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Corporate Tax

Italy

Di Tanno e Associati

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Law and Practice

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Di Tanno e Associati has a team comprised of 12 partners and 22 associates, with offices in Rome and Milan. Primary practice areas include tax law, tax litigation, tax planning, international taxation, private equity and real estate funds, extraordinary transactions, M&A and restructuring. The firm has established continuous collaborations with major tax consultancy firms in Europe and the USA, and on the major Asian markets. As to the corporate tax sector, Di Tanno e Associati has achieved vast expertise in satisfying all types of requirements: from standard taxation to more significant and complex extraordinary transactions, and from relationships with the tax authorities to tax litigation at the highest levels. The firm also provides legal advice in relation to the establishment and support of equity and real estate investment funds, and the provision of regulatory assistance to fund managers.

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1. Types of Business Entities Commonly Used, Their Residence and Their Basic Tax Treatment

1.1 Corporate Structures and Tax Treatment

Business in Italy is commonly carried out through corporate entities. The corporate veil entails that a shareholder's personal liability is limited to the value of the shares or quotas held in the company's capital.

Corporate entities may be incorporated in the following forms:

- società per azioni (SpA) – joint-stock company, commonly used for medium- and large-sized businesses;
- società a responsabilità limitata (Srl) – limited liability company, normally used for small- and medium-sized businesses; and
- società in accomandita per azioni (Sapa) – company limited by shares, rarely adopted in business practice.

Corporate entities are liable to both corporate income tax (IRES) and regional tax on business activities (IRAP) as separate legal entities.

Provided that certain requirements are met, an optional regime is available according to which corporate entities may opt to be treated as flow-through entities.

1.2 Transparent Entities

The following partnerships are commonly used where partners wish to take part in business activities directly:

- società in nome collettivo (Snc) – general partnership, in which all partners are jointly and severally liable for the partnership's obligations; and
- società in accomandita semplice (Sas) – limited partnership, which entails two different categories of partners (general partners and limited partners) having different degrees of responsibility.

Partnerships are tax-transparent. They are not liable to IRES, although they are liable to IRAP. The taxable income of partnerships is determined at the level of the entity, and is then allocated and taxed directly in the hands of the partners, regardless of the actual receipt and proportionally to their share in the partnership's profits.

Undertakings for collective investment (OICRs) are commonly adopted in the private equity and venture capital sectors as well as in the real estate industry. They can take the form of investment funds or società di investimento a capitale fisso (SICAF), among others, and – if they are established in Italy – are in principle liable to IRES. However, provided that certain regulatory requirements are met, OICRs are exempt from IRES and IRAP (the latter is applicable to SICAFs on a restricted tax base). The rationale of such exemption is to avoid double taxation by removing one layer of taxation (ie, at the level of the OICR). Hence, the proceeds paid out by these entities are taxed in the hands of the investors upon distribution, unless a special exemption regime applies.

1.3 Determining Residence

An entity is deemed to be resident in Italy for corporate income tax purposes if, during most of the year (at least 183 days), either its legal seat or place of effective administration is in Italy, or the place where its main and substantial activity is carried on is situated within the territory of Italy. Only one of these requirements must be met in order for the entity to be deemed resident.

Non-resident entities which control Italian-resident entities are deemed to have their tax residence in Italy (on the basis of a rebuttable presumption) if they are, alternatively:

- directly or indirectly controlled by Italian tax-resident persons (companies or individuals); or
- administered by a board of directors composed mainly of Italian-residents.

Entities which invest mainly in Italian real estate funds and are directly or indirectly controlled by Italian-resident entities are also deemed to be resident in Italy for tax purposes.

If, on the basis of the rules mentioned above, an entity formally established abroad were considered resident in Italy for tax purposes, it would be liable to IRES and IRAP. If the same entity were also considered resident in the country of its incorporation, it would in principle be subject to double taxation. In order to solve dual-residence conflicts like this, the taxpayer may claim the application of a tax treaty (if applicable) according to which the entity shall be deemed to be resident only in the country in which its place of effective management is situated. Since the concept of 'place of effective management' is substantially similar to the domestic concept of 'place of effective administration', if the entity is deemed to be resident in Italy on the basis of the latter criterion, then the conflict would likely be solved in the sense that the entity would be deemed to be resident in Italy under the treaty. Moreover, as mentioned, Italy has noted that in determining an entity's residence, the location of its main and substantial activity also has to be taken into account and, therefore, under such a criterion the dual-residence conflict would also in principle be solved in favour of Italy. In the latter case, the other contracting State may not agree with the Italian view and therefore there may still be double taxation. It is worth noting that the 2017 OECD Model Convention deals with the dual residence issue by means of a mutual agreement procedure.

1.4 Tax Rates

Both Italian individuals and Italian corporations are taxed on the basis of their worldwide income.

Corporations are subject to IRES at a rate of 24% on their worldwide income, but they may elect to exempt income derived from foreign permanent establishments (PEs). Due to the recent reduction of the IRES ordinary rate from 27.5% to 24%, a surcharge of 3.5% is charged to banks and other financial institutions in order to keep the total tax base unchanged (at 27.5%), thus avoiding the need to account for the write-downs of the deferred tax assets and the consequent impact on the regulatory capital.

Partnerships' income is included in the partners' income tax return and subject to individual income tax (IRPEF) at the ordinary rates (net of tax deductions), ranging from 23% to 43%.

According to the 2019 draft Budget Law (which at the time of writing was due to be approved before 31 December 2018), under specific conditions reduced tax rates will apply with reference to the reinvestment of profits in the business that the taxpayer carries out.

In addition, IRAP applies at a rate from 3.9% to 5.9%, depending on the business sectors.

2. Key General Features of the Tax Regime Applicable to Incorporated Businesses

2.1 Calculation for Taxable Profits

Italian corporate entities are subject to IRES on an annual basis. Their tax year and the accounting year (as determined by the law or the articles of association) overlap. As a general rule, the taxable base is the company's worldwide income (ie, the results of the profit and loss account, with certain adjustments). All income derived by corporate entities that carry on commercial activities is considered business income and is liable to IRES. For IAS/IFRS-adopters, the criteria applied in the financial statement for the qualification, timing accrual and classification of items of income and expenses are also relevant, with some exceptions, for corporate income tax purposes (so-called 'principle of derivation of corporate taxable income from the statutory financial statements').

Recently, many Italian generally accepted accounting principles (GAAPs) have been partially amended in order to implement the 'substance over form principle' and align the philosophy of the domestic accounting rules with IAS/IFRS; this means that the transactions are accounted not only in consideration of their legal nature, but also and above all in consideration of their intrinsic substantial nature. Hence, the 'principle of derivation' has been extended to companies that draft their financial statements according to the Italian GAAPs.

