DE BERTI JACCHIA FRANCHINI FORLANI
STUDIO LEGALE

DOING BUSINESS IN ITALY

2023

AT A GLANCE

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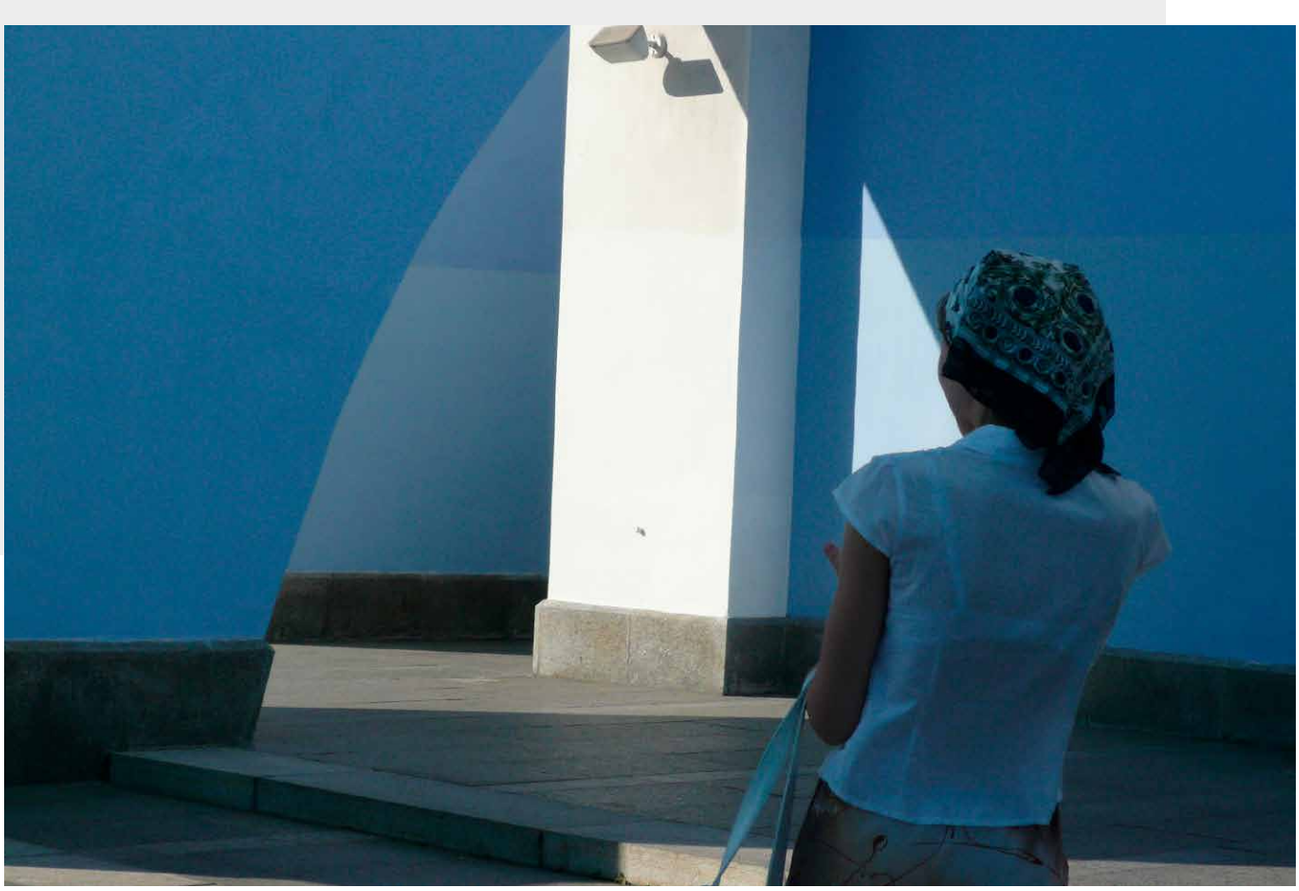
Our Firm traditionally engages in international and European commercial work in both contentious and non-contentious matters.

