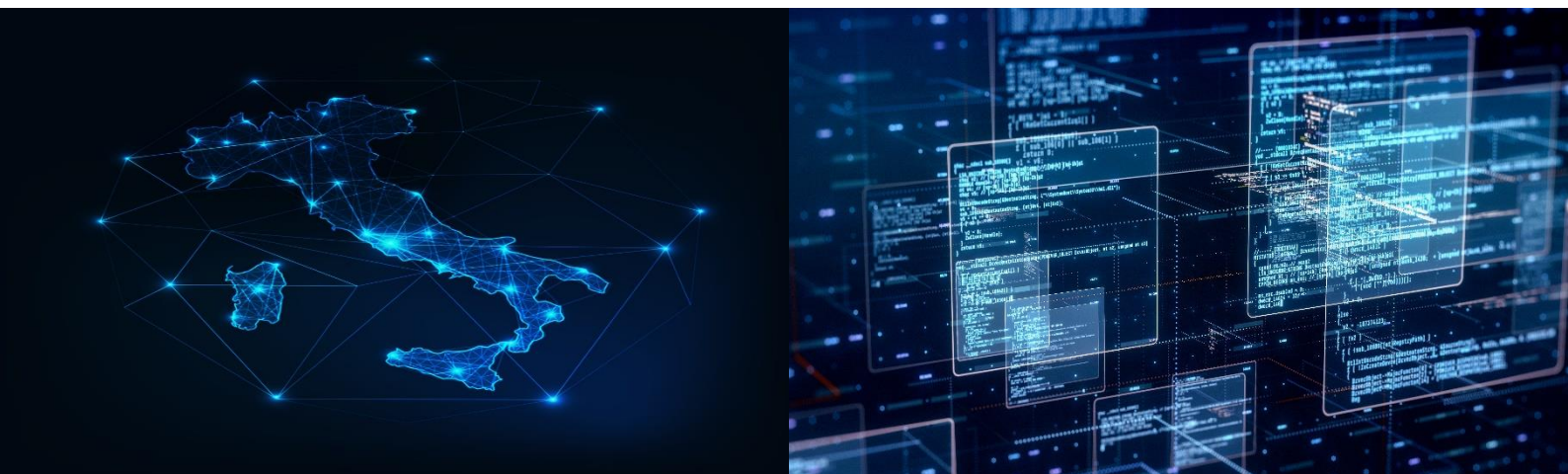




SLM AUTUMN – WINTER NEWSLETTER

**Updates and insights from Italy for private
clients and business enterprises**



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STUDIO LEGALE MASTELLONE

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PRIVATE CLIENTS

1. The 2026 Budget Act renews the window for facilitating the allocation to private individual shareholders of real property held by resident companies.

Private clients holding real property in Italy through an Italian resident company are advised to consider that mere holding companies run the risk of qualifying as a "non-operational companies (so-called *società immobiliare di comodo*) if they systematically produce losses and do not produce sufficient revenues (thus failing to overcome the so-called "operativity test") and thus liable to pay corporate income tax (IRES) at the rate of 24% and regional tax on production activities (IRAP) at the rate of 3.9% on an assessed income.

The draft 2026 Budget Act offers a new opportunity to such real estate holding companies to transfer ownership title of any non-instrumental real property to private individual shareholders with reduced transfer taxes levied on the cadastral value rather than on the balance sheet values of the real property

More in detail: by **30 September 2026**, partnerships and corporations will be able to assign to their shareholders who are individuals (not corporate entities) any real property not used instrumentally in the business, benefiting from:

- a substitute tax **of 8%** (or **10.5%** for companies not operating in at least two of the tax periods prior to 2026) on the difference between the normal value of the assets and their tax cost;
- a **13%** substitute tax on tax-suspended reserves eliminated as a result of the assignment;
- non-application of the presumption of prior distribution of profit reserves compared to capital reserves pursuant to Article 47 of the Italian Tax Code (TUIR);
- the possibility of using the **cadastral value** instead of the normal value for real estate;
- **halving** of the proportional registration tax (if due) and fixed mortgage and cadastral taxes.

2. Accepting an inheritance of assets located in Italy with the benefit of the inventory, to avoid the heir's personal liability (in the presence of the risk of debts and liabilities exceeding the assets).