Business income is generally determined on an accrual basis, except for certain specific items of income (eg, dividends and directors' fees).

Capital gains and losses deriving from the disposal of capital assets are included in the taxable income according to special rules. Special rules also apply for the taxation of dividends.

Income derived from real estate assets that are not used to carry on the business activity (or which do not constitute the goods produced or exchanged by the company) is considered business income, but is determined as the greater of a figurative cadastral income or the rental income reduced by up to a maximum of 15%.

Depreciation of tangible assets is determined by applying to the cost of the assets' specific coefficients, determined by a Ministerial Decree, and reduced by half for the first tax year. Land is not depreciable, whilst intangible assets (eg, goodwill that has been acquired for consideration and recorded in the balance sheet) may be depreciated by up to 1/18 per fiscal year.

For certain tangible and intangible assets purchased before 30 June 2019 and used in the course of business activity, the depreciable tax basis is 140% or 130% of the purchase or production cost (depending on when the asset has been purchased). Moreover, for certain high-tech tangible assets purchased before 31 December 2019, the depreciable tax basis is 250% of the purchase cost. The latter provision (according to the 2019 draft Budget Law that, at the time of writing, was due to be approved before 31 December 2018) might be extended to the hi-tech tangible assets purchased before 31 December 2020 under the condition that before 31 December 2019 the related order has been accepted by the seller and an advance payment has been made. The depreciable tax basis would be in a range from 250% to 150% of the purchase cost.

Costs and expenses other than interest expenses incurred in the tax year may be deducted only if they relate to activities or assets which give rise to taxable revenues.

Resident companies and non-resident companies are also liable to IRAP. Their taxable base is equal to their net production value (ie, the difference between revenues and operating expenses deriving from the profit and loss account of the relevant fiscal period, including the cost for permanent employees).

2.2 Special Incentives for Technology Investments

A patent box regime providing for a partial exemption of the income deriving from intellectual property (IP), both for IRES and IRAP purposes, is available to taxpayers (individuals, companies and other entities) carrying out a business activity, and to PEs of non-resident entities which are resident in a country that has a tax treaty in force with Italy allowing an effective exchange of information. In this case, the intangibles must be attributed to the PE.

Under such a preferential tax regime, which is irrevocable for five tax years, 50% of income deriving from the direct use or licensing of intellectual works, copyrighted software, patents, know-how, designs, models, plans, secret formulas or processes related to the industrial, commercial or scientific sectors is excluded from the taxable base of the year for IRES and IRAP purposes. In the case of direct use, the partial exclusion from taxation is subject to a mandatory advance ruling aimed at setting the suitable methods and criteria of calculation of the relevant IP income with the Italian Tax Authority (if the IP are licensed out, the ruling is discretionary). Trade marks have been excluded from the regime as of the 2017 tax year.

Eligibility for the patent box regime requires that taxpayers perform R&D activities, including through research contracts agreed with non-related companies or with universities or equivalent entities. The relevant R&D activities include basic research, applied research, design and creation of software.

If the IP is licensed out, the income partially exempted consists of the income deriving from the right to use the IP, net of the directly and indirectly related costs; in the case of direct use, it consists of the economic contribution of the IP to the global income. The income eligible for the exemption is determined by multiplying the relevant IP income by the so-called 'nexus ratio'. The relevant IP income is calculated differently depending on its sources (direct inward use or licence). The nexus ratio is determined as a ratio between all the direct and indirect R&D costs borne by the company in order to maintain, develop or enhance the relevant IP asset, and the overall cost of production or acquisition of the relevant IP asset.

All expenses related to basic research, applied research, fundamental or industrial research and experimental development are eligible for the 2018 R&D tax credit. Under this scheme, a tax credit is granted equal to 50% (25% according to the 2019 draft Budget Law that was due to be approved before 31 December 2018) of the qualifying expenses incurred over the yearly average of such qualifying R&D expenditure that the enterprise incurred in the three fiscal years preceding the fiscal year as at 31 December 2015 (ie, for the years 2012-2014 for enterprises that adopt the calendar year), within a limit of EUR20 million (EUR10 million according to the 2019 draft Budget Law) per year. The expenses which are eligible for such tax relief are those which are incurred for highly qualified and technical personnel, research contracts with universities, research institutions, companies, start-ups and innovative SMEs, depreciation rates of laboratory instruments and equipment, and technical and industrial skills. The tax credit can be offset against taxes and social security contributions due for the fiscal year following the year in which the qualifying R&D expenses are incurred.

2.3 Other Special Incentives

In order to boost the capitalisation of Italian enterprises, a special allowance for corporate equity (ACE) is also granted, under certain conditions, to companies, commercial entities and PEs of non-resident entities liable to IRES. This allowance consists of a yearly deduction from the corporate taxable income of the notional yield of the new equity (hereinafter the term 'ACE' will be used to refer to this notional yield). The ACE is equal to the increase of the net equity compared to its value at 31 December 2010, multiplied by a fixed rate (4.75% for 2016; 1.6% for 2017; and 1.5% from 2018 onwards). This increase (hereinafter the 'ACE base') is capped at the net equity as resulting from the financial statements of the relevant year.

Any ACE exceeding the corporate net taxable income of the year (hereinafter the 'ACE surplus') may be carried forward in the following years, without any restriction on time or amount. Alternatively, the ACE surplus may be converted into a tax credit, calculated by applying the ordinary corporate income tax rate to the ACE surplus. This tax credit may only be used to offset IRAP, in five annual instalments of equal amount.

If a tax consolidation is in place, the ACE surplus of the consolidated companies must be transferred to the fiscal unit and used as a deduction from the consolidated income.

Special anti-avoidance rules are in force, which aim at preventing duplications of the ACE benefit, especially in corporate groups. To avoid any possible dispute, the taxpayer may file a tax ruling with the Italian tax authorities to demonstrate that the relevant net equity increase has not duplicated the ACE benefit in any manner.

Companies investing in innovative start-up companies (ie, non-listed companies that meet certain requirements) may deduct 30% of the invested amount from their taxable income. The maximum tax deduction is set at EUR540,000 each year. Among the relevant criteria, the incentive shall keep the equity participation in the innovative start-up company for at least three consecutive tax years.

According to the draft 2019 Italian Budget Law, the ACE regime will be repealed as of 2019. The deductibility of ACE surplus at 31 December 2018 as well as the conversion into a tax credit for IRAP purposes remain unaffected.

2.4 Basic Rules on Loss Relief

Tax losses may only be carried forward. For newly incorporated companies that have natural tax losses, the carrying forward of losses relating to the first three tax periods is unlimited. Losses incurred as of the fourth tax period (measured from the year of incorporation) can be fully carried forward, without time limits, and may offset up to 80% of the taxable income of each tax period.

