

Branch Office vs Subsidiary Company vs PT Nominee Company

Using a Company to hold immovable property can serve a variety of purposes. Several forms of companies are available. A foreign company can be used to set up either a *Branch Office* or a *Subsidiary Company*. Alternatively, owners can create a domestic company, a Portuguese Nominee Company. The treatment of these entities is quite different. Each option requires careful consideration.

A **Branch Office** is generally defined as a fixed site (*a permanent establishment*) through which the business of the company is wholly or partly conducted within that jurisdiction. It can include an agent habitually exercising authority to do business on behalf of the company.

A **Subsidiary Company** is a separate legal entity owned by the parent company. Liabilities arising within the company cannot be claimed against another company in the group.

A **Portuguese Nominee Company** (*Civil Company*) is fully compliant Portuguese structure and is not subject to the punitive legislation that have made Offshore Property Companies a pariah. When the Company is eventually sold, only a simple deed of sale of the shares is required. The property remains securely within the company.

<i>Issues</i>	Branch Office (PE)	Subsidiary Company	PT Nominee Company
Legal entity	Not a separate legal entity. Claims and liabilities arising in the <i>permanent establishment</i> (PE) can be extended to the main company.	A separate legal entity. Any liabilities arising in one jurisdiction cannot be claimed against another company in the corporate group.	As a legal entity, this form of company is fully compliant under Portuguese legislation.
Inter office remittances / Repatriation of profits	Upon registration of a branch, evidence must be provided of the legal existence of Parent Company. Inter office remittances are not taxable.	Repatriation of profits is flexible. Repatriation of profits can be arranged to suit timing of the Company's tax position. There is normally no withholding tax on dividends	N.A. As a stand-alone Portuguese Company, there are normally no remittances nor repatriations
Profits / Losses	Start up costs and initial trading losses can be set against parent company profits for tax purposes. Company Tax will be due on profits made by the branch.	The rate of tax can be higher as a result of increased numbers of companies in the worldwide group.	There is a 50% exclusion on Capital Gains upon sale of shares. Share transfer does not trigger transfer tax (IMT) or Stamp Duty on the Company's property.
Filing requirements	The same as the parent, including filing returns for VAT, employees and company tax (IRC).	Public disclosure of the accounts. With cross border consolidation, administration can be more straightforward.	PNC's file annual Portuguese IRC accounts normally at zero.
Liability	Parent company is fully responsible for the liabilities of the branch.	Subsidiary is responsible for liabilities limited to share value.	Transparency. Shareholders will be held liable for any Company debts.
Taxation of assets	Sale of property out of the Company gives rise to CGT to Company plus on-going assessment on dividends to shareholders.	Sale of property out of the Company gives rise to CGT to Company plus assessment on dividends to shareholders.	Shares can be sold including the property avoiding IMT & Stamp Duty for Buyer and 50% less CGT for the Seller.
General	A Branch is easier than a Subsidiary Company to set up and close down if unsuccessful.	When trading, customers often prefer to deal with a local company rather than an overseas branch.	Annual running costs are substantially less than commercial companies.

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