



PERMANENT ESTABLISHMENT IN AUSTRIA: BRANCH OR SUBSIDIARY?

DEFINITION OF A PERMANENT ESTABLISHMENT

Simply put: a provision of service involves a service, which is temporarily provided in another state while in the case of a permanent establishment, the business itself becomes part of the 'foreign' economy. The latter usually involves a fixed infrastructure. This difference is not solely defined by time – a provision of service could last several years, for example in construction – and can therefore only be determined by looking at the double taxation agreements and each specific case individually. The temporary character of a service is also evaluated considering its frequency, regularity and continuity.

DEFINITION AND MAIN DIFFERENCES BETWEEN A BRANCH AND A SUBSIDIARY

From a legal perspective, a branch office means that the foreign entrepreneur or business entity is itself the direct holder of all rights and obligations arising out of all transactions of its Austrian branch office. Thus, all business transactions by the Austrian branch office will entail personal liability on the part of that entrepreneur or business entity.

If the foreign entrepreneur or business entity wishes to limit personal liability, for business activities in Austria a subsidiary should be formed, e.g. in the legal form of a GmbH, AG.

Austria is also popular as a location for holding companies. In practice, holding companies are usually incorporated entities (i.e. a GmbH, AG, SE) or in certain circumstances private foundations: even though private foundations cannot issue shares, there are legal constellations that may nevertheless make it advantageous to form a private foundation in Austria.

TAX AND ACCOUNTING OBLIGATIONS

Business entities in Austria are taxed based on the legal form in which the business is operated.

Profits of incorporated entities (GmbHs, AGs, SEs) are subject to a 25% rate of corporation tax (flat tax) in Austria. Losses attract a minimum tax, which is € 1,750 in the case of a GmbH and € 3,500 in the case of an AG. The minimum tax is credited against corporation tax in subsequent years.

Distributions of profits received by an Austrian incorporated entity from equity interests held in domestic or foreign "corporations" are, as a rule (exemptions for tax evasion), exempt from corporation tax at the level of the recipient. In the case of equity interests in corporations whose registered office lies outside the EU or is located in a country with which there is no bilateral administrative assistance agreement, this exemption from corporation tax for dividends will only apply on the condition that the equity holding equals at least 10% of the foreign corporation's total share capital and has been held for at least one year without interruption. Gains upon sale and liquidation received by an Austrian incorporated entity from a foreign corporation are likewise exempt from corporation tax, subject to the above-referenced conditions.

Group Taxation

A parent company may form a tax group together with all or any of its subsidiaries or affiliates. The condition precedent to this is that the parent company's equity stake amounts to more than 50% of the stated capital of the affiliate; the minimum duration of a tax group is three years. There are various tax benefits available

to tax groups, for example losses by individual members of the group may be immediately offset by profits of other group members.

The profits of a partnership entity are not taxed at the level of the entity itself. Rather, the share of each partner's profit (depending on whether the partner is a natural person or legal entity) is subject to income or corporation tax, respectively.

VAT

Austrian value-added tax (VAT) applies to turnover generated by profit-oriented business entities within Austria, irrespective of whether the entrepreneur is domiciled in Austria or not. The rate of VAT is, as a general rule, 20%, and in certain circumstances a reduced rate of 10%, 12% and 13% will apply. There are also cases of complete exemption from VAT.

As a rule, entrepreneurs may deduct VAT invoiced to them by other entities for their goods or services as input tax. However, businesses will not be entitled to deduct input tax where the good and services are used for purposes of generating tax-exempt turnover.

Supplies of goods within the EU and in third countries will be exempt from VAT under certain circumstances. As a general rule, other services will be subject to VAT in the country in which the recipient of the service has his registered office.

Accounting

Subsidiaries and branches have an obligation to keep separate books and file tax returns in Austria and are required to submit and disclose their annual financial statements in German to the Austrian Commercial Register court.

REGISTRATION FORMALITIES

Application for entry in the Companies Register, signed by all managing directors with signatures attested.

Registration of the Trade Announcement of the Appointment of the Managing Director under the Trade Law.

After registration in the Companies Register, the company has to apply for a tax identification number.

STANDARD LEGAL OBLIGATIONS AND FORMALITIES FOR A BRANCH

See above.