VISTRA

Permanent Establishment Playbook

What PE Is, How It's Changing and How to Protect Your Organization

Contents

Introduction

Every year at Vistra we publish informative pieces about international expansion and operations, including blog posts, global regulatory updates, webinars, playbooks and more. Of all these publications, web analytics show that year in and year out one of our most popular pieces is a short overview titled "Explanation of What Creates a Permanent Establishment."

The enduring popularity of the overview suggests that business leaders and administrators know that permanent establishment (PE) is a concept they must understand. They're right: Failure to understand and follow domestic and international PE laws when engaging in cross-border activities can lead to double taxation, significant penalties and interest, lost productivity and reputational damage.

Critically, the continued popularity of our short overview also suggests that a significant number of business leaders and administrators do not have a firm grasp of the concept of PE. This playbook expands on our brief overview and is intended to give readers a deeper understanding of what constitutes PE.

You should keep in mind while reading the playbook that each country has its own unique (and evolving) definition of what constitutes a PE, or a taxable presence. This playbook is not meant to provide specific guidance that can be applied across jurisdictions to ensure compliance with local PE laws. Rather, it explains in simple terms what PE is and what commonly triggers it. It will in short enable you to ask the right questions about PE when contemplating or engaging in activities abroad.

Understanding the Concept of Permanent Establishment

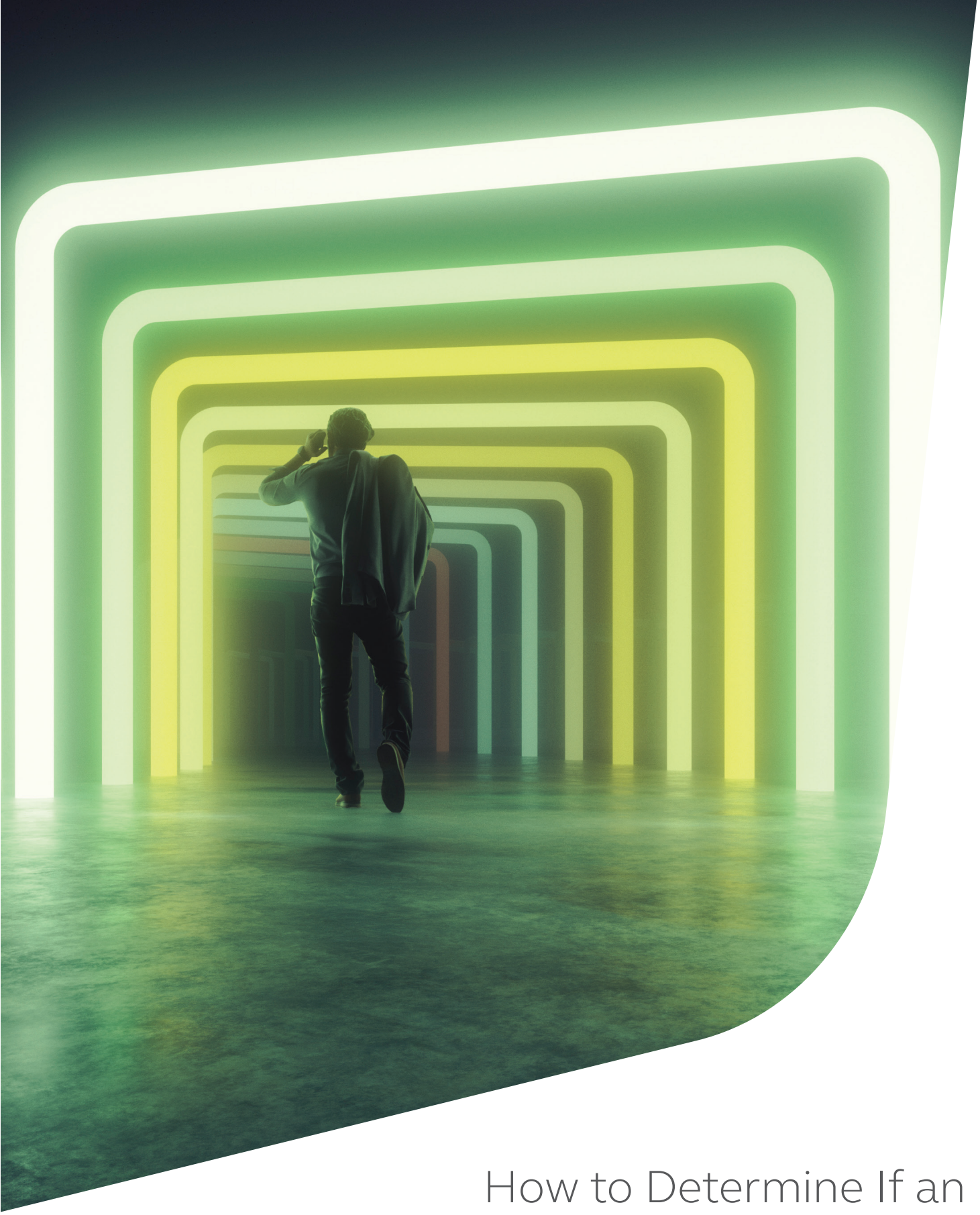
The concept of permanent establishment was developed to determine whether an organization's activities in any given jurisdiction are taxable by local authorities — in other words, to determine if there is a taxable presence in that jurisdiction. To put it in a more favorable light, a correct PE determination also helps ensure that double taxation does not occur.

