

Global WTS PE Study

A high-level overview of most discussed PE issues
in EU, OECD and BRICS countries

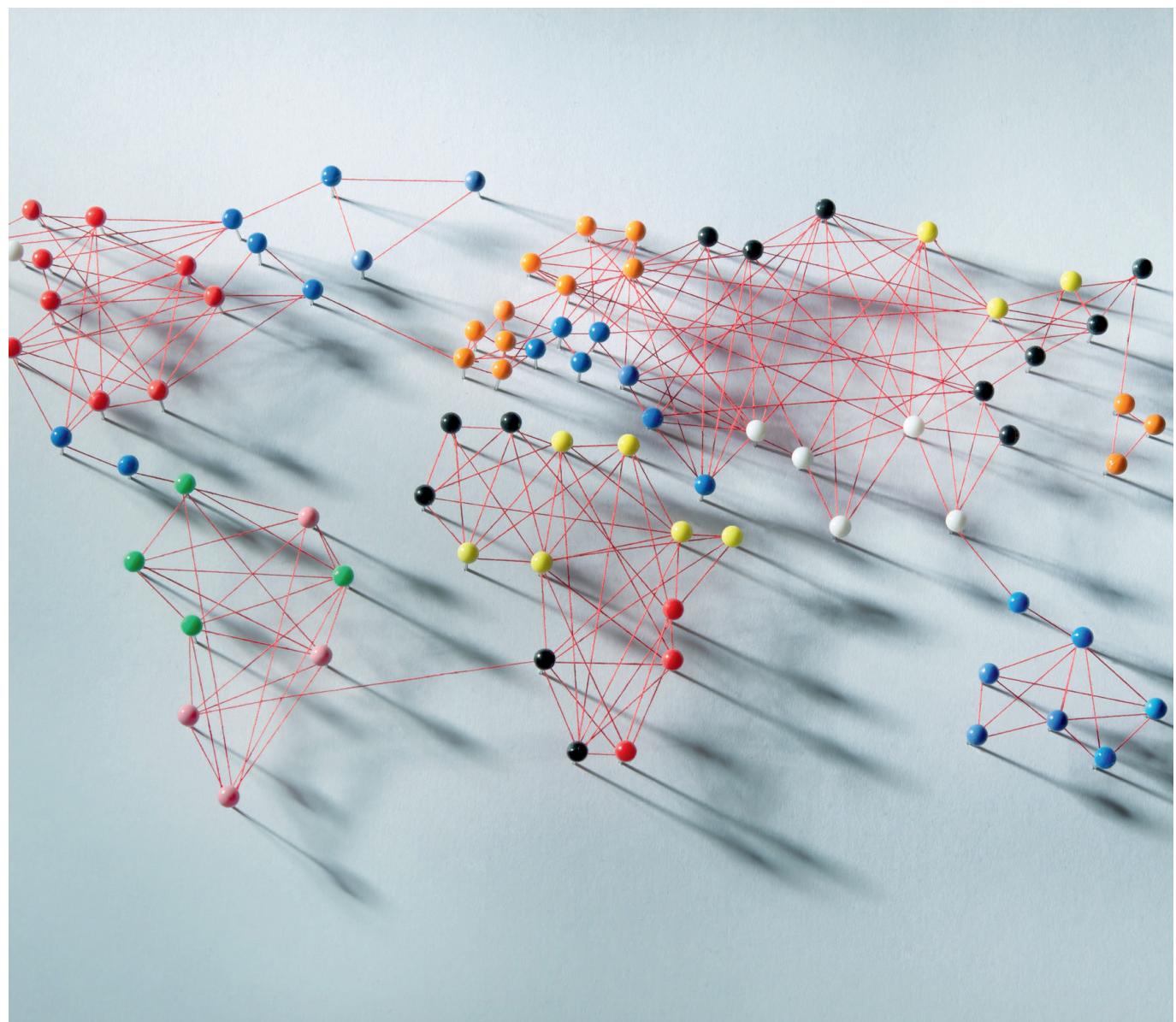


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Dear reader,

WTS has conducted a Global WTS PE Study regarding the permanent establishment ("PE"). This survey has been initiated in response to the international developments regarding the OECD BEPS project, i.e. the OECD action plan against Base Erosion and Profit Shifting ("BEPS").

As a result of action point 7 of the OECD BEPS project in many normal business situations a taxable presence in the form of a PE may not be avoided anymore. Therefore, a number of foreign PEs will be created; consequently, foreign tax filing obligations as well as tax liabilities will increase.

This PE Study has been conducted to provide a quick high-level overview for almost every MNE group regarding PE issues that are frequently discussed. Furthermore, the PE study provides a rough overview of differences in legislation and/or practices that exist between the various

countries. Also, the transfer pricing aspects of the permanent establishments, how results are to be determined, have been addressed.

With respect to the OECD BEPS project the survey provides for a basis for an initial assessment regarding the impact of the different changes in the context of permanent establishments.

The 62 countries that have been included in the survey cover most of the EU, OECD and BRICS countries. The questionnaire has been answered by those local tax experts from the Global WTS Network who are frequently dealing with PE issues and who are therefore familiar with both the theoretical as well as a practical background.

Should you have any questions on PE issues please feel free to contact one of our colleagues of the relevant countries. We will be at your service.



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Conclusions at a glance

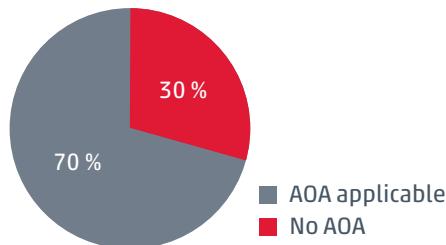
As a result of the OECD BEPS project it is expected that tax authorities worldwide will focus on international PE issues in order to gain additional tax revenues. In order to mitigate risks MNE groups, irrespective of their size, should review and safeguard their business processes, in particular their distribution structures.

In any case, it is highly recommendable to have cross-border activities reviewed from a tax perspective before the activities are offered and quoted and before they are finally carried out.

Although the PE regulations differ from one country to the other, the OECD Model Tax Convention already gives a good initial guidance of how PEs are treated.

EU countries provide for similar regulations that are close to what the OECD Model Tax Convention provides for, the same is true for non-EU OECD countries. When looking at the BRICS countries or other non-OECD countries, the differences become more significant. Therefore, when doing business in those countries, the activities should be reviewed even more careful in order to avoid serious compliance risks.

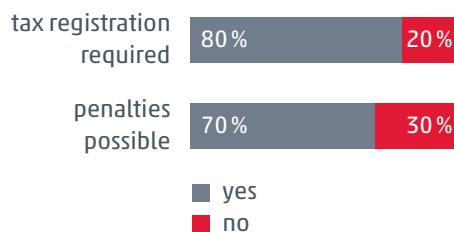
Where a PE is created, it is necessary to check the profit allocation rules. Most of the countries already apply the Authorized OECD Approach (AOA).



In case the AOA is not applied in both countries, i.e. in the country of the head office as well as the country of the permanent establishment, double taxation risks are to be expected to be significantly higher than in case both countries apply the AOA.

The future developments, i.e. the PE regulation on multinational, bilateral as well as local levels, need to be followed closely and, given the developments at the OECD as well as in the EU, we expect that the planned changes may be implemented soon.

In case the PE rules abroad are similar to those in the head office country, particularly in case a double tax treaty exists and the AOA is applicable in both countries, the PE may provide a good alternative to a separate (legal) entity in order to carry out the business.



An activity which creates a PE only becomes a problem, if the registration obligations and tax liabilities are not anticipated in advance but come up after the activities have started, i.e. upon request of the customer or in the course of an audit. Not reporting a permanent establishment, and not filing and paying the appropriate taxes, could qualify as tax fraud. This could lead to reputation and compliance risks that may have an impact far beyond a tax risk.

The main use of the concept of the permanent establishment (PE) is to determine the right of a country to tax a foreign company for the activities conducted in that country. The PE concept in general as well as the actual developments of the OECD BEPS project are further described following this summary of the survey. The detailed results from the survey can be found in the section Detailed survey of this PE Study.

In the absence of a separate (legal) entity in a country the local tax authorities are keen to qualify activities as a PE in order to gain (corporate) income tax revenues, which they would otherwise not be able to achieve.

In order to be compliant with the local regulations in international business one of the issues to be considered is the proper registration and tax filing in countries abroad, particularly if such requirements are generated through the creation of a permanent establishment.

The first part of the survey deals with the **prerequisites and formal requirements** that are linked to a PE. The second part focusses on the **profit attribution and taxation** of the permanent establishment. The results can be summarized as follows:

Prerequisites and formal requirements

General compliance obligations

In most of the countries the concept of the PE is applied. As a consequence, it should be assumed that the PE concept is known worldwide and by definition needs to be taken into consideration when doing business abroad. Only in a few countries from our survey, which are not part of the OECD, the PE concept is not applied, e.g. Bahrain, Brazil, Kuwait, UAE and Vietnam. In addition, it should be noted that the PE definition is not the same in each of the countries, e.g. Brazilian tax law does not provide for a general definition, however, foreign residents may still be taxable with their activities in Brazil.

When a permanent establishment exists, in 80% of the responding countries it is required to register the permanent establishment at the local tax authorities. In 70% of the responding countries penalties may be imposed when a foreign company incorrectly has not registered a PE (in time). However, the local regulations can differ substantially on this point.

In view of the growing number of PEs worldwide as a result of the OECD BEPS project the tax compliance risks as well as the tax liabilities are expected to increase correspondingly.

Other taxes

If a PE exists for corporate income tax purposes, this does not automatically mean that also a PE exists for other tax purposes as well, such as for indirect taxes. In many countries different requirements exist to conclude that a permanent establishment for indirect taxes exist, such as for VAT (Value Added Tax), GST (General Sales Tax) or Sales Tax. Therefore, it is recommended to address both the indirect and direct taxes when determining whether a permanent establishment exists, as the outcome on the existence may differ per type of tax. 66% of the responding countries have indicated that when a permanent establishment for corporate income taxes exists, this does not automatically mean that a permanent establishment for VAT purposes exists.

With regard to personal income tax and wage tax requirements more than 50% of the countries have responded that in general it can be concluded that once a PE has been created for corporate income tax purposes, it also exists for wage tax purposes. This also impacts the personal income tax obligations for the employees working under supervision at the permanent establishment.

In practice, the tax risks resulting from a PE creation consist of both (corporate) income taxes as well as other taxes. Other taxes, such as VAT and wage tax are often significantly higher and even more difficult to manage.

