

PERMANENT ESTABLISHMENT IN IRELAND: BRANCH OR SUBSIDIARY?

DEFINITION OF A PERMANENT ESTABLISHMENT

There is no definition under Irish Company Law of what constitutes either a 'permanent establishment' or a 'branch'.

The Companies Registration Office (CRO) provides the following guidance:

"There is no definition of the term 'branch'. It is a concept of Community Law whose meaning is ultimately to be determined by the European Court of Justice. There is some European case law which would support the view that a branch is a place of business, which has the appearance of permanency, such as an extension of the parent body, has a management and is materially equipped to negotiate business with third parties, without resource to the parent body, the head office of which is abroad."

DEFINITION AND MAIN DIFFERENCES BETWEEN A BRANCH AND A SUBSIDIARY

A subsidiary is a separate legal entity, whereas a branch is not.

The primary advantages of establishing a subsidiary in Ireland through which to trade are as follows:

- the parent company can avail of limited liability which significantly reduces its exposure
- there is scope to maximise tax planning opportunities
- if there is an intention to sell the Irish operation in the future having a standalone company will facilitate this

The advantages of trading through a branch are the lower compliance costs (both initial and ongoing).

TAX AND ACCOUNTING OBLIGATIONS

An Irish branch of a foreign company will be required to register for all applicable taxes, likely VAT, payroll taxes and Corporation Tax.

- a branch should withhold payroll taxes from any Irish employees (under the PAYE system)
- a branch should operate VAT in line with its local obligations (which will vary widely based on the nature of the business)
- a branch would be liable to Irish Corporation Tax (12.5% on trading income) on its taxable profits

A branch does not have an obligation to prepare statutory financial statements, however a separate income statement will be required in order to calculate the branch's taxable profit.

REGISTRATION FORMALITIES

A foreign company establishing a branch in Ireland is required to register that branch with the CRO within 30 days. It must provide the following information and documentation:

- completed registration form
- certified copy of the constituting documents of the company
- copy of the company's certificate of incorporation
- copies of the latest accounting documents
- translations to English of the above if required

In order to register a branch the company must nominate an Irish-resident individual who will:

1. be responsible for ensuring compliance with branch regulations
2. be available to accept process on behalf of the company

It is possible to engage a nominee to fulfil this role.

STANDARD LEGAL OBLIGATIONS AND FORMALITIES FOR A BRANCH

A branch should report any changes to the following to the CRO within 30 days:

- a change to the constituting documents of the company
- a change to the directors, secretaries or other authorised representatives of the company
- a change to the branch's address in Ireland

A branch must also file an annual return with the CRO along with the latest accounting documents of the company.