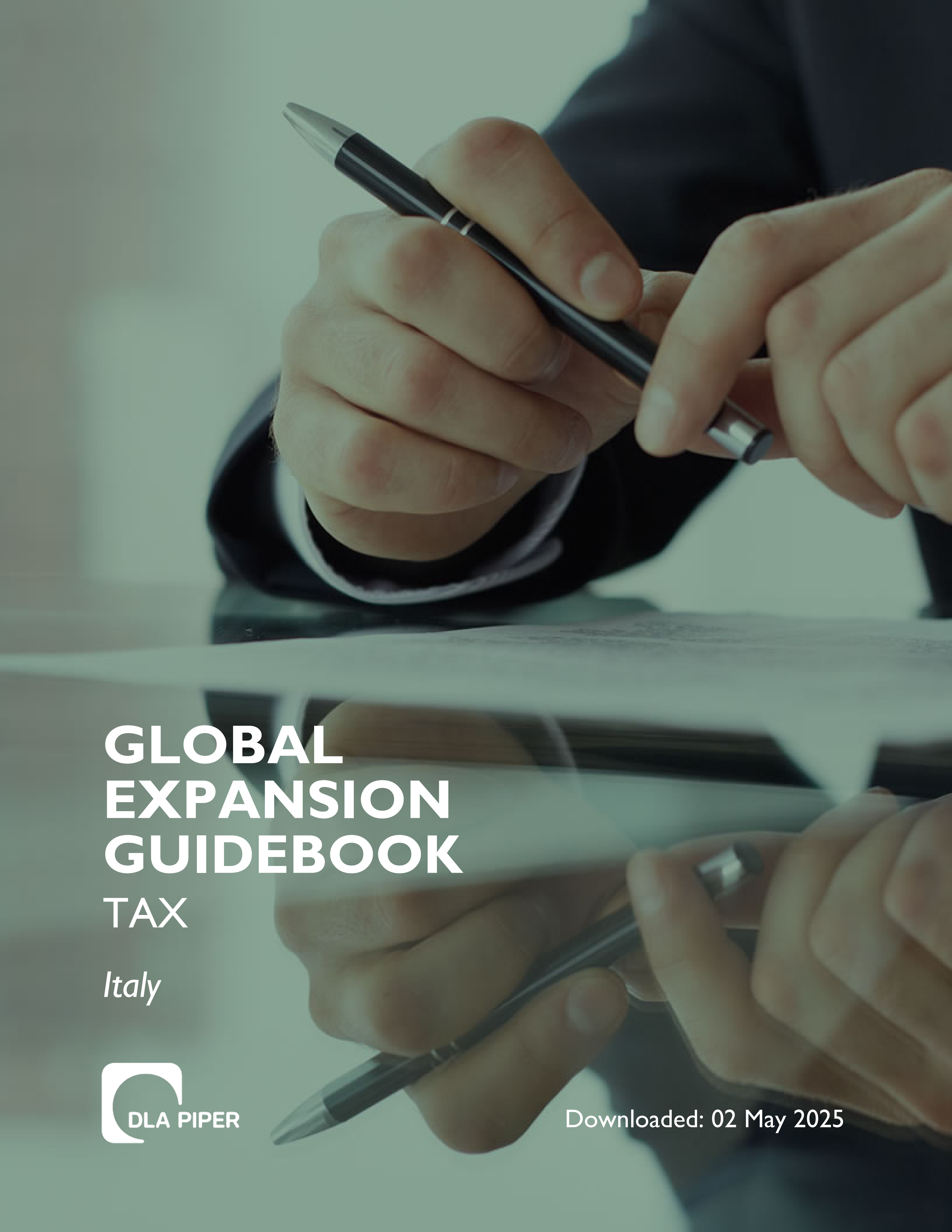

GLOBAL EXPANSION GUIDEBOOK

TAX

Italy

DLA PIPER

INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Tax.*

GLOBAL EXPANSION GUIDEBOOK SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics companies need to know.

The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, intellectual property and technology, global equity and tax laws in key jurisdictions around the world.

TAX

Multinational companies continue to expand globally at an ever faster pace. Successful expansion depends, in part, on strategic and effective tax planning and compliance. This guide, brought to you by DLA Piper's Tax group summarizes the key features of tax laws in 41 popular jurisdictions.