Examples for PEs

Business trips

In practice, many companies qualify regular visits of their employees as a business trip when such employee visits a foreign country where he works on a project or provides services to a regular customer. 60% of the responding countries have stated that such business trips may eventually trigger a permanent establishment. The permanent establishment could be triggered due to the term that the employee is present in the country. Also, the presence of multiple employees in a country after each other could be deemed to trigger a permanent establishment.

The type of work of those employees also determines whether a permanent establishment may be deemed to exist. Do the employees conclude contracts on behalf of the company as a sales person or agent? Or do they only provide auxiliary activities? All is of influence on the (non-)existence of the permanent establishment.

Home office

A further example that may create a PE in many countries is the home office. Even if the foreign enterprise does not reimburse the employee for the use of the home office, a PE may be deemed to exist. In 70% of the responding countries a home office could create a PE and thus lead to a tax liability for the company in the foreign country where the home office is used by an employee of the company.

Services

Another example, that is often mentioned, is a company that renders services in a foreign country. Although a fixed place of business does not exist, in 55% of the responding countries such services could trigger a permanent establishment. An example of this is given in the commentary on article 5 of the OECD Model Tax Convention, i.e. the so-called "Painter example".

Agent activities

Moreover, more than 80% of the responding countries confirm that agent activities give rise to the creation of a PE in a foreign country. In situations of direct sales to foreign customers, in many cases agents are used to generate such sales. Such agents are often own employees, who qualify as a permanent representative, and thus create an Agent PE. But even if the agent activities are carried out by an existing local subsidiary, which is already registered as a tax payer in the foreign country, this legal entity may also create a PE for the foreign company which acts as the principal. As a consequence, there are two taxpayers to be considered, even though the local subsidiary is remunerated at arm's length; this is further dealt with below.

It may well be that the Agent PE issues will become even more important after the OECD BEPS project results of action point 7 have been implemented into the multi-lateral instrument and/or the bilateral tax treaties.

Minimum term

When being present in a foreign country, the question often is after what term of presence a permanent establishment is deemed to exist. From our experiences in international tax practice, we know that there is a wide range of answers. The outcome of the survey confirms this. The term after which a permanent establishment is deemed to exist deviates from 1 day to 2 years. However, 65% of the answers are in line with the OECD commentary that mentions a 6 months period as tipping point where a permanent establishment may start to exist.

Contract Splitting

In practice, companies often try to structure their activities in a foreign country in a way that the creation of a PE is avoided. An example is splitting up contracts into different activities in order to achieve short term contracts on the basis of which the activities are interrupted with certain periods of time, rather than one long-term contract that by definition triggers a permanent establishment. 75% of the responding countries have indicated that the permanent establishment could not be avoided this way. The local tax authorities often challenge this, finding the split-up with interruptions to be abusive, unless there are other economic reasons.

Contract splitting is also applied between closely related enterprises to avoid that each group company exceeds the term on the basis of which a permanent establishment is deemed to exist. More than 60% of the responding countries have stated that these contracts are not treated as separate contracts but are treated as one contract resulting in a PE of the lead contract party; thus avoiding a PE by contract splitting should be difficult in many cases.

Therefore, in many countries the proposed OECD BEPS changes regarding contract splitting may have rather limited consequences.

Tax Rulings

When it is uncertain whether the activities of a company trigger a permanent establishment, certainty can be obtained from the local tax authorities. 60% of the countries have responded that certainty can be obtained on the (non-)existence of a permanent establishment through, for instance, the application of advance tax rulings.

Profit attribution and taxation

Application of the AOA

The main risk of double taxation is that countries apply different transfer pricing views. Therefore, it has been investigated to which extent the responding countries apply the Authorised OECD Approach (AOA) which is the "functionally separate entity approach", where the permanent establishment is to be regarded as a separate, independent, third party entity.

Based on the survey, the AOA was applied in 2015 in almost 70% of the responding countries, but almost in 90% of the responding EU and OECD countries. In some OECD countries the AOA is not yet applicable since the AOA has not yet been formally incorporated into local tax law. However, due to recent local tax law changes in 2016 this might have already changed.

Transfer Pricing methods

Based on the OECD Transfer Pricing guidelines there are five standard transfer pricing methods that can be applied to establish whether the conditions of controlled transactions are consistent with the arm's length principle. These five methods consist of three "traditional transaction methods": the comparable uncontrolled price method ("CUP" method), the resale price method, and the cost plus method; and two "transactional profit methods": the transactional net margin method ("TNMM") and the transactional profit split method. In more than 70% of the responding countries these five TP methods are also used when determining the appropriate remuneration for a PE.

Interest charges

When determining the result of a permanent establishment on the basis of the AOA, also interest needs to be taken into account. There are, in principle, two approaches for attributing the external interest expense of an enterprise to its PE: (1) a tracing approach, and (2) a fungibility approach. The question has been whether interest could be charged by the head office to the permanent establishment or vice versa. Many countries only allow such interest charges in case there is an active

treasury function (fully fledged treasury department) at the head office or at the permanent establishment which in practice will not often exist.

Royalties

Based on the AOA the intellectual property (IP) needs to be allocated to the head office or the permanent establishment. Royalty charges from the permanent establishment to the head office or vice versa are allowed in roughly 60% of the responding countries.

Remuneration for Agent PEs

A frequently discussed practical issue is whether or not in case of an Agent PE (as described above) additional profit can be allocated to the Agent PE when the agent (a related party abroad) has received an arm's length remuneration. The question is whether additional profit can be allocated to a permanent establishment when all functions and risks in the territory are already remunerated through the remuneration of the agent. There is no clear tendency in the answers from the responding countries. Almost half of the responding countries have stated additional profit can be taxable.

One of the main results of the OECD BEPS project may be an increased focus on Agent PEs. Consequently, the remuneration of Agent PEs will be challenged in tax audits in many countries.

APA

To obtain certainty on the profit allocation between the head office and permanent establishment an (unilateral) Advance Pricing Agreement (APA) could be concluded. 60% of the responding countries companies have confirmed that companies can apply for such an APA.

Taxation

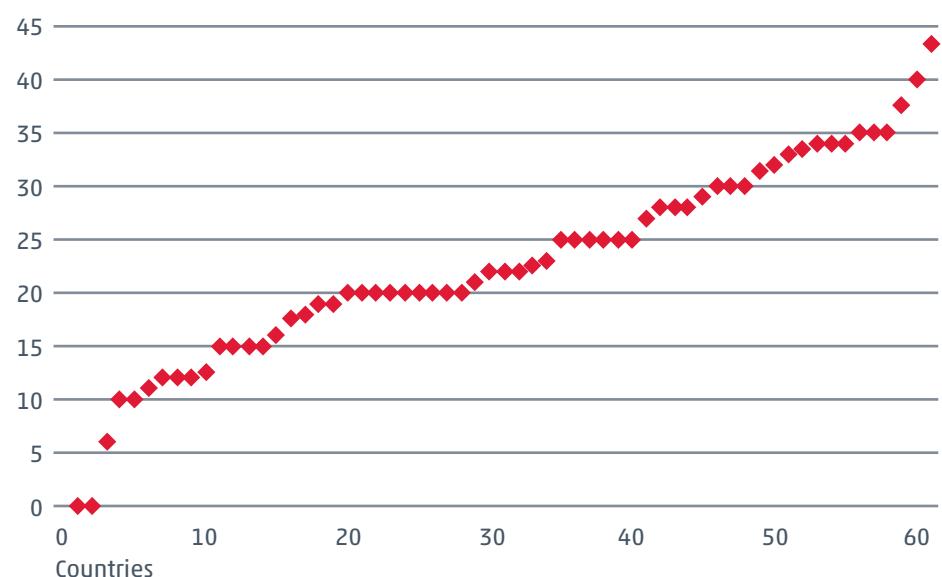
In summary, it has to be acknowledged that the corporate income tax treatment of a PE does not differ from the corporate income tax treatment of a resident (legal) entity. In 80% of the countries the same or a similar tax regime and tax rate apply. However, there may be differences when it comes to the details, particularly to the determination of the taxable income.

One significant item that should be observed when determining the tax position of a PE compared to a resident (legal) entity is withholding tax. There is a variety of different situations that may apply. Local tax rules in many countries do not provide

for any withholding taxes to be triggered on dealings between the permanent establishment and its head office. On the other hand, there may be Branch Profit Taxes applicable once the PE profit is actually transferred to the head office. In such cases the creditability or even the deductibility of the withholding taxes at the level of the head office and the PE, as the case may be, may become problematic.

The attached survey shows the local total income tax rates for 2015 that are applicable for a Branch or a PE; in each country it has been assumed that the head office is a corporation and the PE profit amounts to 100.000 EUR.

Tax Rate in %



Detailed survey

Prerequisites and formal requirements					
1 Is the concept of the permanent establishment applied in your country?	yes	yes	yes	yes	no
2 Does an obligation exist in your country to register that permanent establishment at the Chamber of Commerce or any commercial register?	yes	yes	no	yes	yes
3 Does an obligation exist to register the permanent establishment at the tax authorities?	yes	yes	yes	yes	no
4 If a permanent establishment for corporate income tax purposes exists, would then automatically a permanent establishment exist for VAT purposes?	yes	no	no	yes	no
5 If a permanent establishment for corporate income tax purposes exists, would then automatically a permanent establishment exist for personal income tax and wage tax purposes?	no	no	yes	no	no
6 Will penalties be imposed when the permanent establishment is not immediately registered but, for instance after one year, e.g. due to an unexpected delay on the basis of which the 12 months threshold for construction projects is exceeded?	yes	yes	yes	yes	no
7 Many companies qualify regular visits of for instance different employees to a project and/or regular customer in a foreign country as a business trip. If such business trips would be to your country, could this trigger the existence of a permanent establishment?	no	yes	yes	no	no
8 The OECD commentary mentions a 6 months period as a tipping point where a permanent establishment may start to exist. What period could be regarded as a rule of thumb in your country?	6 months	6 months	6 months	90 days	n.a.
9 Could a home office trigger a permanent establishment, when the foreign employer would not pay a reimbursement/rent for the use of that home office?	no	yes	no	yes	no
10 Could the mere rendering of services in your country without having a fixed place of business trigger a permanent establishment?	yes	yes	yes	yes	no
11 Could the agent activities of a legal entity in your country trigger a permanent establishment of the principal?	yes	yes	yes	no	no
12 Could a permanent establishment be avoided by splitting up a contract on the basis of which the activities are interrupted with certain periods of time?	yes	no	no	no	no
13 Could a permanent establishment be avoided by splitting up a contract between companies being member of the same group?	yes	no	no	no	no
14 Is it possible to obtain certainty on the (non-)existence of a permanent establishment from the tax authorities, e.g. by applying for an advance tax ruling?	yes	yes	no	yes	no

