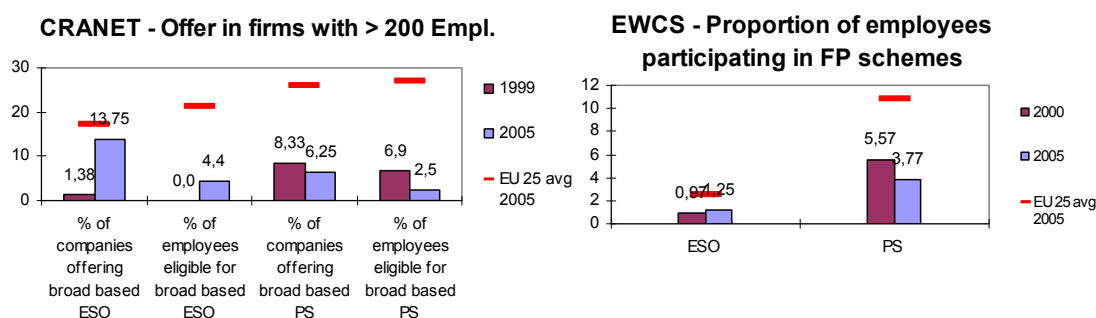


## XIV. Italy

Financial participation in Italy has emerged particularly since the mid-1980s, with the development of company level bargaining agreements. This development took place at a time when companies were restructuring their production processes and redesigning human resource management; labour unions, seeking more power and legitimacy, saw to it that workers had an important role in shaping these agreements at the company level.

The most important form of employee financial participation used to be profit-sharing but recently employee ownership has been catching up. The Italian privatisation process, implemented on a large scale since the 1990s, had no significant impact on employee ownership. Workers co-operatives, on the other hand, have significant importance in the commercial sector, as well as a long historical tradition. Tax incentives for employee financial participation were introduced in the late 1990s; unlike in most other countries they regard also smaller firms, that is, limited liability companies.



### 1. General Attitude

Under the Tripartite Agreement of 1993<sup>134</sup>, new rules on decentralised bargaining and income policy were adopted. Although this had a positive effect on the introduction of PEPPER schemes, corresponding tax incentives for promoting employee financial participation were not introduced until 1997; the emphasis as placed on achieving macro-economic benefits through linking pay to performance, especially to check wage inflation. Promoting a new environment of participation at the micro-economic level was less relevant. It is difficult to evaluate what impact the bargaining rules of the 1993 agreement had on the spread of employee financial participation in Italy; regularly published official data on the incidence of these plans is lacking. Recently, however, a renewed interest in this issue has stimulated new proposals to make compensation schemes more flexible and to

<sup>134</sup> 'Protocollo sulla politica dei redditi e dell'occupazione, sugli assetti contrattuali, sulle politiche del lavoro e sul sostegno al sistema produttivo' of 13 July 1993.

increase tax incentives. This government initiative, supported by both, unions and employers' representatives, confirmed by Law No. 126/2008 was extended in the 2009 budget.

Trade unions and employer representatives alike have mixed views of financial participation. Trade unions agreed in principle on the positive effects of profit-sharing but were divided over employee share ownership schemes. Of the major trade unions, CISL is in favour of share schemes, regarding them as a means to expand participation in decision-making; UIL, on the other hand, believes it not the function of trade unions to promote share ownership. CGIL, however, is traditionally opposed to share schemes; its position is that employee financial participation is better realised through special complementary funds ('Fondi di previdenza complementare'). Employer associations were similarly divided. Confindustria wants to leave the matter entirely to individual enterprises without taking a stand. The organisations representing SMEs (Confartigianato, Confcommercio) are more open to financial participation if it takes the form of funds to promote regional development of SMEs. However, in the context of a new legislative initiative in 2009 these positions are being reevaluated.

In summary, the political situation in Italy is in a state of evolution. All political parties agree on introducing fiscal incentives (namely, tax reduction) to encourage company-level agreements linking increases in remuneration to increased productivity. This principle was mentioned in the tripartite agreement of 23 July 2007; although not yet implemented, it is expected to decrease the tax burden on remuneration made in the form of profit-sharing. Despite increased interest in this subject, other kinds of participation, for example, employee shareholding, do not have the unanimous support of employer associations and trade unions.

## 2. Legal and Fiscal Framework

Although Art. 47 of the Italian Constitution recognises the right of workers to have access to share investments in the main production industries, legislative support of employee financial participation is comparatively underdeveloped (compare Pendleton and Poutsma 2004, p. 12). Special legislation, including tax incentives, exists for profit-sharing, employee share ownership and stock option plans.

### a) Share Ownership

Pursuant to the Law No. 262 of 28 December 2005, quoted companies that intend to provide share or stock-option plans to employees, directors or consultants need the approval by the shareholder meeting; they also must communicate information on the plan to both Consob (the Italian Securities and Exchange Commission) and to the public. In general the sale gain is taxed with 12.5 CGT instead of 40 per cent provided that the transfer regards less than 2 per cent of the votes or 5 per cent of the capital in quoted companies or respectively less than 20 per cent of the votes or 25 per cent of the capital

in non-quoted companies; in cases of losses the amount can be carried forward as a tax credit.

