



ITALIA

LA BELLEZZA UNISCE LE PERSONE  
BEAUTY CONNECTS PEOPLE  
الجمال يجمع الناس

Partner del Padiglione Italia a Expo 2020 Dubai

## LA REGIONE LAZIO VERSO EXPO2020DUBAI

“INFORMAZIONE & FORMAZIONE 4.0” - CICLO DI DIGITAL MEETING

# Internationalisation in the UAE

*The choice to go global*

## STRUCTURES TO MENAGE FOREIGN INVESTMENT

REP. OFFICE

BRANCH

SUBSIDIARY



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### Permitted activities

Promozione, pubblicità, networking, raccolta informazioni, centralizzazione funzioni amm.ve, gestione risorse aziendali, valutazione del mercato di insediamento, valutazione opportunità di investimento, diffusione marchio, contatto con operatori locali, preparazione propedeutica all'apertura di strutture locali, ecc.

### Forbidden activities

Direct entrepreneurial activity, sale of goods and/or services

### Fiscal profiles

1. Fiscal deductibility of costs supported by Italian Parent Company; possible % taxed on costs of local office - not contemplated in the Emirates - structure and LSA cost
2. The legal definition of Rep. Office is basically the same in the Italian and Emirati judicial codes - art. 332 of CCL no.2/2015, Oman (one Omani resident and a threshold down payment required) - Min. Decision by Rep. Off. Regulatory Law no.22/2000, Saudi Arabia - Foreign Investment Royal Law decree no. M/I dated 2000

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### **Permitted activities**

Carrying out the same business as the Head Office in UAE/Oman/KSA

### **Requisites and characteristics**

LSA nomination (in UAE and Oman) same activity as Parent Company - same name - Parent Company operating for at least two years in its place of origin. Importing goods from Parent Company and direct contracts with final clients is not allowed. A deposit fee in AED is required (sponsorship fee) with no autonomous legal entity, and responsibility lies with the parent company.

### **Fiscal profiles**

Definition of stable organisation according to the codes of Italy, the Emirates, Saudi Arabia, Oman and of the convention

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## BRANCH

### Definitions compared. The concept of “stable organisation”

#### Convention

##### Art. 5 of the OECD Model 2010

Action no.7 of BEPS - amendments to art 5 and Commentary  
Action no.1 of BEPS - SO and the digital economy

#### ITALY

Art. 162 Dpr 917/86 Tuir  
Articles 151, 152, 153 Dpr 917/86 - Tuir

#### UAE

Articles 327 - 331 of CCL no.2/2015 - “...its domicile and its activity...”.

#### KSA

CCL 1965 - amended 1967-1982 and 1985

#### OMAN

Brand New CCL of 17.2.2019 - entry into force 17.4.2019 (replaces CCL no.4/74)



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## BRANCH

### Definitions compared. The concept of “stable organisation”

Convention - art 5 of the OECD model

1. **Existence of the site** – under any form, even without personnel (pipelines and railways)
2. **Fixed nature of site** – spatial sense (land) or time sense (lasting connection with open time frame except for building sites)
3. **Usefulness of site** – to undertake autonomous economic activities (management and accounting) through the aforementioned structure

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### **Convention - art. 5 of the OECD model - Amendments of BEPS action no.7**

1. “Commissionaire” agreements - no SO or independent agent without ownership of the products sold
  2. Contracts substantially negotiated in the country but formally signed abroad
  3. Taxable entity in the state where public contracts are signed (false presence of SO/PE)
    4. False presence of SO/PE, “negative” reading of art. 5 OECD
  5. Activity of preparatory or support nature - length and extension - all PEs restricted in this way now?
    6. Fragmentation of a single activity into a range of smaller pseudo-preparatory ones
      7. Splitting up of contracts - for building sites
      8. Anti domestic-abuse norms to be integrated

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## BRANCH

Definitions compared.  
The concept of “stable organisation”

Italy

**Art. 162 of Dpr 917/86 - Tuir**

Co. 1 – 3 Material positive stable organisation (construction site 3 months/OECD 12 months)

Co. 4 – 5 Negative stable organisation (only for warehousing, showcasing or delivery/only for preparatory or support activities)

Co. 6 Personal positive stable organisation (habituality and representation mandate in name and on behalf)

Co. 7 – 9 Personal negative stable organisation

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**LA BRANCH o SUCCURSALE Definizione comparata**

**Definitions compared.**

**The concept of “stable organisation”**

**UAE**

**CCL n. 2/2015**

**Art. 327** – “...apply to the foreign companies that conduct their activities in the State or their place of management is based in the State..”

