

SETTING UP A BUSINESS IN FRANCE: “BUREAU DE LIAISON”, BRANCH OR SUBSIDIARY?

A UK investor setting up a business in France may have 3 options: a “bureau de liaison” (liaison office), a branch or a subsidiary company.

These structures are subject to different legal and taxation regimes and before going any further one should consider the amount of investment and the level of independence he wishes to grant to his French business.

BUREAU DE LIAISON

A business may start in France through a “bureau de liaison” appointing a French employee as a “permanent representative”.

The Bureau de liaison only has to be registered with the local social security authorities (URSSAF) that allocate the “SIRET” number, which is indispensable to recruit a French employee. This registration is done by filing a simple “M0” form. It is free of costs.

Legally the Bureau de liaison’s has no autonomy and its activity is regarded as an extension of its UK head office. Its activity is considered as non-commercial as long as it is limited to preliminary or auxiliary operations such as collecting information or marketing clients. As a consequence it is not liable for any income taxation or VAT in France.

However, it may be difficult to distinguish between activities that are simply preparatory and real business activities that may render the “Bureau de liaison” taxable in France.

A branch or a subsidiary may then rapidly appear to be more suitable.

BRANCH

Like the liaison office, the Branch has no legal personality, its assets and liabilities remaining at the level of its Head office.

Meanwhile, it benefits from a certain independence in its relations towards third parties having the capacity to contract and to take legal action of behalf of its Head office.

And it is totally independent on a tax standpoint, being considered as a “permanent establishment” under the UK-France tax treaty.

As a consequence, the Branch is fully liable for income taxation in France on the business achieved by its UK owner in that country.

The income that does not remain within the French branch is deemed to have been distributed to a UK shareholder and is subject to the same taxation regime as for a dividend paid by a French company to a UK resident.

For this purpose the UK head office needs to appoint a local representative who will be liable for filing all necessary tax returns.

The Branch needs to be registered with the local “tribunal de commerce” within 15 days of initiating its activity.

To obtain its “SIRET” number necessary with all tax and social authorities, the UK head office will face a certain amount of paperwork with the local “Centre de formalités des Entreprises” (CFE).

It will need to provide the CFE with original and translated copies of its Articles of Association, a certificate attesting of its incorporation in the UK, proof of right to use its premises in France and personal documents related to its representative.

The costs of registration remain limited to a few hundred Euros.

SUBSIDIARY

The subsidiary is a French company with full legal capacity.

Its assets and liabilities are distinct from that of its UK owner, which must consider it as an independent body with potentially distinct interests from its own. Relations between the UK and France entities are like between third parties (e.g. transfer of goods at a fair market price, profits withdrawn through dividends).

The subsidiary may take any of the corporate forms provided by French law (SARL, SA, SAS, etc.) the choice depending on its level of business and on the financial commitment of its shareholder.

Setting up and running a French commercial company usually require a certain amount of time and expenses but small corporate form such as the EURL (similar to the UK Limited company) may be operated at reasonable costs with proper advice.

The main advantage of the corporate form is its increased credibility due to its legal independence and capacity of evolution. Indeed the activity becomes represented by shares, which may be sold or contributed to other entities in a joint venture prospect. It may also benefit from a more favourable position in state aids or exemptions.

To register its subsidiary, the UK company needs to go through the procedure of setting up a regular company in France (drafting the article of association, appointment of the executives, legal publication, etc.) As with a branch the formalities in order to obtain the SIRET number will be handled by the local CFE for a few hundred Euros.

The choice of setting up a branch or a subsidiary is usually tax neutral, both structure being liable for income and VAT taxation.

Meanwhile, converting a branch into a company is a complex procedure that may reveal extremely costly in terms of transfer and capital gains tax.

As a way of conclusion, a liaison office may often be a good temporary structure suited to deal with the preliminary steps of an investment. Should these steps reveal a potential of business a branch or a subsidiary should be considered without delay.

In any case a UK investor should be advised to submit his scenario to a French tax and legal specialist.

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