ITALY
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Business Relations and Investment Guide

Consiglio Nazionale
dei Dottori Commercialisti
e degli Esperti Contabili

A.I.C.E.C.

Fondazione
Nazionale dei
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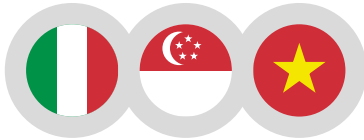

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This edition anticipates a new institutional mission in Vietnam and Singapore and reiterates the CNDCEC's commitment in the field of internationalisation, to promote and strengthen the acquisition of useful (and I would say, indispensable) expertise and experience for supporting our clients today.

The production and financial processes of business activities occur today in increasingly globalised and complex contexts and require not only interdisciplinary expertise, but also the ability to integrate knowledge of models and opportunities present in other markets. The new National Council, formed on 1 June, have the firm intention to pursue and strengthen activities associated with internationalisation through a wide programme of specialist training with targeted missions. A specific Observatory has been set up which will involve the participation of major institutions, consolidating past experiences of fruitful collaboration, which will carry out research and draw up documentation dedicated to different segments and sectors of interest to our profession. We work in a context that is seeing an increase in business risk, digitalisation, the drive towards sustainability and the interlapping of different legislations that requires us to be, as always, able to give precise and useful responses. I am, therefore, confident that this publication and the associated mission, about to get under way, will provide concrete and necessary help for numerous colleagues.

Elbano de Nuccio
President of the Consiglio Nazionale
dei Dottori Commercialisti
e degli Esperti Contabili

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Presentation

Dear Colleagues,

The ongoing transformation of world trade, as well as the delicate international relations that underpin it, are before our eyes, and not just as from today. As parties involved in this change, we, as accountants, cannot choose to ignore the causes and consequences. The role that we have, in providing daily and multidisciplinary support to our numerous business clients, obliges us to be experts also with regards to international dynamics.

Just considering what has happened in the last four years, and in the last two in particular, should be sufficient to realise how many complex changes there have been, and still are in progress, especially for smaller, less structured enterprises less expert in relations with foreign countries: first the "tariffs war", then Brexit, and immediately after that the pandemic have completely rewritten the rules of trade, generating also a huge push towards e-commerce which, at times, is completely improvised and uncontrolled, and therefore terribly dangerous if not managed with awareness and competence.

Subsequently, after the darkest Covid-19 period, and finally an economic recovery, there has been an increase in prices which has seen, among things, a doubling of the cost of sea freight rates and a lengthening in average sea transport times, resulting in a first rethinking of inventory management and of the "just in time" model that has long dominated business strategies.

Finally, the recent war and occupation of a number of Ukrainian territories by Russian military forces, with the consequent restrictive measures taken in various countries, including the European Union, have completely shattered those trade balances that we had been accustomed to for around a couple of decades.

These introductory thoughts clearly show the close correlation between foreign trade and geopolitics, and we are operators called upon to "handle", if not always to "guide", the imposed change, assuming an even more delicate role than in the past. The global value chain, very often transferred to different countries due to previous delocalisation strategies, is today turning towards "re-shoring" or "friend-shoring" in order to bring production phases closer together and to limit the risks of the current uncertain situation.

In all of this, we are well aware of the fundamental importance of our role and it is a commitment on the "front line". Larger, better structured companies, while not immune to the risks deriving from the above-described phenomena, are able to face difficulties with greater autonomy, while smaller businesses, by virtue of their structure, do not the same possibilities and are often on the lookout for help, especially with regards to the international context, also in terms of import/export operations to be carried out. Also,

and perhaps especially, with regards to this situation, the support requested of us takes on a delicate and important aspect.

Our national economy is based, for a third, on the value of exports and numerous Italian SME clients are appreciated at international level for their formidable transformation capacity; it is increasingly clear, therefore, how the support that professionals can provide also to the growth, in terms of both structure and exported value, of these smaller firms becomes fundamental for the entire national economic system. The growth, in terms of expertise, of these small businesses occurs also with the contribution that the AICEC seeks to provide to professionals through its initiatives that aim at disseminating the culture of internationalisation in order to increase the level of knowledge necessary to deal with foreign countries, both in terms of product placement and with reference to markets for procurement.

In the current geographical scenario in which the countries in the ASEAN area play a fundamental role in terms of their populations and commercial opportunities, standing in first place among geographical destinations for global exports, we have chosen to concentrate our attention on Vietnam and Singapore, for the characteristics that these two territories possess and for the enormous opportunities for growth in commercial exchanges.

From exports to setting up business abroad, passing through the various intermediate phases of the complex process of internationalisation, the contribution of us accountants, natural interlocutors operating in the internationalisation sector, today considered a particularly precious asset in the entire system, remains decisive. It is also for this reason that we sincerely thank the Embassies and the entire Italian diplomatic network system abroad that has always supported us in our initiatives, granting patronage to our missions and intervening in first person to testify to the efficiency of the Italian Economic System in supporting Italian enterprises interested in relations with foreign counterparties.

Obtaining this important consideration on the part of institutions supporting the internationalisation of enterprises and professionals was one of the initial objectives characterising the operation of AICEC and of the entire CNDCEC. All this has been possible thanks to the seriousness and competence with which we have worked up to now – and will continue to do so – in order to provide the necessary information to concretely support our enterprises in their approach to foreign markets.

It should also be pointed out that this has been possible also, and especially, thanks to your strong participation and initiatives, which have been, and remain, a continuous stimulus in offering training and authoritative information, as well as a challenge to seek to provide expertise which is appropriate to the changes in progress.

In wishing you profitable reading, I offer my most sincere thanks.

Giovanni Gerardo Parente
President A.I.C.E.C. – Associazione Internazionalizzazione Commercialisti ed Esperti Contabili (the Italian Professional Association of Chartered Accountants)

The Italian Economic System

1. Country presentation

1.1. Form of government

The Italian State is a parliamentary republic based on the principle of the separation of powers: legislative power is attributed to Parliament, the representative body of the popular will, while executive power is attributed to the Government, which operates on the basis of a vote of confidence received from the legislative body, and judicial power is exercised by the Judiciary, an autonomous system independent of any other power.

Apart from, and above, the traditional powers of the state there is the President of the Republic, the highest office of the State and representative of national unity, who is elected by Parliament in a joint session of its members.

The President of the Republic is a monocratic, impartial and *super partes* constitutional body to whom specific and predetermined prerogatives are attributed, aimed essentially at guaranteeing a balance of, and separation between, the other powers of the state and of safeguarding the Constitution, which represents the fundamental and supreme law of the Italian State.

More specifically, the Constitution, in its first twelve articles, establishes the fundamental principles of the Italian Republic; in the first Part, it identifies the rights and duties of citizens in the context of ethical-social relations and, in the second Part, regulates the organization of the Republic, that is, the bodies of which it is composed, local authorities, as well as, finally, constitutional guarantees.

Having stated the above, the main characteristics of the bodies to which the Constitution attributes the three fundamental powers of the state are outlined below.

1.2. The Parliament

Parliament is a constitutional body, representing the political will of electors and is subdivided into two chambers (so-called perfect bicameralism): the Chamber of Deputies and the Senate of the Republic, which differ in the age limit required to vote and to stand, the number of members and the presence, in the Senate, of non-elected members.

The traditional and prevalent function of Parliament is legislative and is exercised by the Chambers collectively, through a law approval process that requires the perfect

matching of the will of both branches of Parliament and, hence, approval of an identical text of law on the part of the two Chambers.

All laws, after having received parliamentary approval, must be promulgated by the President of the Republic who, in his capacity as guarantor of the Constitution, can, in the event of formal or substantial flaws in the act approved by Parliament, send back the text to the Chambers with a motivated message, requesting a review; due to the principle of the separation of powers, the President, in all events, has no right of veto, since if the text of law is newly approved by the Chambers, to which, as has been said, are attributed legislative power, the President is obliged to promulgate the law.

After promulgation, the law is published in the Official Gazette of the Italian Republic, which represents the official source of knowledge of the laws in force in Italy; once 15 days have elapsed from publication, (a term which, if provided for in the same law, can be greater or lesser), the law enters into force.

1.3. The Government

The Government is the constitutional body that exercises executive power and is composed of the Prime Minister, appointed by the President of the Republic, and by the ministers – similarly appointed by the latter, on the proposal of the Prime Minister and placed in charge of determined administrative structures – which together form the Council of Ministers, the is, the Cabinet.

Within ten days from its formation, every government must obtain the approval of the two Chambers, that is, a so-called vote of confidence, which must continue for the entire duration of office; if, in fact, during the legislature, the relationship of confidence between the legislative power and the executive one is withdrawn, the Government is obliged to resign from office.

The executive function is exercised by the Government through the identification, implementation and coordination of national political, economic and financial policies; the Government, moreover, is attributed the role of representing the interests of the Italian State in the international context (so-called foreign policy), as well as in the European context, in which a representative of the Government participates in the Council of the European Union, its decision-making body.

The Government is attributed the power to issue regulations – which constitute a secondary source of law – through which it can implement and integrate legislative provisions, regulate the organisation of public administrations and, generally, regulate on matters that the Constitution does not reserve exclusively to Parliament.

The Government can also exercise the legislative function traditionally attributed to Parliament in two cases provided for and strictly regulated by the Constitution.

The first is when Parliament itself assigns the Government the power to issue acts having the force of law, so-called legislative decrees, on the basis of a specific delegated law that establishes the guiding principles and criteria that the Government has to follow, the term within which the proxy has to be exercised and its specific subject matter.

The second case, on the other hand, permits the Government, in extraordinary cases of necessity and urgency that require an immediate legislative intervention, to adopt provisional acts with the force of law autonomously and under its own responsibility, so-called decree laws – that must be converted into law by Parliament within the following sixty days, on penalty of the loss of effectiveness right from their emanation.

In any case, in the event of failed conversion, the Chambers can regulate, with a specific law, juridical relations arising on the basis of the unconverted law decree.

1.4. The Judiciary

Judicial power is attributed to the Judiciary, which is the series of bodies that exercise the judicial function in a position of impartiality with respect to the other powers of the state.

Jurisdiction is either ordinary (civil and criminal) or special (administrative, accounting and military) and, subject to exceptions and particular choices of court proceedings, is based on three degrees of judgement.

The instrument for implementing the judicial function is the fair trial, in relation to which the Constitution identifies, as fundamental principles, the impartiality of the judge, the conduct of cross-examination between the parties in conditions of parity, as well as its reasonable duration.

The jurisdictional function is exercised by ordinary magistrates appointed and regulated by the rules of the judiciary.

In order to ensure the impartiality and autonomy of the judiciary, the Constitution attributes to a specific body, the *Consiglio superiore della magistratura* (Judicial Council) exclusive power with reference to the designation of appointments, transfers, promotions and disciplinary measures regarding magistrates.

1.5. Language and currency

The official language of the Italian Republic is Italian.

On 1 January 2002 Italy and 11 other European Union member States introduced banknotes and coins in euros to replace the respective national currencies of each country; today the euro is the official currency of 19 of the 27 member countries of the EU which together constitute the euro area, officially referred to as the euro zone.

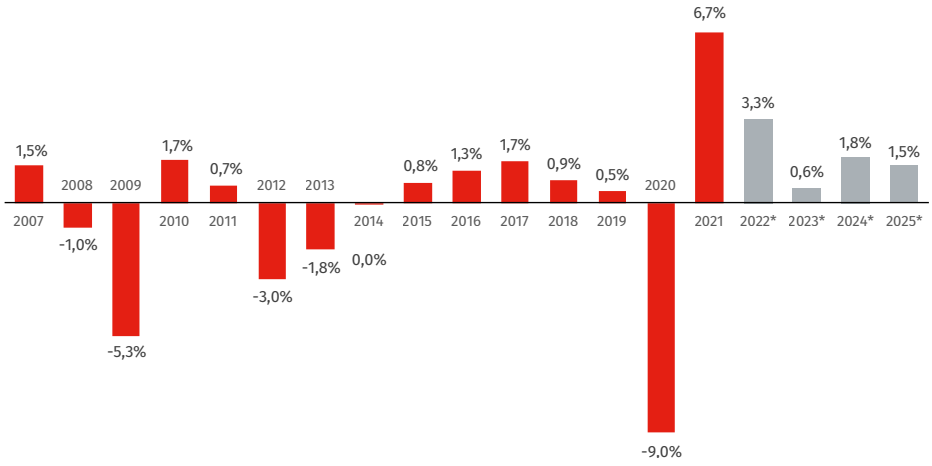
1.6. Economic Outlook

1.6.1. The economic situation

After the downturn in 2020 following the pandemic emergency, the Italian GDP rebounded strongly in 2021 and is expected to grow also in 2022. The post-pandemic growth trend has, however, changed during the year following the increase in interest rates decided by the central banks in order to mitigate inflationary pressures that had already started to appear in the USA and in Europe at the end of 2021.

According to the International Monetary Fund (World Economic Outlook, October 2022), in 2023 the Italian economy will return into recession and the GDP will fall by 0.2% against a growth in the euro area of 0.5%. The FMI's forecasts for Italy in 2023 contrast with those reported by the Italian government (September 2022) in the *Nadef* 2022 (Update of the Economic and Financial Document 2021) in which a GDP growth of 0.6% is expected.

Graph 1. Real GDP trend (values with respect to the year of reference 2015). Years 2007-2025



*Finance Ministry (Mef) forecasts (September 2022)
Source: FNC analysis of *Istat* (National Statistics Institute) and *Mef* data

The main cause of the trend reversal in progress is the impact of the energy crisis combined with supply-side bottlenecks in relation to the growing demand for raw materials and specific intermediate inputs (such as semi-conductors) which have become essential for global production chains. The strong recovery in global trade in 2021, followed by the gradual overcoming of the pandemic emergency in the USA and Europe continued also in the first part of 2022, leading to the first serious supply bottlenecks, and a first significant energy crisis. The Russia-Ukraine war that broke out in the spring of 2022, together with the persistence of the pandemic in Asia, led to further supply bottlenecks and an even deeper energy crisis.

The inversion in the economic trend was immediately detected through business confidence indicators. In particular, the trend of the composite index of SME purchasing managers revealed a change in the economic climate already in the second half of 2021. The index, in fact, after having reached the highest level since the start of the pandemic in May 2021, began to gradually fall. The last survey of October 2022 records the lowest level of the last 20 months.

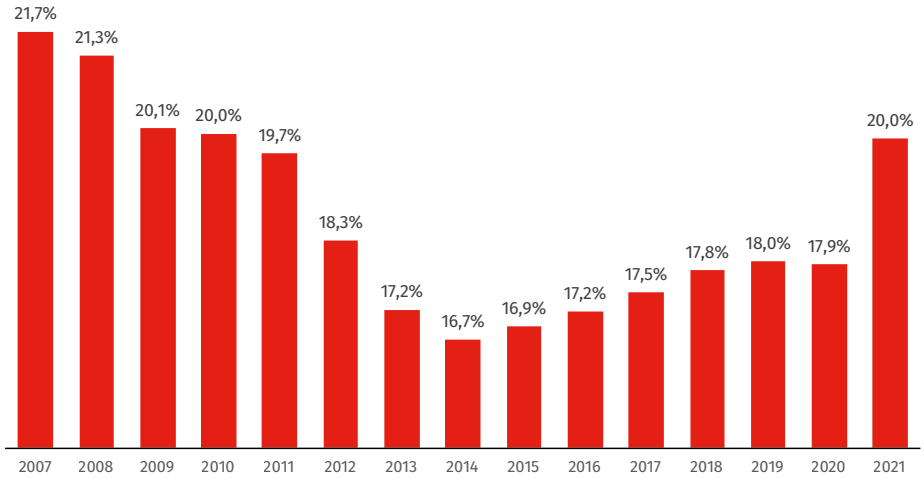
In line with the growth in GDP in the first part of 2022 and, most of all, thanks to the strong growth in 2021, employment reached very high levels, exceeding the threshold of 23 million at the end of the second quarter of 2022 and leading to an employment rate of 60.2%. At the same time, due also to the weak dynamics of the labour market, the unemployment rate fell to 8.1%, the lowest level of the last ten years.

Household consumption, after the strong recovery in 2021, further increased in the first half of 2022. The financial situation of Italian families has remained solid. At the beginning of 2022, household debt was equal to 64.2% of available income, a much lower level than the average for the euro area (97.7%).

The recovery and the rise in demand are clearly visible also in the credit trend thanks to the acceleration of loans to businesses and the resilience of loans granted to families. The formation of an accumulation of savings for Italian families during the acute phase of the pandemic emergency in 2000 and 2021, together with the solidity of Italian household finances, has led to an increase in the demand for loans for the acquisition of real estate.

Investments, which also grew in the first part of 2022, have been held up mainly by the expenditure in constructions supported by the tax concessions introduced in 2020. In the second half of 2022, the ratio of investments to GDP reached 21%.

Graph 2. Fixed gross investments as a percentage of GDP. Values at current prices. Years 2007-2021



Source: FNC analysis of Istat data

Inflation of the harmonized index of consumer prices in the euro-zone has risen gradually until reaching 10% in September 2022 with peaks above 20% in Estonia, Latvia, Lithuania and Hungary, while in Italy (9.4%) inflation is slightly below the EU average (9.9%). The rise in inflation is showing no signs of abatement in the USA (8.2%) despite the heavy increases in interest rates set by the American FED starting from March 2022.

In line with the strong recovery in world trade, in 2021 Italy's trade balance was positive for 44.2 billion euros, but was down compared to 2020 and, most of all, compared to 2019. In the first half of 2022, the trade balance became negative. The cause is the energy sector, excluding which the balance would be positive. The reason is the prices of energy materials, which are generating a significant increase in the value of imports.

With regards to the currency, the strong asymmetry between the USA and Europe has led to a decisive increase in the value of the dollar against the euro which, in the first eight months of 2022, lost 11% of its value.

1.6.2. The political situation

To face the pandemic emergency, in 2020 governments and central banks immediately adopted strongly expansive economic policies aimed at supporting the incomes, consumption and liquidity of businesses. In 2021 and, especially in 2022, faced with the worsening of the energy crisis and the increase in inflation, governments introduced new policies directed at businesses and families primarily in order to mitigate the effects of inflation.

During 2020, to deal with the devastating impact of the pandemic on GDP, the European Union launched Next Generation Eu (NGEU), an intervention of 750 billion euros intended to integrate the EU's 2021-2027 budget. To face the energy crisis caused by the Russia-Ukraine war, in 2022 the EU launched REPowerEU, an intervention of 300 billion euros.

In order to support the post-covid economic recovery, the Italian government has focused its efforts on the NRRP, the National Recovery and Resilience Plan, approved in 2021, which draws most of its resources from the NGEU and which amounts overall to 235 billion euros. The main strategic lines and objectives defined in the NRRP are:

- digitalisation, innovation, competitiveness, culture;
- green revolution and ecological transition;
- infrastructures for sustainable mobility;
- education and research;
- inclusion and cohesion;
- health.

Besides the financial measures aimed at fostering important economic investments, the NRRP also provides for a series of reforms of significant strategic value for the implementation of the plan itself. Among the most important are the reform of the public administration, the justice system, legislative and bureaucratic simplification, the plan for

the promotion of competition and a series of sectorial reforms structured within the single objectives. In addition, there are a number of accompanying reforms such as that of the tax system and for the extension and strengthening of the social safety nets system.

There are, instead, three strategic goals pursued by the EU through the REPowerEU:

- energy-savings;
- diversification of supplies;
- expansion of renewable energy sources.

The plan forms part of the European Green Deal, already a cornerstone of the NGEU, and plans for the ecological transition also through the need to gradually reduce energy dependence on Russia as a result of the conflict in Ukraine.

RePowerEU has been conceived as an additional chapter of the single national RRPs and, following the logic of the Recovery and Resilience Facility, is broken down into single investment plans and legislative reforms of the system.

1.6.3. Economic outlook

Even respecting all the objectives provided for in the NRRP and despite their improving impact on economic growth forecasts, the government, taking account of the inversion in the general economic trend and of the risks of recession in 2023, has revised down GDP growth for 2023, most of all as a result of the decidedly negative impact of new forecasts on the trend of a number of external variables such as exports and foreign demand, which will undergo a significant deceleration in 2023 to then rapidly recover in the 2024-2025 two-year period. Besides foreign demand, the price of petroleum and gas and the increase in interest rates in progress also have a negative effect on economic growth.

In the forecasts updated in September 2022, the government expects a GDP growth of +0.6% against a previous forecast, made in April 2022, of +2.4%. The change in the new economic situation is, therefore, particularly negative and equal, overall, to -1.7 percent. The positive boost of the NRRP is, therefore, not sufficient on its own, since the effect of the variables associated with the Russia-Ukraine crisis is decidedly greater and decisive. In addition to this, as already mentioned, the International Monetary Fund has expressed a very pessimistic view with regards to Italy's growth for 2023 (-0,2%).

Table 1. International Monetary Fund growth forecasts

	2021	2022	2023
United States	5,7	1,6	1,0
Euro Area	5,2	3,1	0,5
Germany	2,6	1,5	-0,3
France	6,8	2,5	0,7
Italy	6,7	3,2	-0,2
Spain	5,1	4,3	1,2
Japan	1,7	1,7	1,6
United Kingdom	7,4	3,6	0,3
Canada	4,5	3,3	1,5

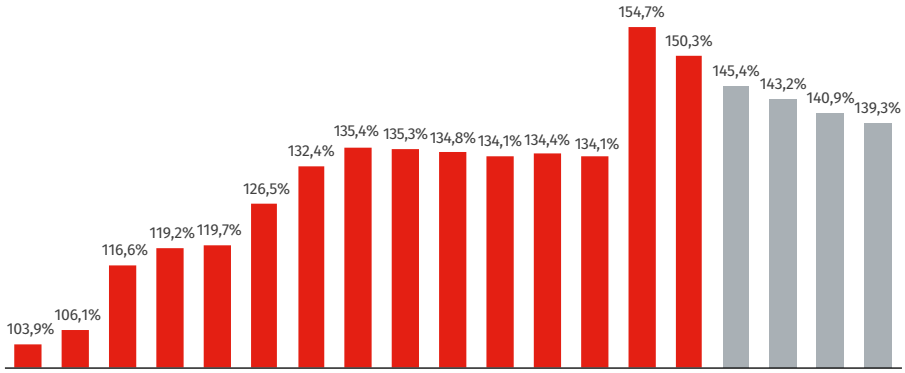
Source: World Economic Outlook, IMF, 22 October 2022

1.6.4. Public finances

As is well-known, in 2020, due to the pandemic emergency and the measures to support household incomes and business liquidity, EU national governments, especially thanks to the suspension of the Fiscal compact, implemented strongly expansive fiscal policies, thereby significantly increasing deficits and public debt. Thanks, also, to accommodating interventions by the European Central bank, which launched an extraordinary plan for the purchase of securities and took real interest rates to a negative level, Italian public debt grew significantly in 2020, reaching 154.9% of GDP.

At the end of 2021, the Italian public debt was 2,678 billion euros against 1,782 billion of GDP. Thanks to the strong recovery in 2021, with a nominal GDP growth of +7.3% and the substantial stability of the implicit interest rate of 2.5%, the ratio fell to 150.3%, nevertheless significantly higher compared to 134.1% in 2019. Thanks to the positive GDP trend, the debt/GDP ratio is forecast to fall further to 145.4% and then to reach 139.3% in 2025.

Graph 3. Trend of ratio between public debt and gross domestic product. Years 2007-2025



*Mef Estimates (September 2022)
Source: FNC analysis of Bank of Italy and Mef data

The combined effect of the rebound of GDP in 2022 and the energy crisis led to an unexpected increase in tax incomes, taking the tax burden to 43,4% in 2021 with a forecast of a further jump to 43.9% in 2023 to then fall gradually in the following years until arriving at 42.5% in 2025.

2. Starting a business activity in Italy

The choice of the manner a foreign entrepreneur can operate in Italy depends on numerous factors essentially linked to the organisation and objectives of their own business, as well as the particular characteristics of the Italian market.

In general, a business activity can be carried on in individual or collective form, also subscribing or acquiring capital/stakes in an already existing company.

With the definitive coming into force of the Business Crisis and Insolvency Code further to the amendments introduced by Legislative Decree no. 83/2022 which implemented in Italy EU Directive 1023/2019 on preventive restructuring frameworks[1], individual or collective entrepreneurs must adopt suitable measures or an adequate organisational, administrative or accounting structure for the nature and dimension of the enterprise, also for the purpose of the prompt detection of a state of crisis and are obliged to act without delay to adopt and implement one of the tools provided by the law for overcoming the crisis.

With reference to the ways to start a business venture, various approaches are possible, which are briefly described below.

2.1. The representative office

The representative office is the simplest form of market penetration; through this means, in fact, a foreign person or entity can directly promote their products or services in the Italian territory with limited obligations and costs and without acquiring any tax liability, avoiding administrative, accounting and fiscal commitments of any significance.

It is characterised by presence in the Italian territory of a company without there being any exercise of its main activities and makes it possible to easily gauge the Italian market, while promoting its own business activity.