If a company suffers losses in at least four out of five consecutive tax years, it may qualify as a dormant company that is subject to special rules on losses carried forward, provided that certain conditions are met.

2.5 Imposed Limits on Deduction of Interest

Italian-resident companies, as well as Italian PEs of non-resident entities, may deduct interest expenses up to the amount of interest income accrued in the same tax year and, for the surplus, within 30% of the ROL derived from the main activity carried out ('gross operating income', which is close to the EBITDA).

Interest expenses exceeding the aforementioned interest barrier rule may be carried forward without time limitation and can be deducted in the following fiscal years to the extent that the interest expenses (exceeding interest income) accrued in the following years are below the 30%-EBITDA threshold. Moreover, if 30% of EBITDA in a given tax year is greater than the interest expenses of the same tax period, such EBITDA surplus may be carried forward to increase the EBITDA of subsequent tax periods.

The interest expenses incurred by insurance companies and some other financial companies are not subject to the previous limitation and are deductible for 96% of their amount. Carrying these expenses forward is not allowed.

In the case of a tax consolidation, any interest expense surplus (accrued in the course of the tax consolidation) may be used to offset the taxable income of the consolidated group to the extent that the other companies within the tax group have an EBITDA surplus.

Certain amendments are envisaged upon the last draft Legislative Decree for the conversion of the Anti-Tax Avoidance Directive (ATAD), which was definitely approved by the Italian government on 28 November 2018 and was due to be definitively issued before 31 December 2018. Notably, the EBITDA surplus carry-forward should be subject to a five-year time limitation and the interest income carry-forward should be allowed.

2.6 Basic Rules on Consolidated Tax Grouping

Tax consolidation is available (on option) for domestic groups.

A subsidiary may jointly opt for tax consolidation with the parent company if the latter holds (directly or indirectly) the majority of the voting rights and more than 50% of the subsidiary's share capital, and is entitled (directly or indirectly) to more than 50% of the profits of the subsidiary. A non-resident company may opt for the consolidation regime as a controlling company, provided that it is resident in a State allowing an adequate exchange of information with Italy and exercises a business activity in Italy through a PE. EU and EEA companies not having a PE in Italy may opt for the domestic tax consolidation regime by indicating a resident company as the consolidating company. Italian PEs of subsidiaries that are resident in an EU or EEA white-listed country may be included in the consolidation.

Under the domestic tax consolidation regime, the consolidated income is determined as the algebraic sum of the net taxable income of each consolidated company. The (entire) income of the subsidiaries is included in the consolidated income base, regardless of the percentage of participation of the controlling company.

This option can be made use of only if the parent company and the subsidiaries have the same accounting year. It is irrevocable for three tax years and is deemed to be renewed at the end of the three-year period, unless expressly revoked. Tax consolidation is not available for IRAP purposes.

Resident companies (listed on a regulated market or controlled by the government, a governmental entity or resident individuals who do not directly or indirectly control other resident or non-resident companies) can also opt for the worldwide tax consolidation regime, thus determining a single tax base with all their non-resident controlled companies. Income of non-resident subsidiaries is allocated to the parent company in proportion to the percentage of participation in the profits of each foreign subsidiary. This election is irrevocable for a five-year period.

In the absence of tax consolidation, tax losses would be exclusively utilised on a separate basis by the loss-making company.

2.7 Capital Gains Taxation

As a general rule, capital gains are included in taxable income; special computation rules apply. Write-downs of capital assets do not give rise to deductible capital losses. Capital gains are taxed in the tax period in which they are realised or, if the assets have been held for three years, across five tax years.

Capital gains on the disposal of shareholdings in resident and non-resident companies are only subject to IRES for 5% of their amount, provided that the following conditions are met (under the so-called participation exemption regime or 'PEX'):

- there is a 12-month holding period prior to the sale (the LIFO principle applies to this);
- the shareholding is classified as financial fixed assets in the financial statements of the first tax period of ownership;
- the participated company is resident in a State or territory other than those having a privileged tax regime; and
- the participated company carries out a business activity. This requirement is always verified for listed companies, while it is excluded (with no rebuttable presumption) with regard to shareholdings in real estate companies whose real estate assets are neither traded as the company's main business nor used in the conduct of the business.

The two latter requirements shall be met (without interruption) as of the last three tax years before the disposal.

Certain amendments are envisaged upon the ATAD Decree. Notably, residence of the participated company, in a State or territory other than those having a privileged tax regime shall be met, without interruption, as of the first tax year of participation. However, in case of no intra-group disposal of shareholdings held for more than five tax periods, it should be sufficient that this condition was met, uninterruptedly, for the five tax periods prior to the disposal.

See **6.3 Taxation on Dividends from Foreign Subsidiaries** for the definition of black-listed jurisdiction and the potential amendments which may arise in that respect from the ATAD Decree.

For holding companies, a look-through approach applies. Accordingly, the holding company meets the PEX requirements if they are satisfied at the level of the subsidiaries representing the greater part of the holding company's asset value.

2.8 Other Taxes Payable by an Incorporated Business

Value added tax applies to entrepreneurs, artists and professionals at a rate of 22%, provided that certain requirements are met. A VAT group regime has recently been introduced.

The financial transaction tax applies to transfers of shares and other financial instruments issued by companies with a registered office in Italy, and it is payable by the transferee. The taxable base is the net daily balance of the transactions calculated on the same instrument and executed by the same person, or the consideration paid. The standard rate is 0.20% for shares traded 'over the counter', reduced by half if the transfers take place on EU or EEA-regulated markets and multilateral trading systems. A number of exemptions are provided for by the law.

2.9 Incorporated Businesses and Notable Taxes

Registration, mortgage and cadastral taxes are levied on a number of deeds at a fixed amount (EUR200, in general) or at percentage rates varying in consideration of the agreement executed and according to the tariff established by law.

Financing agreements are VAT-exempt and, if voluntarily registered or executed/authenticated by a notary, subject to registration tax at a fixed amount (EUR200); if the loan is guaranteed by a mortgage, a 2% mortgage tax (and, in some cases, a 0.5% registration tax) is due. However, upon election of the lender, a special regime applies to financing transactions with a maturity of more than 18 months that have been executed in Italy and granted by 'qualified' lenders (basically banks and other financial entities). According to this regime, all deeds, documents, agreements and formalities relating to the financing transaction (including any guarantee released and any assignment of receivables) are subject to a substitute tax at a rate of 0.25% in place of any registration tax, stamp duty, mortgage and land tax and taxes on government concessions.

