

# MAIN LEGAL AND TAX ISSUES FOR NORTH AMERICAN PROGRAMS IN ITALY

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## PREMISE

The increasing number of North American academic programs establishing their own branch in Italy has, as its primary consequence, the need for everyone to face a new legal system, quite different from their usual one; as a matter of fact, not only the Italian and North American domestic legislations, but even their respective legal mentalities are sometimes rather distant from each other, with unavoidable difficulties and misunderstandings.

A twofold need, therefore, arises: on one hand, to provide the programs (and their administrators!) with complete and reliable information on all Italian laws with which they will have to comply once “landed” in Dante’s land, in order to allow for appropriate planning, financially speaking, as well, of what appears to be, in the very end, a long-term investment for the North American institution; on the other hand, to contribute to the “meeting of the minds” which is a fundamental necessity when such different experiences and cultures get together, so that this meeting will not turn into a clashing of minds, with unpleasant consequences for both sides.

The Borio Legal and Tax Firm in Florence has been legal and tax counsel to AACUPI since 1994, assisting both the Association, as such, and the member programs on any legal and tax issue, providing them with periodical Newsletters (both in English and in Italian) which cover the main legislative news affecting their activities, participating in all AACUPI meetings to answer general or specific questions, trying, in a word, to act as a liaison between the Italian and the North American legal and fiscal systems.

We are, therefore, proud to be able to contribute to this AACUPI volume the following report, whose aim it is to give a general overview of the main legal and tax issues of which any North American institution has to be aware in planning its Italian program, on the basis of our direct experiences over the past years and with some perspective on the future of North American academic studies in Italy.

To preserve the character of “general and historic guide” of this presentation, all legal updates that have occurred since its first edition (September 2000) have been from time to time indicated following the original text, duly summarized as appropriate and necessary.

We feel obliged to point out that, legislation being subject to frequent changes, even in its interpretation, any and all of the following information needs to be checked before taking any concrete action; in spite of our utmost care, Studio Borio cannot, therefore, accept any responsibility for inaccuracy or subsequent amendment of the legal rules which are referred to in the following pages.

## **1. GENERAL ISSUES**

### **1.1 LEGAL STATUS OF NORTH AMERICAN ACADEMIC PROGRAMS IN ITALY**

For too many years, the North American academic programs operating in Italy did not know what their precise legal status effectively was, ending up, as a matter of fact, acting in a completely uncertain legal situation; now, thanks to specific Statutes issued, first in 1989, and, more recently, in 1999, and to their effective implementation, it is possible to identify their appropriate legal status and, therefore, to give indications of what is needed to safely commence any academic activity in Italy.

The first Statute, having a tax effect only, was Art. 34, Paragraph 8-bis of Law n. 154 of April 27, 1989, the second one is now Art. 2 of Law n. 4 of January 14, 1999.

The latter clearly confirms that, upon certain conditions, and following a given administrative procedure, “branches in Italy of universities or institutions of higher learning at the university level, having their legal office in the territory of foreign States and there acknowledged as nonprofit entities” can be authorized to permanently operate in Italy by the Ministry of University and Scientific Research, after consultation with the Ministry of Foreign Affairs and the Ministry of Internal Affairs.

From a strictly legal point of view, such “branches”, being permanent locations of foreign legal entities, can be deemed as full “branches of a foreign legal entity”, and can, therefore, be registered as such at the Register of Legal Entities of the locally competent Civil Court, at what is now the “*Ufficio Territoriale del Governo*”, *i.e.* the national Government’s local office in each Province. The North American entity shall have to submit a number of documents which can show its legal existence according to its domestic law: its nature as a

nonprofit entity, the resolution to establish the Italian branch, as well as the power of attorney to the individual (Italian or not) appointed as legal representative of the branch, and the very last officially-approved financial statements of the home office. It is essential to point out that all documents provided must be duly apostilled according to the Hague Convention of 1961, as well as accompanied by a sworn translation into Italian.

Similar documentation is required by Law n. 4/1999 for the purposes of administrative procedure with the Ministry of the University, in order to give evidence of the existence of the conditions needed for the related authorization, namely:

- a) that the branch have as its purpose and activity the study in Italy of courses which are fully part of the didactic or research programs of its own mother university or institution of higher education; and
- b) that all courses be solely taught to students duly enrolled with the mother university or institution of higher education.

It is anyway allowed to “self-certify” the different requirements, to be then examined by the competent offices of the Ministry, which shall authorize the branch’s activities by a decree; in any case, the authorization is deemed to be granted after ninety days from receipt of the notice of commencement of the activities.

## **1.2 TAX STATUS OF NORTH AMERICAN ACADEMIC PROGRAMS IN ITALY**

The need of overall legislative regulation of foreign academic programs in Italy was initially mainly due to tax reasons. In fact, in 1988 and 1989, a number of tax inspections took place in many foreign institutes, leading to heavy tax claims by the Italian authorities, both for income tax and Valued Added Tax.

