



PERMANENT ESTABLISHMENT IN ITALY: BRANCH OR SUBSIDIARY?

DEFINITION OF A PERMANENT ESTABLISHMENT

The definition of a PE is included in the local tax legislation, art. 162 of DPR 917/1986, our Tax Law. It results from the coordination with our local tax legislation of art. 5 of the OECD model, hence the result is basically a translation of the guidelines into Italian.

The Tax Law describes a PE as a fixed business seat, by means of which the non-resident company performs its activities, in part or in whole, on Italian soil. It includes:

- a) a place of management
- b) a branch
- c) an office
- d) a factory
- e) a workshop
- f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

DEFINITION AND MAIN DIFFERENCES BETWEEN A BRANCH AND A SUBSIDIARY

A branch ("succursale" in French, and "filiale" in Italian) is a type of permanent establishment of a foreign entity that does not have a corporate life of its own, according to the local legislation. It is subject to the legal happenings of the mother company and does not have a proper share capital.

A subsidiary ("filiale" in French and "società a capitale proprio" in Italian) is a local legal entity that is completely independent from its HQ, has a capital of its own and is not per se subject to the results of its mother company.

In terms of local operations allowed, no restrictions of activities apply to either entity type and the establishment type is therefore generally a choice of the entrepreneur.

Profit distribution or loss coverage, if any, also works in relation to the type of entity, whereby a branch shares its results with its mother company and a subsidiary can choose whether or not to distribute dividends.

TAX AND ACCOUNTING OBLIGATIONS

Both branches and subsidiaries have the same tax and accounting obligations, that can be summarized as follows:

1. General ledger
2. Journal ledger
3. Inventory ledger ("faux amis": not to be read as "stock", but as "details of the financial statements")
4. Book of assets
5. Withholding tax statements
6. Personnel-related ledgers
7. Local / regional tax returns and payments
8. National tax returns and payments



The differences relating to compliance obligations are mainly in the area of the requirements arising from the application of civil law.

REGISTRATION FORMALITIES

In order to establish a branch, these steps need to be taken:

1. Prepare and sign a resolution of the establishing entity's management, resolving the start of the business branch in Italy, that states the local address, the name of the legal representative for the local business and the start date;
2. Obtain a fiscal code for all the subjects needing to interact with the Italian authorities and banks;
3. Obtain an Italian sworn-translated copy of the memorandum and articles of incorporation of the foreign entity, and of a recent Chamber of Commerce excerpt (i.e.: K-bis certificate). In some cases - depending on the country of origin - there may be the need for an apostille on the above documents (not needed in the case of France);
4. Sign anti-money laundering statements, identifying the businesses' beneficial owner(s);
5. File the above documentation / information with the authorities, within the local compliance terms.

STANDARD LEGAL OBLIGATIONS AND FORMALITIES FOR A BRANCH

Company Law is generally applicable to branches: the same legal obligations and formalities that subsidiaries have to deal with - with the exception of the filing of own financial statements - apply to branches, in full.

A branch is, in fact, not obliged to prepare nor file a set of own financial statements; however chambers of commerce do require branches to file the sworn-translated mother companies' financial statements, even if there is no statutory deadline.