A business that performs activities outside its home country that give rise to revenue or otherwise create value is often said to "trigger" a PE in the foreign jurisdiction. Activities that trigger a PE can range from sending employees abroad on business trips, to hiring contractors in another country, to signing sales contracts, to establishing a remote office and more.

If an organization triggers a PE, there will likely be a requirement to report and pay corporate income taxes to local authorities. In order to report and/or pay taxes, the organization will generally have to establish a local legal entity such as a subsidiary or branch.

Unfortunately for multinationals, a business can establish a taxable presence in a foreign jurisdiction without even knowing it has done so. This is actually quite common. And when local tax authorities eventually become aware of such a business' taxable activities — for example through information from another cooperating tax authority, through in-country activities such as using contractors or through employee social security contributions — those authorities may deem the business to have retroactively triggered a PE.

Double taxation, penalties, interest and reputational damage often follow, which is why it's so critical for any organization to properly understand PE-related risks before undertaking cross-border activities, including sending or hiring workers abroad.



How to Determine If an Organization Has Triggered a Permanent Establishment

In any given country, PE is determined by application of the local PE laws and any relevant double tax treaties entered into by that country. For example, a US-based company's activities in France will be deemed taxable or not by French authorities based on French law, including reference to the France-US tax treaty.

No one country has tax treaties in place with every other country. In the absence of a treaty, domestic tax law in the country where the activities occur will determine if a company has triggered a PE there. It's worth noting again that PE-related legislation (both domestic-only law and any treaties) can vary significantly by country.

The United States' tax treaties can be found on the IRS website. It should be said that even these treaties — all available in English — leave room for ambiguity and interpretation, especially in our quickly evolving global tax landscape.

PE determination is in short a notoriously gray area. Each PE determination requires applying relevant laws to a unique set of circumstances. The laws involved, and even the language in which they're written, are often unfamiliar to the expanding organization. The laws also may not contain specific thresholds or benchmarks that can be applied to the organization's activities. In other words, there is almost always room for interpretation when making PE determinations.

The very nature of this process means that a company expanding abroad is at risk of making a PE-related judgment that differs from that of the local tax authority. This risk increases significantly if there is no tax treaty in place between the home country and the target country.

Given the legislative complexities involved, and the country-specific quirks of tax-law interpretation, many US companies wisely seek third-party expertise when making PE determinations.