Profit attribution and taxation						Bahrain
15 Does your country apply the Authorised OECD Approach (AOA) which is the "functionally separate entity approach", where the permanent establishment is to be regarded as a separate, independent, third party entity?	yes	yes	no	no	no	
16 Do the tax authorities in your country apply/advocate a dynamic interpretation method of the OECD commentary of the OECD model convention, i.e. do they apply the newest commentary on all tax treaties or do they apply a static interpretation method where only the commentary applies that was valid at the time the tax treaty was concluded? If the Dynamic interpretation method is advocated by the authorities, please answer "Yes", if the Static Interpretation Method is used, please answer "No".	yes	yes	no	no	no	
17 Are indirect methods applicable for determining the profit of a permanent establishment?	no	no	yes	yes	no	
18 Is the AOA regulated in local law?	no	yes	no	no	no	
19 Are the five TP methods used to determine the remuneration of the permanent establishment?	yes	yes	yes	no	no	
20 When the agent activities of a legal entity in your country trigger a permanent establishment of the principal, could additional profit be allocated to that agent permanent establishment when the legal entity already receives an arm's length remuneration?	yes	yes	no	no	no	
21 Is it possible that interest is charged by the head office to the permanent establishment or vice versa?	yes	yes	no	yes	no	
22 Is it possible that royalties are charged by the head office to the permanent establishment or vice versa?	yes	yes	no	yes	no	
23 Is it possible to obtain certainty on the correct profit allocation to the permanent establishment, e.g. by applying for a (unilateral) Advance Pricing Agreement?	no	yes	yes	yes	no	
24 Does the corporate income tax treatment of a permanent establishment differ from the corporate income tax treatment of a resident (legal) entity?	no	no	no	no	no	
25 Are there any withholding taxes that have to be considered regarding payments to the head office?	yes	no	no	yes	no	
26 What is your local total income tax rate (assuming a corporation with a business profit allocated to the PE in the amount of EUR 100,000)?	35%	30%	25%	20%	0%	

Prerequisites and formal requirements					
1 Is the concept of the permanent establishment applied in your country?	yes	yes	yes	yes	yes
2 Does an obligation exist in your country to register that permanent establishment at the Chamber of Commerce or any commercial register?	yes	no	yes	yes	no
3 Does an obligation exist to register the permanent establishment at the tax authorities?	no	no	no	yes	yes
4 If a permanent establishment for corporate income tax purposes exists, would then automatically a permanent establishment exist for VAT purposes?	no	no	no	no	yes
5 If a permanent establishment for corporate income tax purposes exists, would then automatically a permanent establishment exist for personal income tax and wage tax purposes?	no	no	yes	no	yes
6 Will penalties be imposed when the permanent establishment is not immediately registered but, for instance after one year, e.g. due to an unexpected delay on the basis of which the 12 months threshold for construction projects is exceeded?	no	no	yes	no	yes
7 Many companies qualify regular visits of for instance different employees to a project and/or regular customer in a foreign country as a business trip. If such business trips would be to your country, could this trigger the existence of a permanent establishment?	no	no	no	no	yes
8 The OECD commentary mentions a 6 months period as a tipping point where a permanent establishment may start to exist. What period could be regarded as a rule of thumb in your country?	30 days	n.a.	6 months	2 years	6 months
9 Could a home office trigger a permanent establishment, when the foreign employer would not pay a reimbursement/rent for the use of that home office?	yes	no	yes	yes	no
10 Could the mere rendering of services in your country without having a fixed place of business trigger a permanent establishment?	yes	no	no	no	no
11 Could the agent activities of a legal entity in your country trigger a permanent establishment of the principal?	yes	yes	yes	no	yes
12 Could a permanent establishment be avoided by splitting up a contract on the basis of which the activities are interrupted with certain periods of time?	no	no	no	yes	no
13 Could a permanent establishment be avoided by splitting up a contract between companies being member of the same group?	yes	no	no	no	no
14 Is it possible to obtain certainty on the (non-)existence of a permanent establishment from the tax authorities, e.g. by applying for an advance tax ruling?	yes	no	no	yes	yes

Profit attribution and taxation					
15 Does your country apply the Authorised OECD Approach (AOA) which is the "functionally separate entity approach", where the permanent establishment is to be regarded as a separate, independent, third party entity?	yes	no	yes	yes	yes
16 Do the tax authorities in your country apply/advocate a dynamic interpretation method of the OECD commentary of the OECD model convention, i.e. do they apply the newest commentary on all tax treaties or do they apply a static interpretation method where only the commentary applies that was valid at the time the tax treaty was concluded? If the Dynamic interpretation method is advocated by the authorities, please answer "Yes", if the Static Interpretation Method is used, please answer "No".	yes	no	yes	no	yes
17 Are indirect methods applicable for determining the profit of a permanent establishment?	yes	no	no	yes	yes
18 Is the AOA regulated in local law?	no	no	no	yes	yes
19 Are the five TP methods used to determine the remuneration of the permanent establishment?	yes	no	yes	yes	yes
20 When the agent activities of a legal entity in your country trigger a permanent establishment of the principal, could additional profit be allocated to that agent permanent establishment when the legal entity already receives an arm's length remuneration?	yes	no	no	yes	no
21 Is it possible that interest is charged by the head office to the permanent establishment or vice versa?	no	no	yes	no	yes
22 Is it possible that royalties are charged by the head office to the permanent establishment or vice versa?	no	no	yes	yes	yes
23 Is it possible to obtain certainty on the correct profit allocation to the permanent establishment, e. g. by applying for a (unilateral) Advance Pricing Agreement?	yes	no	no	yes	yes
24 Does the corporate income tax treatment of a permanent establishment differ from the corporate income tax treatment of a resident (legal) entity?	no	no	no	no	no
25 Are there any withholding taxes that have to be considered regarding payments to the head office?	no	yes	yes	yes	yes
26 What is your local total income tax rate (assuming a corporation with a business profit allocated to the PE in the amount of EUR 100,000)?	33,99%	34%	10%	33%	22,5%

Prerequisites and formal requirements					
1 Is the concept of the permanent establishment applied in your country?	yes	yes	yes	yes	yes
2 Does an obligation exist in your country to register that permanent establishment at the Chamber of Commerce or any commercial register?	no	no	no	no	yes
3 Does an obligation exist to register the permanent establishment at the tax authorities?	yes	yes	no	yes	yes
4 If a permanent establishment for corporate income tax purposes exists, would then automatically a permanent establishment exist for VAT purposes?	yes	no	yes	no	no
5 If a permanent establishment for corporate income tax purposes exists, would then automatically a permanent establishment exist for personal income tax and wage tax purposes?	yes	no	yes	no	yes
6 Will penalties be imposed when the permanent establishment is not immediately registered but, for instance after one year, e.g. due to an unexpected delay on the basis of which the 12 months threshold for construction projects is exceeded?	yes	yes	no	yes	yes
7 Many companies qualify regular visits of for instance different employees to a project and/or regular customer in a foreign country as a business trip. If such business trips would be to your country, could this trigger the existence of a permanent establishment?	yes	no	no	no	yes
8 The OECD commentary mentions a 6 months period as a tipping point where a permanent establishment may start to exist. What period could be regarded as a rule of thumb in your country?	6 months	6 months	6 months	6 months	6 months
9 Could a home office trigger a permanent establishment, when the foreign employer would not pay a reimbursement/rent for the use of that home office?	yes	yes	yes	no	yes
10 Could the mere rendering of services in your country without having a fixed place of business trigger a permanent establishment?	yes	yes	yes	no	no
11 Could the agent activities of a legal entity in your country trigger a permanent establishment of the principal?	yes	yes	no	yes	yes
12 Could a permanent establishment be avoided by splitting up a contract on the basis of which the activities are interrupted with certain periods of time?	no	no	no	yes	no
13 Could a permanent establishment be avoided by splitting up a contract between companies being member of the same group?	yes	yes	no	no	no
14 Is it possible to obtain certainty on the (non-)existence of a permanent establishment from the tax authorities, e.g. by applying for an advance tax ruling?	no	no	no	yes	yes



China



Czech Rep.



Egypt



Estonia



Finland

Profit attribution and taxation	China	Czech Rep.	Egypt	Estonia	Finland
15 Does your country apply the Authorised OECD Approach (AOA) which is the "functionally separate entity approach", where the permanent establishment is to be regarded as a separate, independent, third party entity?	yes	yes	yes	yes	yes
16 Do the tax authorities in your country apply/advocate a dynamic interpretation method of the OECD commentary of the OECD model convention, i.e. do they apply the newest commentary on all tax treaties or do they apply a static interpretation method where only the commentary applies that was valid at the time the tax treaty was concluded? If the Dynamic interpretation method is advocated by the authorities, please answer "Yes", if the Static Interpretation Method is used, please answer "No".	yes	yes	yes	yes	no
17 Are indirect methods applicable for determining the profit of a permanent establishment?	no	yes	no	yes	no
18 Is the AOA regulated in local law?	no	no	no	yes	no
19 Are the five TP methods used to determine the remuneration of the permanent establishment?	no	yes	yes	yes	yes
20 When the agent activities of a legal entity in your country trigger a permanent establishment of the principal, could additional profit be allocated to that agent permanent establishment when the legal entity already receives an arm's length remuneration?	yes	yes	no	no	no
21 Is it possible that interest is charged by the head office to the permanent establishment or vice versa?	no	yes	yes	no	no
22 Is it possible that royalties are charged by the head office to the permanent establishment or vice versa?	no	yes	yes	no	no
23 Is it possible to obtain certainty on the correct profit allocation to the permanent establishment, e. g. by applying for a (unilateral) Advance Pricing Agreement?	no	yes	yes	no	yes
24 Does the corporate income tax treatment of a permanent establishment differ from the corporate income tax treatment of a resident (legal) entity?	yes	no	no	no	no
25 Are there any withholding taxes that have to be considered regarding payments to the head office?	no	yes	yes	no	no
26 What is your local total income tax rate (assuming a corporation with a business profit allocated to the PE in the amount of EUR 100,000)?	25%	19%	23%	20%	20%