In brief, the assumption was that all monies sent by the foreign “home offices” and needed to finance their Italian programs, were deemed payment for the academic services rendered to the students attending the courses and the activities in Italy, while the foreign institutes were deemed permanent establishments of non resident entities, therefore, subject to the tax requirements usually applicable to such subjects.

The whole issue had at the time political and diplomatic consequences, firstly, because no mention was made of the existing bilateral conventions against double taxation which do not allow discrimination and impose, anyway, less traumatic solutions; secondly, because there were no legal grounds at all on which to claim the commercial nature of the Italian activities of foreign universities. As a matter of fact, although permanent and sometimes important structures had been created, students and faculty came from the home office only, students paid their tuition fees to it (and faculty received their compensation from it), while all monies sent to Italy were simply sufficient, up until the very last “lira”, to cover the branch’s expenses with no profit produced in Italy. Separate but linked issues were then the equally important “collateral” activities usually performed by the same foreign institutes: board and lodging for students and faculty, supply of didactic materials, books and the like.

Sizeable tax litigation was avoided thanks to a specific Statute, the aforementioned Art. 34, Paragraph 8-bis, of Law n. 154/1999, now referred to and confirmed by Law n. 4/1999; by this provision, the Italian legislator has expressly acknowledged the non commercial nature, for all tax purposes, of any activity performed in Italy by branches of foreign universities or institutions of higher education, including board, lodging and the supply of books and didactic materials, even if managed by annexed or dependent colleges and the like.

Nowadays, all programs which duly obtain the authorization ex Law n. 4/1999 can operate in Italy as non commercial entities not performing any commercial activity, being, therefore, exempt from any kind of IRES (the Italian corporate income tax, formerly known as IRPEG), taxation for their “institutional” activities, in other words, the academic activities.

The same programs are obviously still subject to any other tax provision which is applicable to them, and are, therefore, liable for IRAP, again, for income taxes if they produce other kind of income taxable in Italy (for example, the cadastral income attributed to their immovable properties), must comply with the related accountancy rules, need their own tax code, must withhold income taxes on behalf of their employees, professionals, collaborators, etc.

IRES (formerly IRPEG) is anyway reduced to half thanks to Art. 6 of DPR n. 601 of September 29, 1973, and ICI is not applicable thanks to Art. 7, first paragraph, Letter i) of D.Lgs. n. 504 of December 30, 1992.

It is impossible to recap here all specific formal and accountancy fulfillments applicable to non commercial entities like the North American programs in Italy (yearly tax returns, periodical payments of withheld income taxes and social contributions) and our advice is always to refer to duly authorized Certified Public Accountants or Labor Consultants for assistance in complying with all such complicated and ever-changing rules.

## **2. ISSUES RELATED TO THE CONCRETE ACADEMIC ACTIVITIES IN ITALY**

### **2.1 PURCHASE AND RENTAL OF PROPERTIES IN ITALY: LEGAL AND TAX ASPECTS**

The first and quite fundamental choice for any North American academic program intending to operate in Italy on a permanent basis relates to securing the most adequate place for its academic activities, in other words, finding one or more buildings where students and faculty can work and study. Under the strict legal point of view, the alternative is between purchasing the property and renting it: in both cases, Italian laws and practices do differ from the North American ones, therefore, it is essential to be assisted by legal counsel from the very beginning of any possible negotiation.

Although it is not possible to cover all aspects of each alternative, given the peculiarities of each transaction, here is a short list of issues to be taken into account whenever a property is to be purchased:

- The procedure for purchasing can be very long, depending on the contractual terms and the urbanistic and cadastral situation of the property; it is absolutely essential to have professional technicians (architects or “*geometri*”) verify whether the building is subject to any lien or public limitation, if there have been any urbanistic irregularities which still need to be settled, if the premises are technically adequate for the intended use, and the like.
- Usually the property purchase is distinguished in two fundamental moments: the so-called “preliminary contract”, by which both parties undertake the purchase/sale with the buyer paying an advance on the price (usually around 30% of the final price), and

sometimes receiving possession of the property; the so-called “notarial deed” or “closing deed”, for which a Notary Public is needed (whose fees and costs shall be paid by the buyer), by which the purchase is completed.