Functions merely auxiliary or preparatory but useful for the penetration of a foreign enterprise in the Italian market are carried out through a representative office, such as promotional and advertising activities, the gathering of information and the delivery of goods. These activities can be performed in laboratories, warehouses, deposits, offices,

1 This refers to Directive (EU) 2019/1023 of the European Parliament and Council of 20 June 2019 on preventive restructuring frameworks, on the discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and which amends Directive (EU) 2017/1132 (Directive on restructuring and insolvency).

shops and showrooms, provided an entire production or sales cycle is not carried out on a permanent basis, as the condition of a (concealed) permanent establishment would easily in this case materialise, with all the consequences linked to the relative omissions.

From a civil law point of view, the representative office does not have legal autonomy from the parent company, which remains the only entity responsible for corporate obligations assumed with relation to third parties. Italian legal provisions, however, apply regarding public access to official records.

For tax purposes, the foreign enterprise is not subject to taxation in Italy for the presence of a representative office unless, as already mentioned, it is effectively a permanent establishment of the foreign entity, carrying out a production or commercial activity on own account.

In this sense, it is necessary to pay attention to the activity performed by the representative office in order not to run the risk that said office is redefined subsequently as a permanent establishment in Italy of the foreign enterprise, with consequent taxation in Italy of the income generated by the permanent establishment.

2.2. The permanent establishment

A non-resident enterprise can carry on its activity in Italy through a permanent establishment. According to the definition provided by the OCSE[2] the expression "permanent establishment" refers to a fixed business site by means of which a non-resident enterprise exercises, in whole or in part, its own business activity in Italy. This includes: a management site, a branch, an office, a workshop, a laboratory, a building site for construction, assembly or installation (provided said building site has a duration of more than three months[3]).

A significant and continuous economic presence in the territory of the State set up so as not to have a physical presence in the same territory is also considered as a permanent establishment. This condition was introduced in 2018 with the aim of *"mitigating the link – until then fundamental – between the physical presence of an activity in the territory of the State and being subject to tax legislation"*.

2 This definition has been substantially taken from Italian domestic legislation (art. 162 of Presidential Decree 917/1986 bearing the Income Tax Consolidated Act – the so-called *Tuir*), except for a number of differences.

3 Art. 5 of the OECD Convention Model against double taxation provides for a duration of 12 months for the purpose of considering a building site a permanent establishment. Art. 162 of the *Tuir* provides for a duration of only three months.

The legislator has, moreover, defined a permanent establishment in a negative sense, listing a series of situations that do not constitute a permanent establishment (a so-called negative list).

In this sense, a fixed place of business is not considered a permanent establishment if it is used only for the purpose of purchasing assets or goods or for gathering information. The use of an installation for storage purposes only, the display or delivery of assets or goods belonging to the enterprise, or for the availability of assets or goods stocked only for storage purposes and for display or delivery or transformation on the part of another enterprise, are all considered as not constituting a permanent establishment. Finally, the same applies to the availability of a fixed place of business used only for the purpose of the combined performance of the above-mentioned activities.

In order to be considered not pertinent for the purpose of constituting a permanent establishment, the activities listed in negative list must, in essence, be of a preparatory and auxiliary nature with respect to the main activity of the non-resident enterprise[4].

A permanent establishment is defined as "material" (M.P.E.) if it is established through the physical presence of a fixed place of business of the foreign enterprise[5]; it is defined as "personal" (P.P.E.), in the presence of non-independent agents that have the power to close contracts in the name and on behalf of the foreign company or act for their closure without substantial modifications made by the foreign enterprise (so-called commission agent)[6].

From a civil law point of view, also the permanent establishment is not a legally autonomous entity with respect to the parent company. It is essentially a mere means through which the business activity is carried on. As a result, although it is typically provided with an endowment fund, it does not need to formally establish share capital or have independent corporate bodies.

4 The new paragraph 5 of art. 162 of the Income Tax Consolidated Act provides for the so-called anti-fragmentation rule, aimed at preventing the non-resident enterprise from artificially subdividing a single activity into a number of operations, considered preparatory and auxiliary, only for the purpose of meeting one of the conditions excluding the permanent establishment definition provided for by the so-called negative list.

5 The characteristics necessary for being defined as a M.P.E. include principally the fixed nature in time and space of the fixed place of business and the requirement that the activity of the foreign parent company is carried out in said place.

6 With regards to the P.P.E., it should be noted that the power assigned to a person must be effectively exercised, not in an occasional manner, and must relate to the foreign parent company's business activity. Conversely, the status of permanent establishment is not met when the person that operates on behalf of a non-resident enterprise only carries on merely auxiliary and preparatory activities. When a person operates exclusively or almost exclusively on behalf of one or more enterprises with which they have close ties, they cannot be considered as an independent agent.

With reference to aspects relating to taxation, the permanent establishment is a significant entity both with regards to value added tax (VAT), and is an autonomous centre for the allocation of revenues and costs, and is taxed in the territory of the Italian State for the income generated there by the P.E..

The permanent establishment is considered as an entity resident in the Italian state for tax purposes and as such is subject to the same tax regulations provided for individuals and entities carrying out business activities in Italy.

In accounting terms, the operations carried out by the permanent establishment are recorded in separate accounts from that of the parent company and merge into the financial statement of the foreign enterprise, consolidating with the accounting records of the parent company.

The permanent establishment keeps accounts only for tax purposes in order to quantify the income attributable to it according to the arm's length principle. Said income is definitively taxed in the foreign State, and is consolidated in the parent company's overall income. The taxes paid in Italy are deducted from the parent company's income through the tax credit system provided for by the OCSE Model and by art. 165 of the Income Tax Consolidated Act (in that case for foreign branches).

One advantage of the use of a permanent establishment with respect to the setting up of a company arises in the event of making substantial losses. With a company, in fact, it would be necessary to resort to recapitalisation, while in the case of a branch, it is not necessary to restore the initial endowment fund or, in all events, intervene with regards to capital.

In addition, distributions of the endowment fund from the branch to the parent company are not subject to withholding tax in the Italian State. The OCSE Guidelines on the attribution of profits to a permanent establishment permit, under certain conditions, the allocation of funds between the parent company and the permanent establishment. Said passive interests, together with interest payable on loans taken out directly by the permanent establishment can be deducted according to the ordinary rules of the Italian State.

2.3. Incorporating a company

The incorporation of a company is the most complete way of establishing a presence in Italy on the part of a foreign investor.

Italian law offers a wide range of company forms useable for carrying on a business activity, the choice of which depends on numerous factors relating to the entrepreneur's

organisational requirements, the business objects established in the memorandum of association by the members or shareholders, as well as with respect to liability and the taxation regime to which it is intended to be subject.

The rules regarding types of companies are contained in the Italian Civil Code and in special laws bearing detailed provisions for companies operating in sectors subject to supervision, such as listed companies, banks and insurance companies.

Limiting our analysis to companies that do not carry on their business activities in supervised sectors, a first classification to make, with regards to legal status, relates to the distinction between partnerships and companies.

The first category – including the *società semplice* (s.s.) (simple partnership) the *società in nome collettivo* (s.n.c.) (general partnership) and the *società in accomandita semplice* (s.a.s.) (limited partnership) – is characterized by:

- imperfect financial autonomy. The partners (all in general partnerships and in the simple partnership, in the latter case unless otherwise agreed to the contrary, general partners in limited partnerships) have unlimited and liability – meaning that each partner responds with their own personal assets for the obligations assumed by the partnership –– and joint liability, that is to say, each member is liable also for debts incurred, in the name of the partnership, by the other partners, with the consequence that the partnership's creditors can refer to any of the partners to require the fulfilment of the entire obligation;
- the invalidity of agreements through which one or more partners are excluded from any participation in profits or losses;
- the possibility of the simultaneous status of partner and director;
- the transferability, between living persons or for cause of death, of the status of partner, subject to the approval of all the other partners, that is, of all other surviving partners.

Companies enterprises, that is, joint-stock companies, limited liability companies plus partnerships limited by shares – are characterized by:

- perfect financial autonomy. The capital of the company, in fact, is completely separate from the capital of the members and, as a result, only the company is answerable for corporate obligations with its own capital to the limit of the share capital or the assets that the members have contributed to the company (excepting limited liability partnerships, where the unlimited and joint liability of the general partners is provided for);

- the separation between the status as member and power of management, for which a member is not, as such, a director of the company and a director of the company is not necessary one of the members;
- the transferability, between living persons or for cause of death, of the status of partner, subject to compliance with the particular restrictions established by the law in the specific regulations for the type of company chosen by the members upon incorporation.

A further classification of company types can be made on the basis of the business objects, making a distinction between profit-making companies, with the purpose of dividing the profits earned among the shareholders, and companies with a mutualistic purpose (cooperatives), whose object is the provision of goods and services or the creation of jobs for the members under more advantageous conditions than what the members would obtain in the market. It should be noted that the provisions of s.p.a's (join-stock companies) apply to cooperatives where compatible, that is, as regulated by the by-laws, and in the case that the number of members is lower than twenty and balance sheet assets do not exceed a million euros, regulations laid down for s.r.l.s (limited liability companies).

Italian law, moreover, permits the incorporation of single-member companies, incorporated by a single member, upon the meeting of certain conditions and, since 2012, provides for the possibility of incorporating an s.r.l. with a minimum capital of one euro (simplified limited liability company) and which does not exceed the amount of 10,000 euros.

Also starting from 2012, the Italian legislator introduced into the legal system a new type of innovative enterprise (the so-called innovative start-up), in relation to which significant tax and contribution concessions are provided for, as well as incentives for investors.

Innovative start-ups are limited companies, also in cooperative form, resident in Italy (or in another member country of the European Union, provided they have a production site or a subsidiary in Italy), which meet certain conditions[7] and whose business object, exclusively or prevalent, consists in the development, production or marketing of innovative products or services with a high technological content.

In the category of the aforementioned limited companies, the *s.p.a.* (joint-stock company) and the *s.r.l.* (limited liability company) represent the forms most used to start a business in Italy. As a result, it is only with reference to said legal forms that the main characteristics are described below.

7 Reference should be made to art. 25 of Decree Law 18 October 2012 no. 179, converted with amendments by Law 17 December 2012, no. 221.

2.3.1. *Società per azioni* (s.p.a.) (Joint-stock companies)

The capital is represented by shares and the minimum value is fixed at euro 50,000.00, of which 25% must be paid upon incorporation which must occur through a public deed drawn up by a notary.

The *s.p.a.* is characterised by three distinct management and control systems which, together with the shareholders' meeting, are responsible for the organization of the company. The independent audit is performed by an external person or firm specifically appointed by the shareholders' meeting. In the traditional management and control system (see below) a provision of the articles of association can assign the audit to the statutory board of auditors.

The Shareholders' Meeting is the sovereign body of the *s.p.a.* with exclusively decision-making functions and in which the will of the members is expressed, to be then implemented by the management body.

As mentioned, the management and control system of *s.p.a.*'s can be carried out through three different governance models:

- the traditional system, based on a management body and a control body;
- a dualistic system, in which the management of the company is assigned to a Management Board, controlled by a Supervisory Board, which appoints members of the Management Board. In this case, the independent audit is always assigned to an audit firm or to an auditor external to the company;
- the one-tier system, in which the management of the company is assigned to a Board of Directors which internally appoints a Management Control Committee. Again, in this case, the independent audit is always assigned to an audit firm or to an auditor external to the company.

In the traditional management and control model, which is the most widely used and which is applied in the absence of a different provision in the articles of association, the management of the company is, therefore, assigned to a management body, which can be composed of a number of directors, the so-called board of directors, or by a single director, the so-called sole director.

The board of directors can delegate some of its powers of administration to an executive committee or to a managing director. It should be noted that the setting up of suitable structures for the nature and dimensions of the enterprise, also for the purpose of a prompt detection of a state of crisis, is attributed exclusively to the directors.

The board of statutory auditors, in the traditional system of governance, monitors compliance with the law and with the articles of association, compliance with the princi-

ples of correct management and, in particular, the adequacy of the organisational, management and accounting structure adopted by the company and its effective functioning.

As mentioned, in some cases the board of statutory auditors can be assigned the audit: this applies to companies that are not obliged to draw up consolidated financial statements and with respect to which a specific provision of the articles of association attributes the audit to the board of statutory auditors.

2.3.2. *Società a responsabilità limitata* (s.r.l.) (Limited liability companies)

The *s.r.l.* is a leaner and more flexible form compared to the *s.p.a.* and is traditionally used for business activities of smaller dimensions compared to those that an *s.p.a.* carries on and characterized by a lower level of investment.

Incorporation must occur through a public deed drawn up by a notary; the capital is in the form of shares and the minimum value is set at 10,000 euros, without prejudice to the possibility, as already mentioned, of incorporating a simplified limited liability company with a minimum capital of 1 euro.

The latter is a corporate form useable only by individuals, also by a single member, and the share capital – as mentioned equal to at least 1 euro – must be less than 10,000 euros, subscribed and fully paid upon incorporation. Payment must be made in money and paid to the management body.

It is worth noting, moreover, the recent introduction into Italian law of the category of *società a responsabilità limitata PMI (s.r.l. PMI)* (SME limited liability companies) which reduces the differences between *s.r.l.* and *s.p.a.* so that, in departing from the strict provisions regarding s.r.l.'s – on the basis of which shares cannot be offered to the public as financial products – it is permitted to place shares on the market through specific telematic portals for crowdfunding, in compliance with the legal limits provided for by the legislation[8].

Along the same lines, *s.r.l. PMI*'s are able to create categories of shares.

With regards to the management and control system characterising the *s.r.l.*, it should be pointed out that, unless otherwise provided for by the articles of association, management is assigned to one or more members appointed by decision of the shareholders. As a result, *s.r.l.*'s can be managed by a sole director or by a number of directors.

When management is assigned to a number of people, they form the board of directors. The memorandum of association can, however, provide that management is as-

8 Pursuant to art. 100-*ter*, para. 1-*bis*, Leg. Dec. n. 58, of 24 February 1998 of the Tuf, excepting what is provided for by art. 2468, para. 1 of the Italian Civil Code, equity stakes in small and medium enterprises incorporated as *società a responsabilità limitata* can be offered to the public as financial products also through portals for the raising of capital regulated in the same provision.

signed to the members of the board separately or jointly. It is worth pointing out that the setting up of suitable structures for the nature and dimensions of the enterprise, also for the purpose of a prompt detection of a state of crisis (s. par. 2.), is attributed exclusively to the directors.

The s.r.l. is characterised by a particular control system, as only upon the exceeding of certain parameters or upon the meeting of certain conditions, is the shareholders' meeting obliged to appoint an external auditor or, alternatively, a control body composed of a number of members or a single person (the sole statutory auditor).

More precisely, the appointment of a control body – also monocratic (sole statutory auditor) – or of an external auditor (individual or firm) is obligatory if the company:

- is obliged to draw up consolidated financial statements;
- controls a company obliged to have an independent audit;
- has exceeded, for two consecutive financial periods, at least one of the following limits:
  - 4,000,000 € of assets in the balance sheet;
  - 4,000,000 € of revenues from sales and services;
  - 20 employees on average during the financial period.

With regards to the functions of the control body, the law provides that, also in the presence of a monocratic body (sole statutory auditor), the provisions referring to the board of statutory auditors of *s.p.a.*'s apply.

Independent audit

As stated above, limited companies are obliged to appoint an independent auditor.

The individuals or entities that perform the independent audit of Italian accounts (external auditors and audit firms) must be enrolled in the Register of external auditors kept by the Ministry of the Economy and Finance and must comply with the provisions contained in Leg. Dec. no. 39/2010, in its implementing provisions and in European Regulation no. 537/2014.

In the event that, as mentioned, the independent audit of the accounts is assigned to a board of statutory auditors (or to the sole statutory auditor of an *s.r.l.*), all the members, or the sole statutory auditor, must be enrolled in the Register of external auditors and comply both with the rules provided for in the regulations relating to the supervisory function, and – with regards to the performance of the audit in collegial form – with the specific provisions of Leg. Dec. n. 39/2010, including the provisions relating to independence and the International Standards on Auditing (ISA Italia).

3. The taxation system

The Italian tax system is based on the taxation of income, consumption and assets, and is implemented through the application of the following main taxes:

- *Imposta sul reddito delle società (IRES)* (Corporate income tax);
- *Imposta regionale sulle attività produttive (IRAP)* (Italian regional tax on production);
- *Imposta sul valore aggiunto (IVA)* (Value added tax);
- *Imposta sul reddito delle presone fisiche (IRPEF)* (Personal income tax) ;
- *Imposta sulle successioni e donazioni* (Inheritance and gift tax);
- *Imposta Municipale Unica (IMU)* (Municipal property tax);
- *Imposta di registro e tasse indirette su trasferimenti di proprietà* (Registration tax and indirect taxes on property transfers);
- *Imposta sul valore delle attività finanziarie estere (IVAFE)* (Tax on the value of foreign financial assets;
- *Imposta sul valore degli immobili esteri (IVIE)* (Tax on the value of foreign real estate).

The main taxes of particular interest for a foreign investor are analysed below.

3.1. IRES

The *Imposta sul Reddito delle Società (IRES)* (Corporate income tax) is aimed at taxing the incomes produced by activities exercised by both resident and non-resident companies, cooperatives and similar entities (associations, foundations, trusts, etc.). Any source of income generated by said companies and similar entities is subject to tax on income through IRES.

For resident entities taxable income includes not only the income generated in Italy, but also that generated abroad.

For non-resident entities taxable business income in Italy is only that earned through a permanent establishment in Italy.

A company or legal entity is considered resident in Italy if, for the greater part of the tax period, has in Italy, alternatively, its (i) registered office, (ii) administrative office, (iii) main business object.

Partnerships are not subject to either IRPEF or IRES since, with regards to the income generated, the single partners are subject to taxes on income with reference to the stake held by them and independent of its collection (so-called "transparency principle").

IRES is a proportional tax, the rate of which is 24%, and is applied on taxable income (the taxable base).

The tax obligation is fulfilled twice a year, with the result that, at the first deadline, the balance is due relating to the previous year and the first down payment for the current year, and at the second, the second down payment relating to the year in progress.

Tax base of business income: observations

In general, the business income of companies and commercial entities is determined by making increasing or decreasing adjustments to profit or loss, as provided for by tax legislation.

In the event of a negative tax base, the losses made in the first three financial periods from the start of operations are recordable in the subsequent tax periods, without time or quantity limits. Losses made from the fourth financial period are deducted from the income of subsequent tax periods up to a limit of 80% of the taxable income for each of them.

Interest payable is deductible up to correspondence with interest receivable. The excess is deductible within the limit of 30% of the gross operating profit shown in the income statement. Any further excess is deductible, according to the above limits, in subsequent financial periods.

Dividends paid by limited companies to non-resident shareholders are subject to withholding tax of 26% (without prejudice to the application of any more favourable rates provided for by Conventions against double-taxation; said withholding tax is not applicable to profits relating to a permanent establishment in Italy of a non-resident entity).

Withholding tax is at 1.20% in the event dividends are paid to companies and entities subject to corporate income tax resident in another member State of the European Union or in States that have signed up to the European Area Agreement and that permit an adequate exchange of information.

Finally, exemption from "outgoing" withholding tax is provided for dividends distributed to limited companies resident in another member State of the European Union that hold, uninterruptedly for at least one year, a minimum equity investment of 10% in the limited company resident in Italy (so-called "parent-subsidiary" directive).

3.2. IRAP

The *Imposta Regionale sulle Attività Produttive (IRAP)* (Italian regional tax on production) is an "own derived tax", that is to say, a tax established and regulated by the law of the State, the revenue from which is attributed to the regions which must, therefore, exercise their own tax autonomy within the limits established by State law.

IRAP revenue goes towards funding the National Health Service.

Limited companies and entities subject to IRES, as well as partnerships and professional associations, are subject to IRAP.

The ordinary rate is 3.9%.

The tax base is the net value of production, determined, as a general rule, from the difference between the positive and negative components of ordinary operations (not taking account of financial income and charges). Specific provisions for the cost of employees are also established: the cost relating to permanent employees is fully deductible, while that relating to fixed-term employees is deductible only with respect to contributions for compulsory accident insurance as well as in relation to apprentices, disabled workers, staff hired with training and employment contracts and staff working on research and development. For entities with positive components of no greater of 400,000 in the tax period, a flat-rate deduction of 1,850 euro is provided for each fixed-term worker, up to a maximum of 5 employees.

For non-resident entities, IRAP is due only if its activities are carried on through a permanent establishment set up in Italy.

3.3. IRPEF

The Imposta sul Reddito delle Persone Fisiche (IRPEF) (Personal income tax) is imposed on all resident individuals with regards to all income however generated (in Italy or abroad), and on non-resident individuals, in relation to only income generated in Italy.

All those who, for the greater part of the tax period, alternatively (i) are registered in the registries of populations resident in Italian Municipalities, (ii) have their domicile (considered as the centre of economic and family interests) in Italy, (iii) have their residence (intended as the place where the person has their usual residence) in Italy, are considered as resident in Italy

IRPEF is a personal and progressive tax. The tax due is calculated applying to the overall income (composed of all the categories of revenue and, therefore, also of income

different from those of the business), net of deductible costs, increasing rates by income brackets. The progressive rates by income brackets are set out below:

- up to 15,000.00 euros, 23%;
- over 15,000,00 euros and up to 28,000.00 euros, 25%;
- over 28.000,00 euros and up to 50,000.00 euros, 35%;
- over 50,000,00 euros, 43%.

Specific deductions provided for by current tax laws will be subtracted from the resulting gross amount.

The above deductions are fully recognised also for non-resident individuals that earn in Italy not less than 75% of their overall generated income and that do not enjoy analogous tax benefits in the State of residence.

3.4. IVA (VAT)

As a rule, the sale of goods or the provision of services in the Italian territory on the part of individuals and entities that professionally carry on a business activity is subject to *Imposta sul Valore Aggiunto (IVA)* (VAT). It is an indirect tax on the consumption of income.

The ordinary rate is 22%. Reduced rates are provided for specific goods and services: 4%, for example, for foods, drinks and agricultural products; 5%, for example, for certain foods; 10%, among others, for the supply of electricity and gas for domestic use, hotel and catering services, medicines and renovation of the building heritage.

4. Labour relations in the market

Businesses' demand for labour in the Italian market is met through the offer of two types of work: subordinate employment and self-employment.

The Italian Civil Code defines the subordinate worker as a worker that is obliged to collaborate with the enterprise, providing their manual or intellectual services to their superiors and under the di-rection of the entrepreneur.

The law establishes that the permanent employment contract is the standard employment relationship ("standard" employment).

Regulation of employed work relations is contained in the Italian Civ-il Code, in special laws of the State and in collective labour agree-ments signed between trade union organizations and representative employers' associations.

Permanent employment contracts can be terminated with an exit agreement or through unilateral withdrawal.

The worker can withdraw from the employment contract by resign-ing, respecting the notice period provided for in the collective agreement applying to the contract.

The employer can withdraw from the employment contract inform-ing the worker with a letter of "justified" dismissal", specifying the motives for interrupting the employment relationship.

The notice of dismissal and the notice of resignation is provided for unless there is a "just cause" of withdrawal or when the trust be-tween the employer and the worker is lost.

With the labour laws reform of 2015 (the so-called "Jobs Act"), new remedies against illegal or unjustified dismissal were introduced. In the light of the reform, the "actual" stability of the employment re-lationship, with the worker's right to be reinstated in the job, re-mains only when the invalidity of the dismissal is ascertained. The dismissal is invalid when it is discriminatory, retaliatory, against the law or when notified verbally.

In the other cases, the main remedies against illegal dismissal pro-vide for the right of the worker to receive compensation payments.

"Normal" working hours are established by the law as forty hours per week. They can be distributed over five or six days in the week.

Every worker has the right to rest each day for a minimum of eleven hours; a weekly rest of a minimum of twenty-four hours; a period of holidays of at least four weeks for each year of work.

The time worked and the level of professionalism are the main pa-rameters used for calculating remuneration for work.

Art. 36 of the Constitution of the Italian Republic affirms that work-ers have the right to a remuneration proportionate to the quantity and quality of their work and, in all events, sufficient to ensure themselves and their family a free and dignified existence.

The levels of remuneration to take as a benchmark for complying with the constitutional provision are those established in national collective labour agreements signed by the most representative trade unions of the reference category.

Italian law protects the work of women and minors.

According to the general principle, children that have not reached fifteen years of age cannot work. Adolescents, that is, minors aged between fifteen and eighteen years old, cannot enter the labour market before they are 16 and only having completed their compul-sory education.

The parity of female workers with respect to male workers is given fundamental importance in the Italian legislation. Discrimination, al-so of a remunerative nature, against female workers, is prohibited. Discrimination of females in any professional orientation and training initiative is also prohibited.

The law attributes the employer executive power, disciplinary power and supervisory power for the management of their employed staff.

The employee has the duty to obey the directives given by the em-ployer and is obliged to perform their work with diligence. In addi-tion, during the employment relationship, employees have the obli-gation of loyalty with respect to their employer. This means that the law prohibits the worker from carrying out activities in competition with their employer.

Italian law has established also forms of “flexible” work.

Regulation of “non-standard” types of employment contracts is con-tained in Leg. Dec. no. 81/2015.

The main ones are the fixed-term contract and the part-time em-ployment contract.

The fixed-term contract can be freely entered into for the first time with any worker if it has a duration of no greater than twelve months. No worker can have fixed-term contracts with the same em-ployer that have an overall duration of greater than twenty-four months. Upon the agreed expiry of employment, the contract is terminated automatically.

