2.8%.

The most developed sectors of Italian industry include the manufacturing, mechanical and construction sectors, and chemicals and the transport industry. A significant contribution to the national wealth is generated, in particular, by products "made in Italy" (textile products, production of clothing and footwear, agri-foodstuffs and design sectors), known and appreciated throughout the world.

The role played by tourism is also of prime importance: Unesco has pointed out that Italy has the greatest cultural heritage in the world.

One salient feature of the Italian economy is the high propensity to entrepreneurship seen, in relation to other industrialized countries, in the very high number of small and medium-sized businesses: 98% of the over 4 million businesses employ fewer than 19 persons (the average is 3.98 employees per company).

Another significant feature of the Italian economy is the development of the so-called "industrial districts", geographical areas in which numerous companies belonging to the same sector are concentrated with close economic relations, each one specializing in a specific stage of the production line: today there are over 200 districts in Italian territory.

With these associations, the sectors concerned maintain considerable flexibility and a high level of specialization and innovation.

The favourable geographical position at the centre of the Mediterranean and the infrastructural links with the countries of Europe allow Italy to form a crossroads for international trade, a natural bridge between Europe and Africa.

Investment is favoured by the marked industrialization present in the North and by the concessions existing, at Community level as well, intended to favour the economic development of the South.

Finally, membership of the European Community provides for the freedom of movement of citizens, goods, services and capital between Italy and the 24 other Member States, thus creating a single market of continental dimensions.

# 3. Investment Factors

## 3.1 Tax concessions and investment incentives

### 3.1.1 Preamble

Companies may receive Community, national or regional aid.

### 3.1.2 Community concessions

European Union policy is implemented by means of so-called "structural funds", intended to promote the development of the less industrialized regions.

The structural funds comprise the following:

- ERDF (European Regional Development Fund): this finances infrastructures, production investment intended to create employment, local development projects and measures favouring small and medium-sized businesses;
- ESF (European Social Fund): this promotes the vocational inclusion of the unemployed and disadvantaged groups, providing support for training and incentives for the creation of jobs, in particular;
- FIGF (Financial Instrument for Fisheries Guidance): the aim of this instrument is to modernize the sector;
- EAGGF (European Agricultural Guidance and Guarantee Fund): this finances rural development incentives and provides aid for farmers.

The European structural funds pursue priority objectives and identify different target zones (particularly 1, 2 and 3).

The regions of Southern Italy mainly fall into target 1 zones; the only exception to this is the Abruzzo region which falls into target 2 zones.

70% of the structural funds are intended for target 1 zones.

The maximum amount of aid for target 1 zones is 35% NSE (\*) + 15% GSE (\*\*) for small and medium-sized enterprises (SMEs) and 35% NSE for large enterprises.

(\*) Net Subsidy Equivalent: this represents the actual benefit for the company, also taking tax into consideration, as well as the elements relating to the calculation of the GSE.

(\*\*) Gross Subsidy Equivalent: this represents the nominal value of the aid granted, expressed as a percentage of the permissible investment.

### 3.1.3 National concessions

#### 3.1.3.1 Law 488/92

The main means of access to the national concessions, intended to support the private sector for backward areas, is represented by Law No. 488 of 19 December 1992.

The permissible investments are as follows:

- Design and studies: up to 5% of the total expenditure;
- Land: up to 10% of the total expenditure;
- Brickwork and the like;
- Plant, machinery and equipment;
- Software;
- Licences and patents for products and production processes.

The Law contemplates several bands, including the following in particular:

#### Industry and Services

The beneficiaries of this band include industrial companies in the manufacturing, extraction, building, electricity, steam and water production and distribution sectors and companies providing services for industry.

#### Tourism

The beneficiaries include travel agencies and small and medium-sized enterprises operating in the tourist sector. Investment projects for the construction of a new reception unit or for the expansion of existing structures are financed.

#### Trade

The beneficiaries include retail and wholesale sales outlets and distribution centres managed by individual companies or by consortia or associations; mail order companies; and companies operating in the e-commerce sector.

Investments intended to increase the efficiency of the distribution network are financed.

#### Environment

Beneficiaries include industrial companies in the manufacturing, extraction, building, electricity, steam and water production and distribution sectors and companies providing services for industry.

The establishment of investment programmes designed to reduce the environmental impact of production activities is financed.

#### Craftsmen

Beneficiaries include companies entered in the register of craft companies belonging to the extraction, manufacturing, building, national electricity, steam and hot water production and distribution sectors and service companies, except for companies belonging to sensitive sectors excluded by the Community regulations on State aid.

#### Smaller islands

Concessions are granted for production activities situated on the smaller Italian islands, identified by the implementing Circular. The concession is multi-sectoral, being able to finance activities belonging to the manufacturing, service, tourism and trade sectors.

#### 3.1.3.2 L. 215/92: Female enterprise

Beneficiaries of this band include individual firms managed by a woman, partnerships and cooperatives (with a minimum female presence in their capital of at least 60%) and capital companies (with a minimum female presence of 2/3 both in terms of shares held and in the administrative bodies) of any production, trade and service sector.

The incentive consists of a contribution of plant and permissible investments include the following:

- *Feasibility studies, up to 2% of the total investment;*
- *Plant;*
- *Equipment, machinery and furnishings;*
- *Patents, licences and software;*
- *Actual services.*

#### 3.1.3.3 Technological innovation: the Integrated Concessions Package- Innovation

This is a concessionary system that enables companies to implement multi-annual development initiatives by means of a single application enabling them to gain access to the contributions laid down by Law 46/82 in the "precompetitive development" part and by Law 488/92 for "the industrialization of results".

The concession consists of concessionary funding equal to 50% of the costs recognized as permissible with regard to precompetitive development expenses. This funding is supplemented by a contribution of up to 35% of the NSE.

#### 3.1.3.4 La Law 388/2000

This rule provides for the supply of capital contributions to encourage investments in the reorganization of industrial processes, making particular use of the office and other information technologies connected with Internet platforms.

Contributions are provided by means of a mechanism that allows the investments made by the company to benefit from a tax credit of differing amounts depending on the geographical location of the company itself. The mechanism laid down by the law extends the intervention of the Fund for Technological Innovation to support the creation and consolidation of business initiatives undertaken in sectors with a high development potential.

### 3.1.4 Regional Operational Plan

Each of the regions included in the target Zones laid down by the European legislation has drawn up regional operational plans (R.O.P.) to implement the European directives on the use of the structural funds.

## 3.2 Employment legislation

### 3.2.1 Preamble

The field of employment legislation has been the object of wide reform with the approval of Law 276/2003 known as the "Biagi Reform". This is an extremely wide reform designed to provide for its gradual implementation with the result that some of the institutions provided for and analysed below could still be in the process of implementation or subject to amendments or adjustments.

### 3.2.2 The employment contract

The type of relationship considered "normal" by the law, and presumed to exist in the absence of a different and valid choice made by the parties, is that of an "employee for an indefinite period".

With a view to protecting the worker, this contract, which is general and residual in nature, does not require any special form; the written form is generally requested for other types of contracts, however.

### 3.2.3 Aspects of civil law and social security

On making an appointment, the employer is subject to a series of measures.

On commencing employment, insurance covering business risks must be arranged with the Istituto Nazionale Infortuni sul Lavoro [National Workmen's Compensation Institute] (INAIL) and several compulsory registers must be signed.

The employee also has to be registered with the Istituto Nazionale per la Previdenza Sociale [National Social Security Institute] (INPS), opening a social security account for the payment of contributions due for its employees.

At the time of appointment, the employer has to give the INAIL and the competent Employment Office the necessary information.

In some cases, preventive measures exist.