Prerequisites and formal requirements					
1 Is the concept of the permanent establishment applied in your country?	yes	yes	yes	yes	yes
2 Does an obligation exist in your country to register that permanent establishment at the Chamber of Commerce or any commercial register?	yes	yes	no	yes	no
3 Does an obligation exist to register the permanent establishment at the tax authorities?	yes	yes	yes	yes	yes
4 If a permanent establishment for corporate income tax purposes exists, would then automatically a permanent establishment exist for VAT purposes?	no	yes	no	yes	no
5 If a permanent establishment for corporate income tax purposes exists, would then automatically a permanent establishment exist for personal income tax and wage tax purposes?	no	yes	yes	yes	no
6 Will penalties be imposed when the permanent establishment is not immediately registered but, for instance after one year, e.g. due to an unexpected delay on the basis of which the 12 months threshold for construction projects is exceeded?	yes	yes	yes	yes	no
7 Many companies qualify regular visits of for instance different employees to a project and/or regular customer in a foreign country as a business trip. If such business trips would be to your country, could this trigger the existence of a permanent establishment?	yes	yes	no	no	yes
8 The OECD commentary mentions a 6 months period as a tipping point where a permanent establishment may start to exist. What period could be regarded as a rule of thumb in your country?	n.a.	n.a.	6 months	3 months	3 months
9 Could a home office trigger a permanent establishment, when the foreign employer would not pay a reimbursement/rent for the use of that home office?	yes	yes	yes	no	yes
10 Could the mere rendering of services in your country without having a fixed place of business trigger a permanent establishment?	no	yes	no	yes	no
11 Could the agent activities of a legal entity in your country trigger a permanent establishment of the principal?	yes	yes	yes	no	yes
12 Could a permanent establishment be avoided by splitting up a contract on the basis of which the activities are interrupted with certain periods of time?	no	yes	no	no	no
13 Could a permanent establishment be avoided by splitting up a contract between companies being member of the same group?	yes	yes	yes	no	no
14 Is it possible to obtain certainty on the (non-)existence of a permanent establishment from the tax authorities, e.g. by applying for an advance tax ruling?	yes	yes	yes	no	yes

Profit attribution and taxation					
15 Does your country apply the Authorised OECD Approach (AOA) which is the "functionally separate entity approach", where the permanent establishment is to be regarded as a separate, independent, third party entity?	yes	yes	yes	yes	yes
16 Do the tax authorities in your country apply/advocate a dynamic interpretation method of the OECD commentary of the OECD model convention, i.e. do they apply the newest commentary on all tax treaties or do they apply a static interpretation method where only the commentary applies that was valid at the time the tax treaty was concluded? If the Dynamic interpretation method is advocated by the authorities, please answer "Yes", if the Static Interpretation Method is used, please answer "No".	yes	yes	yes	no	yes
17 Are indirect methods applicable for determining the profit of a permanent establishment?	yes	yes	yes	no	yes
18 Is the AOA regulated in local law?	no	no	yes	no	yes
19 Are the five TP methods used to determine the remuneration of the permanent establishment?	yes	yes	yes	yes	yes
20 When the agent activities of a legal entity in your country trigger a permanent establishment of the principal, could additional profit be allocated to that agent permanent establishment when the legal entity already receives an arm's length remuneration?	yes	no	no	no	yes
21 Is it possible that interest is charged by the head office to the permanent establishment or vice versa?	no	yes	no	yes	yes
22 Is it possible that royalties are charged by the head office to the permanent establishment or vice versa?	no	yes	yes	yes	yes
23 Is it possible to obtain certainty on the correct profit allocation to the permanent establishment, e. g. by applying for a (unilateral) Advance Pricing Agreement?	yes	yes	yes	yes	yes
24 Does the corporate income tax treatment of a permanent establishment differ from the corporate income tax treatment of a resident (legal) entity?	no	no	no	no	yes
25 Are there any withholding taxes that have to be considered regarding payments to the head office?	no	no	no	yes	no
26 What is your local total income tax rate (assuming a corporation with a business profit allocated to the PE in the amount of EUR 100,000)?	33,33%	15%	30%	29%	12%

Prerequisites and formal requirements						Ireland
1 Is the concept of the permanent establishment applied in your country?	yes	yes	yes	yes	yes	
2 Does an obligation exist in your country to register that permanent establishment at the Chamber of Commerce or any commercial register?	yes	yes	no	yes	yes	
3 Does an obligation exist to register the permanent establishment at the tax authorities?	no	yes	yes	yes	yes	
4 If a permanent establishment for corporate income tax purposes exists, would then automatically a permanent establishment exist for VAT purposes?	no	no	yes	yes	no	
5 If a permanent establishment for corporate income tax purposes exists, would then automatically a permanent establishment exist for personal income tax and wage tax purposes?	no	yes	yes	yes	no	
6 Will penalties be imposed when the permanent establishment is not immediately registered but, for instance after one year, e.g. due to an unexpected delay on the basis of which the 12 months threshold for construction projects is exceeded?	no	yes	yes	yes	no	
7 Many companies qualify regular visits of for instance different employees to a project and/or regular customer in a foreign country as a business trip. If such business trips would be to your country, could this trigger the existence of a permanent establishment?	no	yes	yes	no	yes	
8 The OECD commentary mentions a 6 months period as a tipping point where a permanent establishment may start to exist. What period could be regarded as a rule of thumb in your country?	n.a.	6 months	6 months	n.a.	6 months	
9 Could a home office trigger a permanent establishment, when the foreign employer would not pay a reimbursement/rent for the use of that home office?	yes	yes	no	no	yes	
10 Could the mere rendering of services in your country without having a fixed place of business trigger a permanent establishment?	no	yes	yes	yes	yes	
11 Could the agent activities of a legal entity in your country trigger a permanent establishment of the principal?	yes	yes	yes	no	yes	
12 Could a permanent establishment be avoided by splitting up a contract on the basis of which the activities are interrupted with certain periods of time?	no	no	no	no	no	
13 Could a permanent establishment be avoided by splitting up a contract between companies being member of the same group?	no	no	no	no	no	
14 Is it possible to obtain certainty on the (non-)existence of a permanent establishment from the tax authorities, e.g. by applying for an advance tax ruling?	yes	yes	no	no	no	

Profit attribution and taxation						Ireland
15 Does your country apply the Authorised OECD Approach (AOA) which is the "functionally separate entity approach", where the permanent establishment is to be regarded as a separate, independent, third party entity?	yes	yes	no	no	yes	
16 Do the tax authorities in your country apply/advocate a dynamic interpretation method of the OECD commentary of the OECD model convention, i.e. do they apply the newest commentary on all tax treaties or do they apply a static interpretation method where only the commentary applies that was valid at the time the tax treaty was concluded? If the Dynamic interpretation method is advocated by the authorities, please answer "Yes", if the Static Interpretation Method is used, please answer "No".	yes	no	yes	no	yes	
17 Are indirect methods applicable for determining the profit of a permanent establishment?	no	yes	no	no	yes	
18 Is the AOA regulated in local law?	no	no	no	no	yes	
19 Are the five TP methods used to determine the remuneration of the permanent establishment?	yes	yes	yes	no	yes	
20 When the agent activities of a legal entity in your country trigger a permanent establishment of the principal, could additional profit be allocated to that agent permanent establishment when the legal entity already receives an arm's length remuneration?	no	yes	yes	no	no	
21 Is it possible that interest is charged by the head office to the permanent establishment or vice versa?	no	yes	yes	yes	no	
22 Is it possible that royalties are charged by the head office to the permanent establishment or vice versa?	yes	yes	yes	no	no	
23 Is it possible to obtain certainty on the correct profit allocation to the permanent establishment, e.g. by applying for a (unilateral) Advance Pricing Agreement?	no	yes	yes	no	yes	
24 Does the corporate income tax treatment of a permanent establishment differ from the corporate income tax treatment of a resident (legal) entity?	no	yes	no	yes	yes	
25 Are there any withholding taxes that have to be considered regarding payments to the head office?	no	no	yes	no	no	
26 What is your local total income tax rate (assuming a corporation with a business profit allocated to the PE in the amount of EUR 100,000)?	20%	43,26%	25%	25%	12,50%	

Prerequisites and formal requirements					
1 Is the concept of the permanent establishment applied in your country?	yes	yes	yes	yes	no
2 Does an obligation exist in your country to register that permanent establishment at the Chamber of Commerce or any commercial register?	yes	no	yes	yes	yes
3 Does an obligation exist to register the permanent establishment at the tax authorities?	yes	yes	yes	yes	yes
4 If a permanent establishment for corporate income tax purposes exists, would then automatically a permanent establishment exist for VAT purposes?	yes	no	no	yes	no
5 If a permanent establishment for corporate income tax purposes exists, would then automatically a permanent establishment exist for personal income tax and wage tax purposes?	yes	no	no	yes	no
6 Will penalties be imposed when the permanent establishment is not immediately registered but, for instance after one year, e.g. due to an unexpected delay on the basis of which the 12 months threshold for construction projects is exceeded?	yes	yes	yes	no	yes
7 Many companies qualify regular visits of for instance different employees to a project and/or regular customer in a foreign country as a business trip. If such business trips would be to your country, could this trigger the existence of a permanent establishment?	no	yes	yes	yes	yes
8 The OECD commentary mentions a 6 months period as a tipping point where a permanent establishment may start to exist. What period could be regarded as a rule of thumb in your country?	n.a.	n.a.	6 months	6 months	day 1
9 Could a home office trigger a permanent establishment, when the foreign employer would not pay a reimbursement/rent for the use of that home office?	yes	no	no	yes	yes
10 Could the mere rendering of services in your country without having a fixed place of business trigger a permanent establishment?	no	no	no	no	yes
11 Could the agent activities of a legal entity in your country trigger a permanent establishment of the principal?	yes	yes	yes	yes	yes
12 Could a permanent establishment be avoided by splitting up a contract on the basis of which the activities are interrupted with certain periods of time?	no	no	no	no	no
13 Could a permanent establishment be avoided by splitting up a contract between companies being member of the same group?	no	no	no	no	no
14 Is it possible to obtain certainty on the (non-)existence of a permanent establishment from the tax authorities, e.g. by applying for an advance tax ruling?	yes	no	yes	no	no

