Holst, guide

Setting up business in Denmark

Foreign companies may conduct business in Denmark either by establishing a Danish subsidiary or by operating directly through a branch office in Denmark.

A subsidiary is an independent Danish company. A share capital in the amount of DKK 50,000 is needed to establish a private limited company (in Danish: "ApS"). The establishment of a subsidiary will often be the preferred choice, if the aim is to limit liability on the part of the foreign parent company.

A branch office has no share capital since such entity forms an integral part of the main company (a division of the foreign company). The advantage of a branch office is that no initial capital needs to be contributed. Companies already incorporated in other EU or EEA countries are allowed to set up branch offices in Denmark, whereas companies in other countries must document the right to set up business in Denmark by way of an international agreement, or it must be demonstrated that Danish companies enjoy a similar right of establishment in the relevant country.

For tax purposes, it is of no major significance which solution is chosen. A Danish branch office is comparable to a Danish subsidiary since branch offices are regarded as "permanent establishments", meaning that the foreign parent company must register the income and expenses attributable to the branch office separately in order for the Danish branch office to be able to file its own tax return on expiry of each income year. This may give rise to several administrative challenges which may again speak in favour of establishing a subsidiary. The tax rate in Denmark is 22 % (2017), and this rate applies to both public limited companies, private limited companies and branch offices.

For accounting purposes, however, the obvious advantage of branch offices is that the annual report of a branch office is not publicly accessible in Denmark. Therefore, the setting up of a branch office in Denmark will make it possible to prevent competitors from gaining insight into the financial details of the branch office.

A final option is to set up a representative office for the purpose of gathering information on the Danish market and/or operating a showroom to promote the products of a foreign company. In such set-up, however, it is not legally possible to make any kind of sales contracts, agreements etc. committing neither the representative office nor the foreign company.

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Holst, Advokater provides legal advisory services regarding all aspects of Danish corporate and commercial law. We have extensive expertise and experience in assessing and addressing any corporate or commercial law issue that may arise when setting up and operating a business in Denmark. We have on-line access to the Danish Business Authority, and this enables us to implement quick and highly effective registrations for our clients with the Agency, for instance in connection with the formal incorporation of companies, amendments to corporate documents, capital increases etc.

	Subsidiary	Branch office	Representative office
Setting up procedure	A subsidiary can be established subject to cash payment of DKK 50,000; in principle a subsidiary can be established by all nationalities.	Easy and low-cost solution to companies domiciled in other EU and EEA countries; limited option for other nationalities.	Very few formal requirements for establishment, but highly limited possibility of pursuing activities other than activities of an observatory nature.
Annual reports	An audited annual report must be prepared; the report is publicly accessible. In some cases, this requirement may be exempted from.	An audited annual report must be prepared, separating the activities of the branch office from those of the main company; the report is not publicly accessible.	Annual report not required; no taxable activities allowed.
Liability	Liability limited to the share capital of the subsidiary.	Main company has full liability for any and all activities pursued.	Main company has full liability for any and all activities pursued.
Tax	Corporate tax of 22 %.	Corporate tax of 22 %.	No tax charged; no taxable activities allowed.
Dividend	No tax payable on dividend from subsidiaries if the parent company owns at least 10 % of the share capital and the parent company is domiciled in an EU or an EEA country or in a country having entered into a double taxation agreement with Denmark.	Due to transparency between the branch office and the foreign main company, no dividend is distributed to the main company.	No taxable activities allowed; no dividend available for distribution.
Structural changes	Subsidiaries are subject to all formal national rules, including equity capital requirements, rules on capital changes, liquidation etc.	Branch officers are governed by the corporate law rules of the home country. Branch offices can easily be closed down and/or converted into subsidiaries; both of which may, however, give rise to taxation on any increase in value.	Easy to close down.
Transfer pricing rules	Subsidiaries are subject to the ordinary rules on transfer pricing. When calculating taxable income, pricing must be made on market terms equivalent to what could have been obtained between independent parties.	No transfer between different legal entities due to transparency between the branch office and the foreign main company.	No taxable activities allowed; not applicable.

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