### 3.2.4 Termination of employment

The employer should always have a valid reason for withdrawing from the employment contract; otherwise, his withdrawal will be invalid. Free withdrawal may occur in marginal cases.

Individual dismissal may take place for subjective reasons connected with the conduct of the employee, or objective situations, irrespective of whether or not he is at fault.

Collective dismissal may depend solely on causes relating to the company, such as resizing or transformation of the business activities for economic or organizational reasons, and is subject to special trade-union procedures.

In any case of termination of employment, the worker is entitled to severance pay (T.F.R.).

### 3.2.5 Various types of employment and cooperation

#### Fixed-term employment contract

For the application of this type of contract, technical, production or replacement reasons must exist.

On expiry of the period, the relationship ends automatically, without the need for notice or formal notification.

#### Provision of work

This is a tool that enables companies to benefit from a provision of work without having to assume all the costs deriving from an employment relationship. The workforce is acquired by means of a contract arranged with a supply company, acting as agent between the actual beneficiary of the work and the worker.

#### Part-time contract

A part-time contract is an individual employment contract that fixes reduced working hours in relation to those established by the legislator or by collective contracts, with a proportional reduction in pay.

#### Job sharing

Job sharing involves an employment contract in which two workers jointly undertake to perform a single and identical

job for the employer.

#### Intermittent work or work on call

With this type of contract, a worker is available to the employer who may use him for discontinuous or intermittent work, following notice.

All the above contracts must be drawn up in writing and contain a series of indications listed by law.

### 3.2.6 Other forms of collaboration

#### Project work

Project work is characterized by:

- *collaboration*: it must relate to one or more specific projects or work programmes or phases thereof;
- *collaborator's independence in performing work*;
- *necessary coordination with the client's organization*;
- *irrelevance of the time taken to provide the service*;
- *the contract period is or may be established*.

The scope of the regulations excludes, in particular, commercial agents and representatives, temporary employment, intellectual professions and members of the company's administrative and supervisory bodies.

#### Temporary work

Temporary work is deemed to include relations arranged for a total period of not more than 30 days during the course of a solar year with the same client, unless the overall payment received in that calendar year, with the same client, is more than 5 thousand euros.

## 3.3 Concessions connected with employment policies

### 3.3.1 Tax credits

This is an incentive scheme that provides for the recognition of a tax credit in favour of employers permanently increasing the

number of workers holding employment contracts for an indefinite period.

The concession consists of a tax credit equal to € 100 or € 150 if the employee is over 45 years' old. A further contribution of € 300 is provided for appointments made in the Target 1 areas and in the Abruzzo and Molise regions.

### 3.3.2 Incentives for the appointment of particular types of workers

This concession is provided for employers engaging unemployed workers or those suspended from work, with special requirements.

The benefits consist of a reduction in the amount of social security and welfare contributions payable and sometimes in the provision of actual financial contributions for the employers themselves.

### 3.3.3 Special employment contracts

Two forms of employment contract will be examined below, intended to include young people and socially weaker persons in the job market.

#### Apprenticeship

Three new types of employment relations may be identified for training purposes:

- Apprenticeship to fulfil the duty/right to instruction and training or qualification;
- Professional apprenticeship to obtain a qualification by training on the job and a technical and professional knowledge;
- Apprenticeship to obtain a diploma or to follow *higher education or specialist courses*.

The benefits of engaging apprentices are both regulatory and economic.

#### Contract of entry

The contract of entry is an employment contract arranged for a specific period to favour the inclusion of workers in the company requirements by means of procedures for adaptation to the context of work, and the relevant production processes.

The contract of entry may relate to any work activities and may be arranged in all sectors, excluding public administration, and is intended for certain categories of persons. The law provides a series of regulatory and economic incentives for the employer.

### 3.4 Immovable property investments

According to Italian law, immovable property includes buildings, constructions and, in general, everything that is naturally or artificially incorporated into the ground, even if temporarily. Strict controls are laid down for property and instruments providing for the purchase or sale of property, and a special system for advertising the transfer of property.

#### 3.4.1 Ownership of immovable property

##### 3.4.1.1 Methods of acquiring original ownership

The ownership of immovable property may be acquired by accession or by usucaption.

##### Accession

In the case of accession, two or more properties or parts of properties are combined in such a way that they cannot be separated without serious damage; in such a case in the absence of specific agreements between the owners, ownership of the main property leads to the acquisition of the secondary property.

##### Usucaption

Acquisition by usucaption arises when a property has been held by a third party in good faith for at least 20 years in the presence of the inactivity of the party entitled to it.

In such cases, the possessor is granted the corresponding right (ownership or real right of use), while the right not exercised is extinguished.

##### 3.4.1.2 Methods of derived acquisition

The ownership of immovable property may be acquired on a derived basis by arranging instruments that transfer this right or on succession following death.

Contracts transferring ownership of immovable property must be drawn up by private instrument or by notarized instrument drawn up and signed by a Notary with the duties of a public official.

The form of publicity laid down for these contracts is registration, which performs the function of settling any disputes between holders of rights and giving priority to the first party to register his right of acquisition.

The contract may be preceded by an undertaking (or preliminary purchase contract).

Succession, by law or by will, may be universal or just for part of the property.

#### 3.4.2 Taxes on property transfer instruments

Instruments transferring property are subject to the payment of indirect taxes (registration, land and mortgage tax) and direct taxes. Indirect taxes are determined proportionately based on the land value of the property itself. If the vendor is an individual, the taxes are as follows:

- Registration tax, 7% (3% in the case of a first house);
- Mortgage tax, 2% (fixed in the case of a first house);
- Land tax, 1% (fixed in the case of a first house).

If the vendor is a company, registration tax will be fixed and not proportional and the price will be subject to VAT. More specifically:

- 10% VAT (4% in the case of a first house)
- Registration tax fixed at: € 129.11;
- Mortgage tax fixed at: € 129.11;
- Land tax fixed at: € 129.11.

#### 3.4.3 Income from owning immovable property

For natural persons, income deriving from the ownership, use or other real rights to buildings is subject to taxation based on their

revalued land income, depending on the period of possession during the calendar year, the percentage of possession and the type of use made of the property. These contribute to forming the overall income made by the holder according to the general rules.

If the owner's principal residence is in the property, the relevant income is not taxed. For natural persons, the capital gain made on the transfer of property is only taxed if the sale is made within five years of purchase.

If the property has been acquired by means of tax benefits for a principal residence and is sold within five years of purchase, the vendor will forfeit the concessions enjoyed and the relevant penalties will be applied, unless he purchases another property to be used as his principal residence within one year.

All income from property belonging to companies or relating to commercial businesses will assume the nature of business income and will contribute towards forming the overall income.

Income from property rental will contribute towards forming the overall income of the holder.

In particular, income from non-instrumental property will contribute towards forming the business income based on the land income or, if rented, based on the rent received.

#### 3.4.4 ICI (Municipal property tax)

ICI is a communal tax charged on the possession of buildings, buildable areas and agricultural land situated within the State territory, intended for any use, including property used in performing company activities (see 5.7 below).

#### 3.4.5 Property rental (leasing)

##### Methods of property rental and contractual forms

Two types of contract are laid down by the regulations:

##### ▪ Open-rent leasing contracts

The parties may arrange leasing contracts for a period of not less than four years, renewed for a further four years (6 + 6 if

premises are leased for commercial use). Automatic renewal does not take place if special conditions of need arise for the owner.

##### ▪ Agreed-rent contracts

The parties may arrange leasing contracts, agreeing the period (not less than three years and renewable not more than twice) and the rent (governed by local agreements between associations of owners and tenants).

The legislator has provided a series of tax discounts for this type of contract.

