

Representative office of a foreign company in Russia

1. Introduction	1
2. Legal status	1
3. Tax status	2
4. Currency control considerations	2
5. An alternative	3
6. Accreditation procedures	3
7. Registration procedures	4
8. Disclaimer	5
9. Contacts	5

Introduction

Any foreign company carrying on commercial activity in Russia must, quite naturally, comply with Russian legal requirements. Normally the company, for conducting its business, establishes some kind of an office in Russia. In accordance to the law, this office should be *accredited* (permitted to act by the state) and *registered* (for tax purposes). In this paper we give a short description of the relevant procedures and requirements, and of the legal and tax status of such an office in Russia.

Legal status

First of all, let us give a short introduction to the legal background and the terminology involved.

In accordance to the Russian Civil Code, any legal entity can have a separate division in a place other than its principal place of location. The Code stipulates two types of such divisions, namely the *representative office* and the *branch*. (This refers to both Russian and foreign companies.)

According to the Code, a representative office is a division representing and protecting interests of the legal entity, whereas a branch is a division exercising any or all functions of the legal entity, including the functions of a representative office. None of the two, however, is a legal entity separate from the parent company: any assets or liabilities related to a division are those of the parent company itself.

As we see, the branch is understood as a division possessing generally more powers of the parent entity, as compared to the representative office's powers. However, a representative office is allowed to be involved into commercial activity also. Normally establishing a representative office of a foreign company is sufficient for doing business, though establishing a branch is also possible.

Tax status

The tax status of foreign companies in Russia is determined by the Russian Tax Code. In accordance to the Code, there are two different ways for a foreign company to derive income from the territory of Russia: carrying on business through a *permanent establishment* or without such a permanent establishment.

A permanent establishment of a foreign organisation in Russia is understood as any fixed place of doing business. According to the Code, this may be a branch, a representative office, a bureau, an office, an agency, another separate division or place of business, through which the organisation regularly carries on entrepreneurial activity on the territory of Russia. This notwithstanding, even if the foreign company has no office in Russia, but appoints a person (called a *dependent agent*) for carrying on business in Russia on behalf of the company, it results in deemed creation of its permanent establishment for tax purposes. An *independent agent* (e.g. a broker) is not deemed to create a permanent establishment.

The profits derived by a foreign company through a permanent establishment are taxed in Russia at the usual profit tax rate (currently 24%). This rate also applies to regular Russian companies. Generally, the principles of taxation applicable to a permanent establishment of a foreign company in Russia are basically the same as the ones applicable to a regular Russian company, *mutatis mutandis*. They are both subject to the profit tax, the VAT, the property tax, payroll taxes, regional taxes, etc. They are also both subject to Russian accounting and reporting rules.

Income derived by a foreign company without a permanent establishment is normally one of a passive character, i.e. dividends, interest, royalty, etc. It is usually subject to withholding tax.

As we see, both a representative office and a branch generally constitute a permanent establishment of the foreign company for tax purposes. However, there may be situations in which the actual activity of the division does not result in deemed creation of a permanent establishment in the tax sense (e.g. short-term construction in accordance with the terms of a tax treaty between the two countries). But anyway the office should be accredited and registered in the first place for commencing *any* activity.

(Note there is some mess in the Russian terminology: the civil law term "representative office" and the tax law term "(permanent) establishment" are one and the same word in Russian: *predstavitel'stvo*, while being different in their respective meanings. This unfortunate circumstance leads to quite a few confusions, misunderstandings, and even collisions.)

Currency control considerations

Russia has currency control legislation in force, designed with a view to protect the national currency from supposedly harmful influence of the outside financial world. For this purpose, Russian residents are legally restricted in their operations with foreign currencies, whereas non-residents are restricted in their rouble operations.

As we mentioned above, a representative office of a foreign company in Russia is in no way a separate Russian legal person. The accounts the company may open with Russian banks to do business through such an office are still accounts of a non-resident. As such, they are subject to currency control regulations applicable to non-residents. This means that company's foreign currency (US Dollar, Euro, etc.) accounts are operated without substantial restrictions, and once the money is on the foreign

currency account, the whole amount may be freely sent abroad. At the same time, company's rouble accounts are subject to strict control rules.

Specifically, the regulations stipulate two major types of rouble accounts of a non-resident company: Type "K" (convertible) and Type "N" (non-convertible). As it follows from the accounts' respective names, rouble amounts on a Type "K" account may be converted into a foreign currency (and further repatriated) without restrictions; but the amounts on a Type "N" account may not be converted - lest they are first blocked on the account for one year.

Currency control regulations specify the exact list of operations allowed to be executed through each type of the accounts. Generally, most transactions with Russian residents may be channelled through a Type "K" account, unless the operation is related to obtaining a loan from a resident, or to selling anything to a resident on long-term prepayment terms. In the both latter cases, the money must be credited to a Type "N" account. In case the foreign company wishes to acquire shares in a Russian company, it may do it using the funds on a Type "K" account, but not on a Type "N" account.