A municipal real estate tax (IMU) is charged on the possession of immovable properties located in Italy. The taxable base is the cadastral value of the property, increased by 5% and then multiplied by a coefficient that varies from 55 (for business properties) to 160 (for residential properties) depending on the type of property. The rate of 0.76% is applied but each municipality has the right to increase or decrease the rate up to 0.3% (the maximum rate being 1.06%).

3. Division of Tax Base Between Corporations and Non-Corporate Businesses

3.1 Closely Held Local Businesses

Closely held local businesses mostly operate in corporate form. Due to its flexibility, the limited liability company form is the most used. Partnerships are also widely used, especially for small businesses.

3.2 Individual Rates and Corporate Rates

Currently, none of the Italian tax rules prevents individual professionals from earning income at corporate rates. On the contrary, individual professionals may set up corporate entities (so-called 'società tra professionisti' or STPs) to carry out their professional activity, with the professional income being taxed at the corporate income tax rate (which is generally lower than individual income tax rates). A public tax ruling recently endorsed the fact that professional income produced by a STP constitutes business income.

In some cases, however, the Italian tax authorities have claimed the attribution of the income to a taxpayer different from the formal owner. This is done by invoking the application of an Italian tax law provision that aims to counteract sham transactions in which profits appear to be owned by a company, but are actually owned by the shareholders. The interpretation of this rule is debated by scholars.

3.3 Accumulating Earnings for Investment Purposes

There are no specific rules preventing closely held corporations from accumulating earnings for investment purposes. Nevertheless, according to a part of the Italian tax courts, should a higher income be assessed in the hands of a company with a limited number of shareholders, a corresponding dividend distribution could be presumptively assessed in the hands of the same shareholders.

3.4 Sales of Shares by Individuals in Closely Held Corporations

As a result of a recent update of the relevant rules, dividends and capital gains derived from substantial and non-substantial shareholdings are subject to a withholding tax at a flat rate of 26%. 'Substantial' shareholdings here are defined as those representing more than 20% of the voting rights (2% for listed companies) or more than 25% of the share capital (5% for listed companies).

This regime will apply to capital gains realised from 1 January 2019 and dividends paid out of profits realised from 1 January 2018 deriving from shares not connected to a business activity. Profits realised before 31 December 2017 will be subject to the new regime if distributed after 31 December 2022.

Dividends received by resident individuals from foreign companies that are located in low-tax jurisdictions are generally subject to tax on their full amount.

Year by year, Italian tax law usually extends the possibility for non-business taxpayers to step-up the tax value of participations held in non-listed companies upon the payment of an 8% substitute tax on the value resulting from an expert's appraisal.

Capital gains and dividends from non-substantial shareholdings included in a qualified long-term investment plan (PIR) are tax-exempt.

3.5 Sales of Shares by Individuals in Publicly Traded Corporations

The individuals' tax regime provided for dividends from and capital gains on the sale of the shares held in closely held corporations (described in **3.4 Sales of Shares in Closely Held Corporations**, above)is also applicable in relation to shareholdings in publicly traded corporations.

4. Key Features of Taxation of Inbound Investments

4.1 Withholding Taxes

Dividends derived by non-resident shareholders from an Italian company are subject to a 26% final withholding tax. Non-resident recipients who are able to prove that a similar final tax has already been levied on the same dividends abroad are entitled to claim a partial refund up to 11/26 of the withholding tax paid in Italy.

According to the domestic implementation of the EU Parent-Subsidiary Directive, a withholding tax exemption applies to dividends paid to a qualifying EU parent company that is not resident in Italy, and which has held not less than 10% of its subsidiary's share capital for an uninterrupted period of one year before such payments have been made.

If the Directive is not applicable, a 1.2% withholding tax is levied on dividends paid to companies which are tax-resident in an EU or EEA member state allowing an adequate exchange of information with Italy and subject to corporate income taxes in their country of residence.

A 26% withholding tax is also levied on interest paid to non-resident persons. Interest derived from government bonds and similar instruments is subject to a lower, 12.5% withholding tax rate.

Exemption is granted in relation to cross-border interest payments relating to medium or long-term loans if the borrower is an enterprise (eg, an Italian commercial partnership, a resident company or the Italian PE of a non-resident enterprise) and the lender is a bank or insurance company located in any EU member state or an institutional investor, whether or not subject to tax, established and subject to regulatory supervision in a white-listed jurisdiction. The exemption also applies to interest and similar proceeds on bonds, bond-like securities and commercial papers issued by public entities, Italian banks or listed companies paid to:

- a resident of a white-list jurisdiction;
- entities or international organisations established due to international treaties enforced in Italy;
- white-listed institutional investors, whether or not subject to tax; and
- foreign central banks or entities that invest in the public reserve of their Country.

A withholding tax exemption applies on interest deriving from bond, bond-like security and commercial paper, and paid to:

- undertakings for collective investment, set up in Italy or in another EU Member State, if their units are entirely held by qualified investors and invest more than 50% of

their capital in the aforesaid debt securities and commercial papers; and
- Italian securitisation vehicles, if their notes are entirely held by qualified investors and more than 50% of their assets are the aforementioned debt securities and commercial papers.

As a rule, a 30% final withholding tax is levied on royalties paid to a non-resident taxpayer for the right to use industrial or scientific equipment located in Italy. No withholding tax is levied on payments made to Italian PEs of non-resident companies.

The EU Interest and Royalty Directive provides, if certain conditions are met, for a withholding tax exemption on outbound interest and royalty payments made between associated companies within the EU.

4.2 Primary Tax Treaty Countries
According to the data collected by Reprint, Politecnico di Milano (ICE), the primary tax treaty countries used by foreign investors are France, Germany, the UK, the USA and Switzerland. In our experience, the main tax treaty countries used to make investments in local corporate stock are the UK, Luxembourg and Netherlands.

4.3 Use of Treaty Country Entities by Non-Treaty Country Residents
Italian tax authorities may challenge alleged treaty-shopping arrangements on the basis of the domestic GAAR (that is, Article 10-bis of Law 212/2000). As a result of the Directive 2015/121/EU of 27 January 2015, the domestic GAAR has been explicitly extended to abuses of the EU Parent-Subsidiary Directive, which cannot apply in the case of artificial arrangements.

Abuse of double taxation conventions (DTCs) may also be challenged through the beneficial ownership clause generally provided for in Articles 10 (dividends), 11 (interest) and 12 (royalties) of the DTCs entered into by Italy.

In addition, the Italian tax authorities have challenged EU Directives-shopping and DTCs-shopping in leveraged buyout (LBO) transactions.