##### Leasing taxes

Rental contracts should be registered within 30 days and are subject to the application of proportional registration tax, amounting to 2% of the annual rent with a minimum of € 51.65; all property leasing and rental contracts of any amount must be registered, whenever they are arranged for a total period of more than 30 days in the year. Contracts subject to VAT deduct registration tax in the fixed amount of € 129.11.

# 4. Types of Business Organisations

## 4.1 Preamble

Italy offers a wide range of choice of different legal forms for setting up companies. One therefore has to identify the most suitable form of company from an organizational point of view, also taking into account the objects to be pursued, the capital to be committed, the level of liability each legal form involves, the various tax implications and, finally, the complexity of the accounting and organizational measures.

### Sole Trader

A sole trader is a business set up by a single holder.

The businessman conducting business is also financially responsible for it, i.e. he is liable for the debts contracted by the firm with his own present and future personal wealth.

If relatives (members of family of the company holder up to the 3rd degree and relatives up to the 2nd degree) work in the business, it is regarded as a **family business**, for which the sole holder remains liable, receiving at least 51% of the business income (family workers do not share in the losses).

This legal form is very suitable for small businesses and allows access to forms of concessionary funding.

### Partnerships

#### Simple partnerships

A simple partnership is the most elementary form of partnership.

The fundamental characteristic is that it can only be set up to perform non-commercial, profit-making activities.

The scope of simple partnership may therefore be extended to the management of property assets, to conducting professional activities in the form of an association and agricultural activities, with several limitations. In particular, the partnership cannot be involved merely in the use of goods, but in the common and specific exercise of economic activities.

Another characteristic is the partners' unlimited liability for partnership obligations, although the liability of partners with no powers of representation may be excluded by suitable agreement.

In the simple partnership, the creditor may receive payments from the partnership assets or from the assets of partners with unlimited liability.

#### Joint-name partnerships (S.n.c.)

The joint-name partnership (S.n.c.) is a type of partnership that can be used to conduct commercial or non-commercial activities.

For this partnership, there is no minimum capital contribution and all the partners have unlimited liability.

All the partners hold joint and unlimited liability for the business obligations but, unlike the simple partnership, the partners benefit from the preliminary right of execution on the partnership assets. Any agreement to the contrary has no effect vis-à-vis third parties.

#### Limited partnerships (S.a.s.)

It is possible to set up a partnership with different levels of liability for business obligations, by means of a limited partnership (S.a.s.). This partnership is characterized by the presence of two categories of partners:

- **general partners**, who have sole responsibility for the administration and management of the partnership and have unlimited and joint liability for the fulfilment of the company obligations;
- **sleeping partners**, who are liable for the partnership obligations within the limits of the shares they hold, provided they are not involved in the partnership management.

This legal form is suitable for businesses that wish to bring in new partners to contribute capital but with their business risk limited to the amount of the capital contributed.

### Company with share capital

#### Joint-stock company (S.p.a.)

A joint-stock company (S.p.a.) constitutes the model capital company in regulatory terms and is the form of company most suitable for substantial capital investments. It is also the compulsory form for companies wishing to be listed on the stock exchange.

Joint-stock companies are characterized by the presence of two fundamental elements, the limited liability of all the shareholders and the division of capital into shares.

The company has to be set up by a notarial document, indicating the parties to the contract, who may be natural or legal persons.

The initial minimum capital of joint-stock companies must not be less than 120,000 euros, but this legal minimum is increased for some companies in relation to the nature, size and effects on the market of the activities the company proposes to conduct.

The holding in the company's capital need not correspond to the contributions made by each shareholder. The proportions of capital payments, profits and administrative rights (votes) do not necessarily have to correspond.

The administration of joint-stock companies may be organized according to three different models:

- *traditional*
- *monistic*
- *dualistic*

In the traditional model, the directors have the task of managing the company.

The managerial competence attributed to the directors is general and includes all necessary measures to achieve the company's objectives, that are not expressly reserved by law or by the deed of incorporation for other bodies.

In the dualistic system, management is assigned to a board of management, elected by the supervisory body which, in turn, is elected by the general meeting.

In the monistic system, the rules of administration are not significantly different, but supervision is exercised by a committee

set up within the board of directors.

One characteristic element is found in the accounting supervisory system, which may be assigned to an auditor or to the supervisory board, while in "listed" companies, an auditing firm must be present.

#### Partnerships limited by shares (S.a.p.a.)

A partnership limited by shares (S.a.p.a.) is a joint-stock company in which the management power is held by full directors who, in return for their prominent position, hold unlimited liability, even if subsidiarily, for the company obligations.

One peculiar feature consists in the coexistence of two different groups of shareholders:

- General shareholders, de jure directors, with personal and unlimited liability;
- Sleeping shareholders, excluded from the management, whose liability is limited to their contributions.

#### Private limited company (S.r.l.)

A private limited company (S.r.l.) is a company model intended for smaller businesses than the joint-stock companies, whose shareholding is denoted by a personal profile.

In fact, the shares are generally held by a limited number of shareholders, who are not personally liable for the company obligations, even if they have acted for and on behalf of the company.

The Italian legislation in force since 1 January 2004 has laid down innovations for limited liability companies, which now represent an extremely flexible plan that the shareholders can adopt to pursue their own specific economic objectives.

The minimum share capital to be subscribed is fixed at 10,000 euros and companies must be set up by a notarized deed, indicating the parties to the deed of partnership, who may be natural or legal persons.

The shares in the company need not be proportional to the contributions made by the shareholders.

The transfer of shares may be limited and even prohibited; in this case, each

shareholder will be entitled to withdraw from the company, obtaining a reimbursement for his share.

The management benefits from the same flexibility; it is, in fact, possible to provide for a sole director or a board of directors, with joint or separate management.

It is also possible for a shareholder to be able to hold special personal management rights.

With regard to the legal inspection of the accounts, the deed of incorporation may provide for the appointment of a board of auditors or an auditor. A board of auditors must be appointed if the share capital is equal to or greater than 120,000 euros or other parameters laid down by law are exceeded.

Finally, private limited companies may issue debt instruments similar to bonds (which remain the sole prerogative of joint-stock companies and partnerships limited by shares).

Unlike bonds, these instruments may only be subscribed for by professional investors.

### Other types of companies

It is also possible to set up other types of companies, in the form of limited liability cooperative societies, unlimited liability cooperative societies and mutual insurance societies, all for mutual purposes.

This means that they are intended to provide

goods, services or work for members directly, under more advantageous conditions than those that members would obtain on the market.

Finally, all companies, except for simple partnerships, may unite in a consortium to coordinate economic activities similar or related to those of several businesses or conduct certain stages of production of the respective companies.

## 4.2 Formation of a company

### 4.2.1 Formalities for the formation and commencement of activities

#### Capital companies

Limited liability companies (S.r.l.) and joint-stock companies (S.p.A.) may be set up by means of a contract between two or more persons, whether natural or legal persons, or by means of a unilateral instrument (S.r.l. or unipersonal S.p.A.).

In both cases, the deed of formation should be drawn up by notarized instrument.

As a general rule, the process of setting up a company with share capital is composed of the following stages:

- 1) Preparation of the Articles;
- 2) Payment of at least 25% of the share capital (100% in the case of a unipersonal S.r.l. or unipersonal S.p.A.) with a linked bank current account; in the case of an S.r.l. the payment may be replaced by

arranging an insurance policy or a bank guarantee for the corresponding amount;

- 3) Valuation of any contributions of goods in kind or credits by an expert entered in the register of auditors (the shares corresponding to these contributions should be fully paid-up);
- 4) Subscription for the entire share capital and preparation of the notarized deed;
- 5) Submission of the deed of incorporation and articles to the register of companies office by the notary;
- 6) Registration of the company with the register of companies;
- 7) Any government authorizations required for particular activities.

