



PERMANENT ESTABLISHMENT IN UNITED ARAB EMIRATES: BRANCH OR SUBSIDIARY?

DEFINITION OF A PERMANENT ESTABLISHMENT

A permanent establishment is when an investor registers a company in the territory of the United Arab Emirates. It may be performed with a partner - resident of the country in case of onshore registration or with full foreign ownership by registering a company in free trade zones.

DEFINITION AND MAIN DIFFERENCES BETWEEN A BRANCH AND A SUBSIDIARY

Both types are affiliates of a parent company, carry its name and remain wholly owned by the parent company without them having their own legal entity. However, both types of affiliates require a service agent, who has to be a national of the UAE, but has no decision-making rights or any other rights whatsoever. The role of the service agent is to assist in obtaining licenses, visas, labour cards, etc.

The main difference between both types of affiliates is that a representative office – as opposed to a branch office – is not allowed to perform any commercial activities.

TAX AND ACCOUNTING OBLIGATIONS

Tax Obligation

There is no federal income tax in the UAE for general businesses. However, the Dubai Income Tax Ordinance 1969 states that any organization conducting business or trade, including rendering of any services in Dubai, will be subject to a certain tax scale. For instance, for income range Dh.1,000,000 to Dh.2,000,000 (10% rate applicable); Income range Dh.3,000,000 to Dh.4,000,000 (30% rate applicable); Income in the range Dh.4,000,000 to Dh.5,000,000 (40% rate applicable) and for income above Dh.5,000,000 (50% rate applicable).

Legislation is there for corporate tax in each emirate: Abu Dhabi, Dubai and Sharjah (not on federal level). But in practice corporate tax is only for Oil & Gas companies and Branch Offices of foreign banks.

In Abu Dhabi emirate, no tax is levied on corporations other than on Branches of Foreign banks (20% of their taxable income); Oil & Gas Companies (as per respective agreements); and hotel & entertainment services.

Accounting Obligations

Under Federal Law No. 13 of 1988, all commercial companies are required to keep financial records, while Federal Law No. 18 of 1993 specifies that a business enterprise must keep such commercial books as the nature and scope of its business requires in a manner that accurately reflects its financial position, including assets and liabilities.

Also, if the Company setup is in Mainland (LLC), the businesses must have their accounts audited annually. If it's registered in a Free Zone, it will depend on that Free Zone if they will require it or not. For example:

1. Banks (local banks and branches of foreign banks);
2. Insurance companies and agencies;
3. Public and private shareholding companies;
4. Limited liability companies;



5. Branches of foreign companies;
6. Partnerships limited by shares; and
7. Other companies whose articles require annual audits.

REGISTRATION FORMALITIES

A Trade License must be issued to the Investor from a government authority of the relevant Emirate.

STANDARD LEGAL OBLIGATIONS AND FORMALITIES FOR A BRANCH

The Commercial Companies Law stipulates that they should be 100 percent foreign owned, provided, and a local agent appointed. Only UAE nationals or companies owned by UAE nationals should be appointed as local agents. The UAE service agent will render the necessary services for obtaining licenses, visas and other permits, and run the business of the office without assuming any financial obligation. Also, a branch office should provide the Ministry of Economy with the following information and documentation for its formality:

1. Articles of association of the company;
2. Certificate of incorporation;
3. A resolution of the board of directors of the company to:
 - a) set up the office and practice activities in the UAE,
 - b) power of attorney authorizing the representative to establish an office and submit the required applications to the local government authorities;
4. The last two audited balance sheets of the foreign company together with the auditor's report, or any other documents which proves the sound financial position of the company;
5. A copy of the national agent/sponsor agreement duly authenticated;
6. Photocopies of the passport of the national agent/sponsor; and
7. A valid lease agreement of the company's office premises.

Note: All the above-mentioned documents should be notarized and authenticated by the concerned governmental authorities.