



PERMANENT ESTABLISHMENT IN THE NETHERLANDS: BRANCH OR SUBSIDIARY?

DEFINITION AND MAIN DIFFERENCES BETWEEN A BRANCH AND A SUBSIDIARY

A branch is a permanent establishment of a company from which business operations are carried out. Dutch tax legislation has no definition of a permanent establishment. For the definition, the tax treaties are leading. So, for example, there is a permanent establishment if there is a building site or construction or installation project that lasts more than twelve months. No branch is constituted if the activities of the company in Holland only have a preparatory or auxiliary character. An important condition to constitute a branch is whether the people working in Holland are entitled to make decisions, may sign contracts, and/or sell the goods or services of the company. In any case, the question of whether the activities will be qualified as a branch is casuistic and should be checked in the applicable treaty.

Many foreign companies make use of a subsidiary rather than a branch. The main legal reason to set up a subsidiary, instead of a branch, is limitation of liability. As a shareholder of a subsidiary, the foreign company's liability is basically limited to the extent of its capital contribution; whereas, if the foreign company makes use of a branch, it is fully responsible for all the obligations and liabilities of the branch.

One major advantage of setting up a branch is that it does not generally require the same legal formalities required for setting up a subsidiary. However, the simplification and flexibility of the Dutch limited company law (as mentioned above) may well diminish this advantage.

Another important aspect to consider with respect to the choice of setting up a branch or a subsidiary in the Netherlands is the matter of local tax regulations. The choice of setting up a branch or a subsidiary will be determined based on the circumstances and relevant factors with respect to the business as such, and the Dutch tax regulations and tax treaties.

TAX AND ACCOUNTING OBLIGATIONS

A branch has to be registered at the Dutch Chamber of Commerce. With the number of the Chamber of Commerce, a branch can apply for registration at the Dutch tax authorities. A VAT number will be granted to the branch. If the activities of the branch do not apply for a VAT exemption, every month or every quarter the branch is obliged to fill in a VAT tax form. In most situations there will be staff working for the branch. For these employees the branch has to take care for pay rolling and is obliged to pay wage tax every month. Once a year a corporation tax return has to be made. Only corporation tax is due for the profits that can be attributed to the branch. To prevent the payment of huge interest, it is profitable not to wait until the year passed away, but to apply for a provisional assessment.

REGISTRATION FORMALITIES

Registration of a branch is quite easy. A representative of the company registers the branch at the Dutch Chamber of Commerce. For this registration, the Chamber of Commerce uses standard forms. It is not obliged to go in person to the Chamber of Commerce. Notarized documents can also be sufficient for identification. After this registration, the registration at the Tax office is quite simple, only requiring completion of some standard forms.



STANDARD LEGAL OBLIGATIONS AND FORMALITIES FOR A BRANCH

Besides the aforementioned tax obligations, the branch has to carefully provide good bookkeeping. Every year the branch has to publish the annual accounts of the branch at the Chamber of Commerce. Furthermore, all legal requirements that apply for Dutch companies apply for the branch. This concerns, for example, minimum wage rules, collective agreements for employees, and permit requirements.