

Contacts:

Giovanni Amendola Dottore Commercialista Revisore Legale - Legal Auditor
g.amendola.oadvisory.com

Manuela Stefoni Dottore Commercialista Revisore Legale - Legal Auditor
m.stefoni@oadvisory.com

office: info@oadvisory.com

BRANCH, SUBSIDIARY OR REPRESENTATIVE OFFICE IN ITALY

Branch

A branch is an entity of a foreign company that does not have a corporate life of its own, so it has no separate legal identity apart from the parent company.

It can carry out the business activity of the company itself on an autonomous basis; it has a separate tax and accounting identity and autonomy from its foreign head office.

In order to establish a branch, the following steps need to be taken:

1. Prepare and sign the minutes of the Board of Directors meeting which establishes the creation of an office in Italy, indicating the local address and the name of the legal representative for the local business;
2. obtain a fiscal code for all the individuals needing to act in Italy;
3. obtain a sworn translation in Italian of the memorandum and articles of incorporation of the foreign entity, and a recent Chamber of Commerce excerpt. For some documents coming from certain countries, an apostille may be necessary;
4. sign anti-money laundering statements, identifying the business' beneficial owner;
5. file the above documentation/information with the authorities, within the local terms of compliance.

Registration of the branch can usually be achieved in about 30 days.

Company Law is generally applicable to branches: legal obligations and formalities that subsidiaries have to deal with apply also to branches with the exception of the filing of their own financial statements. A branch is not obliged to prepare its own financial statements, however, Chambers of Commerce do require branches to file sworn translations of head office financial statements even if there is no statutory deadline.

A branch has the following tax and accounting obligations:

- Journal ledger
- Inventory ledger

- Book of assets
- Withholding tax statements
- Personnel-related ledger
- Corporate tax (IRES) and Regional Tax (IRAP) returns and payments
- VAT registration and obligations

Briefly, the tax advantages of establishing a branch are:

- the head office company can write-off any initial losses, reducing its tax burden in its home state;
- any after-tax income of the branch can be transferred to the foreign company without any further taxation in Italy, as it is not classified as a dividend.

The tax disadvantages are:

- Italian tax returns must refer to the branch's financial statements based on accounting books kept in strict compliance with Italian accounting principles;
- branches are not covered by double Tax Treaties.

Subsidiary

A subsidiary is a local legal entity that is completely independent from its head office, has a share capital of its own and is not subject to the economic results of its parent company.

In terms of the local operations allowed, no restrictions of activities apply to a subsidiary.

In order to incorporate a subsidiary, these steps are necessary:

1. It must be incorporated by way of public deed, before a public notary. The founding members may appear before the notary either in person or grant authority to an attorney;
2. at the time of entering into the Deed of Incorporation, a company must also adopt the type of limited liability company and Articles of Association;
3. obtain a VAT number from the National Tax Office;
4. register the new company with the Chamber of Commerce;
5. open a bank account in the Company's name.

The incorporation of a subsidiary can usually be achieved in about 7 days.

The two most common types of limited liability corporate vehicles are the S.p.A. ("Società per Azioni") or the S.r.l. ("Società a responsabilità limitata"). The rules governing S.p.A.'s and S.r.l.'s are contained in the Italian Civil Code.

The minimum capital required for an S.p.A. is € 50,000 and € 1.00 for a simplified S.r.l..

For a business start-up in Italy, an S.r.l. is advisable, since it allows for a greater degree of flexibility from the perspective of corporate governance and control over the company's management and accounts.

The subsidiary must prepare the Financial Statement annually, according to Italian accounting principles, and it must be registered with the Chamber of Commerce.



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Taxable income of a subsidiary is calculated on the basis of net profits earned during the financial year as reported in its financial statements. Accordingly, in principle, all profits and losses recorded in the balance sheet are relevant for tax purposes.

However, differences between the net profit or loss shown in the balance sheet and the taxable income or loss may arise from special provisions of the Italian Tax Code.

A subsidiary has the same tax and accounting obligations as those of a branch.

The tax advantages/disadvantages are the opposite of those of a branch. More specifically, contrary to a branch, there is not a substantial tax risk that the Italian Tax Authority may assess the Italian-sourced income on a presumptive basis, and attribute to the Italian subsidiary a share of the overall income of the parent company.

Representative office

A representative office is not a legal entity from either a corporate or a tax perspective. It is deemed as a “center of expenses” whose responsible officer has no power to take decisions or bind the foreign company vis-à-vis third parties.

Accordingly, as a general rule, it does not carry out the core business activity of a company but only engages in public relations, market research and collection of information from or for potential customers, and does not act as an agent of the company, nor can it be deemed to form a “permanent establishment” in Italy.

For these reasons, operating through a representative office is only advisable if no productive business activity is intended to be carried out in Italy.

In order to establish a representative office, these steps need to be taken:

1. A resolution by the Board of the foreign company authorizing the opening of the office and appointing an individual responsible for managing the office;
2. notify the local companies' register within 30 days of the effective date of the start of its activities.

Establishment of a representative office can usually be achieved in about 30 days.

Briefly, the advantages of establishing a representative office are:

- no corporate income tax or local income taxes are due;
- there is no VAT impact and it is not required to register for a VAT number;
- is not required to keep accounting books and records nor to produce financial statements.

The disadvantages are:

- the activities of a representative office are limited to public relations, market research and the provision of information relevant to the foreign company. Moreover, the labor and social security issues involved would not be significant, since the number of people employed should not be greater than 2-3 at the most;
- the person responsible for the representative office must not have the authority to enter into contracts in the name of the parent company;
- in order to recover Italian VAT on purchases made in Italy, the foreign company will need to appoint an Italian VAT representative or, alternatively, deal with this directly itself, and it will need to register for VAT purposes.