4.4 Transfer Pricing Issues
Italian TP regulations are substantially aligned with the OECD standards, while their enforcement by local tax authorities is not always consistent, especially with regard to the choice of the relevant values (median or interquartile range), comparable (internal or external; loss-making entities) and time window of the comparability analysis.

Currently, the burden of proof in transfer pricing cases is under the spotlight. The most recent case law established that the tax authorities must prove the existence of the intragroup transaction and that the price was not at arm's length, while taxpayers opposing the claim must prove that the price was set at market conditions. Moreover, tax authorities may apply a method different from the taxpayer's only by proving its inapplicability. If the taxpayer has prepared and shared the TP documentation (master file and country file) with the tax authorities, no administrative penalties apply in the case of transfer pricing assessments.

4.5 Related Party Limited Risks Distribution Arrangements
The limited risk distributors are normally treated as routine entities as long as the contractual arrangements are fully consistent with the functions that they actually carry out. According to the Italian tax authorities, taxpayers shall not simply label the risk profile of the entity (eg 'limited-risk distributor') in the TP documentation without describing the actual functions performed and assets used.

Insofar as business restructuring is concerned, the Italian tax authorities may tend to characterise the conversion of a fully fledged entity into a limited-risk distributor as a contract termination, and to challenge the need for an arm's-length indemnification in accordance with the OECD standards.

Tax courts have ruled on the importance of the functional analysis in assessing the proper comparable of an Italian independent enterprise acting as a limited-risk distributor.

4.6 Comparing Local Transfer Pricing Rules and/or Enforcement and OECD Standards
Italian transfer pricing rules are substantially consistent with the OECD standards. Misalignments arise from the tax authorities' implementation of, for example, the selection of the pricing method and the setting of the comparable. Although there is no longer a precise hierarchy between the pricing methods, CUP is still to be preferred where applicable. However, the tax authorities very often tend to switch to the TNMM (even where it is not 'suggested' by the OECD). Moreover, the tax authorities often disregard the reference markets chosen by the taxpayer for the comparability analysis, which can give rise to tax litigation on this issue.

5. Key Features of Taxation of Non-Local Corporations

5.1 Compensating Adjustments When Transfer Pricing Claims are Settled
Compensating adjustments are allowed when a transfer pricing claim is settled following the conclusion of a mutual administrative procedure (MAP). However, MAP procedures are very rarely used in practice, because they usually require a long time to be concluded. Moreover, according to a recent legislative amendment, corresponding adjustments

reducing the taxable income (and mitigating the double taxation effect) are also allowed in the following two cases:

- as a result of transfer pricing adjustments deriving from international co-operation activities whose results have been shared between the participant States; and
- upon formal request by the taxpayer to the Italian tax authorities, following a final transfer pricing adjustment made in compliance with the arm's length principle in the foreign State (with which a tax treaty with Italy that provides for an adequate exchange of information is in force).

The majority of DTCs entered into by Italy incorporate a duty to negotiate (ie, to use the best endeavours to find an agreement) but not necessarily to achieve a result. However, for the purposes of the multilateral instrument (MLI) adopted to implement BEPS recommendations, Italy has embraced a mandatory binding arbitration procedure.

5.2 Taxing Differences

In accordance with a principle of non-discrimination also deriving from the case law of the ECJ, IRES and IRAP apply similarly to both local branches constituting PEs and local subsidiaries of non-resident corporations. The Italian PE of a non-resident entity is treated as an independent and autonomous legal entity, according to the so-called functionally separate entity approach. The PE shall be assigned those profits that it would have obtained by performing the same (or similar) functions under the same (or similar) conditions in the event that it operated as a separate company, taking into account the functions performed, the risks assumed and the assets held. The free capital of the PE is determined based on the OECD principles, taking into account the functions performed, the risks assumed and the assets held.

5.3 Capital Gains of Non-Residents

Capital gains realised by non-resident companies on the sale of non-substantial shareholdings (ie, not exceeding 2% of the voting rights or 5% of the stated capital) in Italian-resident companies listed on regulated markets are not regarded as Italian-sourced income and are not taxed in Italy. Gains on the sale of listed bonds and similar listed instruments are not regarded as Italian income either.

Capital gains realised on non-substantial shareholdings in Italian resident companies (ie, participation not exceeding 20% of the voting rights or 25% of the stated capital in the case of non-listed companies) are generally subject to a 26% final substitute tax. Residents of countries which allow an exchange of information with Italy are not taxed on this kind of capital gains.

Capital gains on the sale of substantial shareholdings realised before 1 January 2019 are taxed at the ordinary IRES rate on 58.14% of such gains (49.72% of gains realised before January 2018). From 1 January 2019, the 26% flat rate will also apply to all substantial shareholdings' capital gains. Hence, non-resident companies will be subject to a 26% substitute tax on capital gains realised on substantial and non-substantial shareholdings in resident companies, unless a DTC prevents Italy from taxing the gain.

Under the provision of most of the DTCs entered into by Italy, capital gains arising from the disposal of shares in Italian-resident companies are tax-exempt in Italy and, as such, subject to the exclusive right of taxation of the State of residence of the seller. According to the Italian tax authorities, the treaty protection is granted only on capital gains realised by companies qualifying as genuine and non-artificial structures which are provided with adequate substance (ie, staff, premises, equipment) and do not qualify as flow-through entities.

Italian tax law does not provide for any indirect capital gains tax (ie, any rule according to which the capital gains arising from the disposal of shares of the non-resident holding company owning a local corporation should be deemed to be realised in Italy).

5.4 Change of Control Provisions

The disposal of shares in a holding company located at the top of an interest chain does not trigger any change of control provisions in Italy when a subsidiary (indirectly held) is located here.

The carrying forward of tax losses is not allowed in the case of a transfer of the majority of the voting rights of the company which carries forward the tax losses, or if there is any change of the company's actual business purpose in the tax year of the change of control (or in the two preceding or following tax years). A safe harbour rule applies. This provision does not literally apply in the case of indirect transfer (ie, where the participation in the holding company is sold, notwithstanding the different opinion of some scholars).

5.5 Formulas Used to Determine Income of Foreign-Owned Local Affiliates

There are no formulae used to determine the income of foreign-owned local affiliates selling goods or providing services. In such cases transfer pricing rules apply.

5.6 Deductions for Payments by Local Affiliates

No standard is applied in allowing deductions for payments by local affiliates for management and administrative expenses incurred by non-resident affiliates. The intra-group management agreements are subject to domestic transfer pricing rules, meaning that any intra-group payment shall be determined in compliance with the arm's-length principle.

These expenses are subject to the ordinary tax law provisions regarding costs' deductibility; therefore, as a general rule, they are deductible on an annual accrual basis, to the extent that they are reported in the profit and loss account and relate to the activities or assets of the company which originate taxable revenues.