Our operative seats are our own stand-alone offices.

Our Italian offices are located in Milan and Rome and we have been having for decades fully operative offices in Brussels and Moscow. We all can speak and work fluently in Italian, English and French and frequently use German, Spanish, Swedish, Russian, Polish and Portuguese.



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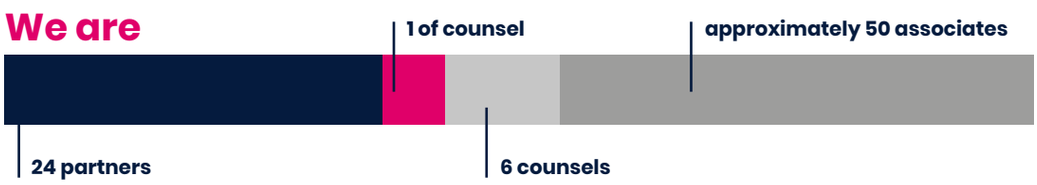

We regularly enlist the support of leading professors and academics, as special counsels and expert witnesses.

A number of our partners have teaching and academic assignments, are legal authors and serve in scientific and editorial committees.

Our expertise embraces almost all the areas of law

The core of our practice consists of:

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Sponsoring and Tourism | Fashion and Luxury |
Industrial Products and Equipment |
Pharmaceuticals and Life Sciences |
Railways, Aviation and Logistics |
Start-Up | Steel.

A significant part of them are multinational companies ranking among the 500 largest companies worldwide (Fortune Global 500) besides a large number of Italian SMEs.

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01

SETTING UP A LEGAL ENTITY WHICH LEGAL ENTITY TO CHOOSE?

Trading activities may be carried out in Italy through:

PARTNERSHIPS MAIN FEATURES

Partnerships may be one of 2 types:

- **FULL PARTNERSHIP (società in nome collettivo - "SNC");**
- **LIMITED LIABILITY PARTNERSHIP (società in accomandita semplice - "SAS").**

Partners generally have personal and unlimited liability for the company's debts and obligations BUT, by way of exception, while the general (managing) partners (soci accomandatari) of an SAS have unlimited liability, that of the limited (non managing) partners (soci accomandanti) is limited to any unpaid amount of their respective shares in the capital. The management of partnerships may be extremely simple, as are the rules governing bookkeeping and the drawing up of the annual accounts. There is no minimum authorised capital requirement. Banking and insurance businesses can not be run via a partnership.

BRANCHES OF FOREIGN LEGAL ENTITIES MAIN FEATURES

The opening of an Italian branch of a foreign company may provide a useful alternative where a foreign company intends to:

- **KNOW THE MARKET AND ASSESS the feasibility of a larger investment;**
- **BE PRESENT ON THE MARKET, INVESTING a minimum amount of capital.**

A branch has no separate legal identity from that of the foreign company; it is simply a distinct permanent place of business of the foreign company in Italy. However, a branch does have separate identity for tax and accounting purposes, and needs to comply with Italian laws and regulatory materials, and in particular those concerning direct and indirect taxation, essentially in the same manner as that applicable to companies incorporated in Italy.
Finally, many of the rules relating to the disclosure of general corporate documents also apply to branches.

LIMITED LIABILITY COMPANIES SRL, SPA, SAPA MAIN FEATURES

A limited company (società di capitali) may be one of 3 types

- **PRIVATE LIMITED LIABILITY COMPANY (società a responsabilità limitata - "SRL");**
- **LIMITED LIABILITY COMPANY (società per azioni - "SPA");**
- **LIMITED LIABILITY CORPORATE PARTNERSHIP (società in accomandita per azioni- "SAPA").**

In the SRL and the SPA, the liability of members is limited to any unpaid amount of their shares. In the case of an SAPA, on the other hand, the principles concerning liability are the same as for an SAS (see above).

