

## **26. Doing Business in Italy**

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## **A. LIMITED LIABILITY COMPANIES (SPA and SRL)**

Most common types of companies are joint-stock companies (*Società Per Azioni - SPA*) and limited liability companies (*Società a Responsabilità Limitata - SRL*).

This memorandum outlines the patterns of the SPA and indicates where necessary the differences related to SRL.

### **1. SPA companies**

*Società Per Azioni* is a legal entity with limited liability except where all shares are owned by a single shareholder who is then liable without limitation for the obligations incurred by the company.

Ownership interests are represented by shares registered in the name of the shareholders. Minimum capital required is EUR 120.000. At least 25% of the capital must be deposited with an Italian bank before the incorporation of the Company.

Articles of Association and by-laws must be executed by a notary public who will then register the Company with the local Register of Companies. When incorporating the Company the shareholders can be represented by granting special powers of attorney before a notary public.

Registration tax of EUR 129 is applicable irrespective of the amount of the capital stock.

The Company must be registered with the VAT Office and with the local Chamber of Commerce. Companies selling food and drinks or dealing in the tourism business must be registered in a special register held by the Chamber of Commerce (REC).

An additional annual tax of EUR 310 is due for obtaining compulsory legalization of accounting books. The tax is EUR 516,46 for companies having a capital stock of EUR 516.456,90 or higher.

The Company can be managed either by a sole director or by a Board of Directors; the Directors' term of office will last three years.

The Company must also have a board of statutory auditors whose major functions are to inspect the books, monitor the company administration and exercise control over the management. They are remunerated with a fee that varies mainly in accordance with the magnitude of the company operations.

External audit is required unless the audit function is also assigned to the board of statutory auditors.

## **2. SRL companies**

Limited liability companies may be incorporated as SRL (*Società a Responsabilità Limitata*) which are similar to SPA except for:

- minimum capital required is EUR 10.000
- the board of statutory auditors is not required unless the capital stock is EUR 120.000 or higher, as well as when the Company meets for two subsequent years at least two of the following criteria:
  - annual sales of at least EUR 3.125.000
  - total assets of at least EUR 6.250.000
  - 50 employees
- the ownership of the Company is represented only by the registration of the quotaholders in the quotaholders' register
- the sole director or the board of directors can be in office unlimitedly.

The information indicated below are applicable to both companies incorporated as SRL and as SPA.

## **3. Corporate, accounting and tax books**

Both SPAs and SRLs are required to maintain the following books:

### **Corporate books**

1. Register of the shareholders' meetings (section 2421 c.c.)
2. Register of shareholders (section 2421 c.c.)
3. Minute book of directors' meetings (section 2421 c.c.)
4. Minute book of statutory auditors meetings (section 2421 c.c.)

All the above books must be legalized by a notary public or by the Court (section 2421 c.c.) before they are used.

No. 4 above is kept by the statutory auditors (section 2421 c.c.).

### **Accounting books**

1. Register of annual accounts (section 2214 c.c.)
2. Journal, including subsidiary records such as cash book, etc. (section 2214 c.c.)

The above accounting books are required for fiscal purposes as well (section 14, letter a, DPR 600/1973 and section 45, DPR 633/1972).

### **Tax books**

1. VAT: purchase invoices register (section 25, DPR 633/1972)
2. VAT: sale invoices register (section 23, DPR 633/1972)
3. Supplementary records (section 14, letter c, DPR 600/1973)
4. Fixed assets register (section 16, DPR 600/1973)
5. Register of inventory movements (section 14, DPR 600/1973)

## **4. Taxation of SPA and SRL**

### **4.1 Corporate Income Tax (IRES)**

IRES (Corporate Income Tax) rate is 33%. Taxable base corresponds to profit before tax, plus certain tax adjustments for non-deductible items or for temporary differences.

Fiscal losses incurred during the first three fiscal years of the incorporated company are carried forward for IRES purposes without any time limit.

Fiscal losses incurred starting from the fourth fiscal year are carried forward for IRES purposes for a five years period.

