



ITALIA

LA BELLEZZA UNISCE LE PERSONE
BEAUTY CONNECTS PEOPLE
الجمال يجمع الناس

Partner of the Italy Pavilion at Dubai 2020 Expo

THE LAZIO REGION IN THE RUNUP TO EXPO2020DUBAI

“INFORMATION AND TRAINING 4.0” - DIGITAL MEETINGS CYCLE

Internationalisation in the UAE

The choice to go global

STRUCTURES TO MENAGE FOREIGN INVESTMENT

REP. OFFICE

BRANCH

SUBSIDIARY



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Permitted activities

Promotion, advertising, networking, collation of information, centralisation of administrative functions, management of company resources, market penetration assessment, investment opportunities assessment, brand circulation, contacts with local operators, preparation efforts aimed at local openings, etc.

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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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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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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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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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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ART. 5 – CCL n. 2/2015

Excludes applicability of companies set up in the FTZ

ART. 14 – CCL n. 2/2015

The text in Arabic always prevails and is the only one applicable in the State

ART. 21 – CCL n. 2/2015

Principle of incorporation in the Commercial Register as date of acquisition of legal personality

Art. 10 - CCL n. 2/2015

Co. I – “...JLC and SCC ...all the joint partners shall be UAE nationals ...any company established in the State shall have one or more UAE partners (national – ndr) holding at least 51% of the share capital of the company”

BUT

Federal Law n. 13 del 2011 – -There are three cases in which one can operate from FTZ in Mainland without a 51% Emirati stakeholder Civil Work Co./Llc/Branch with local agent

Federal Decree n. 19 del 2018 - option to operate through a 100% foreign stakeholder

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SETTING UP A COMPANY IN THE UAE

ART. 327 – CCL n. 2/2015

“...the provisions of this law, excluding the provisions concerning incorporation, shall apply to the foreign companies that conduct their activities in the State or their place of management is based in the State.”

Mixed principle

For Emirati companies - principle of incorporation (place of setup or positioning of registered address)

For foreign companies - principle of real site (administrative office broadened to include the place where activities are carried out)

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

Art. 9

9. Type of companies

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.

Regulation of Free Zones - DIFC - entails the principle of residency based on incorporation: the company is resident in place of incorporation - registered address

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FISCAL EVASION

ELUSION

LEGITIMATE TAX SAVING



RISKS

DUMMY COMPANIES - FOCUS ON THE ISSUE OF RESIDENCY OF COMPANIES AND INDIVIDUALS

TRANSPARENCY TAXATION - CFC

VIOLATION OF ANTI MONEY-LAUNDERING NORMS

VIOLATION OF SELF-LAUNDERING NORMS

VIOLATION OF CRIMINAL TRIBUTARY NORMS

STRONGER SANCTIONS AND DOUBLING OF TERMS FOR FINANCIAL ACTIVITIES HELD ABROAD AND RELATIVE NON-DECLARED INCOME

RIGHTS ABUSE - FISCAL ELUSION

THE CONSTITUENT ELEMENTS OF ELUSION - ART. 10BIS OF L.212/2000

- TRANSACTIONS WITH NO ECONOMIC SUBSTANCE AND ONLY PRODUCING FISCAL ADVANTAGES
- TRANSACTIONS PRODUCING UNDUE FISCAL ADVANTAGES IN CONTRAST WITH THE GOALS OF FISCAL NORMS OR PRINCIPLES OF THE TRIBUTARY LEGAL FRAMEWORK
 - TRANSACTIONS WITH NO VALID EXTRA-FISCAL REASONS, NOT MARGINAL
- REQUEST FOR CLARIFICATION WITHIN 60 DAYS TO THE TAXPAYER BEFORE INSPECTIONS ARE TRIGGERED
 - BURDEN OF PROOF OF ELUSIVE CONDUCT IS THE RESPONSIBILITY OF AF
 - REIMBURSEMENT FOR ANY PAID TAX AND FOR TRANSACTIONS ANALYSED
- ILLEGAL TRANSACTIONS ARE NOT PUNISHABLE BASED ON CRIMINAL-TRIBUTARY LAW - SPECIFIC ORIENTATION OF THE COURT OF CASSATION

SOME ANTI-ELUSION NORMS

ART. 2 CO. 2BIS
RES. PF

ART. 73 CO. 5BIS
RES. SOC.

ART. 167
Transparency regime CFC



Thank you...

Dr Mauro Finiguerra

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