

## **Business in Ukraine**

legal aspects

### **Foreign representative offices: special features of doing business**

**To develop overseas economic cooperation, foreign companies establish permanent missions on the territory of Ukraine, which run complete or partial business activities. This article lists types of non-resident representative offices and describes how the status influences taxation.**

#### **WHAT IS THE REPRESENTATIVE OFFICE?**

Activities of representative offices have their special features. Non-residents at the territory of Ukraine may perform activities only through their own representative offices, which are very close to branch offices by their functions. Non-resident legal entity may delegate some of its own functions to the representative office. Non-resident representative offices received such an opportunity as they exist and act on the legislative bases of two states: their native country and the country, where they run activities.

Ukrainian legislation provides the following definitions of non-resident representative offices in Ukraine:

- Representative office of foreign economic entity is an institution or entity, which represents interests of foreign economic entity in Ukraine and possesses corresponding powers, which have been duly registered;
- Representative office of a foreign company is an entity, which has been accredited in the order set by the Ukrainian law and which represents non-resident legal entity interests in Ukraine on the basis of corresponding powers duly registered.

To register a non-resident representative office in Ukraine, head of it should be appointed. This office may be held either by a foreigner or by a Ukrainian citizen. Head of representative office governs its current activities and ensures fulfillment of instructions received from a head office. He acts on the basis of a proxy registered by notary public and legalized in the Ukrainian consulate in the country of issue. Heads of non-resident representative offices should not receive a permit for employment in Ukraine.

#### **List of documents required to register company representative offices in Ukraine:**

1). Written request of registration – should be made at the company's blank and should be signed by the company's head and stamped. Free manner. The request should contain:

- Company name;
- Company address;
- Phone and fax numbers;
- City, where the representative office is being opened – add future address;
- If branch offices are to be found – list the cities of Ukraine;
- Number of foreign citizens, which will work for the representative office;
- Date the company was established in the native land;
- Bank and account;
- Field of company business;
- Purpose of opening and field of representative office activities (only representative functions), information about business relations with Ukrainian partners and outlooks for development of cooperation.

The request is submitted in original with a company head signature authorized by notary public.

2). Record from the trade register of the country, where officially registered headquarters of foreign economic entity is located. The record should be duly authorized by notary public.

3). Record from the bank, where the company's account is opened – account number added.

Bank record is handed in original. Signature of bank clerk, who issued the record, must be authorized by notary public.

4). Proxy (for particular entity) – for performance of representative functions on the territory of Ukraine, representative powers should be listed.

Proxy is submitted in original, signature of the company head is authorized by notary public.

Originals of documents mentioned in p.p.1-4 should be legalized in due manner in consulate institutions, which represent interests of Ukraine, and are accompanied with translation into Ukrainian authorized by the official interpreter stamp.

The documents should be submitted to the Ministry of economy of Ukraine no later than 6 months since the date of issue in the country of the company location. Upon reception of the documents for registration, the applicant gets an account number to pay a state fee of USD 2,500.

### **WHAT ARE THEIR TYPES?**

In fact, non-resident interests at the territory of Ukraine may be represented not only by their representative offices, but also by separate structural sub-departments established for this particular purpose. This function may be performed by residents of Ukraine as well.

Meanwhile, non-resident representative offices may have two forms: permanent and so-called casual (those, which are not involved in business). Hence, if the goal of foreign representative office is only to represent interests of non-resident legal entity at the territory of Ukraine as well as to conclude any contracts on his behalf (and take other actions which can not be defined as economic activity), such representative office is equal to regular non-residents of Ukraine. (Let us remind that economic activity suggests actions aimed to receive profit.)

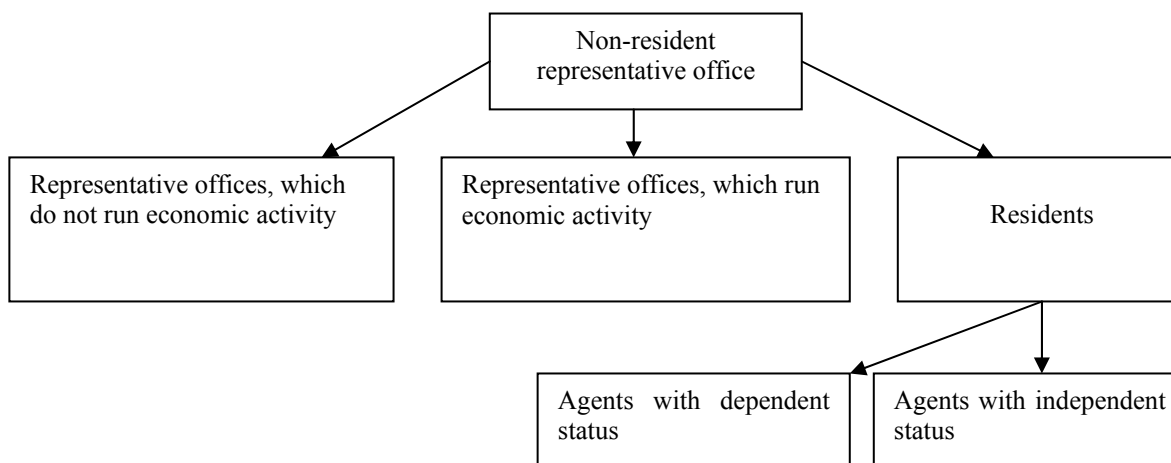
At the same time, if key goal of non-resident representative office is to conduct any economic activities (of course, in the framework of its non-resident legal entity activity), this type of representative office belongs to permanent ones, according to tax legislation.