- The buyer must check whether the seller can legally sell the property (checking, for example, whether any mortgage is still existing on the property), as well that no future risk of a “revocation” of the sale exists (this could happen when the seller is a commercial entity subject to bankruptcy, within one or two years from the sale), while the seller could require guarantees for the price settlement (such as a bank guarantee).
- Any property purchase by foreign legal entities needs more bureaucracy and more documentation to be provided than is usually necessary, so adequate time planning (between the informal agreement on the purchase terms, the preliminary contract and the notarial deed) has to be carefully made.
- Quite often, the property is found thanks to a local real estate agency, which is then entitled to a mediation fee, usually 2% of the price, plus VAT at 20%, usually paid at the preliminary contract.
- It is also possible for the buyer to seek a loan from an Italian bank to finance, at least partially, its purchase, although almost all recent experiences do not suggest such a way, simply because the related financial costs in Italy are much higher than in North America; in any case, the Italian bank shall require as minimum guarantee, a mortgage on the property, with all consequent costs and time delays charged to the buyer.
- From the tax point of view, the buyer shall pay (through the chosen Notary Public) the registration tax and the cadastral taxes, for a total which is usually 10% of the purchase price; there might cases in which such taxes are reduced or even waived, but this has to be carefully evaluated according to the cadastral situation of the property, while any potential capital gains tax is at the vendor’s sole charge. Should the vendor be a commercial entity, the price will be subject to VAT (usually at the ordinary rate of 20%, save specific exceptions), but then the cost for registration and cadastral taxes is reduced by 7%.

In the event of renting a property, the following issues are to be considered with care, although again they do not cover all possible concrete situations:

- Even in the case of renting, it is essential to have the property duly inspected by a specialized professional, who could verify whether it is adequate for didactic activities and give an estimate of all needed renovation work; if such work is “structural”, then, the landlord will have to pay for it (with the possibility of subsequently increasing the rent), otherwise, the related costs will be the tenant’s sole charge.
- Rental agreements for properties dedicated to didactic use are regulated by a specific law (Law n. 392/1978) which can be derogated by the parties for limited aspects only, the most important one being the rent amount, which can be freely agreed upon. On the other hand, the agreement duration is set by the law in six years, automatically renewed for a further six year period unless the landlord gives evidence that he/she really needs the property. Usually, the tenant can terminate the rental agreement, with prior notice of usually six months, save a higher contractual term; the tenant can, in any case, terminate the rental agreement at any time for “serious reasons” (for example, program closure).
- It is quite usual for the landlord to require a cautionary deposit of one or two, maximum three months’ rent; on such a deposit, yearly legal interest accrues (now at 2,5%), to the tenant’s benefit; the yearly rent amount is usually updated, on an yearly basis, according to inflation (calculated at the so-called “ISTAT” rate), but the parties can agree on other parameters.
- Any rent agreement must be stipulated in writing and registered within 20 days (and then every year); if the rent is not subject to VAT (and this usually happens when the landlord is not a commercial entity), registration tax is at 2% of the yearly rent, and both parties are liable to the Tax Office, but they can share the cost if they agree.
- Specific care has to be dedicated to the expenses related to the rented property; some of them are obviously the tenant’s sole charge (such as utilities and the like), while the so-called “condominium” ones are shared according to national agreements, or any different contractual agreement.

- The rent payment can be made in different ways, but the tenant must always require from the landlord the appropriate receipt for any payment, on which the stamp duty of 1.81 euros has to be applied when the amount exceeds 77.47 euros.

## **2.2 LABOR SAFETY, TECHNICAL AND URBANISTIC QUALIFICATIONS OF PROPERTIES**

The implementation in Italy of many European Union Directives on labor safety and technical and urbanistic qualifications of properties dedicated to didactic activities, in general, has made this issue a key one for any program intending to operate in Italy.

Shortly, and without being able to cover all details of such a complex field which is beyond the Studio Borio's professional expertise, any North American program should, BEFORE entering into any kind of legal agreement to purchase, or even to rent properties for its academic activities, as well as for lodging students and/or faculty, have the property carefully inspected by an Italian technician, duly chartered for the purposes of labor safety (as per Law n. 626/1994 and more recently Law n. 81/2008), and more generally expert in urbanistic and architectural requirements for didactic activities. Usually, these are architects, engineers or "*geometri*" who have direct experience in such a field, which is, once again, quite sensitive and complex.

The main risk is to purchase or to rent a property which could be, for example, technically qualified for traditional activities (such as "for office use"), but which needs major renovations if it has to be used for didactic purposes, usually because it will then have to be open to a lot of people simultaneously (namely, students and faculty), and, therefore, specific safety and solidity requirements apply.

The consequence could be that such renovations would be mandatory, before being able to legally commence any activity, with all related high costs and time delays, something which needs to be known with due advance.

If the program has purchased the property, any of the above work, including work done on a voluntary basis, will be its sole charge; but even if the property is rented, most of the required work on safety and the like will be the program's charge, save different and quite unlikely contractual agreements, unless these are effectively "structural works", in other words, those absolutely necessary for the safety of the property in

itself. However, if the landlord absorbs such costs, he/she can then increase the rent within some limits set by the law.

We cannot quite obviously make a list of the concrete work which could be required: again, the appointed technician shall indicate what is necessary. Recent experiences include, for example, fire exits, emergency stairs, wider doors and windows according to the number of people hosted in a given room, consolidation of floors, ceilings, terraces, etc.

All that will be added to what is usually needed to adapt any property to the specific needs of the program (for example, a computer room, technical laboratories and the like) and can really become complicated if the property is under certain artistic or historical liens, therefore, protected by peculiar laws which forbid or limit any building modification.