Limited companies have more structured organisation and management, and must comply with stricter accounting requirements.
Each type of limited company must have a statutory minimum authorised capital.
Most commonly used limited liability companies (especially due to the mentioned liability regime) are SRL and SPA.

There is no minimum authorised capital requirement. Banking and insurance businesses can not be run via a partnership.

SRL MAIN FEATURES

An SRL cannot be listed on the stock exchange. Capital is divided into quotas (notional percentages of the capital) and there are no certificates. Subject to any restrictions in the articles of association, quotas are normally freely transferable. The minimum statutory capital is EUR 10,000, but it can be even lower (at least equal to EUR 1) if the capital contributions are entirely effected in cash and fully deposited to the administrative body. Members ("quotaholders") of an SRL have a relatively broad degree of flexibility in the organisation of the company and in its decision making processes which can be adapted to their specific needs. The distribution of powers between the quotaholders' meeting and the Director/s are mostly referred to the autonomous choices of the Quotaholders, taken under the By-Laws.

Management may be entrusted to:

- **a sole director** (Amministratore Unico);
- **a board of directors** (Consiglio di Amministrazione); or
- **two or more directors** who may act either individually or jointly.

If the corporate capital, assets, turnover and number of employees exceed certain thresholds, an SRL will be subject to control (audit):

- of the adequacy of the organisational, administrative and accounting structure adopted by the company ("legal control"), either by a sole statutory auditor or (if provided so by the Articles of Association) by a committee of statutory auditors, and

- of the accounts, either by the sole statutory auditor/committee of statutory auditors or by an external auditor ("accounting control").

Should the SRL be incorporated by individuals with a corporate capital of less than 10,000 Euro and in the form of "**Simplified SRL**" certain cost benefits may apply (eg: no stamp duty nor notarial fees at the moment for the incorporation). Simplified SRLs must be incorporated with a standard model of articles of association (the text of which was issued by Ministerial Decree) and have a significantly lower flexibility compared to standard SRLs.

SPA
MAIN FEATURES

The law governing this kind of company is more stringent and imposes more formalities in the organisation and decision-making process. It provides the shareholders ("shareholders") with instruments for a wider range and more sophisticated forms of capital holdings and finance.

The minimum statutory corporate capital is EUR 50,000. The corporate capital is divided into shares, usually represented by certificates. Subject to any restrictions in the articles of association, shares are normally freely transferable. Shares may be of various types having different characteristics and rights.

Management and control may be structured in 3 different models:

- in the **traditional model**, the administrative body of the company shall be a Board of Directors or a Sole Director; legal control is carried out by a board of statutory auditors while accounting control is carried out either by the board of statutory auditors itself or by an external auditor/ auditing firm;
- in the **monistic model** the administrative body is a board of directors while legal control is entrusted (by the board itself) internally to a "committee for management control ("comitato per il controllo sulla gestione"); accounting control is entrusted to an external auditor/auditing firm;
- in the **dualistic model** the administrative body is a "management board" ("consiglio di gestione"). The management board is appointed by the "control board" ("consiglio di sorveglianza") in charge of legal control; accounting control is entrusted to an external auditor/auditing firm.

CHOOSING BETWEEN SRL AND SPA

Due to its greater flexibility, minimal management formalities and the fact that quotaholders can also be involved in the management, an SRL is the most suitable form of limited company for small to medium size businesses, having a small number of members, who both invest in the company and manage it, while an SPA may be a more appropriate choice for medium to large size businesses and those having many members.

An SPA offers various means for raising funds on the market and, in particular, may apply to have its shares listed on capital markets.

The management and the operation of an SPA are more strictly regulated by the law, and the management structure is more complex and is designed to achieve the separation of management functions from shareholder involvement.

Statutory formalities and actions are prescribed in order to facilitate the control over an SPA's management.

The costs of running an SPA are therefore higher than those required for an SRL.