An alternative

There is yet another way for a foreign organisation to do business in Russia. The organisation may establish a Russian subsidiary company, which would further operate in Russia on its own behalf. This is a completely different case not covered by this paper. In this case generally no permanent establishment of the foreign company is deemed to be created, and the Russian subsidiary is taxed and otherwise treated as a regular Russian resident company, perhaps with minor reservations.

In particular, subsidiary's profits are taxed at the usual rate (24%), and the dividends distributed to the foreign parent are subject to the withholding tax (currently at 15%, if no tax treaty is in place between the two countries). No currency control restrictions are applicable to rouble accounts of the resident company, but to make a payment from its foreign currency (e.g. US\$) account, the company must comply with relevant regulations.

Accreditation procedures

Accreditation means obtaining a permission from a government authority to establish a representative office (or a branch) of a foreign company in Russia. Accreditation provides an official status for the company and allows it to carry on commercial activity in Russia. Besides that, accreditation grants the company a right for visa support from the Ministry of Foreign Affairs. This means that invitations and long-term visas are granted for expatriate employees of the representative office, as well as for their family members.

The major agencies authorised to accredit representative offices of foreign companies are the State Registration Chamber of the Ministry of Justice of the Russian Federation and the Chamber of Trade and Industry of the Russian Federation, though in certain cases accreditation with other ministries may be possible. As for branches, the only agency authorised to accredit them is the State Registration Chamber - such discrimination originates from mostly historical rather than logical reasons.

The documents required from a foreign company to accredit its representative office in Russia are as follows.

1. An application of the company for accreditation (a specific wording is required).
2. The certificate of incorporation (or excerpts from a commercial register) confirming registration of the company.
3. The statutes of the company (e.g. its Memorandum and Articles of Association).
4. A reference letter from the company's bankers.
5. A resolution of the company to establish a representative office in Russia.
6. A power of attorney for the head of the representative office.
7. A power of attorney for the person (if different from the above) authorised to apply for accreditation on behalf of the company.
8. The statutes of the representative office.
9. A confirmation of the address of the representative office.
10. Reference letters from Russian commercial partners of the company (at least two).
11. An agreement of local authorities (only if the representative office is not in Moscow).
12. Information about the representative office (in a specific form).

The documents No. 1-6, that is ones of the foreign origin, must be specifically certified. That is, they should be either *apostilled* by a government authority in the country of origin, or *legalised* by the Russian consulate or embassy, also in the country of origin of the company. For either of the two, the documents are normally required to be certified by that country's notary first. ("Apostille" is an internationally accepted form of certification prescribed by the Hague Convention of 1961, which Russia is a party to.) The documents should be further furnished with a Russian translation, which should be certified (usually by a Russian notary).

(The documents required for accreditation of a branch are basically the same.)

The state accreditation fees should be paid at this point. Those depend on the term the representative office is accredited for (US\$1,000-2,500 for 1-3 years). The procedure of accreditation normally takes 21 working days, though acceleration to 7 days is possible at US\$500 in extra costs. (The quoted fees are those of the State Registration Chamber.)

On obtaining the permission for establishing a representative office or a branch - that is, on accreditation - the company may apply for personal accreditation of its expatriate personnel in Russia (by default, up to 5 persons) and their family members, which grants them a right for the visa support.

Registration procedures

On being accredited, the representative office (or a branch) must be registered with a relevant tax authority. In Moscow, this will be the Inspectorate No. 38 of the Ministry of Taxes of the Russian Federation. For tax registration, the following documents are required.

1. An application of the company for registration (in a specific form).
2. The certificate of incorporation (or excerpts from a commercial register) confirming registration of the company.
3. A certificate of the tax registration of the company in its country of origin.
4. A resolution of the company to establish a representative office in Russia.
5. A power of attorney for the head of the representative office.
6. A power of attorney for the person (if different from the above) authorised to apply for registration on behalf of the company.

The documents No. 2-5 must again be apostilled or legalised and furnished with a certified translation. Note that now we need an additional required foreign certified document as compared to the previous lists, namely, the tax registration certificate. It is usually advisable to obtain it beforehand and include in a single set of documents to be apostilled. Then it is possible to pass the original apostilled set to the State Registration Chamber, and its notarised copy to the Tax Inspectorate.

The procedure of tax registration officially takes 5 working days, though delays are unfortunately possible.

Besides the above, the representative office (or a branch) must be registered with various other government agencies, such as the Pension Fund of Russia, the Social Security Fund, the Fund of Obligatory Medical Insurance, and the State Committee for Statistics. This may take another week.

On completion the registration procedures, the company may open bank accounts in Russian banks. Several different types of accounts are available for a foreign legal entity, including the "Type N" (non-convertible) rouble account, the "Type K" (convertible) rouble account, and the foreign currency account, each having its specific regime in terms of the currency control legislation.

On finishing all the above, the company's representative office may at last commence its actual business activity.

Disclaimer

This paper contains only a general sketch of the legal and taxation issues relating to the status and accreditation/registration procedures of a foreign company's representative office in Russia. We recommend you to seek advice and/or assistance of a Russian professional firm in any specific case.

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2003