**Share Plans** – The Italian Civil Code (hereinafter referred to as CC) regulates discounted employee shares in joint-stock companies with a holding period of 3-5 years.<sup>135</sup> According to Art. 2441 CC, the pre-emptive right of shareholders can be suspended for up to 25 per cent of newly issued shares by majority vote of the general assembly if these shares are to be transferred to employees; for more than 25 per cent, majority shareholder vote is required. To facilitate the acquisition of shares by employees, the law permits a company to advance funds and to make and secure loans, with a view to acquisition by employees of the company, conditional that this ‘financial assistance’ is within the limits of distributable reserves (Art 2358 CC). Furthermore, Art. 2349 and 2351 CC permit the issuing of special ‘employee shares’ in capital increases with specific rules for form, tradability and rights (see below c)). Since 1999 pursuant to Decree Law 505/99 free shares are not considered income and exempted from personal income tax and social security contributions up to a threshold of Euro 2.066. According to Art. 51 of the Income Tax Law (hereinafter referred to as IITL), the tax exemption is linked to a blocking period of three years. However, no blocking period has to be observed if the shares are transferred *ex lege* (Tax Agency decision No. 97 of 25 July 2005).

**Privatisation** – Pursuant to § 381 of the Law No. 266 of 23 December 2005, the by-laws of companies in which the State has a significant ownership position may foresee special financial instruments or categories of shares, to be offered free to all shareholders, or in the case of specific shareholders for the payment of compensation in order to facilitate the privatisation process.

**Stock Option Plans** – Specific rules regarding stock option plans were introduced in 1997 under Art. 48 para. 2 g) and g-bis) IITL as amended by the Decree Law 314/97. Decree Law 505/99 exempted the increase in value between grant and exercise of the option from social security contributions and personal income tax with new conditions for the tax exemption introduced by Decree Law No. 262 of 3 October 2006 (the so-called ‘Financial Law’ converted into Law No. 286/2006): (1) minimum vesting period of three years from when they are assigned; (2) at the moment when the employee exercises the option or the share is accrued, the company is listed on the market<sup>136</sup>; (3) a minimum holding period of five years from date of exercise, for shares representing the difference between the value of the shares at grant and the amount provided by the employee. Nevertheless, the exemption from PIT was cancelled by Decree Law No. 112/2008 and Law No. 113/2008.

**Limited Liability Companies (SRL)** – While a share in a SRL transferred as remuneration is subject to corporate income tax at company level, a free share is exempt from tax and social security contributions up to an amount of Euro 7.500 (2009) with the notary fees borne by the employer.

<sup>135</sup> However, pursuant to Law No. 112/08 the value of the discount is deemed income and subject to personal income tax and social security contributions accordingly; the same applies to shares transferred in lieu of remuneration.

<sup>136</sup> This condition substantially reduces the possibility of exemption from ordinary taxation for a large number of employees, considering that the number of companies listed on the market is rather low.

## **b) Profit-Sharing**

Rules for profit-sharing are determined by collective bargaining at the company level. Tax incentives for profit-sharing were introduced by the Decree Law No. 67 of March 1997 allowing a partial tax exemption for employers' contributions up to 1 per cent of the payroll; this percentage was subsequently increased to 3 per cent.<sup>137</sup> Further, a 10 per cent 'compulsory solidarity contribution', substituting for the general social security contribution, was introduced. Although the new Law No. 247/2007 increased the tax exemption for employer contributions to a maximum of 5 per cent the Inter-ministerial decree of 7 May 2008 set a ceiling of 3 per cent. The employer benefits from a 25 per cent reduction in social security contributions. The employee is exempted from social security contributions, which the state covers in order not to reduce the initial contribution. The ceiling of the annual maximum value of the bonus rose from Euro 3.000 to Euro 6.000 with the income ceiling for eligibility for incentives fixed at Euro 35,900 annually.

## **c) Participation in Decision-Making**

Employee financial participation is generally not linked to the extension of the existing participation rights in decision-making. A rare exemption is Art. 2351 CC: it stipulates that shareholders of specific 'employee shares' can be granted the right to nominate a representative to the management or supervisory board under the company's articles of association. Nevertheless, Art. 2351, introduced with the 2003 reform of the Civil Code has not been used to date. Although Art. 46 of the Italian Constitution recognises the right of workers to 'co-operate in the running of the companies in a manner and within the limits defined by the law', this regulation was never transformed in special laws. However, Law No. 300/70 guarantees the freedom of trade unions and the right to be represented. The so-called 'Intesa Quadro' between the major trade unions CGIL, CISL and UIL of 1 March 1991 introduces an organ of union representatives (RSU, rappresentanze sindacali unitarie) which may be set up in any company with more than 15 employees and has the right to represent workers, inter alia in collective bargaining. Information rights (for example, about investment, planning, production, forecasts, technological changes) and consultation rights (for example, on internal work rules and the working environment) are defined in collective bargaining contracts. The recent transposition of the European Directives on Information and Consultation rights (Decree Law 25/2007) into national law extends and strengthens the effectiveness of these rights in all companies employing more than 50 employees.

<sup>137</sup> In 1998, the share of the flexible wage exempted from payment of social security contributions was raised to 2 per cent and in 1999 the tax relief was re-determined to a maximum of 3 per cent.