INNOVATIVE START UP AND SME

INNOVATIVE START-UP

"Innovative start-ups" are a new category of limited liability companies having as corporate purpose the development, manufacturing and/or commercialization of high-technology products and/or services and which can be established (amongst others) both in the form of an SRL or of an SPA.

It shall fulfill several formal and substantial requirements (e.g., concerning specific corporate requirements, overall production annual value, the budget intended for research and development purposes, the qualification of its members and/or employees, industrial properties, etc.) and, should it be an SPA company, its shares cannot be listed on capital markets.

The innovative start-up may benefit from several preferential treatments allowed by the relevant provisions of law, such as: tax reliefs, exemption from paying administrative charges, facilitated procedures in case of economic crisis (these companies cannot be declared bankrupt nor be subject to the procedures under the bankruptcy law), facilitations for the corporate capital raising and derogation to certain mandatory rules (e.g. the possibility to postpone for one additional year the mandatory reduction of the corporate capital in case of losses equal to more than 1/3 of the same, not affecting the corporate capital).

For start-ups incorporated in the form of a SRL, the articles of association may provide for different categories of quotas, provided with different rights or limited voting rights even in derogation to the principle of proportionality of single quotas.

SMALL AND MEDIUM-SIZED ENTERPRISES

Italian Law-Decree 50/2017 has extended to all the small and medium-sized enterprises in the form of SRL certain of the benefits/derogations by law which were already provided in favor of the innovative start-ups in the form of SRL: in particular amongst this the possibility of providing for different categories of quotas (see above).

Small and medium sized-enterprises are all those limited company which have less than 250 employees and a total turnover of less than 50,000,000 (or total assets of less than 43,000,000).

SELLING IN ITALY

GENERAL PRINCIPLES

NEGOTIATION OF AGREEMENTS: A FEW HINTS TO BEAR IN MIND WHEN NEGOTIATING IN ITALY

"The Parties, in the conduct of negotiations and in the formation of the contract, shall behave according to good faith" (art.1337 of the Italian civil code). Breach of such principle may result in damages;

When conducting negotiations always bear in mind that the overall behaviour of the parties is relevant and therefore even only exchange of e-mails, messages, etc. are to be duly taken into consideration.

EXECUTION OF AGREEMENT UNDER ITALIAN LAW, THE GENERAL RULE

"...an agreement is executed when the proposing party has knowledge of the acceptance of the other party..." (Art. 1326 of the Italian civil code);

The acceptance of the proposal must be a "full" acceptance: as a matter of facts any request of changes is deemed as a new proposal, therefore, to be accepted by the counterparty.

CONTENTS OF THE AGREEMENT

The parties to a contract may, in principle, freely regulate their respective interests. The above having been said, attention should be borne to the fact that also under Italian law there are certain rules of law that cannot be derogated and will prevail over any terms to the contrary. Accordingly, when entering into a commercial agreement, it is therefore advisable to ensure that:

- a proper regulation of any relevant aspect is agreed upon by the parties or, if express provisions are not included, that the parties are aware of any applicable provisions of law;
- the contract's terms and conditions are not invalidated by law.

ESTABLISHING A SALES NETWORK WHICH KIND OF AGREEMENT?

DISTRIBUTION AGREEMENTS

Distribution agreements are not regulated by the law. All matters should therefore be covered by appropriate provisions in the agreement (such as, term of the agreement, territory, exclusive rights, use of trademarks, effects of termination etc.).
Differently from other jurisdictions, in Italy distributors are not entitled to severance indemnity (save for certain exception in the automotive sector).
Nonetheless, care should be taken in case of early termination for withdrawal since relatively recent
case law has expressly stated the application of the general principle of good faith also in these cases and the right to damages of the counterparty in case of breach of such principle.

