

Marco Q. Rossi & Associati

INTERNATIONAL TAX & COMMERCIAL LAW FIRM

ITALY - NEW YORK

**BUSINESS OPPORTUNITIES
IN THE UNITED STATES:
LEGAL AND TAX BEST PRACTICES**

Round table CONFINDUSTRIA Udine
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Marco Q. Rossi & Associati

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ITALY - NEW YORK

Marco Q. Rossi & Associati

New York

Genoa, Milan

Beverly Hills

Boutique U.S.-Italy
international law firm
specialized in
international business law
and tax advice for
international clients in
Italy and the United
States

Marco Q. Rossi, Managing Partner

Extensive expertise in providing international and U.S. legal and tax advice to Italian companies establishing or operating a business in the U.S. and to Italian personnel assigned to Italian-owned U.S. subsidiaries

- Graduate Law Degree – *University of Genoa, School of Law* (Genoa, Italy)
- Post graduate International Tax Law Degree – *New York University School of Law* (New York, NY)
- Founder and Principal at Marco Q. Rossi & Associati in New York
- Member of International Fiscal Association, American Bar Association and New York State Bar association (International Law and Tax Section), New York City Bar Association (Business Taxation Committee)
- Provides U.S. and Italian international legal and tax planning and works and outside general counsel services to Italian firms doing business in the US.
- Lives in Manhattan, NY and New Canaan, CT with wife (Antonella) and two children (Michael and Helen)
- Favorite books: *Capitalism and Freedom* (Milton Freedman), *Steve Jobs* (Biography, Walter Isaacson)
- Sport hero: Michael Phelps

Sale of Goods into the United States

*Italian companies
exporting goods
into the United
States
through
U.S. Distributors
and U.S. Sales
Agents*

That is easy, right?

Legal and Tax Considerations

First: Mind Your Contracts!

- Do you have the right set of reps and warranties?
- Do you have the right termination clause?
- Do you have the right confidentiality clause/agreement?
- Do you have the right intellectual property clause/agreement?
- Do you have the right non interference clause?
- Do you have the right non competition clause?
- Do you have limitation of liability clause?
- Do you have adequate breach of contract clause?
- Do you have the right choice of jurisdiction clause?
- Distribution Contracts and Sale Representative Agreements are very important.
- There is no one size fits all.

Legal and Tax Considerations

Second: Protect Your Business

- Are you exposed to U.S. jurisdictional power of U.S. courts (i.e.: can you be sued in the United States)?
- Do you have adequate terms and conditions of sale with limitations of liability clauses?
- Do you have adequate commercial liability insurance?
- Is your intellectual property registered/patented in the U.S.?

Legal and Tax Considerations

***Third: Do Not Mess
With U.S. (and Italian)
Taxes***

- Are you exposed to U.S. taxation?
 - Are you “engaged in a trade or business” (ETB) in the U.S.?
 - Do you have “effectively connected income” (ECI)?
- What if you have inventory in the U.S.?
- What if you have/send personnel in the U.S. (to provide technical and assistance service)? Just for a few days? Or regularly during the year?
- Did your U.S. client ask a W8 form? What do you do?
- Are you protected under the US-Italy Tax Treaty?
- If the agent is independent? If the agent is dependent?
- Is the distributor really a distributor?
- You think you do not have a PE in the U.S. and you are exempt from tax under article 5 of the Treaty. Is that enough? Or do you want to file a “protective return” with attached form 8832?

Legal and Tax Considerations

Fourth: Do Not Mess With U.S. State Income Taxes

- Are you exposed to State income taxation in the U.S.?
 - Are you “doing business” in a State?
 - Do you have any taxable income that can or should be “apportioned” to that State? “
- You just said you do not have a PE, so no taxation under the Tax Treaty.
- No state income tax as well?
- Does the Tax Treaty apply to the States?
- State income tax but no federal tax?

Legal and Tax Considerations

Fifth: Do Not Mess With U.S. Sales Taxes

- Do you have any nexus with a State for the purpose of state sales taxes?
- When are sales taxes due? Do you sell to end users?
- What are sales tax rates?
- Are there also other local taxes?

Legal and Tax Considerations

Sixth: Do your homework, clean your own house, plan for the future

- You think you may be exposed to U.S. taxes (federal, state, income taxes, sales taxes), what do you do?
- Register and open a “branch” in the U.S.
- Prepare account records for your U.S. “branch”
- File U.S. (federal and state) income tax returns, pay U.S. taxes on your U.S. taxable income
- Claim a foreign tax credit in Italy
- On an ongoing basis, set up a subsidiary?

