



# PERMANENT ESTABLISHMENT IN ROMANIA: BRANCH OR SUBSIDIARY?

## DEFINITION OF A PERMANENT ESTABLISHMENT

### **Law 31/1990 regarding trading companies, Law 571/2003 regarding Fiscal Code, Accounting Law 82/1991**

A permanent establishment is a location through which the activity of a non-resident is wholly/partly carried out, either directly/through a dependent agent. It includes a place of management, branch, office, factory, shop, workshop. Additionally, it can be the place through which an activity continues to be carried out with the assets and liabilities of a Romanian legal person that entered in a reorganization process.

## DEFINITION AND MAIN DIFFERENCES BETWEEN A BRANCH AND A SUBSIDIARY

### **Branches**

Companies without legal personality incorporated, before their activity starts, at the trade register of the county where they will carry out their activity. They can be defined as any secondary center of the parent company, with capital which is entirely controlled by its parent company and has a certain legal and economic autonomy to this company.

#### Characteristics:

- has no Romanian nationality, only the nationality of the parent company;
- is subject to its national law

### **Subsidiaries**

Represent trading companies with legal personality and are set up in one of the forms according to the Romanian law. They are under the control of the parent company.

#### Characteristics:

- has legal personality, it is a legal company, by law, distinct from the parent company;
- can act in commercial legal relations in its own name.

The main differences between branches and subsidiaries are:

1. The branch is not an entity with legal personality. It is part of the structure of the parent company and is economically dependent on it. The subsidiary is an independent company with its own legal personality compared to the parent, under whose control it is.
2. The branch has only a few assets necessary for the activity that has been allocated by the parent company. The subsidiary has its own patrimony.
3. The branch is registered at the Trade Register, but should not have a minimum share capital; it only benefit from a patrimony which is attributed by the parent company. The subsidiary also is registered at the Trade Register with a minimum share capital required by law to the form of the company it is established.
4. The branch may have in the object of activity, only activities that the parent company has in own activity. The object of the activity of a subsidiary may be distinct of the object of the activity of the parent company.
5. The subsidiary is subject to the law of the state where it has its registered office because is an independent company, unlike a branch, which is subject to the national law of the parent company who founded it.
6. The subsidiary act in their personal name with third parties, while branch only works in the name or on behalf of the parent.



## TAX AND ACCOUNTING OBLIGATIONS

### Branches - tax and accounting regulations

- Permanent headquarters from Romania which belong to foreign companies are required to organize and manage their own accounts and prepare annual financial statements. The branch does not prepare annual financial statement, but is required to prepare an annual accounting report.
- The financial year in Romania coincides with the calendar year and has 12 months. The financial year may differ from the calendar year for branches established in Romania which belong to legal persons with headquarters abroad as well as for legal entities residing in Romania.
- Foreign legal persons carrying out activities through a permanent establishment in Romania are required to pay income tax for the taxable profit which is attributable to the permanent establishment.
- For foreign legal persons carrying out activities through a permanent establishment/more permanent establishment in Romania, the profit tax is applied on taxable income attributable to the permanent establishment or the taxable profit determined in the permanent establishment designated to fulfill tax obligations.
- All branches or other subunits without legal personality of a taxable person who has established its business outside Romania must be registered under one registration code for VAT purposes.
- Legal persons who have secondary offices in Romania have the status of payer of tax obligations, except for the tax on salary income, for which the tax payment is made, for the secondary offices of legal persons.

### Subsidiaries - tax and accounting regulations

- Subsidiaries are established in one of the forms under the Romanian law, with the legal regime of corporate form in which it was established. The subsidiary is subject to the law of the state where it has its headquarters office, this is an independent company and therefore is subject to all applicable accounting regulations and tax resident companies.
- Subsidiary, having legal personality, elaborates financial statements according to the law of each country.
- The individual financial statements of a subsidiary may be subject to consolidation with the parent company which will issue consolidated financial statements, according to legal regulations.

At the moment, the financial statements will be accompanied by the directors report, the audit report or the censors report (as applicable) and the proposal for distribution of profit or covering of loss accounting.

## REGISTRATION FORMALITIES

### Branch

- Foreign companies may establish branches or other secondary locations in Romania, under Romanian law, if this right is recognized by their law, under the same conditions as Romanian companies.
- Are registered before beginning their activity in the trade register in the county in which they will operate.

### Subsidiaries

- Foreign companies may establish subsidiaries in Romania, under Romanian law, if this right is recognized by their law.
- Are registered at the trade register of the subsidiary's office.

## STANDARD LEGAL OBLIGATIONS AND FORMALITIES FOR A BRANCH

- Competence of foundation/dissolution belongs to General Meetings/Extraordinary General Meeting of Shareholders, unless otherwise provided in the constitutive act.
- A branch may only pursue an economic activity within the objects of the company founders, providing some autonomy but within the limits set by the founding company.
- A branch firm consists of the company legal person who founded it, the name of the town where the headquarters is, followed by the word "branch" and the name of the town where the branch is located.
- The trader with headquarters abroad which opens branches in Romania must request their registration with the Trade Register at the headquarters of each branch.