## **2.3 ITALIAN LEGISLATION ON PERSONAL DATA PRIVACY PROTECTION**

Another important issue which North American programs in Italy, and most of all, their legal representatives, should know well is the so-called “protection of personal data”, in a word the rules of privacy law (Law n. 675/1996 and subsequent amendments, and the last Law n. 196/2003). Again, this has been an implementation by Italian law of rules issued on a European level, according to criteria which have often exceeded the correspondent regulations of other countries, mainly, the US.

Shortly, and with the usual advice to carefully study each concrete situation, keep in mind that the purpose is to protect the privacy of any individual, in particular, for the so-called “personal data”, which, on one hand, must be known to be able to make operations and transactions (for example, employees’ payrolls), and which, on the other hand, cannot be given to third parties without the express consent of the individual and must, therefore, be protected against any possible violation.

All North American programs must comply with such rules for their students, faculty, employees and collaborators, of whom they obviously know and manage their personal data. One should, anyway, make a fundamental distinction: there are data and information which are absolutely essential for the program to comply with legal obligations (for example, personal data of the employees are needed to file their payrolls

and fulfill all related tax obligations), which the program can freely “manage”, but which must be duly protected, as well as data and information which do not relate to legal requirements, but to the program’s activities as such (for example, information on the students), which the program can therefore “manage” but with the individual’s express consent only, and, again, must be protected without any third party diffusion.

There are many different cases in practice and we, therefore, refer to our Newsletters which were dedicated to these issues; as a general rule, each program will have to secure written and informed consent from each individual before managing and keeping any personal data, while appropriate safety measures must be implemented for any existing archive, be it on paper or on computerized files.

Further requirements are imposed on the so-called “sensitive data”, namely, information on very important and personal situations: as examples, information on religion, health, sexual behavior, political belief, etc.

In any case, without the prior written consent of the individual, it is forbidden to give to third parties any personal data; the typical situation for universities is the circulation of their own students’ names for career purposes, something which has to be expressly authorized in writing by each individual.

Each program must then appoint a “responsible officer” for privacy, who will be delegated to implement the above rules, being responsible thereof for the individual involved and the Authority for Privacy, the national body competent to assess and sanction any infringement.

Specific rules were introduced in 2005, for antiterrorism purposes, for those who make Internet and electronic mail services available on the program’s premises (for example, to students and faculty), as well as for any wireless equipment.

## **2.4 INSURANCE COVERAGE FOR THE ITALIAN PROGRAMS**

A quite important aspect to be considered in planning the opening and the management of an academic program in Italy relates to the insurance coverage which must be implemented. In general, each university usually has its own appropriate insurance protection in the US or in Canada, which should already cover their Italian activities, as well:

the very first step is, therefore, to verify whether such coverage applies to any accident which may occur in Italy.

Unfortunately, direct experiences have too often shown that, in practice, whenever an accident occurs in Italy, all North American insurance companies create enormous difficulties in covering damages suffered by the program, or, which the program must repay to third parties, while the need for adequate insurance assistance locally is immediate and urgent.

The advice is, therefore, to have parallel North American policies and Italian policies, the latter to be stipulated with leading Italian insurance companies, at least as follows:

- insurance policy for the so-called “civil liability against third parties”, covering any damage suffered by third parties on the program’s premises, or because of the program’s activity;
- policy against risks, accidents, death to the benefit of students, faculty and collaborators of the program, which should expressly include the so-called “extra-didactic” activities, such as field trips, visits to museums, etc.
- policy against damages and theft on the property owned or rented, also covering risks such as fire, flood, utilities breakdowns, etc.
- policy for “legal” purposes, namely to cover risks and expenses related to legal litigation, inclusive of attorneys’ and experts’ fees and the like.

Any accident or illness suffered by the program’s employees, if duly employed according to Italian law, are covered by the mandatory public insurances and social contributions (INAIL and INPS), while this is not applicable to occasional collaborators and independent professionals.

Italian insurance policies are always very long and complicated documents, so specific care has to be taken before signing them, without hesitating to request written explanations by the insurance company or the insurance agent proposing the policy. Last, please do consider with attention, any clause which might limit or even exclude insurance coverage, usually indicated under the name of “*franchigia*”.

### **3. LEGAL, TAX AND SOCIAL CONTRIBUTION ISSUES RELATED TO THE PROGRAM'S PERSONNEL**

#### **3.1 FACULTY**

Any North American academic program in Italy needs faculty staff for its courses; from the legal, tax and social contribution points of view, one should distinguish two basic situations:

- a) faculty employed and paid by the North American home office;
- b) faculty employed by an Italian contract.

