



## PERMANENT ESTABLISHMENT IN FRANCE: BRANCH OR SUBSIDIARY?

When you decide to set up a permanent establishment in France (i.e. a fixed place of business), you have to decide first what kind of legal structure to set up in France. A permanent establishment can be either a Subsidiary, or a Branch.

- A Subsidiary is a separate company, different from its parent company.
- A Branch is a part of the same company, which happens to be in a different country than the head office.

### MAIN DIFFERENCES BETWEEN A BRANCH AND A SUBSIDIARY

- **A subsidiary company is a French legal entity**, which might, in some circumstances, be considered as advantageous by French clients.
- **A subsidiary company is not always audited.** The simplest company you can have is an EURL (Limited Liability Company with only one shareholder who can be a foreign company). A SARL (or EURL) is only required to complete an audit in limited cases OR if it exceeds two of following three thresholds : (i) Total annual (pre-tax) turnover exceeding EUR 3.1m ; (ii) Total assets exceeding EUR 1.55m ; OR (iii) greater than 50 employees during the audited period. The auditors will be appointed for a six-year term by the shareholders.
- In the case of a Subsidiary, **the financial responsibility of the shareholders** is limited to the share-capital (except in some specific circumstances). On the contrary, for a Branch, the foreign company financial responsibility is unlimited as well as the personal responsibility of the CEO.
- **Any profit incurred in the Branch will be considered as distributed.** Consequently, withholding tax on dividends, calculated on the yearly profit, will have to be paid each year – except, notably, if the head office is located in another EU country. On the contrary, any profit in a subsidiary company is distributed only if the shareholders decide to distribute dividends.
- A French company will have to draft its own **Articles of Association** and to organize a **yearly shareholders' meeting** (not required for a Branch).
- A Subsidiary will have to prepare each year the **Corporate Tax return and Financial Statements**, whereas a Branch will have to prepare only the Corporate Tax return.
- **A French company will have to file with the French Commercial Court its own annual accounts**, whereas the Branch will have to file the accounts of the whole foreign company (i.e. the account of the French branch and of the foreign head office altogether).

### SIMILAR REGISTRATION FORMALITIES

- Registration at the Commercial Court
- Obtaining a TIN ("Siret" in French) and a VAT registration number
- Registration with social funds (Social Security, Unemployment fund, Pension fund, Provident fund, Health insurance, etc.)

### SIMILAR TAX AND ACCOUNTING OBLIGATIONS

- Subsidiary companies and Branches are liable to almost the **same taxes** (VAT, corporate tax, business licence tax, training tax, payroll taxes, etc...). However, if the Branch renders services only to its head office, then it falls under a specific VAT system and should follow a longer specific procedure to get VAT credit reimbursement



- **Revenue recognition** (allocation of profit) is the same for a Branch and a subsidiary company.
- A Branch cannot **invoice services to itself** (meaning it cannot issue invoices to its head office, as it is the same entity), however the Branch can issue debit notes to its head office and revenue would be recognised as if the Branch was producing services for a third party.
- For tax purposes, a Branch should have its **own set of books**, gathering all the transactions relating to the activity in France. This set of books is consolidated with those of the head office to make the whole books of the foreign company.
- As per French tax law, the **local books** (of the Branch or of the Subsidiary) should be kept in French GAAP, according to the French chart of accounts, and in French language. The amounts should be in Euros.

### SIMILAR DOCUMENTS REQUIRED TO COMPLY WITH FRENCH TAX LAW

- **A general ledger and monthly journals** consolidate the accounting entries. The monthly journals should show the total amount of the entries.
- **The sub-ledgers Accounts Payables (AP) and Accounts Receivables (AR)** should include every entry related to debtors and creditors (Invoices and payments) and not only the outstanding entries.
- **Reliable accounting books:** The entries must be recorded chronologically and cannot be amended afterwards.
- **A description of the accounting procedures** when it is necessary to clarify the specific entries.
- All **accounting entries** should detail the origin, the content and the impact of each data and the reference of the supporting documentation.
- All accounting books and supporting documentation must be **kept during at least 6 years** (but for an unlimited time if a tax loss is carried forward).
- The total **documentation relating to the software** and computer organisation should be available in France in case of a tax audit (documentation, programs and processes).
- The information must be kept as **computerised data** for at least 4 years on their initial medium (disk, tape, etc...).