

info

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Italy

INCORPORATION

Setting Up Ltd in Italy: Short Note

Worth talking about

- ”How can my company benefit from these changes?
- ”Should I think about expanding into the Italian market now?
- ”Should I consider changing the legal status of my Italian branches?

Significant changes include the ability of partners in a limited liability company (s.r.l.) to settle and to determine the powers in terms of ordinary and extraordinary matters. They also call for a decrease in the capital to be paid in prior to the incorporation from 30 to 25 percent and for the unlimited duration of the company. The reform also permits unrated distribution of the profits to the partners.

The lowered corporate capital necessary to establish a limited liability company in Italy is now fixed at Euro 10,000. Assets in kind and non-cash investments can be used to establish the company in lieu of ready money. Prior to the incorporation of the company, the necessary 25 percent of total capital must be made to a deposit account. The payment can be replaced by a bank warranty. According to article 2466 of the Italian Civil Code the remaining amount (75 percent) may be paid over a period of months. Today, it is no longer obligatory to indicate the expiring date of the company during registration; a company registering as a limited liability company may have an unlimited duration.

Splitting power between partners

The reform of the company-law has also introduced new governance rules. For instance, the law assigns to the deed of partnership the right to settle and to determine

the powers in terms of ordinary and extraordinary company matters, in order to take any action to be deemed appropriate to carry out and to achieve the company's corporate goals. In particular it allows for a Board of Directors to run the company, which is to be made up of two or more members who do not necessarily have to be shareholders.

The company may be run instead by two or more Managing Directors. They can be vested with separate powers in terms of ordinary

and extraordinary company matters. In cases where the powers of individual Managing Directors are not fixed in the company by-laws, the rules provided for in the Civil Code for the partnership remain in effect.

The deed of partnership may provide different systems of corporate governance for ordinary and extraordinary matters. For instance, one Managing Director may be delegated separately to perform specific actions or categories of actions within the scope of the power con-





„Setting up a limited liability company in Italy usually requires no more than about two or three days.“

Avv. Dr. Fabrizio Bianchi Schierholz, ECOVIS Bianchi Schierholz, Montani & Partners, Milano, Italy

ferred on him. And while each Managing Director is considered to be the legal representative of the company in dealings with third parties and in legal proceedings, the deed of partnership and the shareholders later may provide the legal representation exclusively for specific actions or categories of actions, giving one Managing Director sole right to represent the company legally within the range of said actions. In event of difference of opinion between Managing Directors with equal powers, one of them may block the operation. In this case the shareholders may pass the resolution.

Alternatively, incorporation as a partnership with limited liability (*società in accomandita semplice*, s.a.s.) might be considered. In this case the income is subject to local taxes (IRAP). The profits distributed to the partners are subject to personal taxation (IRPEF) to be paid by the partners.

Cost and timing

When registering a company various costs will occur. Notarization fees come to Euro 2,500, the cost of the certified public accountant will amount to approximately Euro 1,200. Half the costs may be related to the expenses to be borne for the registration of the company, included stamps, chamber rights, postal transfers, payment of various taxes.

Currently, setting up a limited liability company usually requires ap-

proximately two to three days, and registration will take about one month. In the meantime the company may operate legally and the administrative bodies are allowed to represent the company in dealings with third parties.

The cost of the services of the commercialista

The costs of the certified public accountant (*commercialista*) in conjunction with ordinary bookkeeping are computed on the basis of the tariff guidelines of their professional association. In particular, the tariff guidelines provide for a remarkable discrepancy between the costs for occasional services and remuneration provided to regular clients. The amount provided for hereby are strictly related:

- to the profits of the company;
- to the numbers of the balance sheet.

A copy of the tariff guidelines may be requested. Normally the cost to be borne yearly as for the bookkeeping of a small-sized s.r.l. amounts nearly Euro 5,000. The activities included therein are:

- drawing up the corporate balance sheet,
- calculating profits and losses in compliance with the law,
- completing the income tax return.

The cost for said services provided by a *commercialista* for a partnership with limited liability (*s.a.s.*) usually amounts to about Euro 1,000. Additional services such as international tax planning or quarter balance sheet will incur additional costs and should be agreed on beforehand.

One expression that can crop up during registration of a limited liability company in Italy is “*data di aggiornamento*”. It refers to the last update of the Certificate of Incorporation (*visura camerale*) including the date of the deposit of the last company deed, including the balance sheet.





„Reform of the Japanese pension system is underway, but the pace is slow.”

Kazuhiko Chiba, ECOVIS APO, Tokyo, Japan

Japan / Some Expatriates Feel Pension Pain in Japan

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Reform of the public pension system is a top prerogative, but some foreigners in Japan are still forced to contribute twice.

The number of participants in the public pension system in Japan has been in decline for years, leaving some 420,000 elderly people without retirement incomes. Reform is underway, but the pace is slow.

The public pension system in Japan involves two separate institutions, the National Pension Insurance (NPI) for self-employed persons and the Welfare Pension Insurance (WPI) for salaried employees. At present, the NPI premium is fixed at JPY15,100 per month, the WPI premium is set at 16.058 percent of monthly standard remuneration (MSR). Half of the WPI premium is contributed by employer.

To become eligible for payments, the insured person has to pay into the system for at least 25 years. In addition to WPI, employers are obliged to contribute to a health insurance, unemployment insurance and worker's accident compensation insurance which together provide social security in Japan. Total deduction come to approximately seven percent of an employee's total remuneration.