In the first case, faculty are “transferred” by the home office to the Italian branch, and all legal rules of the North American employment relationship continue to be applied (salary, working hours, vacation, etc.). On the social security side, the home office shall provide its Italian branch with specific documentation which shows the regular payment of any social security applicable either in the US or in Canada, so that the provisions of the current bilateral conventions between Italy and the US and Italy and Canada against double social contributions can be applied. In any case, all faculty employed by the home office shall have to be insured in Italy at the local INAIL office. From the specific tax point of view, if the faculty member remains a “non resident” for tax purposes (in other words, staying in Italy for less than 183 days in the same calendar year) his/her remuneration is taxable in the US only; on the other hand, if the 183 days limit is exceeded, said remuneration is taxable in Italy, but the so-called tax credit can be utilized if any income tax has been paid in the US on the same income (however, please see the last period of this paragraph for the possible tax exemption according to the convention against double taxation between Italy and the US).

Some “mandatory” Italian legal provisions are, in any case, applicable to the home office’s employees, such as labor safety, non discrimination, etc.

Under case b) the faculty member, who could still be coming from North America or not be Italian anyway, renders his/her services under a specific Italian contract; there are then two sub-possibilities:

- b1) formal employment as an employee of the Italian program;

- b2) a collaboration relationship according to Law n. 4/1999, now integrated with the rules introduced in 2003 by the “Biagi Reform” (please see below).

In the following paragraph 3.3, specific discussion will be made of the main legal and financial differences between an employment contract and a collaboration relationship. Here, it is sufficient to point out that any choice between them must be carefully made according to the concrete activities which the faculty member shall perform, as well as to the effective relationship which is built between the faculty member and the program.

As it will clearly appear, the employment contract according to Italian law creates quite a strong relationship between the two parties, a much stronger one than with the corresponding North American employment contract; the concrete consequences are that faculty would be much more protected as employees, but they will have to work “exclusively” for the employing program; a collaboration relationship is fairly more flexible and less expensive, but cannot be implemented in all cases.

As a matter of fact, Paragraph 5 of Law n. 4/1999 now allows all branches which have duly complied with the other legal requirements to stipulate independent collaboration contracts for any kind of didactic activity, similar to the correspondent independent contracts for Italian public universities and pursuant Article 2222 of the Civil Code.

According to recent court precedents and the current opinions of the competent Italian labor authorities on this issue, it is now possible to affirm that the working relationships with faculty are deemed independent relationships, namely with no formal employment, if the following concrete elements do exist (and are included in the written contract stipulated between the parties):

- no imposition of a working timetable unilaterally determined by the program;
- compensation must be determined according to professionalism and the effective services;
- no hierarchical power and disciplinary sanctions;
- faculty’s freedom of choice of the technical ways of teaching;
- mutual agreement to exclude any employment relationship.

N.B. All of the above is also applicable to “project contracts”, on which please refer to the next paragraph.

All above considerations are valid for Italian (and Italian resident) faculty, as well; however, for such faculty, it will be in practice quite difficult to follow the North American contract alternative, unless they effectively work at the home office and are later “transferred” to Italy for a determined and limited period of time. Italian faculty can obviously take advantage of the collaboration relationship as explained above.

A peculiar procedure should be followed in the event the program requires the services of faculty who are employed full time, either by Italian universities or by Italian public entities (such as a professor of the local Faculty of Architecture), because it would then be necessary to request the prior written consent of the Italian employer, and then notify him of the amount of any paid remuneration on the part of the faculty member.

For tax purposes only, the current convention against double taxation between Italy and the US allows full income tax relief in Italy, if faculty, regardless of their kind of labor contract, stay in Italy on a temporary basis, and for no more than two calendar years to teach or to do research at any university, college, school and the like, and were, immediately before their stay in Italy, resident in the US (Article 20 of the Convention).

### **3.2 ADMINISTRATIVE STAFF**

Any North American program in Italy shall also need non-faculty personnel, such as secretarial staff, library staff, a student coordinator, a student housing liaison, etc.

Again, the “transfer” of employees from the home office is possible, under the conditions indicated under alternative a) of the previous paragraph, but, usually, local personnel is needed, as well.

One should, therefore, carefully consider that Law n. 4/1999, and the related possibility to stipulate independent collaboration contracts, is applicable to didactic activities ONLY, and NEVER to other kinds of services; as examples, the librarian, all secretarial staff, the student coordinator, cannot take advantage of said provisions.

It would be quite difficult, if not really dangerous, to follow the collaboration contract (or current project contract) scheme, while a formal Italian employment contract would be the most appropriate choice.

### **3.3 DEPENDENT CONTRACTS, PERMANENT COLLABORATION CONTRACTS, OCCASIONAL COLLABORATION CONTRACTS, PROJECT CONTRACTS, INDEPENDENT PROFESSIONAL SERVICES**

After having mentioned the different legal alternatives for faculty and non-faculty personnel, it can be useful to summarize the main features of the different kinds of labor contracts nowadays existing in Italy, all quite complex and not very similar to corresponding North American situations. As this is a very technical field and subject to permanent legislative changes, please refer to a chartered Italian professional (lawyer, public accountant or labor consultant) before taking any action.