Common Permanent Establishment Triggers: Fixed Place of Business and Dependent Agent

While tax treaties and country-specific tax legislation vary, most treaties contain similar principles related to permanent establishment. These principles are outlined in Article 5 of the Organization for Economic Cooperation and Development's (OECD's) Model Tax Convention (Model Convention).

Under Article 5 of the Model Convention, there are two primary ways an organization will trigger a PE:

1. By maintaining a fixed place through which the business of the company is carried on in the country, or
2. By having someone in the country who regularly concludes contracts on behalf of the organization (a "dependent agent")

Let's take a look at each of those concepts now.

Fixed Place of Business

The Model Convention defines PE as a "fixed place of business through which the business of an enterprise is wholly or partly carried out." In plain terms, this means a company will trigger a PE when it carries out business activities in an office, factory or other physical space on an extended or recurrent basis in the country in question.

Generally speaking, a "fixed place" is any location with a certain degree of permanence (usually longer than six months) that an entity has a right to use or habitually uses to carry out business activities. This place may be, for example, a rented office, an employee's home office that the company pays a contribution towards the cost of maintaining, or even a customer's location, such as an office that a third-party consultant may use while on assignment. It's worth adding that interpretations of what constitutes a "degree of permanence" are changing. A 2017 Swedish Court ruling, for example, held that a three- to four-month stay in-country was sufficient to trigger a PE.

The OECD's interpretation of Article 5 sheds light on the ambiguities of PE determination related to a fixed place. The interpretation includes a long section, for example, on whether an individual's home office might constitute a PE for the individual's employer. The passage emphasizes that such determinations "will depend on the facts and circumstance of each case."

In some cases, the business activities at the home office "will be so intermittent or incidental that the home will not be considered to be a location at the disposal of the enterprise," and therefore won't trigger a PE. In other cases, the home office will be "used on a regular and continuous basis for carrying on business activities for an enterprise," and a PE may be deemed to exist.

The lack of explicit thresholds, then, makes PE determinations fraught with risks for those unfamiliar with related domestic and international laws and guidance. Again, there is almost always room for interpretation. For example, companies that wish to mitigate their PE risk in a country by setting up a home office in lieu of a traditional office may run afoul of local authorities if those authorities deem the home office to be a fixed place of business that constitutes a PE. These shades of gray extend to countless other scenarios — for example to a company's use of a customer's premises or to a company performing activities in a country on a recurrent if relatively short-term basis. In such cases a company runs the risk of having to pay several years of historic corporate income taxes (on income that has already been taxed in the home country), along with penalties and interest.

A word on defining "business activities" that take place at a fixed place of business that constitutes a PE: The deciding factor in this kind of determination is whether the activities are related to the organization's core business. Typically, any preparatory or auxiliary functions such as advertising or warehousing do not constitute core business activities and therefore do not trigger a PE.

The Model Convention and most tax treaties address exceptions to the fixed-place-of-business rule. In other words, they lay out certain activities that do not constitute a PE. For example, according to the Model Convention a construction project will not constitute a PE unless it lasts more than 12 months. More critically for most concerns, the Model Convention states that "the maintenance of a fixed place of business solely for the purpose of carrying on … [any] activity of a preparatory or auxiliary character" will not trigger a PE.

Here again, however, related legislation is evolving and interpretations may at times seem almost arbitrary. For example, in the 2017 case we mentioned, a Swedish Court held that a German company had a permanent establishment in Sweden despite the fact that the company's local activities were limited to short-term testing functions and the company maintained no physical office or storage facility in Sweden.

The Swedish case is somewhat complex, but essentially the Court analyzed the German company's Sweden-based activities in light of OECD guidance and the company's overall business. It determined that the company's Sweden-based activities could not be deemed to be preparatory or auxiliary in nature despite

the short-term nature of the activities and the lack of a fixed place of business.

As the OECD's interpretation notes, "it is often difficult to distinguish between activities which have a preparatory or auxiliary character and those which have not." Again, each case must be reviewed individually when determining whether a given activity triggers a PE. The OECD's interpretation explains that "the decisive criterion [when determining whether an activity is preparatory or auxiliary in nature] is whether or not the activity of the fixed place of business in itself forms an essential and significant part of the activity of the enterprise as a whole."

