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10.6 TAXATION

Unless otherwise indicated, for purposes of the following discussion regarding taxation, the Ordinary Shares and the Savings Shares are collectively referred to as the “Telecom Italia Shares”.

10.6.1 ITALIAN TAXATION

The following is a summary of material Italian tax consequences of the ownership and disposition of Ordinary Shares, Savings Shares or ADRs as at the date hereof. It does not purport to be a complete analysis of all potential tax matters relevant to a decision to hold Shares, Savings Shares or ADRs. For purposes of Italian law and the Italian-U.S. Income Tax Convention (the “**Treaty**”), holders of ADSs which are evidenced by ADRs will be treated as holders of the underlying Shares or Savings Shares, as the case may be. The 1999 Treaty between Italy and U.S. entered into force and took effect for taxable periods beginning on or after January 1, 2010. In respect of tax withheld at the source (such as withholding tax on dividends) the 1999 Treaty is effective for amounts paid or credited in or after February 1, 2010. A grandfathering clause allows a person entitled to greater relief under the 1984 Treaty to elect to apply the 1984 Treaty in its entirety for a 12-month period from the date on which the provisions of the 1999 Treaty have had effect.

Income Tax

Dividends paid to holders of Savings Shares and applicable ADRs who are not Italian residents and do not have a permanent establishment in Italy to which dividends are connected are subject to a 12.5% withholding tax.

Dividends paid to holders of Ordinary Shares and applicable ADRs who are not Italian residents and do not have a permanent establishment in Italy to which dividends are connected are subject to a 27% withholding tax.

All shares of Italian listed companies have to be registered in a centralized deposit system. With respect to dividends paid in connection with shares held in the centralized deposit system managed by Monte Titoli, such as Telecom Italia Shares, instead of the 27% or 12.5% withholding taxes mentioned above, a substitute income tax will apply at the same tax rates as the above-mentioned withholding taxes. This substitute income tax is levied by, and under the responsibility of, the Italian authorized intermediaries participating in the Monte Titoli system and with whom the securities are deposited and also by non-Italian authorized intermediaries participating, directly or through a non-Italian centralized deposit system, in the Monte Titoli system. With respect to any dividends paid within the above mentioned centralized deposit, Telecom Italia assumes no responsibility for the withholding of tax at the source (and application of tax treaties, as stated below) as such responsibility lies entirely on the Italian authorized intermediaries with whom the securities are deposited.

Non-resident holders of Ordinary Shares and applicable ADRs have the right to recover within 48 months from the date of payment of the Italian substitute income tax, up to four-ninths of such 27% substitute tax on their dividend income, upon providing adequate evidence, certified by the tax authorities in their home country, that they paid a corresponding amount of income tax in their home country on the same dividend income.

These refunds are normally subject to extensive delays. In addition, these refunds are an alternative to seeking any relief from double taxation under an income tax treaty, including the Treaty.

U.S. resident beneficial owners of Ordinary Shares and ADRs may be entitled to a reduced tax rate on their dividends under the Treaty. Where a U.S. resident owner: (i) qualifies for the benefits of the Treaty and meets all the requirements of the Treaty provision dealing with limitation on benefits, (ii) is the actual beneficial owner of the dividends, and (iii) the dividends paid are not connected with a permanent establishment in Italy through which the U.S. resident owner carries on a business or with a fixed base in Italy through which the U.S. resident owner performs independent personal services, the Treaty generally provides that Italian taxes cannot exceed 15% of the gross amount of the dividend (this 15% rate may be reduced to 5% when the beneficial owner of the dividends is a U.S. company which has owned at least 25 percent of the voting stock of the company paying the dividends for a 12-month period ending on the date the dividend is declared).