Unlike other European countries, the principle of the immediate transfer of inheritance upon death is excluded under the Italian Civil Code, which instead provided that the heirs acquire control of the estate only through acceptance (Article 459 of the Civil Code). Automatic transfer is limited to legacies (Article 649 of the Civil Code) and succession by the State in the absence of other heirs (Article 586 of the Civil Code).

The heir who has accepted the inheritance is responsible for all the debts and liabilities of the estate, even if they exceed the assets, hence the beneficiary who is not sure whether the assets will cover the debts and liabilities is well advised to accept the inheritance with the benefit of the inventory.

Care needs to be taken by potential heirs not to put into place any actions which might be considered as the equivalent of a formal declaration of acceptance: beneficiaries becomes heirs if they perform acts that presuppose their willingness to accept, including the sale of inherited assets, the establishment of rights over them, taking legal action to recover them, paying inheritance debts with sums from the estate or requesting land registry transfers. Qualifying acts also include the signing of a preliminary sale agreement (Cass. ord. 9436/2025).

The declaration of acceptance with the benefit of the inventory must be made by means of a formal declaration received by a notary public or by the Chancellor of the Tribunal of the district in which the succession was opened. The "person called to the inheritance" who is not in the possession of the heritable property can make the declaration as long as the right to accept is not prescribed, whilst the person who is in possession of the heritable property must draw up the inventory within three months

of the date of the opening of the succession or from when they became aware of the inheritance. If this term expires without the inventory having been completed, the persons called to the inheritance are considered heirs “pure and simple”. Once the inventory has been completed, the beneficiaries who have not yet declared that their acceptance is with the benefit of the inventory, have forty days from the completion of the inventory to decide whether to accept or renounce the inheritance, and if this term expires without a decision having been formalised, they are considered as heirs “pure and simple”.

The effect of the benefit of inventory consists in keeping the assets of the deceased distinct from those of the heirs, from which it follows that the heirs are not liable for the debts and legacies of the inheritance beyond the value of the property received. If the declaration is made prior to the inventory, the latter must be completed within 3 months.

The jurisprudence of the Supreme Court (*Corte di Cassazione*) considers that an inventory is essential, even in the event that the beneficiaries in the possession of inherited assets waive their inheritance rights: anyone who possesses inherited assets and does not draw up an inventory within three months of the opening of the succession is considered an heir despite, within that same period, having submitted a waiver of rights (Cass. 4845/2003; ord. 156/2020; Cass. 12437/2021; 36080/2021). It follows that a timely waiver is deemed ineffective in the absence of an inventory.

3. The complex landscape of real property short-term rentals (and the alternatives available to landlords).

Short-term i.e. “*locazione breve*” of accommodation rented exclusively for tourist purposes, are contracts entered into between the landlord and private individual tenant (not entrepreneurs), either directly or through estate agents or online portal operators, with a maximum term of 30 days, including contracts that provide, in addition to the rental, the supply of linen, cleaning of the premises and other services strictly related to the use of the accommodation (utilities, Wi-Fi, air conditioning, etc.). Market rents are permitted for such short-term contracts.

The short-term rental sector has become a battleground between the State, Regions and Municipalities (the *Comuni*), due to conflicting regulations and recourse to courts to resolve the discrepancies. The 2024 Budget Act has introduced the obligation for landlords to apply for a specific national identification number (“CIN”) and to report contract details to the Revenue Agency and has restricted the number of apartments that can be rented on short-term by private individuals without being considered entrepreneur is compelled to apply for a VAT number - which has already reduced the supply of rentals and increased management costs.

The 2026 Budget Act has issued further tax changes: the flat tax rate (“*cedolare secca*”) of 21% is reconfirmed for income deriving from the rental of the first property, with a flat tax rate of 26% applicable to income deriving from the second property onwards, and also to the first property if an intermediary (agency or portal) is used.

Owners with multiple short-term rental properties will need to carefully consider the tax regime to apply, depending on the number of property units owned and the type of intermediary used, and also ensure that rental contracts comply with the regulations and that the flat-rate tax is applied correctly.