### **4.2. Regional Income Tax (IRAP)**

IRAP rate is 4,25% and its proceeds are assigned to regional authorities depending on the location of personnel.

The following items are not relevant for the computation of IRAP taxable base:

- Labor cost
- Impairment of fixed assets
- Impairment of current assets
- Provision for risks
- Other provisions
- Interest charge/income
- Impairment of financial investments
- Extraordinary income and charges

Therefore, the taxable base is a gross profit rather than a net profit

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**5. Dividends**

Dividends paid to non-resident shareholders are subject to 27% final withholding tax, unless a different treatment is provided under a tax treaty.

The tax treatment provided for dividends paid by an Italian company (ITCO) to shareholders resident in the following Countries is outlined below.

**USA**

In the case of a US resident shareholder (being a company), dividends distributed by ITCO are subject to the following withholding taxes:

- 5% if the shareholder owns more than 50% of the capital stock and for longer than 12 months
- 10% if the shareholder owns at least 10% of the capital stock and for longer than 12 months
- 15% in all other cases.

A new tax treaty was signed on August 25, 1999, but it is not yet effective. When effective withholding tax applicable will be as follows:

- 5% if the shareholder owns more than 25% of the capital stock and for longer than 12 months
- 15% in all other cases

**UK**

In the case of a UK resident shareholder (being a company), dividends distributed by ITCO are subject to the following withholding taxes:

- 5% if the shareholder owns at least 10% of the capital stock
- 15% in all other cases.

In order to enjoy the above reduced withholding tax rates, there is a 12 month period requirement for holding the interest in the Italian company. This requirement does not apply in the case of shareholders holding less than 10% of the shares, and in the case of dividends paid out of profits made in the previous 12 months. **(1)**

**France**

In the case of a French resident shareholder (being a company), dividends distributed by ITCO are subject to the following withholding taxes:

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- 5% if the shareholder is a company holding (for at least 12 months) at least 10% of the capital stock of the Italian company
- 15% in all other cases. **(1)**

**The Netherlands**

In the case of a Dutch resident shareholder (being a company), dividends distributed by ITCO are subject to the following withholding taxes:

- 5% if the shareholder is a company holding (for at least 12 months) more than 50% of the capital stock of the Italian company
- 10% if the shareholder is a company holding (for at least 12 months) at least 10% of the capital stock of the Italian company
- 15% in all other cases. **(1)**

**Germany**

In the case of a German resident shareholder (being a company), dividends distributed by ITCO are subject to the following withholding taxes:

- 10% if the shareholder is a company holding at least 25% of the capital stock of the Italian company
- 15% in all other cases.**(1)**

**(1) EU Shareholders**

Under the EU parent/subsidiary directive, EU resident companies holding for at least 12 months an interest of at least 25% in the capital stock of the Italian company are exempt from withholding tax on dividends received.

Please note that in the case of EU resident shareholders which are controlled by non-EU companies (e.g. by US companies) the above exemption is applicable on condition that the EU resident company receiving the dividends can prove that it was not incorporated for the sole purpose of enjoying the above benefit.

Therefore, based on treaty rules and/or the EU parent/subsidiary directive:

1. dividends paid to EU resident shareholders (meeting the requirements of the directive) are exempt from withholding tax
2. dividends paid to US resident shareholders are subject to 5% or 10% or 15% withholding tax as indicated under item 2 above.

## **B. BRANCH**

A branch office is subject to the same accounting and tax requirements as a subsidiary (general ledger and VAT books, annual income tax and VAT return, annual return of payments subject to withholding tax, monthly VAT, social contributions and withholding tax payments)

The parent company is unlimitedly liable for the branch's obligations.

Please note that switching from a subsidiary to a branch would require:

- liquidation of the subsidiary
- registration of the branch, including official translation of the articles of association of the mother company: the procedure takes several months
- change of VAT, tax code number and social security number of the entity
- transfer of business from the subsidiary, which is regarded as a taxable event (3% registration tax plus 33% income tax on the goodwill); the transfer price can be challenged by tax authorities
- professional costs (notary, lawyer, tax advisor) connected with the above

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