




“ PACKAGE INSERT ”

Branch Office, Permanent Establishment, Liaison Office & Co.



*What is the difference between Branch
Office, Permanent Establishment and
Representative Office (liaison office)?
Which legal form is most suitable for me /
my company?*

Über Erfolgchancen und Neben-
wirkungen informiert Sie Ihr
Steuerberater, Ihre Steuerberaterin oder
Ihr Rechtsanwalt...
kurz: die COOPERATIVE BERATUNG

Erfolg ist berechenbar



This brief overview should be followed up by a face-face consultation on your individual situation. Also recommended is a comparison with the relevant local interpretation of the double taxation agreement applying to Austria and to your home country!

Branch Office

“Branch office” (local branch) is defined as being the non-independent auxiliary premises or permanent establishment of a company.

... and this is how it works in detail

The term “branch office” is one derived from corporate legal codes. It pertains to those premises registered in (Austria’s) companies register.

Unlike a subsidiary, a branch office (branch) is not an independently-acting legal entity, even though it operates discretely in key ways (spatially, in the pursuit of business and in terms of organization) from the main office. Such branch offices are typically set up for preset and long periods of time. Branch offices are also required to conduct their own accounting – or at least to report transactions in a discrete way.

A branch office is required, furthermore, to have a proprietary management.

Austria’s corporate legal code does not permit any exceptions to be made to the requirement of securing an entry into the companies register for the branch office.

This entry empowers the branch office to conclude in its own right contracts and the like. Until the branch office has secured its entry into Austria’s corporate registry, the main office of the company has to serve – virtually *sui generis* – as the ‘business partner’ in transactions (the branch office virtually does not in this case exist from the legal point of view).

Permanent Establishments

(steuerrechtlicher Begriff)

Permanent establishments are deemed to be delineable corporeal facilities that are available for use by the company at any time.

... and this is how it works in detail

The term “permanent establishment” is derived from tax codes and pertains to the rules of implementation of the relevant double taxation agreement (DTA).

The DTA is, in all cases, also in force in its country of original formulation and is available in that country’s language. All of the enforceable stipulations and definitions contained in the DTA are derived from the mutually-endorsed understanding reached by the countries. This entails the taking into account by Austria’s tax authorities, in the interests of reciprocity, of the interpretation made by foreign counterparts. What this means: in cases in which a non-Austrian official body uses a broadly-based definition of “permanent establishment”, this definition will also, as a rule, be employed by the Austrian counterparts (useful in such cases is the provision of documentation by the non-Austrian official bodies).

In cases in which a permanent establishment does exist, liable for taxation in Austria are those revenues attributable to this Austrian facility. These corporate premises – there are few exceptions to this rule – are liable to pay taxes at the same rate levied upon an Austrian company. The legal form of the main office determines the nature(s) of the taxation levied. In cases in which the form is comparable to that of a corporate body (“limited”), the corporate premises will be treated in the manner of an Austrian corporate body. In cases in which the main offices are comparable to a non-incorporated or a single-person firm, the taxation of the premises is to be comparable to that of the counterparts in Austria.

‘Representative office’ (Liaison office)

(Special kind of “permanent establishment”)

Should such be permitted by the applicable double taxation agreement, certain kinds of permanent establishments can be excluded from tax liability.

... and this is how it works in detail

The OECD’s model convention (and thus many of the DTAs agreed upon with Austria) lays down a set of negligibly-important operations that are not be regarded as being incumbent upon permanent establishments. These are thus excluded from tax liability. These operations are primarily:

- ✓ Storage, exhibition and (exclusively) delivery operations
- ✓ Storage of goods and other wares for the purpose of being processed by another company
- ✓ Offices exclusively undertaking sales and information provision operations
- ✓ Offices undertaking preparations for subsequent operations, or handling advertising or research

The underlying concept informing the OECD’s regulations is invariably that of auxiliary operations (“auxiliary support points”) Such “points of support” have a preset time of maintenance. The tax authorities responsible for them are, as a consequence, to monitor these establishments in order to ascertain whether or not and how long these exclusively auxiliary operations are being carried out. In cases in which these operations are no longer to be regarded as auxiliary or delimited in terms of time, a “regular” permanent establishment is deemed to exist (see above).

One important comment: such exceptions are only granted in cases of reciprocal actions.

The designations “auxiliary point of support” or “permanent establishment” have to be verified on an ongoing basis. The designation can be altered at any time by the tax authorities.

Turnover tax

Austria’s turnover tax code stipulates that this tax is to be levied upon products and other items supplied by an entrepreneur in Austria for recompense and as part of his or her business activities. “Entrepreneur” is defined to be “the independent pursuit of commercial or professional activities”. “Commercial” or “professional” is defined to be each activity that is pursued to reap income, even in those cases in which it is not intended to earn a profit on such. According to this basic definition of Austria’s turnover tax code, a representative office is not an entrepreneur. It is therefore not entitled to demand the reimbursement by Austrian tax authorities of the turnover tax levied in invoices issued in Austria. To be established is whether or not the non-Austrian company is entitled to apply for such a reimbursement.

Conclusion: the representative office is not an entrepreneur. As such, an office is excluded, according to this statutory definition, from realizing revenues. Furthermore, it is not liable to pay

Austrian turnover taxes, and is not entitled to withhold such input taxes. In such cases, the non-Austrian company maintaining the office can secure refunds of Austrian turnover taxes.

Taxation of employees staffing a representative office in Austria

Employees working for a non-Austrian company and staffing a representative office in Austria are liable to pay Austrian income tax in conjunction with their commencing their work in the country, or as of their establishing Austria as a place of residence or customary domicile. The judging of each case is to take into account national and international codes of taxation. A consequence of this is that taxation-required remuneration accounting has to be undertaken in Austria for the employees. Entailed in this is the withholding and transferring to taxation authorities of taxes and charges on remuneration, and of social security payments.

