

# Taxation of Banking permanent establishment in Italy

## Summary of applicable taxes

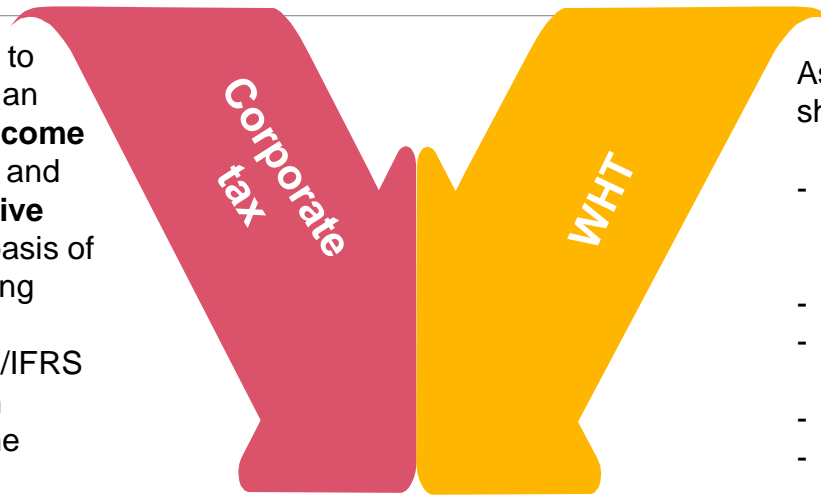
For corporate tax purposes, the tax regime applicable to PEs of foreign banks is the same as for corporate Italian entities. Accordingly, a PE is **subject to corporate income tax - IRES, Additional IRES** (applicable to the banks and some financial entities) **and regional tax on productive activities - IRAP**. Both taxes are determined on the basis of financial accounts prepared according to the accounting principles applying to resident enterprises with similar business activity carried out by the PE (generally, IAS/IFRS principles apply for banking players) and that are then adjusted according to the specific rules provided by the Italian Tax Law. The attribution of profit to a PE is determined according to OECD rules, keeping into account the activities performed, the risks assumed and assets used.

It has to be determine whether the permanent establishment intervenes in the output and input supplies from an Italian VAT perspective.

Permanent establishment of a foreign bank has generally the same VAT obligations like other Italian banks.

**Most financial services are exempt for VAT with no right to deduction.** As a consequence, input VAT may become a cost totally or partially. The actual amount of non deductible depends on whether the Permanent establishment also carries activities which entitle input VAT deduction.

Generally, supplies of services between PEs and their HQ are not relevant for VAT purposes, unless either PE or HQ are member of a VAT Group in their respective place of establishment.



As provided for the Italian banks, also PEs of foreign banks should **act as withholding agents** on, among the others:

- financial yields (deriving from securities, current and deposit banking accounts, etc.) paid to Italian resident investors;
- capital gains on securities, derivatives, etc.;
- cross-border payments (if no exemption apply) referred to dividends, interest and royalties;
- salaries and wages;
- income from professions and other independent work

### *Applicable taxes to a permanent establishment of a foreign bank in Italy*



Other taxes relevant for banking PE:

- a. **Registration fee:** tax raised on the transfer of wealth;
- b. **Stamp Duty:** apply on a certain list of deeds or documents provided for by the relevant law provision;
- c. **Substitute tax on medium/long term loans:** applied upon election to substitute government license tax and registration, mortgage and cadastral taxes;
- d. **FTT:** Italian FTT applies to (i) cash equities, (ii) derivatives, and (iii) high-frequency trading transactions;
- e. **Real Estate tax:** levied on the ownership of real estate properties;
- f. **DST (Web Tax):** applies on the value of specific digital services collected, net of VAT and other indirect taxes.

Please note that the taxes indicated in points a)-c) are generally charged to the client and, thus, do not represent a cost for the bank.