We'll discuss this evolving area of PE legislation more in another section. Basically, the OECD and global tax authorities are taking steps to clarify and restrict what constitutes activities "of a preparatory or auxiliary character" in an effort to prevent inappropriate reliance upon this exemption.

Generally speaking, here are some activities that may be considered preparatory or auxiliary and therefore may in some cases not constitute a PE:

- Conducting market research
- Performing marketing activities
- Gathering information
- Developing trade contacts
- Answering product inquiries

Our clients often ask us for a list of borderline activities that may be misinterpreted as preparatory or auxiliary but are in fact typically deemed to be core activities that constitute a PE when performed through a fixed place of business. Here is a list of examples of these kinds of activities (the list is of course not exhaustive):

- Participating in the sales process (the greater the extent to which the on-the-ground activities lead to the conclusion of the sales process, the greater the PE risk)
- Performing management functions
- Conducting post-sales operations such as customer service, repair and maintenance
- Performing a function closely related to the main business of the enterprise.

Now let's have a look at the other primary way organizations typically trigger a PE — through the use of a dependent agent.

Dependent Agent

Our clients are often surprised to learn that they can trigger a permanent establishment in another country without maintaining a fixed place of business there. An organization that controls a so-called dependent agent in another country — even a self-employed worker or someone employed by a third party — may run the risk of creating a taxable presence in that country.

The agent (i.e., the individual retained in the foreign country) in this case must be dependent on the hiring organization to run the risk of creating a PE. In this context, to be dependent means to act almost exclusively, whether legally or in practice, for the other party. Furthermore, to be a dependent agent, the individual should have the authority to conclude contracts in the name of the organization — or should hold themselves out as having such authority — and should habitually do so. It should be emphasized that this area of PE legislation is becoming more restrictive.

A truly independent agent, then, will not trigger a permanent establishment. In contrast to a dependent agent, an independent agent works at arm's length from the foreign organization that hires them, essentially acting as a middleman who will not trigger an agency-related PE.

An independent agent should not have the ability to enter into contracts on behalf of the hiring organization. It should be noted that an agent may be deemed to be dependent even if he or she does not have the formal right to enter into contracts. To take one common example: an organization hires a contractor in another country to provide exclusive sales support. If that contractor (i.e., agent) receives orders on behalf of the organization and forwards those orders to the foreign principal for formal execution, a PE may be triggered.

As with other areas of PE determination, each case must be reviewed individually in light of any treaties and local laws and customs. Scenarios are often complex.

An Increasingly Common PE Trigger: Providing Technical Services

As we've seen, the OECD's Article 5 model definition of a PE underpins most tax treaties. That definition does not mention the provision of technical services and how such services relate to an organization's taxable presence.

The provision of services is increasingly common in the digital age, even for entities undertaking software as a service (SaaS) arrangements. As the United Nation's Department of Economic and Social Affairs website explains, the growth in provision of services across borders now exceeds the growth in the provision of goods. Many existing tax treaties are based on an outmoded goods-only business model. As a result, the UN says, "multinational enterprises often avoid being taxed on fees received for technical, management and consulting services."

This legislative oversight or loophole particularly affects developing countries that are target destinations for multinational tech companies. In an effort to address this trend, many countries are either updating their PE legislation (including tax treaties) to include technical services as a PE trigger, or they're interpreting existing treaties as, the UN explains, "allowing them to tax income from technical services without the permanent establishment test having been met."

The UN adds that there is as yet no standard way of addressing fees for technical services as PE triggers. In our experience, technical services must be provided in a country for a period in excess of a certain limit (often three to six months) in order to trigger a PE. An example of a technical service that could trigger a PE might be the local installation of software purchased abroad. As usual, organizations must keep apprised of evolving PE legislation and interpretation on a country-by-country basis in order to maintain compliance.