Many regions have approved specific regulations, often contested by the government: recent cases include the 'Abitare Reform' in Bolzano (challenged by the Council of Ministers for violating freedom of enterprise), the Consolidated Tourism Law of Tuscany, now under review by the Constitutional Court, and the Sicilian reform, amended after protests over excessive rigidity.

Meanwhile, the jurisprudence has reiterated that municipalities cannot restrict non-commercial short-term rentals (Council of State 2928/2025), but many cities have nevertheless introduced restrictions: Florence (size limits, bans in UNESCO areas), Venice (with a maximum limit of 120 days per year), Rome and Bologna (additional authorisations and urban planning variations). According to Aigab (Italian Association of Short-Term Rental Managers), these measures generate uncertainty and disputes, while the CIN requirement and new technical rules increase costs for operators. The supply is estimated to have fallen by 11% nationally and by up to 20% in historic centres.

In considering alternative rental contracts to the "*locazione breve*", the following is a list focusing on duration (minimum and maximum length fixed by the law) and rent amounts (free market rent vs. rent caps agreed locally between landlords' and tenants' organisations) - the tax aspects are not considered here.

No restrictions on rent and maximum duration

- short-term rental exclusively for tourist purposes: market rent, maximum duration 30 days [*contratti a canone libero ma a durata limitata*]

No capped rent, but minimum length

- so called 4 years + 4 years (automatic renewal, except for serious reasons): market rent, minimum length 4 years [*contratti a canone libero*: art. 2, c.1, L. 431/98]

No restrictions on rent nor length

- rental of property which is part of the national heritage due to its historical, artistic and architectural importance (so-called *immobili vincolati* pursuant to Law, June 1, 1939 n. 1089), or falling in cadastral categories A1, A8 and A9 which denote, respectively, stately homes, villas and castles or prominent buildings: no restrictions as regards rent and duration [*contratti a canone e durata liberi*]

Other than the above, the law regulates the minimum term and the maximum amount of rent as follows:

Agreed rent contracts (*canone concordato*) art. 2, para. 3, Law 431/98

Duration 3 years + 2 years (automatic renewal)

Rent: must fall within the minimum and maximum limits established by the territorial agreements between landlords' and tenants' organisations, based on the size of the flat, its objective conditions (state of repair of the property, appurtenances, presence of common areas, balconies, lift, etc.) and its location. The "agreed rent contract" must be signed in the presence of a representative of one of the organisations that signed the local agreement, or it must be certified by one of these associations.

Transitional contracts (*ad uso transitorio*) art. 5, para. 1, Law 431/98

restricted to satisfying the condition of transitional needs of the owner or of the tenant, to be specified in the contract and supported by appropriate documentary evidence, such as:

- as regards the landlord, future prospect of selling a rented property; the need to use the property for their own or family housing needs; renovation works already budgeted
 - as regards the tenant, work reasons; assistance to a family member; purchase, assignment or rental of a dwelling that becomes available within the term of the contract; renovation works of their home
- Duration: not to exceed 18 months.

Rent: in municipalities with a population of more than 10,000 the rent is calculated within the ranges agreed between landlords' and tenants' organisations and set out in local agreements; in all other municipalities and for contracts of 30 days or less, the rent is not regulated.

Transitional contracts for university students art. 5, paras. 2 and 3, Law 431/98

Duration: from a minimum of 6 to a maximum of 36 months

Rent: the minimum and maximum rent is determined by the territorial agreements.

4. The Italian Tax Agency qualifies an “opaque” US trust as a “transparent” trust in Italy.

Of particular interest is the response no. 239 of 15 September 2015 of the *Agenzia delle Entrate* to the question (*istanza di interpello*) submitted by the beneficiaries of a US Living Trust set up by a Grantor to which he had contributed assets, both movable and immovable, all located in California - in essence, the entire assets of the Trust consisted exclusively of assets located in the United States. The beneficiaries were the Grantor's great-grandchildren, all resident in Italy.

The Grantor was the first beneficiary and first trustee of the Trust with the discretionary power to revoke and modify the Trust until his death. After the Grantor's death, his great-grandchildren became the final beneficiaries of 84% of the Trust fund, to be divided equally following the liquidation of the movable and immovable assets by the Trustee.