FRANCHISING AGREEMENTS

A full set of rules on franchising agreements was introduced in 2004, in order to create a legal framework containing general provisions applicable to all franchising agreements (e.g. the provision of specific pre-contractual disclosure obligations) rather than create a rigid new type of contract.
In order to establish a franchising network, it is necessary the franchisor to have previously experimented on the market its franchise formula.
Franchising agreements must be executed in writing, or they will be null and void.

BROKERAGE AGREEMENTS

By means of this kind of agreement a subject creates a contact between two or more parties so that the same may enter into an agreement.
Brokers do not operate on a permanent basis for any party.
Brokers are entitled to commission from both parties where a transaction is concluded as a result of his/her efforts.

AGENCY AGREEMENTS

Agency agreements are regulated by the law, also implementing the EU Directive 86/653 on the coordination of the laws of the Member States relating to self-employed commercial agents. Exclusive rights both to the benefit of the agent and the principal are provided for by the law and by the national collective agreement for commercial agents, but the parties may derogate therefrom by making appropriate provisions in the contract.
Agency agreements are commonly in writing, as the law prescribes the written form in order to prove the existence of the agreement.
The principal has to pay certain contributions to ENASARCO which are different depending on whether the agent is an individual or a corporate entity.
When the agency agreement in terminated, the agent is entitled to the payment of a termination indemnity.

EMPLOYING PEOPLE IN ITALY

BASIC PRINCIPLES

In Italy employment relationships are regulated not only by **law** but also by **National Collective Bargaining Agreements ("NCBA")** signed by the Trade Unions and Employers' Organisations, as well as **by individual employment contracts**.

Substantially all employment relationships will be covered by the NCBA applicable to the type and level (executive - dirigente - or non-executive) of worker involved, and individual employment contracts must grant the employee rights equal to or better than those granted to him/her by the applicable NCBA.

MAIN TYPES OF LABOUR AGREEMENTS

As well as standard **permanent full-time employment agreements** and **short fixed-term contracts**, the law provides for a variety of other forms of contract to promote a more flexible labour market, such as:

- **part-time agreements:** the employee works only some of the hours provided by the applicable NCBA;
- **apprenticeship agreements:** can be used for young employees entering the labour market for the first time. These contracts can subsequently be transformed into a permanent agreement;
- **job on call:** the employee is called to work by the employer when needed. This contract can be used with employees aged less than 24 years old or more than 55, for a maximum of 400 working days within a 3-years period;
- **temporary work agreements:** applies where a temporary work agency is involved. It is a three-party agreement under which the temporary work agency supplies the temporary agency worker to a user undertaking for a consideration, and pays said worker;
- **training agreements:** can be used to people having difficulty entering the job market, such as young first-time employees, people unemployed for at least two years or over fifty years old, those with grave physical or mental handicap.

DISMISSAL – TERMINATION

An employee can be dismissed only for **cause** ("giusta causa") or in case of a **valid reason** ("giustificato motivo"):

- a **cause** (giusta causa) exists when the employee's behaviour results in a loss of the employer's trust such as to render the continuance of the employment impossible.

- In case of dismissal for cause no notice is due; Law dated July 15, 1966, no. 604 (as amended by Law of May 11, 1990, no. 108) regulates the "giustificato motivo" (valid reason) for termination of contract, defining respectively the two main cases of **subjective and objective** giustificato motivo. The first one is based on a considerable breach of contract by the employee ("giustificato motivo soggettivo"), while the second relates to **organisational and productive circumstances affecting the employer** ("giustificato motivo oggettivo"). In particular, "giustificato motivo oggettivo" would be the reason to adopt in case of suppression of the working position in the frame of a general reorganisation of the operations. The reasons behind the need to carry out the reorganisation are, generally, of an economic nature (bad economic results), but could also be found in the need to have a more efficient structure bringing to savings or higher productivity. A function, for instance, could be relocated to another location. In the event of dismissal for valid reason, the employee is entitled to be given notice (the length of which depends on the status, seniority and (sometimes) age of the employee concerned). However, the notice period may be replaced by the payment of an indemnity in lieu of notice. The dismissal of executives (dirigenti) is less strictly regulated.

