

Italy

Legal Provisions

Compiled by:

Swiss Business Hub Italia

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GENERAL REMARKS

The Italian legal system is based on three pillars: civil, criminal and administrative law. Apart from the main codes (civil and criminal code), there is a multitude of regulations which are frequently changing. Legal texts are published in the *Gazzetta Ufficiale*, which is the official source. Italy is member of the European Union and major international organizations and consequently bound by these agreements. Bilateral agreements with more than sixty countries are also in force.

Compared to other systems, the Italian legal system is rather complex and often requires the planning of more administrative resources and the support of experts when doing business.

CUSTOMS

Italy is bound by the EU Customs Tariff (TARIC - Integrated Tariff of the European Community). Customs issues are managed by the competent *Agenzia della Dogane*. The agency works closely with the respective EU institutions. www.agenziadoganemonopoli.gov.it

Products which are imported into Italy are subject to a VAT (IVA) of actually 22%. Reduced rates apply at 10% for specific goods such as pharmaceuticals, hotels, restaurants, transportations and 4% on food and books.

IMPORT AND EXPORT REGULATIONS

To a large extent, imports from Switzerland are customs-free based on the free trade agreements. However, certain goods are not covered by the agreement and a specific check is recommended. Since 2009, sanitary control of animal products originating from Switzerland has been abolished. For products of vegetal origin the submission of the declaration *Nulla Osta sanitario* is required.

CURRENCY REGULATIONS

Italy belongs to the Economic and Monetary Union of the European Union. In 1999, the Euro € became real currency and single monetary policy under the authority of the European Central Bank has been adopted. Italy also follows the EU directives on the prevention of money laundering and terrorist financing. Consequently, all cash transactions are limited to EUR3'000. In another attempt to fight tax evasion and to make traceable all transactions, all commercial activities and shops are required to offer electronic payments.

Since 2007, any person entering or leaving the EU with EUR10'000 or more in cash is required to declare the sum to the competent authorities.

REGISTRATION PROCEDURE FOR PRODUCTS

Italy protects licences, trademarks and copyrights. These must be registered with the *Ufficio Italiano brevetti e marchi* attached to the *Ministero dello sviluppo economico*.

Ufficio Italiano brevetti e marchi www.uibm.gov.it

Note: Food, cosmetic and medical products still need to be registered with the competent authorities before being put on the market in Italy/EU.

Cosmetics: The CPNP (Cosmetic Products Notification Portal) is an online database created to implement EC Regulation 1223/2009. This regulation requires the responsible person and/or the distributor of cosmetic products to submit information about the product into CPNP which is then made available to the authorities in the EU member states.

Medical Devices: Although Italy has abolished the need for *nulla osta* for the import of medical devices made in Switzerland, the registration with the Ministry of Health is still mandatory.

Food: The registration has to be done through an OSA - *Operatore Settore Alimentare* with an organization in Italy or the EU. Swiss Business Hub has a directory of experts for registration.

STANDARDS, TECHNICAL RULES, LABELLING REGULATIONS

Italy applies the harmonized EU standards. For products not covered by these standards, ISO standards do apply. However, in order to verify the relevant standards currently in force, one can refer to *UNI – Ente nazionale Italiano di normazione* www.uni.com

The competent entity for technical standards for the electrical, electronic and telecommunication sector is the “Comitato elettronico italiano” which is the official body recognized by the Italian government and the EU to define standards and product rules.

CEI – Comitato elettronico italiano www.ceiweb.it

The labelling requirements vary depending on the products but follow the EU directives. In general, labels should include information regarding origin, identity, quality, composition and conservation of the product. The use of Italian language is mandatory.

TAXES

Italy remains in the group of OECD countries with the highest fiscal pressure (e.g. corporate taxation, wage taxation etc.). At the same time, the system is quite complex and requires professional support.

Products which are imported into Italy are also subject to VAT (actually 22%) and in some cases to an excise tax (petro products, electric energy, alcohol, tobacco) in addition to customs duties.