Under US law, until the Grantor's death, the Trust was qualified as a “Grantor Trust”, i.e. an interposed, modifiable and revocable trust. As a result, all the Trust's income was reported by the Grantor in his personal tax return (Form 1040). Upon the Grantor's death, under US law, the Trust changed its nature to become a “Non-Grantor Trust”, the main features of which are the appointment of a new Trustee, the presence of new beneficiaries, and the circumstance that the Trust itself is irrevocable and non-modifiable.

US tax law considers a Non-Grantor Trust as “opaque”, which means that effective from the death of the Grantor, the income generated by the assets in the Trust are taxed on the Trust itself. The Italian beneficiaries therefore requested the Italian Tax Agency to classify the Trust as “opaque”, “transparent” or “interposed” from the point of view of Italian direct taxation purposes, with reference to the period following the death of the Grantor.

The reply given by the Tax Agency mentions Circular No. 61/E of 27 December 2010 where the Agency has taken the position that trusts established and managed for the sole purpose of merely interposing themselves in the possession of income cannot be considered as validly operating for tax purposes: this is the case, for example, of trusts in which the Grantor or the beneficiaries issue binding instructions to the trustee: these include trusts that are considered as “non-existing” in Italy, such as trusts in which the

Grantor (or the beneficiary) is granted powers whereby the trustee, although endowed with discretionary powers in the management and administration of the trust, cannot exercise them without the Grantor's consent and any other case in which the trustee's management and disposal powers are in some way limited or even simply conditional upon the Grantor's (and/or beneficiaries') will.

With regard to trusts recognised as "existing" for tax purposes in Italy, for the purposes of determining the tax regime applicable to income, there are two types of trust:

- "transparent trusts", i.e. trusts with "identified" beneficiaries of income, which is taxed on the beneficiary, through "imputation" for transparency purposes and applying the taxation rules applicable to the beneficiaries;
- "opaque trusts", i.e. trusts without "identified" beneficiaries of income, which is taxed on the trusts as a corporate income tax taxpayers.

With regards to transparent trusts, paragraph 2 of Article 73 of the Italian Income Tax Code (TUIR) provides that *"In cases where the beneficiaries of the trust are identified, the income earned by the trust shall in any case be allocated to the beneficiaries in proportion to the share of participation identified in the trust deed or in other subsequent documents or, failing that, in equal parts"*.

It follows that, upon the Grantor's death, the tax qualification of the trust, according to Italian tax law, will take into account the terms resulting from the deed setting up the trust in order to determine whether, following the Grantor's death, the trustee is in a position to manage the trust fund independently, pursuing the purposes for which the trust was established. In the circumstances: - the Trustee was granted broad powers to manage the trust fund, such as, for example, the power to sell, lease, hold and invest securities, grant loans, etc. ; - the manner in which the Beneficiaries are allocated assets is also at the Trustee's discretion ; and - after the Grantor's death, the Trustee may only be revoked and replaced by order of the Court.

Based upon the above, the Tax Agency excludes the "interposed" nature of the Trust with respect to beneficiaries resident in Italy, and goes on to assess its transparent or opaque nature, finding that the characteristics of the Trust in question did not reveal any discretion on the part of the Trustee with regard to the timing of distributions or their amount, given that it is expressly established that all the income and residual assets of the Trust must be distributed according to percentages predetermined by the Grantor: therefore, the Tax Agency considered that the Trust qualified as "transparent" under Italian tax law, as the beneficiaries have the right to receive the distribution of the residual fund in the Trust after the death of the Grantor, making them owners of "identified income", pursuant to Article 73, paragraph 2, of the Italian Income Tax Code (TUIR), i.e. persons who express, with respect to the income of the Trust, a current ability to pay.

In recent years, the Tax Agency has increasingly tended to consider foreign trusts set up by deceased settlors as "transparent". The response to the question confirms that U.S. Living Trusts with Italian resident beneficiaries can be a useful tool for intergenerational planning between Italy and the United States.