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| <p>To obtain the reduced tax rate afforded by the Treaty, a beneficial owner of Shares or ADRs must provide, before the dividend is paid (usually, according to the intermediary instructions), the intermediary with which the shares are deposited and which participates in the Monte Titoli system with the following:</p> <ul style="list-style-type: none"> (i) a declaration by the beneficial owner containing all the data identifying such person as the beneficial owner and establishing the existence of all the conditions necessary for the application of the Treaty; and (ii) in the case of a U.S. holder, a certification (Form 6166) issued by the U.S. Internal Revenue Service that states that the beneficial owner is a U.S. resident for tax purposes. The certification is valid until March 31 of the year following the submission. | |
| <p>The processing of requests for certification by the U.S. Internal Revenue Service may take a substantial period of time. Accordingly, in order to be eligible for the procedure described below, eligible ADR holders should begin the process of obtaining Form 6166 as soon as possible after receiving instructions from the Depositary on how to claim the reduced rate provided by the Treaty.</p> | |
| <p>The Depositary's instructions, which will be sent to all ADR holders before the dividend payment date, will specify certain deadlines for delivering to the Depositary any documentation required to obtain the reduced rate provided by the Treaty, including the certification that the eligible ADR holders must obtain from the U.S. Internal Revenue Service. In the case of ADRs held through a broker or other financial intermediary, the required documentation should be delivered to such financial intermediary for transmission to the Depositary. In all other cases, the eligible ADR holders should deliver the required documentation directly to the Depositary.</p> | |
| <p>If the holder of Ordinary Shares or ADRs fails to obtain the reduced rate provided by the Treaty at the time the dividend is paid, a refund equal to the difference between the Treaty rate and the Italian 12.5% or 27% substitute tax, applied at the payment of dividends, may be claimed directly from the Italian tax authorities. Extensive delays have been encountered by U.S. residents seeking payments directly from the Italian authorities.</p> | |
| <p>In the case of dividends derived by a U.S. partnership, the reduction of the tax rate under the Treaty is only available to the extent such dividends are subject to U.S. tax in the hands of the partners.</p> | |
| <p>The Italian Budget Law for 2008 (Law No. 244 of December 24, 2007) introduced, among other provisions, some changes regarding dividends paid to non-residents. According to these new rules, the Italian withholding tax rates of 12.5% or 27%, currently levied on dividends paid to non-residents, are reduced to 1.375%, provided that the beneficial owner of the dividends:</p> | |
| <ul style="list-style-type: none"> • is subject to corporate income tax in its home State country; and • is resident in another Member State of the European Union or of the European Economic Area listed in the New White List to be issued by the Ministry of Finance pursuant to the (new) Article 168-bis of the Italian Tax Code (see below). | |
| <p>It follows that such rate reduction is not available for non-resident individuals or entities not subject to corporate taxation, regardless of where they are located.</p> | |
| <p>Non-resident holders who paid the Italian substitute tax at the rate of 1.375% have no right to recover the four-ninths of such tax, as would otherwise be available to non-resident holders of Ordinary Shares.</p> | |

The new rate applies to a distribution of profits that have been realized in tax periods starting on or after January 1, 2008. On November 19, 2009, the European Court of Justice finally ruled (C-540/07) that making dividends distributed to companies established in other European Union Member States subject to a withholding tax rate more disadvantageous than the tax regime applied to dividends distributed to resident (i.e., Italian) companies is in breach of European Union principles (free movement of capital). According to the above-mentioned decision, since Italian domestic legislation only removed this different treatment on dividends paid out of profits that have been realized in tax periods beginning on or after January 1, 2008, the reduced tax rate of 1.375% could also be applicable (within the terms of the statute of limitations as in force in Italy and to the extent retroactive refund claims are available) to dividends paid to companies established in other European Union Member States, out of profits realized in tax periods beginning before January 1, 2008.

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A new ministerial decree will be issued and will provide a new list of States and territories allowing an adequate exchange of information with the Italian tax authorities (i.e. the **“New White List”**). It should differ from the existing white list, as the new provision refers to the existence of an effective exchange of information.

The above provision will become effective as from the tax period following the one when such ministerial decree will be enacted. Transitional provisions are provided. Until the effectiveness of the new provisions, reference has to be made to the States and territories currently listed in the Decree of the Ministry of Finance dated as of September 4, 1996, as modified by subsequent Ministerial Decrees (the latest one being the Decree of the Ministry of Finance dated as of December 14, 2000).

