

Operations, contracts and compliance

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The operational set-up determines whether the company has the substance that the tax analysis presupposes. The checklist below, which follows the order of this chapter, summarizes the minimum.

For the practitioner. Establishing a trading company in Lugano: - Choose the form (SA, Sagl, branch) and the capital currency; adopt organizational regulations with trading limits and reporting lines (Art. 716a and 716b CO). - Appoint a board that meets in Switzerland and receives regular position, risk and liquidity reports; avoid nominee directors without information. - Obtain a tax ruling on functions, remuneration and, where relevant, the immigration step-up; check the communal multiplier of the chosen commune. - Model the GloBE effective tax rate if group revenue reaches EUR 750 million. - Analyse Italian CFC, residence (Art. 73 para. 3 and 5-bis TUIR) and permanent establishment risks; document where strategic and day-to-day decisions are taken. - Prepare transfer pricing documentation following OECD TPG paras 2.18–2.22, with pricing dates recorded at contract conclusion. - Standardize contract terms: governing law with or without the CISG, Incoterms 2020 or standard forms, inspection and notice clauses, sanctions clauses, demurrage alignment. - Adopt a policy on letters of indemnity and register them as contingent liabilities. - Document hedges under ISDA or futures account agreements and check FinMIA status. - Draft arbitration clauses (Swiss Rules with seat in Lugano, Zurich or Geneva; GAFTA/FOSFA in London where applicable). - Assess due diligence duties under Art. 964j–964l CO and the DDTrO and prepare supply chain documentation for banks and EU customers. - Establish sanctions, export control and anti-money laundering procedures (Part G).

1 Reviewing an existing company

Many trading companies in Lugano were established before 2020 under regimes that no longer exist. A review of such a company should begin with its tax history. It asks whether the company was a mixed company, whether it used the special rate on hidden reserves and whether its effective rate has changed since the reduction of 2025. It should then examine the governance, in particular the composition and practice of the board, the organizational regulations and the reporting on positions and risks. The Italian position deserves particular attention when the owners or managers live in Italy. The reform of Article 73 TUIR in 2023 changed the criteria, so that an arrangement defensible under the old rules may fail under the new ones.¹

The contractual review should check whether the standard terms still reflect current law. Points to examine are Incoterms 2020, the exclusion or application of the CISG, sanctions clauses adapted to the measures since 2022 and arbitration clauses that reflect the revised Swiss and English arbitration laws. The compliance review should cover due diligence and supply chain documentation, sanctions screening and the bank relationships. A company that passes these tests can present itself to banks, counterparties and tax authorities as a trading house with real activity in Lugano, which is the precondition for its business in the decade ahead.

2 Notes

1. TUIR, Art. 73 para. 3 as amended by Legislative Decree No. 209 of 2023, Brocardi.it (above). ↩

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