5.7 Constraints on Related Party Borrowing

Related party borrowing by foreign-owned local affiliates paid to non-resident affiliates must be compliant with the arm's-length principle as provided in the OECD guidelines. No thin capitalisation rule applies (interest deduction is allowed within 30% of the EBITDA).

According to the Italian tax authorities, under certain circumstances, shareholder loans may be re-characterised as equity injections on a case-by-case basis and in the presence of certain factual elements (eg, where the shareholder loan is indirectly financed by the investors, or it is subordinated to external debt financing), with the consequential disallowance of the interest deduction and the re-characterisation of the proceeds as dividends for tax purposes.

6. Key Features of Taxation of Foreign Income of Local Corporations

6.1 Foreign Income of Local Corporations

Local corporations are liable to IRES in Italy according to the worldwide taxation principle. However, international double taxation is avoided/mitigated through a foreign tax credit system, which is granted to both individuals and corporations. The foreign tax credit is recognised when the following conditions are met:

- a foreign income is produced;
- the foreign income contributes to the domestic taxable base; and
- foreign taxes are paid definitively on the same income.

The tax credit may be granted up to the amount of domestic corporate income tax proportionally to the ratio between the foreign-sourced income and the total income taxed in Italy. Excess tax credit can be carried back and forward up to eight years.

Resident companies can irrevocably elect, under certain conditions, for branch exemption (the 'all-in/all-out' principle applies).

6.2 Non-Deductible Local Expenses

As a general principle, costs and other negative items cannot be deducted if, and to the extent that, they relate to business activities or assets from which exempt income arises.

6.3 Taxation on Dividends from Foreign Subsidiaries

Dividends received by resident companies from other resident companies or companies resident in white-listed countries for Italian tax purposes are excluded from IRES for 95% of their amount. 5% is subject to IRES at the ordinary 24% rate.

Dividends directly or indirectly distributed by a company (non-EU/EEA) resident in a black-listed jurisdiction (that is a jurisdiction whose nominal corporate income tax rate, whether it derives from a general or a special tax regime, is lower than 50% of the nominal Italian tax rate) are fully taxable in the hands of the Italian recipient, unless the income has been already taxed in the hands of the Italian recipient under the applicable CFC rules, or the shareholding does not localise income in a tax haven.

As of the 2018 tax year, dividends directly or indirectly distributed by companies resident for tax purposes in jurisdictions having a privileged tax regime are taxable only for 50% (instead of the previous 100%) of their amount in the hands of the Italian recipient, as long as the distributing non-resident company carries out, as its main business purpose, an industrial or commercial activity in the foreign market. If the resident company controls the distributing company, an indirect tax credit is granted for up to 50% of the underlying foreign taxes paid by the distributing company.

Based on the ATAD Decree, in order to determine whether dividends are distributed by a company resident in a black-listed jurisdiction it is necessary to distinguish between (i) controlling shareholdings (ie, a shareholding granting directly or indirectly the majority of voting rights or a qualifying influence in a foreign company's shareholders meeting under Article 2359 of the Italian Civil Code or a profit sharing for more than 50% in a foreign company's profits), in which a black-listed jurisdiction is a jurisdiction whose effective level of taxation is lower than 50% of the Italian one, and (ii) non-controlling shareholdings, in which a black-listed jurisdiction is a jurisdiction whose nominal level of taxation is lower than 50% of that applicable in Italy, also if it is due to local special tax regimes leading to the same result.

Upon ATAD's conversion, dividends may still benefit from a 50% exclusion for IRES purpose (and they may benefit from an underlying foreign tax credit in the case of a controlling shareholding) by proving that an actual business is carried out in the foreign jurisdiction by way of local personnel, equipment, other assets and premises (first exception), or from the standard 95% exclusion for IRES purpose by proving that an ultimate adequate level of taxation was borne by the foreign subsidiary (second exception).

6.4 Use of Intangibles

The use of intangibles developed by resident corporations by non-resident subsidiaries is subject to transfer pricing rules. Hidden transactions related to such assets, and/or transactions not compliant with the arm's-length principle, may be challenged by the Italian tax authorities under the domestic transfer pricing rules.

6.5 Taxation of Income of Non-Local Subsidiaries Under CFC-Type Rules

According to the CFC legislation in force (currently under review in the context of the implementation of ATAD), the income of a controlled foreign entity located in a State with a privileged tax regime is attributed to the controlling resident company, proportionally to the shareholding held, and taxed in Italy. The subsequent distribution of such income is not further taxable in Italy.

The CFC regime also applies to profits of non-resident persons that are not resident in a low-tax jurisdiction, if the profits were earned through a PE situated in a low-tax jurisdiction.

From the 2016 tax year, a jurisdiction is considered as having a privileged tax regime for CFC purposes if the nominal corporate income tax rate is lower than 50% of the nominal Italian tax rate. This rule does not apply to subsidiaries located in EU or EEA member states that have concluded an exchange of information agreement with Italy, to which the CFC regime applies only if:

- the entities are subject to an effective income taxation lower than 50% of that which would have been levied if they were resident in Italy; and
- more than 50% of the foreign entity's gross revenue consists of passive income.

CFC regulation is not applicable if the resident parent company is able to demonstrate that:

- the foreign company predominantly carries out, as its main business, an actual commercial activity in the market of the state or territory in which it is located (first exemption); or
- the shareholding does not have the effect of shifting income in black-listed states (second exemption), ie,more than 75% of the CFC's income was realised in jurisdictions that are not low-tax jurisdictions.

Certain amendments are envisaged upon the ATAD's conversion. Based on the ATAD Decree, all the income of the foreign entity or the PE should be attributed to the Italian resident person as long as (i) the CFC's effective (no longer nominal) tax rate is lower than 50% of the tax rate that would have applied had the CFC been resident in Italy and (ii) more than a third of the CFC's income is passive income.

A safe harbour rule applies whether the CFC carries on a substantial economic activity supported by staff, equipment, assets and premises.

6.6 Rules Related to the Substance of Non-Local Affiliates

Italian tax law and the tax authorities' clarifications do not provide any exhaustive guidance relating to the substance of non-local affiliates.

The Italian tax authorities have provided a strict notion of 'beneficial owner' in the context of the beneficial ownership test, which has traditionally been relevant due to its importance in DTCs. In clarifications given on several occasions (which are, it should be noted, not always consistent), such a requirement has also been examined in light of the 'substance' of the recipient, ie, the adequate presence of premises, staff and equipment relating to the activity carried out.

