



PERMANENT ESTABLISHMENT IN THAILAND: BRANCH OR SUBSIDIARY?

DEFINITION OF A PERMANENT ESTABLISHMENT

PERMANENT ESTABLISHMENT: In Thailand, the term PERMANENT ESTABLISHMENT (PE) is usually used for consideration of foreign company domiciled in those 60 countries which have double taxation agreement with the Thai government, to ensure whether their business operations is subject to be PE risk or not.

In most DTA agreements the term means a fixed place of business through which the business of an enterprise is wholly or partly carried on. This includes a place of management, a branch, an office, a factory, a workshop, a warehouse - in relation to a person performing storage facilities for others, and a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources. The term also encompasses sites of construction, assembly or installation projects or supervisory activities in connection therewith or an installation or drilling rig or ship used for the exploration or exploitation of natural resources, furnishing of services and consultant services for a certain period of time which varies in each participating countries. Overall, this PE term covers any foreigner having its assets, agent, and activities for its operation in Thailand.

DEFINITION AND MAIN DIFFERENCES BETWEEN A BRANCH AND A SUBSIDIARY

BRANCH: A branch represents a 100% foreign owned entity by overseas Head Office which would like to conduct its business activities in Thailand, such as a contract project or trading office, usually being allowed to operate for a period of five years, unless a shorter period is indicated in the application as a result of a contract to be performed in Thailand.

Before commencement of activity, it is required to apply for a Commercial Registration Certificate and Alien Business License (if any) with the Ministry of Commerce. The time for this process is about 6 months.

SUBSIDIARY: A subsidiary is a registered limited company under the Civil and Commercial Code of Thailand (private or public) which is wholly owned or being influenced by a parent company in aboard. Being a private limited company in Thailand needs at least 3 shareholders and a public company needs at least 15 shareholders. It is also needed to apply for an Alien Business License if its business activity falls some categories under FBA (Foreign Business Acts). In being a limited company, this takes a shorter period of time for registration than a branch office.

Main Differences Between a Branch and a Subsidiary:

1. Registration process: A subsidiary needs at least 3 shareholders, but none are required for a branch. A subsidiary takes only a one month registration process, whereas a branch may take about 3-6 months for registration depending on the activity operated.

Both of them must apply for an Alien Business License if its business activity falls within some categories under FBA (Foreign Business Acts), as well as applying for a Taxpayer Identification Card and Value Added Tax Registration with the Revenue Department.

2. Operational period: A subsidiary is commonly used for those who desire a more permanent business in Thailand than a branch.
3. Secretarial process: For annual statutory filing, a subsidiary needs to prepare minutes of ordinary shareholder



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meetings for approval of the annual audited financial statements. This is not required for a branch.

4. Promotional privilege: The Investment Promotion Acts indicate that only Thai-registered companies will be granted promotional privileges by the Board of Investment.
5. Tax Investigation process: Mostly, tax officers will concentrate on sharing expenses between Head Office and worldwide branches, which is a normal concept for multi-national entities.
6. Winding up process: A subsidiary must apply for liquidation process with the Ministry of Commerce, while a branch can liquidate when its license period has expired and no renewal for such certificate.

TAX AND ACCOUNTING OBLIGATIONS

In Thailand, both subsidiary and branch will use the same tax and accounting laws and regulations, such as Revenue Code, Accounting Acts, Civil and Commercial Code, and Labor Law.

REGISTRATION FORMALITIES

Most business activities operated in the form of branch or subsidiary fall within the scope of one or more laws or regulations which require special regulation or license (e.g., value added tax registration, taxpayer identification card, Commercial Registration Certificate, alien business license, etc.) before the commencement of activities.

Foreign business establishments must therefore follow generally applicable procedures. If the intended activity falls under the Foreign Business Acts (FBA), the entity must apply for an alien business license prior to performing any of the intended activities.

BRANCH: A condition for approval of a Foreign Business License for a branch of a foreign corporation is that minimum capital amounting to no less than five million baht be brought into Thailand within four years of start-up. The branch may be allowed to operate for a period of five years, unless a shorter period is applied for. Extension of the original duration of the license to operate may be granted, provided that the working capital to be brought into Thailand requirement is met.

SUBSIDIARY: A foreign-owned Thai company should have the minimum capital used for the business operation in Thailand at least THB 2 million. If the business requires an alien business license (ABL) under the FBA, the company must have minimum capital of not less than 25 percent of the annual average of the first three years' estimated expenditures or THB 3 million, whichever is higher. One of the mandatory conditions under the ABL is that the total debt financing used in the business shall not exceed seven times the portion of the capital owned by the shareholders or owners of the business.

STANDARD LEGAL OBLIGATIONS AND FORMALITIES FOR A BRANCH

A branch office of a foreign company is required to be registered with the Ministry of Commerce in Thailand. The registration of a branch is more costly and time consuming than registering a Thai company limited.

The main drawback with a registered branch in Thailand is that the branch is considered as the same entity as its foreign head office, which subjects the foreign head office to legal liability for actions of the branch in Thailand.

The main attractive benefit of registering a branch in Thailand is the appropriate allowance of expense allocations to be made by the foreign head office to the Thailand branch.