The company will acquire legal status on registration with the register of companies. For operations conducted beforehand, those taking measures and shareholders deciding, authorizing or allowing measures to be taken will have unlimited and joint liability.

The deed of incorporation must indicate the following:

- The surname and forename or company name, date and place of birth or the State of formation, domicile or registered office, the citizenship of each shareholder and, in particular, in the case of an S.p.A., the number of shares assigned to each one as well;
- The name and commune in which the company's registered office and any secondary offices are situated;
- The activities constituting the company objects;
- The amount of the subscribed and paid-up capital;
- The contributions and participation of each shareholder in the S.r.l.; the number, nominal value, characteristics and procedure for the issue and circulation of shares in the S.p.A.;
- The value attributed to the credits and goods in kind assigned;
- The rules by which any profits and benefits if granted to sponsors or to the founder shareholders in the S.p.A. alone are distributed;

- The rules on the functioning of the company, administration and representation and any persons responsible for inspecting the accounts in the S.r.l.; the system of administration selected, the number of directors and auditors, the powers of the directors and the identification of powers held by the directors and representatives, the appointment of the first directors and auditors or the members of the supervisory body and any person responsible for the audit of the S.p.A.;
- The at least approximate global amount of the formation expenses borne by the company and, particularly for the S.p.A., the duration of the company.

The benefit of limited liability is also extended to unipersonal companies with share capital provided that:

- During the formation stage, the entire subscribed share capital has been paid up;
- If the plurality of shareholders ceases during the life of the company, payments still outstanding are made within 90 days;
- A declaration containing the particulars of the sole shareholder is deposited with the register of companies by the directors or sole shareholder within 30 days of his entry in the appropriate register.

#### Partnerships

Partnerships have to be formed by a notarized instrument or a by private instrument authenticated by a notary the deed of incorporation has to be entered in the register of companies.

### 4.2.2 Company books

#### Companies with share capital

Companies with share capital must keep the following books:

- The shareholders' register, which should contain the names of the shareholders, transfers and any constraints thereon and the payments made;

| Characteristics of the main company forms |   |  |   |   |
|---|---|--|---|---|
|   | S.p.a.  | S.r.l.   | S.n.c.  | S.a.s.  |
| Type of company                           | Medium-sized and large companies / listed companies | Small and medium-sized companies with a limited number of shareholders | Partnerships set up to conduct commercial and non-commercial activities | Partnerships set up to conduct commercial and non-commercial activities |
| Minimum share capital                     | € 120,000   | € 10,000   | No limit  | No limit  |
| Liability for company obligations         | Limited to the company assets                       | Limited to the company assets  | Unlimited for all shareholders  | Unlimited for general partners<br>Limited for sleeping partners         |
| Supervisory body                          | Compulsory  | Optional / Compulsory if certain limits exceeded                       | Not provided for  | Not provided for  |

- The book of meetings and decisions of the General Meetings (for S.p.A.) or the book of shareholders' decisions (for S.r.l.), which should also contain the minutes drawn up by notarized instrument;
- The book of meetings and decisions of the Board of Directors or the Management Board (for S.p.A.) or the book of directors' decisions (for S.r.l.);
- The book of meetings and decisions of the board of auditors and/or the book kept by the person responsible for auditing the accounts (for S.p.A.) or the book of decisions of the board of auditors or auditor (for S.r.l.);
- The book of meetings and decisions of the Executive Committee (only for S.p.A.), if there is one.

If bonds are issued, the following must be kept:

- The book of bonds and the book of meetings and decisions of the General Meetings of Bond Holders.

If an S.p.A. has issued special financial instruments other than shares, a book must be kept indicating their characteristics, the amount of those issued and those cancelled, particulars of the holders of registered bonds and the transfers and constraints relating thereto.

Before being put to use, the company books must be stamped and numbered consecutively at the register of companies or by a notary.

#### Partnerships

Partnerships are not required to keep company books. In practice, however, a book of meetings and decisions of the General Meeting is certified and the approval of the annual report and most important decisions recorded in it.

### **4.3 Legal, accounting and audit requirements**

#### **4.3.1 Legal requirements**

All companies, and individual businesses, must be registered with the register of

companies in the place of the principal place of business.

In company documents and correspondence, details of registration with the register of companies must be indicated.

A suitable section should also be provided in the company register containing details of companies conducting management and coordination activities (parent companies) and those subject thereto. The latter, in particular, should indicate in their documents and correspondence the company to whose management and coordination they are subject..

#### **4.3.2 Accounting requirements**

All companies, whether companies with share capital or partnerships, are required to keep books and records of accounts and to keep original documents sent and received in order for each concern. The accounting instruments and documents relating to each concern should be kept for ten years.

Companies with share capital are also required to draw up an annual balance sheet and to file it with the register of companies, within 30 days of its approval. Partnerships are required to draw up an annual report indicating profits and losses, subject to minor formalities, without the obligation to present it to the register of companies.

The following table summarizes the timetable for approval and filing of the balance sheet for companies with share capital.

#### **4.3.3 Audit requirement**

##### Persons subject to auditing requirements

The following persons are required to undergo a compulsory audit:

- All S.p.A., irrespective of the size and recourse or otherwise to venture capital;
- S.r.l. with a share capital of not less than 120,000 euros (the minimum laid down for an S.p.A.) or exceeding two of the following limits in two consecutive years:
  - total assets of: 3,125,000 euros;
  - income from sales and services of: 6,250,000 euros;
  - average number of employees engaged during the year: 50.

#### Persons conducting the audit

In an S.p.A., the audit is conducted by:

- a firm of auditors registered with the CONSOB, if the S.p.A. is a listed company or controlled by a listed company;
- a firm of auditors entered in the register of auditors, but to which the regulations on companies registered with the CONSOB apply, solely with regard to that assignment, if the S.p.A. has recourse to venture capital;
- a firm of auditors entered in the register of auditors or an auditor, in other cases.

In an S.p.A. not listed or controlled by listed companies, not having recourse to venture capital and not required to draw up a consolidated balance sheet, the audit may be assigned by the articles to the board of auditors. In this case, all the members of the board of auditors must be entered in the register of auditors.

In an S.r.l., when an audit is compulsory or when it is adopted optionally by the company, it may be conducted by the board of auditors or by an auditor. If the deed of incorporation does not provide otherwise, the audit may be conducted by the board of

auditors.

#### Tasks of the audit

The auditor remains in office for 3 years and performs the following tasks:

- He checks that the company accounts are kept properly and that the management facts are correctly entered in the accounting records;
- He checks that the balance sheet or, if drawn up, the consolidated balance sheet corresponds to the results of the accounting records;
- He gives his opinion on the balance sheet or the consolidated balance sheet, if drawn up, in a suitable report.

### **4.4 Formation of a branch in Italy**

A secondary office in Italy of a foreign company which is not a legal entity is characterized mainly by two factors:

- The permanence of the establishment: a permanent establishment must be set up with means intended to conduct the activities of a company or a company

| S.p.A.  |  | S.r.l. (with no board of auditors)   |  |
|---|--|--|--|
| Approval of the balance sheet by the board of directors and notification thereof, together with the management report, to the auditors and person responsible for the audit | Not less than 30 days before the date of the General Meeting | Approval of the balance sheet by the directors and filing of the balance sheet and possible management report at the registered office | Not less than 15 days before the date of the General Meeting |
| Filing of the balance sheet, management report, auditors' report and report of the person responsible for the audit at the registered office                                | Not less than 15 days before the date of the General Meeting |  |  |
| General Meeting held to approve the balance sheet   | Within 120-180 days of financial year end                    | General Meeting held for the approval of the balance sheet   | Within 120-180 days of financial year end                    |
| Filing of the balance sheet and other documents at the register of companies  | Within 30 days of the General Meeting of Shareholders        | Filing of the balance sheet and other documents at the register of companies   | Within 30 days of the General Meeting of Shareholders        |

branch;

- Permanent representation: a person must be appointed to represent the secondary establishment vis-à-vis third parties.

