

LEGAL INFORMATION NEWSLETTER

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We are pleased to provide you with the new issue of our legal information newsletter.

Topical legal questions are discussed and those related to issues that you might encounter.

We hope that you will find it of interest. We would welcome any comment you might have.

OVERVIEW OF THE EXCHANGE CONTROLS AND THE FOREIGN INVESTMENTS RESTRICTIONS IN ITALY

Rules applying to foreign investors - In accordance with EU directives, Italy has no foreign exchange controls.

There are no restrictions on currency transfers; there are only reporting requirements. Banks are required to report any transaction over EUR 1,000 due to money laundering and terrorism financing concerns.

Profits, payments, and currency transfers may be freely repatriated. Residents and non-residents may hold foreign exchange accounts.

In 2016, the government raised the limit on cash payments for goods or services to €3,000 (from €1,000). Payments above this amount must be made electronically.

Enforcement remains uneven. The rule exempts e-money services, banks and other financial institutions, but not payment services companies.

Exchange controls – Italy has achieved complete exchange control deregulation through the Presidential Decree 148 of 31 March 1988 (Foreign Exchange Control Law) and the Ministerial Decree of 27 April 1990. Non-residents may:

- export cash, bank cheques, bank drafts and securities in foreign currency and euro; and
- maintain bank accounts and transferable deposits in foreign currency and euro.

Repatriation rights – Decree Law 167 of 28 June 1990 sets forth a monitoring system of international cash transactions, money instruments, and securities for tax purposes. Its provisions mainly concern the following areas:

Banking and reporting formalities - Banks and other financial intermediaries must report to the Italian tax authorities inbound and outbound transfer of money (and money instruments) made on behalf of or in favour of individuals, non-commercial entities, and non-commercial partnerships.

Moreover, the Ministerial Decree of 8 August 1990 provides that non-resident individuals and non-resident partnerships, whenever they deposit money into an Italian bank account, must provide documentation evidencing the source of such money to the bank.

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The same documentation is required for the purchase and sale of securities that provide for a cash-settlement as well as for the transfer abroad of cash and securities previously deposited with an Italian bank.

If the non-resident cannot provide this documentation, the bank must request an affidavit from the non-resident containing the necessary information.

A copy of the affidavit must be forwarded to the Ministry of Finance for purposes of the exchange of information between foreign tax administrations.

Import and export restrictions - The same rules hereunder described with reference to repatriation rights apply.

Foreign investment restrictions - Foreign persons or entities may freely hold equity interests in Italian companies irrespective of their nature.

They may also freely establish branches and representative offices. Some limitations exist for non-EU persons with respect to the conduct of certain activities in Italy (e.g. insurance, banking and shipping).

These limitations may apply to either (i) activities carried out directly in Italy by such persons or (ii) holding by such persons of interests in Italian companies that have as a corporate purpose the carrying out of such activities.

In particular, foreign investments are restricted in the fields of:

- banking. While EU banks may carry out their activity in Italy without prior authorization, non-EU banks may establish branches or subsidiaries in Italy also with the prior authorization of the Bank of Italy;

- insurance. While EU insurance companies may carry out their activity in Italy without prior authorization, non-EU insurance companies need authorization from IVASS;

- ownership of aircraft. The Italian Navigation Code provides that in order to be enrolled in the Italian Registry, aircraft must be owned more than 50% by:

- the Italian state, local governments or any other Italian or EU public or private entity;

- Italian or EU citizens; or

- companies with their registered office in Italy or in another EU Member State that are more than 50% owned by Italian or EU citizens or Italian or EU companies that meet this requirement and the chairman, the majority of the board of directors (including the managing director) and the general manager of which are Italian or EU citizens;

- ownership of ships. In order to be enrolled in the Italian Registry, ships must be more than 50% owned by EU citizens, EU companies or EU public or private entities.

In addition, a ship may be enrolled in the Italian Ship Registry if it is owned by non-EU individuals or companies which (i) utilize the ship through a permanent establishment in Italy or in another EU Member State and (ii) have committed the management of the ship to an Italian or EU individual or company.

This latter individual or company must elect domicile in the place where the ship has been enrolled and undertake full liability against third parties and Italian public authorities;

- ownership of newspapers. According to Law 416 of 5 August 1981, non-EU entities may carry out publishing and newspaper activities in Italy, provided that their country of residence actually grants the same rights to Italian citizens; and
- state-owned companies. If the Italian government or other governmental entities hold shares in a closed S.p.A., the by-laws may provide that the public shareholder is entitled to appoint one or more directors or statutory auditors, and that the same may be removed only by the public shareholder which appointed them (Article 2449 of the Civil Code).