Transfer Tax

No transfer tax is due upon the transfer of shares and securities under Italian laws since Italian transfer tax—formerly provided for by the Royal Decree No. 3278 of 30th December, 1923, as amended and supplemented by the Legislative Decree No. 435 of November 21, 1997—has been abolished starting from December 31, 2007.

Following the repeal of the Italian Transfer tax, contracts relating to the transfer of securities are subject to the registration tax as follows: (i) public deeds and notarized deeds are subject to fixed registration tax at a rate of 168 euros; (ii) private deeds are only subject to registration tax in case of use or voluntary registration.

Capital Gains Tax

Under Italian law, capital gains tax (**“CGT”**) is levied on capital gains realized by non-residents from the disposal of shares in companies resident in Italy for tax purposes even if those shares are held outside of Italy. For the purposes of CGT, the exchange of shares under a merger or de-merger of Italian companies does not constitute a disposal of shares. In such transactions, the tax value and the holding period of the exchanged shares is carried over to the shares received in the exchange. Capital gains realized by non-resident holders on the sale of non-qualified shareholdings (as defined below) in companies whose shares or ADSs are listed on a stock exchange and resident in Italy for tax purposes (as is the case for Telecom Italia) are not subject to CGT.

A “qualified shareholding” consists of securities (except for Saving Shares and applicable ADRs) that (i) entitle the holder to exercise more than 2% of the voting rights of a company with shares listed on a stock exchange (Telecom Italia is such a company) in the ordinary meeting of the shareholders or (ii) represent more than 5% of the share capital of a company with shares listed on a stock exchange (Telecom Italia is such a company). A “non-qualified shareholding” is any shareholding that does not meet the above mentioned requirements to be qualified as a “qualified shareholding”.

The relevant percentage is calculated taking into account the shareholdings sold during the prior 12-month period.

Pursuant to the Treaty, a U.S. resident will not be subject to Italian CGT on a sale of qualified shareholdings unless the Telecom Italia Shares or ADRs form part of the business property of a permanent establishment of the holder in Italy or pertain to a fixed base available to a holder in Italy for the purpose of performing independent personal services. U.S. residents who sell Telecom Italia Shares or ADRs may be required to produce appropriate documentation establishing that the above mentioned conditions of non-taxability pursuant to the Treaty provisions have been satisfied if CGT would otherwise be applicable.

Inheritance and Gift Tax

The transfers of any valuable asset (including Shares, Savings Shares and ADRs) as a result of death or donation (or other transfers for no consideration) and the creation of liens on such assets for a specific purpose are taxed as follows:

- (i) transfers in favour of the spouse and of direct descendants or ascendants are subject to an inheritance and gift tax applied at a rate of 4% on the value of the inheritance or the gift exceeding €1,000,000 (per beneficiary);

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| <p>(ii) transfers in favour of brothers and sisters are subject to an inheritance and gift tax applied at a rate of 6% on the value of the inheritance or the gift exceeding €100,000 (per beneficiary). The same tax rate applies in favour of handicapped individuals on the value of inheritance or gift exceeding €1,500,000 (per beneficiary);</p> <p>(iii) transfers in favour of all other relatives up to the fourth degree or relatives-in-law up to the third degree, are subject to an inheritance and gift tax applied at a rate of 6% on the entire value of the inheritance or the gift;</p> <p>(iv) any other transfer is subject to an inheritance and gift tax applied at a rate of 8% on the entire value of the inheritance or the gift.</p> | |

With respect to listed Shares, the value for inheritance and gift tax purposes is the average stock exchange price of the last quarter preceding the date of the succession or of the gift (increased by the interest accrued during the interim). With respect to unlisted Shares, the value for inheritance and gift tax purposes is determined by reference to the value of listed debt securities having similar features or based on other certain elements.

There is currently no gift tax convention between Italy and the United States.