If such offices exist, they must be entered in the ordinary section of the company register, attaching the following documents:

- Authenticated copy of the deed of incorporation of the secondary office, registered with the registry office; if the information on the appointment of the representative in Italy is not contained in the deed of incorporation of the secondary office, an authenticated copy of the relevant deed of appointment should also be filed, registered with the registry office;
- Authenticated copy of the articles of association of the foreign company. In the case of a company domiciled in a Member State of the European Community, the articles may be replaced by a certificate issued by the body in the foreign State performing the duties corresponding to the register of companies in Italy.

Following entry in the company register, the secondary office of a foreign company is subject to the same measures as an Italian company with regard to the periods of publication of the balance sheet and other company documents.

#### 4.4.1 Tax aspects

##### Permanent establishment

Pursuant to the Italian tax regulations, a secondary office is described as a permanent establishment if:

- There is a permanent business office in Italy;
- There is a non-resident company;
- Use is made of the permanent office in Italy by the non-resident company for the purposes of its activities.

The overall income of a permanent establishment in Italy of a company resident abroad is determined unitarily according to the rules governing the establishment of

company income, as if it had proceeded to the formation of a company domiciled in Italian territory.

##### Representative office

If the business office is used solely for the following purposes:

- Storage, display or delivery of goods belonging to the foreign company;
- Purchasing goods or obtaining information for the foreign company; or conducting preliminary activities assisting the business activities of the foreign company;
- a permanent establishment does not exist for tax purposes.

Consequently, a non-resident company will be taxed, in the event of taxable income, according to the rules applicable to natural persons and non-commercial bodies, i.e. by determining the individual income independently, based on the regulatory provisions for the individual categories to which they belong.

## 4.5 Accounting and company measures

### 4.5.1 Preparation and keeping of accounting records

Accounting records may be kept directly by the business, in the places in which the activities are conducted, or by other persons at their offices.

Two main compulsory accounting systems are established, depending on the characteristics of the company and the amount of income declared in the previous year, one ordinary and one simplified and suitable for small subjects with a simple organization.

### 4.5.2 Keeping books and accounting records

The businessman (whether an individual or a company) is required to keep the books and

records of accounts laid down by the Civil Code and by the tax regulations.

### 4.5.3 Annual Chamber fee

The annual fee is a tax payable by all companies registered or entered in the Company Register each year in favour of the Chamber of Commerce with territorial competence.

Companies with share capital pay an amount commensurate with the total turnover made during the year.

## 4.6 The Trust in Italy

Trusts have been recognized in the Italian legal regulations since the entry into force in 1992 of Law No. 364 of 16/10/1989, ratifying the Hague Convention of 01/07/1985, governing the law applicable to Trusts and their legal recognition.

The main effect of the ratification is the possibility of setting up "internal" Trusts in Italy falling under national regulations with regard to all characteristic factors, except for

the governing law, which may be that of any State issuing its own regulations on the subject.

As Italy does not yet have any specific laws governing trusts, greater freedom of choice is granted with regard to the governing law. The business of setting up a trust in a country other than Italy, or arranged in Italy but governed by a foreign law, represents an entirely legitimate deed along the lines of any other contract.

Trusts set up to avoid irrevocable rules or principles of public order in force in Italy, such as rules on inheritance, deeds of trust or the protection of injured parties, will be prohibited and unlawful.

The disposing party, trustee and beneficiary may be natural or legal persons, public bodies or associations.

Only relations established voluntarily, or with the specific intention of setting up a trust, may be established as trusts, and the deed of formation should be drawn up in writing, observing any compulsory forms laid down by law for specific contracts.

There are no limits to the property submitted

| BOOK OF ACCOUNTS  | RECORDS OF ACCOUNTS   |
|---|---|
| <ul style="list-style-type: none"> <li>▪ <b>Journal:</b> this contains all the transactions conducted by the business, in chronological order</li> <li>▪ <b>Inventory:</b> this should list the company property and a valuation of the assets and liabilities and the balance sheet</li> </ul> | <ul style="list-style-type: none"> <li>▪ <b>Record of depreciable assets:</b> this contains a detailed record of the instrumental assets relating to the company. It may be included in the inventory and journal</li> <li>▪ <b>Auxiliary warehouse documents:</b> these indicate the warehouse and stock movements and variations at the end of the year. They are compulsory for companies presenting an income in excess of EUR 5,164,568.99 and stocks in excess of EUR 1,032,913.80 for two consecutive years</li> <li>▪ <b>Record of VAT on invoices issued:</b> this contains a record of invoices issued relating to all the company's credit transactions</li> <li>▪ <b>Record of VAT on sales:</b> this is drawn up for retail traders and contains a record of the credit transactions conducted</li> <li>▪ <b>Record of VAT on purchases:</b> invoices for purchases relevant for VAT purposes should be entered</li> </ul> |

## 5. Taxation

to trusts and to the nationality of the persons involved in the relationship.

The trust may also be formed by citizens of a State not recognizing the trust institution, without prejudice to the obligation to refer to a law governing trusts in a country where such laws exist.

### 5.1 General structure

The Italian tax system is based on the following main taxes:

- Direct taxes;
- Company income tax and tax on other legal institutions (IRES);
- Natural persons' income tax (IRPEF);
- Regional tax on production activities (IRAP);
- Value Added Tax (IVA);
- Inheritance and gift tax;
- Local taxes: communal property tax (ICI), etc.;
- Registration tax and other indirect taxes on property transfers.

### 5.2 Company income tax (IRES)

As from 1 January 2004, income produced by companies and institutions is subject to legal persons' income tax known as IRES (company income tax).

IRES is payable on all income produced within the scope of the company's activities. The tax, charged at a rate of 33%, is applied to taxable income (tax assessment basis) and is payable for each tax period.

For maritime companies, specific provisions exist to establish the tax assessment basis.

The tax period generally consists of 12 months and corresponds to the calendar year.

Any withholdings are deducted from the tax established in the tax return.

If the sum of the payments on account made and the withholdings borne exceeds the tax payable, the excess may be deducted from the tax payable for the subsequent tax period, reimbursed or used to offset any other tax and social security debts, at the taxpayer's option.

#### 5.2.1 Persons liable for tax

The following companies and institutions resident in State territory are liable for IRES:

- Companies with share capital;

- Cooperative societies;
- Mutual insurance societies;
- Resident public and private commercial institutions;
- Resident public and private non-commercial institutions;
- Non-resident companies and institutions. Companies and institutions with the following in the territory of the Italian State for most of the tax period are considered to be resident:
  - The registered office;
  - The administrative office;
  - The main object of the activities.

If income produced abroad contributes towards the formation of the overall income, the taxes ultimately paid on that income in the countries of origin may be deducted from the net tax with specific limitations.

#### 5.2.2 Tax assessment basis

The taxable income is determined by applying increases and reductions to the profit in the accounts, according to criteria laid down for tax purposes.

Tax losses may be carried over for the following five years, except for losses made in the first three years, which may be carried over without any time restrictions. Specific anti-abuse rules are laid down.

#### 5.2.3 Controlled Foreign Company (CFC)

The income produced by a business, company or other institution, resident or situated in States with a preferential tax system, controlled directly or indirectly by a resident business, is attributed directly to the resident person, in proportion to the participation held. The inland revenue has approved a specific list of countries with a preferential tax system.

This rule also applies if the subsidiary has a permanent establishment in one of the aforesaid countries.

The CFC Rules do not apply in the event of a positive response given by the inland revenue, following a preliminary request (questioning), intended to prove the existence of specific conditions.