#### **DEPENDENT CONTRACTS**

This is the most common kind of labor relationship, in which the worker is formally employed by the employer and therefore becomes an “employee”. Italian legislation is still quite rigid, trying to protect the party deemed the weakest one, namely, the employee. Most of the key elements of this contract are set by the law, or the so-called “National Collective Labor Contracts”, stipulated by the trade unions and the employers’ associations, and can be derogated to the employee’s advantage only.

It is, therefore, the law, or, by reference, the applicable national contract, to set, for each employment level, the minimum salary, vacation days, leaves, initial trial period, notice for termination, severance pay, etc.

Some peculiar aspects of these contract are often totally unknown to the corresponding North American contracts; here are the main ones:

- mandatory salary increases: salaries are automatically increased according to the understandings reached in the national collective labor contracts, while any voluntary increase is usually added to the mandatory ones;
- severance pay or “liquidation”: it is a sum of money, to be calculated each calendar year on the salary level, which will be paid by the employer upon termination of employment, regardless of who chooses to terminate employment;

- notice: it is the minimum period of time to notify the other party about employment termination; if not effectively “worked” must be paid (or withheld);
- unilateral termination: the employee can terminate employment at any time (by “resignation”), but the employer can do so for “just cause or reasons” only, a quite rare occurrence (as examples, the total closure of the program, or a serious crime committed by the employee against the employer); if no such reasons exist, the employee must be either re-hired (when the employer has more than 15 employees) or paid compensation, between 2.5 and 6 months salary (if the employer has less than 15 employees). Peculiar provisions are obviously applicable for employers with a large number of employees with financial difficulties and the like.

Part-time employment contracts are also allowed, as well as employment contracts with a limited duration; however, the latter cannot be prorogated multiple times and, in any case, for more than three consecutive years, as they would automatically be transformed into unlimited employment contracts (there are now many peculiar rules in this regard that we cannot summarize in this presentation).

The tax and social contribution level is quite high on employment, most of it at the employer’s expense, on a monthly basis. The related rules are really complicated so that it is impossible to summarize them here: as a matter of fact, any employer needs the qualified assistance of a labor consultant. As a general figure, the overall burden on the employer in the year 2000 was around 30-35%, while about 8-10% was at the employee’s expense. Currently, in 2008, such levels have not changed too much, as minor reductions have been allowed for the employer only (now at 28-30%).

### **PERMANENT COLLABORATION CONTRACTS**

These became a more and more popular kind of “quasi-employment” contract until 2003-2004, being something in between the usual employment relationship and professional services, as such. On one hand, there is no formal employment contract, so all related legal rules are not applicable and the relationship is flexible and financially more convenient for the employer; on the other hand, the working relationship is still quite stable, and so is usually the related remuneration, paid on a more or less regular time basis.

The clear example of permanent collaboration contracts for academic programs is now the relationship with faculty thanks to the previously-mentioned Law n. 4/1999, as explained in the above paragraph 3.1. The collaborator's remuneration is not linked to any legal or national collective contract provision, there is no severance pay, no prior mandatory notice, and the working timetable is mutually agreed upon by the parties involved.

From the social contribution point of view, these contracts are subject to the so-called "INPS contribution", which is now at 17% (if the collaborator already has another pension coverage) or otherwise at 24.72% reached in 2008; 2/3 of said contribution is charged to the employer and 1/3 to the collaborator. Since 2000, all collaboration of this kind is also subject to the mandatory public insurance INAIL.

For income tax purposes, the collaborator's income has been deemed, so far, independent income, therefore subject to 20% withholding tax for Italian tax residents, and 30% for non resident individuals; however, starting in 2001, such income is deemed dependent income and its taxation will be similar to the employees' one (with more administrative burdens for employers), unless unexpected amendments are made to the new law.

## **PROJECT CONTRACTS**

By Law n. 276 of September 10, 2003, (the so-called "Biagi Reform"), the contractual kind of permanent collaboration contracts has been progressively replaced by project contracts, with a lot of new limitations for their general application, to the advantage of dependent contracts.

On project contracts AACUPI has devoted specific meetings in 2003 and we have written many Newsletters, to which we refer for all specific details, as it is impossible to even summarize the new discipline in this short presentation, along with its subsequent interpretation by the Italian Courts and the Government agencies competent in this matter.

Very shortly, one can say that:

- what was listed in the above paragraph 3.1 on independent contracts with faculty REMAINS VALID for project contracts, too;

- however, IN ADDITION to what was indicated above, the project contract, to be stipulated in writing, must include precise indications on what follows:
  - a) duration of the working services;
  - b) project to be performed or work program, identified by specific contents;
  - c) compensation, criteria for its determination, ways of payment, discipline of expenses reimbursements;
  - d) ways of coordination with the employer, so that these do not jeopardize the working autonomy of the project collaborator;
  - e) measures to protect the health and safety of the project collaborator.

Should the project contract not comply with the above provisions, it would be automatically converted into a time unlimited dependent contract. Over the years the Italian Government has subsequently widened social protection for project collaborators, in the matters of illnesses, accidents and maternity.

