

Practical issues related to permanent establishments

by *Cornelia Vașoti*, Accounting & Taxation Services

In a globalized world, cross-border activities carried out by companies are quite natural. From a fiscal point of view, the long-term presence of a non-resident person in a certain country generates a permanent establishment, whereby a limited taxation right of that particular country over the non-resident person appears.

Definition

The definitions of the permanent establishment given by Romanian and international law are similar. Mainly it represents a place from which the activity of the non-resident person is carried out directly or through a dependent representative. The regulations mention examples of facilities /activities that generate a permanent establishment.

Permanent establishments are, for example, a place of management, a branch, an office, a construction site, a construction project, an installation project or other similar activities, if these exceed a certain period of time. However, a fixed place, whose sole purpose is to carry out supporting activities, generates no permanent establishment. This applies also to a representative office, which exists only for representation purposes, i.e. performs no economic activities.

Formal registration in the Commercial Register

Foreign companies can establish branches or other secondary offices in Romania. Such entities have no legal personality¹ but they have the obligation to register in the Commercial Register, and from a fiscal point of view they are considered permanent establishments.

In practice, these facilities are treated by some authorities² as separate persons although, legally speaking, they are only 'extended arms' of the mother-company.

A fiscal permanent establishment can also arise even if, officially, there is no registration obligation in the Commercial Register. This happens for example in the case of construction sites that are operated for more than 6 months.

Fiscal Registration

A permanent establishment must be fiscally registered prior to the beginning of its activity. Entities registered in the Commercial Register that generate permanent establishments receive the tax code already upon such registration. In other cases, the fiscal registration has to be made with the territorial financial authority. In this case, a form and certain supporting documents should be submitted.

Accounting Obligations

Permanent establishments are subject to the Romanian accounting law and have to comply with the financial reporting provisions for their commercial activity³. They are obliged to double

¹ The mother-company is the legal entity

² For ex. the city hall, the labour authority, the police

bookkeeping and must submit financial statements and other reports in Romanian language, while also showing the transactions in RON.

Corporate Tax

A non-resident legal person that carries on activities in Romania through a permanent establishment is liable to pay corporate tax on the taxable profit of the permanent establishment. In such cases, the permanent establishment is considered to be a separate legal person. While only the revenues and expenses attributable to the permanent establishment should be taken into account for the corporate tax computation, practically this allocation can lead to major problems since both the state of origin and the state in which the permanent establishment resides are interested in the profit taxation. When carrying out transactions between the permanent establishment and the parent company, the arm's length principle must be observed. In this regard, the Romanian Fiscal Code includes, unfortunately, insufficient provisions⁴.

In case more permanent establishments exist, the taxable profit of all permanent establishments will be consolidated, reported and paid by one designated permanent establishment.

A certificate regarding the payment of profit tax in Romania can be requested from the financial authority. Such certificate is used by the mother-company as supporting document when deducting the corporate tax paid in Romania.

Value Added Tax

If the permanent establishment is considered to be a fixed establishment from a VAT perspective, it must obtain a VAT number and fulfill the VAT-related obligations in Romania. This requires that the permanent establishment has a sufficient degree of stability in Romania, as well as enough technical and human resources for performing or using in a sustainable way taxable deliveries/services.

Permanent establishments from corporate tax perspective and fixed establishments from VAT perspective are two different notions, however in practice they are often overlapped.

Conclusion

Given the increasing number of permanent establishments and the practical problems related, the current regulations are not sufficient. The envisaged fiscal authority modernization should take into consideration this issue as well.

Contact and further information:



STALFORT Legal. Tax. Audit.
Bucharest – Bistrița – Sibiu

Office Bucharest:

T.: +40 – 21 – 301 03 53

F: +40 – 21 – 315 78 36

M: bukarest@stalfort.ro

www.stalfort.ro

³ Law 82/1991

⁴ It generally refers to OECD-directive