#### 5.2.4 International ruling

Businesses with international activities may implement a suitable international standard ruling procedure, mainly with regard to the system of transfer prices, interest, dividends and royalties, in order to reach an agreement with the inland revenue, valid for three tax periods, without prejudice to any changes in the de facto and de jure circumstances resulting from the agreement signed.

#### 5.2.5 International agreements

Italy has arranged over 70 international treaties to avoid the double taxation of income produced in different States.

#### 5.2.6 Dividends

Dividends paid by Italian and foreign companies are taxable at a rate of 5%; dividends from countries benefiting from a preferential tax system remain excluded. Dividends distributed within companies in a group opting for tax consolidation are completely exempt from taxation.

#### 5.2.7 "Participation exemption"

Capital gains made on the transfer of company holdings, under certain conditions, are exempt from taxation.

Any capital losses are not deductible.

The conditions laid down by law are as follows:

- a. uninterrupted holding as from the first day of the twelfth month preceding that of transfer; holdings acquired more recently will be deemed to be transferred first (LIFO);
- b. classification of holdings as investments as from the first balance sheet closed during the period of ownership;
- c. tax residence of the subsidiary in a State or territory other than those with a preferential tax system;
- d. exercise by the subsidiary of actual commercial activities; "immovable property" companies are excluded.

The requirements set out in letters c) and d)

must exist from commencement of the tax period prior to realization.

#### 5.2.8 Thin capitalization

There is a limit to the deductibility of debit interest relating to funding supplied or guaranteed by a qualified shareholder or by its related parties (subsidiaries, etc.), if the indebtedness exceeds four times the portion of net worth held by that shareholder or the relevant related parties.

The Thin Capitalization Rule does not apply to companies whose volume of income is less than 5,164,568.99 euros, except for companies solely or predominantly conducting activities involving the acquisition of holdings, in which case it will apply.

#### 5.2.9 Pro-rata non-deductibility of financial charges

This is a new system designed to reduce the deductibility of interest payable related to the holding of exemption for investments. If, at the end of the tax period, the book value of investments with the characteristics of "participation exemption" exceeds the net book worth of the holding institution, the interest payable remaining after application of the provisions on thin capitalization is partially or totally non-deductible.

Holdings in companies opting for the following will not contribute towards determining pro-rata non-deductibility:

- National or global consolidation with the participant;
- Taxation transparency.

#### 5.2.10 Tax transparency option

The tax transparency system is a system in which the company's taxable income is not taxed in respect of the company itself, but attributed to each shareholder, irrespective of its actual distribution, in proportion to their share in the profits.

The system is optional and the option has to be exercised by all the shareholders.

The requirements for exercising the option are as follows:

- The shareholders must all be companies with share capital, cooperative societies or mutual insurance societies resident in State territory;
- Each shareholder must hold a percentage of voting rights at the general meeting and profit-sharing of not less than 10% and not more than 50%.

These requirements must exist from the first day of the tax period of the subsidiary in which the option is exercised and remain uninterrupted until the end of the option period.

The option period is a three-year period.

Under certain conditions, this system may also be opted for if one or more shareholders are not resident.

In the event of the distribution of dividends, consisting of profits acquired during the periods included in the period of validity of the option, dividends will not be taxed.

This system is also applicable to S.r.l. or cooperatives, provided that:

- All the shareholders are natural persons only, numbering not more than ten for an S.r.l., or 20 for cooperative societies;
- The subsidiary has a volume of income not exceeding 5,164,568.99 euros;
- The company does not have participations with the participation exemption requirements.

#### 5.2.11 National and world tax consolidation

Companies belonging to the same group may opt for the consolidation of their company income.

##### National tax consolidation

National tax consolidation is an optional system arranged for a three-year period, to which company groups may have access. To exercise the option, the law provides for the controlling company to participate directly or indirectly in an amount exceeding 50% of the share capital and profits of the subsidiary for the year.

The system consists of the consolidation of the taxable income, calculated separately by

each company, which is totalled algebraically, irrespective of the percentages of participation of the different companies. The advantages can be summarized as follows:

- Possibility of offsetting positive and negative taxable income;
- Deductibility of interest payable otherwise non-deductible owing to the effect of the capital pro-rata non-deductibility;
- Total exemption of dividends distributed by companies belonging to the "tax group".

The option is exercised by forwarding suitable notification to the inland revenue.

Companies belonging to the group and using reductions in the rate of IRES may not exercise the option.

The following requirements must also be met:

- Residence in the State of all companies participating in the "fiscal unit";
- Identity of tax period;
- Election of domicile by each subsidiary with the controlling company.

##### World tax consolidation

World tax consolidation is an optional system with a five-year period, based on which a controlling company resident in Italy may consolidate the income made by all non-resident subsidiaries proportionately, for which the control requirement exists as defined by the law based on the percentage of participation held in the subsidiaries.

The following requirements must be met:

- Residence of the controlling company in Italy;
- Identity of tax period, unless not permitted by foreign legislation;
- Inspection of the balance sheets of the controlling and subsidiary companies;
- Compulsory consolidation of all foreign subsidiary companies;
- Certification by non-resident subsidiaries of their consent to the audit of the balance sheet and undertaking to provide any collaboration required to establish the tax

assessment basis and to comply with the requests of the inland revenue.

A suitable appeal should be made to the inland revenue to check the existence of the requirements needed for valid exercise of the option.

### 5.3 Personal income tax (IRPEF)

This tax is personal and progressive. The requirement for this tax, which will be reformed and renamed IRE (income tax), is the possession of income, in cash or in kind, falling into one of the categories laid down by law.

The tax period corresponds to the solar year.

#### Persons liable for tax

The following persons are liable for the tax:

- Natural persons resident in the State territory for all income owned;
- Natural persons not resident in the State territory solely for income produced in the Italian State.

Residents in Italy are deemed to comprise natural persons who, for most of the tax period, meet at least one of the following requirements:

- They are registered in the registers of the population resident in the State;
- They are domiciled in the State (domicile is deemed to mean the principal office for business and interests, including moral and company interests);
- They are resident in the State (normal residence).

#### Tax assessment basis

Tax is applied to the overall income, i.e. the sum of the income of each category, less any losses deriving from the practice of arts or professions and/or commercial businesses. The categories contributing towards forming the overall income are as follows:

- *Land income*, relating to land and buildings situated in the Italian territory;

- *Capital income*, with no specific definition but listed by the legislator and relating to income from the use of cash or other property
- *Income from employment*;
- *Income from self-employed work*;
- *Company income*;
- *Sundry income*, not acquired from the exercise of business, arts or professions.

#### Establishment of overall income and calculation of tax

Once the gross overall income has been determined, any deductions laid down by law are applied.

The gross tax is calculated by applying the increasing rates by income increments to the net overall income.

The rates currently in force (year 2004) are as follows:

| Income increments         | Rates |
|---------------------------|-------|
| Up to € 15,000            | 23%   |
| From € 15,000 to € 29,000 | 29%   |
| From € 29,000 to € 32,600 | 31%   |
| From € 32,600 to € 70,000 | 39%   |
| Over € 70,000             | 45%   |

The rates will probably be reduced to four (23%, 33%, 39% and 43%); the reform should take place as from 1 January 2005.

Tax deductions are provided on the tax calculated, generally equal to 19% of the charge borne.

#### Regional and communal IRPEF surcharges

In addition to the tax calculated, two additional payments have to be made to the local authorities (Region and Municipality) in which the taxpayer is resident:

- A regional surcharge whose rate, decided annually by the relevant Region, falls between a minimum of 0.9% and a maximum of 1.4%;
- A municipal surcharge composed of a first rate, equal throughout the national territory, fixed annually by the State, and a second rate, established by the individual Commune at a rate not exceeding 0.20% per annum.