10.6.2 UNITED STATES FEDERAL INCOME TAXATION

The following is a description of the material U.S. federal income tax consequences to the U.S. Holders described below of owning and disposing of Telecom Italia Shares or ADSs representing Telecom Italia Shares, but it does not purport to be a comprehensive description of all tax considerations that may be relevant to a particular person's decision to hold the securities. This discussion applies only to a U.S. Holder that holds Telecom Italia Shares or ADSs as capital assets for U.S. federal income tax purposes. In addition, it does not describe all of the tax consequences that may be relevant in light of the U.S. Holder's particular circumstances, including alternative minimum tax consequences and tax consequences applicable to U.S. Holders subject to special treatment, such as:

- certain financial institutions;
- dealers or traders in securities who use a mark-to-market method of tax accounting;
- persons holding Telecom Italia Shares or ADSs as part of a hedging transaction, straddle, wash sale, conversion transaction or integrated transaction or persons entering into a constructive sale with respect to the Telecom Italia Shares or ADSs;
- persons whose functional currency for U.S. federal income tax purposes is not the U.S. dollar;
- entities classified as partnerships for U.S. federal income tax purposes;
- tax-exempt entities, including an "individual retirement account" or "Roth IRA";
- persons that own or are deemed to own ten percent or more of voting stock of Telecom Italia;
- persons who acquired Telecom Italia Shares or ADSs pursuant to the exercise of an employee stock option or otherwise as compensation; or
- persons holding Telecom Italia Shares in connection with a trade or business conducted outside of the United States.

If an entity that is classified as a partnership for U.S. federal income tax purposes holds Telecom Italia Shares or ADSs, the U.S. federal income tax treatment of a partner in the partnership will generally depend on the status of the partner and the activities of the partnership. Partnerships holding Telecom Italia Shares or ADSs and partners in such partnerships should consult their tax advisers as to the particular U.S. federal income tax consequences of holding and disposing of the Telecom Italia Shares or ADSs.

This discussion is based on the Internal Revenue Code of 1986, as amended (the "Code"), administrative pronouncements, judicial decisions, final, temporary and proposed Treasury regulations, and the Treaty, all as of the date hereof, any of which is subject to change, possibly with retroactive effect. It is also based in part on representations by the Depositary and assumes that each obligation under the Deposit Agreement and any related agreement will be performed in accordance with its terms.

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A “U.S. Holder” is a holder who, for U.S. federal income tax purposes, is a beneficial owner of Telecom Italia Shares or ADSs who is eligible for the benefits of the Treaty and is:

- a citizen or resident of the United States;
- a corporation, or other entity taxable as a corporation, created or organized in or under the laws of the United States, any state therein or the District of Columbia; or
- an estate or trust the income of which is subject to U.S. federal income taxation regardless of its source.

In general, a U.S. Holder who owns ADSs will be treated as the owner of the underlying Ordinary Shares or Saving Shares, as the case may be, represented by those ADSs for U.S. federal income tax purposes. Accordingly, no gain or loss will be recognized if a U.S. Holder exchanges ADSs for the underlying Ordinary Shares or Saving Shares, as the case may be, represented by those ADSs.

The U.S. Treasury has expressed concern that parties to whom American depositary shares are released before shares are delivered to the depositary (“pre-release”), or intermediaries in the chain of ownership between holders and the issuer of the security underlying the American depositary shares, may be taking actions that are inconsistent with the claiming of foreign tax credits by holders of American depositary shares. These actions would also be inconsistent with the claiming of the reduced rate of tax, described below, applicable to dividends received by certain non-corporate holders. Accordingly, the creditability of Italian taxes, and the availability of the reduced tax rate for dividends received by certain non-corporate U.S. Holders, each described below, could be affected by actions taken by such parties or intermediaries.

U.S. Holders should consult their tax advisers concerning the U.S. federal, state, local and foreign tax consequences of owning and disposing of Telecom Italia Shares or ADSs in their particular circumstances.

This discussion assumes that the Company is not, and will not become, a passive foreign investment company, as described below.