Profit attribution and taxation					
15 Does your country apply the Authorised OECD Approach (AOA) which is the "functionally separate entity approach", where the permanent establishment is to be regarded as a separate, independent, third party entity?	yes	yes	yes	yes	no
16 Do the tax authorities in your country apply/advocate a dynamic interpretation method of the OECD commentary of the OECD model convention, i.e. do they apply the newest commentary on all tax treaties or do they apply a static interpretation method where only the commentary applies that was valid at the time the tax treaty was concluded? If the Dynamic interpretation method is advocated by the authorities, please answer "Yes", if the Static Interpretation Method is used, please answer "No".	yes	yes	yes	no	no
17 Are indirect methods applicable for determining the profit of a permanent establishment?	yes	no	yes	no	no
18 Is the AOA regulated in local law?	no	yes	no	yes	no
19 Are the five TP methods used to determine the remuneration of the permanent establishment?	yes	yes	yes	yes	no
20 When the agent activities of a legal entity in your country trigger a permanent establishment of the principal, could additional profit be allocated to that agent permanent establishment when the legal entity already receives an arm's length remuneration?	yes	yes	yes	yes	yes
21 Is it possible that interest is charged by the head office to the permanent establishment or vice versa?	yes	yes	yes	no	no
22 Is it possible that royalties are charged by the head office to the permanent establishment or vice versa?	yes	yes	yes	yes	no
23 Is it possible to obtain certainty on the correct profit allocation to the permanent establishment, e. g. by applying for a (unilateral) Advance Pricing Agreement?	yes	yes	no	yes	no
24 Does the corporate income tax treatment of a permanent establishment differ from the corporate income tax treatment of a resident (legal) entity?	no	no	yes	no	no
25 Are there any withholding taxes that have to be considered regarding payments to the head office?	no	no	yes	yes	no
26 What is your local total income tax rate (assuming a corporation with a business profit allocated to the PE in the amount of EUR 100,000)?	31,40%	35%	37,5%	11%	15%



Latvia



Lithuania



Macau



Malta

Nether-
lands

Prerequisites and formal requirements

1 Is the concept of the permanent establishment applied in your country?	yes	yes	yes	yes	yes
2 Does an obligation exist in your country to register that permanent establishment at the Chamber of Commerce or any commercial register?	no	no	yes	yes	yes
3 Does an obligation exist to register the permanent establishment at the tax authorities?	yes	yes	yes	yes	yes
4 If a permanent establishment for corporate income tax purposes exists, would then automatically a permanent establishment exist for VAT purposes?	no	no	no	yes	no
5 If a permanent establishment for corporate income tax purposes exists, would then automatically a permanent establishment exist for personal income tax and wage tax purposes?	yes	yes	yes	yes	yes
6 Will penalties be imposed when the permanent establishment is not immediately registered but, for instance after one year, e.g. due to an unexpected delay on the basis of which the 12 months threshold for construction projects is exceeded?	yes	yes	yes	yes	yes
7 Many companies qualify regular visits of for instance different employees to a project and/or regular customer in a foreign country as a business trip. If such business trips would be to your country, could this trigger the existence of a permanent establishment?	yes	yes	no	no	yes
8 The OECD commentary mentions a 6 months period as a tipping point where a permanent establishment may start to exist. What period could be regarded as a rule of thumb in your country?	6 months	6 months	day 1	n.a.	6 months
9 Could a home office trigger a permanent establishment, when the foreign employer would not pay a reimbursement/rent for the use of that home office?	no	no	yes	yes	no
10 Could the mere rendering of services in your country without having a fixed place of business trigger a permanent establishment?	no	no	yes	yes	no
11 Could the agent activities of a legal entity in your country trigger a permanent establishment of the principal?	yes	yes	no	yes	yes
12 Could a permanent establishment be avoided by splitting up a contract on the basis of which the activities are interrupted with certain periods of time?	no	no	no	yes	no
13 Could a permanent establishment be avoided by splitting up a contract between companies being member of the same group?	no	no	no	yes	no
14 Is it possible to obtain certainty on the (non-)existence of a permanent establishment from the tax authorities, e.g. by applying for an advance tax ruling?	yes	yes	no	yes	yes



Latvia



Lithuania



Macau



Malta

Nether-
lands

Profit attribution and taxation

15 Does your country apply the Authorised OECD Approach (AOA) which is the "functionally separate entity approach", where the permanent establishment is to be regarded as a separate, independent, third party entity?	yes	yes	yes	yes	yes
16 Do the tax authorities in your country apply/advocate a dynamic interpretation method of the OECD commentary of the OECD model convention, i.e. do they apply the newest commentary on all tax treaties or do they apply a static interpretation method where only the commentary applies that was valid at the time the tax treaty was concluded? If the Dynamic interpretation method is advocated by the authorities, please answer "Yes", if the Static Interpretation Method is used, please answer "No".	yes	yes	no	yes	yes
17 Are indirect methods applicable for determining the profit of a permanent establishment?	no	no	yes	no	no
18 Is the AOA regulated in local law?	yes	no	no	yes	yes
19 Are the five TP methods used to determine the remuneration of the permanent establishment?	yes	yes	no	no	yes
20 When the agent activities of a legal entity in your country trigger a permanent establishment of the principal, could additional profit be allocated to that agent permanent establishment when the legal entity already receives an arm's length remuneration?	no	no	yes	no	no
21 Is it possible that interest is charged by the head office to the permanent establishment or vice versa?	no	no	yes	yes	no
22 Is it possible that royalties are charged by the head office to the permanent establishment or vice versa?	no	no	yes	yes	yes
23 Is it possible to obtain certainty on the correct profit allocation to the permanent establishment, e. g. by applying for a (unilateral) Advance Pricing Agreement?	yes	yes	no	yes	yes
24 Does the corporate income tax treatment of a permanent establishment differ from the corporate income tax treatment of a resident (legal) entity?	no	no	no	no	no
25 Are there any withholding taxes that have to be considered regarding payments to the head office?	no	no	yes	no	no
26 What is your local total income tax rate (assuming a corporation with a business profit allocated to the PE in the amount of EUR 100,000)?	15%	15%	12%	35%	20%

		New Zealand		Nigeria		Norway		Oman		Philippines
Prerequisites and formal requirements										
1 Is the concept of the permanent establishment applied in your country?	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
2 Does an obligation exist in your country to register that permanent establishment at the Chamber of Commerce or any commercial register?	yes	no	yes	yes	yes	yes	yes	no	yes	yes
3 Does an obligation exist to register the permanent establishment at the tax authorities?	yes	yes	yes	yes	yes	yes	yes	no	yes	yes
4 If a permanent establishment for corporate income tax purposes exists, would then automatically a permanent establishment exist for VAT purposes?	yes	yes	no	no	no	no	no	yes	yes	yes
5 If a permanent establishment for corporate income tax purposes exists, would then automatically a permanent establishment exist for personal income tax and wage tax purposes?	yes	no	no	no	no	no	no	no	no	no
6 Will penalties be imposed when the permanent establishment is not immediately registered but, for instance after one year, e.g. due to an unexpected delay on the basis of which the 12 months threshold for construction projects is exceeded?	yes	yes	no	yes	yes	yes	yes	no	yes	yes
7 Many companies qualify regular visits of for instance different employees to a project and/or regular customer in a foreign country as a business trip. If such business trips would be to your country, could this trigger the existence of a permanent establishment?	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
8 The OECD commentary mentions a 6 months period as a tipping point where a permanent establishment may start to exist. What period could be regarded as a rule of thumb in your country?	6 months	6 months	6 months	90 days	6 months	6 months	6 months	6 months	6 months	6 months
9 Could a home office trigger a permanent establishment, when the foreign employer would not pay a reimbursement/rent for the use of that home office?	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
10 Could the mere rendering of services in your country without having a fixed place of business trigger a permanent establishment?	no	yes	yes	yes	yes	yes	yes	yes	yes	yes
11 Could the agent activities of a legal entity in your country trigger a permanent establishment of the principal?	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
12 Could a permanent establishment be avoided by splitting up a contract on the basis of which the activities are interrupted with certain periods of time?	yes	yes	yes	yes	no	yes	yes	yes	yes	yes
13 Could a permanent establishment be avoided by splitting up a contract between companies being member of the same group?	yes	yes	yes	no	yes	yes	yes	yes	yes	yes
14 Is it possible to obtain certainty on the (non-)existence of a permanent establishment from the tax authorities, e.g. by applying for an advance tax ruling?	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes



New
Zealand



Nigeria



Norway



Oman



Philippines

Profit attribution and taxation

15 Does your country apply the Authorised OECD Approach (AOA) which is the "functionally separate entity approach", where the permanent establishment is to be regarded as a separate, independent, third party entity?	no	yes	yes	no	yes
16 Do the tax authorities in your country apply/advocate a dynamic interpretation method of the OECD commentary of the OECD model convention, i.e. do they apply the newest commentary on all tax treaties or do they apply a static interpretation method where only the commentary applies that was valid at the time the tax treaty was concluded? If the Dynamic interpretation method is advocated by the authorities, please answer "Yes", if the Static Interpretation Method is used, please answer "No".	no	yes	yes	no	yes
17 Are indirect methods applicable for determining the profit of a permanent establishment?	yes	yes	yes	no	yes
18 Is the AOA regulated in local law?	no	yes	yes	no	no
19 Are the five TP methods used to determine the remuneration of the permanent establishment?	yes	yes	yes	no	yes
20 When the agent activities of a legal entity in your country trigger a permanent establishment of the principal, could additional profit be allocated to that agent permanent establishment when the legal entity already receives an arm's length remuneration?	no	no	no	yes	yes
21 Is it possible that interest is charged by the head office to the permanent establishment or vice versa?	yes	yes	yes	no	yes
22 Is it possible that royalties are charged by the head office to the permanent establishment or vice versa?	no	yes	yes	no	yes
23 Is it possible to obtain certainty on the correct profit allocation to the permanent establishment, e.g. by applying for a (unilateral) Advance Pricing Agreement?	yes	no	yes	no	yes
24 Does the corporate income tax treatment of a permanent establishment differ from the corporate income tax treatment of a resident (legal) entity?	yes	no	no	no	no
25 Are there any withholding taxes that have to be considered regarding payments to the head office?	no	no	no	yes	yes
26 What is your local total income tax rate (assuming a corporation with a business profit allocated to the PE in the amount of EUR 100,000)?	28%	6%	27%	12%	30%

Prerequisites and formal requirements					
1 Is the concept of the permanent establishment applied in your country?	yes	yes	yes	yes	yes
2 Does an obligation exist in your country to register that permanent establishment at the Chamber of Commerce or any commercial register?	no	yes	yes	no	yes
3 Does an obligation exist to register the permanent establishment at the tax authorities?	yes	yes	yes	yes	yes
4 If a permanent establishment for corporate income tax purposes exists, would then automatically a permanent establishment exist for VAT purposes?	no	yes	no	no	yes
5 If a permanent establishment for corporate income tax purposes exists, would then automatically a permanent establishment exist for personal income tax and wage tax purposes?	no	yes	no	no	yes
6 Will penalties be imposed when the permanent establishment is not immediately registered but, for instance after one year, e.g. due to an unexpected delay on the basis of which the 12 months threshold for construction projects is exceeded?	yes	yes	yes	yes	yes
7 Many companies qualify regular visits of for instance different employees to a project and/or regular customer in a foreign country as a business trip. If such business trips would be to your country, could this trigger the existence of a permanent establishment?	yes	yes	yes	yes	yes
8 The OECD commentary mentions a 6 months period as a tipping point where a permanent establishment may start to exist. What period could be regarded as a rule of thumb in your country?	6 months	6 months	day 1	6 months	n.a.
9 Could a home office trigger a permanent establishment, when the foreign employer would not pay a reimbursement/rent for the use of that home office?	no	yes	yes	yes	no
10 Could the mere rendering of services in your country without having a fixed place of business trigger a permanent establishment?	yes	no	yes	no	no
11 Could the agent activities of a legal entity in your country trigger a permanent establishment of the principal?	yes	yes	yes	yes	yes
12 Could a permanent establishment be avoided by splitting up a contract on the basis of which the activities are interrupted with certain periods of time?	no	no	no	no	no
13 Could a permanent establishment be avoided by splitting up a contract between companies being member of the same group?	no	no	no	no	no
14 Is it possible to obtain certainty on the (non-)existence of a permanent establishment from the tax authorities, e.g. by applying for an advance tax ruling?	yes	yes	no	yes	no