Direct taxation in Italy is based on 3 pillars:

- Personal income tax (*IRPEF*) and addizionale regionale/comunale
- Corporate income tax (*IRES*)
- Regional tax on productive activities (*IRAP*)

Indirect taxes include VAT, registration fees, property tax, property transfer tax etc.

On 23 February 2015, Italy and Switzerland signed an amending protocol to their double tax treaty from 1976 as well as a roadmap for the continued dialogue in tax and financial matters. The agreement is considered a major milestone after a long controversy in the area of finance and taxation between the two countries and entails, among others, the following key enhancements. Once the amending protocol is effective, Switzerland will be removed from the Italian blacklist of foreign suppliers (Ministerial decree of 23 January 2002), for which Italian buyers are subject to an increased burden of proof for the deduction of the acquisition costs, and added to the Italian white list (Ministerial decree of 4 September 1996) allowing qualified Swiss recipients a domestic tax exemption of certain Italian financial income.

Swiss individuals and companies are allowed to benefit from Italian tax law provisions specifically applicable to domestic persons or persons resident in a country included in the Italian white list. As a consequence, interest on bonds and capital gains derived from the disposal of certain financial assets realized by Swiss beneficial owners or other qualified investors can benefit from a domestic exemption from Italian taxation.

COMMERCIAL LAW

Generally, commercial relationships between companies and/or individuals are regulated through the civil law and other applicable laws, according to the specific business field. The contract law in Italy will govern agreements for employment in Italy, certain commercial transactions like real estate purchase or rent and the provision of services between two parties.

The Company Law, consisting of several legal documents, regulates a series of important aspects about company formation in Italy. Among the most important legal provisions following can be listed:

- types of companies that can be incorporated in Italy
- company governance:
- shareholder's rights and protection
- corporate litigation
- financial requirements
- auditing compliance
- company liquidation

In relation to the Covid-19 emergency, several special regulations have been introduced, which may temporarily govern over the normal regulation frame (s. decree of 19.05.2020 "Misure urgenti in materia di salute, sostegno al lavoro e all'economia, nonché di politiche sociali connesse all'emergenza epidemiologica da COVID-19")

COMMERCIAL PARTNERS / PROVIDERS

Since 2019, new regulations for the issuance of commercial invoices/billing have been introduced. For domestic business, Italian companies are obliged to issue exclusively electronic invoices (system linked to the tax authorities). If invoices are issued to a company in Switzerland or Liechtenstein, still regular paper documents may be issued.

SETTING UP COMPANIES

As previously mentioned, the Italian Civil Code provides the basis for different types of companies. Italy offers a range of legal forms for setting up companies depending on the company's organization model, its business objectives, the level of capital to be committed, the extent of liability of the founders as well as tax and accounting implications. Italy's corporate law primarily differentiates between Corporations and Partnerships.

Limited liability companies *società a responsabilità limitata* or *S.r.l.* and *società per azioni* or *S.p.A.* are generally characterized by:

- legal personality, autonomous from company owners' personality;
- limited liability for the company owners, i.e. each owner's liability is limited to the cash or assets he/she has contributed to the company;
- separation of ownership and managing powers; hence the owners of the company are not necessarily also the directors of the company, and directors are not necessarily company owners;
- Ownership as freely transferable either inter vivos or mortis causa.

Partnerships *società in nome collettivo* or *S.n.c.* and *società in accomandita semplice* or *S.a.s.* are generally characterized by:

- unlimited joint and several liability of the partners for the company's obligations;
- each partner acts as a director of the company with managing powers;
- non-transferability, either inter vivos or mortis causa of the partner status except whereby authorized by all other partners.
- Tax transparency
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To open an Italian company, the founder shall execute the Memorandum and Articles of Association (By-Laws) before an Italian public notary. The incorporation process can be carried out by distance through a power of attorney.