All workers can be hired with a part-time employment contract pro-vided that the contract specifies the working hours. The employee must be able to have free time outside the working hours estab-lished by the contract.

As a general rule, all employment contracts must be established through the signing of a written employment contract.

The law prescribes essential information to be contained in the em-ployment contract:

- a. a. the identity of the parties;
- b. b. the place of work;
- c. c. the site or domicile of the employer;
- d. d. the position, level and qualification attributed to the worker or, alternatively, a brief description of the job;
- e. e. the date of the start of the employment contract;
- f. f. the type of employment, specifying in the event of fixed-term contracts, its intended duration;
- g. g. in the case of employees of an employment agency, the identity of the user enterprise when, and as soon as, known;
- h. h. the duration of the trial period, if provided for;
- i. i. the right to receive training organised by the employer, if pro-vided for;
- j. j. the duration of holiday leave, as well as other paid leave the worker is entitled to or, if this cannot be indicated in the con-tract, the methods for determining their enjoyment;
- k. k. the procedure, the form and the terms of notice in the event of withdrawal of the employer or worker;
- l. l. the initial amount of remuneration and the method of payment;
- m. m.the normal working hours;
- n. n. the collective agreement, also corporate agreements, applied to the employment contract, with indication of the parties that have signed it;
- o. o. the entities and institutes that receive the social security and insurance contributions due by the employer and any form of protection regarding social security provided by the employer.

Italian law provides for a general and absolute prohibition of inter-mediation and intervention in the employment relationship. That is, the supply of labour hired by an "intervening" hirer (the so-called provision of other people's work) and employed under the direction of an interposing entrepreneur, is prohibited. This implies that there must be a direct relationship between the employer and the worker. As a general rule, the employer cannot provide or supply their own employee to other employers.

5. Forms of incentives and support to investors and enterprises

5.1. Innovative start-ups and SMEs

(Leg. Dec. 179/2012 – Decree Law no. 3/2015 – Decree Law 34/2020)

Regulations have been established in the corporate, fiscal and employment law fields for enterprises that operate in Italy in the area of technological innovation, so called "innovative start-ups" and "innovative SMEs".

Objective: the measures are aimed at fostering new business initiatives, sustainable growth, technological innovation and employment (particularly youth employment).

Beneficiaries: SMEs incorporated as limited companies that meet certain requirements in terms of research and development costs, the employment of highly-qualified staff or the use of registered patents/software.

Concessions:

- reduction of bureaucratic costs during the incorporation phase;
- exemptions from certain provisions regarding corporate law;
- flexible work rules;
- possibility of raising capital through equity crowdfunding;
- possibility of return on investment through equity participation instruments;
- support in access to credit through a Guarantee Fund;
- subsidised dedicated loans (the *Smart&start Italia* programme, for example);
- possibility of access to other forms of dedicated funding;
- tax incentives for investors.

Tax incentives

- Investment incentive, organised as follows:
  - for **individuals**, an IRPEF deduction of 30% from the amount invested, up to a maximum investment of 1 million euros;
  - alternatively, for **individuals** there is an IRPEF deduction of 50% from the amount invested in the risk capital of innovative start-ups or innovative SMEs. The concessions are granted according to the "de minimis" Rule. For investments made in innovative start-ups, the subsidised investment amounts to a maxi-

mum of 100,000 euros for each tax period (300,000 euros for SMEs). Pursuant to the "de minimis" Rule, the company receiving the investment cannot obtain "de minimis" aid for more than 200,000 euro over three financial periods.
- for **legal entities**, a deduction from the IRES taxable amount equal to 30% of the invested amount, up to a maximum investment of 1.8 million euros.

› lower costs for the offsetting of VAT credits;
› tax exemption from capital gains deriving from the sale of equity investments in innovative start-ups.

5.2. Tax credit for investments in capital goods

(art. 1, paragraphs 184 to 197, Law 160/2019 as amended.)

The Budget Law for 2020 introduced new types of incentives for the acquisition of tangible and intangible assets instrumental to the exercise of the business activity, with particular reference to those supporting the development of the "industry 4.0" programme.

With regards to tangible goods pertaining to the "industry 4.0" model, the credit is remodelled as follows:

› 2022 tax period:
- 40% of the cost for invested amounts up to 2.5 million;
- 20% of the cost for invested amounts over 2.5 million and up to the limit of admissible costs of 10 million;
- 10% of the costs for invested amounts between 10 million and up to the admissible limit of costs of 20 million;

› tax periods between 2023 and 2025 inclusive:
- 20% of the cost for invested amounts up to 2.5 million;
- 10% of the cost for invested amounts over 2.5 million and up to the limit of admissible costs of 10 million;
- 5% of the costs for invested amounts between 10 million and up to the admissible limit of costs of 20 million;

With regards to technically advanced intangible capital assets pertinent to the 4.0 transformation process, the level of the tax credit (to be calculated on a maximum amount of 1 million), can be summarized as follows:

- 50% in 2022[9];
- 20% in 2023;
- 15% in 2024;
- 10% in 2025.

With regards to ordinary assets (not 4.0), there is a lower level of aid, equal to 6%, within the maximum limit of admissible costs of 2 million euros.

5.3. Tax credit for investments in the South of Italy and Special Economic Zones ("ZES")

(art. 1, paragraphs from 98 to 108, Law 208/2015 as amended.)

The 2016 Stability Law established a tax credit for the acquisition of capital goods intended for production sites located in the Southern regions of Italy (Campania, Puglia, Basilicata, Calabria, Sicily, Molise, Sardinia and Abruzzo). Investments are eligible for concessions which are made in machinery, pant and various equipment (also through finance leasing) relating to:

- the creation of a new factory;
- the extension of an existing factory's capacity;
- diversification of the production of a factory to obtain products not previously manufactured;
- a fundamental change in the overall production process of an existing factory.

Art. 4 of Decree Law 91/2017[10], for the purpose of promoting the creation of favourable conditions for development, in certain areas of the country, of enterprises already operating, as well as the establishment of new enterprises, provided for the possibility of

9 That is, by 30.06.2023, provided that by 31.12.2022 the seller has acquired the relative order and that down payments have been made for at least 20% of the purchase cost.

10 Decree Law 20 June 2017, no. 91, *"Disposizioni urgenti per la crescita economica del Mezzogiorno"* (Urgent provisions for economic growth the South of Italy).

setting up so-called *ZES* (Special Economic Zones), inside of which it is possible to benefit from tax concessions and the simplification of administrative procedures. Specifically, a tax credit has been established corresponding to the overall cost of the capital goods within the maximum limit, for each investment project, of 100 million euros. The *ZES* tax credit has been recently extended, including also the purchase of land and the acquisition, development or extension of real estate instrumental to the investments.

The Southern Italy tax credit is proportionate to the overall cost of the assets[11], within the maximum limit, for each investment project, of:

- 3 million euros for small enterprises;
- 10 million euros for medium enterprises;
- 15 million euros for large enterprises.

The determination of the maximum thresholds currently in force has superseded the previous legislation, according to which, the limits in question referred to the cost of the assets net of depreciation provisions made in the tax period, with relation to the same categories of asset belonging to the production site in which the new investment is made.

The tax credit for areas in Southern Italy, on the basis of the region of reference and the dimension of the enterprise, is calculated according to the rates shown in the table below:

Regions	Small	Medium	Large
Basilicata, Calabria, Campania, Molise, Puglia, Sardinia, Sicily	45%	35%	25%
Abruzzo	30%	20%	10%

The above rates are applied also to the tax credit relating to Special Economic Zones.

11 For investments made through finance leasing contracts, the cost incurred by the lessor for the acquisition of the assets is referred to; this cost does not include maintenance costs.

5.4. Aid for Economic Growth (so-called "ACE")

(Art. 1, Decree Law 201/2011 – art. 19, Decree Law 73/2021)

Aid for economic growth, better known in Italy with the "ACE" acronym, is a concession intended to foster the capitalisation of enterprises and is directed towards limited companies, partnerships and individual entrepreneurs in the ordinary accounting regime and other entities resident in Italy, as well as the same non-residential individuals and entities with respect to permanent establishments in Italy.

The concession consists in a deduction from overall income of a percentage return on capital introduced or increased in the Italian enterprise, equal to 1.3%, permitting a reduction of *IRES* and of *IRPEF*, besides of the relative surcharges. The concession has no impact on *IRAP*.

The increase in equity for ACE purposes, on which to calculate the aforementioned return percentage, is determined, generally, considering as increases cash contributions and provisions of available profits and reserves and as decreases reductions in shareholders' equity attributable to shareholders (or to the entrepreneur) for any reason.

5.5. Tax credit for research and development

(Law 190/2014)

The 2015 Stability Law introduced a tax credit in favour of all enterprises, regardless of their legal form, of the economic sector and of the tax regime adopted.

The tax credit is quantified on the amount of costs incurred in each subsidised tax period, exceeding the average of the same investments made in the three previous tax periods.

The level of aid, the maximum amounts and the concessions provided for vary on the basis of the activities in question:

1. Fundamental research, industrial research and experimental development in a scientific or technological field[12].

12 The criteria for the correct application of said definition are set out in detail by art. 2 of Ministry of Economic Deveopment (*MISE*) Decree 26 May 2020 which distinguishes them taking account of the general principles and criteria contained in the Frascati Manual 2015 - Guidelines for collecting and reporting data on research and experimental development (https://www.oecd.org/sti/inno/frascati-manual.htm).

2. Technological innovation aimed at the development of new or substantially improved product or production processes.
3. 4.0 and green technological innovation, aimed at the development of new or substantially improved products or production processes for the achievement of an ecological transition or 4.0 digital innovation objective[13].
4. Design and aesthetic conception activities aimed at significantly innovating the products of

The different rates subdivided on the basis of the type of activity, are summarised in the table below.

		2022	2023	2024-2025	2026-2031
Research and development	Rate	20%	10%	10%	10%
	Amount limit	4 million	5 million	5 million	5 million
Technological innovation	Rate	10%	10%	5%	-
	Amount limit	2 million	2 million	2 million	-
4,0/green innovation	Rate	15%	10%	5%	-
	Amount limit	2 million	2 million	4 million	-
Design	Rate	10%	10%	5%	-
	Amount limit	2 million	2 million	2 million	-

13 The criteria for the correct application of said definitions are indicated in arts. 3 and 5 of the aforementioned Ministerial Decree, taking account of the general principles contained in the Oslo Manual 2018 - Guidelines for Collecting, Reporting and Using Data on Innovation, 4th Edition. (https://www.oecd.org/science/oslo-manual-2018-9789264304604-en.htm).

5.6. Capital Goods – "Nuova Sabatini financing" tool

(art. 2 Decree Law 69/2013, no. 69)

Objective: support investments for the acquisition, also in leasing, of machinery, equipment, plant, capital goods for production use, as well as of hardware, software and digital technologies.

Beneficiaries: SMEs operating in all production sectors, including agriculture and fishing.

Concession: the contribution covers part of the interests on bank loans and is determined to an extent equal to the value of the interest calculated, in a conventional way, on a loan of a duration of five years and of an amount equal to the investment, at an annual interest rate of:

- 2.75% for ordinary investments;
- 3.575% for investments in so-called "Industry 4.0" technologies.

The contribution is related to a bank loan (or leasing agreement), of between 20,000 euros to 4 million euros, of a maximum duration of 5 years, which can be assisted up to 80% from the Guarantee Fund.

5.7. Patent box

(art. 1, paragraphs 37-43 Law 190/2014 – Decree Law 3/2015 – Mise (Ministry of Economic Development)/MEF (Ministry of Economy and Finance) Ministerial Decree 30 July 2015 – Mise Ministerial Decree 26 May 2020 – art. 6 Decree Law 146/2021)

Objective: make the Italian market more attractive for long-term national and foreign investors, incentivising the location in Italy of intangible fixed assets currently held abroad, the maintenance of intangible fixed assets in Italy and favouring investment in research and development activities.

Beneficiaries: all companies and entities with business income.

Concession: the new regulations permit the increase by 100%, for IRES and IRAP purposes, of expenses incurred in the carrying out of research and development activities aimed at the maintenance, reinforcement, protection and increase in the value of software protected by copyright, of industrial patents and of legally protected designs and

models. The activities pertinent for the purpose of the concession are classified as follows:

- industrial research and experimental development pursuant to art. 2 of Mise Decree 26 May 2020;
- technological innovation pursuant to art. 3 of Mise Decree 26 May 2020;
- design and aesthetic conception pursuant to art. 4 of Mise Decree 26 May 2020;
- legal protection of rights on intangible assets.

For the purposes of the facility, expenses relate to:

- staff directly involved in the performance of the pertinent activities;
- amortisation provisions, the capital part of leasing fees and other costs relating to the capital goods and intangible assets used in the performance of the pertinent activities;
- consultancy services and equivalent relating exclusively to the pertinent activities;
- materials, supplies and other analogous products used in the pertinent activities;
- maintenance of rights on subsidised intangible assets, their renewal upon expiry, their protection, also in associated form, and relating to the prevention of counterfeiting and to the management of disputes aimed at protecting the same rights.

5.8. Ecobonus and Sisma bonus

A tax deduction varying from 50% to 85% of the cost incurred - for work on common parts of multi-occupancy buildings – is recognised for redevelopment work and for the reduction of seismic risk carried out on capital properties, goods or assets, with variable ceilings on subsidized spending for each intervention, up to a maximum of 136,000.00 euro, to be spread over 5 or 10 years, depending on the type of intervention.

5.9. Guarantee fund for SMEs' access to credit

(art. 2, paragraph 100, letter a, Law 662/1996)

Its objective is to facilitate access to sources of finance for small and medium enterprises through the granting of a public guarantee that flanks and often replaces the collateral brought by the enterprises.

Thanks to the Fund, an enterprise has the real possibility of obtaining funds without additional guarantees (and therefore without the costs of surety or insurance premiums) on the amounts guaranteed by the Fund, generally equal to 80% of the loan.

5.10. European Funds

It should be noted that Italy, as a member State of the European Union, has access to a wide range of European Funds, distributed with Regional competence. For more information reference can be made to the website:

http://europa.eu/european-union/about-eu/funding-grants_it.

5.11. Other incentives and concessions

For a complete and updated review of incentives in favour of Enterprises and Investors, reference can be made to the website: https://www.mise.gov.it/it/incentivi-mise.

6. A number of customs issues: "origin" and free trade agreements

In international trade, companies have understood the importance of being informed about customs law which, with specific procedures and obligations, often regulates delicate aspects which could be of significant importance for each single operator.

For enterprises that operate in Italy, and in general for those established in the territory of the European Union, it is worth knowing the customs regulations deriving from the application of the Union Customs Code[14] (UCC) and the associated delegation and execution regulations[15] in order to be in a position, in the "pre" phase, to plan trade with foreign countries in the best way and to be ready to manage, in the "post" phase, any problems linked to intrinsic aspects that may occur, often also linked to non-tax profiles.

The management of "Trade compliance" is a delicate task from the point of view of company management, in its dealings with the customs process and in determining the relative debt deriving from the customs procedure[16] through which the goods have to pass. Reliance is often placed externally, abandoning the planning phase, and the management of customs aspects is assigned to third parties (shipping companies, customs brokers) which, thanks to their specific experience in trade with foreign countries are needed to fulfil customs procedures and formalities on behalf company so that the third country product can enter the EU or vice-versa. This "delegation" mechanism can cause inefficiencies inside the enterprise and sometimes a misalignment between internal data, normally used in the accounting records, with respect to customs data.

14 The legal framework in force in the customs field is based on a complex structure of European and national regulations, which have stratified and succeeded each other over the years as a result of the progressive evolution of the European integration process. The European Union's customs union is a unique example. Inside the Community Customs Union, the 27 member states adopt a uniform system for the management of goods which are imported, exported and in transit, and implement a shared series of customs regulations, called the Union Customs Code (UCC). The code came into force on 10 May 2016, even though a number of transitory provisions are still applied. A uniform system of customs duties applies to the importation from third countries, while there are no customs duties at the borders between member States. See EUR-Lex - customs union - EN - EUR-Lex (europa.eu)

15 Regulation (EU) no. 952/2013 of the European Parliament and Council, of 9 October 2013, which establishes the Union Customs Code (recast directive) (Official Gazette (OG) Law 269 of 10.10.2013); Delegated Regulation (EU) no. 2015/2446 (DR); Execution Regulation (EU) no. 2015/2447 (ER); Transitional Delegated Regulation (TDR) no. 2016/341.

16 In the UCC, exportation and release for free circulation are "ordinary" regimes, while transit (type T1 or T2), Deposit (including tax-free zones), particular Use and Inward/Outward Processing Relief are "special" regimes.

An effective way of overcoming these inefficiencies and of limiting responsibility profiles, is to integrate the work of customs brokers with increased communication and better knowledge on the part of the company itself, and of the accountant assisting it, with regards to the prescribed customs obligations, setting up, where possible, specific internal controls.

A suitable "Trade Compliance" control consists, among other things, in:

- the issue of certifications of preferential origin and the use of non-preferential origin certifications;
- the collection of internal and external documentation with respect to the company (for compliance with the rules of origin);
- periodic monitoring of international agreements, directives, European regulations and laws and national trade legislation (including embargos and concessions);
- the identification of necessary licenses for importation into foreign countries;
- the creation of check-lists and procedures that must be adopted by intermediate operators in the supply chain, brokers and suppliers, in compliance with the standards adopted by the exporting company for the acquisition of specific qualifications (such as, for example, AEO);
- risk prevention and mitigation measures deriving from possible violations of the different regulations (with the adoption of Model 231, extended to the crime of smuggling).

Specifically, economic operators' familiarity with the origin concept (together with customs concepts regarding classification and value) of a particular item and, above all, the rules that identify the country from which the item can be considered as originating from, can lead to significant competitive advantages for operators both with regards to commercial and marketing aspects, with a clear reference to the question of the so-called "non-preferential" or "made in" origin, and with regards to a real saving of cost (in terms of customs concessions) by virtue of the numerous trade agreements – free trade agreements - entered into by the European Union with third countries with relation to the "preferential" origin concept.

6.1. Preferential and non-preferential origin

A clear distinction, well-established also by the UCC, on the issue of the origin of goods concerns, therefore, preferential origin and non-preferential origin. Every time a com-

mercial relationship implies a transfer of goods between different countries[17], there is the requirement – upon the passage through the border customs – to establish the origin of the products involved in the transaction. In this way, the identification of the place of origin (production of the item) makes it possible to use and, make recognisable, an indication of origin universally associated with the "made in" term. This applies when the intention is to reveal that a product has undergone in the country reported on the label the last "substantial processing"[18]. Goods classified as such respond to the non-preferential "rule of origin[19]" which, in the Union context, represent the general rule defined so as to apply to all products, regardless of the country of final destination. The impact of such an indication is substantially commercial, without concessions on import customs taxation. The certificate of non-preferential origin is issued, in Italy, by the competent Chamber of Commerce for the territory[20] under the company's direct responsibility.

When, instead, an international transaction has as counterparties two enterprises respectively resident in countries that have signed up to a bilateral preferential agreement, the origin of the product, with respect to the precise rules set out in the agreement, has a significant impact on import customs taxation. The exporter, in fact, is able to certify that its products have undergone "sufficient processing[21]" to attribute the preferential origin of the country of transformation; it will be able to obtain for its customer an importation concession through a reduction or elimination of payable duties. In all events, in an international relationship, it is not possible to disregard the determination of origin for each individual product. Such indication, therefore, together with classification and val-

17 The movement of goods between member States of the European Union does not involve a passage through border customs.

18 To establish if the operations carried out in a given country on non-original materials are more or less sufficient to confer origin to that country, criteria have been established for each category of products; for example, a change of customs heading or a maximum percentage, in value, of non-original semi-finished products, components and/or raw materials that can be used, or a specific production process that must be carried out, or also a combination of these criteria.

19 Specific rules on the theme of non-preferential origin are also contained in annex 22-01 UCC-DR.

20 An electronic request for certificate of origin can be forwarded to the Chamber of Commerce of the province of the registered office of the exporting entity, of the province of one of its operating units or of the province in which the goods to be exported are situated, subject to authorisation of the Chamber of Commerce of the province in which the exporter has its registered office. Printing of the certificate in the company is possible if the requesting entity is the holder of an "AEO" (Authorised Economic Operator) certification or if it has the status of "Authorised Exporter" or is registered with the "REX" system (System of registered Exporters).

21 Sufficient processing is considered as a work process that permits a change in the customs heading or compliance with one of the other rules provided for in preferential agreements.

ue, represents one of the elements the determination of which is essential for achieving a correct application of customs taxation.

Preferential origin, by virtue of the duty benefits granted in customs matters, is certified through documentation issued by the customs authorities[22]. In the determination of the preferential origin of goods intended for sale it could be necessary to involve the suppliers, asking them to issue a suitable declaration[23] certifying the preferential origin of the sold goods.

The European Community regulations on the origin of goods are contained in arts. 59 to 68 of the UCC and in arts. 57 - 126 of ER and 31 - 70 of the DR.

6.2. Free trade agreements

Starting from the second half of the 1980s, there has been a proliferation of formal economic integration agreements entered into between partner countries in order to liberalise trade with reciprocal benefits for the signatories. At international level, three types of agreements can be identified:

a. cooperation and partnership agreements that regulate economic relations between two countries;
b. free trade agreements that generate areas of free trade between the signatory countries with the reduction or elimination of customs tariffs for goods that can be defined as "originating" in one or other of the countries or area that has signed up to the agreement;
c. customs unions.

The above-described international agreements are of fundamental importance as much for exporters as for importers, since they arise from the aim of supporting trade between the partner countries and define the ways that related benefits can be obtained.

The free trade agreements entered into by the European Union[24] provide, in specific origin protocols, for reciprocal duty concessions and the relative conditions for application:

22 For countries linked to the Union by bilateral agreements, this refers to Model EUR 1 which is issued by the customs authorities of the exporting country further to the exporter's written request; Eur 2 for determined goods types and imports; declaration on the invoice for exports of a value of no greater than Euro 6,000.00; Atr in the case of exchanges between the EU and Turkey; finally, Form A for developing countries.

23 Supplier declaration and long-term declaration (Arts. 61 and 62 (EU) Reg. 2447/2015).

24 Companies established in Italy are also fully entitled to benefit.

tariff concessions are provided for on a reciprocal basis so that exemptions or reductions regard both products of Union origin exported to partner countries and products originating in said countries intended to be exported to the European Union: the regulatory sources on the question of preferential origin are therefore the protocols themselves and, alternatively, the rules contained in the UCC.

More recent commercial and free trade agreements entered into by the European Union include:

- Agreement on trade and cooperation between the EU and the United Kingdom;
- EU-Vietnam free trade agreement;
- EU-Singapore free trade agreement;
- EU-Japan EPA (Economic Partnership Agreement);
- EU-Canada CETA (Comprehensive Economic and Trade Agreement);
- EU-Peru Colombia Ecuador Multi-party agreement;
- EU-Central American Countries Association Agreement;
- EU-South Korea Free Trade Agreement.

In the following chapters we will outline the main characteristics of the agreements entered into with Vietnam and Singapore.

Singapore's Economic System

1. Country presentation

Singapore is a City-State which extends for 710 sq.km, situated on the extreme south coast of the Malay peninsula and extends over an archipelago with 58 islands, with the metropolis developed on the largest one.
Singapore has 5.45 million inhabitants with a long story of immigration that has led to the presence of various ethnicities with a prevalence of Chinese, Malaysian and Indians, for which in Singapore, besides Malaysian, which is the national language, English, Chinese and Tamil are also spoken.
Buddhism is the dominant religion in Singapore with a 33% percentage prevalence, followed by Christianity at 18% and Islam at 15%.
The quality of life in this City-State is very high, not only because its population has one the highest pro-capita incomes in the world and a widespread high level of education, but also for its particular attention towards environmental protection and sustainability, as a result of careful measures and state-of-the-art policies. For this, Singapore is often called the “city garden”.

1.1. The political system

Singapore, after abandoning the Federation of Malaya in 1965, became a parliamentary republic within the scope of the British Commonwealth governed according to the Westminster system.

The Singaporean Constitution (Perlembagaan Republik Singapura) of 9 August 1965 established a representative democracy as the adopted political system.

The parliament is the single-chamber legislative body and its members are elected in constituencies.

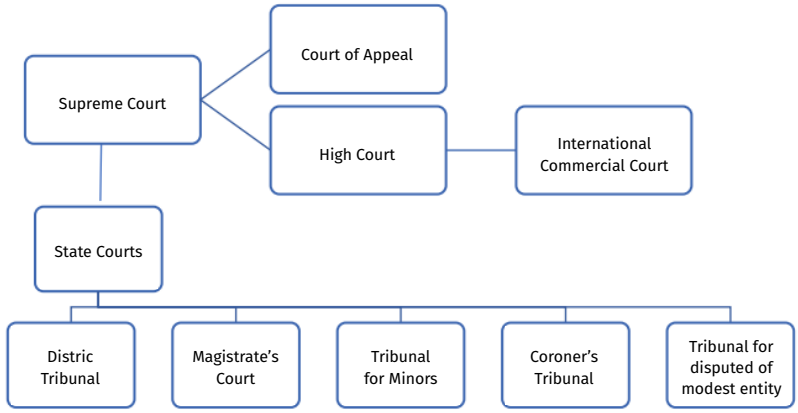
The President, who is the leader of the state, is elected by popular suffrage and has power of veto for certain decisions such as the use of national reserves and the appointment of judges, but has, above all, representative functions, while executive power is assigned to the Prime Minister and to his/her government.