### 5.4 Tax on income of non-residents

Non-residents are subject to tax on income produced in the Italian State.

The law expressly identifies cases in which the income owned by non-residents is considered to be produced in the State territory.

Any contrary provisions contained in the agreements arranged by Italy with third countries to avoid double taxation prevail over the internal regulations.

In some cases, the international agreements to avoid double taxation limit the amount of taxes payable by non-residents for income considered to be produced in Italy.

#### Natural persons

Two different systems of taxation apply to non-resident persons, depending on the type of income:

- Ordinary and separate taxation: the tax deduction is made by applying the rules laid down for residents, apart from a few deductions
- Taxation by way of tax: the tax deduction is made by applying a withholding at source.

#### Companies and institutions

The overall income made by non-resident companies and institutions consists solely of income produced in the territory of the Italian State.

Non-resident commercial companies and institutions are divided into:

- Those with no permanent establishment in the State territory;
- Those with a permanent establishment in the State territory.

For the former, the income produced in Italy is identifiable with those same criteria of territoriality laid down for natural persons.

For the latter, the overall income consists of the company income shown on the profit and loss account to which the tax variations laid down for resident commercial companies are applied.

Under certain conditions, it is assumed that income produced in Italy by the parent company contributes to the income of the permanent establishment.

### 5.5 Regional tax on production activities (IRAP)

The regional tax on production activities (IRAP) is a local tax collected by the Region in whose territory the production activities liable for tax are conducted.

If taxpayers conduct their activities in establishments and offices situated in the territory of several Regions, the distribution of the tax assessment basis, and therefore the relevant tax, among the latter is effected in proportion to the cost of the employees working in the various establishments and offices.

#### 5.5.1 Persons liable for tax

The following persons are liable for tax:

- Natural persons receiving company income;
- Natural persons receiving income from self-employed work;
- Joint-name partnerships, limited partnerships and those equivalent to simple partnerships practising arts and professions and professional associations;
- Agricultural producers receiving agricultural income (individuals or groups), except for those exempt from VAT;
- Persons liable for IRES: resident commercial companies and institutions, and non-resident companies and institutions of any type with or without legal status;
- Public and private non-commercial institutions and public administrations.

The tax does not apply to mutual investment funds, pension funds, European economic interest groups (EEIG) and door-to-door salesmen.

For persons not resident in Italy, the tax only applies when the activities are conducted over a period of at least three months through a permanent establishment.

### 5.5.2 Tax assesment basis and rates

In general, the tax applies to the net production value, which is deemed to mean the difference between positive components, consisting of the income from sales or provision of services, variations in stocks (if positive) and other income and revenue, and the negative components, consisting solely of the cost of purchasing goods and services, the cost of the use of third party goods, variations in stocks (if negative), depreciation, devaluations in credits and fixed assets, amounts set aside for risks and sundry management charges, excluding the costs borne on account of employment, costs deriving from the provision of temporary self-employed work, financial charges and exceptional charges of any kind.

The rate applied, in most cases, is equal to 4.25%, without prejudice to the Regions' right to vary the rate within a limit of 1%.

A fixed deduction is applied, determined by increments with reference to the tax assessment basis, plus a deduction for employees (subject to a check on certain conditions).

Special rules apply to establish the tax assessment basis for specific categories of persons (banks, financial institutions and companies and insurance companies) and, in some cases, different rates.

## 5.6 Value Added Tax

VAT is applied on "value added" in the sense that, by means of a system of reimbursement charges and deductions, tax is payable on the increase in value of goods or services in the individual stages of production and trade, until it reaches the final consumer who bears the full cost of the tax.

### 5.6.1 Operations liable for VAT

VAT substantially affects the following operations:

- Transfers of goods made in Italy in running businesses or in practising arts and professions;

- Provision of services in Italy in running businesses or in practising arts and professions;
- Intra-Community purchases of goods from another EU Member State in running businesses or in practising arts and professions;
- Purchases made by foreign countries of some services carried out in Italy in running businesses or in practising arts and professions;
- Imports of goods from non-EU countries, made by anyone.

For VAT purposes, "Italy" is considered to be the territory of the Italian Republic, excluding the Communes of Livigno, Campione di Italia and the waters of Lake Lugano in Italian territory.

VAT does not apply to all the aforesaid operations conducted in the territory of the Italian State, however.

Some operations are, in fact, "exempt" from tax, while others fall outside the scope of VAT.

Special agreements apply to goods imported into Italy from the Vatican City and from the Republic of San Marino.

### 5.6.2 Rates applicable

The ordinary rate is 20%.

In addition to the ordinary rate, there are two reduced rates, 10% and 4%, and the "zero" rate which applies to some so-called "non-taxable" operations (exports of goods, provision of some international services or services connected with international trade, transfers of goods to another EU Member State, provision of some services connected with transfers of goods to another EU Member State).

### 5.6.3 Measures

#### Registration for VAT purposes

If a person (natural person, partnership, company with share capital or institution) intends to carry out a relevant operation from the Italian VAT point of view in running a business or in practising an art or profession,

it is required to apply for an Italian VAT number before implementing the operation. If the foreign operator has a permanent establishment in Italy, it should apply for an Italian VAT number and take all necessary measures laid down by law as a national person.

If the foreign operator does not have a permanent establishment in Italy, it may alternatively:

- Appoint a tax representative for the purposes of Italian VAT, i.e. a natural person or institution resident in Italy, responsible for fulfilling the obligations and exercising the rights laid down by the regulations on VAT; or
- If resident in one of the EU countries or in one of the non-EU countries with which Italy has arranged reciprocal assistance agreements with regard to indirect taxation, identify itself directly in Italy for VAT purposes, directly fulfilling the obligations and exercising the rights laid down by Italian regulations.

The appointment of the tax representative or direct identification should follow a special procedure and should be notified to the other contracting party before making the first relevant operation for the purposes of Italian VAT.

One special rule is laid down for non-Community operators providing electronic services for private persons within the scope of the European Union.

The VAT position of a person remains valid until the termination of activities.

#### Taxpayers' obligations

Italian regulations lay down very detailed rules on the following:

- Procedure and timing for the issue of invoices
- Content of invoices
- Procedure for the registration of invoices issued and received
- Procedure for the issue of credit and debit notes
- Calculation of VAT payable
- Periods for settlements and payments of VAT

- Procedure for the completion and submission of VAT returns
- Retention and submission of Intrastat lists for operations conducted with other EU persons
- Conditions and procedure for requesting the reimbursement of any VAT credits.

A person with an Italian VAT number is required to submit a VAT return in Italy once a year.

The obligation still remains when no relevant operations for VAT purposes have been conducted during the year.

There are a few special cases that are exempt from this obligation.

### 5.6.4 Other VAT systems

#### Special VAT systems

There are several special VAT systems that apply to anyone operating in particular sectors of activities (e.g. agricultural producers, publishers, travel and tourist agencies, etc.)

#### Customs and VAT warehouses

Special rules establish the conditions to be able to set up and use customs warehouses where products are held without payment of custom duties and VAT until they are removed from the warehouse.

#### Group VAT settlement

Groups of national companies are able to make group VAT payments, offsetting the VAT debits and credits of the various companies.

## 5.7 Municipal tax of property (ICI) and other local taxes

The municipal tax of property (I.C.I.) is a local tax collected by the Communes.

Those liable are owners of buildings, buildable areas or agricultural land situated in the State territory, whatever the intended use, including instrumental property used for company activities.

The tax assessment basis is represented:

- For agricultural buildings and land, by the land income multiplied by coefficients varying based on the intended use of the property
- For buildable areas, by the commercial value of the property at 1 January in the year of taxation.

The owner of the property or holder of the real right of usufruct, use, residence, emphyteusis or taxable area thereof is required to pay tax.