**Art. 328** – personal responsibility “...prior to completion of the (license) ...the persons who conduct such activity shall be personally and jointly liable for such activity.”

**Art. 330 – co. 2** “...The office or branch of a foreign company shall be deemed as its domicile in respect of its activity in the State.” – co. 3 “decisions of Ministry ...management and closure of the branch or office ...”

**Art. 331** – “branches shall have an independent balance sheet and an independent profits and losses account and shall have an auditor registered...shall be provide...annually a copy of the balance sheet, the final accounts together with a report by the auditor..”

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### Setting up a Company in the UAE

#### Art. 9 - CCL n. 2/2015

- Joint Liability Company (similar to the Italian Società in nome collettivo)
- Simple Commandite Company (similar to the Italian Società in accomandita semplice)
- Public Joint Stock Company (similar to the Italian Società per Azioni pubblica)
- Private Joint Stock Company (similar to the Italian Società per Azioni privata)
- Limited Liability Company (similar to the Italian Società a responsabilità limitata)

#### Non art. 9

Civil work co.(freelancers)  
Joint Venture (contractual)

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This Law recognizes the following types of companies:

- (1) Companies Limited by Shares;
- (2) Limited Liability Companies; and
- (3) Recognised Companies.



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## SETTING UP A COMPANY IN THE FTZ COMPANIES LAW NO.2/2009 DIFC

### Art. 14 co. 3

- (3) A certificate of incorporation is conclusive evidence of the following matters:
- (a) the incorporation of the Company; and
  - (b) that the requirements of this Law have been complied with in respect of the registration of the Company.

**Ordinamento della Free Zone – DIFC – prevede principio della residenza basato sulla incorporazione: società è residente nel luogo di costituzione – luogo di sede legale**

# Internationalisation in the UAE

## L'internazionalizzazione tra due estremi...

EVASIONE FISCALE

ELUSIONE

LEGITTIMO RISPARMIO D'IMPOSTA



### RISCHI

ESTEROVESTIZIONE SOCIETA' - CENTRALITA' DEL PROBLEMA DELLA RESIDENZA DELLE SOCIETA' E DELLE PERSONE FISICHE  
TASSAZIONE PER TRASPARENZA – CFC  
VIOLAZIONE NORME ANTIRICLAGGIO  
VIOLAZIONE NORME AUTORICLAGGIO  
VIOLAZIONI NORME PENALI TRIBUTARIE  
SANZIONI MAGGIORI E RADDOPPIO TERMINI PER ATTIVITA' FINANZIARIE DETENUTE ESTERO E RELATIVI REDDITI NON DICHIARATI  
L'ABUSO DEL DIRITTO - L'ELUSIONE FISCALE

### GLI ELEMENTI COSTITUTIVI DELLA ELUSIONE - L'ART. 10BIS DELLA L.212/2000

- OPERAZIONI **PRIVE DI SOSTANZA ECONOMICA** E PRODUTTIVE ESCLUSIVAMENTE DI VANTAGGI FISCALI
- OPERAZ. CHE PRODUCONO **VANTAGGI FISCALI INDEBITI** IN CONTRASTO CON FINAL. NORME FISCALI O PRINC. ORDIN. TRIB.
  - OPERAZIONI PRIVE DI **VALIDE RAGIONI EXTRA-FISCALI, NON MARGINALI**
- RICHIESTA DI **CHIARIMENTI** ENTRO 60 GG. A CONTRIBUENTE PRIMA DI INIZIARE ATTIVITA' DI ACCERTAMENTO
  - ONERE DELLA PROVA DELLA CONDOTTA ELUSIVA IN CAPO AD AF**
  - RIMBORSO PER IMPOSTE EVENTUALMENTE PAGATE PER LE OPERAZIONI "SMONTATE"**
- LE OPERAZIONI ABUSIVE NON SONO PUNIBILI DALLE LEGGI PENALI-TRIBUTARIE - ORIENTAMENTO CASSAZIONE SPECIFICO

### ALCUNE NORME ANTIELUSIVE

**ART. 2 CO. 2BIS**  
RES. PF

**ART. 73 CO. 5BIS**  
RES. SOC.

**ART. 167**  
REGIME TRASPARENZA CFC



Ringraziamento da....

Dr Mauro Finiguerra

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