Rules applying to domestic investors abroad - The Foreign Exchange Control Law and Ministerial Decree of 27 April 1990 implemented complete exchange control deregulation in Italy.

Consequently, Italian residents are now allowed to:

- keep foreign currency and securities, under any form, in Italy and abroad;
- open and maintain bank accounts and deposits (whether euro-denominated or not) in Italy and abroad;
- grant loans to non-residents (whether in euro or foreign currency) in Italy and abroad;
- export cash, bank cheques, bank drafts and securities in foreign currency and euro;
- carry out stock exchange transactions with foreign counterparties;
- exchange foreign currency for euro; and
- settle their obligations towards other Italian residents in foreign currency.

The Foreign Exchange Control Law identifies Italian residents as follows:

- Italian citizens who have their permanent abode in Italy;
- legal persons, including companies, and other associations or collective entities that have their effective place of management in Italy;
- Italian citizens who have their permanent abode abroad, only to the extent that they are employed or self-employed in Italy or carry-on business activities in Italy on a regular basis;
- foreign citizens who have their permanent abode in Italy, only to the extent that they are employed or self-employed in Italy or carry-on business activities in Italy on a regular basis; and
- legal persons, including companies, and other associations or collective entities that have their registered office abroad and a branch in Italy, only to the extent that they carry out activities in Italy through a permanent establishment (Article 1 of the Foreign Exchange Control Law).

Repatriation rights – Law Decree N° 167 of 28 June 1990 sets forth a monitoring system for international cash transactions, money instruments, and securities for tax purposes.

The following rules apply to Italian residents:

Banking and reporting formalities - Banks and other financial institutions must report to the Italian tax authorities information on any inbound or outbound transfer of money (including money instruments) for an amount equal to or higher than EUR 15,000 made on behalf of or in favour of resident individuals, non-commercial entities and non-commercial partnerships.

Import and export restrictions – Pursuant to Legislative Decree 195 of 19 November 2008, any person, whether resident or non-resident, who enters into

or leaves Italy carrying with himself either money or Italian or foreign securities having a value greater than EUR 10,000 must disclose this to the Italian customs authorities.

To this end, the person must file a statement either:

- before crossing the border if the statement is submitted electronically; or
- at the time of crossing the border if the paper form is used.

The same disclosure obligation applies to transfers of money or securities in excess of EUR 10,000 that are made through the postal service.

If the money transfer is made by mail package, the above statement must be filed with the post office at the time of the delivery (outbound transfer) or within 48 hours from the receipt of the package (inbound transfer).

These provisions do not apply to postal money orders, postal cheques, bank cheques or cashier's cheques drawn on, or issued by, resident banks or the Italian Postal Company (i.e. *Poste Italiane S.p.A.*), provided that they indicate the name of the beneficiary and a "non-endorseable" clause.

In addition, Legislative Decree 231 of 21 November 2007, as amended and supplemented by Legislative Decree 90 of 25 May 2017, provides rules to fight money laundering and, to this end, sets forth certain formalities and restrictions in connection with specific money instruments.

In particular, Legislative Decree 231 of 21 November 2007 provides that transactions between different persons may be settled in cash (or by other equivalent money instrument) only up to

EUR 3,000 (or an equivalent amount in foreign currency) or EUR 1,000 in case of money remittance services.

Otherwise, the payment must be made through a bank.

Presumed income – Under Decree Law 167 of 28 June 1990, if, for a given tax year, a resident individual, non-commercial entity, or non-commercial partnership does not declare the income deriving from money deposits or securities transferred or already existing abroad, such money deposits and securities are deemed to yield income equal to the interest accruing on the money deposits/securities as a result of the application of the official EU interbank interest rate for that year (deemed income).

The taxpayer may avoid application of this deemed income provision by declaring in the tax return that the income on the money deposits/securities will actually be earned in subsequent years.

Otherwise, the taxpayer may provide evidence, within certain statutory terms, that the money deposits/securities do not yield any income or yield a smaller income.

Any asset (including financial assets) held abroad must be reported in a proper section of the tax return and subject to wealth taxes that vary depending on the type of asset.

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