Profit attribution and taxation					
15 Does your country apply the Authorised OECD Approach (AOA) which is the "functionally separate entity approach", where the permanent establishment is to be regarded as a separate, independent, third party entity?	yes	yes	no	yes	no
16 Do the tax authorities in your country apply/advocate a dynamic interpretation method of the OECD commentary of the OECD model convention, i.e. do they apply the newest commentary on all tax treaties or do they apply a static interpretation method where only the commentary applies that was valid at the time the tax treaty was concluded? If the Dynamic interpretation method is advocated by the authorities, please answer "Yes", if the Static Interpretation Method is used, please answer "No".	yes	yes	no	yes	no
17 Are indirect methods applicable for determining the profit of a permanent establishment?	yes	yes	no	yes	no
18 Is the AOA regulated in local law?	no	no	no	yes	yes
19 Are the five TP methods used to determine the remuneration of the permanent establishment?	yes	yes	no	yes	yes
20 When the agent activities of a legal entity in your country trigger a permanent establishment of the principal, could additional profit be allocated to that agent permanent establishment when the legal entity already receives an arm's length remuneration?	no	yes	yes	yes	yes
21 Is it possible that interest is charged by the head office to the permanent establishment or vice versa?	no	yes	no	yes	no
22 Is it possible that royalties are charged by the head office to the permanent establishment or vice versa?	no	yes	no	yes	no
23 Is it possible to obtain certainty on the correct profit allocation to the permanent establishment, e. g. by applying for a (unilateral) Advance Pricing Agreement?	yes	yes	no	yes	no
24 Does the corporate income tax treatment of a permanent establishment differ from the corporate income tax treatment of a resident (legal) entity?	no	no	no	no	yes
25 Are there any withholding taxes that have to be considered regarding payments to the head office?	no	yes	yes	no	no
26 What is your local total income tax rate (assuming a corporation with a business profit allocated to the PE in the amount of EUR 100,000)?	19%	21%	10%	16%	20%

		Saudi Arabia		Serbia		Slovakia		South Africa		Spain
Prerequisites and formal requirements										
1 Is the concept of the permanent establishment applied in your country?	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
2 Does an obligation exist in your country to register that permanent establishment at the Chamber of Commerce or any commercial register?	yes	yes	no	no	no	no	no	no	no	no
3 Does an obligation exist to register the permanent establishment at the tax authorities?	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
4 If a permanent establishment for corporate income tax purposes exists, would then automatically a permanent establishment exist for VAT purposes?	no	no	no	no	no	no	no	no	yes	yes
5 If a permanent establishment for corporate income tax purposes exists, would then automatically a permanent establishment exist for personal income tax and wage tax purposes?	no	yes	yes	yes	yes	yes	yes	yes	yes	yes
6 Will penalties be imposed when the permanent establishment is not immediately registered but, for instance after one year, e.g. due to an unexpected delay on the basis of which the 12 months threshold for construction projects is exceeded?	yes	yes	yes	yes	no	no	no	no	yes	yes
7 Many companies qualify regular visits of for instance different employees to a project and/or regular customer in a foreign country as a business trip. If such business trips would be to your country, could this trigger the existence of a permanent establishment?	yes	no	no	yes	yes	yes	yes	yes	no	no
8 The OECD commentary mentions a 6 months period as a tipping point where a permanent establishment may start to exist. What period could be regarded as a rule of thumb in your country?	day 1	6 months	6 months	6 months	6 months	6 months	6 months	6 months	6 months	6 months
9 Could a home office trigger a permanent establishment, when the foreign employer would not pay a reimbursement/rent for the use of that home office?	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
10 Could the mere rendering of services in your country without having a fixed place of business trigger a permanent establishment?	yes	no	yes	yes	yes	yes	yes	yes	no	no
11 Could the agent activities of a legal entity in your country trigger a permanent establishment of the principal?	yes	no	yes	yes	yes	yes	yes	yes	yes	yes
12 Could a permanent establishment be avoided by splitting up a contract on the basis of which the activities are interrupted with certain periods of time?	no	yes	yes	yes	yes	yes	yes	yes	no	no
13 Could a permanent establishment be avoided by splitting up a contract between companies being member of the same group?	no	yes	yes	yes	yes	yes	yes	yes	no	no
14 Is it possible to obtain certainty on the (non-)existence of a permanent establishment from the tax authorities, e.g. by applying for an advance tax ruling?	no	no	no	yes	yes	yes	yes	yes	yes	yes



Saudi
Arabia



Serbia



Slovakia



South
Africa



Spain

Profit attribution and taxation

15 Does your country apply the Authorised OECD Approach (AOA) which is the "functionally separate entity approach", where the permanent establishment is to be regarded as a separate, independent, third party entity?	no	no	yes	yes	yes
16 Do the tax authorities in your country apply/advocate a dynamic interpretation method of the OECD commentary of the OECD model convention, i.e. do they apply the newest commentary on all tax treaties or do they apply a static interpretation method where only the commentary applies that was valid at the time the tax treaty was concluded? If the Dynamic interpretation method is advocated by the authorities, please answer "Yes", if the Static Interpretation Method is used, please answer "No".	no	no	yes	no	no
17 Are indirect methods applicable for determining the profit of a permanent establishment?	no	yes	no	yes	no
18 Is the AOA regulated in local law?	no	no	yes	no	yes
19 Are the five TP methods used to determine the remuneration of the permanent establishment?	no	no	yes	yes	yes
20 When the agent activities of a legal entity in your country trigger a permanent establishment of the principal, could additional profit be allocated to that agent permanent establishment when the legal entity already receives an arm's length remuneration?	yes	yes	no	no	yes
21 Is it possible that interest is charged by the head office to the permanent establishment or vice versa?	no	yes	yes	yes	no
22 Is it possible that royalties are charged by the head office to the permanent establishment or vice versa?	no	yes	yes	yes	no
23 Is it possible to obtain certainty on the correct profit allocation to the permanent establishment, e. g. by applying for a (unilateral) Advance Pricing Agreement?	no	no	yes	yes	yes
24 Does the corporate income tax treatment of a permanent establishment differ from the corporate income tax treatment of a resident (legal) entity?	no	no	no	no	no
25 Are there any withholding taxes that have to be considered regarding payments to the head office?	yes	yes	yes	yes	no
26 What is your local total income tax rate (assuming a corporation with a business profit allocated to the PE in the amount of EUR 100,000)?	20%	15%	22%	28%	28%



Sweden



Thailand

Trinidad
and Tobago

Turkey

Prerequisites and formal requirements

1 Is the concept of the permanent establishment applied in your country?	yes	yes	yes	yes
2 Does an obligation exist in your country to register that permanent establishment at the Chamber of Commerce or any commercial register?	yes	yes	yes	yes
3 Does an obligation exist to register the permanent establishment at the tax authorities?	yes	no	yes	no
4 If a permanent establishment for corporate income tax purposes exists, would then automatically a permanent establishment exist for VAT purposes?	no	no	no	yes
5 If a permanent establishment for corporate income tax purposes exists, would then automatically a permanent establishment exist for personal income tax and wage tax purposes?	yes	no	yes	no
6 Will penalties be imposed when the permanent establishment is not immediately registered but, for instance after one year, e.g. due to an unexpected delay on the basis of which the 12 months threshold for construction projects is exceeded?	no	yes	yes	yes
7 Many companies qualify regular visits of for instance different employees to a project and/or regular customer in a foreign country as a business trip. If such business trips would be to your country, could this trigger the existence of a permanent establishment?	yes	yes	no	yes
8 The OECD commentary mentions a 6 months period as a tipping point where a permanent establishment may start to exist. What period could be regarded as a rule of thumb in your country?	6 months	day 1	n.a.	6 months
9 Could a home office trigger a permanent establishment, when the foreign employer would not pay a reimbursement/rent for the use of that home office?	yes	yes	no	yes
10 Could the mere rendering of services in your country without having a fixed place of business trigger a permanent establishment?	yes	yes	no	yes
11 Could the agent activities of a legal entity in your country trigger a permanent establishment of the principal?	yes	yes	no	yes
12 Could a permanent establishment be avoided by splitting up a contract on the basis of which the activities are interrupted with certain periods of time?	yes	no	no	yes
13 Could a permanent establishment be avoided by splitting up a contract between companies being member of the same group?	yes	yes	no	yes
14 Is it possible to obtain certainty on the (non-)existence of a permanent establishment from the tax authorities, e.g. by applying for an advance tax ruling?	yes	yes	no	yes



Sweden



Thailand



Trinidad
and Tobago



Turkey

Profit attribution and taxation

15 Does your country apply the Authorised OECD Approach (AOA) which is the "functionally separate entity approach", where the permanent establishment is to be regarded as a separate, independent, third party entity?	yes	no	no	yes
16 Do the tax authorities in your country apply/advocate a dynamic interpretation method of the OECD commentary of the OECD model convention, i.e. do they apply the newest commentary on all tax treaties or do they apply a static interpretation method where only the commentary applies that was valid at the time the tax treaty was concluded? If the Dynamic interpretation method is advocated by the authorities, please answer "Yes", if the Static Interpretation Method is used, please answer "No".	yes	no	no	no
17 Are indirect methods applicable for determining the profit of a permanent establishment?	yes	yes	yes	no
18 Is the AOA regulated in local law?	yes	no	no	no
19 Are the five TP methods used to determine the remuneration of the permanent establishment?	yes	no	no	yes
20 When the agent activities of a legal entity in your country trigger a permanent establishment of the principal, could additional profit be allocated to that agent permanent establishment when the legal entity already receives an arm's length remuneration?	yes	no	no	no
21 Is it possible that interest is charged by the head office to the permanent establishment or vice versa?	no	no	yes	yes
22 Is it possible that royalties are charged by the head office to the permanent establishment or vice versa?	no	yes	yes	yes
23 Is it possible to obtain certainty on the correct profit allocation to the permanent establishment, e. g. by applying for a (unilateral) Advance Pricing Agreement?	yes	no	no	yes
24 Does the corporate income tax treatment of a permanent establishment differ from the corporate income tax treatment of a resident (legal) entity?	no	no	yes	no
25 Are there any withholding taxes that have to be considered regarding payments to the head office?	no	yes	yes	yes
26 What is your local total income tax rate (assuming a corporation with a business profit allocated to the PE in the amount of EUR 100,000)?	22%	20%	25%	32%