Singapore’s political system is characterised by high stability, which contributes to creating a secure framework for economic activities in the country, also with a long-term perspective.

1.2. The legal system

Singapore has a legal system which is considered as among the most efficient in the world; it is structured on various levels, each with its own scope of competence.

Full judicial power is attributed to the Supreme Court, the highest level of the system, and Chief Justice is the highest office of the Judiciary and presides over the Supreme Court.



The competence of the High Court covers both criminal and civil cases, as well as appeals against the decisions of district courts and Magistrate's Courts. In addition, the Court is assigned proceedings relating to company liquidation, bankruptcy and application for admission of legal advisers and lawyers. It also has general supervisory and review jurisdiction over all subordinate courts in any civil or criminal matter.

The Singapore International Commercial Court (SICC) is a division of the High Court and, as such, a branch of the Supreme Court, assigned to deal with transnational commercial disputes.

The Court of Appeal hears appeals against decisions of the High Court in civil and criminal matters.

The state tribunals are composed of tribunals with specific competences and are divided into district tribunals or magistrate's courts. Both types of tribunals examine civil and criminal cases, though the magistrate's courts deal with less serious cases.

Singapore also has specialised tribunals that deal with specific areas, such as copyright and employment disputes.

Strict regulations govern education and the cleaning of public places and streets. In Singapore it is, in fact, forbidden to chew gum, smoke or drink alcohol in public places

and in the street. Breach of these rules is punishable with very high fines. In addition, especially in the streets and in the squares, there is constant police surveillance and an efficient system of surveillance cameras in the city.

The death penalty exists for a number of serious crimes such as murder, kidnapping, high treason and drug trafficking.

The law provides, for certain crimes, the infliction of corporal punishment (flogging) if perpetrated by male adults of under 50 years of age and without health problems. Flogging is an obligatory punishment in the case of rape, drug trafficking and, among minor crimes, aid given to foreigners that remain in the country beyond the visa limit of 90 days and also in the case of acts of vandalism.

1.3. The economic system

Singapore has an advanced economic system among South-East Asian countries with modern communication and technological infrastructures. Singapore is one of the most competitive countries in the world, favouring all initiatives aimed at the on-site creation of centres of excellence in the various sectors of transport, telecommunications, banks and services in general.

Economic policies over the years have enabled the organisation of a technologically advanced economy, able to create value through highly specialised services, while the manufacturing industry is concentrated on sectors such as pharmaceuticals and technologies applied to medicine, information technologies, the aerospace sector, renewable energy and precision engineering.

In this context, foreign investments have been incentivised to contribute expertise and technologies and for the growth of start-ups in the digital field through substantial public funds.

The theme of digital technologies is particularly important in Singapore, where limitations in terms of territory and natural resources impose a constant modernisation of the city in order to favour sustainable development. There is, therefore, substantial investment in the so-called “Internet of Things”, in the development of sophisticated systems of communicating sensors of the urban infrastructure for monitoring the environmental situation, traffic conditions, lighting systems, energy savings, waste management and water consumption.

Among the many initiatives undertaken by the government, we can mention, by way of example, two particularly significant ones in terms of the longsightedness and efficiency of the economic system.

In 2020, to attract technological entrepreneurs into the country, the administrative visa called "Tech Pass" was introduced. It's a visa administered by the Singapore Economic Development Board that permits established technological entrepreneurs, leaders or technical experts from all over the world to go to Singapore for innovative business and research activities.

From next December 2022, the first integrated building park situated in Jurong Port, one of the initiatives forming part of the Ministry for National Development's industrial transformation programme, will become operative. The park will bring together leading operators in the construction sector supply chain, facilitating their collaboration and the sharing of resources and structures, such as, for example, storage yards and mixing plants for ready-mix concrete.

1.4. The banking system

Local banks for opening a banking relationship for transactions with non-residents demand ever-more stringent requirements, causing various difficulties for newly-incorporated companies. Although the pandemic stimulated the adoption of remote meetings, most local branches continue to demonstrate little flexibility in requiring the physical presence of directors at their branches. Foreign banks, instead, offer a more rapid process for opening an account for whoever is already their customer in the country of origin, but charge above-average bank commissions.

It should be noted, however, that in the last few years, there has been a strong evolution in "digital banking", filling some of the gaps in the traditional banking system.

1.5. The flag and the currency

The Singaporean flag consists of two horizontal bands, red on white. Red symbolises universal brotherhood and equality between individuals; white represents purity and virtue. In the top left-hand corner, there is a white crescent moon facing towards the right and five stars in a circle.

The country's currency is the Singapore dollar, in force since 1967, and is used with coins worth from 1 cent to 1 dollar and banknotes from 2 to 10,000 dollars.

The currency is represented by the S$ symbol and by the SGD international abbreviation.

1.6. Singapore in ASEAN

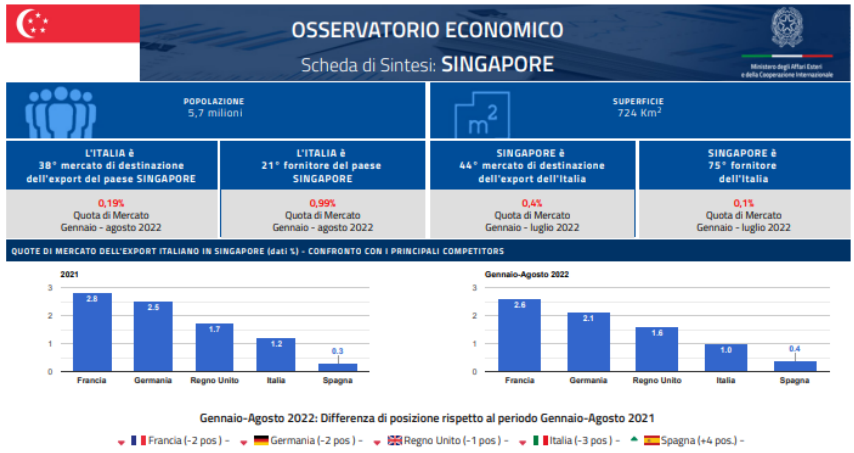
On 8 August 1967, the five leaders of Indonesia, Malaysia, the Philippines, Thailand and Singapore signed up to the establishment of the "Association of Southeast Asian Nations" (ASEAN).

With the coming into force of the ASEAN charter, the community of member countries operates in a legal framework and has set up a series of new bodies to reinforce the development of the community. The ASEAN Charter, in fact, is a legally binding agreement between the ASEAN members. The current members of ASEAN are: Brunei, Cambogia, Indonesia, Myanmar, Laos, Malaysia, the Philippines, Singapore, Thailand and Vietnam. ASEAN's mission is to strengthen ties and make reciprocal opportunities more evident, both for enterprises and for institutions, and its motto is "One Vision, One Identity, One Community".

Through membership of this community, members have shared the objectives of reciprocal respect of independence, sovereignty, equality, territorial integrity and national identity, the right of each State to carry on its national existence free from external interference, subversion or coercion, reciprocal non-interference in internal affairs, the resolution of divergencies or disputes in a peaceful manner, the renunciation of threat or the use of force and effective cooperation between them.

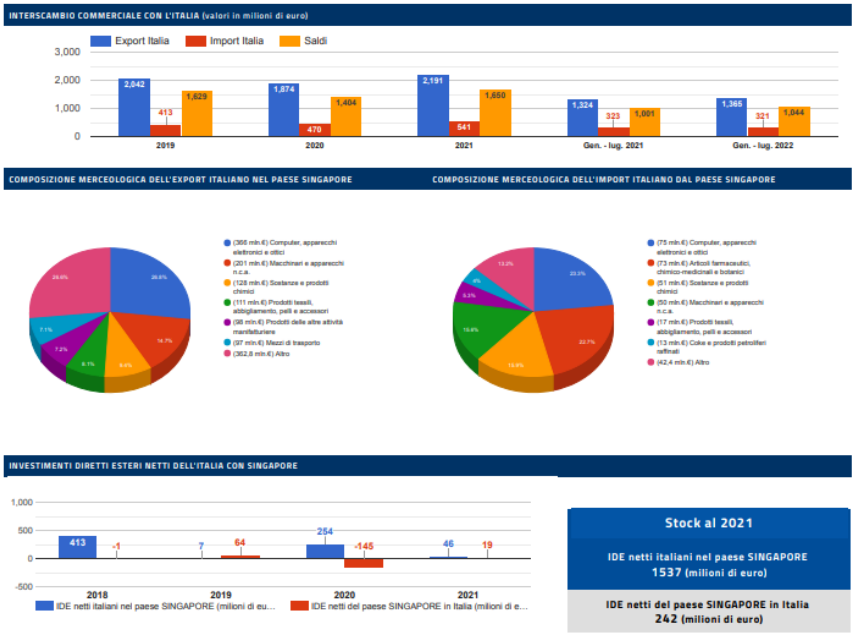
1.7. Economic relations with Italy

Singapore is the EU's biggest trading partner in South-East Asia and the top destination for Italian exports to the region. Specifically, in 2021, Singapore was the 41st destination market for Italian exports and the 66th supplier of Italy. At the same time, Italy was the 20th supplier and 35th customer of Singapore at global level. In 2020, due to the pandemic, there was a fall in **commercial exchange** of 2.3 billion euros, with exports of 1.8 billion (-9.7%) and imports of 470 million (-13.7%). The trade balance was, however, positive for 1.4 billion euros. The latest data available from ISTAT (Italian National Statistics Institute) referring to **2021**, instead show a commercial exchange of **2.7 billion euros**. Exports amount to 2.1 billion euros, while imports are 540 million euros.



Source: Infomercati Esteri.

In 2021, the **main items exported by Italy** were: machinery and equipment, computers and electronics, Coke and petroleum products, chemical products, electronic equipment and manufactured industrial products. Vice-versa, the **main items imported by Italy** were: pharmaceutical products and preparations, computers and electronics, chemical products, machinery and equipment and leather articles (excluding clothing). Both trade and Italy's presence in the City State certainly have room for improvement. Singapore continues today, in fact, to be a highly significant strategic, commercial, financial and logistic 'Hub'. Italian enterprises, particularly those with a high technological content, can here find high profile partners to develop their product or to re-export it to the rest of the region, as well as concrete support on the part of governmental agencies dedicated to supporting high added value investments. Exploiting the logistic platform offered by the City-State, they can direct their operations towards ASEAN as a whole, the regional market that has been unified now for some years.



Source: Infomercati Esteri.

1.8. The protection of intellectual property

Companies that intend to export to Singapore are strongly advised to protect their intellectual property.

Given that registration and protection of Intellectual Property rights are of a territorial nature, registrations made in Italy are not automatically applicable in Singapore, making it necessary to make new local registrations.

Singapore has a solid legal framework in which intellectual property is protected with the recognition of patents, trademarks, registered designs, copyright, the layout-design of integrated circuits, geographic indications, commercial secrets and confidential information.

Singapore is also signed up to international conventions on the protection of Intellectual Property, such as the Paris Convention, the Madrid Agreement, and the Patent Cooperation Treaty (WIPO).

2. Starting a business in Singapore

Foreign investors can set up various structures in Singapore for their investments. Those entering Asia for the first time, for example, could set up a low-risk explorative presence in the form of a representative office, while those wishing to use Singapore as a stepping stone for accessing the ASEAN markets could require higher investments, opening a branch or subsidiary. Singapore's favourable landscape for investments has made it an important Hub of South-East Asia, attracting a multitude of international companies from all over Asia and the world operating in both conventional industries and so-called New Age industries. Singapore's attraction is due, most of all, to the ease of creating business opportunities with legal structures for their management and thanks to the solid network of free trade agreements (FTA) and double-taxation agreements (DTA). Investors, nevertheless, need to be aware of the risks inherent in each investment choice; the ideal path for entry or expansion in the market requires careful consideration of the nature of the business activities, tax implications and legal liability.

2.1. Private companies limited by shares

The private company limited by shares, known also as limited liability companies, is by far the preferred structure among small and medium enterprises (SME) for the creation of a commercial presence in Singapore.

This type of company has the typical characteristics of Italian limited companies but their share capital is in the form of shares and not stakes as in Italian law. The limited liability company can benefit from tax incentives available for local companies. It's a legal entity that separates its managers from the shareholders of the company. In addition, the liability of ownership is limited to the share capital subscribed by its shareholders which can also be another controlling company. Since a limited liability company can be owned entirely by a foreign individual and/or a corporate investor, this type of legal entity can be incorporated as a local holding company or branch of the foreign holding company. Having a company incorporated in Singapore offers the advantage obtaining access to a wider market and the free trade areas of ASEAN, as well as other free market agreements through ASEAN, which include ASEAN-Hong Kong, ASEAN-India and ASEAN-China. This s particularly useful for companies that have plans for development into the South-East Asian area.

Main requirements for the incorporation of a private limited company

a. Company name reservation:
- The company name must be approved by the Accounting and Corporate Regulatory Authority (ACRA) before the registration process for the company;
- once a name has been selected, it must be submitted, through an ACRA Bizfile, a request for approval of the name, which can be refused if the name is identical, similar or phonetically similar to an already registered company;
- the name request costs S$15, and will be held reserved for 120 days from its approval

b. Appointment of corporate bodies:
The bodies of a company can be:
- Directors – the appointment of at least one director must be a Singaporean citizen, or a permanent resident, or a holder of an EntrePass or Employment Pass; they must be at least 18 years of age and not have a history of misconduct or bankruptcy in their work history
- Auditor (to be appointed within 3 months from incorporation except in the event of exemption from audit obligations)
- Company secretary (to be appointed within 6 months from incorporation)
- Shareholders – the minimum share capital issued and paid is S$1

c. Registered address:
It must be a commercial address in Singapore.

2.2. Branch

Foreign companies can set up branches for the carrying on of any type of business activity that comes under the scope of their own activities. Branches cannot take advantage of the tax exemptions and incentives available for local companies, as the final control of the branch remains with the foreign parent company. In this way, branches are considered as an extension of the foreign holding company and are, therefore, taxed as non-tax residents with the corporate tax rate of 17%. The name of the branch must be the same as that of the group parent company. The parent company must assume legal liability of the branch which must be registered with ACRA, the body responsible for monitoring new

companies in Singapore. Due to this liability, many foreign companies decide to set up a limited liability company rather than a branch.

The key requirements for the creation of a branch are:

1. Branch name reservation.
   - The name must be the same as the foreign group parent company;
   - The name must be approved by the Accounting and Corporate Regulatory Authority (ACRA) before the registration process of the branch;
   - Once a name has been selected, the name request must be submitted through an ACRA Bizfile for approval, which can be refused if the name is identical, similar or phonetically similar to an already registered company;
   - The name request costs S$15, and will be held reserved for 120 days from its approval.

2. Appointment of company officers.
   A company's bodies include:
   - Directors.
     - The management body of a Singaporean branch must be the same as that of the foreign group parent company.
     - The directors must be at least 18 years of age and not have a history of misconduct or bankruptcy in their work history.
   - Authorised representation.
     - The branch must have at least 1 authorised representative who is normally resident in Singapore.

3. Registered address
   - It must be a commercial address in Singapore.

The parent company will sustain all the costs of the branch since it is considered as a legal extension of the parent company.

2.3. Representative offices

A representative office is a temporary short-term arrangement, for a maximum of 3 years, with a limited activity. Recognition of the representative office is subject to assessment on the part of "Enterprise Singapore", the governmental agency of the Ministry of Commerce and Industry.

This type of choice is ideal for foreign investors that are still evaluating various investment options before setting up a proper business activity in Singapore.

Companies that wish to open a representative office need to have an annual turnover of at least 250,000 USD and must be represented by staff of the parent company or by a Singaporean citizen.

Representative offices can be composed of a maximum of five people, and the parent company assumes liability for the activities carried on by the office and must sustain all its costs.

The operations that can be carried out by a representative office are limited to the following types:

- The gathering of information on markets and potential customers;
- The carrying out of market research to ascertain information on products/services;
- The development of commercial contacts and the management of requests regarding products;
- Participation in trade fairs and shows;
- The gathering of information regarding legal requirements for the incorporation of a permanent establishment.

Foreign companies that wish to set up a representative office in Singapore must prove to have been incorporated for more than three years and that they achieve an annual turnover of more than 250,000 USD.

As a temporary administrative office, the RO cannot carry on commercial activities for profit and can only collect information or carry out market research.

2.4. Variable Capital Companies

In January 2020, the Monetary Authority of Singapore (MAS) and the Accounting and Corporate Regulatory Authority (ACRA) launched in Singapore the "Variable Capital Company (VCC)", a new innovative legal structure intended for investment funds.

The VCC is regulated by its own regulatory framework through the Variable Capital Companies Act and offers greater operating flexibility with respect to the investment fund structures currently available in the country through trusts, limited partnerships or limited liability companies.

This means that fund managers can create investment funds both through traditional strategies and alternatives in the form of open or closed funds.

Open-end funds are offered through fund companies that sell shares directly to investors, allowing them to enter and exit as they wish. The main characteristic is that there is no limit to the number of shares that can be issued.

Closed-end funds are supervised by a fund manager or by a brokerage company and are listed on the stock exchange. In this case, the number of shares issued is fixed.

VCCs must meet a number of requirements, including:

- they must have at least three directors resident in Singapore. At least one director must be a representative of the fund manager;
- they must have a regulated and authorised Singaporean fund manager or use an authorised Singaporean bank as fund manager. The entity cannot be self-managed;
- they can have a single shareholder or own a single asset;
- they must have a registered office in Singapore and appoint a secretary based in Singapore;
- they must be audited by an auditor based in Singapore and submit their financial statements prepared according to the International Financial Reporting Standards (IFRS) or US GAAP.

There are several advantages that a VCC structure has compared to current collective investment schemes, including:

- VCCs can be used as an autonomous fund (composed of a single investment portfolio) or as an umbrella fund with various single sub-funds which allow for the separation of portfolios and liabilities. Having a number of funds in a single VCC can improve cost efficiency.

- The capital of VCCs will always be equal to its equity. This is because VCCs' shares are created only when investments are made. This provides flexibility in the distribution and reduction of capital since dividends can be paid from capital, facilitating fund managers' ability to fulfil dividend payment obligations.
- Fund managers can easily redomicile investments in existing funds in other countries to Singapore.
- Tax benefits of various forms.

3. The taxation system[1]

3.1. Corporate income tax

Singapore has a corporate income tax (CIT)[2] with a fixed rate of 17%, the lowest among ASEAN member States. The country applies a corporate tax system at a single level, which means that companies pay CIT only on taxable income (on profits) and all dividends are exempt from further taxes.

The low rate has attracted to Singapore a dynamic community of investors, composed of more than 7,000 multinational enterprises, of which more than half manage their activities in the Asia-Pacific area from the country.

Enterprises with an income deriving from Singapore or remitted to the country are obliged to pay corporate taxes with a rate of 17% on taxable income, regardless of the fact that it is a local or foreign company.

Taxable income includes:

- Profits deriving from commercial or entrepreneurial activity[3];
- Royalties and bounties;
- Rental income;
- Income from investments such as interest.

Tax residence

The tax liability of companies and individuals in Singapore depends on their tax residence status.

Resident and non-resident companies

In Singapore, a company is resident or non-resident. The Inland Revenue Authority of Singapore (IRAS) determines residence on the basis of the place where the company is controlled and managed or, in other words, where decisions on strategic questions[4] are

1 Singapore signed up to a double-taxation agreement with Italy in 1977 and had been deleted from the so-called black list of countries in relation to the non-deductibility of costs and CFC rules, already from 2015.

2 Corporate income tax

3 The one-tier system provides that companies based in Singapore pay taxes only on profits and not on income.

4 PEM, Place of Effective Management.

taken. This means that the place of residence of a company does not necessarily coincide with the place where it has been incorporated.

For example, a company could be incorporated in Singapore, but be considered as non-resident if decisions are effectively taken in another jurisdiction like Hong Kong or London. A factor for determining residence – but not necessarily the only one – is the place where the company's board of directors meets.

Resident and non-resident individuals

Citizens of Singapore and permanent residents in Singapore are both considered as tax resident. Foreigners are considered as tax resident if they have lived or worked in Singapore for:

(a) more than 183 days in a calendar year in the previous tax year (YA), or (b) without interruption for three consecutive years; or have worked in Singapore for a continuous period of two calendar years with a total duration of stay greater than 183 days, including their physical presence in Singapore before and after the start of work.

The IRAS classifies non-resident individuals into three different categories: foreign professionals, public entertainers and managers. Recognition of non-residence for all three categories depends on whether they spend more or less than 183 days in Singapore in a calendar year, but the three types have different tax obligations.

A professional is a non-resident if they stay in Singapore for less than 183 days in a calendar yar. Examples of foreign professionals are foreign experts or consultants invited to Singapore to share knowledge or skills with an organization; an academic that takes part in a seminar or workshop, or an individual that operates through a foreign company.

Public entertainers are those who visit Singapore to perform as musicians, dancers, actors or athletes, and spend less than 183 days in the country. They are classified as public entertainers irrespective of the fact that they work as freelancers or as employees. IRAS does not include in this category people that assist public entertainers in their performances, such as members of the sound crew, choreographers, coaches and personal trainers.

Finally, members of the board of directors, or company executives, are non-resident if they spend less than 183 days in a calendar year in Singapore. A director can also hold another office in the company, such as managing director or general manager, but is considered as such only for income deriving from that role.

Advantages of being tax resident

The status as tax resident allows a company to benefit from a myriad of tax incentives offered in the country, which can reduce the total effective tax rate of Corporate Income Tax (CIT).

As will be described in detail in the chapter dedicated to tax incentives, these incentives provide for the possibility for new start-ups of benefitting from a tax exemption of 75% on the first 100,000 S$ of taxable income (available for the first three years of activity) All other companies will receive a tax exemption of 75% on the first 10,000 S$ dollars and a further 50% on the subsequent 190,000 S$ of taxable income.

Tax residents can benefit from the provisions contained in over 90 double-taxation agreements (DTA) of the country, which allow enterprises to eliminate cases of double taxation between the signatories of the treaties. In addition, tax residents have the advantage of accessing wider Asian markets thanks to the country's Free Trade Agreements (FTA).

3.2. Individual income tax

The tax liability of foreigners in Singapore depends on their tax residence status. Foreigners are considered as tax resident if:

They live or work in Singapore for more than 183 days in a calendar year or work without interruption for at least three years.

Tax rates

Singapore taxes all incomes generated in Singapore and all incomes of foreign origin introduced into the country before 1st January 2004. Income of foreign origin introduced into Singapore after 1st January 2004 are exempt from taxes.

Singapore applies a progressive rate on individual income tax (IIT[5]) on tax residents, with a current maximum rate of 22%. The progressive tax rates on individual income tax for tax residents are as follows:

Tax years from 2017 to 2023

Taxable Income	Tax Rate (%)
First S$20,000	0
Subsequent S$10,000	2
First S$30,000	-

5 Individual income tax.

Taxable Income	Tax Rate (%)
Subsequent S$10,000	3.50
First S$40,000	-
Subsequent S$40,000	7
First S$80,000	-
Subsequent S$40,000	11.5
First S$120,000	-
Subsequent S$40,000	15
First S$160,000	-
Subsequent S$40,000	18
First S$200,000	-
Subsequent S$40,000	19
First S$240,000	-
Subsequent S$40,000	19.5
First S$280,000	-
Subsequent S$40,000	20
First S$320,000	-
Over S$320,000	22

Source: www.iras.gov.sg.

Starting from 2024, Singapore will increase the main rate of Individual income Tax to 24%, adding two new bands.

Taxable incomes between S$ 500,000 and 1 million S$ will be taxed at 23%, while taxable incomes over 1 million S$ will be taxed 24%.

Non-tax residents are taxed with a flat rate of 15%.

3.3. Goods and services tax (GST)

Goods and services tax (GST), noted also as value added tax (VAT), is a tax on the consumption of goods and services in Singapore, regardless of the fact that they are purchased by nationals or foreigners.

Since GST is a self-assigned tax, enterprises based in Singapore are obliged to assess the need to register for GST.

Companies must register for GST if they achieve or expect to achieve a taxable income of greater than 1 million S$ in a period of 12 months.

The current GST rate in Singapore is 7%. The Government, however, is planning to increase it by a percentage point in January 2023 to arrive at 8% and by a further point in January 2024, taking it to 9%. The main justification for this increase is the financing of future infrastructure projects and the increase in social welfare costs.

The GST applied to customers is known as "output tax", while GST applied to purchases and business expenses, which include the importation of goods, is known as "input tax". The difference between "output" and "input" tax comprises the net GST to be paid to the State.

3.4. Withholding and other taxes

Withholding tax

Withholding tax at source[6] is applied only to non-resident companies or individuals that have generated an income in Singapore. The types of incomes subject to withholding tax are:

Withholding tax on payments to non-resident companies

Nature of income	Tax rate (in %)
Dividends	Esente
Interest	15
Royalties	10
Technical assistance and provision of services	17
Lease of moveable property	15
Costs for the hiring of planes or ships	0-2

Fonte: World Economic Outlook, IMF, 22 october 2022

Taxpayers do not have to pay any withholding tax at source to resident individuals and companies. The standard rates in Singapore for withholding taxes outside of a treaty are zero for dividends, 15% for interest and 10% for royalties.