5. The dilemma of foreign assets falling into succession: the example of Armani and French taxes.

Inheritance taxes for residents in Italy are traditionally lower than in other European countries with rates ranging from 4% to 8%, with high zero thresholds e.g. €1,000,000 in the case of the 4% rate for inheritance of spouses and children; €100,000 in the case of the 6% rate for inheritance between siblings. If an individual resident in Italy owns assets in countries with higher inheritance taxes, Italian heirs may find themselves having to pay a much higher tax than the national one. This is the case, for example, with real estate or shareholdings in France. A striking and very recent example is the estate of Giorgio Armani, who was credited as the owner of approximately 2% of Essilor Luxottica, based in Paris, with a value of around £2.4 billion at the beginning of September 2025.

For Italian residents, inheritance tax is applied to the taxable value of all the deceased's assets, wherever they are located. However, taxes paid abroad can be deducted from those due in Italy, up to the amount of Italian tax. In practice, if a foreign country applies a much higher tax, the Italian tax authorities do not collect any tax.

There is a specific double taxation agreement between Italy and France for the avoidance of double taxation with respect to taxes on inheritance and gifts (Treaty of 14 December 1994), which however not change the general rules: property and shareholdings are taxed in the country where they are located (for companies, this refers to their domicile, i.e. their registered office). In Italy, therefore, the amount paid in France is deducted.

In France, however, rates reach up to 45% in a straight line and 60% between persons without family ties, with much lower allowances.

The calculation of the tax base is also different: in Italy, the percentage of capital belonging to the deceased at the net book value per share and quota of unlisted companies is used, while for listed shares, the price on the day of death is used as a reference. In France, for unlisted companies, the actual market value is considered, including elements such as control premiums or minority discounts; for listed securities, the value on the date of death is used or, alternatively, the average of the 30 trading days prior to death.

6. Domicile and residency in Italy and proving the contrary, despite being listed in the registry of the resident population.

Individuals register themselves in the registry of the resident population (*Anagrafe*) held by each Italian municipality (*Comune*) for a number of practical reasons, including reduced real property purchase taxes, exemption from annual property taxes (IMU), the possibility of purchasing a motor vehicle with an Italian plate or paying reduced utility bills for their Italian homes. What is often not clear is that becoming a resident of Italy or having a domicile in Italy has very stringent effects taxwise, since all individuals resident or domiciled in Italy are required to pay income tax in Italy and file income tax returns in respect of their income on a worldwide basis.

According to the definition laid down by the Italian civil code (art. 43), a person's domicile (*domicilio*) is the place where they have established the main centre of their business and interests, a person's place of residence (*residenza*) is the place where they habitually live. Hence, domicile is located in the place where the person has established the main centre of their business and interests, and consists of two elements: the objective element, referring to economic, moral, social and family relationships; and the subjective element, deriving from the person's intention to establish the centre of their business or interests in a specific place.

Residence coincides with the habitual abode of the person in a given place and is also characterised by the above-mentioned objective and subjective requirements. It may therefore differ from the place chosen as domicile, as it often happens (e.g. self-employed workers/professionals) that the professional office is chosen as domicile, while maintaining residence at the family home.

As indicated above, domicile and residence have an impact on income tax liability: *"For income tax purposes, persons who, for most of the tax period, including fractions of days, have their residence within the meaning of the Civil Code or their domicile in the territory of the State or are present there, are considered residents. For the purposes of applying this provision, domicile means the place where the person's personal and family relationships are mainly developed. Unless proven otherwise, persons registered for most of the tax period in the registers of the resident population are also presumed to be residents"* (art. 2, para. 2 of the TUIR - consolidated statute on income tax, as amended by art. 1, para. 1 of Legislative Decree 209/2023, D.Lgs. 209/2023 ("Attuazione della riforma fiscale in materia di fiscalità internazionale"))

The definition of domicile is now detached from the civil code concept. It is significant to note that, according to the literal wording of the law, no importance is attached to the taxpayer's economic relations, with reference being made only to personal and family relations; among the conditions that may determine tax residence in Italy, physical presence for most of the tax period is also important. In the absence of specific provisions on this point, for the purposes of satisfying this requirement, the reasons (e.g., periods of treatment in Italy, tourism and recreation, etc.) that lead the taxpayer to be present in the territory for at least 183 days during the calendar year would appear to be irrelevant; the legislation now expressly provides that fractions of a day are also taken into account.