The tax is calculated by applying to the tax assessment basis the rate fixed by each Comune independently, varying between 4 and 7 per mill., which may reach a maximum of 9 per mill. in the case of unused housing. In the case of joint ownership or joint entitlement, the tax has to be paid by each joint owner or holder in relation to his share. Exemptions exist for properties of public institutions intended for institutional use, for religious or cultural activities and for specific land situated in mountainous or hilly regions.

#### Other local taxes

The category of local taxes (taxes collected by the Region, Province or Comune) also include the following:

- The tax on the occupation of public spaces and areas (TOSAP);
- The tax on the disposal of solid urban waste (TARSU);
- The provincial tax on environmental protection and hygiene;
- The regional surcharge on fees for the use of public water;
- The regional tax on State concessions;
- The regional motor vehicle tax.

### **5.8 Registration tax**

Registration tax is applied to documents of any kind (contractual, administrative, legal) and to some verbal contracts.

A distinction is made between documents subject to compulsory registration and documents registered voluntarily.

With regard to the time at which the obligation to register an instrument arises, a distinction is made between documents subject to registration "within a specified

period" and documents subject to registration only "in the event of use".

#### **5.8.1 Persons liable for taxes and periods**

Persons required to apply for registration include the parties to the contract, notaries and public officers and the clerks and employees of the inland revenue.

Those required to pay the tax are those in whose interests the document is registered or the parties in question.

Public officials are also jointly liable, solely for the main tax.

The tax has to be paid at the time of registration.

Except for certain particular types of documents, the registration period is 20 days (30 days for the leasing of immovable property situated in Italy) as from the date of the instrument if drawn up in Italy; for documents drawn up abroad, the period is 60 days.

#### **5.8.2 Rate of tax**

The rates to be applied to the taxable value depend on the nature and object of the document.

If the documents to be subjected to registration relate to transfers of property or provisions of services subject to VAT, registration tax is applied in the fixed sum of € 129.11.

#### **5.8.3 Concessions**

Deeds of purchase, relating to non-luxury residential buildings, drawn up by natural persons setting up residence therein, are subject to the reduced rate of 3%.

Deeds for the purchase of property of historic or artistic interest are subject to the reduced rate of 3%.

The transfer of agricultural land to persons who are agricultural businessmen or

agricultural cooperatives/associations are subject to the reduced rate of 8%.

### **5.9 Inheritance and gift tax**

The tax system for free transfers resulting from inheritance owing to death or between living persons was radically changed by Law No. 383 of 18 October 2001, with the abolition of inheritance and gift tax.

With regard to gifts, however, some documents and other acts of generosity between living persons are still taxable.

The following are no longer taxed (apart from the application of mortgage and land taxes in the event of transfer of immovable property or real property rights)

- Gifts made to the spouse, relatives in direct line and other relatives to the fourth level;
- Gifts made to persons other than the spouse, relatives in direct line and other relatives to the fourth level, for an amount not exceeding € 180,759.91.

Registration tax is applied to the portion exceeding the sum of € 180,759.91.

If the gift includes immovable property, mortgage and land taxes are applied at a rate of 2% and 1%, respectively.

### **5.10 Navigation system**

The navigation system in Italy may have different regulations, with particular reference to the tax system and to the composition of the crew.

In particular, treatments vary depending on whether ships have been entered in the:

- "National" Shipping Register;
- "International" Shipping Register".

#### **5.10.1 Tax system applicable to ships entered in National Register**

Taxation applies according to ordinary rules, with the application of IRES and IRAP.

The National Shipping Register provides for a crew entirely composed of EU resident sailors.

#### **5.10.2 Systems applicable to ships entered in International Register**

The income deriving from the sailing of ships entered in the International Register contributes towards forming up to 20% of the overall income, while it is not liable for IRAP. Capital gains (and capital losses) deriving from the transfer of ships do not fall under the concessionary system, provided the ship has been entered in the International Register for an uninterrupted period of at least three years before the transfer.

Ships designed solely for international commercial traffic can also be registered.

These ships cannot provide coasting services, apart from a few exceptions.

Shipping companies operating ships entered in the International Register are granted a tax credit at a rate corresponding to the personal income tax payable on the employment and self-employed work income paid to the personnel on board.

The contribution thus made to the employer constitutes income exempt for tax purposes.

It is also possible to benefit from exemption from the payment of social security and welfare contributions payable by law.

#### **5.10.3 So-called Tonnage Tax system**

Legislative Decree 344/2003 has introduced a system for the fixed taxation of income deriving from the sailing of ships entered in the International Register and designed for the following activities:

- Passenger transportation
- Goods transportation
- Salvage, towing and other high-seas activities
- Other auxiliary activities and those relating to the foregoing.

The ships must have a tonnage in excess of 100 tonnes.

The system is optional and may be adopted with a binding 10-year option, to be forwarded to the competent tax authorities within three months of commencement of the first year of application of the system.

Companies with share capital resident in Italy may join the fixed system.

If the system ceases to apply, it cannot be renewed until the original 10-year period has passed.

The tax assessment basis for each ship is determined daily (excluding the periods in which the ships are not operational), by applying a predetermined profit to the tonnage.

The figure obtained is then corrected depending on the age of the ships.

Companies opting for the tonnage tax system cannot opt for group taxation or for the tax transparency system.

## 5.11 Tax obligations

During the course of each year, the taxpayer is required to comply with a series of obligations that vary, by type and by date, in relation to the category of persons to which the taxpayer belongs and the tax to which the measure relates.

### 5.11.1 Compliances relating to direct taxation

Both IRPEF and IRES taxpayers have to draw up an annual return to be able to pay the taxes in full for the year to which the return relates and the tax payments on account for the current year at the time the return is drawn up.

The tax payments are divided into two payments on account paid during the course of the tax year, quantified based on the taxes paid during the previous year, and a balance payable in the month of June of the year following the tax year.

The payment is due on 20 June (or 20 July with an increase of 0.40%).

The return must be submitted by the month of July each year or, if sent electronically, by 31 October.

### 5.11.2 IRAP

For IRAP too, an annual return has to be drawn up, to be submitted together with the income return.

The methods and periods of payment coincide with those laid down for direct taxation.

### 5.11.3 VAT

Value Added Tax is settled and paid throughout the year.

In general, settlement is effected on a monthly basis (for some categories of persons, it is possible to opt for quarterly settlement).

If the monthly settlement shows a tax debit, payment must be made by the 16th day of the month following that to which the settlement relates or, in the case of quarterly settlement, by the second month following the end of the quarter.

Any credit will be deducted from the settlement in the following month or quarter. By 27 December, the taxpayer is asked to pay a payment on account for the last settlement for the year.

For VAT too, an annual return has to be drawn up, to be submitted (except in particular cases) together with the direct tax return.

Solely for taxpayers making quarterly settlements, the deadline for the payment of tax for the last quarter is 16 March of the following year.

For this tax, a summary of figures should be sent by February each year.

### 5.11.4 Offsetting

It is possible to offset credits and debits relating to the same tax (traditional offsetting) or credits and debits deriving from different taxes and contributions (horizontal offsetting).

In this case, offsetting may only be effected from the day following that of closure of the period in which the credit was established.

### 5.11.5 ICI

The declaration of immovable property owned in the communal territory, excluding exempt property, must be submitted by the person liable for tax, whether a resident or non-resident, in the previous year.

The first declaration submitted also applies to the following years if no variations have arisen.

The declaration must be submitted in the event of variations resulting from acquisitions for consideration, gifts, transfers of property or other real rights, or a change in the characteristics thereof.

The period generally coincides with that fixed for the submission of income returns.

The tax is paid in two equal annual instalments: the first by 30 June and the second by 20 December.

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