SETTING UP A SUBSIDIARY OR A BRANCH IN ITALY

According to OECD model tax convention, international business activities can cross borders in two ways from a tax law point of view:

1. **SETTING UP A SUBSIDIARY:** this is the most intensive, but sustainable way. It gives rise to a parent-subsidiary structure;
2. **SETTING UP A BRANCH**: establishing foreign branches, offices, factories, or other facilities: these are not incorporated in Italy but are part of the parent **company**.

SETTING UP THE SUBSIDIARY

FORMS

There are basically two forms of company with limited liability:

Società per azioni (S.p.A.) Public Limited Companies by Shares Minimum capital: 50.000€
Società a responsabilità limitata (S.r.l.) Private Limited Companies by Quotas Minimum capital: 10.000€

Compared to S.p.A. a S.r.l. allows more flexibility and autonomy for its members because they can regulate many features (e g the governance with large flexibility in the Articles of Association (By laws).

Moreover, the appointment of a board of statutory auditors is always required for an S.p.A. while, in the case of a S.r.l. it is mandatory only if certain conditions are met (in these cases, it is possible to appoint a single auditor).

GENERAL CHARACTERISTICS

- At the moment of creating of the company, it is mandatory to pay at least 25% of the share capital.
- The legal seat is indicated in the company's Article of Association.
- The place of effective management is the place where the directors manage the company and take **business** decisions.
- The main business purpose is determined based on Article of association or based on the type of activity in which the company is actually engaged in.
- Italian resident companies have to file out local financial statements within 4 months of the fiscal year end date.

MANDATORY DOCUMENTS

Board of directors' minute including:

- Resolution about the opening of the Italian company the description of business in Italy;
- Appointment of the legal representatives in Italy and members of Italian board;
- Powers granted to legal representatives;
- Eventually appointment of the people empowered to appear in front of the notary on behalf of the legal representative of the parent company.

TAX CONSIDERATIONS

The subsidiary will be subject to the corporate income tax IRES (rate 24% of taxable income) and to the regional tax IRAP (rate 3,9% of taxable income).

CORPORATE INCOME TAX DUE DATES

CIT return due date	By the end of the 11 th month after the tax year end

CIT final payment due date	The last day of the sixth month following the tax year end
CIT estimated payment due dates	Advance payment: – 40 by the last day of the sixth month following the tax year end – 60 by the end of the 11 th month following the tax year end

SETTING UP A BRANCH

Under Italian tax law, a branch is a **permanent establishment** (PE) as defined by OECD: "a fixed place of business through which the business of the non-resident enterprise is wholly or partly carried out".

Non-resident companies interested in setting up a branch in Italy need to comply with Italian law regarding

publication of corporate deeds.

Under the Italian tax assessment code, non-resident companies operating in Italy through a PE must file separate documentation evidencing the activities carried out through the PE. The income of the PE will be determined according to the rule set forth for resident companies and on the basis of separate profit and loss accounts related to the management of that branch, taking into account the application of the arm's length principle. Tax returns must be filed on a yearly basis.

In order to set up an Italian branch, a meeting with an Italian notary must be arranged where the following is required:

- Abstract of the (apostilled) minutes of the shareholders or board of directors meeting during which the resolution of the opening of the Italian branch was taken, including the description of business in Italy, the appointment of the legal representatives in Italy,

the powers granted to legal representatives, the appointment of the persons empowered to appear before the notary on behalf of the legal representative of the parent company.

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