Besides, according to the guidelines issued by the Italian tax authorities with respect to LBO transactions, treaty protection is granted only on capital gains realised (upon the exit), or dividends received, by intermediate holding companies owned by a foreign investment fund provided that they qualify as genuine and non-artificial structures which are provided with adequate substance (ie, staff, premises and equipment) and do not qualify as flow-through entities. The holding company is considered to have a lack of economic substance if it has at least one of the following characteristics:

- a 'light' organisational structure (eg, staff, premises and equipment are provided by *domiciliataires* pursuant to service management agreements), not having effective business, real consistency and substantial decision-making power (eg, the investment management plan is predetermined and the company is set up as a mere executor of the same); and/or
- a 'conduit' financial structure with regard to the specific transaction.

In such cases, in the absence of material non-tax reasons, the holding company may be disregarded and the tax benefits disallowed. However, should the foreign fund be regarded as a tax transparent entity the investors may under certain conditions claim the application of the DTC in force between Italy and their own state of residence.

6.7 Taxation on Gain on the Sale of Shares in Non-Local Affiliates

Capital gains realised on the sale of shares in non-resident entities are subject to the same tax regime applicable to capital gains realised on the disposal of shares in local corporations (ie,participation exemption applies under certain conditions). Participation exemption does not apply on capital gains on the sale of shares in affiliates resident in black-listed countries (with regard to the amendments to the definition of black-listed jurisdiction provided for by the ATAD Decree **see 6.3 Taxation on Dividends from Foreign Subsidiaries**).

7. Anti-Avoidance

7.1 Overarching Anti-avoidance Provisions

In the 2015 tax year a legal definition of abuse of law was introduced to enhance certainty in tax matters. According to this definition, transactions carried out without any economic substance and, although apparently coherent with tax law, aimed at obtaining undue tax benefits, qualify as 'abuse of law'. Transactions that trigger no significant effects other than tax advantages are considered to be lacking in economic substance; the 'tax benefits' are considered 'undue' if achieved contrary to the rationale of the relevant rules. In the case of transactions that are grounded on valid economic reasons not merely marginal, any abuse of law must be excluded.

Under the new rules, in an abuse of law assessment taxpayers may benefit from certain procedural guarantees and notably a preliminary discussion with the tax authorities before the latter issues any anti-abuse tax assessment. Failure to comply with such requirements by the tax authorities would make the assessment void.

The new rules expressly clarify that the taxpayer is always free to choose between different optional tax regimes or between different transactions leading to different tax burdens. In other words, taxpayers can legitimately pursue tax savings (choosing the less tax-burdensome arrangement) through the exercise of the constitutional principle of the freedom of economic activity and the EU fundamental freedoms (unless the tax benefit is undue, ie, contrary to the rationale of the tax system).

Taxpayers can file a ruling request to the Italian tax authorities in order to verify whether a transaction constitutes an abuse of law.

It is also specified by the law that abusive transactions that are challenged under the new definition of abuse of law do not amount to tax crimes. Ordinary administrative tax penalties apply.

8. Other

8.1 Regular Routine Audit Cycle

As a general rule, Italian tax law does not provide for a regular routine audit cycle, except in the case of large taxpayers, who are systematically verified. The Italian tax authorities may carry out audits of taxpayers identified by selective criteria based on tax-evasion risk indicators (established annually by the Ministry of Economics and Finance).

A number of procedures are available to taxpayers in order to avoid tax assessment and fix their tax burden in co-operation with the Italian tax authorities.

Starting from the 2015 tax year, a new co-operative compliance programme has been provided for by the domestic tax law. This regime is aimed at promoting enhanced co-operation between the Italian tax authorities and taxpayers in order to prevent possible tax litigation. This programme can be accessed by both resident and non-resident entities having an Italian PE with a total turnover exceeding EUR10 billion. Entities granting execution to the opinion of the Italian tax authorities in response to the advance tax ruling on new investments, notwithstanding threshold of turnover, can also access this programme.

The admission to co-operative compliance allows:

- a shorter procedure for tax ruling regarding the application of tax provisions to specific cases;
- the application of half tax penalties in the case of assessment and, in any case, the application of tax penalties not exceeding the minimum provided; and
- refunds of direct and indirect taxes without any bank guarantees.

The advance tax ruling on new investments can be addressed to the Italian tax authorities by both resident and non-resident enterprises that intend to realise long-lasting and relevant investments in Italian territory, in order to identify with certainty the final tax treatment applicable to the business plan proposed (including any reorganisation that has to be carried out to implement the investment plan). The request may refer to any tax aspect of the investment plan and include whether the transaction constitutes abuse of law, the existence of requirements in order not to apply anti-avoidance provisions or the existence of the requirement for the admission to specific tax regime. For the purpose of such ruling, the resources necessary to implement the business plan must be equal to at least EUR30 million and have an impact on employment levels. The Italian tax authorities' answer is binding with no time limitations, unless there is a change in the facts or in the law.

9. BEPS

9.1 Recommended Changes

Although the Italian tax system has been considered to be largely BEPS-compliant, the OECD BEPS project is fostering a high degree of change. Some of the notable BEPS-inspired changes are:

- the country-by-country reporting which stems from BEPS Action 13;

- an amendment to the transfer pricing legislation by replacing the notion of 'normal value' for pricing inter-company transactions with the OECD's 'at arm's length' principle;
- an amendment to the optional patent box regime (see **9.4 Competitive Tax Policy Objective**, below); and
- a new definition of 'permanent establishment' aligned with BEPS Action 7.

On 7 June 2017, Italy signed the OECD Multilateral Convention (MLI), which is still being ratified. Italy adopted the principal purpose test (PPT) to counteract treaty abuse; the anti-fragmentation rule against the artificial avoidance of permanent establishments, as well as a mandatory binding arbitration procedure.

9.2 Government Attitudes

The Italian government has so far followed a twofold approach. From one side, Italy has been on the front line in the BEPS process: the Italian government considers the final OECD BEPS proposals as a goal achieved with its participation, and has a tax system that is (already) largely BEPS-compliant. From the other side, a number of measures has been enacted in order to make the Italian tax framework more attractive for foreign investments (eg, the IP patent box rules, the tax regime to attract HNWIs and the R&D incentives).

This approach, far from being considered as contradictory, aims to create a common playing field with the other EU Member States.

9.3 Profile of International Tax

International tax law has a high level of long-standing public recognition in Italy. In the past few years, both the legislator and the tax authorities have placed stronger emphasis on international tax issues.

The BEPS project has been at the forefront of the public consciousness in Italy from its outset. Counteracting international tax avoidance has become a major political goal in order to claim a fair 'share of the tax pie'. Although the Italian tax system is largely BEPS-compliant, it is predictable that careful attention will be paid to the implementation of the BEPS recommendations.