TAX	RATE	BRIEF DESCRIPTION	MAIN RECURRING TAX FULFILMENTS
IRES/ Additional IRES	24% - 3,5%	<p>Based on the <b>Authorized OECD Approach (“AOA”)</b>, recalled by the Italian Tax Code (“ITC”), a PE should be treated as a functionally separate and independent entity for the purpose of determining its profits and the income attributable to such PE will be the income that the latter would have earned under the <b>arm’s length principle</b>, in particular with reference to the dealings with other parts of the enterprise, if it were a distinct and separate enterprise from its head office, taking into account the functions performed, assets used and risks assumed by the enterprise both through the PE and its other parts.</p> <p>IRES/Additional RES is charged on the total net income reported in the financial statement of the company and adjusted according to specific tax rules.</p>	<p><u>Payments:</u> For IRES and IRAP purposes, the tax law provides for both, advance payments and settlement payments. As a general rule, the advance payments are equal to the net tax liability for the previous tax period and are due during the tax period to which they refer. The advance payments due are equal to 100% and are split into two instalments:</p> <ul style="list-style-type: none"> <li>- 40% by the end of the sixth month following the tax year-end;</li> <li>- 60% by the end of the 11<sup>th</sup> month following the tax year-end.</li> </ul> <p><u>Filings:</u> IRES and IRAP returns must be filed by the end of the 11<sup>th</sup> month following the tax year-end.</p>
IRAP	Standard: 4,65%; Increased for banks usually to 5,57%	<p>Also for IRAP purposes, the attribution of profit to a PE is determined according to OECD rules, keeping into account the activities performed, the risks assumed and assets used.</p> <p>The IRAP taxable base for banks is broadly represented by the company's intermediation margin resulting from financial statement and reduced by <i>i)</i> 50% of dividends; <i>ii)</i> 90% of amortization costs relating to fixed tangible and intangible assets, <i>iii)</i> 90% of other administrative expenses; <i>iv)</i> net value of adjustments and reassessments for bad debts on clients’ receivables.</p> <p>Special rules apply to financial institutions, other than banks, and holding companies.</p>	<p><u>TP Documentation (optional)</u> Italian TP rules provide for a “penalty protection” regime based on which, should PEs declare TP documentation possession in their annual tax returns by ticking an appropriate box and such documentation is compliant with local requirements, no administrative penalties (i.e., ranging from 90% to 180% of higher taxes due) apply in case of tax audit regarding TP matters.</p>

TAX	RATE	BRIEF DESCRIPTION	MAIN RECURRING TAX FULFILMENTS
VAT	Standard <b>22%</b>	<p>The Italian VAT rates are either standard (22%) or reduced (4%, 5% or 10%).</p> <p>Most financial services are exempt for VAT purposes with no right to deduction.</p>	<p><u>Payments:</u></p> <ul style="list-style-type: none"> <li>- Generally, monthly by the 16<sup>th</sup> day of the month subsequent to the one to which the VAT settlement relates;</li> <li>- Upon specific conditions also quarterly periodical VAT payments are possible;</li> <li>- An advanced payment (generally equal to 88% of the last periodical VAT payment due in the preceding calendar year) must be made by the 27<sup>th</sup> day of December of each calendar year.</li> </ul> <p><u>Main filings:</u></p> <ul style="list-style-type: none"> <li>- VAT balance quarterly communication – end of the second month following the last month of the quarter;</li> <li>- Annual VAT return – 30<sup>th</sup> April of the following year;</li> <li>- Where certain conditions are met, Intrastat/ESL/EPC are due on a periodical basis.</li> </ul> <p>Generally, invoice does not have to be issued, unless required by customers upon the tax point, for certain financial and bank services, exempt from VAT, carried out by PEs of foreign banks.</p> <p>Apart from the exemption, e-invoicing rules also apply for PEs of foreign banks.</p>