The 2023 amendment has removed the previous absolute presumption of tax residence for persons who are recorded as residents in the registers of the resident population (*Anagrafe*) which now allows for proof to the contrary. We strongly recommend to all foreign non-resident individuals to discuss with a qualified professional consultant before deciding to register with the *Anagrafe*, and to verify the effects from a tax perspective.

Professional advice should also be taken on the means of documentary evidence which would be appropriate to prove that enrolment with the registry of resident population does not amount to domicile and residency for tax purposes, and that the person is not a resident spending in excess of 183 days in a solar year in Italy, nor is a person domiciled in Italy as the place in which individuals develop primarily their personal and family relationship. Such means of evidence may include: registration with the registry office of a different country, the availability of a home abroad, no family ties, no specific activities in Italy, professional and working positions with non-Italian companies abroad, utility bills, etc.

Furthermore, the specific definition of an individual's tax residency as laid down in the applicable bilateral treaty for the avoidance of double taxation between Italy and the foreign country will also be relevant - cfr. Article 4, para 1 "Resident" of the OECD Model Tax Convention on Income and on Capital – "For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature ... " also for resolving situations of dual tax residence

BUSINESS CLIENTS

7. The Italian AI Act and the Duty of Transparency of Business Enterprises.

The Italian Parliament has approved a law, which integrates the rules of the EU AI Act, with the aim of establishing principles concerning the areas of research, experimentation, development, adoption and application of artificial intelligence systems and models. The objectives of the law (Law No. 132 of 23 September 2025) are to promote the correct, transparent and responsible use of artificial intelligence in an anthropocentric dimension, aimed at seizing its opportunities and to ensure oversight of the economic and social risks and impact on fundamental rights of artificial intelligence. No new obligations beyond those provided for in Regulation (EU) 2024/1689 are created, whilst in fact the Italian law must be interpreted and applied in accordance with the Regulation itself, laying down rules in areas that the Government considers particularly sensitive, such as national security and defence, health, justice and labour.

As regards the area of labour, the law lays down a transparency requirement for enterprises using artificial intelligence systems in personnel management processes, which must provide clear and comprehensive information to workers and trade union representatives on how the algorithms work, and specifically should:

- promote the use of artificial intelligence that improves working conditions, protect the health and dignity of the individual and promote quality and productivity, in compliance with European law
- introduce the principle of transparency and security: the use of systems must be reliable, traceable and respectful of data confidentiality, and cannot involve forms of covert surveillance or decisions that undermine the dignity of workers
- state the principle of non-discrimination, laying down the obligation that artificial intelligence does not result in different treatment based on gender, age, ethnic origin, opinions or other personal conditions, and for the employer to verify its impact through human controls and safeguards.

Reference is also made to another piece of legislation –the so-called Transparency Decree (Art. 1-bis of Legislative Decree 152/1997, introduced by Legislative Decree 104/2022) which regulates in detail the new information obligations for employers or clients who use automated decision-making or monitoring systems. The Transparency Decree stipulates that in all cases where AI affects recruitment, management or termination of employment, the assignment of tasks or performance evaluation, the employer must provide workers with written, prior and comprehensive information, describing the aspects of the

employment relationship affected by the algorithm, the logic and purposes of the processing, the categories of data and productivity metrics used, the human control measures and the persons responsible for the quality of the systems, as well as indicating the level of accuracy and potential risks of discrimination.

Notice of any significant changes must be given at least 24 hours in advance, and the information must also be sent to the company's trade union representatives or, in their absence, to the most representative local trade union representatives.

The workers are entitled to request additional clarifications and obtain, within thirty days, a written response with additional information on the data processed and the functioning of the algorithm.

8. Cybersecurity as a Business Risk to be Monitored at the Highest Level.

Assonime (the Association of Italian Joint Stock Companies) has published a report referred to as "Circular on cybersecurity risk governance: Board of directors' obligations and responsibilities" (*Circolare n. 23/2025 - Il governo del rischio di cybersicurezza: obblighi e responsabilità degli amministratori*) providing its comments on Legislative Decree 138/2024 implementing EU Directive 2022/2555 (also known as 'NIS 2') the aim of which is to ensure a high level of cybersecurity at national level by protecting the networks and information systems used to provide essential services in key sectors. The EU Directive has introduced a set of requirements for the prevention and management of cybersecurity for those enterprises classified as "essential" or "important", with the aim of strengthening the digital resilience of businesses in order to deal with cyber threats and systemic risks to the country. In essence the entities falling within the scope of application of the legislative decree are required to register with the National Cybersecurity Agency and to adopt technical, operational and organisational measures.