Business Travelers and Permanent Establishment

Many US-based entities send employees abroad with no intention of setting up a legal presence outside the US. These organizations should be aware that their business travelers who spend long periods in a particular country —six months or more as a rule of thumb — could potentially run the risk of triggering a PE for the organization, depending on the nature of their activities and other factors.

Business travelers without a work permit are only permitted to engage in certain activities in-country, depending on local immigration laws. Permitted activities typically include client visits and attending trade events or trainings. Undertaking core business activities typically isn't permitted.

Given these restrictions, the risk of a business traveler triggering a PE for his or her employer is typically far lower than the risk of triggering personal tax residency in the target country. Employers looking to skirt PE laws by sending nominal business travelers to engage in core activities should keep in mind that PE determination is based on actual activities, not simply an employment contract or other formal description of duties.

Some Scenarios That May Trigger a Permanent Establishment

Now that we've gone over the basics of permanent establishment — including the primary triggers of maintaining a fixed place of business and hiring a dependent agent — let's look at some common scenarios. Our clients and prospects often find themselves in these kinds of situations and come to us for clarity about whether or not they've triggered or may potentially trigger a taxable presence in their target countries.

As usual in this playbook, these scenarios are general in nature and intended to give the reader a broad understanding of the kinds of activities that may trigger a PE. They're not intended to illuminate the laws and customs of any one country. We strongly recommend obtaining advice from a trusted authority in the PE laws of your target country if you feel your planned or ongoing international activities put your organization at risk of creating a PE.

Scenario One: A Technician Temporarily Provides Technical Services

Your US-based software company sends a technician to perform installation and maintenance services in a developing country on a five-month assignment. While you don't normally provide these services, the client negotiated to receive them as part of a large initial contract. You assume you are in no danger of creating a taxable presence in the target country due to the following factors:

- The assignment is less than six months.
- Your technician will not be establishing a fixed place of business, but will be performing services strictly in the client's offices.
- Your technician will not actually be developing and selling software (your core business), just installing and temporarily maintaining it.
- There is no tax treaty in place between the US and the target country, but domestic tax laws do not mention the provision of technical services as constituting a permanent establishment.

Despite the above sound reasoning, local authorities may deem that the technical services you provide in the target country do in fact trigger a PE, since revenue can be attributed to those services. This scenario reflects the global trend of tax authorities in many developing countries interpreting existing PE legislation to include technical services, even though the legislation may not explicitly mention those services.

Scenario Two: Sending a Sales Rep to Test a New Market

Your small, US-based operation is considering expanding internationally for the first time. It believes an EU country is a particularly promising market and wants to send a trusted employee there to gather information and discuss options with local prospects. You decide to send one of your East Coast sales representatives to the country on a three-month fact-finding assignment. You assume you are in no danger of creating a taxable presence in the target country due to the following factors:

- Your sales rep will stay in a hotel during the trip, and therefore will not establish a fixed place of business.
- Your sales rep will remain on a US payroll.
- Your sales rep will not be concluding any contracts or engaging in any revenue-generating activities.

Local tax authorities may be alerted to the presence of your employee through immigration services, with additional information obtained, for example from an email signature or business cards. This information will show that your employee's title includes the word "sales." In such cases, tax authorities may automatically deem that your organization has triggered a PE simply due to the word "sales" in the job title. Even if your employee is not conducting any activities that would trigger a PE, it is up to you as the taxpayer and employer to prove to the local authority's satisfaction that your expat employee is not actually engaging in sales activities and that you have not created a taxable presence.

Scenario Three: Hiring a Local Client Liaison

Your US-based consulting company is supporting an important client in a South American country. Due to language barriers, cultural differences and other factors, you hire a citizen from the target country to act as a liaison between you and the client. You assume you are in no danger of creating a taxable presence in the target country due to the following factors:

- You have not included "sales" in the local hire's job title, and you are careful to include language in the worker's job description indicating that he or she does not have the authority to enter into contracts, engage in any sales-related or revenue-generating activities or work from a home office.
- You are not establishing a fixed place of business, and your worker will perform all duties at the client's offices.