Upon termination of employment (on whatever grounds), all employees are entitled to be paid, in addition to accrued salary and other wages (the accrued pro-rata amount of 13th and any 14th instalment of annual salary, indemnity for unused holidays etc.), the **severance payment** provided by Sect. 2120 of the Italian Civil Code (Trattamento di Fine Rapporto or T.F.R.). The severance payment is equal to approximately one month's gross salary for each year of employment.

EMPLOYMENT COSTS

Pension and social contributions amount to approximately 40% of the overall gross salary of an employee or of an executive, of which approximately 30% thereof is borne by the employer and the rest by the employee.

COMPLIANCE LEGISLATION

CERTAIN RULES TO BE AWARE OF

It is important for anyone intending to do business in Italy to be aware, in particular, of the following laws and ensure due compliance with:

LAW ON PERSONAL DATA PROTECTION

(Legislative Decree no. 196/2003, as amended as well as EU Regulation 2016/679).

This law imposes a series of obligations on businesses in relation to data protection. Breaches of its provisions can result in administrative fines and/or criminal penalties;

LAW ON HEALTH AND SAFETY AT WORK

(Legislative Decree no. 81/2008).

Employers are under an obligation to evaluate all health and safety risks run by their employees and to adopt preventive and protective measures. Again, administrative fines and criminal penalties can apply in the event of serious breaches of these provisions.

It is also worth noting that certain violations of the health and safety at work law can result in a company being barred for a period of time from carrying on its business;

ENVIRONMENT CODE

(Legislative Decree no. 152/2006, as amended).

The Code contains a wide range of provisions on environmental protection (concerning e.g. air pollution, water pollution, waste disposal) which may impact on some businesses. Administrative fines and criminal penalties can apply in the event of serious breaches of these provisions.

Larger companies, in particular, should also be aware of the **Law on criminal liability of companies** (Legislative Decree no. 231/2001 - "LD 231/2001" - as amended).

This law introduced the concept of "administrative" responsibility of companies, by making certain criminal offences, committed by an individual in the interests and for the benefit of a company, crimes of the company itself.

Companies may be exempted from liability by proving that they:

- had adopted and enacted an appropriate organisational and management model, meeting certain requirements, aimed at preventing the committing of crimes such as those committed and
- had appointed an internal supervisory body to monitor compliance with the organisational model.

The most important offences which can give rise to criminal liability on the part of a company include:

Offences against public officials (e.g. bribery and corruption of State officials, corruption etc);

Offences against industry and commerce (e.g. counterfeiting of geographic indications or denominations of the origin of food products);

Corporate crimes (e.g. filing of false corporate documents, false reports or communications by auditing companies);

Personal injuries as a consequence of breach of health and safety at work provisions;

Environmental crimes.

TAXATION

01 ON INCORPORATION OF THE COMPANY

1.1 FORMALITIES FOR THE INCORPORATION

The incorporation of a company must be notified to the local tax office within 30 days. The company must apply for a tax identification number ("codice fiscale") and for a VAT number ("partita IVA") which is usually the same.

1.2 TAX AND FEES

STAMP DUTY ("imposta di registro") applies with regards to contributions made by share / quotaholders in order to form the share capital. The amount of registration tax varies according to the nature of the items.

- € 200 in the event of contribution of (i) cash, movable goods, credits and other rights; (ii) of immovable properties carried out by a VAT taxpayer; (iii) contribution of a going concern;
- an amount ranging between 2% and 9% of the market value of the item in the event of contribution of immovable properties carried out by an individual;
- it is also important to consider the fees applied by the Public Notary to draw up the incorporation deeds. These may vary depending on the value of the deed.

MORTGAGE AND CADASTRAL TAXES (about 3%) apply in the event of the contribution of real estate properties.

