



PERMANENT ESTABLISHMENT IN POLAND: BRANCH OR SUBSIDIARY?

DEFINITION OF A PERMANENT ESTABLISHMENT

According to Act of corporate income tax in Poland (CIT), the foreign establishment (in Polish "Zakład") shall mean:

- a) a permanent place of business through which the subject whose seat or management office is on the territory of one state pursues its activities, in whole or in part, within the territory of another state, in particular a branch, agency, office, factory, workshop or place of extraction of natural resources;
- b) a construction site, construction, assembly or installation works carried on within the territory of one state by the subject whose seat or management office is on the territory of another state;
 - unless a double taxation treaty (DDT) to which Poland is party provides otherwise. For example, for the purposes of the DTT Poland/Italy, the term "permanent establishment" means a fixed place of business in which business of the enterprise is wholly or partly carried out.

Based on the Commentary to OECD Model Tax Convention from 2000, planning and supervising activity does not result in the permanent establishment, if carried out by another enterprise as building contractor.

DEFINITION AND MAIN DIFFERENCES BETWEEN A BRANCH AND A SUBSIDIARY

In Poland we operate with the definition of branch. According to the Act on Freedom of Economic Activities, a branch (Oddział) is a organizationally distinct and independent part of the business, pursued by the entrepreneur outside its registered office (or principal place of business).

Foreign entrepreneurs may operate in Poland through a branch. However, entrepreneurs from outside the European Economic Area may establish branches in Poland on a reciprocity basis. A foreign entrepreneur establishing a branch may perform business operations only within the scope of operations of such foreign entrepreneur.

Foreign entrepreneurs may establish representative offices having seats in the territory of Poland. The scope of operation of the representative office may cover only advertising and promotion of the foreign entrepreneur. Therefore, representative offices do not constitute the so called permanent establishment within the meaning of the international tax law and in principle do not pay income tax in Poland.

TAX AND ACCOUNTING OBLIGATIONS

Branches of foreign persons operating in Poland constitute a permanent establishment of a foreign entrepreneur within the meaning of tax regulations. Profits attributable to the operations of a permanent establishment are taxed in Poland.

A permanent establishment of a legal person will pay 19% corporate income tax on income taxable in Poland. A natural person establishing a branch in Poland will pay income tax in accordance with the tax scale (18% and 32%) or a flat rate tax in the amount of 19% of income if he/she notifies the intention to use this form of taxation to the tax office in a timely manner.

In most cases, branches are obligated to pay the Polish goods and services tax (VAT) and collect as withholding agents personal income tax and social security contributions if they employ personnel in Poland.



REGISTRATION FORMALITIES

Branches of foreign entities are entered into the register of entrepreneurs (KRS).

Except for certain financial institutions, representative offices of foreign entities are entered into the register of representative offices of foreign entrepreneurs, kept by the minister competent for economy.

STANDARD LEGAL OBLIGATIONS AND FORMALITIES FOR A BRANCH

The law requires the foreign entrepreneur to appoint his representative in Poland.