Scope of application. The EU Directive, as implemented in Italy, applies to **public and private entities** considered "essential" (that exceed the thresholds for medium-sized enterprises i.e. enterprises employing fewer than 250 persons, with an annual turnover not exceeding EUR 50 million and/or an annual balance sheet total not exceeding EUR 43 million), operating in the **highly critical sectors** listed in Annexes I and II, namely: energy; transport; banking; financial market infrastructure; healthcare; drinking water; wastewater; digital infrastructure; ICT service management; space) and **other critical sectors** (postal and courier services; waste management; manufacture, production and distribution of chemicals; food production, processing and distribution; manufacturing; digital service providers; research). The scope of application includes public administrations as listed in Annexes III and IV and, regardless of their size, fiduciary service providers, top-level domain name registry operators and domain name system service provider; as well as other entities considered "important".

Board of Directors duties - The obligations laid down directly affect the duties and responsibilities of the Board of Directors, elevating cybersecurity to an essential element of business strategy and organisation. The regulatory framework is completed by the determinations of the National Cybersecurity Agency (ACN), which specify in detail the conduct of those involved in the broad scope of the Decree, as well as by the FAQs developed by the Agency itself to guide the interpretation of the rules and provide an operational model that enterprises must comply with in order to build their own cybersecurity management system, to include the following:

- risk analysis and information and network security policies;
- an incidents management procedure (including for reporting incidents or relevant information);
- ensuring business continuity (organising backup management, disaster recovery, crisis management procedures);
- ensuring supply chain security (security of relationships between each entity and its direct suppliers or service providers);
- security of the acquisition, development and maintenance of information and network systems (vulnerability management and disclosure);
- policies and procedures for assessing the effectiveness of cybersecurity risk management measures;
- basic hygiene practices and training in cybersecurity;
- policies and procedures relating to the use of encryption and, where appropriate, scrambling;
- staff security and reliability, access control policies and management of assets and assets;
- use of multi-factor or continuous authentication solutions, secure voice, video and text communications, and secure emergency communication systems by the entity internally, where appropriate.

Failure to comply with the obligations set out in the NIS 2 Implementing Decree may result in severe penalties:

- up to a maximum of EUR 10 million or 2% of the entity's total worldwide annual turnover for the previous financial year for essential entities (excluding public administrations).
- up to a maximum of EUR 7 million or 1.4% of the total worldwide annual turnover for the previous financial year for important entities (excluding public administrations).

The Assonime Circular highlights how cyber risk is not a mere technical issue that can be delegated exclusively to the company's IT department, but a business risk that must be monitored at the highest governance level. Article 23 entrusts company directors and managers of enterprises classified as essential or important with the following duties: to approve the methods for implementation of the IT security risk management measures adopted by the enterprise; to supervise their implementation and provide training; the responsibility for any violations.

The effect of the above is that the Board of Directors of the entities falling under the scope of application of the NIS2 Directive implementing Legislative Decree must ensure that dedicated processes, procedures and information flows are put into place, as well as a clear division of responsibilities and powers and an ongoing monitoring in line with the state of the art, with a proportional and multi-risk approach.

9. Full Remote without Borders: Opportunities and Risks for Italian Employers.

More and more employees are asking to work from abroad on a full remote basis: different locations, different time zones, but the same Italian employer. This is a rapidly growing trend, especially in the highly digitised digital and service sectors, which affects those workers who, in agreement with the company, carry out their work from any location chosen by the worker. They are called *remote workers* – bound by an employment contract or a coordinated and continuous collaboration contract signed in their country of origin for an employer established there, even if they move their residence elsewhere – not to be

confused with digital nomads – workers who carry out self-employed professional activities remotely, with frequent travel and/or prolonged residence abroad.

This new way of working responds to new lifestyles and the search for flexibility.