Services in the US

*Italian companies
perform services
in the US
through their
own personnel
(installation,
assembly,
technical
assistance)*

That probably is not so
easy ...

Services in the US

Almost certain exposure to US taxes both for company and its personnel

- Assess the exposure to US tax liability (sporadic vs. regular and continues, number of projects/contract etc.)
- File federal protective returns?
- File full returns and and pay federal taxes?
- File and pay state state taxes?
- Handle tax exposure for Italian personnel working in the US
- By the way, what about the working VISA for your personnel?
- Same legal considerations as before (prepare good contracts, protect business, take out commercial insurances etc.)

U.S. Subsidiary

*Italian company
sets up a subsidiary
in the US (for
marketing and sale,
services, sometimes
assembly,
production and
sale)*

Now, that is
interesting!

Legal Considerations

*Plan in advance
legal type and
structure, operation
and management,
tax implications in
U.S. and Italy*

- Do you form an LLC?
- A corporation?
- A partnership?
- What are the differences?
- Where do you incorporate/
organize your entity? Delaware?
Why Delaware?
- How are the different types of
entities taxed?
- And their owners/shareholders?
- How are the different entities
managed and operated?
- What accounting and tax filing
requirements apply?

Organizational Set Up

Check list

- Organizational/Legal (set up legal name, obtain federal ID number, register the entity, obtain EIN, open bank account, establish board of directors, hire corporate legal counsel and accounting firm, obtain licenses, set up structure for reporting financial information)
- Taxes-Income/Sales/Use/Property (register in each state, different registration for income vs. sales taxes, property tax filings, electronic filings, annual filing to remain in good standing)
- Personnel/Payroll (set up payroll services)
- Employee Benefits (set up 401K with or without company match, health insurance plans, etc.)
- Business Insurances (general liability, workers comp., D&O, commercial automobile, umbrella policy)
- Financial Reporting/Systems
- Human Resources (PTO, vacation, sick, personal, employee handbook)

Contracts

*Set up the right set
of contract for your
U.S. subsidiary*

- Inter company agreements with Italian parent and affiliates (intra group distribution agreement, services agreement, licensing agreement, loan agreement)
- Distributions contracts with U.S. distributors
- Sales agency agreements with U.S. sales agents
- Services agreements for U.S. warehouse and logistics
- General terms and conditions of sale

International Tax Considerations

Set up and document the right transfer-pricing policy, manage flows of money between U.S. Sub and Italian parent, Plan and manage U.S. state and local taxes

- Transfer pricing
- Taxation of intra group payments (dividends, interest, royalties, compensation for services)
- State income taxation
- State and local taxes
- Tax returns filings
- International tax reporting (in Italy and the U.S.)

Tax Considerations for Assigned Personnel

*Manage taxes for
Italian personnel
assigned to U.S.
Sub*

- Temporary transfer
- International secondment,
- New employment with U.S. Sub
- Working Visa issues
- U.S. and Italian taxation for U.S. personnel
- Change of tax residency for Italian personnel
- Tax liabilities for Italian parent and U.S. sub

U.S. Corporate Income Taxes

Federal and state corporate income taxes

U.S. nominal corporate income tax combined rates: #1 in the world

- Federal corporate tax rate: 34%
- State income tax rates: New York 7.1%, New Jersey 9%, Massachusetts 8.25%, California 8.84%, Pennsylvania 9.99%
- State corporate income taxes different from federal corporate tax
- Nexus
- Apportionment
- States apportionment factor formula: sales, payroll, property

Individual Income Taxes

Federal income tax

State income taxes

- Federal income tax rates and brackets:

Married	Single
10% Bracket \$0 – \$17,400	\$0 – \$8,700
15% Bracket \$17,400 – \$70,700	\$8,700 – \$35,350
25% Bracket \$70,700 – \$142,700	\$35,350 – \$85,650
28% Bracket \$142,700 – \$217,450	\$85,650 – \$178,650
33% Bracket \$217,450 – \$388,350	\$178,650 – \$388,350
35% Bracket Over \$388,350	Over \$388,350

- Very generous deductions and exemptions
- State individual income tax rates: NY: 4-8.88% (plus NYC tax); NJ: 1.4-8.97%; CT: 3-6.7%; CA: 1-9.3%; PA: 3.7% (flat rate);
- No state individual income taxes in Florida, Nevada, South Dakota, Texas, Washington

Final Thoughts

*The hardest thing to understand in the
world is the income tax*

Albert Einstein

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