



PERMANENT ESTABLISHMENT IN MALTA: BRANCH OR SUBSIDIARY?

DEFINITION OF A PERMANENT ESTABLISHMENT

There is no definition of a permanent establishment in Maltese law and the latter generally follows the OECD definition: "a fixed place of business where the business of an enterprise is partly or wholly carried out."

Malta has concluded around seventy (70) double taxation treaties, which ought to be looked at when assessing whether a permanent establishment is created in Malta or not.

DEFINITION AND MAIN DIFFERENCES BETWEEN A BRANCH AND A SUBSIDIARY

Subsidiary

Fully fledged company registered in Malta, which pays taxes on a world-wide basis meaning that all of its income and capital gains, arising in Malta or elsewhere, whether received in Malta or not, is taxable in Malta. The headline tax rate is 35% on taxable profits.

However, subsidiaries can benefit from various tax incentives and with correct structuring typically pay effective tax rate between 0% and 5% in Malta. There are also patent-box exemptions as well as other tax exemptions including a participating holding regime for holding companies.

Branch

The branch of a foreign company registered in Malta is taxable at the headline tax rate of 35% on income arising in Malta, and any foreign income which is remitted to Malta. Any foreign income or capital gains which are not remitted to Malta are not taxable in Malta. Hence, branches enjoy a territorial system of taxation whilst also being able to benefit from other benefits, for example the possibility of registering for VAT purposes in Malta.

TAX AND ACCOUNTING OBLIGATIONS

Both branches and subsidiaries have obligations to keep proper books of account and present financial statements in line with IFRS or local GAAP (Generally Accepted Principles for Smaller Entities), when the latter applies.

REGISTRATION FORMALITIES

A subsidiary must present to the Registry of Companies, via a licensed Corporate Service Provider in Malta, a signed Memorandum and Articles of Association together with proof that the initial share capital has been applied. The process of opening a subsidiary in Malta is very swift, and this is normally done in a few days.

A branch ought to present certain prescribed forms and also documentation to show that the company applying for the branch is duly registered and in good standing in its country of registration. A Maltese representative is to be also appointed who will act as the liaison between the branch and the Malta Registry of Companies. Provided the necessary documents are provided, a branch is also registered quickly within a few days.



STANDARD LEGAL OBLIGATIONS AND FORMALITIES FOR A BRANCH

- Submit documents to attest that the company is in good standing and registered in its country of Registration, including resolutions to show the decision to open a branch in Malta
- Have a registered office in Malta
- Appoint a Maltese representative to act as the liaison between the branch and the Malta Registry of Companies
- File annual income tax returns and pay any income taxes due
- Prepare financial statements in line with IFRS or local GAAP when applicable, and file such with the Inland Revenue Department and also with the Malta Registry of Companies
- Report any changes to the constitution of its shareholders/board of directors/officers to the Malta Registry of Companies