

PERMANENT ESTABLISHMENT IN SCANDINAVIA: BRANCH OR SUBSIDIARY?

DEFINITION OF A PERMANENT ESTABLISHMENT

In Sweden, permanent establishment is defined in the Income Tax Act. There is a general definition, and also rules for when a permanent establishment may be created by a person acting on behalf of the enterprise.

General definition

Foreign enterprises have a permanent establishment in Sweden if they carry on business wholly or partly from a fixed place of business in Sweden.

A foreign enterprise may have a permanent establishment in Sweden even when there is no fixed place here but business operations in Sweden are carried on through a dependent agent.

In Denmark and Norway the Tax Acts does not contain a specific definition of a permanent establishment. Decisive for a non-resident entity's tax liability in Norway/Denmark is whether the non-resident carries out or participate in an enterprise in the country

Wealth and income derived from these enterprises is taxable in the Scandinavian countries, if the enterprise is operated or managed from Scandinavia. Normally the threshold for the non-resident entity being considered tax liable to Scandinavia under Scandinavian tax law is lower than the threshold for being considered as a permanent establishment under a relevant tax treaty.

DEFINITION AND MAIN DIFFERENCES BETWEEN A BRANCH AND A SUBSIDIARY

The main difference between a subsidiary and a branch is that a branch is not a separate legal entity. Thus, the parent company is the right addressee for the branch's rights and obligations. Unlike a Scandinavian subsidiary, proceedings against a branch must be made towards the parent company.

A Scandinavian subsidiary is liable to income tax on worldwide profits unless the income being exempt under a relevant tax treaty. A branch of a non-resident company only pays corporate tax on profits derived from its activity in Scandinavia. The current tax rate is 27% in Norway and 22 % in Sweden and Denmark. Any double taxation of the parent company following the branch's tax liability to Scandinavia might be resolved in a relevant double taxation treaty.

The remittance of profits from a branch to the parent company is not subject to Scandinavian tax. The distribution of dividends from a Scandinavian limited liability company is in general subject to withholding tax. However, if the shareholder is a company resident inside the EEA, the dividends will normally be exempt from Scandinavian tax.

Unlike a subsidiary, a branch is not required to have its own board of directors, but must have a managing director/contact person. In Norway a branch also has to use a value added tax representative.

TAX AND ACCOUNTING OBLIGATIONS

Unless the branch is entitled to use a divergent financial year, the income year is the same as the calendar year. The branch must file its income return within 5 months (6 months in Sweden and Denmark) the year following the relevant income year. The taxable income of a branch is normally computed in the same way as of a resident company. The arm's-length principles apply for intragroup transactions.

The branch must keep separate accounting records for its operations in Scandinavia. The books must be kept in Scandinavia unless an exception is granted. Branches exceeding a certain net turnover (TEUR 320-600) are obligated to have statutory audit of its financial statements.

Both the financial statements for the branch and the financial statements of the parent company must be submitted to the Company House.

REGISTRATION FORMALITIES

A branch must be registered to the Company House in the Scandinavian country.

STANDARD LEGAL OBLIGATIONS AND FORMALITIES FOR A BRANCH

A branch must describe itself on its letterhead and in other business documents as a branch of a foreign company. The Business Registration Number must also be stated.