Prerequisites and formal requirements	UK	Ukraine	Uruguay	USA
1 Is the concept of the permanent establishment applied in your country?	yes	yes	yes	yes
2 Does an obligation exist in your country to register that permanent establishment at the Chamber of Commerce or any commercial register?	yes	yes	no	yes
3 Does an obligation exist to register the permanent establishment at the tax authorities?	yes	yes	yes	yes
4 If a permanent establishment for corporate income tax purposes exists, would then automatically a permanent establishment exist for VAT purposes?	no	no	yes	no
5 If a permanent establishment for corporate income tax purposes exists, would then automatically a permanent establishment exist for personal income tax and wage tax purposes?	yes	no	yes	yes
6 Will penalties be imposed when the permanent establishment is not immediately registered but, for instance after one year, e.g. due to an unexpected delay on the basis of which the 12 months threshold for construction projects is exceeded?	yes	no	yes	yes
7 Many companies qualify regular visits of for instance different employees to a project and/or regular customer in a foreign country as a business trip. If such business trips would be to your country, could this trigger the existence of a permanent establishment?	yes	yes	yes	yes
8 The OECD commentary mentions a 6 months period as a tipping point where a permanent establishment may start to exist. What period could be regarded as a rule of thumb in your country?	6 months	6 months	6 months	3 months
9 Could a home office trigger a permanent establishment, when the foreign employer would not pay a reimbursement/rent for the use of that home office?	yes	yes	no	yes
10 Could the mere rendering of services in your country without having a fixed place of business trigger a permanent establishment?	no	yes	yes	yes
11 Could the agent activities of a legal entity in your country trigger a permanent establishment of the principal?	yes	yes	yes	yes
12 Could a permanent establishment be avoided by splitting up a contract on the basis of which the activities are interrupted with certain periods of time?	no	no	yes	no
13 Could a permanent establishment be avoided by splitting up a contract between companies being member of the same group?	no	yes	no	yes
14 Is it possible to obtain certainty on the (non-)existence of a permanent establishment from the tax authorities, e.g. by applying for an advance tax ruling?	yes	yes	yes	no

Profit attribution and taxation	UK	Ukraine	Uruguay	USA
15 Does your country apply the Authorised OECD Approach (AOA) which is the "functionally separate entity approach", where the permanent establishment is to be regarded as a separate, independent, third party entity?	yes	yes	yes	no
16 Do the tax authorities in your country apply/advocate a dynamic interpretation method of the OECD commentary of the OECD model convention, i.e. do they apply the newest commentary on all tax treaties or do they apply a static interpretation method where only the commentary applies that was valid at the time the tax treaty was concluded? If the Dynamic interpretation method is advocated by the authorities, please answer "Yes", if the Static Interpretation Method is used, please answer "No".	yes	yes	no	no
17 Are indirect methods applicable for determining the profit of a permanent establishment?	yes	yes	no	yes
18 Is the AOA regulated in local law?	yes	yes	no	no
19 Are the five TP methods used to determine the remuneration of the permanent establishment?	yes	no	yes	yes
20 When the agent activities of a legal entity in your country trigger a permanent establishment of the principal, could additional profit be allocated to that agent permanent establishment when the legal entity already receives an arm's length remuneration?	no	yes	no	yes
21 Is it possible that interest is charged by the head office to the permanent establishment or vice versa?	no	no	no	yes
22 Is it possible that royalties are charged by the head office to the permanent establishment or vice versa?	no	no	yes	yes
23 Is it possible to obtain certainty on the correct profit allocation to the permanent establishment, e. g. by applying for a (unilateral) Advance Pricing Agreement?	yes	yes	yes	no
24 Does the corporate income tax treatment of a permanent establishment differ from the corporate income tax treatment of a resident (legal) entity?	no	yes	no	yes
25 Are there any withholding taxes that have to be considered regarding payments to the head office?	no	no	yes	yes
26 What is your local total income tax rate (assuming a corporation with a business profit allocated to the PE in the amount of EUR 100,000)?	20%	18%	25%	40%



**United Arab
Emirates**



Uzbekistan



Venezuela



Vietnam

Prerequisites and formal requirements		United Arab Emirates	Uzbekistan	Venezuela	Vietnam
1	Is the concept of the permanent establishment applied in your country?	no	yes	yes	no
2	Does an obligation exist in your country to register that permanent establishment at the Chamber of Commerce or any commercial register?	yes	no	no	no
3	Does an obligation exist to register the permanent establishment at the tax authorities?	no	yes	no	no
4	If a permanent establishment for corporate income tax purposes exists, would then automatically a permanent establishment exist for VAT purposes?	no	no	no	yes
5	If a permanent establishment for corporate income tax purposes exists, would then automatically a permanent establishment exist for personal income tax and wage tax purposes?	no	yes	no	yes
6	Will penalties be imposed when the permanent establishment is not immediately registered but, for instance after one year, e.g. due to an unexpected delay on the basis of which the 12 months threshold for construction projects is exceeded?	no	yes	no	no
7	Many companies qualify regular visits of for instance different employees to a project and/or regular customer in a foreign country as a business trip. If such business trips would be to your country, could this trigger the existence of a permanent establishment?	no	yes	no	yes
8	The OECD commentary mentions a 6 months period as a tipping point where a permanent establishment may start to exist. What period could be regarded as a rule of thumb in your country?	n.a.	6 months	6 months	6 months
9	Could a home office trigger a permanent establishment, when the foreign employer would not pay a reimbursement/rent for the use of that home office?	no	yes	yes	yes
10	Could the mere rendering of services in your country without having a fixed place of business trigger a permanent establishment?	no	yes	no	yes
11	Could the agent activities of a legal entity in your country trigger a permanent establishment of the principal?	no	yes	yes	yes
12	Could a permanent establishment be avoided by splitting up a contract on the basis of which the activities are interrupted with certain periods of time?	no	no	no	no
13	Could a permanent establishment be avoided by splitting up a contract between companies being member of the same group?	no	yes	yes	yes
14	Is it possible to obtain certainty on the (non-)existence of a permanent establishment from the tax authorities, e.g. by applying for an advance tax ruling?	no	yes	yes	no



**United Arab
Emirates**



Uzbekistan



Venezuela



Vietnam

Profit attribution and taxation

15 Does your country apply the Authorised OECD Approach (AOA) which is the "functionally separate entity approach", where the permanent establishment is to be regarded as a separate, independent, third party entity?	no	yes	no	no
16 Do the tax authorities in your country apply/advocate a dynamic interpretation method of the OECD commentary of the OECD model convention, i.e. do they apply the newest commentary on all tax treaties or do they apply a static interpretation method where only the commentary applies that was valid at the time the tax treaty was concluded? If the Dynamic interpretation method is advocated by the authorities, please answer "Yes", if the Static Interpretation Method is used, please answer "No".	no	no	no	no
17 Are indirect methods applicable for determining the profit of a permanent establishment?	no	yes	no	no
18 Is the AOA regulated in local law?	no	no	no	no
19 Are the five TP methods used to determine the remuneration of the permanent establishment?	no	yes	yes	no
20 When the agent activities of a legal entity in your country trigger a permanent establishment of the principal, could additional profit be allocated to that agent permanent establishment when the legal entity already receives an arm's length remuneration?	no	no	no	yes
21 Is it possible that interest is charged by the head office to the permanent establishment or vice versa?	no	no	no	no
22 Is it possible that royalties are charged by the head office to the permanent establishment or vice versa?	no	no	no	no
23 Is it possible to obtain certainty on the correct profit allocation to the permanent establishment, e. g. by applying for a (unilateral) Advance Pricing Agreement?	no	no	no	no
24 Does the corporate income tax treatment of a permanent establishment differ from the corporate income tax treatment of a resident (legal) entity?	no	yes	no	yes
25 Are there any withholding taxes that have to be considered regarding payments to the head office?	no	no	yes	yes
26 What is your local total income tax rate (assuming a corporation with a business profit allocated to the PE in the amount of EUR 100,000)?	0%	17,50%	34%	22%

The PE concept

When a company conducts activities in a foreign country (i.e. outside the country where that company is established), a permanent establishment ("PE") of that company could be triggered in the foreign country. The main use of the concept of the permanent establishment is to determine the right of the foreign country to tax the company for the activities conducted in the foreign country.

Whether or not a permanent establishment exists, depends on the local legislation of the country where the activities are conducted. Furthermore, also the tax treaty between the country where the company is located and the country where the activities are performed defines the permanent establishment. The view on whether or not a permanent establishment exists can differ per country and per tax treaty.

In general, most tax treaties are based on the 'OECD Model Tax Convention on income and on capital'. Therefore, the article 5 of this convention that defines the permanent establishment as well as the commentary on that article provide a good indication of what the various countries in the world deem to form a permanent establishment. Attachment 1 provides article 5 of the 'OECD Model Tax Convention on income and on capital' – the current definition of a permanent establishment.

The OECD Model Tax Convention distinguishes three types of permanent establishments:

- A normal permanent establishment with a fixed place of business.
- A building site or construction or installation project of more than 12 months.
- A dependent person that is acting on behalf of the company with the authority to conclude contracts in the name of that company and who habitually exercises that authority.

The normal permanent establishment

A permanent establishment is created in case of a fixed place of business through which the business of an enterprise is wholly or partially carried on. This includes especially a place of management, a branch, an office, a factory, a workshop, and a place of extraction of natural resources.

The existence of a 'place of business'

This covers any premises, facilities, installations or space that is at the disposal of the company. No formal or legal right is required to deem a place of business at the disposal of the company. Having a certain premises at its disposal is sufficient.

The place of business must be 'fixed'

This means that the permanent establishment must be established at a distinct place with a certain degree of permanence. In practice, in many cases a permanent establishment has been considered to exist where the place of business was maintained for a period of longer than 6 months. Temporary interruptions do not cause a permanent establishment cease to exist. When related parties do a project sequentially in short periods of time, to avoid the permanent establishment, these projects are likely aggregated by the local authorities.

