



COMPANY FORMATION IN ITALY

MAIN FORMS OF COMPANY/BUSINESS IN ITALY

The vast majority of the businesses currently operating in Italy are incorporated under either the "SRL" (i.e. "Società a Responsabilità Limitata" - limited liability company) or the "SPA" (i.e. "Società Per Azioni" - joint stock company) legal form.

The former, being the most common corporate tool for small and medium enterprises as well as the most flexible one; the latter being utilized by larger corporations instead, raising funds from the market or banks, or needing to go public. Specific business sectors (i.e. banking, insurance) may require the set up under the SPA form.

Branches of foreign companies are often established when the influence on strategic decisions by the mother company is the main driver of the local business.

Representative offices are, finally, the lighter business structure that allows penetration only for only market scouting purposes, and country analysis.

SPECIFIC TAX CONCERNS RELATED TO ESTABLISHING A COMPANY

Local entities are subject to two types of direct taxes: IRES (national income tax) and IRAP (regional income tax). The former is levied on the difference between revenues and costs, minus tax-specific disallowances (such as 20% phone costs; 40% vehicle-related costs; 25% entertainment expenses). The latter is based on the civil code-drawn financial statements, with the exclusion of labor-related costs, and financial interest. Labor-intensive businesses should keep this in mind.

There are no differences between the above mentioned legal forms in respect to their taxation system - except for rep offices, whose activities are not subject to local taxation.

In the establishment of an entity, special tax concerns such as the "cluster analysis" system, and the "operational companies list" are typical local issues to be considered.

Transfer pricing issues also have to be taken into consideration, especially for branches and companies with a sole shareholder, or with strong business relations between the HQ and ITA.

Tax losses can be carried forward (but not backwards) according to specific criteria.

LEGAL ISSUES RELATED TO ESTABLISHING A COMPANY

The "reciprocity" terms define restrictions, by country of origin, in the investment of alien entities (individuals or companies) in this country. Restrictions in a local investment relate to:

- » the list of countries allowed to invest;
- » the entity type that can be formed legally;
- » the percentages of allowed capital / asset ownership;
- » the corporate roles that can be held by individuals of a given nationality;



Specific business types may have to undergo:

- » minimum capital requirements (i.e.: "SPA"-type companies; banking industry; insurance);
- » local licenses (i.e.: alcohol; food; etc.);
- » specific job/tuition levels/titles (i.e.: wholesale of fruit and vegetables);
- » application of cluster-specific legislation (i.e.: electronic invoicing);

CULTURAL CONCERNS RELATED TO ESTABLISHING A COMPANY

Hiring employees is complicated by the existence of some 400 national bargaining contracts, that the companies normally have to refer to in the course of the definition of their relations with prospects.

Dismissing employees is even more complicated (i.e.: expensive), as the judgemental decisions are normally most favorable to the employees in case of litigations.

The help of a payroll consultant is certainly a requirement.

In general, compliance with local formalities is very demanding, as the bureaucratization level of this country is very thick. The world bank ranks us at #46 out of 189 in the "starting a business" classification (France is #28).

Having to do with public offices may be a nightmare, unless you obtain local administrative guidance.

OTHER COUNTRY-SPECIFIC ISSUES RELATED TO ESTABLISHING A COMPANY

1. AML (i.e. "KYC") procedures will require to acknowledge and identify the ultimate beneficial owner of a business, by means of statements and copies of ID's. They may take long to complete.
2. The payment of taxes can only happen through local, specific software (no bank drafts are allowed).
3. A local bank account is necessary to perform payments of taxes. Not all international banks are authorised by the tax authorities to perform payments (i.e. JP Morgan is not).
4. Employees' salaries are paid net, every month, Withholding tax is applied and generates monthly and yearly reporting dues.
5. A business registered with the Chamber of Commerce has to have a certified e-mail address, i.e. "PEC", that must be registered with one of the allowed (Italian) e-mail providers. Such e-mail address is only used for statutory communications, and is normally held in addition to the business' normal e-mail address.
6. Accounting compliance rules are very specific and require local expertise.
7. The services provided by an Italian "expert comptable" can cover all the areas in the company formation and set-up processes, even most of those that abroad are normally performed by lawyers.
8. Communications with the authorities have specific deadlines, all normally falling under the standard term of "30 days after the event". Some items, however, must be dealt with prior to commencement (i.e.: employment of personnel).