9.4 Competitive Tax Policy Objective

Italy is really interested in both counteracting aggressive tax planning and boosting foreign investments by preserving a growth-friendly environment.

A clear-cut example of this tension with the BEPS project is the amendment to the domestic patent box regime. Italy originally included trade marks among the assets qualifying for the IP box regime, with the goal of exploiting the benefit with regard to high-value Italian trade marks. As of 2017, an amendment to exclude trade marks has been introduced in order to make the regime fully BEPS-compliant.

9.5 Features of the Competitive Tax System

We do not believe that any features of the Italian tax system are more vulnerable than others from a BEPS perspective. Italy has historically pursued a tax system designed to support inclusive economic growth. Examples of such well-balanced policy are the development (many decades ago) of transfer pricing legislation in line with the OECD standards, the introduction of an anti-mismatch clause since 2004, and the existence of a domestic statutory GAAR.

The BEPS project drew inspiration from the aim to align the economic substance with the legal form of international business models. Italy will be provided with a more effective 'toolbox' in order to tax profits generated by economic value created in the Italian territory.

9.6 Proposals for Dealing with Hybrid Instruments

Since 2004, Italy has had an anti-hybrid mismatch rule with respect to foreign financial instruments.

As an EU Member State, Italy was required to implement ATAD, as modified by the Anti-Tax Avoidance Directive 2 – 'ATAD2') containing certain minimum standards in line with the BEPS recommendations, by 31 December 2018. The provisions of the ATAD Decree aim at neutralising the effects of hybrid mismatches in terms of double deduction (ie, a deduction in two states) as well as deduction without inclusion (ie, income deduction in one state without inclusion in the tax base of the other).

9.7 Territorial Tax Regime

Italy adopts a worldwide tax regime. A territorial tax regime applies vis-a-vis non-resident investors with respect to Italian-sourced income.

From a tax design perspective, the interest deductibility limitation is pursued through a 30% EBITDA-based interest barrier rule for resident companies. Any 'excessive' interest deduction which might arise from inter-company financial transactions is further tackled by:

- the transfer pricing legislation, in accordance with the OECD standards; and
- the possibility for the tax authority, on a case-by-case basis, to re-characterise the inter-company financing in equity. No thin capitalisation rule applies.

The Italian interest barrier rule is largely BEPS-compliant. Hence, the interest deductibility proposals should not dramatically affect cross-border investments. The ATAD Decree (which is BEPS-inspired) provides for some amendments: in particular, the EBITDA surplus carry-forward will be subject to a five-year time limitation and the interest income carry-forward will be allowed.

9.8 CFC Proposals

Italy only applies a territorial tax regime vis-a-vis non-resident investors with respect to Italian-sourced income.

Italy has CFC legislation that is largely in line with the international standards. ATAD includes amendments to the CFC legislation. Based on the ATAD Decree, a transactional approach will be adopted (ie, focusing on the category of income gained by the CFC) as opposed to a jurisdictional approach (according to which the non-distributed income of the CFC arising from non-genuine arrangements is taxed in the state of residence of the foreign holding).

In the case of a sweeper CFC rule that applies to offshore subsidiaries irrespective of the level of substance, we highlight the importance of a safe harbour rule, according to which the resident shareholder may apply for a tax ruling in order to claim the non-application of the presumptive CFC rule which may appear unfair to the offshore subsidiaries.

9.9 Anti-Avoidance Rules

Italy has always adopted a strong stance against aggressive tax planning via conduit arrangements.

The majority of Italy's DTCs do not contain comprehensive provisions on limitation of benefits.

Italy has adopted the PPT by signing the MLI in order to counteract treaty abuse. It is well known that the PPT contains two kinds of tests: first, a 'reasonableness test' (based on all facts and circumstances) concerning the scope of the arrangement(s) put in place by the taxpayer. Then, a 'one of the principal purposes' test according to which the tax authority would be allowed to deny the tax benefit if the latter was one of the purposes (but not the sole purpose) of the arrangement(s).

The wording of the PPT would risk ending up with tax authorities having broader powers to disregard tax structures that, even if they incorporate a tax saving, are actually well grounded from a commercial perspective.

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9.10 Transfer Pricing Changes

Transfer pricing changes will not radically affect the domestic Italian legislation. The Italian tax authorities follow the OECD TP Guidelines in the audit activity, even if some misalignments tend to occur in practice, eg, with regard to the selection of the proper pricing method and setting of the comparable.

The Italian concept of 'normal value' has already been replaced with a specific reference to the arm's-length principle. Economic double taxation caused by transfer pricing adjustments can be mitigated under Italy's income DTCs, which follow Article 9(2) of the OECD model.

Italy has already enlarged the possibilities for mitigating double taxation arising from transfer pricing arrangements by introducing new cases that are eligible for corresponding adjustments.

Income from intellectual property does not represent a particular source of controversy.

9.11 Transparency and Country-by-Country Reporting

Transparency is the leading principle of the modern age in international tax law. Nowadays, it can be said that a tension exists between transparency and tax planning.

Italy has committed to the Common Reporting Standard for automatic exchange of information. Country-by-country reporting has been approved in Italy as of the 2016 financial year, in line with the OECD standards. The risk is showing data that can be easily misinterpreted or abused by a non-specialist audience. Besides, this kind of reporting may pose confidentiality issues by disclosing a set of information from which the business model of MNEs may easily be derived.

In our view, the benefits of country-by-country reporting seem to be uncertain, and the practice appears to be hugely burdensome from a compliance perspective. For the purpose of the reporting, it would be appropriate to describe (in summary) how the taxes paid in each country are calculated in order not to mislead a non-specialist audience.

9.12 Taxation of Digital Economy Businesses

In March 2018, the EC proposed new rules to ensure that digital businesses are taxed in a fair way in the EU. These rules are at the heart of the Italian public debate.

Aside from this, under public pressure Italy has unilaterally introduced, as of 2019, a 3% tax on digital transactions related to the performance of services carried out through electronic means (the 'web tax'). This web tax is due by the buyers of the services on the amount of the consideration paid.

It is hoped that such unilateral initiatives will be definitively dropped in favour of joint initiatives at EU or OECD level. It is worth noting that a trend is growing towards a global formulary apportionment, despite the fact that the 'arm's-ength principle' is still the OECD standard.

9.13 Other General Comments

The compatibility of the implementation of the final BEPS outcomes with EU law shall be assessed in due course. This scrutiny may only be made ex post by the ECJ. EU law aims to preserve the EU's fundamental freedoms, whereas BEPS is targeting all the tax gaps left by the countries in order to avoid an outcome of double deduction or double non-taxation. Hence, we cannot exclude the possibility that some issues may arise in terms of compatibility with EU law.