JOINT VENTURE OPPORTUNITIES

The legal structure of "joint venture" is not specifically regulated in the Italian Civil Code. The parties are able to form contractual and corporate Joint Ventures under the principle of freedom to contract.

Contractual Joint-Ventures: This form is generally used when the parties do not intend to go beyond a mere relationship between themselves, or where the activity that will be performed is on an occasional basis and limited in time.

Corporate Joint-Ventures: This form consists of a company duly formed through the execution of a company agreement for the co-operation of two or more companies (co-ventures). The scope is to unify the activities developed by each company within a new legal entity that pursues a defined and limited project. Companies must be established by a deed of incorporation *Atto costitutivo*. The new company must contain bye-laws *Statuto*, which set out the company's governing rules. Generally, the following types of company are used:

- The joint stock company *Società per azioni* (SpA).
- The limited liability company *Società a responsabilità limitata* (Srl).

For both SpA and Srl, in the case of multiple founders, those paying the capital subscription in cash are not required to pay the entire amount of the shares up-front: they are entitled to deposit at least 25% initially and pay the remaining 75% at a subsequent date. Once the deed of incorporation has been filed with the competent Companies' Register and the company has been duly incorporated, the company can issue shares/quotas representing its own share capital.

PROMOTION OF INVESTMENT

Invitalia is the national agency for Inward Investments and Economic Development. It is part of the Italian Ministry of Economy MISE. On international level, the Italian Trade & Investment Agency ITA has 70 offices around the globe. <https://www.ice.it/en>

ENTRY CONDITIONS, WORK PERMITS, RESIDENCE PERMITS, LABOUR LAW

Swiss citizens enjoy the right to freedom of movement in/to Italy in identical conditions to those that apply to citizens of the European Union, based on the agreement on the freedom of movement between the Swiss Confederation and the European Community. According to the above-mentioned agreement, for a stay up to 90 days, an identity card or Swiss passport will be sufficient to enter Italy.

Swiss citizens have the right to reside in Italy for a superior period than three months. However, this requires their registration process for residence in Italy and registering with the next official Swiss representation.

Specific rules apply for the posting of workers to Italy (*distacco transnazionale*) for a max. period of 90 days. The registration of those workers has to be done before their mission. Information can be found on <http://www.distaccoue.lavoro.gov.it>

PROCEDURES FOR COLLECTING PAYMENT

To collect outstanding debts, it is always advisable to reach an out-of-court settlement because lawsuits in Italy can be very lengthy, arduous and costly. On the legal side, Italy has two options for legal action against debtors: a quick order compelling payment or a thorough action on the merits. It is possible to execute a claim based on an enforceable order, such as an order

compelling payment (“*Decreto ingiuntivo*”) or a judgment.

Also the conditional sales including a reservation of property rights is not an alternative as any dispute requires legal steps.

It is therefore recommendable to agree contractually about pre-payments which is quite common in business relationships.

SOURCES OF INFORMATION AND LINKS

Swiss Business Hub Italy	https://www.s-ge.com/de/company/swiss-business-hub-italy
EDA	https://www.eda.admin.ch/countries/italy/de/home.html
Eur-Lex - (EU-Law)	www.eur-lex.europa.eu/en/index.htm
EU Taxation and Customs Union	www.ec.europa.eu/taxation_customs/dds2/taric/taric_consultation.jsp?Lang=en&SimDate=20140331
EU Citizens - (Database)	www.eudo-citizenship.eu
Agenzia Entrate (Taxes)	www.agenziaentrate.gov.it
Ministero del Lavoro	www.lavoro.gov.it
OECD	https://stats.oecd.org/
MISE (Economy)	www.mise.gov.it

Date:	27.05.2020
Author:	Stefan Zwicky
Author's address	Swiss Business Hub Italia Via Palestro 2 – 20121 Milano/Italy Tel. +39 02 777 91644 Email: mil.sbitalia@eda.admin.ch