### **OCCASIONAL COLLABORATION CONTRACTS**

These are quite limited cases of collaboration, applicable only if the collaborator renders one single service, not to be repeated and limited in time, so that it can be deemed “occasional”; such kind of collaboration is exempted from any INPS contribution and INAIL insurance, and is subject to the income withholding tax at 20% (or at 30% if the collaborator is non resident) only.

Due care is to be given to this possibility, because the related service must really be limited and occasional: as an example, a single conference or lecture can be deemed an occasional collaboration, but a number of conferences, or a course, can never be deemed occasional and are to be considered permanent collaboration.

The very same above-mentioned Biagi Reform introduced a new kind of occasional but also “coordinated” collaboration, still subject to the same social contributions as all project contracts; even more, regardless of the kind of services performed. Such relationships cannot be deemed occasional if one of the following limits is exceeded:

- 5,000 euros as gross compensation in the same calendar year;
- a total duration of the relationship with the same employer exceeding 30 days, even not consecutive, during the same calendar year.

## **INDEPENDENT PROFESSIONAL SERVICES**

Quite often, North American programs have contacts with Italian independent professionals: architects, engineers, notary publics, lawyers, certified public accountants, labor consultants and the like. In such circumstances, none of the above working relationships is applicable, because independent professionals still have their own peculiar legal status.

There is a trust relationship between the “client” and the professional, which the client can terminate at any time, with the only obligation of paying for the services rendered. Usually, Italian professionals link their fees to the official professional fees which can refer to the value of the case and its complexity; nowadays, it is anyway possible to stipulate different prior agreements, even on a time basis.

All fees are subject to VAT (at 20% at the client’s sole expense) as well as to a social contribution of between 2% and 4% (again at the client’s sole expense); the program shall then have to make the usual 20% income withholding tax.

## **4. ISSUES RELATED TO STUDENTS**

### **4.1 STUDENT ACCOMMODATIONS WITH ITALIAN FAMILIES**

Accommodating one or more students with Italian families during their stay in Italy is one of the most common choices and maybe more interesting ones, for the student. There are, however, some sensitive legal and administrative issues which need prior care, in order to avoid unnecessary risks, first of all, for the families themselves.

As a matter of fact, if the family hosts foreign students on a business basis, then this becomes a “professional” activity and the related “housing” requirements must be complied with by the family (such as a specific license, peculiar qualifications for the rented premises, etc.).

This would obviously create a lot of difficulties and is, therefore, to be avoided, if possible.

The problem is that there is no clear legal rule which states when such an activity becomes a professional one, while the reality is that families host the students for quite a long period of time, on a regular basis and upon receiving from the program, or from the student, some kind of “expense reimbursement”.

Some municipalities have so far accepted to not consider this kind of activity as a professional one, if one can effectively provide some evidence that the student is hosted in the cadre of “cultural exchange”, both for the family and the student, so that they receive reciprocal cultural and language benefit, having the student introduced to the family’s daily and social life.

It is clear that this can happen only if the number of hosted students is limited, no more than two at a time, and under the auspices of the program, which must ensure that the exchange effectively takes place, with mutual dedication and responsibility.

A quite sensitive aspect is the payment to the families of monies to cover their expenses to host the students; the risk is to have the local tax authorities deem such monies (in particular, when they represent a forfeit reimbursement) as taxable income for the individual who receives them. Each situation needs careful study, but the ultimate tax responsibility remains exclusively with the families. At no time should the study abroad program give hosting families legal and fiscal “advice”.

Another issue, sometimes linked to the tax one, should be mentioned: all families must notify the local police authority of the presence of foreign students staying with them, giving the “cause” of such stay. It would not be entirely correct to indicate on the related forms something like “Free Stay”, as the students have paid, through their tuition fee, to be hosted. One should indicate a more appropriate cause, such as “Stay for cultural exchange”, or the like.

## **4.2 STUDENT ACCOMMODATIONS IN RENTED APARTMENTS**

The other most frequent alternative for the students’ stay is to host them in apartments rented for that purpose by the program, which should then follow the same advice given in paragraph 2.1 and also consider what follows.

First of all, the rental agreement should be stipulated by the program with the landlord, as in practice it would be much more difficult to make the agreement in the name of each student (who would then be obliged to obtain their own Italian tax code first, and can always change from time to time), and the agreement should include a specific clause allowing the program to host its students in the rented apartment. Again, the premises should be previously checked by a professional (architect or “*geometra*”) for safety reasons and suitability for hosting a number of people. The landlord should certify, in writing, that the electrical system in the apartment has been renovated according to the current technical regulations in effect for that municipality.

All utilities and the related consumption should be registered in the name of the program and paid by the program, which shall then be reimbursed by the students, in order to simplify accounting. The program will be directly responsible to the landlord and to any third party for any damage caused by the students, who will then repay the related expenses.