Conclusion: taxation-required remunerating accounting is to be undertaken for employees who staff a representative office in Austria upon their becoming liable for taxation.

Being entered in the companies register, registration with tax authorities

Not foreseen is the representative office's being entered in the companies register. Registration with taxation authorities has to be undertaken.

Summary

Companies planning for the long-term should consider at the time of launching operations the merits of founding two or more representative offices.

... and this is how it works in detail

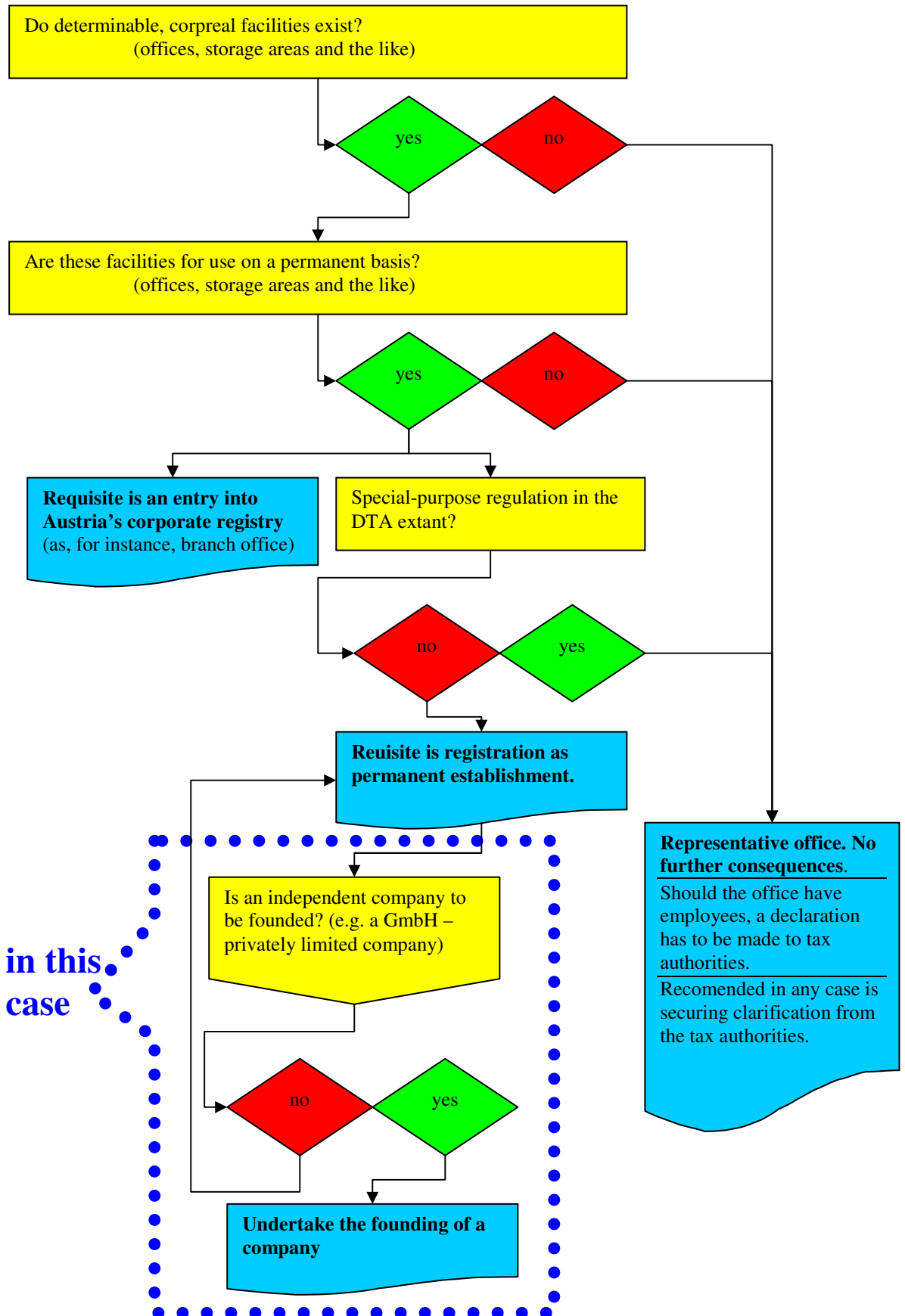
Given the nature of the matter at hand, the smallest possible unit (in this case, either “an auxiliary point of support” or “representative office”) has the fewest taxation-relations obligations to fulfill. The accompanying disadvantage is that this status also means dispensing with a wide range of tax-related advantages. A representative office that is subsequently upgraded into a permanent establishment or an independent company can not (or can not entirely) claim tax deductibility for expenditures made during the period in which the establishment was a representative office.

The relationship between “permanent establishment” and “independent company” (for instance: a privately limited company – GmbH) is analogous to the above.

- A “representative office” is not tax liable, for practical purposes. (Despite this, a “precautionary” registration of the office's transactions is urgently advisable, so as to provide for a subsequent alteration of the basis of tax liability.)
- A permanent establishment has to be registered with tax authorities. Such an establishment is “limitedly tax liable”, and is therefore subject to a set of tax-related limitations and disadvantages.
- An independent company (for instance: GmbH) is “unlimitedly tax liable” and can therefore lay claim to all taxation-derived advantages and options.

Our recommendation is to plan operations for the long-term and to secure consulting services to that end (please consult the schema below).

Schematic portrayal



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