TAX	RATE	BRIEF DESCRIPTION	MAIN RECURRING TAX FULFILMENTS
WHT/ substitute tax on Interest	0%/12,5%/ 26%/DTT rates	<p><u>Internal</u> Application of WHT on interest income and the relative rate depend on the nature of the recipient (individual vs corporate). Some exemptions are possible, to be analyzed case-by-case. Interest paid between two banks is generally exempt from WHT. Interest on government bonds is subject to a 12,5% domestic WHT.</p> <p><u>Cross-border</u> The standard WHT rate may be reduced under the applicable DTTs, EU Directives, or other special domestic tax regimes (such WHT exemptions and reductions are only granted to the beneficial owner of the income). Also, cross-border interest paid between two banks benefits generally from WHT exemption .</p>	<p><u>Main filings:</u></p> <ul style="list-style-type: none"> <li>- Annual WHT return (filing deadline – 31<sup>st</sup> October of the following year). Please note that some WHT on interest should be indicated in the IRES return;</li> <li>- Annual Certification of the dividends paid (within 16<sup>th</sup> March of the following year);</li> </ul>
WHT on Dividends	0%/26%/1,2%/ DTT rates	<p><u>Internal</u> Dividends paid by a resident company to another resident company are not subject to withholding tax. For resident individuals, generally a 26% WHT applies as final taxation.</p> <p><u>Cross-border</u> Dividends paid by Italian entities to foreign persons are generally subject to a 26% withholding tax rate with the following main exceptions:</p> <ul style="list-style-type: none"> <li>• Partial refund;</li> <li>• DTT;</li> <li>• Payments to EU corporate entities;</li> <li>• EU Parent-Subsidiary Directive.</li> </ul>	<p><u>Payments:</u></p> <ul style="list-style-type: none"> <li>- Most WHTs are paid within 16<sup>th</sup> of the month following the one when the tax is withhold. However, there are some exemptions to be verified case by case.</li> </ul>

TAX	RATE	BRIEF DESCRIPTION	MAIN RECURRING TAX FULFILMENTS
Substitute tax on capital gains	0%/12,5%/26%	<p><u>Resident Clients</u> Capital gains on financial instruments - including bonds, both qualified shareholdings (i.e. holding more than 20% of voting rights or 25% of the share capital, 2% or 5% in case of listed companies) and non-qualified shareholdings, derivatives, etc. - realized by resident individuals are subject to 26% substitute tax. A reduced 12,5% rate applies to capital gains derived from bonds issued by (i) the Italian government and its public entities and administrations; (ii) central governments and their local administration of foreign countries included in the “white-list”.</p> <p><u>Foreign clients</u> Generally, substitute tax of 26% (or 12,5% for government bonds) would apply on capital gain deriving from all financial instruments held in Italy and from Italian shareholdings whatever held. Anyway exemptions are provided for:</p> <ul style="list-style-type: none"> <li>- disposal of listed securities other than Italian shareholdings;</li> <li>- disposal of listed non-qualified Italian shareholdings;</li> <li>- disposal of Italian non-qualified (even if non-listed) shareholdings executed by clients resident in a “white-list” country.</li> </ul> <p>However, if the non-resident realizing the gain is located in a state that has concluded a double tax treaty with Italy, capital gains are generally exempt from tax in Italy.</p>	<p><u>Main filings:</u></p> <ul style="list-style-type: none"> <li>- Annual WHT return (filing deadline – 31<sup>st</sup> October of the following year). Please note that some substitute taxes on capital gains should be indicated in the IRES return;</li> <li>- Annual Certification of capital gain income to the client (within 16<sup>th</sup> March of the following year) ;</li> <li>- Annual Certification to employees and freelance professionals (within 16<sup>th</sup> March of the following year);</li> </ul> <p>For granting exemptions, proper documentation shall be obtained.</p> <p><u>Payments:</u></p> <ul style="list-style-type: none"> <li>- Various deadlines provided for the substitute tax payment based on the taxpayer’s regime;</li> <li>- Most WHTs are paid within 16<sup>th</sup> of the month following the one when the tax is withhold. However, there are some exemptions to be verified case by case.</li> </ul>
WHT on salaries and wages	Wide range of rates TBD case by case	Salaries and wages are generally subject to WHT at rates varying in accordance with the amount of income earned.	
WHT on income of freelance workers	20%	Income from resident independent workers is generally subject to a WHT of 20%.	