As regards residents, which operate on the territory of Ukraine in favor of non-resident legal entity, they too have internal gradation. In particular, they can be defined as “agent with dependent status” or “agent with independent status”. In brief, they are called agents. So, who are they and how can one define their status (dependent or independent)?

The agent with dependent status is a resident, who acts on the territory of Ukraine on behalf of non-resident. For taxation purposes, agents with dependent status are equaled to permanent representative office of non-residents with the only difference that such residents should not undergo another registration of legal entity in taxation bodies of Ukraine.

Agents with independent status are residents, which conduct activities on non-resident behalf and on the basis of agent agreements (for instance, commission). Non-resident enterprise is not considered the one having permanent representative office in Ukraine only if it runs commercial activities at Ukraine's territory through broker, commissioner, or other intermediary (that is – the agent with independent status), who acts in the limits of its regular business.

To visualize all of the aforementioned, see general scheme below.



Non-resident representative office

Representative offices, which do not run economic activity

Representative offices, which run economic activity

Residents

Agents with dependent status

Agents with independent status

Status is very important for representative offices. It affects the order of representative office registration, as well as the procedure of current account opening in a bank. Hence, for non-resident representative offices, which have the status of permanent representation, banks open P type accounts. At the same time, N type accounts are set up for representative offices without permanent status. The difference between the accounts is that N type accounts are opened for non-resident enterprises (in particular, their representative offices), which do not run economic activity. No revenues from commercial activity in Ukraine can be forwarded to this account – only parent company may transfer funds to maintain its representative office, which only performs representative functions. Neither the account may receive payment of commercial contracts for parent company.

## TAXATION MATTER

Non-resident representative office status has a crucial role when it comes to taxation of the activity. Therefore, common taxation policy, which is 25% - проверить towards the taxation object, is applied to permanent representative offices and entities close to them (that is, residents with dependent status).

As opposed to permanent representative offices, activities of representative offices, which are not permanent, may be exempted from taxation in Ukraine according to international agreements. Such offices should first of all confirm their status. To do this, they should prove their activity is not a regular activity of non-resident. Meanwhile, principal activity of non-resident is the activity defined by its authorized documents, which is regular and permanent during calendar year, for which the report period falls.

The proves of auxiliary or preparatory nature of representative office activities towards performance of foreign company that has created its representative office are the documents, which state direct type of activities of a company itself and determine how performance of representative office in Ukraine serves implementation of functions for non-resident. The documents may cover, for example, authorized documents of non-resident company, record from chamber of commerce and industry from the country of non-resident location, record from bank institution, where the official non-resident account is opened, as well as other similar documents issued in compliance with legislation of foreign country. The examples of such activities are gathering of analytical and statistic data, marketing research, as well as drafting of contract documents to be signed between parent company and resident of Ukraine.

Thus, if non-resident representation managed to prove its activity has auxiliary nature, in such case its activity will be exempted from taxation in Ukraine in accordance with international agreements, provided such agreement is available and in force.

**Legal aspects of principal differences  
between representative offices and legal entities  
according to Ukrainian legislation.**

1. Since representative office is not a legal entity, but specially placed sub-department of legal non-resident entity, proxy issued by parent company to head of representative office is the legal ground for its activity at the territory of Ukraine, which defines borders for such activity.

Business entity is a legal entity created and acting according to Ukrainian law in the frames set by basic documents and further instructions of its founders.

2. Commercial representative offices are likened to legal entities of Ukraine by their status. Such form is rarely used by foreign company as tax legislation of Ukraine is applied to such office in full volume, while the office lacks complete volume of capacity, not being a legal entity.

3. Experience shows that as a rule, head of representative office as a physical individual receives a separate proxy to represent parent company as a commercial representative. Contracts are signed directly with parent company, and payment is made to parent company accounts in the country of headquarters location.

**More detailed information about establishing of foreign representative offices in Ukraine and problems of labor and related tax matters regulation is available at Derzhzovnishinform Center.**