



PERMANENT ESTABLISHMENT IN NIGERIA: BRANCH OR SUBSIDIARY?

DEFINITION OF A PERMANENT ESTABLISHMENT

A **permanent establishment** is defined as a fixed place of business through which the business of an enterprise is wholly or partly carried on. A permanent establishment includes a sales outlet and the operation of a dependent agent.

DEFINITION AND MAIN DIFFERENCES BETWEEN A BRANCH AND A SUBSIDIARY

A **subsidiary** of a company is one whose board of directors is controlled by another company (holding company) which owns more than half in the nominal value of its (subsidiary) equity share capital.

A **branch** of a company is a fixed base or the physical location where a non-resident company operates and derives business profit from Nigeria.

TAX AND ACCOUNTING OBLIGATIONS

A subsidiary or branch of a foreign company in Nigeria is expected to prepare their Financial Statements in accordance to International Financial Reporting Standards for filing of returns in Nigeria.

Under the Nigerian tax provision, a subsidiary as well as a branch of a foreign company in Nigeria is treated as a full taxpayer in Nigeria and the income derived by it in Nigeria will be fully charged to tax. Any business through related parties (holding and subsidiary company), the profit chargeable to tax is determined on arm's length principle by the tax authority. Thus the subsidiary will be required to file annual transfer pricing returns. The exceptions to branch rule or the conditions under which a branch will not be subjected to tax are:

- If the branch is used solely for storage or display of goods or merchandise
- If the branch is used solely for the collection of information

Entities are expected to file annual company income tax returns, monthly VAT, monthly WHT, and monthly PIT returns.

REGISTRATION FORMALITIES

1. Application is first made to the Corporate Affairs Commission for the approval of the proposed name for the Company.
2. Memorandum and Articles of Association are prepared and signed by the subscribers.
3. Where the majority interest in the company will be owned by foreigners, the share capital of the company must not be less than ten (10) million Naira. This has to be registered as imported capital with the Nigeria Investment Promotion Council.
4. An application must be made to the Nigerian Immigration Service for a Business Permit, Expatriate Quota and Alien Registration Card.
5. The company must be registered with the Financial Reporting Council of Nigeria.



6. The company must be registered with the Federal Inland Revenue Service for Corporate, Education, VAT and other taxes payable to the Federal Government.
7. The company must be registered with the State Internal Revenue Service for employees' Payroll (PAYE) and state withholding taxes.

STANDARD LEGAL OBLIGATIONS AND FORMALITIES FOR A BRANCH

Where a Branch is used solely for storage or display of goods or merchandise or for collection of information, it is only required to register with the Federal Inland Revenue Service who will monitor Branch activities to ensure that it does not operate beyond this framework. Where it operates outside this framework, the tax authorities will deem it as a non-resident trading entity and tax it accordingly.

All registered company obligations apply except incorporation with the Corporate Affairs Commission.