A distinctive feature of this phenomenon is that the worker, not because of the organisational needs of the company, but on their own initiative, decides to move to a country other than the one where their employer, a branch or a permanent establishment is located. However, this seemingly simple scenario raises numerous legal, tax and social security issues, which companies cannot navigate without preparation.

Current national, EU and international legislation does not provide a unified framework, and each situation must be dealt with on a case-by-case basis. The guiding principle remains that of the country in which the work is actually performed, which may determine the application of foreign legislation and the need to assess taxation, residence, social security contributions and safety requirements. However, when the employment relationship is governed by Italian law — based on the general rules of private international law, with which we are all familiar — it will be necessary to take into account not only the general legislation on labour law and collective agreements, but also a series of specific rules applicable to this type of situation.

An Italian employee who moves permanently to another country may, for example, become a tax resident abroad (if they exceed 183 days and the conditions are met), resulting in taxation outside of Italy. Similarly, the employer may be required to pay social security contributions in another country, or risk double contributions if there are no international agreements in place.

The following are the main critical issues that should not be underestimated

- the risk of double taxation and double social security contributions;
- health and safety at work premises, data protection and GDPR compliance obligations even outside the EU;
- insurance costs for accidents and occupational diseases, potentially different from those in Italy, to which may be added:
- the need to define tools, working hours, the right to disconnect and IT access;
- possible penalties and disputes if the agreement is not formalised correctly.

To protect the company, it is essential to draw up a written individual contract that specifically regulates rights, obligations and the place of work, taking into account the applicable foreign rules. Even better, have a specific company policy for transnational work, where there is more than one worker abroad, establishing criteria for authorisation, prior legal and tax verification, operating procedures and the responsibilities of the parties.

Full remote transnational work can become an accelerator of competitiveness and talent retention, but only if it is well planned and managed with prevention in mind. Companies that clearly regulate these relationships reduce risks and turn regulatory complexity into a structural advantage.

If your company has received requests for work from abroad and is considering internal policies or wants to prevent tax and social security disputes, we are available to support you with analysis, documentation and customised contracts.

Contact us for more information or to receive the complete operational checklist for managing full remote transnational work.

10. Whistleblowing: if you use email, you need an Impact Assessment.

The *Garante Privacy*, the Italian Data Protection Authority, issued an opinion (*provvedimento* 581 of 9 October 2025) on the draft Guidelines that ANA, the Italian Anticorruption Authority (*Autorità Nazionale Anticorruzione*) is preparing on Whistleblowing, both as regards internal reporting procedures and external reporting.

The risks associated with the use of email as a reporting channel is one of the most critical points highlighted by the Authority: the use of electronic mail (ordinary or certified) is considered in itself inadequate to guarantee the confidentiality of the identity of the reporting person, unless accompanied by specific, appropriately justified countermeasures, such as risk mitigation measures identified in the data protection impact assessment; this is because, as a rule, e-mail management systems generate, collect and store, in a preventive and generalised manner, logs relating to the sending and receiving of messages, thus creating the risk that the identity of the reporting person can be traced, even indirectly, especially if the latter uses the e-mail account provided by the employer.

If access to internal reporting channels is via the internal data network of the obligated party/employer, the non-traceability of the reporting person must be guaranteed when the connection to these channels is established, both on the IT platforms and on any equipment (e.g. firewalls or proxies) involved in the transmission of the reporting person's communications.

Even where e-mail (ordinary and certified) is used as an internal reporting channel, specific risk mitigation measures must be identified when carrying out the data protection impact assessment.

In the event that several entities entrust the management of reports to the same external entity, it must be ensured that each entity has access only to the reports for which it is responsible, also taking into account the attribution of the relevant responsibility. Technical and organisational measures must be adopted to ensure that each entity has access only to the reports within its competence, and that internal channels are designed to allow selective access to reports only by authorised personnel and to comply with confidentiality and data protection regulations.

Where smaller entities share the internal reporting channel and resources for conducting investigations, each administration/entity must in any case appoint its own report manager and technical and organisational measures must be taken to ensure that each manager has access only to reports relating to their own entity, also taking into account the allocation of relevant responsibilities.

Confidentiality must also be guaranteed if the reporting person requests a direct meeting with the person handling the report.

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