In the case of expatriates transferring to Japan on foreign assignment, they are obliged to participate in



the WPI if their salary is paid in Japan, even though they may be covered by social security in their native country. However, agreements to eliminate dual coverage have been reached with a number of countries, including Germany, the UK, Korea, the USA, Belgium, France, Canada, Australia, the Netherlands, the Czech Republic, Spain, Ireland and Italy. The Japanese Government is currently in discussions with countries such as India, Brazil, Hungary, Austria and Slovakia. In view of the fact that China intends to impose pension insurance premiums on foreign nationals working in China soon, negotiations with China are also urgently needed.

Slovakia / Three-Way Leasing Deal Legal, Court Says

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Tax advantages accruing from leasing assets versus outright purchase are not abusive, the European Court of Justice ruled.

The case concerned the British Churchill Group which predominantly supplies insurance services which are exempt from VAT. Three companies, CML, CARC and Weald Leasing, were accused of tax abuse by the British authorities. It seems that when CML or CARC needed new equipment, they turned to Weald Leasing. The assets were leased to a company called Suas Limited which in turn subleased them to CML or CARC. By resorting to that series of transactions CML and CARC avoided having to purchase directly the equipment they needed or pay in a single sum the total amount of non-deductible VAT on the purchases. The aim of those transactions was obviously to divide and spread the payment of purchase price of assets in order to defer the VAT liability, as CML or CARC would be liable to pay VAT only on the amount of rent



relating to those assets, spread over the term of the leasing agreements.

The British authorities raised VAT assessments disallowing the deduction by Weald Leasing of the input VAT paid on the assets leased arguing that the transactions in question were not economic activities and constituted an abuse of rights. The question referred



„It is intended to liberalize the current standards for sending and storing electronic invoices.”

Kamil Kuczynski, Specialist in Tax Law, Tax Dep. of ECOVIS System Rewident, Warsaw, Poland

to the Court was whether the lease and subsequent sublease resulting in the granting of accrual of a tax advantage would be contrary to the purpose of the VAT Directive.

The Court found that the tax advantage accruing from an undertaking's recourse to asset leasing transactions instead of the outright purchase of those assets does not lead to an abusive practice. The lease rather

than the purchase of assets does not in itself result in the situation that the trader pays less VAT or deducts more VAT than that to which the trader is entitled. Thus while there may be cash flow advantages, there is no VAT saving in leasing rather than purchasing the assets. However, the contractual terms of those transactions, particularly those concerned with setting the rental levels, must correspond to arm's length terms.

Poland / Rules Eased In Poland



Regulations concerning Value Added Tax on goods and on e-Invoicing in Poland underwent some significant changes in 2011.

On January 1st, amendments to the Act on VAT and the secondary regulations became effective in Poland. The most important changes concern the rates of VAT. The basic VAT rate has been increased to 23 percent, while the reduced rates have been fixed at 5 and 8 percent, as well as 0 percent. These changed rates are established temporarily for the period from January 1st to December 31st 2013. There are special rules introduced into the Act on VAT in order to allow taxpayers to apply the correct VAT rate for the supplies of goods and the provision of services encompassing the moment in which the rate is changed.

Additionally, the threshold of turnover below which the entities are exempted from VAT has been increased from PLN 100,000 to PLN 150,000 and the list of items which are exempted from VAT has been transferred to the Act. Moreover, there has been a withdrawal from the statistical classifications (PKWiU) in order to define their scope according to the EU and domestic law as well as respective court rulings.

Next issue is the loss of the right to the full deduction of VAT arising from the receipt of consent for implementing restrictions which were not applied before

Poland's accession to the EU. In the period from 2011 to 2012, when buying passenger cars and certain vehicles of a maximum admissible weight of 3.5 tonnes, taxpayers are entitled to deduct only 60 percent of VAT contained in the purchase price but no more than PLN 6,000. Taxpayers are not allowed to deduct input VAT disclosed on invoices for fuel for these vehicles. The Act still provides for the ability to deduct VAT on the purchase of cars with a maximum admissible weight of 3.5 tonnes and fuel for them if they satisfy the conditions specified in the Act, confirmed by an additional inspection conducted by the regional technical inspection station.

The acquired right to deduct input VAT on installments under lease, rental or leasing contracts and others of a similar nature may be retained by taxpayers if they notify the tax authorities of the contract by 31 January 2011 and there are no changes to the contract after 31 December 2010.

Another very important change which came into force on 1 January 2011 concerns electronic invoicing. It was introduced in order to implement Council Directive 2010/45/EU with respect to the rules on invoicing. The intention was to liberalize current standards for sending and storing electronic invoices to allow treating paper invoices and electronic invoices in the same way. The storage of invoices outside the country was permitted (regardless of the form of transmission) on condition that the tax authorities are provided with the electronic access to them on their request.

Additionally, the possibility of issuing a single collective correcting invoice was introduced if the taxpayer provides discounts on all supplies of goods or services to a single customer in a given period.

The list of changes is not exhaustive, thus we strongly recommend that you contact your Ecovis partner to discuss tax issues which are specific to your business in detail.

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ABOUT ECOVIS

Ecovis is a leading global consulting firm with its origins in Continental Europe. It has over 3,300 people operating in over 30 countries. Its consulting focus and core competencies lie in the areas of tax consultation, accounting, auditing and legal advice. The particular strength of Ecovis is the combination of personal advice at a local level with the general expertise of an international and interdisciplinary network of professionals. Every Ecovis office can rely on qualified specialists in the back offices as well as on the specific industrial or national know-how of all the Ecovis experts worldwide. This diversified expertise provides clients with effective support, especially in the fields of international transactions and investments - from preparation in the client's home country to support in the target country. In its consulting work Ecovis concentrates mainly on mid-sized firms. Both nationally and internationally, its one-stop-shop concept ensures all-round support in legal, fiscal, managerial and administrative issues.

The name Ecovis, a combination of the terms economy and vision, expresses both its international character and its focus on the future and growth. Offices worldwide: www.ecovis.com/global

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