Taxation of distributions

Distributions made with respect to the Telecom Italia Shares or ADSs (other than certain pro rata distributions of Telecom Italia Shares or ADSs), including any Italian tax withheld, will generally constitute foreign source dividend income for U.S. federal income tax purposes to the extent such distributions are made from the Company’s current or accumulated earnings and profits, as determined in accordance with U.S. federal income tax principles. Because the Company does not maintain calculations of earnings and profits under U.S. federal income tax principles, it is expected that distributions will generally be reported to U.S. Holders as dividends. If you are a non-corporate U.S. Holder, subject to applicable limitations that may vary depending on your particular circumstances and the discussion above regarding concerns expressed by the U.S. Treasury, dividends paid to you in taxable years beginning before January 1, 2011 may be taxable at a maximum tax rate of 15%. Non corporate U.S. Holders should consult their own tax advisers to determine whether they are subject to any special rules that may limit their ability to be taxed at this favorable rate. If you are a corporate U.S. Holder you will not be entitled to claim a dividends-received deduction for dividends paid on the Telecom Italia Shares or ADSs. The amount of any cash distribution paid in euros, including the amount of any Italian tax withheld, will be included in your income in an amount equal to the U.S. dollar value of such euros on the date of receipt by the Depositary, in the case of U.S. Holders of ADSs, or by the U.S. Holder, in the case of U.S. Holders of Telecom Italia Shares, regardless of whether the payment is in fact converted into U.S. dollars. If the dividend is converted into U.S. dollars on the date of receipt, you generally should not be required to recognize foreign currency gain or loss in respect of the dividend income. You may have foreign currency gain or loss if the amount of such dividend is not converted into U.S. dollars on the date of its receipt. Gain or loss, if any, recognized on the sale or other disposition of such euros will be U.S. source ordinary income or loss. The amount of any distribution of property other than cash will be the fair market value of such property on the date of distribution.

Subject to certain limitations and restrictions and the discussion above regarding concerns expressed by the U.S. Treasury, Italian taxes withheld from distributions on Telecom Italia Shares or ADSs at a rate not in excess of that provided in the Treaty will be eligible for credit against a U.S. Holder’s U.S. federal income tax liability. Italian taxes withheld in excess of the rate provided in the Treaty will generally not be eligible for credit against a U.S. Holder’s U.S. federal income tax liability (See “Section 10.6.1–Italian Taxation–Income Tax” for a discussion of

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how to obtain the Treaty withholding rate). Instead of claiming a credit, you may, at your election, deduct such Italian taxes in computing your taxable income, subject to generally applicable limitations under U.S. law. An election to deduct foreign taxes instead of claiming foreign tax credits applies to all taxes paid or accrued in the taxable year to foreign countries and possessions of the United States. You should consult your tax adviser concerning the foreign tax credit implications of the payment of any Italian withholding taxes.

Taxation of capital gains

A U.S. Holder will generally recognize U.S. source capital gain or loss on the sale or other disposition of Telecom Italia Shares or ADSs, which will be long-term capital gain or loss if the U.S. Holder held the Telecom Italia Shares or ADSs for more than one year. The amount of gain or loss will be equal to the difference between the amount realized and the U.S. Holder's adjusted tax basis in the Telecom Italia Shares or ADSs in each case as determined in U.S. dollars. U.S. Holders should consult their own tax advisers about the treatment of capital gains, which may be taxed at lower rates than ordinary income for non-corporate taxpayers, and capital losses, the deductibility of which may be limited.

Passive Foreign Investment Company Rules

The Company believes that it was not a "passive foreign investment company" ("PFIC") for U.S. federal income tax purposes for 2009. However, since PFIC status depends upon the composition of the Company's income and assets and the market value of the Company's assets (including, among others, less than 25% owned equity investments) from time to time, there can be no assurance that the Company will not be considered a PFIC for any taxable year. If the Company were treated as a PFIC for any taxable year during which a U.S. Holder held Telecom Italia Shares or ADSs, certain adverse tax consequences could apply to the U.S. Holder.

Information Reporting and Backup Withholding

Payments of dividends and sales proceeds that are made within the United States or through certain U.S.-related financial intermediaries generally are subject to information reporting, and may be subject to backup withholding, unless (i) the U.S. Holder is a corporation or other exempt recipient or (ii) in the case of backup withholding, the U.S. Holder provides a correct taxpayer identification number and certifies that it is not subject to backup withholding.

The amount of any backup withholding from a payment to a U.S. Holder will be allowed as a credit against the U.S. Holder's U.S. federal income tax liability and may entitle it to a refund, provided that the required information is timely furnished to the IRS.