TAX	RATE	BRIEF DESCRIPTION	MAIN RECURRING TAX FULFILMENTS
Stamp Duty	Wide range of rates TBD case by case	<p>Apply on a certain list of deeds or documents provided for by the relevant law provision (e.g. checks, bills of exchange, accounting statements, communications on financial products, certificates, accounting books, deeds of transfer of quotas, etc.).</p> <p>According to the kind of deed, stamp duty tax is due upon the deeds' origin or in case of use (e.g. if the deed is filed to the Italian Registration Office). Moreover, it can be a fixed amount or as an amount proportional to the value of document (e.g., cashier's checks and communications sent to clients on financial products and banking deposits).</p> <p>Italian banks must apply the proportional stamp duty of 0,2% (a maximum amount of Euro 14.000 has been introduced for non-individual clients, while individuals are subject to tax without limitation) on the statements reporting the value of financial investments, at least annually (i.e., wealth tax).</p> <p>For current accounts and savings accounts held by clients, the bank apply a fixed rate of Euro 34,20, if the clients is an individual, or 100 (not an individual). No tax is due for individuals if the average liquidity shown in the bank statements is lower than Euro 5.000.</p> <p>Stamp duty tax is usually alternative to VAT.</p>	<p><u>Main filings:</u></p> <ul style="list-style-type: none"> <li>- Annual Stamp duty return within 31<sup>st</sup> January of the following year (if opted for virtual payments);</li> </ul> <p><u>Payments:</u></p> <ul style="list-style-type: none"> <li>- Two-monthly payments based on data indicated in the preceding year's tax return;</li> <li>- An advance payment (equal to 100% of the tax due for the preceding year) by 16<sup>th</sup> April;</li> <li>- For electronic invoices sent to SDL, the stamp duty must be paid quarterly on the basis of the calculations provided by the Italian tax authorities.</li> </ul>
Registration tax	Wide range of rates TBD case by case	<p>Specific deeds and contracts must be filed with the local registration tax office either upon signature or if specific circumstances occur, and the relevant tax must be paid.</p> <p>Depending on the nature of the contract and on the assets that are subject of the contract, as well as on the form of the contract, registration tax is levied as a fixed amount or as a percentage of the value of the goods and/or rights subject of the contract.</p> <p>As a general rule, no proportional registration tax is due in the case of transactions subject to VAT.</p>	N/A

TAX	RATE	BRIEF DESCRIPTION	MAIN RECURRING TAX FULFILMENTS
Substitute tax on medium / long term loans	<b>0,25%</b> (2% for the mortgages related to homes other than «first home»)	Medium/long term loans can elect for the application of a substitute tax equal of the total amount of the loan requested, instead of the levying of stamp duty, government license tax and registration, mortgage and cadastral taxes.	<p><u>Filings:</u></p> <ul style="list-style-type: none"> <li>- The filing deadline for the tax return is 30<sup>th</sup> April of the following year;</li> </ul> <p><u>Payments:</u></p> <ul style="list-style-type: none"> <li>- Balance payment within 30<sup>th</sup> April of the following year;</li> <li>- Two advance payments equal to 95% of the net tax liability for the previous tax period and due by 30<sup>th</sup> April (45%) and by 31<sup>st</sup> October.</li> </ul>
FTT	Cash Equities: <b>0,1%/0,2%</b>  Derivatives; From <b>€0,01875</b> to <b>€200</b>  HF trading <b>0,02%</b>	Italian FTT applies to: (i) Cash equities - net daily balance of transactions subject to 0.2% on OTC trades or 0.1% on trades executed in a regulated market (or multilateral trading facility); (ii) Derivatives - notional amount of the derivative subject to a special tax scale; the amount is reduced to 1/5 for transactions executed on regulated markets and multilateral trading facilities; (iii) High-frequency trading - applies to transactions on shares and share-based derivatives in the Italian financial markets at the rate of 0,02% if trades amended or cancelled within half a second exceed 60% of the overall trades.	<p><u>Filings:</u></p> <ul style="list-style-type: none"> <li>- The filing deadline for the tax return is 31 March of the following year.</li> </ul> <p><u>Payments:</u></p> <ul style="list-style-type: none"> <li>- Monthly payments within 16<sup>th</sup> of the month following the relevant transaction.</li> </ul>
Real Estate tax	From <b>0%</b> to <b>1,06%</b>	Real estate tax is levied on the ownership of real estate properties. The taxable base is generally determined on the basis of the so called 'cadastral value' (i.e. capitalization of the deemed standard income that is expected to be derived from the real estate). The tax rate is set at 0,86%, with the possibility for municipalities to increase it to 1,06% or decrease it until zero	<p><u>Filings</u></p> <ul style="list-style-type: none"> <li>- The deadline for the submission of the tax return is 30<sup>th</sup> June of the FY following the one in which the ownership of the property has begun or in which there have been significant changes in the determination of the tax.</li> </ul> <p><u>Payments</u></p> <ul style="list-style-type: none"> <li>- Annual payment due in a one shot solution within 16<sup>th</sup> June or in two equal installments due by 16<sup>th</sup> June and 16<sup>th</sup> December.</li> </ul>



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