

PERMANENT ESTABLISHMENT IN GREECE: BRANCH OR SUBSIDIARY?

DEFINITION OF A PERMANENT ESTABLISHMENT

The term “**permanent establishment**” includes especially:

- 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

Specifically, in order for a construction site in Greece to constitute a permanent establishment, a time period of at least three months is required, instead of the time period of twelve months provided in the OECD Model Convention on the Double Tax Treaties for the Avoidance of Double Taxation.

The explicit provision that shops, agencies, annexes and warehouses constitute a permanent establishment ceases to apply.

Moreover, the provision that explicitly provided that facilities of enterprises carrying out the manufacturing of raw materials or the processing of agricultural products constitute a permanent establishment is abolished.

The keeping a stock of goods from which orders are executed on behalf of a foreign enterprise does no longer constitute a permanent establishment, and conversely, is included in the cases that do not constitute a permanent establishment.

DEFINITION AND MAIN DIFFERENCES BETWEEN A BRANCH AND A SUBSIDIARY

A **subsidiary** is an entity controlled directly or indirectly by a parent company. It is legally autonomous and this distinguishes it from a branch.

A **branch** is an office or establishment through which a foreign company engages in business in Greece and it is not an entity which is independent and separate from its parent. From a legal and organisational aspect it is subject to the laws that govern the parent company.

Apart from the above, the main differences between a branch and a subsidiary can be summarised as follows:

1. A branch has no minimum capital requirements as opposed to a subsidiary.
2. A branch has a representative acting in its name and on behalf of the parent company. A subsidiary is managed by a Board of Directors elected by the Shareholders’ meeting.
3. The liability of the shareholders of a subsidiary formed as an A.E. or E.P.E. for the debts of the subsidiary is limited to the amount of their capital contributions, while in the case of a branch there is no limit to the parent company’s liability.

TAX AND ACCOUNTING OBLIGATIONS

As from 1 January, 2015, all entities, irrespective of their form, must keep books according to the Greek Accounting Standards and all transactions must be recorded within a calendar month regarding entities that are obliged to compile a balance sheet and within 3 calendar months for those entities that do not have this obligation.

A Greek branch of a foreign company is liable to tax as a permanent establishment. Standard corporate tax rates apply. An advance tax is also payable based on the current year's tax, which is set off against the tax of the following year.

Greek VAT is independent of the legal form of a business. The main VAT rate is 23% for all goods not belonging to any special category. For Category 1 goods the VAT is 13%, and for Category 2 goods 6.0%. Some items are exempt from VAT, such as medical services and education. On some islands there is a VAT reduction for Category 1 goods to 16%.

REGISTRATION FORMALITIES

The consent of the Local Chamber of Commerce is required to form a branch of a foreign company in Greece. In the case of a branch of a non-EU company, the foreign company's share capital must conform to the requirements imposed on Greek companies.

An application to form a branch must include, amongst others:

- (i) Articles of association of the parent company.
- (ii) A certificate with the names of directors or officials with power to bind the parent company.
- (iii) The appointment by Notary deed or Consular legalisation of a legal representative in Greece with the power to act in its name.
- (iv) A certification regarding the amount of the paid in capital and the year of formation provided by the parent company's local chamber of commerce or any other competent authority.

STANDARD LEGAL OBLIGATIONS AND FORMALITIES FOR A BRANCH

A branch has the same obligations as any other similar local entity established in Greece regarding bookkeeping, the compilation and submission of tax and other returns, income tax and VAT.

More specifically, a branch is required to file annual accounts with the Registrar of Companies, together with a statement reporting local operations. A branch must maintain the same accounting records as a company, which must be written up within a specified number of days, but there is no audit requirement. It may also have the same financial year end as that of the parent company.