This guide addresses common tax questions, by jurisdiction, including:

- Taxation of resident companies and non-resident companies
- Availability of tax holidays, rulings, and favorable tax regimes
- Ability to use losses to offset income
- Anti-deferral (ie CFC) rules
- Withholding taxes
- Employment tax issues

With more than 300 tax lawyers and economists in offices throughout the Americas, Europe and Asia Pacific, DLA Piper's global tax advisory services help multinational companies address the complex challenges of international commerce and business operations as well as manage and resolve tax audits. Our global tax group also assists clients in structuring a wide range of transactions, from private equity deals to corporate acquisitions and disposals. We provide these tax services across our global platform, while at the same time offering clients the benefits of the attorney-client and work-product privileges.

The information in this guide is an accessible, high-level summary of the tax laws in each jurisdiction. This is not a substitute for legal or tax advice. If you have specific questions or require detailed advice, we encourage you to contact one of the attorneys listed in the contributors section of this guide.

We hope that you find this guide valuable and we welcome your feedback.

ITALY

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RESIDENCE AND BASIS FOR TAXATION

A corporation is considered to be resident in Italy if it has its legal seat, its actual place of management ("*sede di direzione effettiva*") or the core management activities ("*gestione ordinaria in via principale*") herein for the major part of the fiscal year. A foreign corporation can be deemed resident in Italy when it owns a controlling participation in an Italian company and:

- Is controlled, even indirectly, by resident entities or
- The board of directors (or similar body of management) is mainly formed by Italian resident directors.

Domestic

Resident corporations are taxable in Italy on their worldwide income. Italian permanent establishments of foreign entities are subject to taxation in the same manner as domestic corporations.

Foreign

Foreign corporations may be subject to Italian taxation on corporate income that is considered Italian source. Tax treaties can reduce or eliminate these taxes. Specific anti-deferral provisions apply to foreign-controlled companies.

TAXABLE INCOME

Domestic

Taxable income of domestic corporations for corporate income tax purposes (IRES) is equal to their business income less applicable deductions.

Foreign

Foreign corporations are taxed on the amount of income generated in Italy, generally without any deduction.

TAX RATES

The IRES standard rate equals 24 percent. Specific surcharges are applied to specific sectors.

TAX COMPLIANCE

Starting from May 2024, ethe IRES tax return is due within 9 months after the fiscal period end (*ie*, September 30 for companies that adopt the calendar year).

ALTERNATIVE MINIMUM TAX

Non-operating companies are subject to a minimum level tax, depending on the assets they own.

TAX HOLIDAYS, RULINGS AND INCENTIVES

Tax holidays

Not applicable for this jurisdiction.

Tax rulings

On certain issues, taxpayers can file a ruling request to ask for the interpretation of a specific ruling issue by the tax authority. Companies with international activities are entitled to apply for a specific mutual agreement procedure (MAP) concerning international aspects (transfer pricing, permanent establishments and dividends /interests/royalties flows, also with respect to double tax treaties). Another special procedure is provided for companies that plan to invest not less than EUR30 million in Italy, in order to ascertain the tax consequences of an investment plan and/or the tax consequences of related extraordinary operations (*eg*, mergers, acquisitions). Furthermore, major companies (*eg*, with revenues exceeding EUR1 billion) may enter into a cooperative compliance regime with the Italian tax authorities.

Tax incentives

A number of tax incentives has been introduced and enhanced over years, with a special attention to the so-called Industry 4.0 Plan. Among others, it is worth mentioning the tax credit for R&D expenses, and the tax credit on investments in certain business assets. Other special provisions are set out for small enterprises and investments in Southern Italy.

Starting from 2024, the notional deduction for capital injection (so-called ACE) is repealed. Notwithstanding, unused ACE surpluses in the 2023 return may be carried forward to future years.

CONSOLIDATION

Eligible corporations that are affiliated (generally based on at least 50 percent stock ownership) may elect to compute corporate income tax on a consolidated basis.

PARTICIPATION EXEMPTION

Dividends received from domestic and foreign corporations are 95-percent excluded from the taxable basis, unless they are distributed by affiliates with a privileged tax treatment. The participation exemption on capital gain from the sale of participations applies when certain requirements are met, allowing an exemption of 95 percent of the capital gain.

Starting from 2024, the PEX regime would be applicable to companies and commercial entities not resident in Italy and without a permanent establishment therein, if 2 conditions are met:

- They are resident in a country located in the EU or in the EEA;
- They are subject to a corporate income tax in their State of residence.

CAPITAL GAIN

Capital gain is generally included in taxable income. If the asset has been held for at least 3 years, the capital gain can be included over up to 5 years. 95 percent of the capital gain on sales of participation can be exempted if certain requirements are satisfied, as described above.

