



Representative Office Branch Subsidiary

Overview

Legal forms

Representative Office

Characteristics	<p>A Representative Office usually serves as a local office of a foreign legal entity to provide information about the latter to potential customers.</p> <p>A Representative Office has no legal personality.</p> <p>Contracts are concluded on behalf of the foreign legal entity.</p>
Field of application	<p>The fields of application of a Representative Office are very limited:</p> <p>A Representative Office may only carry out auxiliary or preparatory activities, e.g. providing information material to potential customers.</p> <p>Any other activities, in particular sales activities, would trigger a Branch.</p> <p>The clear distinction from a Branch is essential, as of the Branch's taxation consequences (see clause B below).</p> <p>If a representative concludes or negotiates contracts in Austria, there is a risk that such measures already trigger a Branch in Austria.</p>
Registration	<p>A Representative Office does not have to be registered with the Austrian Companies Registry.</p>
Capital	<p>No minimum capital required.</p>
Representation	<p>No power of representation.</p>
Time schedule	<p>The establishment of a Representative Office could be done within a short time frame, though this depends on the concrete type of company of the foreign legal entity.</p>
Costs	<p>The costs for the establishment of a Representative Office are low. No lawyer or notary is required.</p>

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Branch

Characteristics	<p>A Branch conducts sales activities in Austria and has substance in Austria, e.g. offices and personnel.</p> <p>A Branch has no legal personality.</p> <p>Contracts are concluded on behalf of the foreign legal entity.</p>
Field of application	<p>The scope of activities of a Branch is unrestricted.</p>
Registration	<p>A Branch has to be registered with the Austrian Companies Registry.</p>
Capital	<p>No minimum capital required by law.</p>
Representation	<p>In general, the Branch is represented by the representative bodies of the foreign legal entity.</p> <p>EU companies: There is no obligation to appoint a Branch office manager in Austria. If appointed voluntarily, the Branch office manager must have his usual place of residence in Austria.</p> <p>Third countries: Obligation to appoint at least one Branch office manager who has its usual place of residence in Austria.</p> <p>A Branch office manager represents the Branch in all matters against third parties. Its power of representation could not be restricted.</p>
Time schedule	<p>The establishment of a Branch takes 2-4 weeks.</p>
Costs	<p>The costs for the establishment of a Branch ranges from EUR 2,000 to EUR 3,000 (lawyer's fees, notary's fees).</p>

Subsidiary (in the legal form of an Austrian Limited Liability Company)

Characteristics	<p>A Subsidiary conducts sales activities in Austria and has substance in Austria, e.g. offices and personnel.</p> <p>A Subsidiary has a legal personality.</p> <p>Contracts are concluded on behalf of the Subsidiary.</p> <p>The most common legal form of a subsidiary is the Austrian limited liability company ("LLC").</p> <p>The following remarks relate exclusively to the LLC.</p> <p>For a comparison to other legal forms see the fact sheet "Comparison of legal forms in Austria".</p>
Field of application	<p>The scope of activities of a Subsidiary is unrestricted.</p>
Registration	<p>A Subsidiary has to be registered with the Austrian Companies Registry.</p>
Capital	<p>Minimum share capital: EUR 35,000, whereby EUR 17,500 have to be paid in.</p> <p>Foundation privilege available for the first ten years of existence: Minimum share capital of EUR 10,000, whereby EUR 5,000 have to be paid in.</p>
Representation	<p>At least one managing director has to be appointed.</p> <p>Any individual could act as managing director. They are not required to have their usual place of residence in Austria.</p> <p>In order to avoid tax risks, it should be ensured that the place of management of the Subsidiary is deemed to be in Austria.</p> <p>The managing director represents the LLC in all matters against third parties. The power of representation could not be restricted.</p>
Time schedule	<p>The establishment of a Subsidiary takes 2-4 weeks.</p>
Costs	<p>The costs for the establishment of a Subsidiary ranges from EUR 3,000 to EUR 5,000 (lawyer's fees, notary's fees).</p> <p>Among other things, costs depend on whether the documents have to be drafted bilingual (e.g. German/English).</p>

Tax aspects

Representative Office

Registration	No tax registration, neither for corporate income tax nor for value added tax purposes.
Corporate income tax	A Representative Office does not trigger corporate income tax in Austria . Please note that in the last years Representative Offices were in the focus of Austrian tax authorities . In particular it is reviewed if the scope of activities of the Representative Office is exceeded (see clause A.2) and therefore a Branch is triggered, so that 25% corporate income tax will be charged (see right column).
Value added tax	The fields of application of a Representative Office are very limited (see clause A.2 above). Since the Representative Office is not permitted to carry out a supply of goods and services in Austria, no value added tax is triggered. Input tax reimbursement for expenses in Austria is possible.

Branch

Registration	Tax registration for corporate income tax and value added tax purposes required.
Corporate income tax	25% corporate income tax. No minimum corporate income tax. Losses can be carried forward (see in detail right column).
Value added tax	From VAT perspective, a Branch triggers the same consequences as a subsidiary (see in detail right column).

Subsidiary (in the legal form of an Austrian Limited Liability Company)

Registration	Tax registration for corporate income tax and value added tax purposes required.
Corporate income tax	25% corporate income tax. Minimum corporate income tax: EUR 1,750 per year (in years of losses). Losses can be carried forward for an unlimited period of time and can be offset with future profits. There is an offsetting limit of 75%, so that 25% of the annual profit remains subject to corporation income tax.
Value added tax	20% value added tax / 10% value added tax / tax exemptions available.

Accounting / Annual financial statements

Representative Office

Annual financial statements	No annual financial statements required.
Disclosure of the annual financial statements	No disclosure requirements

Branch

Annual financial statements	No annual financial statements required. However, the Branch's profit has to be calculated according to the local law. A corresponding bookkeeping / separate accounting for the Branch is required.
Disclosure of the annual financial statements	The annual financial statements of the foreign legal entity have to be translated into German and disclosed to the Austrian companies registry within 9 months after the end of the relevant financial year. If the disclosure requirements are not met, fines are imposed.

Subsidiary (in the legal form of an Austrian Limited Liability Company)

Annual financial statements	Annual financial statements for the Subsidiary have to be prepared in accordance with Austrian legal requirements.
Disclosure of the annual financial statements	The annual financial statements of the Subsidiary have to be disclosed to the Austrian companies registry within 9 months after the end of the relevant financial year. If the disclosure requirements are not met, fines are imposed.

Summary

Representative Office

A Representative Office could only carry out support functions, but could not be used to carry out the core activities of the foreign legal entity (see clause A.2 above with reference to tax risks). Consequently, there are few Representative Offices in practice.

Branch

No minimum capital is required, this is beneficial compared to a Subsidiary (see clause A.4 above).
In respect of the establishment and accounting requirements, Branches are comparable to Subsidiaries.
In practice, a Branch could trigger significant higher costs compared to a Subsidiary, in particular as

- i. the annual financial statements of the foreign legal entity have to be translated to German; and
- ii. changes of the management body of the foreign legal entity also have to be registered with the Austrian companies registry.

Subsidiary (in the legal form of an Austrian Limited Liability Company)

A Subsidiary is considered beneficial as it is clearly separated from the foreign legal entity. An LLC is the most common legal form in Austria.



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