Singapore has entered into tax treaties with various other countries, many of which reduce the withholding tax rates. For example, the agreement with Malaysia reduces the rate at source on interest from 15% to 10% and on royalties from 10% to 8%.

6 Withholding tax.

Taxpayers subject to withholding tax must settle and pay the tax to IRAS by the 15th day of the second month after that in which the payment was made. The term for payment is based on the first date of the contract, invoice, payment or credit to the recipient.

Capital Gains Tax

There is no capital gains tax in Singapore. In general, gains deriving from the sale of a property/investment in Singapore are not subject to tax as they relate to capital gains. The proceeds, however, could be taxed if they relate to the purchase and sale of shares.

Property tax

From 2023 to 2024, the government will increase the marginal rates for residential properties not occupied by the owners and for residential properties occupied by the owners, the rates being:

- tax on residential properties occupied by owners in Singapore: minimum band 2023 rate of 0% up to S$8,000, maximum band of 23% above S$100,000
- tax on properties for residential properties not occupied by owners in Singapore: minimum band 2023 rate of 11% for the first 30,000 S$, maximum band of 27% for properties higher than 60,000 S$.

Carbon tax

Singapore's carbon tax will be gradually increased from the current amount of S$5 per tonne to an overall value of between S$50 and S$80 by 2030.

It is a higher target than the previous one of S$10 and S$15 established in the national budget of 2018. Singapore aims to anticipate its target of zero emissions by the middle of the century.

3.5. Audit and fulfilments

Requirements and compliance of documents

According to Singapore's Companies Act, the main legislative source regulating the activities of companies in the country, companies have to comply with the requirements of annual filing of the financial statements provided for by the Accounting and Corporate Regulatory Agency (ACRA) and the Inland Revenue of Singapore (IRAS).

Company law provides that limited liability companies must submit their financial statements to an audit by a qualified auditor at least once a year.

Annual general meeting

The annual general meeting (AGM) is obligatory for a Singaporean company. The general meeting can be held in any part of the world and the shareholders discuss the following items:

- approval of the audit report;
- re-election of the directors (if necessary);
- re-appointment of the auditors;
- distribution of dividends; and
- other types of transactions.

General meetings must be held once a year, within 15 months from the previous general meeting or within six months from the closing date of the financial statements.

Appointment of auditors

Within three months of the incorporation of the company, the directors must appoint an auditor, unless the following conditions apply:

- the annual turnover is less than 5 million S$;
- the total number of shareholders is less than 20; and
- all the shareholders are individuals and not companies.

The auditor's role is to verify if the financial statements of the company comply with the relative accounting standards and to provide an objective analysis of the company's financial performance. In addition, only public auditors registered with the ACRA can carry out company audits.

Tax year

All Singaporean companies have to make a closure of the financial year (FYE) (that is, the last day of the first financial period of the company) after incorporation.

At the end of the financial period, the company must call the general meeting and present the financial statements/annual report (AR). Listed companies must present the annual report within five months and non-listed companies within seven months.

Many companies choose 31 December for their FYE, while others choose the end of a quarter (31 March, 30 June and 30 September).

At the close of an FYE, companies must consider whether the chosen date affects their suitability to receive tax incentives. Starting from 2020, new qualified companies can re-

ceive a tax exemption of 75% on the first 100,000 S$ of taxable income in the first three consecutive years. For the following 100,000 dollars a tax exemption of 50% is provided for.

For a number of companies, it is, therefore, more advantageous to have 31 December as the closing date of their tax year.

Exemption from audit

In July 2015, the ACRA amended the Companies Act with the Small Company Concept, introducing new criteria for audit exemption for enterprises.

Companies that qualify as "small" are exempted from the obligation to submit their financial accounts to audit and to appoint an auditor.

They must, however, meet two of the following conditions:

- the total turnover must not exceed 10 million S$;
- the total number of full-time employees must not exceed 50;
- the company's total assets must not exceed 10 million S$.

Audit of Group companies

Holding companies and their subsidiaries can be exempt from the audit obligation if they qualify as a "small group". To qualify, the group (composed of all the companies) must meet two of the conditions described above for small companies. All companies exempted from audit are, however, recommended to draw up an annual report.

Accounting principles

Singaporean companies whose financial year begins after 1st January 2003 must use the Singapore Financial Reporting Standards (SFRS), which are based on the IFRS.

Financial statements are drawn up according to the accruals basis, which is one of the fundamental accounting principles of Singapore. On the basis of this accounting method, revenues are recorded when a transaction occurs and not when payment is received.

After the International Accounting Standards Board (IASB) published the IFRS for small enterprises (SE) in 2009, the Accounting Standards Council of Singapore in 2010 introduced the SFRS for SE.

Enterprises able to request SFRS for "small enterprises" (SE) are classified as small enterprises, which means that they must also meet two of the three criteria described above with regards to exemption from audit, that is:

- total turnover not greater than 10 million S$;

- total assets not greater than 10 million S$;
- total number of employees not greater than 50.

A number of the advantages for small enterprises that comply with SFRS for SE derive from the fact that the preparation of the financial statements is much simpler and disclosure requirements are reduced.

Annual declarations

The Singaporean authorities require that companies submit a declaration of taxable income within three months from the close of the financial period.

This report must include:

- statement of comprehensive income (profit and loss account);
- company general details;
- balance sheet;
- shareholders' general details;
- dates of annual declarations and general meeting;
- information on company executives;
- cash flow statement; and
- statement of changes in equity.

Sanctions in the event of non-compliance

Companies that do not hold a general meeting and which are late in filing their financial statements risk fines, summons and arrests warrants on the part of ACRA.

The failed submission of the declaration of income for two years or more will imply a summons to court and, in the event of conviction, the company will be obliged to pay a sanction equivalent to double the amount of tax and a fine of up to 1,000 S$. In addition, starting from 14 January 2022, the sanction for late filing of the annual declaration by certain types of company incorporated in Singapore (Variable capital companies and partnerships limited by shares) within three months from the original deadline will incur a sanction of S$ 300, which will rise to S$ 600 if the delay in filing exceeds the above term.

4. The labour market

4.1. Employment Law

The Employment Act (EA) is the main employment law of Singapore. The law regulates the terms and working conditions for all employees that have an employment contract with an employer. The EA covers the following aspects:

- minimum number of days' notice for termination of the contract;
- actions that employers have the right to take in the event of misconduct of employees;
- periods of remuneration, times of payment;
- maternity protection and allowance and leave for parents and for families for looking after children.
- the right to holidays and absence for sickness.

On 1st April 2019, the Singapore government introduced important amendments to the EA. The changes related to the fundamental obligations regarding human resources (HR) and the payslip, dismissal procedures and leave allowance for employers, as well as the rights of employees in the workplace.

The EA refers to all enterprises and all employees – local and foreign – with contracts with an employer in Singapore.

The amendments were conceived to improve working conditions, extending the requirements relating to salary and duties, with the result that all employees in the private sector are now entitled to the rights and protections provided for by the EA.

The objective of these amendments was to reflect the changed requirements of the country's labour scenario, with professionals, managers, executives and technicians (PMET) who, according to forecasts, will compose almost two thirds of the workforce by 2030, compared to half today.

The workers excluded from the EA are public employees, sailors and domestic workers (who were not included previously) as they are covered by other regulations.

Fundamental provisions extended to a larger number of employees

The fundamental provisions refer to the rights of workers (factory workers and blue-collar workers), "non-factory-workers" (non-executives and middle-managers, of-

fice workers) and executives and middle managers (M&E) that earn not more than 4,500 S$ per month.

After the amendment, the threshold of S$4,500 was removed, allowing another 430,000 executives and middle-managers to benefit from employment protection according to the EA.

The fundamental provisions include:

- timely payment of salaries;
- annual holidays and paid sickness leave;
- paid days of holiday;
- protection from unlawful dismissal; and
- maintenance of work registers.

Increase in the salary threshold

Before 1st April 2019, non-manual workers that earned up to S$ 2,500 were protected by the provisions of Part IV of the EA (which provides for days of rest, working hours and other conditions of service), with a maximum ceiling for overtime of S$ 2,250. With the coming into force of the new law, factory workers that earn up to 2,600 S$ are now protected by the provisions of Part IV and the overtime amount will be limited to 2.600 S$. Executives and middle-managers are not covered by the provisions of Part IV.

New approach to salary deductions

Before the new amendments, employers could make only certain salary deductions, such as, for example, for absence from work or for damage or loss of company assets and property.

Now employers can make other deductions, for example, in favour of company pension plans, (only if the employee agrees in writing to the deduction, and is able to withdraw consent at any time without incurring sanctions).

This agreement offers employers the necessary flexibility to carry out agreed deductions, protecting, at the same time, employees' salaries.

Medical certificates (MC) and leave for hospitalisation

Medical certificates issued by registered doctors and dentists pursuant to the Medical Registration Act of 1997 and the Dental Registration Act of 1999 are now recognized, while previously only certificates issued by the State and by doctors appointed by the company were recognized. In this way, employees have the possibility of going to doctors closer to home.

This policy, however, does not affect the reimbursement of medical costs. Employers are obliged to refund only the fees of State doctors or of doctors approved by the company.

Work on Sundays and bank holidays

Remuneration for work on Sundays and bank holidays has been extended to all employees.

Previously, employers provided compensation equal to an extra day's pay or an entire day's holiday. The new amendments will now allow employers to grant leave for the number of hours worked on a Sunday or bank holiday, instead of for the entire day.

Unlawful dismissal

The Employment Claims Tribunal (ECT) will now manage claims of unlawful dismissal, which were previously judged by the Ministry of Manpower.

The ECT will also decide claims relating to wages, not resolved by the Tripartite Alliance for Dispute Management (TADM), the compulsory mediation procedure before submission of relative claims to the ECT. Employees that consider to have been forced to leave employment and are able to prove their affirmations can file a wrongful dismissal claim.

Each of the parties can, however, terminate a contract giving written notice or paying a sum in lieu of notice to the other party.

4.2. Employment contracts

The essential clauses of an employment contract in Singapore include:

- Date of start of the employment relationship, complete names of the employer and of the employee;
- appointment - duties, main tasks and responsibilities;
- working methods (working hours, number of days, etc.);
- trial period (if applicable);
- remuneration;
- benefits for employees;
- termination of the contract – notice period;
- rules of conduct.

Singapore's Ministry of Manpower does not determine a minimum wage. Wages are defined by market demand and supply. In addition, employers must pay employees on the basis of their skills, ability and experience.

Employees that have to work on a Sunday or bank holiday will have the right to an extra day's payment compared to the basic amount. Alternatively, employers, with the employee's consent, can replace the day of rest with another working day.

If an employee is covered by the Employment Act (EA), they have the right to annual holidays after having worked for three months.

Only residents in Singapore have the right to paid maternity leave. The duration is usually 12 weeks, but if the child is a Singapore citizen, the leave is 16 weeks.

In addition, there are other conditions that must be met to obtain maternity leave. These are:

- the mother must be legally married to the father;
- the employment must have started at least three months before the birth of the child; and
- the first eight weeks of maternity leave are payable by the employer, while the following weeks are payable by the State.

On 2 November 2021, the Singaporean Parliament approved the amendment of the Central Provident Fund (CPF) Act and the Retirement and Re-Employment Act. The CPF is the compulsory savings and pension plan for Singaporeans and permanent residents that finances their need for pensions, health care and accommodation in Singapore.

Basically, the CPF is a retirement savings programme financed by employers and employees' contributions. This compulsory programme is an important pillar of Singapore's social security system and aims at meeting the pension, accommodation and health needs of the population.

In order to be able to obtain an employment contract, the Ministry of Manpower (MoM) issues a wide range of work permits to expats that intend to work in Singapore. Every work permit is different for various categories of employees and is based on their professional skills and on their monthly salaries.

Most work permits are requested through the employer or a recruitment agency, or through the Ministry of Employment's online platform. As a result, for qualified professionals, it's necessary to obtain a job offer in the country before submitting an application.

4.3. Visas and work permits

From 2023, Singapore will introduce a points system for Employment Pass (EP) applicants, besides higher wage thresholds.

The government hopes that the new system – introduced by the Complementarity Assessment Framework (COMPASS) – improves the ability of Singaporean enterprises to select high quality foreign professionals and to guarantee diversity in the workforce.

Future EP applicants will have to have at least 40 points in the context of the COMPASS system, assigned on the basis of four attributions and two bonus criteria. The COMPASS system will come into force for new applicants starting from September 2023 and for applicants for renewal starting from September 2024.

The Pass for entrepreneurs (EntrePass) is intended for foreign professionals and entrepreneurs that wish to start a business in Singapore.

The initial EntrePass is valid for a year, and another two years are granted for every subsequent renewal. Enterprise owners, however, have to meet the renewal criteria stablished by the Ministry of Defence, which include a minimum number of local employees hired and a minimum annual cost for enterprises. The complete list is available on the MoM's website.

There are no foreign worker quotas or taxes for the EntrePasses. Holders of EntrePass, whose annual business expenses and local occupation parameter meet the minimum requirements for admissibility, can apply for passes for dependents and LTVP for some family members.

Singapore has issued a new work permit called Tech.Pass, aimed at attracting highly qualified technological entrepreneurs, experts and company leaders starting from January 2021.

The Tech.Pass programme is an extension of the Tech@SG programme that helps rapidly growing companies to select fundamental talented people for their business.

In contrast with the Employment Pass, the Tech.Pass scheme does not require the sponsoring of a local employer, giving the professional more flexibility in their approach, whether to act as an employer or investor for starting a business, or whether to become a director or consultant in one or more technological companies based in Singapore. This work permit also allows qualified applicants to pass from one employer to another.

Owners of established companies

The current company of an applicant must have an annual turnover of 200 million S$. Company owners must have at least three years of proven entrepreneurial or commercial experience and possess at least 30% of the company.

Owners of new-generation enterprises

An applicant company must have an annual turnover of 500 million S$ and 30% of the company must belong to a close family member. The same company must be committed to one of the activities prescribed for owners of established companies.

Founders of rapidly growing companies

According to this new criterion, the applicant must be the founder and major individual shareholder of a company. The company must have a valuation of at least 500 million S$ and must be invested by a venture capital or prestigious private equity company.

Family office managers

This criterion aims at attracting people with a net investable capital of at least 200 million S$, who intend to establish a family office in the country.

Investable equity includes bank deposits, financial assets, capital market products and other forms of collective investment. In addition, a person must have at least five years of entrepreneurial, management of investment experience.

4.4. Termination of the employment contract

Termination of the employment contract in Singapore can be requested both by the employee and by the employer and both parties must comply with the termination terms and conditions set out in the employment contract.

Employees are generally hired for a trial period of three-six months and, at the end of this trial period, are hired as permanent employees. The employment contract usually establishes the terms for dismissal and any required notice. It is essential that all employees are sure of what their employment contract says, so as to be able to act accordingly.

Termination of the employment contract can occur in the event of:

- resignation of employees;
- dismissal on the part of the employer; or
- expiry of the contractual terms.

If an employee's contract provides for a notice period, the employee must comply with this period or pay an indemnity in lieu of notice. The termination notice, whether on the part of the employee or of the employer, must be written.

If an employment contract does not specify a notice period, this period will depend on the employee's length of service.

If an employee resigns without notice, they must waive the indemnity in lieu of notice.

Valid motives for dismissal can be:

- improper conduct;
- poor performance;
- redundancy.

Unlawful dismissal, instead, occurs when an employee is dismissed without just cause. A claim for unlawful dismissal must be submitted to the Tripartite Alliance for Dispute Management (TADM) within one month from the last day of work. The TADM will require the employee to demonstrate that the dismissal was unlawful.

If the claim cannot be resolved through the TADM, the case shall be assigned to the Employment Claims Tribunals (ECT).

5. Forms of incentives and support for investors and enterprises

Singapore is well-known for being one of the main financial and economic centres in Asia with one of the most favourable fiscal and commercial systems for doing business. Besides benefitting from a very transparent legal system, companies that establish a base Singapore can benefit from various incentives, fiscal and otherwise, if the business they decide to carry on corresponds to a so-called "advantageous" sector for the country's economic development.

The requirements are certainly very rigorous, including a considerable commitment to determined levels of investment, the introduction of cutting-edge expertise and technology, as well as a contribution to growth of research, development and innovation capacity.

The most significant information available on available incentives is set out below.

5.1. Government Agencies and the reference sectors

There are four main governmental agencies that supervise business and tax incentives, broken down by sectors and type of recipient, as follows:

- Economic Development Board (EDB)[7] – which is responsible for the development and execution of strategies that facilitate investments in the country's industries;
- the Inland Revenue Authority of Singapore (IRAS)[8] – the country's tax regulator;
- Enterprise Singapore (ES)[9] – which helps Singaporean companies to expand throughout the world and promote local exports;
- the Monetary Authority of Singapore (MAS)[10] – the central bank and financial services authority.

A complete list of specific incentives by sector is available on the individual websites of these agencies as shown in the respective notes.

7 https://www.edb.gov.sg/.

8 https://www.iras.gov.sg/.

9 https://www.enterprisesg.gov.sg/.

10 https://www.mas.gov.sg/

The sectors that benefit from incentives can be summarised as follows:

- Financial services
- Banks
- Management funds
- Tourism
- Shipping and Maritime
- Global commercial industries
- Insurance
- Processing services
- Research and development
- Headquarters activities
- Legal firms
- E-commerce
- Organisation of events

5.2. Progressive Wage Credit Scheme (PWCS)

The Progressive Wage Credit Scheme (PWCS) was introduced into the 2022 budget to support employers in compulsory wage adjustments for workers with a wage below a certain threshold. The programme envisages that the government co-finances the wage increases of employees that receive a monthly gross salary of up to S$[11] 3,000. The benefit in question can apply to employers with respect to employees who are Singapore citizens and permanent residents. On the basis of the programme, employers can receive support for monthly wage increases up to S$ 2,500 from 2022 to 2026, as well as support for monthly gross wage increases over S$ 2,500 and up to S$ 3,000 from 2022 to 2024. Employers suitable for receiving this incentive do not need to submit an application and are directly informed by the Inland Revenue Authority of Singapore (IRAS) regarding any payments.

11 S$= 1 Singapore dollar corresponds to around 0.713 €.

5.3. Start-up tax exemption (SUTE)

The tax exemption system for enterprises that can be defined as "Start-Ups" was introduced in 2005 with the objective of developing new enterprises and entrepreneurs in the country and consists in a reduction of taxable income according to determined thresholds.

As anticipated in the chapter dedicated to taxation, from 2020, qualified companies can obtain a tax exemption of 75% on the first 100,000 S$ of taxable income during the first three consecutive years. The following 100,000 S$ of taxable income can receive a tax exemption of 50%.

The above-described incentive is applicable in the first three years, after which companies can apply for the partial tax exemption (PTE) regime.

In order to be able to benefit from the incentive, enterprises must be considered as "tax resident" or must have a maximum number of 20 natural person shareholders or, alternatively, at least one shareholder has to control 10% of the issued shares. In addition, the enterprises in question cannot be classified as investment or real estate holding companies.

5.4. Partial Tax Exemption (PTE)

Enterprises that do not fall under the tax exemption regime for Start-ups can benefit from the PTE regime, less attractive than the previous regime, but, nevertheless, provides for 75% exemption on the first 10,000 S$ of taxable income. A further exemption of 50% can, then be applied to the following S$ 190,000.

5.5. Loans for enterprises – the Financing Scheme-Trade loan, the Financing Scheme-Project loan and the Temporary Bridging loan

The Financing Scheme-Trade Loan (EFS-TL) was created to support the business financing needs of enterprises. The scheme provided for the granting of a loan of up to a maximum of 10 million S$ until 31 March 2022, and 5 million S$ (3.7 million US$) until 30 September 2022.

The risk share of the government loans was reduced from 90 to 70 percent starting from 1 April 2021. The risk share of 70 percent for the loans has been maintained for young enterprises and companies active in markets with an S&P rating of BB+ and lower.

The Financing Scheme-Project Loan (EFS-PL) allows enterprises to access various loans during their various phases of growth. The EFS-PL was strengthened to support national projects for construction companies until 31 March 2023.

The maximum amount of the loan is 30 million S$ for domestic projects and 50 million S$ for foreign projects. The risk share of government loans arrives at 70%. The types of loan sustainable for foreign projects include:

- the acquisition, restructuring or construction of land, buildings or factories;
- working capital loan; or
- the hire or acquisition of fixed assets, such as machinery and equipment.

The Temporary Bridging Loan (TBLP) provides for the possibility of obtaining working capital for enterprises that meet certain requirements, and the amounts granted could arrive at up to 3 million S$ or up to 1 million S$ respectively for applications submitted by 31 March 2022 and, subsequent to that date, by 30 September 2022.

5.6. Loans for SMEs: SME working capital loan and SME fixed assets loan

For small and medium enterprises, two tools have been set up to support, respectively, investments and working capital.

The SME Working Capital Loan (EFS-WCL) allows small and medium enterprises to access a loan, even if not guaranteed, of up to S$ 300,000 for working capital; the loan is, however, supported by participating financial institutions and the maximum period of repayment envisaged is five years.

The SME Fixed Assets Loan (EFS-FAL) helps enterprises to finance national and foreign investments, such as the acquisition of equipment and machinery, as well as the establishment of new plants. The maximum loan available is S$ 30 million, with a repayment period that can last up to 15 years.

5.7. The Venture Debt loan and the Merger and Acquisition loan

The Venture Debt loan is used for start-ups characterised by a high rate of growth and development that do not have significant assets to be used as a form of collateral for bank loans. The start-ups are, therefore, allowed to use these forms of incentive to grow their business or diversify their products or services. The maximum loan available is S$ 8 million and the repayment period envisaged is five years.

The Merger and Acquisition loan (M&A) is aimed at supporting enterprises that wish to acquire local or international companies. The maximum amount of the loan available for such incentive is S$ 50 million, repayable in five years.

This tool has recently been strengthened, extending its duration up to 31 March 2026, to increase merger and acquisition activities.

As a result of this strengthening, the maximum amount of the loan is expected to be S$ 50 million per borrower or group of borrowers to be repaid always in five years, with a risk share attributed to the government of 50%, increased to 70% for young enterprises.

In addition, for enterprises that wish to expand abroad, it is possible to benefit also from the Double Tax Deduction Scheme for Internationalisation (DTDi), with a tax deduction of 200% of admissible costs for expansion of the international market and investment development activities[12]. Most DTDi deductions are subject to ESG and Singapore Tourism Board approval. A number of activities, however, do not require approval for the first 150,000 S$ of admissible costs. The DTDi supports companies in four categories and various sub-categories:

- Market preparation.
  - **a.** Product/service certification;
  - **b.** Feasibility studies;
  - **c.** Packaging design for the foreign market.

- Market exploration.
  - **d.** Business trips for development of the foreign market;
  - **e.** Local trade fairs (must be approved by ESG and Singapore Tourism Board);
  - **f.** Virtual trade fairs (must be approved by ESG);
  - **g.** Foreign trade fairs.

12 A complete list of what constitutes admissible costs is available at the page: https://www.enterprisesg.gov.sg/-/media/esg/files/financial-assistance/tax-incentives/dtdi/qualifying-activities-and-expenditure-available-for-dtdi.pdf.

- Market promotion.
  - **h.** Advertising abroad;
  - **i.** Production of company brochures for distribution abroad;
  - **j.** Development of business abroad;
  - **k.** Advertising in authorised business publications.

- Market presence.
  - **l.** Foreign sales offices;
  - **m.** Feasibility studies for investments;
  - **n.** Transfer of employees abroad;
  - **o.** Master licensing and franchising;
  - **p.** Business trips for investment abroad.

5.8. The 100% investment allowance scheme

The incentive in question is managed directly by the EDB, and allows companies to enjoy a fiscal exemption of up to 100% of fixed capital expenditure incurred.

Said expenses are defined by the EDB and give entitlement to various projects over a period of 5 years, which can be extended to eight years.

The incentive is currently provided for until 31 March 2023 and the relative details can be found on the Enterprise Singapore website[13].

5.9. The Enterprise Development grant (EDG)

The Enterprise Development Grant (EDG) is a growth and innovation stimulus for enterprises. The benefit in question makes it possible to finance 70% of project costs up to 31 March 2023. For enterprises operating in the food sector and in retail, the incentive permits access to a loan covering up to 80% of the costs in question.

This benefit applies substantially to three main areas: so-called “core capabilities”, innovation and productivity, and market access.

Projects corresponding to the first area help companies to strengthen core business functions.

13 https://www.enterprisesg.gov.sg/financial-assistance/grants/for-local-companies/enterprise-development-grant/innovation-and-productivity/automation.

Projects aimed at innovation and productivity support companies seeking to improve efficiency in the exploration of new growth areas.

Market access is considered as support for expansion into foreign markets and the EDG intervenes in supporting such expansion.

5.10. The Pioneer Certificate Incentive (PC) and the Development and Expansion Incentive (DEI)

Through this type of incentive, enterprises involved in the production of high added-value products and services can request a certification that attributes them the right to tax exemption for five years and can be extended depending on the company's commitment to further expansion.