Business carried on through the fixed place of business

The business of the company must be carried on wholly or partly through this fixed place of business. The activity itself should form an essential and significant part of the activity of the company as a whole.

The construction/installation permanent establishment

A building site or construction or installation project constitutes a permanent establishment only if it lasts more than 12 months. "Installation project" not only includes an installation related to a construction project, but also the installation of new equipment in an existing building or outdoors. Views may differ in the various countries on when a site starts, ends and what the impact of the use of subcontractors and temporary interruptions is on the 12 months test.

The dependent agent permanent establishment

When a person or company in a foreign country has the authority to conclude contracts on behalf of a company (i.e. acts as a dependent agent), that relate to the business of the company, this can lead to a permanent establishment (Agent PE) of the company in that country. That person or company does not necessarily need to have a place of business in that foreign country and the authority needs to be used repeatedly and not merely in isolated cases.

Exceptions

Not in all cases a permanent establishment is deemed to exist. When a fixed place of business is maintained, solely for the purpose of carrying on an activity of a preparatory or auxiliary character, such as storage activities, purchasing activities and information collection, based on article 5 sec. 4 of the current version of the OECD Model Tax Convention, in principle no permanent establishment is deemed to exist.

Consequences of a permanent establishment

When a permanent establishment exists, various obligations need to be fulfilled. For instance, various tax obligations relating to corporate income tax, wage tax, social security premiums, VAT and customs. These obligations could also include the registration of the company at the local Chamber of Commerce triggering liabilities of the management of the company. The various obligations provide an additional administrative burden and can trigger an additional tax burden. Therefore, it is wise to take the (non-)existence of a permanent establishment into account in the budgeting process of the business. Moreover, incorrectly not considering a permanent establishment can be qualified as non-compliance or even tax fraud.

It is better to do a correct assessment up-front and start a permanent establishment as from the beginning. Concluding after almost a year that a permanent establishment does exist, provides a large administrative burden to repair the past (e.g. the correction of the original VAT treatment as well as the filing of foreign wage tax

returns and adjustment of the wage tax returns in the home country), which often is more costly than doing it right as from the beginning.

Examples of where things may go wrong in practice are for instance:

- Ignoring the continuing presence of a company in a foreign country through different employees that are regularly sent after each other on a "business trip".
- A project that is planned to last less than a year, which however lasts more than one year due to, for instance, unforeseen difficulties.
- Activities that are qualified by the company as auxiliary, but which are actually to be regarded as (part of the) core activity, for instance the provision of after sales services.

Determination of the results

Having local tax obligations, an appropriate profit allocation between the head office of the company and its foreign permanent establishment needs to be taken into account on the basis of the arm's length principle. Many countries in the world have adopted the OECD guidelines. In these guidelines the new Authorized OECD Approach has been introduced. The Authorized OECD Approach ("AOA") is the "functionally separate entity approach", where the permanent establishment is to be regarded as a separate, independent, third party entity.

Based on the AOA, the appropriate remuneration of the permanent establishment is to be determined as if that permanent establishment would be a separate and independent enterprise, in particular in its transactions (so-called dealings) with other parts of the enterprise. The remuneration is to be based on the functions performed, assets used and risks assumed by the company through its permanent establishment as well as through the other parts of that company, taking into account one of the five transfer pricing methods as defined by the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

Results that the company achieves in a country where the permanent establishment is located, but which are not related to the activities of that permanent establishment, are often not to be attributed to that permanent establishment (no "force of attraction principle"). However, countries may have a different view on this.

The consequences of appropriately allocating results to the permanent establishment may be that profits may be attributed to the permanent establishment of the company, even though the company as a whole has never made profits. Conversely, it may be the case that the permanent establishment of the company does not achieve profits, while the company as a whole does.

Reasons for avoiding a permanent establishment

In practice, internationally operating companies are often starting any new business directly out of their head office. In case the new business will be(come) a long-term investment, often a local resident legal entity is founded.

There are two non-tax reasons, which are often mentioned, to choose a legal entity instead of a permanent establishment. First of all, the liability of the local business of a permanent establishment cannot be limited to the assets of that permanent establishment, which is the case when a legal entity (with limited liability) is in place. Secondly, in many countries acting through a Branch / PE is unusual in the business environment. Consequently, there are only few multinational groups that are mainly organized in a Branch / PE structure.

But also for tax reasons, MNE groups often try to avoid the creation of a PE. One of the main reasons is that the tax regulations regarding PEs are often less proven and tested compared to the regulatory environment for foreign separate legal entities, in particular limited liability companies.

OECD BEPS project

Results from action point 7

The OECD BEPS project was started when the G20 finance ministers called on the OECD to develop an action plan to address BEPS issues in a coordinated and comprehensive manner. This resulted in the publication of reports on 5 October 2015, covering 15 action points. The overall goal of those reports was to develop uniform and internationally binding regulations to avoid measures of BEPS as well as to enable the tax authorities to detect and challenge these "tainted" measures.

Due to the globalization of domestic economies and corporations, over time, the existing rules have revealed weaknesses that created opportunities for base erosion and profit shifting, such as the artificial avoidance of the permanent establishment status. The report on action point 7 of the BEPS action plan "Preventing the Artificial Avoidance of Permanent Establishment Status" provides an adjusted definition of permanent establishment (PE) to prevent abuses, such as mentioned below.

Developments regarding action point 7

Discussion
Draft 3/2015



Final Report
10/2015



Additional Report on
profit allocation 2016

For instance, activities previously considered to be merely preparatory or auxiliary in nature, and therefore not triggering a permanent establishment, may nowadays correspond to core business activities that should be regarded as to trigger a permanent establishment. In this respect, many activities, such as distribution warehouses, may not be exempted anymore and thus might create a PE for the foreign company.

Another example of the avoidance of a permanent establishment is the fragmentation of a cohesive operating business into several small operations in order to argue that each part is merely engaged in preparatory or auxiliary activities and, therefore, does not trigger a permanent establishment. Also construction permanent establishments have been avoided by splitting-up contracts between closely related enterprises to avoid that each group company exceeded the 12 months threshold. Based on the report on action point 7 such fragmentations may in future not be suitable anymore to avoid a permanent establishment.

Moreover, companies have been avoiding dependent agency permanent establishments by using commissionaire arrangements. A commissionaire arrangement may be loosely defined as an arrangement through which a person sells products in a country in its own name but on behalf of a foreign enterprise that is the owner of these products. By selling in its own name, the commissionaire may not trigger a dependent agency permanent establishment in many countries, as defined in the OECD Model Tax Convention. Under the proposed broader definition of article 5 of the OECD Model Tax Convention it shall - in future - not be possible to avoid a PE by organizing the distribution function by way of such a commissionaire structure. Even foreign distribution entities that are formed as pure sales support service companies may bear the risk to create an

Agent PE for the foreign enterprise, if their functions may qualify as a leading role in the distribution process ("principal role leading to the conclusion of contracts"). As a result, many MNE groups may face several significant PE risks in the environment of their foreign distribution activities.

Attachment 2 includes the revised wording of article 5 of the OECD Model Tax Convention, which shall be implemented through a multilateral instrument to Modify Bilateral Tax Treaties (action point 15).

Moreover, the OECD commentary to article 5 is about to be significantly amended as well. In addition, it should be noted that the work on action point 7 has not been completed with regard to the future profit allocation principles. However, the results are expected to be provided by the end of 2016 and then integrated into the multilateral instrument as well.

As a result of the OECD BEPS recommendations the definition of a permanent establishment has been broadened and the threshold for the PE creation has significantly been reduced. Therefore, it may be expected that the number of PEs will increase. Thus, tax compliance issues as well as double taxation risks are expected to increase correspondingly. For MNE groups this will result in additional foreign tax filing obligations and tax liabilities.

Documentation obligations

The report on action point 13 of the BEPS action plan "Transfer Pricing Documentation and Country-by-Country Reporting" provides a three-tiered standardised approach to transfer pricing documentation, which has been implemented by many countries already as per 1 January 2016. This standard consists of (i) a master file containing standardised information relevant for all MNE group members; (ii) a local file referring specifically to material transactions of the local taxpayer; and (iii) a Country-by-Country Report containing certain information relating to the global allocation of the MNE group's income and taxes paid together with certain indicators of the location of economic activity within the MNE group (the "CbC Report"). The Country-by-Country Reporting obligation has been agreed upon to enable the tax authorities to efficiently audit multinational group of companies with regard to their transfer prices.

In line with the AOA, the permanent establishment also needs to be taken into account in this three-tiered documentation.

Outcome for MNE groups

As companies will usually act in their normal course of business, it is not always possible to prevent the existence of a permanent establishment. As a result of the announced changes of the OECD BEPS project it will in future become more difficult to avoid the creation of permanent establishments, e.g. by adjusting the business processes or by implementing a separate legal entity.

Given the envisaged changes in the definition of a permanent establishment and further focus of the tax authorities on the existence and compliance of permanent establishments, companies should focus on the possible existence of permanent establishments and the relating compliance. In order to comply with the new regulations it is highly recommendable for MNE groups to review their existing business processes, particularly the distribution structures, in order to determine the scope of filing obligations. Not reporting a permanent establishment and not filing and paying the appropriate taxes could qualify as tax fraud.

Attachment 1

OECD Model Tax Convention ARTICLE 5 PERMANENT ESTABLISHMENT

- 1 For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
- 2 The term "permanent establishment" includes especially:
 - a) a place of management;
 - b) a branch;
 - c) an office;
 - d) a factory;
 - e) a workshop, and
 - f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
- 3 A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.
- 4 Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
 - a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- 5 Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
- 6 An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
- 7 The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Proposed Version:
OECD Model Tax Convention
ARTICLE 5
PERMANENT ESTABLISHMENT

1–3 (unchanged)

- 4 Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
 - e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity;
 - f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e),

provided that such activity or, in the case of subparagraph f), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

- 5 Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 6, where a person is acting in a Contracting State on behalf of an enterprise and, in doing so, habitually concludes contracts, or

habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are

- a) in the name of the enterprise, or
- b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or
- c) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

- b) For the purposes of this Article, a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise.

7 (unchanged)

- 6 a) Paragraph 5 shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the first-mentioned State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

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Disclaimer

Given the complexity of the PE concept in practice, it has not been attempted to cover all PE issues and developments in the different countries. The survey as provided in this PE study provides a first indication of the PE approach in a certain country and whether this is in line with the OECD regulations.

The questionnaire has been designed in a way that most of the questions just allow an answer of "yes" or "no". Consequently, the reader of this PE study should anticipate that the answer may be more complex. The answers cover the legal status of 2015.

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