DISTRIBUTIONS

As noted above, dividends from qualifying domestic and foreign shareholdings may be eligible for an exclusion from taxable income.

LOSS UTILIZATION

Tax loss can be carried forward without any time limitation but can be used to offset only up to 80 percent of taxable income. Tax losses incurred in the first 3 years of activities can be used to entirely offset subsequent years' taxable income. Tax losses cannot be carried back.

TAX-FREE REORGANIZATIONS

Group reorganizations are ordinarily tax neutral for the corporations involved. Special rules apply to cross-border reorganizations.

ANTI-DEFERRAL RULES

CFC

Income derived from certain controlled foreign companies (CFC) resident in a country with a privileged tax system is subject to taxation at the level of the Italian resident person under a tax transparency regime, if:

- From 2024, a foreign entity is considered as a CFC for tax purposes if its effective tax rate is lower than 15 percent (simplified ETR test), and

- More than 1/3 of the controlled company's revenues are from passive income (*eg*. dividends, interest, royalties and intercompany revenues as defined by the law).

The new simplified ETR calculation applies only if the financial statement is audited by an authorized local auditor, otherwise the previous ETR calculation would be applied.

The controlling person may avoid the application of the CFC rules by demonstrating, also by filing an advance ruling request, that the controlled company carries on a substantive economic activity supported by staff, equipment, assets and premises. Before issuing a notice of tax deficiency based on the CFC rules, the tax authorities must send a notice to the taxpayer whereby it is given the opportunity to provide evidence of the application of it within 90 days.

The taxpayer must disclose in its corporate income tax return the ownership of shares in non-resident companies that are potentially subject to the CFC rules.

General Anti-Avoidance Rule

Italian tax authorities may disregard any act put in place without a valid economic reason and for the sole purpose of gathering tax advantages otherwise not due.

FOREIGN TAX CREDITS

Subject to limitations, foreign tax credits are available for foreign taxes paid.

SPECIAL RULES APPLICABLE TO REAL PROPERTY

Starting from 2023, foreign entities selling a participation into a company with more than 50 percent of its assets invested in Italian real estate properties are subject to Italian capital gain tax. Double Tax Treaty, where available and applicable, will continue to supersede the domestic law.

TRANSFER PRICING

Arm's-length principles generally apply to international transactions between related entities. Italian tax rules make reference to the OECD guidelines.

WITHHOLDING TAX

Dividends, royalties, interest, rents, etc.

Dividends paid to foreign entities are subject to ordinary withholding tax at the rate of 26 percent. Dividends paid to EU countries and EEA "white-listed" countries subject to corporate tax in their country of residence are subject to 1.20-percent withholding tax. A tax treaty can reduce the abovementioned rate.

Exemption from withholding tax is provided under the EU Parent-Subsidiary Directive on dividends paid to qualifying shareholders. Among the other requirements, the participation must be at least equal to 10 percent and must be held for at least 12 months.

Interest paid to non-resident entities is subject to 26-percent withholding tax. A tax treaty can reduce the abovementioned rate. The Interest and Royalties directive provides for an exemption on interest and royalties paid to qualifying EU shareholders or affiliate entities.

Royalties are subject to 30-percent withholding tax, generally applied on 75 percent of the amount of the royalties. Tax treaties and the EU Interest and Royalties directive can reduce or eliminate the withholding tax.

Service fees

In principle, no withholding tax is applied on service fees.

CAPITAL DUTY, STAMP DUTY AND TRANSFER TAX

No capital duty. Stamp duties and transfer taxes may be imposed on specific corporate transactions.

EMPLOYMENT TAXES

Employers must withhold an advance payment of individual income tax on salaries paid to employees. Employers also must pay social security contributions in respect of compensation paid to employees. These taxes are deductible by an employer for IRES and for IRAP but only if related to an open-ended working relationship.

OTHER TAX CONSIDERATIONS

IRAP

In addition to corporate income tax (IRES), local income tax is levied at the level of Italian corporations (*ie*, IRAP). IRAP is levied on the net value of the production generated in each Italian region, computed as the difference between revenues and production costs. Employment expenses (if not related to open-ended relationships), write-down of assets and other specific costs are not deductible. The IRAP tax rate is equal to 3.9 percent, but any region can decide to increase the tax rate up to 4.82 percent. Further increases in the rate are provided for specific business activities. IRAP is deductible from corporate income tax up to an amount of 10 percent of IRAP paid.

Specific IRAP provisions apply to banks and financial institutions.

KEY CONTACTS

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