For enterprises to be recognised the benefit in question, assessment takes account of both qualitative and quantitative criteria. Specifically, they refer to:

- the possibility of creating jobs;
- the introduction of new skills;
- the enterprise' ability to make expenditures that create favourable economic repercussions;
- production projects aimed at developing physical and virtual infrastructures;
- introducing technologies and know-how that enable a sector to progress;
- all the above business activities must be effectively new and not already undertaken by other companies in the country.

At the end of the five years as mentioned above, enterprises can obtain a further incentive (DEI) for their development and expansion. This further incentive aims at supporting companies that focus on commercial activities and allows them to generate more earnings by granting them a tax concession that envisages a reduced rate of 5 or 10% on income deriving from said activity.

5.11. Further incentives: digital transformation and post COVID-19

Singapore has concentrated efforts and incentives also in the direction of a greater digital transformation of enterprises through three strategies: Large-scale digitalisation, the Development of "digital leaders" and the creation of new products and business models.

With regards to the first point, the government has issued a tool that permits SMEs to make use of professional IT consultancy in order to obtain digital end-to-end solutions based on their business profile. These consultants have experience in areas such as artificial intelligence, data analysis and cyber-security.

To develop digital leaders, the Digital Leaders Programme – DLP, seeks to identify promising and high-potential companies in order to furnish them with digital capacities able to transform their business, especially with regards to the development of expertise and the implementation of roadmaps for digital transformation.

Finally, to increase the speed of digital innovation and promote greater cooperation, the government has strengthened the Open Innovative Platform (OIP) programme. The OIP was launched in 2018 to support enterprises in obtaining resources to successfully meet their innovation needs.

Package to support the aviation industry post COVID-19

In March 2022, the Singapore's Ministry of Transport presented the "OneAviation Resilience Package" programme, on the basis of which the government could disburse 500 million S$ to support airlines in 2022 and 2023 to help the sector in overcoming difficulties following the COVID-19 pandemic.

Contribution for the recovery of small enterprises

With regards to this further package, the government has introduced a new subsidy for the recovery of small enterprises, which provides for a one-off payment in cash for small and medium enterprises (SMEs) hit hardest by the pandemic.

SMEs can receive 1,000 S$ per local employee, and up to 10,000 S$ per company. In addition, the government will distribute S$ 1,000 to street vendors, markets, cafe owners and local sole proprietorships with an SFA license.

6. Free trade agreements and Singapore's strategy

Singapore is a primary commercial, financial and transport centre in Asia. With a wide range of trade agreements entered into with over 30 partners, the company trades with the rest of the world every year for a value exceeding 550 billion Euros[14].

As indicated by the World Bank, 50 years ago Singapore was facing serious unemployment and a lack of infrastructure and accommodation. Today the City-State is classified as one of the most liveable cities, boasting one of the highest levels of human capital development in the world. The winning idea, which has driven such impressive progress has been that of assigning the development of Singapore, so poor in terms of land and resources, to industrialisation processes and the opening up to international markets implemented through numerous interventions, starting from the need to develop its port and shipbuilding activities, exploiting the geographically strategic position of the island and the opportunities offered by the rapidly evolving financial markets with the advent of financial as well as commercial globalisation. To achieve this, the City-State took steps to offer industries and markets what they requested and still request, with a higher efficiency than what is offered by its potential competitors. The port of Singapore, today, is one of the top five in the world for volume of exchanges and according to a recent declaration of the Prime Minister of Singapore, Lee Hsien Loong, in 2040 work will have finished and the port will cover an area of 1337 hectares, being able to manage 65 million Teus (twenty-foot equivalent units) per year, corresponding to almost double today's volumes[15].

For the European Union, Singapore stands at 14th position among trading partners of goods in the world and in first place for South-East Asia. Having an economic strongly oriented towards services, Singapore is also the 5th trading partner of the EU at global level for services, which is the crux of its cooperation strategies. Over 10,000 European enterprises have set up their offices/regional hubs in Singapore, and for this reason, the country has become the EU's sixth most important destination for direct outbound investments and accounts for two third of the stock of direct EU investments in South-East Asia. Its position, moreover, makes it a logistical hub of unrivalled importance for the entire South-East Asian area and the awareness of this characteristic, accompanied by targeted investments and correct development choices, has led it to be considered

14 Source https://trade.ec.europa.eu/access-to-markets/it/content/accordo-di-libero-scambio-ue-singapore.

15 Source https://www.mpa.gov.sg/maritime-singapore/port-of-the-future.

as one of the most liberal economies in the world which the same World Bank ranks in second place among economies where it is easiest to do business.

It is easy to understand from these considerations and numbers how the services sector is particularly important. Singapore's strategy has focused, over a number of decades, on close cooperation with partner countries and this is seen in the numerous Free Trade Agreements entered into.

Regional FTAs

- ASEAN-Australia-New Zealand Free Trade Area (AANZFTA);
- ASEAN-China Free Trade Area (ACFTA);
- ASEAN-Hong Kong, China Free Trade Area (AHKFTA);
- ASEAN-India Free Trade Area (AIFTA);
- ASEAN-Japan Comprehensive Economic Partnership (AJCEP);
- ASEAN-Republic of Korea Free Trade Area (AKFTA);
- ASEAN Free Trade Area (AFTA);
- Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP);
- EFTA-Singapore FTA (ESFTA);
- Singapore-Eurasian Economic union (EAEUSFTA);
- GCC-Singapore FTA (GSFTA); and
- Trans-Pacific Strategic Economic Partnership (TPSEP).

Bilateral FTAs

- China-Singapore FTA (CSFTA);
- India-Singapore Comprehensive Economic Cooperation Agreement (CECA);
- Japan-Singapore Economic Partnership Agreement (JSEPA);
- Republic of Korea-Singapore FTA (KSFTA);
- New Zealand-Singapore Comprehensive Economic Partnership Agreement (ANZSCEP);
- Panama-Singapore FTA (PSFTA);
- Peru-Singapore FTA (PeSFTA);
- Singapore-Australia FTA (SAFTA);
- Singapore-Costa Rica FTA (SCRFTA);
- Singapore-Jordan FTA (SJFTA);
- Sri Lanka-Singapore FTA (SLSFTA);
- Turkey-Singapore FTA (TRSFTA); and
- United States-Singapore FTA (USSFTA).

Among the founding countries of the Association of South East Asian Nations (ASEAN), Singapore is certainly one of its greatest supporters, aware of the fundamental role of the organization at regional and global level, as well as of the positive effects that this grouping has both at a political and economic level.

Among the most important free trade agreements, mention should be made of those with China, the United States and the treaties with a number of the member countries of the CPTPP and the RCEP.

It should be underlined, however, that the reduction of customs duties has not been the main cornerstone underpinning the entering into of the agreements, given that Singapore has already unilaterally eliminated almost all importation duties of products, albeit with some exceptions, such as, for example, the importation of undenatured ethyl alcohol or beer. While it is one of the territories most open to trade and furnished with efficient customs procedures, a number of types of products do not, however, enjoy particular simplifications[16].

Further to the above, therefore, it appears evident that the primary objective of the stipulation of a free trade agreement, which normally coincides with the total or significant reduction of duties, represents an almost accessory aspect in the case of Singapore.

The new policy of States, however, and particularly of the above European Union, which has extended the scope of application, makes such agreements particularly effective in reducing, if not eliminating, also non-tariff barriers to trade.

16 Reference can be made, for example, to food products and, in particular, to the difficulties associated with the exportation of meat, dairy products and derivative products.

6.1. The free trade agreement between the EU and Singapore

On 19 October 2018, on the margins of the XII ASEM[17] Summit in Brussels, the EU and Singapore signed a series of important agreements: the Free Trade Agreement (FTA), the Investment Protection Agreement (IPA) and the Partnership and Cooperation Agreement (PCA).

Besides questions of a commercial and economic nature, the agreement with Singapore, like other free trade agreements recently negotiated by the EU that are "second generation" with regards to preferential origin, includes a chapter dedicated to sustainable trade and development which promotes minimum environmental and social standards which, besides protecting the environment and workers, aims at reducing enterprises' production cost imbalances deriving from significant differences regarding legislative obligations imposed by the participating countries in the two above-mentioned areas.

The agreement, which came into force on 21 November 2019 is, as we have said, a "second generation" agreement which provides for a strong commitment of the parties for the promotion of human rights, work rights, environmental protection and sustainable development. Of particular interest are the plans for the liberalisation of services (in particular, in telecommunications sector, in environmental services and in the engineering field), the almost total removal of European export duties, the uniformity or mutual recognition of technical standards, access to procurement markets, the protection of intellectual property rights and almost 200 geographical indications[18]. Italy successfully made definitive acceptance to the ratification of the Agreement at the conclusion of the procedure conditional upon recognition of the geographical indications.

The agreement will facilitate Italian and European exports to Singapore which is the major commercial partner of the EU in South-East Asia. According to economic estimates of the European Commission, in 10 years the agreement should lead to an increase in EU exports to Singapore of around 1.4 billion euros.

In brief, the advantages of the agreement can be summarized as follows:

- Greater access to the market for EU enterprises to Singapore and vice-versa;
- less onerous technical regulations;
- elimination of the application of proof for certain products;
- customs procedures and rules of origin that facilitate trade;

17 The Asia Europe Meeting, the interregional forum whose members are: the European Commission, the 28 members of the European Union (UE), the ten members of the Association of South-East Asian Nations (ASEAN), the Secretariat of ASEAN, China, Japan and the Republic of Korea.

18 For more details: https://www.infomercatiesteri.it/relazioni_internazionali.php?id_paesi=137.

- protection of intellectual property rights, including geographical indications (GI);
- new opportunities in environmental services and in "green" public contracts";
- elimination of obstacles to trade and investments in "green" technologies;

The key points of the agreement, as pointed out by the European Commission, enable European enterprises to take full advantage of the opportunities that arise as a result of the following aspects:

- a complete liberalisation of investment services and markets, including cross-cutting regulations on licensing and mutual recognition of diplomas; and sectorial regulations intended to guarantee parity of conditions for EU enterprises;
- new contracting opportunities for EU bidders, particularly in the public services market in which there are many EU supplier leaders;
- the elimination of technical and regulatory obstacles to the trade of goods, such as duplications of tests, in particular, promoting the use of technical and regulatory regulations which are familiar in the EU in the motor vehicles sector, electronics, medical devices and pharmaceutical products, as well as green technologies;
- a more favourable regime for trade, based on international standards, for approval of the exportation of EU meat to Singapore;
- Singapore's commitment not to increase its tariffs (which are currently, on a voluntary basis, usually not applied) on importations from the EU, besides lower-cost access for European enterprises and consumers to products manufactured in Singapore;
- a high level of protection of intellectual property rights, including the application of said rights and border controls;
- a higher level of protection compared to that provided for by the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) for the EU's geographical indications (IG) after their registration in Singapore, once Singapore has set up a GI register (undertaking assumed further to the European Parliament's consent of the free trade agreement);
- a complete chapter on trade and sustainable development, which aims at guaranteeing that trade supports environmental protection and social development and promotes the sustainable management of forests and fishing and indicates the procedures through which social partners and civil society will be involved in its implementation and monitoring;
- rapid mechanisms for the resolution of disputes through an arbitration board or with the help of a mediator; and

- a new complete chapter to promote new opportunities in the «green growth» sector, in line with the EU's 2020 strategy.

6.2. Rules of origin

Despite the fact that a reduction of duties has not been the main driver for entering into the agreement, it remains a particularly sensitive issue for many enterprises interested in import-export operations with Singapore and it should be pointed out that compliance with the agreement is necessary for duty reduction to be recognized. As a result, as already seen for the rules of origin between the EU and Vietnam, also with reference to the agreement between the EU and Singapore, to benefit from the envisaged duty concessions, it is necessary for products to be classified as "original" of one or other of the parties, that is, they must comply with the specific rules of preferential origin on the basis of the customs classification, as well as other requirements provided for by the Agreement in the **Protocol 1** section relating to definition of the concept of "originating products" and to administrative cooperation procedures.

It is useful to remember that originating products of one party are considered as:

- products "**wholly obtained**" in one party in accordance with article 4 of the Protocol (wholly obtained products);
- products produced in one party incorporating materials which have not been wholly obtained there, provided that such materials have undergone in the interested party "sufficient processing or transformation" pursuant to article 5 of the Protocol (sufficiently processed or transformed products).

Products that are not wholly obtained are considered as sufficiently processed or transformed when the conditions are met as per Annex B or B-*bis* of Protocol 1, which provides for a series of rules including the rule of tolerance and the rule of cumulation[19], the principle of territoriality and non-modification and the duty draw-back[20], to which reference should be made for specific classifications.

19 One innovative aspect of the agreement with Singapore is the possibility to apply so-called "diagonal" cumulation (which involves at least 3 countries) with ASEAN countries, of which Singapore is a member, provided it is a country with which the EU has entered into a free trade agreement.

20 The "duty drawback" rule provides that, as part of a preferential origin agreement, non-original materials used in the manufacture of original products, for which a declaration of preferential origin has been issued or compiled, are not subject to a refund or exemption from duties.

6.3. Proof of origin

To ascertain preferential origin and, therefore, to have the possibility of benefitting from the above-indicated duty reductions, exporters must submit **suitable proof** as provided for by the agreement.

According to the provisions of art. 16 and following of Protocol 1, preferential origin can be certified also through the so-called "declaration of origin", which can be issued on the invoice or on another document and must describe sufficiently clearly the original asset in question.

The declaration can be filled out in the EU, by an "authorised" exporter or, alternatively, by any other exporter in the event of shipments not exceeding the value of Euro 6,000,00.

Exporters to Singapore, instead, in order to fill out the declaration of origin, must be registered with the competent authority and must have a UEN number (Unique Entity Number), and must also comply with the regulations in force in Singapore regarding correct compilation.

It is not, therefore, possible to use the EUR1 custom documents.

All exporters that fill out the declaration must be able to provide, at any time, further to request of the customs authorities of the exporter party, all documents proving the original nature of the product in question and compliance with the other requirements of the protocol.

Vietnam's Economic System

1. Country presentation

Vietnam is a country in South-East Asia situated in the Indochinese peninsula, with over 98 million inhabitants; there is a more advanced and industrialised south and a north which is more populous and more dedicated to agriculture. It's the 15th most populated country in the world. Vietnam occupies a surface area of around 331,212 square kilometres and has an elongated shape that resembles an "S".

The distance as the crow flies from north to south is 1,650 kilometres and, at its narrowest point in the central province of Quang Binh, Vietnam is a little under 50 kilometres wide.

Vietnam is subdivided into 8 regions, 59 provinces and 5 municipalities:

- Ha Noi, the capital, stands in the centre of the Red River, and is an important commercial and industrial centre
- Ho Chi Minh, known in the past as Sài Gòn, is an important commercial centre
- Hai Phong
- Can Tho
- Dà Nang

1.1. Political framework

Vietnam has been a socialist republic since 1976, born out of the unification of the former Republic of Vietnam (or South Vietnam) and the former Democratic Republic of Vietnam (or North Vietnam).

The political system is a one-party type and power is concentrated in the hands of the Communist party led by the heirs of Ho Chi Minh, who have adopted the principles of the market economy whilst maintaining a tight and firm control of the decision-making process. A guiding role is played by the Constitution of 1946, which has been amended a number of times, the latest in 2001.

Legislative power is delegated to the National Assembly, composed of 490 members elected for 5 years, which elects the Prime Minister, the President of the National Assembly and the President of the Republic, currently in the person of Nguyễn Phú Trọng. Starting from the 1980s, with the "Doi Moi" (renewal) programme of reform imposed by the government, Vietnam has gradually opened up to the world, until becoming one of the champions of international trade.

Entry into the Association of South-East Asian nations (AESEAN) in 1995 and the WTO in 2007, and the free trade agreements with Pacific countries and with the European Union (EVFTA) are the main steps along this path, crowned by the establishment of the RCEP (Regional Comprehensive Economic Partnership) last year at the instigation of Hanoi in its position as current President of the regional association. Recent developments have been achieved with regards to the fair trial process, the protection of minors and a decrease in death penalty cases.

A new anti-corruption law has been in force since June 2006 followed by a series of implementing measures; in June 2009 Vietnam ratified the United Nations Convention Against Corruption.

1.2. The legal system

The legal system is based on the French code and Marxist doctrine. Justice is administered by People's Courts.

Vietnam's legal system includes "people's courts", military tribunals and people's procuracies.

The country's highest court is the Supreme People's Court with direction and control powers.

There are three levels of courts under the Supreme People's Court:

- people's high courts, of which there are three;
- provincial people's courts, of which there are 63;
- district people's courts, which are of the lowest level.

The provincial and municipal courts are both courts of first instance and appeal courts, while the district courts are courts of first instance.

There are military courts established at various levels in the People's army of Vietnam; the highest is the Central Military Court, which is under the direction of the Supreme People's Court.

The Supreme People's Court is presided by the President of the Supreme People's Court, appointed by the National Assembly of Vietnam.

1.3. Language, currency and religion

1.3.1. Language and religion

Vietnamese is the official language of the majority of the population. English not widely known, although today it is the main foreign language studied.

The traditional Buddhist religion is predominant among organised religions.

Most Vietnamese do not subscribe to organised religions, but follow the traditional Vietnamese religions, which ascribe great importance to the worship of ancestors. The popular religions are based on a harmonious fusion of the so-called "three teachings": Confucianism, Taoism and Buddhism.

1.3.2. Currency

The Vietnamese currency is the dong; US dollars are accepted for current transactions and credit cards are widely used.

1.3.3. Education

In Vietnam, everything that concerns the administration and coordination of schools and universities is under the direction of MOET, that is, the Vietnamese Ministry of Education and Training. At provincial level, the Ministry works in partnership with the Provincial People's Committees.

Education is one of the priority objectives of the Vietnamese government and investment in this sector is considered as one of the main targets of investment for development.

The education system is structured as follows:

1. Nursery school: for children aged 3 to 6 years.
2. Primary school: from 6 to 11 years (compulsory). The classes go from first to fifth grade. Students must pass a national exam at the end of primary school.
3. Lower secondary school: from 11 to 15 years, at the end of which students must pass an intermediate diploma exam (IGE). The classes go from sixth to ninth grade.
4. Upper secondary school: from 15 to 18 years, with a final diploma. The classes go from tenth to twelfth grade. Upper secondary schools can have a technical-professional specialisation.
5. Higher professional education (College): 3 years. It aims at training the basic elements and notions of a professional sector or to prepare the student that has

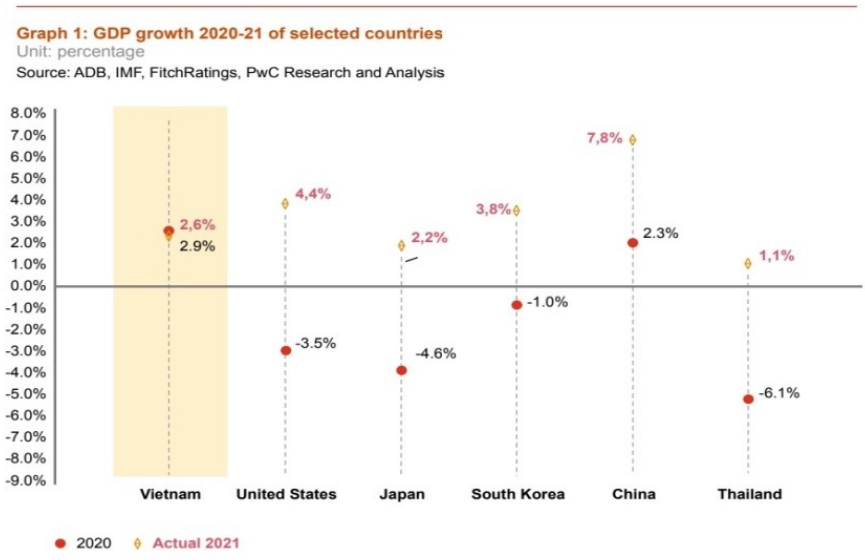
not all the theoretical requirements to access university. An Associate's Degree is obtained at the end of this programme.

6. 1st level degree: 4/5 years depending on the chosen faculty
7. 2-year specialisation course
8. Doctorate degree: 2/4 years

The level of education is very high, but the education of ethnic minorities still needs to be strengthened, as well as schooling in the most backward areas.

1.4. Dati economici e finanziari

Vietnam is one of the few Asian countries that has achieved greater economic growth in the last few years; the boost of the FDI and that of the private sector have taken Vietnam to an average growth of between 5.5% and 6.5%, and has proved capable of absorbing shocks such as the Covid pandemic, recording a positive growth in two consecutive years (2020 and 2021) of around 3%.



All economic indicators
GDP

Indicator	Last	Previous	Min.	Max.	Unit	Frequency	Interval
Gross fixed	2,655,168.8 dec 2021	1,533,217 dec 2020	5,495 dec 1990	2,655,168.8 dec 2021	Billion of VND	Annual	1990-2021
GDP	362.64 dec 2021	343.24 dec 2020	6.29 dec 1989	362.64 dec 2021	Billion of USD	Annual	1985-2021
Public Administration GDP	73,938 sept 2022	48,542 jun 2022	13,398 mar 2013	107,958 dec 2021	Billion of VND	Quaterly	2013-2022
GDP at constant prices	4,006,189 sept 2022	2,602,382 jun 2022	480,455 mar 2013	5,115,805 dec 2021	Billion of VND	Quaterly	2013-2022
GDP constructions	247,916 sept 2022	153,351 jun 2022	24,018 mar 2013	339,115 dec 2021	Billion of VND	Quaterly	2013-2022
GDP mining industry	120,164 sept 2022	76,502 jun 2022	37,038 mar 2022	240,462 dec 2021	Billion of VND	Quaterly	2013-2022
GDP manufacturing	943,954 sept 2022	646,768 jun 2022	90,932 mar 2015	1,217,754 dec 2021	Billion of VND	Quaterly	2013-2022
GDP per capita	10,516.22 dec 2021	10,338.27 dec 2020	1,673.25 dic 1990	10,516.22 dec 2021	USD	Annual	1990-2021
GDP services	1,728,262 sept 2022	1,094,980 jun 2022	216,604 mar 2015	2,146,932 dec 2021	Billion of VND	Quaterly	2013-2022
GDP agricultural sector	424,501 sept 2022	272,241 jun 2022	65,298 mar 2013	578,357 dec 2021	Billion of VND	Quaterly	2013-2022
GDP transport	222,882 sept 2022	135,144 jun 2022	15,783 mar 2013	256,086 dec 2021	Billion of VND	Quaterly	2013-2022
GDP utilities	21,880 sept 2022	14,587 jun 2022	3,044 mar 2013	28,515 dec 2021	Billion of VND	Quaterly	2013-2022
GDP per capita	3,373.08 dec 2021	3,316 dec 2020	472.14 dec 1984	3,373.08 dec 2021	USD	Annual	1984-2021
Gross National Product	8,025,800 dec 2021	5,930,690 dec 2020	39,284 dec 1990	8,025,800 dec 2021	Billion of VND	Annual	1990-2021
GDP growth rate	6.88 sept 2018	6.73 jun 2018	3.14 mar 2009	8.46 dec 2007	%	Quaterly	2000-2018
Annual GDP growth rate	13.67 sept 2022	7.72 jun 2022	- 6.02 sept 2021	13.67 sept 2022	%	Quaterly	2000-2022

Source: General Statistics Office of Vietnam

This economic growth is due to the shift of farm labour to production and services, and a shift to private investments, a strong tourism sector, higher salaries and an acceleration of urbanisation.

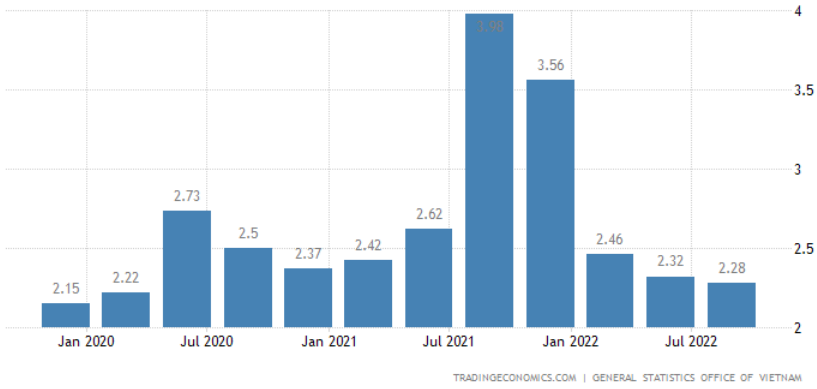
Exports represent a significant contribution to GDP and a number of sectors, such as industrial production and the textile, electronics and fishing industries, are growing rapidly.

The public debt is expected to stabilise at 47.8% both in 2022 and in 2023 and inflation is expected to reach an average of 2.3% in 2022 and 3.2% in 2023.

The diversified commercial structure and the increase in salaries and domestic consumption are the backbone of Vietnam's economic growth.

The unemployment rate remains particularly low.

This situation, however, is subject to high risks that can threaten Vietnam's economy. The risks include stagflation in the major export markets, shocks in the prices of raw materials and the interruption of global supply chains. Challenges include the lack of increasingly required specialised labour, the restructuring of the banking system, in which there are Non-Performing Loans (NPL), increasing in many banks despite a rescheduling of debts of clients hit by the pandemic.