02 ON BUSINESS ACTIVITY (DIRECT TAXES)

CORPORATE INCOME TAX

Resident companies and non resident companies with a permanent establishment (PE) in Italy are subject to corporate income tax (Imposta sul reddito delle società – "IRES") at 24% rate;

Resident companies are subject to IRES on their worldwide income. Non resident companies with permanent establishment in Italy are subject to IRES on the income of the permanent establishment.

REGIONAL BUSINESS TAX

Resident companies and PE of non resident companies are also subject to a regional business tax (Imposta regionale sulle attività produttive – "IRAP"). For manufacturing companies, IRAP is generally levied at a rate of 3.9% (each region may adjust the IRAP rate upwards or downwards by a maximum of one further percentage point) on the net value of production, which is calculated by deducting the cost from the value of the production;

Certain deductions are not allowed for IRAP purposes, such as certain extraordinary costs, credit losses, certain labor costs (excluding compulsory social contributions) and interest;

Special rules for the calculation of the tax base for IRAP purposes apply to banking institutions, insurance companies, public entities and non commercial entities.

TAX RETURNS AND PAYMENTS

Companies are required to file and submit IRES and IRAP tax returns to the Italian tax authorities by the last day of the 11th month following the end of the company's tax year;

Taxes must be paid in two instalments (30 June – 30 November) for the current year (40% and 60% of the previous year's taxes) and the balance in the following year, based on actual income.

WITHHOLDING TAXES

Italian company or PE of non resident company must levy withholding tax on:

- salaries and wages paid to employees;
- remuneration paid to individuals for professional services or other activities; and
- returns on capital paid to individuals or foreign companies not having a branch in Italy (subject to certain exceptions);

Withholding Tax Agent Return (Modello 770) must be filed annually at the same deadline of IRES/IRAP returns.

03 ON BUSINESS ACTIVITY (INDIRECT TAXES)

VAT

The standard rate is 22% with reduced rates of 10% and 4%, 5% applying to some commodities;

Exports are zero-rated. Some supplies are designated as exempt, e.g. medical and certain financial services. Businesses, other than those making exempt supplies, can generally recover the VAT with which they themselves are charged;

All businesses are subject to VAT, and must:

- make periodical payments: (i) monthly, if the turnover achieved in the previous year, or expected for the first year of business, exceeds Euros 309,874.14 for supplies of services or Euros 516,456.90 for other activities or (ii) quarterly, if the turnover does not exceed the above thresholds;
- file (i) quarterly VAT invoices data informative report and (ii) quarterly VAT calculations data informative report summarizing (i) the data included in the purchases and sales invoices and (ii) the overall debit or credit position for each month;
- file an annual VAT return, by April 30 of each year. A VAT credit arising from the annual VAT return may be claimed for refund provided that certain conditions are met.

04 TAX INCENTIVES FOR BUSINESSES

HYPER AND SUPER DEPRECIATION (INDUSTRY 4.0 DEVELOPMENT PLAN)

Investments in new assets which qualify under 4.0 Government Investment Program entitle the taxpayer to a tax credit in 2023 up to 20% of the cost incurred. If these investments the tax credit is increased up to 20%.

R&D TAX CREDIT

The benefit allows resident companies performing qualified R&D activities to benefit from a tax credit up to 10% of the qualified expenses (up to 45% for companies operating in South Italy) up to a certain maximum amount.

PATENT BOX REGIME

The optional Patent Box regime entitles the taxpayer to increase by 110% the amount of of R&D expenses incurred to achieve qualified intangibles (e.g. software, patent) recognized for IRES and IRAP.

OTHER MEASURES

Tax deductions of up to 30% for investments of up to Euro 1,8 million in innovative start-ups and SMEs;

Sabatini-ter law allows taxpayers to obtain contributions from ITA Ministry of Finance on interest paid to fund the purchase new instrumental goods (tangible assets).

SHARING VALUE WITH YOU.

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