It is therefore very important, as more generally anticipated in paragraph 2.4, to stipulate the adequate insurance provisions, to cover the program for any damage or responsibility arising from the premises rented to host the students.

It is also mandatory to inform the local police authority about the presence of the students in the rented apartments; there will be two separate notices, one by the landlord, who will have to indicate as cause the rent, and the other one by the program, to be renewed each time that the hosted parties change, whose cause will be “Housing for student’s stay”, or the like.

#### **4.3 STUDENT ACCOMMODATIONS WITH THE PROGRAM (ON CAMPUS)**

In some cases, there is the chance to accommodate the students in the same program’s building, according to the usual North American campus system. The main worry will then be to make sure that all premises dedicated to such purposes have the needed legal and technical requirements, in order to avoid serious responsibilities for the program and its legal representative. Again, the only possible advice is to refer to specialized professionals.

Further requirements might be imposed by the local fire and health authorities if the program intends to give board services to its students.

Last, the absolute need of adequate insurance coverage is confirmed in this case, too.

#### **4.4 INSURANCE AND HEALTH COVERAGE FOR THE STUDENTS**

Unfortunate concrete experiences lead us to conclude that adequate insurance and health coverage is needed for all students during their stay in Italy. Usually, such students do already have insurance coverage provided for by their university in the US or in Canada, and a kind of “first aid” health insurance is also required by the Italian authorities to grant visas and stay permits for study purposes. However, it appears useful, for the Italian program, to stipulate some further and more general health coverage, which could protect all those students and faculty who should need medical assistance during their Italian stay, so that the consequent bureaucratic and administrative procedures can be simplified as much as possible, in order to be reimbursed for any medical expense borne either by the individual and the program.

### **5. AN ISSUE AWAITING URGENT SIMPLIFICATION: ENTRY VISAS AND STAY PERMITS**

As a conclusion of this summary of the main legal issues related to North American programs in Italy, we feel obliged to point out the most urgent and immediate concrete problem affecting US and Canadian universities intending to establish their courses in Italy, which is awaiting solutions and simplification as quickly as possible.

As everybody nowadays well knows, any individual not belonging to the European Union needs, to be able to legally stay in Italy for study and work purposes for some period of time, a specific entry visa and, most of all, the appropriate stay permit.

A number of legal provisions have regulated this issue in the last decade or so, having now been concentrated in the so-called “Consolidated Act on Immigration”, namely law. N. 286 of July 25, 1998, with all its subsequent implementing rules.

Now, in spite of specific provisions which should cover individuals staying in Italy for study and didactic purposes (such as Article 27 of the Act, which under Letters b) and c) should simplify the procedures for faculty, lecturers and researchers), the concrete experiences of students and faculty who try to secure their visas and stay permits are quite disappointing.

First of all, there are great uncertainties even among all competent Italian authorities, with the consequence that the procedure is much longer than expected; furthermore, the Italian Consulates abroad, even within the same country (such as in the US) do not follow coherent criteria and procedures, but quite different ones from each other, creating a lot of confusion if not real “discrimination” depending on the competent Consulate.

Last, and this is especially applicable to faculty employed by the home office and sent to Italy for one or more courses, sometimes it is even required to formally employ the faculty by the same Italian branch, while the same faculty are already duly employed by the foreign entity and should stay in Italy because part of their working activity is to teach in Italy.

Again, it is not possible to examine each single case, but the message which we would like to launch is twofold: to all North American programs, we would like to say that they should start with due advance time in requesting all needed documentation for visas and stay permits in Italy, both for their students and faculty; on the other hand, we would like to solicit the Italian legislator to intervene at the legislative and then the administrative level, so that the above clear and certainly not “illegal” situations could find easy solutions for everyone.

During the years 2002-2008 different partial reforms of the general Italian legislation on immigration have occurred, both at the Parliament level (the so-called “Bossi-Fini” Law of 2002), and at the Government level for their interpretation and implementation; immigration remains a quite sensitive social and political issue in Italy, as well as in the rest of the European Union, and there is still a lot to be done.

As far as the AACUPI programs have been more concerned, we would like to recall the following main legal and operative simplifications that have been achieved thanks to the patient and constant work of preparation and introduction within the Italian Government and Parliament:

- Law n. 102 of May 24, 2002, that has definitively confirmed that faculty of foreign schools and universities in Italy are not subject to yearly entry quotas;
- Abolition of the stay permit for student purposes for stays that do not exceed 90 days, and introduction in lieu of it of the so-called “declaration of presence”, that has then also been simplified and relieved for those who enter Italy from a non-Schengen territory;
- Harmonization of the procedures to request student visas (requests presented in bulk, etc.).

We do believe that there are still wide margins to facilitate the application of the immigration rules for the peculiar situations that affect AACUPI programs, so that the related bureaucratic burden can be reduced and the consequent “study tourism” encouraged.

STUDIO LEGALE TRIBUTARIO  
INTERNAZIONALE BORIO

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