Vietnam	Last	Previous	Unit	Reference
Unemployment rate	2.28	2.32	Percentage	Sept 2022
Employed	50.80	50.50	Millions	Sept 2022
Unemployed	1.10	1.20	Millions	Sept 2022
Population	98.51	97.58	Millions	Dec 2021
Youth unemployment rate	8.02	7.63	Percentage	Sept 2022
Manufacturing wages	7,660.00	7,500.00	Thousand of VND/month	Sept 2022
Wages	6,700.00	6,600.00	Thousand of VND/month	Sept 2022
Participation rate of the workforce	68.70	68.50	Percentage	Sept 2022

Source: General Statistics Office of Vietnam

1.5. The banking system

The Central Bank of the Socialist Republic of Vietnam is a government body to which the management of currency and banking operations are assigned. The Central Bank is authorised to issue currency and to carry out monetary transactions in favour of the Government. The Central Bank has full legal personality and has state-owned legal capital. Its head office is in Hanoi.

In Vietnam the most reliable and efficient banks are the largest and are also State-owned. A number of the major banks of the country include BIDV, VietinBank and Vietcombank which dominates the country's banking sector.

1.6. Industrial production

Industrial production in Vietnam increased by 6.3% on an annual basis in October 2022, after a growth of 10.3% revised down in the previous month. Production has eased off in most sectors: mining (6.3% vs 14.9% in September), manufacturing (5.7% vs 9.6%) and the supply of electricity and gas (10.5% vs 16.4%). In the meantime, water supply and waste treatment grew by 15.7%, much higher than the increase of 9.1% to September. Considering the first ten months of the year, industrial production grew 9.0% compared to the same period of 2021.

Area	Last	Previous	Unit	Reference
Industrial production	6.30	10.30	Percent	Jun 2022
Manufacturing production	12.50	16.20	Percent	Sept 2022
Movement in inventories	148,762.62	166,647.00	Billions of VND	Jun 2022
Electricity production	21,600.00	21,600.00	Gigawatt/hour	Jun 2022
Mining production	16.30	10.20	Percent	Sept 2022

Source: General Statistics Office of Vietnam

The energy sector has grown exponentially over the years (coal, hydrocarbons, electricity, concrete, the steel industry); a number of sectors are reviewed below:

Electronics

The global consumption of electronics has never been as high as now; it's a phenomenon that continues to grow every year. Although the electronics industry is dominated by giants like Samsung and Panasonic, the nation has nevertheless derived many benefits from these multinationals creating industries in Vietnam that employ the local population.

Food processing industry

Vietnam is food processing centre that seeks to meet the high demand for processed food products from local and international markets. The food market is dominated by agricultural and marine products that are tinned and shipped abroad. The abundance of raw materials has catapulted the country to the top of classifications for the export of rice, coffee and cashew nuts, among other food products.

Construction

Every growing economy always has a great need to build infrastructures that meet the needs of both people and trade. An increase in foreign investments has led to a boom in constructions that has resulted in the building of apartment blocks and offices such as, for example, Ho Chi Minh City. The construction sector has contributed directly to GDP, and this is mainly due to the strong support of the government which has drawn up favourable laws for the sector.

Mining industry

Mining has made a significant contribution to the economy. Vietnam has over 5000 mineral deposits that include rare metals which are highly requested throughout the

world. The country has 7% of global reserves of bauxite, as well as tungsten, titanium, phosphate, coal and iron ore. Starting from 2015, Vietnam became the largest producer of minerals in South-East Asia with a number of projects in the pipeline to push it to the top of the global mineral trade. A sector which has greatly benefitted the mining sector is the steel industry which expects to grow further in the next few years with plans already underway for the creation of a plant which will produce 2 million tonnes of steel every year.

Services and tourism

The services industry in Vietnam contributes to the country's GDP. Tourism plays a significant role in the economy of Vietnam which has emerged as an attractive destination for tourists coming from different parts of the world.

2. Starting a business activity in Vietnam

Foreign investors interested in starting a business activity in Vietnam have various possibilities. We will look at the main options in this chapter.

2.1. The representative office

The representative office offers foreign companies the possibility of carrying out preparatory activities to understand the Vietnamese market and is much used by foreign investors given the low entrance cost.

The main activities that can be carried out through the representative office are:

- market research;
- promotional and marketing activities by the parent company;
- the organisation of meetings.

As a rule, 6 to 8 weeks are needed to set up a representative office and a minimum investment of 10,000 US dollars.

2.2. The branch

The branch of a foreign company is an enterprise which is authorised to operate in Vietnam on behalf of the parent company in certain specific sectors and with the issue of a license.

To open a branch, the parent company needs to have operated in the country of origin for at least 5 years.

The branch can sign rental contracts, acquire land and equipment, hire local and foreign staff, open current accounts and transfer profits to the parent company, and carry on business, administration, marketing and human resources management activities, always on behalf of the parent company.

The branch representative must have their residence in Vietnam.

As a rule, 20 days are needed from the filing of the relative application and the necessary documentation for the issue of the license.

2.3. La società

The types of company available to foreign companies which intend to invest in the Vietnamese market, are the following:

- Joint-stock companies;
- Limited Liability Company.

The Limited Liability Company (LLC) is the most common company type thanks to the possibility of reduced capital contributions and the liability of shareholders limited to the value of the contributions.

The LLC can be incorporated with a single shareholder or with a number of shareholders. The shareholders can be individuals or legal entities depending on the nature of the investor.

The average time needed for the incorporation of a company held 100% by an investor is from 2 to 4 months.

2.4. Joint ventures

The Joint venture (JV) is a company formed by two or more entities that intend to pursue a shared business objective. The incorporation of a joint venture can occur in the form of an LLC or Joint Stock Company (JSC) if the intention is listing in the two Vietnamese stock exchanges.

The JSC form is necessary when the foreign investor intends to buy shares that are traded in the stock markets.

The competent Ministry (MPI Ministry of Planning and Investment) generally does not request particular requirements for incorporation, except for specific industrial sectors, but the Government can establish a minimum ceiling of foreign investment in certain sectors.

The current procedures for the incorporation of a JV provide for foreign capital of 30%, which can be greater in certain specific sectors, and an average time for incorporation of around two months.

2.5. International cooperation agreements (Public Private Partnerships PPP)

Public Private Partnerships are agreements entered into between foreign and local investors and competent State bodies for the development and completion of infrastructure works.

There are 5 types of PPP:

- Build-Transfer-Operate
- Build-Transfer
- Build-Operate-Transfer
- Build-Own-Operate
- Build-Transfer and Lease

2.6. The main requirements for setting up a company

Due to the myriad of laws and regulations, the foreign investor must deal with a complex set of procedures in order to access the attractive Vietnamese market.

In this section we will try to summarise the four main steps necessary to incorporate a company, keeping in mind the need to always refer to expert consultants on site.

First step: approval of the investment project

For certain types of investment in Vietnam, a foreign limited company needs to obtain authorization from the competent local authorities.

To this end, it is necessary to understand the documents needed to carry out the project and prepare all the necessary documentation in order to reduce the waiting time for the issue of the authorisations.

Second step: application for attribution of the investment registration certificate

If the intention is to set up a company entirely owned by the foreign investor, it's necessary to apply for an Investment Registration Certificate (IRC).

To this end, it's necessary to submit:

- the corporate project complying with the directives established by the competent local authorities for certain business sectors in which the company intends to operate;

- the executive details of the project in terms of location and investment;
- business plan and financial plan.

The time necessary for issue of the certificate is around 15 days from the submission of the application complete with all the documents.

Third step: the certificate of registration

The incorporation of a company in Vietnam always requires the issue of an Enterprise Registration Certificate (ERT) which will allocate the enterprise a registration number.

For the registration request, it is necessary to submit:

- the application;
- the articles of association;
- the list of directors;
- the list of legal representatives;
- the letter of appointment and acceptance.

All the documents must be drawn up in Vietnamese and legally certified by a public official and by the local authorities.

The time necessary for the issue of the registration certificate is around 3 days from submission of the application complete with all the documents.

The applications for the investment certificate and for the registration certificate can be made together, the time for issue being around 15 days.

Fourth step: post-registration procedures

Once the 2 certificates to begin operating in Vietnam have been obtained, it is necessary to fulfil the following requirements:

- registration of the brand;
- opening of a current account;
- registration of the work;
- payment of the license;
- payment of the share capital;
- communication to the public of the start of the company.

Two important concepts: share capital and capital invested

The share capital of a foreign enterprise is the amount that the investor has declared to contribute in the investment certificate.

It can represent 100% of the invested capital, or can be associated with the taking out of a loan.

Both the subscribed capital and the capital invested (including any loans) must be registered together with the application for the license issued by the competent Vietnamese authorities.

The registered capital can be increased or decreased only with the approval of the competent authorities.

Investors are obliged to subscribe share capital according to what is set out in the articles of association of the company, joint venture or Public Private Partnership.

The shareholders and the management body of companies incorporated in the form of an LCC are obliged to pay the amount of share capital subscribed according to what is set out in the official documents and as provided for by the law.

3. The taxation system

3.1. Vietnam's principal taxes

All taxes in Vietnam are applied at national level; there are no local, city or provincial taxes. Enterprises have to pay taxes in the locality where the head office or the duly registered branches are situated.

Most foreign companies and investors in Vietnam are subject to the following principal taxes:

- tax on commercial licenses;
- tax on corporate income;
- tax on added value;
- special tax on consumption;
- tax on foreign operators; and
- customs duties.

Business license tax (BLT)

The BLT is an indirect tax on entities that carry on business activities in Vietnam, paid by the enterprises for each calendar year in which they operate in the country. All companies, organisations or individuals (including branches, stores and factories) and foreign investors that operate in Vietnam are subject to BLT.

Corporate Income Tax (CIT)

All income generated in Vietnam is subject to CIT, regardless of the fact that a foreign enterprise has a branch with registered office in Vietnam or that said branch is considered as a Permanent Establishment (PE). The CIT is a direct tax imposed on profits (gross revenues less expenses) made by companies or organisations.

Value Added Tax (VAT)

VAT is applied on the supply of goods and services with three different rates: 0%, 5% and 10%, the latter being the standard rate. All organisations and individuals that produce and trade goods and services in Vietnam are obliged to pay VAT, regardless of the fact that the organisation has a registered office in Vietnam or not.

Tax	Rate
CIT (Corporate Income Tax).	20% (10% for 15 years – new high-technology investment projects) Further general tax concessions: in disadvantaged localities, for priority industries, in economic zones. Tax breaks for certain enterprises situated in local industrial areas.
VAT	0-5-10%.
PIT (Personal Income Tax)	5-35%.
Dividends.	Exempt.
Interest.	Withholding tax of 20% if the individual or legal entity is resident; 5% if the individual or legal entity is non-resident and without a treaty.
Royalties.	Withholding tax of 20% if the individual or legal entity is resident; 10% if the individual or legal entity is non-resident and without a treaty.
Technical assistance and Fees for services.	Withholding tax of 5% and VAT of 3% for non-residents.

Special Consumption Tax (SCT)

The SCT is a duty applied on the production or importation of 11 categories of products and six types of services considered of a luxury nature and non-essential, such as alcoholic drinks and tobacco products. Companies are subject to the both upon importation and upon sale. Nevertheless, to avoid an excessive tax burden, the SCT imposed upon importation will be creditable against the SCT sustained by the sales outlet.

Customs fees

Most goods exported across Vietnam's borders or which pass from the internal market to a non-tariff zone are subject to export or import duties. Goods in transit, goods exported abroad from a non-tariff zone, goods imported from abroad into a non-tariff zone and used only inside said zone, and goods that pass from one non-tariff zone to another, are exempted. Most goods and services exported are exempt from duties.

Foreign Contractor Tax (FCT)

Enterprises and foreign individuals without legal entity status are considered as foreign contractors if they carry on business or receive income in the country on the basis of contracts with local organisations, including foreign-owned companies. The FCT, normally defined as a "withholding tax", is not a separate type of tax. It includes VAT and tax on

income (CIT or PIT) imposed on payments of local organisations to foreign contractors. Said payments are considered as income received in Vietnam and the Vietnamese parties are obliged to declare and make payments on behalf of the foreign contractors.

Payments subject to FCT include interest, royalties, commissions for services, goods supplied inside the Vietnamese territory or associated with services provided in Vietnam. The tax rates applied vary according to the method of payment and the nature of the transactions. Certain distribution agreements in which the foreign entities are directly or indirectly involved in the distribution of goods or in the supply of services in Vietnam are also subject to FCT.

Exemption from FCT is applicable in certain circumstances, such as the pure supply of goods, services provided and consumed outside of Vietnam, and various other services provided entirely outside of Vietnam.

3.2. Accounting and the keeping of accounting records

Local and foreign-owned companies that operate in the country are required to comply with the Vietnam Accounting Standards (VAS) in the recording of their financial transactions.

Foreign companies can choose to manage two sets of accounting records: one based on the VAS and one kept specifically for the foreign head office. In practice, many foreign companies keep an accounting system according to the VAS and convert the records into the International Financial Reporting Standards (IFRS) only on a monthly/quarterly/annual basis as a reference for the foreign parent company.

In brief terms, the VAS require that accounting records:

- are in Vietnamese or can be combined with a commonly used foreign language;
- use the VND as the accounting currency (the FIE can, however, choose a different foreign currency for accounting if it meets the requirements provided for by the Accounting Law);
- comply with the Vietnamese accounting scheme; and
- include the reports provided for by the VAS, printed on a monthly/quarterly/annual basis, signed by the General Manager and bearing the company stamp.

A financial period in Vietnam generally corresponds to the calendar yar. Nevertheless, after registration with the Tax Office, it's possible to adopt periods of 12 months starting from the first day of each quarter.

Annual financial statements

On the basis of the above-indicated financial periods, investors and other foreign enterprises that operate in Vietnam must organise an audit and file the annual financial statements within the last day of the third month after the end of the annual financial period.

As provided for by current law, the annual financial statements must be filed with the following offices:

- the General Statistical Office;
- the Ministry of Planning and Investments;
- the tax office at provincial or municipal level.

For companies that operate in processing areas for exports (EPZs (Export Processing Zones) or industrial zones (IZ)), it is possible to request the filing of the financial statements with the board of directors of the respective EPZ or IZ. Most economic zones permit the investor to benefit from tax exemption incentives. Foreign investors need to obtain information from each zone to verify the incentives which the government officials grant on the basis of each specific case.

Storage of documentation

Further to the close of the annual financial statements, companies are obliged to store a series of documents deriving from the accounting and bookkeeping process. The storage period depends on the nature of the documentation generated and is divided, in general terms, into five-year, ten-year and indefinite storage periods.

- The storage period of five years applies to all documentation used in the management and running of the business.
- The storage period of 10 years applies to all accounting data, accounting records, financial statements and reports of independent audit firms drawn up on behalf of the company; and
- The indefinite storage period is limited to documents deemed important for the economy, national defence or the security of the Vietnamese State.

Vietnam has a series of continuously evolving audit procedures that have to be closely followed in order to guarantee conformity, whether this relates to conformity with the IFRS, or with the growth of computerized accounting or with simple efforts to improve the competitiveness of enterprises.

Below is a detailed guide to the audit process of one of the most common foreign investment vehicles in Vietnam: Foreign-Owned Enterprises (FOE).

Audit procedures for FOEs

The process for FOE obligations, applicable also to JVs, can be complex and require a lot a time. Its completion requires the compilation of an annual report of the independent annual audit of the accounts and the payment of corporate and personal income tax. Once this information has been duly submitted to the various government bodies, the enterprises can repatriate the profits of the business.

Phase 1 - Preparation of the annual independent audit report

All the FOEs are obliged to submit certified financial statements on an annual basis. These financial statements must be drawn up in compliance with the Vietnamese accounting standards (VAS) and must follow the latest available guidelines.

According to the Vietnamese law, the financial statements of FOEs must be submitted to an external audit through an independent auditor. To guarantee conformity, it's necessary to comply with the following audit procedures and draw up the relative documentation:

Requirements for the independent audit

- Income statement;
- Balance sheet;
- Statement of changes in shareholders' equity (if present);
- Cash flow statement;
- Financial statements;
- Notes.

Necessary documentation:

- Report on productive and commercial activities, including:
  - description of the commercial activities effectively carried out;
  - labour statistics (number of employees, turnover, etc.);
  - income from work and payments of the employer for social security and health insurance,
  - unemployment contribution and trade union contributions;
  - result of production and commercial activity (revenues, profits, costs, etc.) and

- taxes and other duties to be paid to the State.

› Statement of changes in capital, including:
  - Opening registered share capital,
  - current registered share capital,
  - share capital contributed in the year of reference,
  - accumulated share capital.

FOEs must submit the audit report to three government departments by the last day of the of the third month of the calendar or tax year: the provincial Department for Planning and Investments (DPI), the provincial Tax Department and the provincial Statistics Office.

Upon receipt of the documentation, said offices apply an admission stamp directly on a copy of the reports submitted, as acknowledgement of receipt. In the event of electronic forwarding, the enterprise will receive an electronic conformation or the documentation will be directly filed in the system without being stamped.

Phase 2 – Calculation of CIT (Corporate Income Tax) and declaration

Besides the quarterly payment of the provisional tax settlement, FOEs in Vietnam must pay income tax at the end of every year. The standard tax year applied in Vietnam is the calendar year. If it uses a different year, the enterprise must communicate this to the local tax office, as already mentioned.

Further to an assessment of income flows, the obligations in force and the incentives for investment, it is possible that taxes can be avoided or substantially reduced. In the event that no tax obligation arises, or taxation in exempted on the basis of applied tax incentives, the enterprises must, in any case, submit tax declarations to the competent authorities within the established deadlines.

Those paying tax on the income of companies must draw up the CIT reports in compliance with the following requirements and deadlines:

Necessary documentation: Declaration of payment of taxes on company income; Annual financial statements and other related documents; One or more attachments to the declaration (depending on the effective origin of the enterprise).

Deadlines – by the last day of the third month from the end of the tax year.

Phase 3 – Finalisation of the PIT (Personal income tax)

FOEs, as employers, are liable to pay all the personal income taxes (PIT) of their employees which are deducted from their salaries during the year.

Enterprises that pay income tax for their employees must ensure that the following forms are duly complete by the deadlines also set out below:

Necessary documentation: Receipt of payment of personal income tax; a detailed list of taxable income and tax deductibles from the salaries and wages of taxable individuals at progressive rates: a detailed list of the taxable income of individuals subject to direct tax rates and a detailed list of dependents registered by employees.

Deadlines – by the last day of the third month from the end of the calendar year and forwarded to the tax office that directly manages the enterprise.

Phase 4 – Payment of social security

Besides their Vietnamese counterparties, all foreign employees that work in Vietnam with permanent employment contracts or fixed-term contracts of a duration of more than three months must be included in the compulsory social security scheme.

Phase 5 – Repatriation of profits

After the payment of due taxes or the conclusion of the investment project in Vietnam, profits can be transferred to offshore accounts if the enterprise has completed all the financial obligations with respect to the Vietnamese State in accordance with the current laws. For enterprises whose investments are still operative in Vietnam, the profits can be repatriated only in the event the FOE in question has not accumulated losses.

3.3. The Road Map to the IFRS

The International Financial Reporting Standards (IFRS) are general accounting standards issued and regulated by the International Accounting Standard Board (IASB) to guide the preparation and presentation of financial statements. Vietnam uses IFRS as a basis for its own system, the VAS, but there are some important differences between the two.

Since all foreign and local companies that operate in Vietnam are obliged to comply with the VAS, foreign investors should be well versed with the VAS's fundamental characteristics in order to be fully aware of the compliance requirements and take properly informed investment decisions.

The Vietnamese government currently has 26 VAS accounting standards based on IFRS. To provide a guide to local and foreign enterprises in Vietnam on these standards, the Ministry of Finance has recently issued circulars no. *200/2014/TT-BTC* and no. *202/2014/TT-BTC*, which improve the comparison and transparency of company financial statements and bring the two systems closer together.

The main differences between IFRS and VAS relate to the terminology, the methods of application and presentation. A number of the most significant difference between the two financial reporting systems are set out below:

Financial statements presentation

A complete set of financial statements based on the IASB's international accounting principle IAS1 includes the following:

- Income Statement;
- Balance Sheet;
- Statement of changes in shareholders' equity;
- Cash Flow Statement;
- Notes to the financial statements.

The components of the financial statements according to the VAS are:

- Balance Sheet;
- Income Statement;
- Cash Flow Statement;
- Notes.

According to VAS 21, the Statement of changes in shareholders' equity is attached to the notes instead of being a primary component of the financial statements. In addition, VAS do not require an indication of the management's strategic opinions, the business outlook and sources of uncertainty in estimates.

Cash Flow Statement

According to IFRS 7, the cash flow statement is based on the balance sheets of the current and previous financial periods and can include certain information from the general ledger. The IFRS establish that trade receivables and payables can be separated from receivables and payables relating to the sale of fixed or long-term assets; as a result, the cash flow from business activities is separate from the cash flow from financial investments.

On the basis of VAS 24, the cash flow statement is taken from the cash book and from accounting bank deposits corresponding to the relevant account. VAS 24 provides indications on the creation of cash flow statements using the indirect method starting from

profit before tax plus or less adjustments including differences in payables, excluding those relating to financial investment activities.

Chart of accounts

The Vietnamese Ministry of Finance has published a unform chart of accounts for enterprises' financial statements.

3.4. The IFRS in Vietnam

In the future, VAS will, however, be replaced by the IFRS and international accounting compliance will be promoted.

Road map in three steps

Phase 1 (2019-2021): The Ministry of Finance makes the necessary preparations for implementing the road map, such as the publication of the Vietnamese translation of IFRS standards, training and drawing up of guidelines for IFRS implantation. Companies that adopt IFRS starting from 2022 will receive dedicated support.

Phase 2 (2022-2025): The MoF selects a number of pilot companies, in particular State enterprises, listed companies and (large) unlisted companies, for the practical implementation of the IFRS. Foreign companies can adopt IFRS for their individual financial statements on a voluntary basis.

Phase 3 (since 2025): IFRS will be compulsory for the consolidated financial statements of all State companies, listed companies and (large) unlisted companies. All other companies will be able to adopt IFRS for their individual financial statements on a voluntary basis.

4. The labour market

4.1. How to hire staff?

Vietnam is an attractive location for all types of enterprises. The country has a growing consumer base and a young and dynamic workforce which is developing its skills. As a matter of fact, the Vietnamese workforce is growing by over a million people per year.

Various important trends are occurring in Vietnam with regards to human resources. Although the cost of labour is still low, salaries are constantly rising. In the last five years, the increase in salaries has not been accompanied by a corresponding increase in productivity. The relatively high rates of social security contributions and of income taxes are impacting staff hiring costs.

As a result of the ongoing development of Vietnam's workforce, it's natural that there is a certain difficulty in finding highly qualified staff. The shortage of skills and talent is particularly serious in sectors such as high technology and the banking sector. Nevertheless, many international companies, in collaboration with the Vietnamese government, are sponsoring training programmes to develop a growing number of highly qualified staff in order to widen the choice.

The country has a young and growing workforce, with new demands and high expectations for their future. The continuous growth of the workforce results in a consequent increase in competition in the labour market.

Companies tend to have a high rate of turnover, as employees often apply their skills in favour of other potential employers. Higher salaries elsewhere are certainly a temptation, but money may not be the only factor that persuades employees to remain for a long time in a company: those enterprises that find a way to foster employee loyalty will reap rewards.

Companies can have difficulty in transferring employees to the city or to different areas due to strong local ties. This can potentially hinder expansion plans for a company, which may find it difficult to transfer expert employees. For this reason, it's essential to find the right partner that can help in the recruitment process.

Many companies mainly rely on external suppliers with regards to human resources, particularly for consultancy relating to recruitment, training and payroll. Many multinationals, in fact, declare that they would like to externalise a higher number of operational HR procedures to a structure of shared services at the regional level.

Foreign companies that wish to operate in Vietnam must make sure to comply with the provisions of the Labour Code, which contains the legal framework of the rights and obligations of employers and employees with regards to working hours, work agreements, social security, overtime, strikes and the termination of employment contracts, to mention just a few.

Foreign employees

A Vietnamese entity is authorised to hire foreigners for work as managers, executives and experts when local hirings are not yet able to meet production and commercial needs. In contrast with a number of other Asiatic countries, Vietnamese representation offices can also directly hire staff.

To demonstrate the need for a foreign employee, 30 days before hiring, an entity has to publicly announce a job offer in a Vietnamese newspaper or on an online portal for the position to those looking for work in Vietnam.

Proof of this announcement must be submitted in the application for a work permit for the foreign worker. The other option is to hire foreigners through a state-owned job centre.

When hiring foreign personnel in Vietnam, it's necessary to be aware of a series of procedures and legal references.

4.2. Types of visas

To enter Vietnam, a foreigner needs a visa issued by the Vietnamese Embassy or Consulate. A Vietnamese visa can be granted while in another country or inside Vietnam. Citizens of ASEAN countries receive a free entry visa for Vietnam that lasts 15 to 30 days. Vietnam also has an electronic visa policy for 80 different nationalities, with a duration of 30 days. To work in Vietnam, however, and remain for a longer period, foreigners need to apply for a single or multiple entry visa lasting three months.

The main types of visa include:

Types of visas for Vietnam

Type of visa	Description	Validity
DL	Tourist visa	3 months
HN	Meetings/Conferences	3 months
LD	Foreign workers/Work visa	2 years

Type of visa	Description	Validity
LV1-LV2	Collaboration with the Vietnamese authorities	12 months
DT	Visas for investors	5 years
DN	Working with Vietnamese enterprises	12 months
NN1-NN2	Head of representative office in Vietnam, Head of the project office of foreign NGOs	12 months
NN3	NGO staff, representative office	12 months
DH	Student/intern	12 months
NG1-NG4	Diplomatic visas	12 months

Procedures and requirements for work permits

A work permit is necessary to work in Vietnam for more than three months. The ideal solution is for the employer to request it from the provincial Ministry of Labour, War Invalids and Social Affairs (MoLISA) 15 days before the foreign worker starts work. 10 working days are required to process the work permit.

Today, work permits for foreigners are valid for a maximum of two years and can be extended once for a further period of two years. If the company wishes to continue to employ the foreign worker, it's necessary to submit a new application.

The work permit can be revoked in the following circumstances:

- expiry of the work permit;
- termination of the employment contract;
- the contents of the employment contract do not correspond to the work permit granted;
- the foreign employee is dismissed by the foreign employer;
- withdrawal of the work permit on the part of authorised state agencies;
- termination of the activities of the company, organisation and partners in Vietnam; and
- the foreigner is sentenced to prison, dies or is declared missing by the court.

A foreigner is exempted from the requirement of a work permit if the interested party:

- is in Vietnam for a period of work of less than three months:
- is a partner of a limited liability partnership with two or more partners;
- is the owner of a limited liability company with a single shareholder;

- is a member of a board of directors of a joint-stock company;
- is in Vietnam to market products and services;
- is in Vietnam for less than three months to resolve an emergency or technologically complex situation that could influence production and which Vietnamese or foreign experts currently in Vietnam are unable to resolve;
- is a lawyer with a professional license in Vietnam;
- is head of representative offices or of project offices of foreign non-governmental organisations in Vietnam;
- is in Vietnam to provide consultancy services regarding research, construction, valuation, monitoring and assessment activities, the management and processing of programmes and projects that use public development assistance (PDA) in compliance with the regulations or agreements of an international treaty regarding PDA entered into between a Vietnamese authority and a foreign agency.

The Vietnamese authorities are becoming stricter with regards to work permits.

Temporary residence permits

Foreigners with a valid work permit for a year or more, and executives, can obtain a Temporary Residence Card (TRC) which is issued by the immigration agency of the Ministry of Public Security and is valid for one to five years depending on the type of visa.

People who have been issued a TRC can enter and leave Vietnam without a visa according to its terms of validity.

Holders of a work permit, members of board of directors, legal representatives of company branches and representatives of foreign enterprises' representative offices in Vietnam can obtain a TRC.

Permanent residence permits

A foreign worker with residence in Vietnam can also request a Permanent Residence Permit (PRC); the following conditions, however, apply:

The expatriate works for Vietnam's development and receives a recognition or title from the government.

- the expatriate has resided in Vietnam for three or more consecutive years and is maintained by a parent, spouse or child of Vietnamese nationality with a permanent residence in Vietnam; and
- the expatriate is a foreign scientist or expert recommended by the head of a Ministerial or Government agency.

4.3. Employment contracts in Vietnam

According to the new labour code, which came into force in January 2021, there now exist only two types of employment contract:

- permanent – A contract in which the two parties do not establish its duration and the date of its termination.
- fixed-term – The two parties establish the duration of a period of between 12 and 36 months and the date of its termination.

If an employee continues to work after the expiry of their employment contract, the contract must be renewed within 30 days from the expiry date or it will become a permanent contract. In addition, electronic contracts are now officially recognised and have the same validity as written ones. A verbal contract is also recognised, provided it is valid for less than a month.

An employment contract must contain indications regarding the work sector, working hours, rest times, the salary, the place of work, the duration of the contract, work health and safety conditions and social security.

Both the employer and the employee can unilaterally withdraw from a contract. 45 days' notice are required for permanent contracts and 30 days for fixed-term contracts. In certain cases, the employer must discuss withdrawal with the trade union executive committee.

Companies that employ ten or more people must have a copy of the company regulations or internal labour regulations registered with the provincial labour department. The company work regulations must include information such as working hours and rest times, rules and orders in the company, work safety, hygiene in the place of work, the protection of assets, confidentiality regarding the business and technology and sanctioning procedures, to mention just a few.

Dismissal and severance payment in Vietnam

In the event of termination of an employment contract, the employer can be obliged to pay a dismissal severance to the employee in question. The nature of the dismissal severance depends on the salary of a determined employee, the length of time the employee in question has worked in their current position and the length of time in which the employee has been covered by social security.

All employees that have been working for a company for at least 12 months are entitled to a severance payment.

According to the Vietnamese labour code, severance pay amounts to half a month's salary for every year worked.

Wage compensation

In Vietnam there are two types of minimum salary. The first type is the common minimum wage of 1,490,000 VND (~64 dollars), used to calculate the salaries of the employees of state organisations and enterprises, as well as to calculate the social security contribution for all enterprises (the maximum social security contribution is 20 times the common minimum wage). The second type of minimum wage is used for the employees of all non-state enterprises, on the basis of the zones defined by the government.

For Vietnamese employees that work in Vietnam in foreign companies, the remuneration is established through negotiations between the two parties. The remuneration must not, however, be lower than the minimum monthly wage established by the government.

Overtime is paid on the basis of the current hourly pay. The rate of overtime pay on weekdays (daytime) is 150%, and at weekends (daytime) 200%, on bank holidays or paid holidays 300%, and on weekdays (night-time) 30% higher than the above-indicated rates.

Salaries paid to Vietnamese staff that work for foreign companies must be specified in Vietnamese Dong. Foreign employers can establish the wage rates both in Vietnamese Dong and US Dollars, but salaries based in US Dollars must be converted into Vietnamese Dong.

In general, the typical monthly salary package of an employee includes the gross salary and compulsory social security obligations. Personal income tax (PIT) is levied on the balance after the deduction of compulsory social security contributions.

Types of bonuses

Bonuses are awarded to employees on the basis on the company's earnings and performance and as a productivity incentive. There are various types of bonuses that a company can award to its employees during the year.

A thirteenth month's salary is usually awarded as a sort of "annual bonus" by local and foreign companies in Vietnam to employees that have worked in the company for at least a year. Employees that have worked in a company for at least one year generally receive a bonus proportional to the effective period of work.

In addition, there is also a special bonus called the "Lunar New Year bonus" (or "Tet bonus") which is often paid to employees before leaving for the Lunar New Year.

Employee can also receive smaller bonuses for festivities or other special days (for example, International Labour Day or National Day). Executives and other high-ranking employees can also receive bonuses on these days, also in the form of shares with a

vesting period, for which the corresponding shares can be sold only after the employee has worked for the company for a certain period of time.

In Vietnam all salaries and bonuses are subject to Personal Income Tax.

Allowances and benefits

Besides the salary and bonuses, an employee can be entitled to different types of monetary or non-monetary allowances and benefits aimed at retaining staff. A number of these are subject to Income Taxes. Taxable benefits include:

- accommodation rental;
- the payment of energy, water and associated services for employees, which amount to more than 15% of their total taxable income;
- transport allowances;
- life insurance premiums;
- health care services;
- entertainment expenses; and
- sports/athletics taxes and fees for membership of golf clubs, tennis clubs and other exclusive clubs.

Established lump-sum amounts (or "khoan chi") for telephone calls and services, stationary, uniforms and diaries are not subject to taxes if they are within the levels established by the reference regulations.

Foreigners that work in Vietnam are also exempt from personal income tax (PIT) on various benefits, such as transfer allowance for transfers in the country, plane tickets for the country of origin and school fees for children.

4.4. Tax obligations for company employees

Besides the basic legislation regarding employment contracts and monetary remuneration, there are specific laws that regulate the levy of taxes and the payment of social security for employees. The employer needs to be aware of and willing to recognise the deductions made in the pay slips of employees.

Withholding for the payment of personal income tax

In general, a typical wage packet contains the gross salary and compulsory social security. Personal income tax (PIT) will be applied on the balance after deducting compulsory social security contributions.

Vietnam law on personal income tax recognises ten different income categories, with a series of different deductions, rates and exceptions applicable in each case.

A person is defined as tax resident if they have resided in Vietnam for 183 days or more in the calendar year or in a period of 12 consecutive months from the date of their arrival.

Tax residents are subject to PIT on their income from their employed work at a global level, regardless of the place in which the income is paid or received, with progressive rates from 5% to a maximum of 35%. Non-resident tax-payers are subject to PIT with a lump-sum rate of 20% on their income of Vietnamese origin.

Companies pay PIT on behalf of their employees at the beginning of the year for the taxable income of the previous year.

Tax exemptions

In Vietnam, foreigners can be exempt from taxation for certain work services. These exemptions include:

- one-time transfer allowance for foreigners that transfer to Vietnam;
- return flights paid once a year by employers for foreign employers on annual leave; and
- school fees for general education or fees paid by the employer for the children of expatriates that study in Vietnam.

Payment of taxes

Foreign Invested Enterprises (FIE) must pay Income Tax on behalf of their employees at the beginning of the year for the taxable income of the previous year.

If an employee has more than one source of income and wishes to pay their taxes autonomously, FIEs can issue a tax deduction certificate further to the employee's request. If the employment contract of an expatriate in Vietnam expires before the end of the calendar year, the employee must make the payment of taxes before resuming work.

The taxpayer pays personal income tax to the state treasury in two ways: in cash or by bank transfer. The taxpayer can pay in cash directly to the state treasury and receive a receipt from the state officials. Otherwise, they can transfer the money to a bank account of the state treasury tax office. The deadline for payment of the tax is the same for the submission of the declaration, that is, no later than 90 days from the end of the calendar year.

Social insurance funds

There are three types of compulsory social security in Vietnam that must be covered by foreign enterprises that wish to hire local personnel:

- social insurance;
- health insurance; and
- insurance against unemployment.

The minimum obligatory contributions are required both from the employer and from the employee. All national and foreign companies that operate in Vietnam are obliged to pay said social insurance contributions for all employees with fixed-term contracts of a duration of more than three months or that have permanent contracts.

Employers register and pay insurance contributions on a monthly basis on behalf of their employees to the provincial Department of Labour, War Invalids and Social Affairs (DoLISA).

Basic Minimum Wage USD 1,295	**Employer's Contribution**	**Employees' Contribution**
Social insurance	17%	8%
Health insurance	3%	1,5%
Insurance against accidents at work and occupational diseases	0,5%	

The contributions are determined on the basis of employees' monthly salary or wage. Even through the amounts to be paid vary according to the remuneration of an employee, the wage ceiling for calculating contributions is set at 20 times the minimum wage for social and health insurance (currently 29,800,000 VND (1,300 dollars)) and 20 times the minimum regional wage for the insurance against unemployment (88,400,000 VND, equivalent to 3,800 dollars depending on the region).

Social insurance covers various services for employees, including sick leave, maternity leave, compensation for accidents at work and occupational illness, pension allowance and death allowance. Health insurance gives the right to a medical examination and to inpatient and out-patient treatments in authorized medical structures.

The insurance against unemployment, which replaces severance pay, is paid to employees to an extent that depends on the period of time in which they and their previous employers have contributed. The monthly unemployment allowance is equal to 60% of the average salary of the last six months of work.

The wage subject to the contribution for social insurance is that defined by the employment contract, but is limited to 20 times the minimum salary for contributions for social insurance established by the government.

At present, the maximum wage for contributions to social insurance is 1,295 dollars.

Once an employment contract in Vietnam expires, the foreign worker can request the agency for social insurance the payment of a lump-sum on the amount paid, if the following conditions are met:

- the reaching of pensionable age, without having paid social security contributions for all 20 years;
- being affected by a pathology such as cancer, pneumonia, HIV or other illnesses regulated by the Ministry of Health;
- the meeting of conditions for a pension, but no longer resident in Vietnam; and
- the termination of the employment contract or the expiry of the work permit without renewal.

5. Forms of incentive and support for investors and enterprises[1]

The Ministry of Planning and Investments (MPI) is the body responsible for the granting of incen-tives for investments.

They generally consist in preferential tax rates (reduced tax rates) and tax exemptions (tax ex-emption for a determined period or for the whole duration of the project) determined on the basis of four factors: sector, location, dimension of the investment and others.

5.1. Concessions for sectors

- Enterprises that make new investments in sectors linked to technology, clothing, shoes, automobiles, production of goods not at national level and goods that meet EU quality standards, are subject to a tax of 10% for 15 years. This period also includes an exemption (tax holiday) for the first 4 years and a reduction of 50% of the CIT rate for the following 9 years.
- Enterprises that operate in the education and training health, sport, culture and environ-mental sectors have a tax rate of 10% for the entire duration of the project.
- Enterprises that obtain their income from prescribed agricultural and related activities can benefit from a tax rate of 15% for the entire duration of their project. A tax incentive in the form of a reduced rate equal to 17% for the entire duration of the project is also pro-vided for enterprises that produce equipment for certain agricultural sectors.

5.2. Concessions for location

- Enterprises that operate in extremely difficult areas, special economic zones (SEZ) or high technology zones (HTZ) are taxed at 10% for the first 15 years of the pro-

1 Source: Vietnam Briefing drawn up by Dezan Shira & Associates.

duction of income. This period also includes a tax holiday for the first 4 years, followed by a reduction of 50% for the following 9 years;

- Enterprises that operate in difficult areas are taxed at 17% for 10 years from the produc-tion of income. This period also includes a tax holiday for the first 2 years, followed by a reduction of 50% for the following 4 years;
- Enterprises that operate in industrial parks can benefit from a 2-year tax holiday, following by a reduction of 50% of CIT for the following 4 years.

5.3. Concessions for projects

- Production projects with an investment capital of greater than 6,000 billion VND (261 mil-lion dollars) invested within 3 years from the granting of the license:
  - minimum revenues are 10,000 billion VND per year within 4 years of activity; or
  - the minimum workforce is 3,000 people within at least 4 years of activity.
- Production projects with an investment capital of greater than 12,000 billion VND dis-bursed within 5 years from the granting of the license and which provides for the use of high technology.

Investments that meet one of the two criteria are subject to a CIT rate of 10% for 15 anni. These companies can also benefit from a tax holiday for 4 years, followed by a reduction of 50% of the CIT rate for the following 9 years.

Other special concessions and incentives

Other concessions can consist in exemptions from importation duties, exemption from taxes on land leases, if certain criteria are met.

More recently, the prime Minister issued Decision 29/2021/QD-TTg which, in order to promote the technological transfer process, establishes the levels, duration and conditions for the appli-cation of special incentives for investment projects, granted on the basis of meeting criteria provided for by the law with regards to investment capital, high technology, technological trans-fer, added value and participation in the value chain of Vietnamese enterprises.

6. Free trade agreements and Vietnam's strategy

As already mentioned in the first chapter dedicated to the Italian Economic System, Free Trade Agreements – FTA establish particular advantageous conditions to be implemented in commercial exchanges between two or more countries. These conditions determine, among other things, the amount of tariffs and duties applicable on imports and exports between the countries party to the FTA. 2007 marked a significant step for Vietnam[2], which joined the World Trade Organisation[3], subsequently entering into numerous free trade agreements, carving out for itself an important position in international trade.

Particularly in recent years, Vietnam has entered into bilateral agreements with countries from all over the world. First and foremost, as a member country of the Association of Southeast Asian Nations (ASEAN), Vietnam has taken part in various free trade agreements that the regional economic bloc has signed up to and ratified. In addition, the country has entered into numerous bilateral trade agreements in the last few years.

OVERVIEW OF VIETNAM's FTAs WITH OTHER PARTNERS

1.	**Vietnam – Japan Economic Partnership Agreement (EPA)** Status: signed in December 2008, in force since 1 October 2009
2.	**Vietnam – Chile FTA** Status: signed on 11 November 2011, in force since 1 January 2014
3.	**Comprehensive and Progressive Agreement on Trans-Pacific Partnership** Status: signed in 8 March 2018, seven including Vietnam have ratified the CPTPP by January 2019 Members: Australia, Brunei, Canada, Chile, Japan, New Zealand, Peru, Singapore, Malaysia, Mexico and Vietnam
4.	**Vietnam – Eurasia Economic Union** Status: signed on 29 May 2015, will enter into force 60 days after the final member country ratifies the FTA Members: Vietnam, Russia, Belarus, Armenia, Kyrgyzstan and Kazakhstan
5.	**Vietnam – EFTA (European Free Trade Association)** Status: negotiations launched in April 2012, still going on Members: Vietnam, Switzerland, Iceland, Norway and Lichtenstein
6.	**Vietnam – South Korea** Status: signed on 5 May 2015, in force since 20 December 2015
7.	**Vietnam - European Union FTA** Status: concluded in December 2015; in force since 1August 2020

2 Vietnam began its renewal policies in 1986 with the so-called "doi moi".

3 World Trade Organization – WTO.

ASEAN FTAs

1.	**ASEAN Free Trade Area** Status: signed, in effect since 30 January 2003
2.	**ASEAN – China FTA** Status: signed, in effect 2003
3.	**ASEAN – Japan FTA** Status: in effect since December 2009
4.	**ASEAN – India FTA** Status: in effect since January 2010
5.	**ASEAN – Australia and New Zealand FTA** Status: in effect since January 2010 (Laos, Cambodia and Indonesia in effect since 2011 and 2012)
6.	**ASEAN – South Korea FTA** Status: Trade in goods chapters signed in August 2006; trade in services signed in November 2007

Source: Guide to the EU-Vietnam free trade agreement (europa.eu)

The entering into of numerous free trade agreements forms part of Vietnam's growth strategy, which involves a gradual shift of its trade from the exportation of low value-added manufactured goods and commodities to high more complex technology such as electronics, machinery, vehicles and medical devices.

The same strategy provides that this transition is to be pursued in various ways. Firstly, through the diversification of supplies along wider trading networks as well as through the importation of intermediate goods with less impact in terms of cost (due to the agreed reductions in tariffs and duties) which should, in this way, increase the competitiveness of Vietnamese exports.

Secondly, collaboration with foreign companies able to transfer necessary skills and technology will enable a "push" towards high added-value productions. The progressive transfer of skills and technology has favoured – and will continue to support – an increase in the productivity of the local workforce and the country's exports.

These sophisticated commercial practices and technologies will help to increase Vietnamese labour productivity and to expand the country's export capacity.

With recent trade agreements such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership – CPTPP, the free trade agreement between the EU and Vietnam (EVFTA), the free trade agreement between the United Kingdom and Vietnam (UKVFTA), as well as the Regional Comprehensive Economic Partnership – RCEP, Vietnam seems to have fully understood the importance of an integration of international trade outside the ASEAN.

These agreements will allow Vietnam to enjoy advantages from reduced tariffs, both inside the ASEAN Economic Community (AEC) and in trade with the EU and the United States, and to attract foreign investments for producing in Vietnam and exporting towards partners outside the ASEAN.

Vietnam's participation in these trade agreements will guarantee, moreover, the alignment of local regulations with international standards, from worker's rights to protection of the environment. In this scenario, both the CPTPP and the EVFTA provide that Vietnam conforms to the standards of the International Labour Organization (OIL). Chan Lee, OIL director in Vietnam, has pointed out that the free trade agreements are an opportunity to modernise local regulations on the theme of work and industrial relations in Vietnam.

6.1. The free trade agreement between the EU and Vietnam

Negotiations between the EU and Vietnam for an agreement on trade and investments started in June 2012 and officially concluded in 2015.

The free trade agreement between the EU and Vietnam forms part of the EU's wider strategy to facilitate trade with Asian countries which, further to the interruption of negotiations for a regional agreement with the ASEAN (Association of Southeast Asian Nations) area, has been pursued through bilateral agreements with single countries in the area.

Further to the opinion of the EU Court of Justice, which has excluded from the EU's exclusive competence non-direct foreign investments and the settlement of dispute between State and investors, the Commission proceeded with the subdivision of the treaty into two distinct agreements: a Free Trade Agreement/FTA on the one side and an Investments Protection Agreement/IPA on the other. The IPA, which has a mixed legal basis, will have to be ratified by national members of parliament to enter into force.

The text of the free trade agreement (FTA) was published on the first of February 2016 and came into force on 1° August 2020, after approval of the European Council and Parliament[4]. It's the third agreement with an Asian country[5] and, although it was negotiated with a developing country, it has a symmetric character, that is, with balanced commitments of the two Parties.

4 For the updated text: https://trade.ec.europa.eu/access-to-markets/it/content/accordo-di-libero-scambio-ue-vietnam.

5 The other two countries are South Korea and Singapore.

Summarising the contents, the Agreement provides for a liberalisation tax of 99% of the tariff lines, to be accomplished in a longer transition period for Vietnam (maximum 10 years) compared to these provided for the EU (maximum 7 years). With regards to Italy, the abolition of duties alone (which in Vietnam are roughly 9.1% on average), should lead to an increase of 3.1% in exports towards Vietnam and 2.3% in import flows.

The effective impact of this agreement will be felt with different timeframes in different sectors: specifically, for industrial products exported to Vietnam, the elimination of duties will occur in 10 years for automobiles, in 7 years for the machinery, equipment, chemical products and pharmaceuticals sectors, while for the textile sector "zero duty" is expected upon the agreement's coming into force.

Also in the agri-food sector, which was subject to duties of up to 50%, there will be a gradual liberalization of the products exported.

A symmetrical graduality, albeit not aligned in terms of timescale, is provided for also with regards to importations into the EU, with the elimination of duties for so-called "sensitive" industrial products upon the agreement's coming into force, or after 3 years (for less sensitive items) and up to 5-7 years (for more sensitive products). The textile sector has been protected maintaining the double transformation rule of origin, with the sole exception of the cumulation of products originating from South Korea, another FTA partner with the EU.

A number of sensitive agricultural products (particularly rice, sugar, tinned tuna and poultry) are protected with tariff quotas (TRQ).

The agreement deals with aspects regarding also the services market in which positive results have been achieved considering that the principle of non-discrimination has been agreed with respect to foreign operators who are treated as equivalent to nationals with reference to international maritime, distribution, postal, telecommunication, environmental and banking services.

Ambitious results have also been achieved in the public procurement sector with reference to infrastructures, roads and ports, as well as in the protection of intellectual property rights, with full protection of trademark, patents, copyright and design rights. Particular attention has been focused on the 169[6] "Geographical Indications" inserted in the EU list since full protection through the agreement is envisaged, accompanied by a prohibition of evocation and obligation of origin. Unfortunately for some, a coexistence with other generic types is provided for[7], which could mislead the consumer; the possi-

6 Of these, 38 are Italian.

7 For Italian products, for example, a coexistence between "parmigiano reggiano" and "parmesan" is provided for.

bility of inserting further geographical indications in the future is, however, also provided for.

The agreement has also introduced significant changes in the field of non-tariff barriers, and in this sense, Vietnam has assumed a formal undertaking to simplify customs procedures.

Finally, the EU and Vietnam have agreed a long list of undertakings in relation to sustainable development[8]; the obligation not to make exceptions to environmental and labour regulations with the aim of attracting investments and increasing trade; the promotion of corporate social responsibility; specific undertakings on the theme of climate change and to the conservation and sustainable management of biodiversity.

6.2. Rules of origin

To benefit from the duty reductions provided for by the agreement, products of one or other of the parties need to be classified as "original", that is, they must comply with the specific rules of preferential origin on the basis of the customs classification, as well as further requirements provided for by the Agreement and in the relative Annex II to Protocol 1 relating to the definition of the concept of "originating products" and to administrative cooperation procedures.

It is useful to remember that originating products of one party are considered as:

- products "wholly obtained" in one party in accordance with article 4 of the Protocol (wholly obtained products);
- products produced in one party incorporating materials which have not been wholly obtained there, provided that such materials have undergone in the interested party "sufficient processing or transformation" pursuant to article 5 of the Protocol (sufficiently processed or transformed products).

Products that are not wholly obtained are considered as sufficiently processed or transformed when the conditions are met as per Annex II of the Protocol of origin, which provides for a series of rules including the rule of tolerance and the rule of cumulation,

8 Among which the implementation of OIL workings standards, the ratification of the OIL Conventions and of multilateral environmental agreements.

the principle of territoriality and non-modification and the duty drawback[9], to which reference should be made for specific classifications[10].

6.3. Proof of origin

To ascertain preferential origin and, therefore to have the possibility of benefitting from the above-indicated duty reductions, exporters must submit suitable proof as provided for by art. 15 of Protocol 1:

- certification of origin;
- declaration on the invoice issued by an exporter (authorised, if the value of the operation exceeds the amount of Euro 6,000);
- certification of origin issued by an exporter registered in the REX database..

Conversely, but only provisionally, EU importers can, instead, import with preference Vietnamese products furnished with a suitable EUR 1[11] certificate. As soon as Vietnam informs the EU of the application of the REX system, suitable proof of origin will be composed solely of a declaration of origin duly completed by a Vietnamese exporter or registered in compliance with the pertinent legislation.

9 The "duty drawback" rule provides that, as part of a preferential origin agreement, non-original materials used in the manufacture of original products, for which a declaration of preferential origin has been issued or compiled, are not subject to a refund or exemption from duties.

10 Besides bilateral cumulation, art. 3 of Protocol 1 also provides for the possibility of using Cumulation with South Korea and cumulation with ASEAN countries in relation to certain products.

11 Issued by the Vietnamese Ministry for Industry and Trade.

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