While you seem to have significantly lowered your risks through the careful drafting of the employment contract, tax authorities in many countries may deem these kinds of "relationship-building" activities as directly contributing to overall revenue generation. Your client liaison manager, therefore, may serve as one indicator to local tax authorities that your organization has triggered a PE.

The Changing Global Landscape of PE Legislation: The OECD Multilateral Convention

The growth of the internet and smart phones has among other things led to a dramatically increased global awareness of corporate responsibilities related to taxation. Massive, widely circulated media stories such as the European Commission's 2016 ruling that Apple must repay €13 billion plus interest to Irish tax authorities for unpaid taxes continue to throw light on the issue of corporate tax avoidance. Whether or not you agree with the Apple ruling and similar findings like those involving Starbucks and Google, public opinion is often not kind to multinationals and their understandable attempts to reduce corporate taxation. Fair or not, those companies that are perceived as not paying their fair share of corporate taxes risk widespread reputational damage at the least.

Influential global efforts like the OECD's Base Erosion and Profit Shifting (BEPS) program have specifically targeted perceived aggressive multinational corporate tax avoidance. BEPS and similar initiatives — often undertaken by individual countries — are aimed at preventing multinationals from shifting their tax presences and taxable incomes to low tax jurisdictions so they won't be taxed on profits where economic activity is performed and value created.

In late 2015, the OECD released the final draft of its BEPS recommendations, which consist of 15 action items to fight tax avoidance. In November 2016, more than 100 tax jurisdictions across the globe agreed on a document known as the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (Multilateral Convention), the development of which was shaped by the final 2015 BEPS recommendations.

According to an OECD press release, the Multilateral Convention transposes the final BEPS results "into more than 2,000 tax treaties worldwide" and "implements minimum standards to counter treaty abuse and to improve dispute resolution mechanisms while providing flexibility to accommodate specific tax treaty policies." The Multilateral Convention was signed in June 2017.

The OECD press release also explains that the Multilateral Convention, which consists of 39 articles, is designed in part to hasten the process of governments all over the world closing legislative gaps in tax treaties and domestic legislation that allow for corporate profit shifting. The Multilateral Convention effectively allows cooperating jurisdictions to implement the changes in the document across the existing network of tax treaties without going through the lengthy process of renegotiating each agreement. The Multilateral Convention also, of course, promotes legislative consistency across tax jurisdictions.

Part IV of the Multilateral Convention (Articles 12 through 15) specifically addresses the avoidance of permanent establishment and effectively updates and expands on the former OECD Convention. Let's now look at some of the important changes reflected in the Multilateral Convention.

Multilateral Convention and Dependent Agents

The Multilateral Convention updates the definition of PE as defined in Article 5 of the OECD's Model Convention, which as we've seen addresses dependent agents concluding contracts.

The Multilateral Convention expands dependent agency PE to include situations where a person "habitually plays a principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise." If someone in another country, then, substantially agrees to terms with another party, and this agreement is formalized by contract with the organization in the home country, there is an increased PE risk. It is perhaps no longer sufficient, then, to rely on the offshoring of contract signing to avoid PE.

In addition, the Multilateral Convention expands the activity of the intermediary (i.e., agent) beyond contracting "in the name of the enterprise" to now include contracts "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 for the provision of services by that enterprise." This change is specifically directed at the use of local commissionaires where the agent acts in his or her own name, with no legal arrangement between the customer and the (offshore) principal. For example, if you hire a third-party agent in another country to sign a contract with another third party in that country — say to sign a lease for a warehouse — that signature could under the Multilateral Convention trigger a PE.

The Multilateral Convention essentially lowers the threshold for triggering a PE when using an agent in another country. Under the Multilateral Convention, hiring a third party in another country to facilitate the conclusion of contracts no longer provides a measure of protection from establishing a taxable presence.

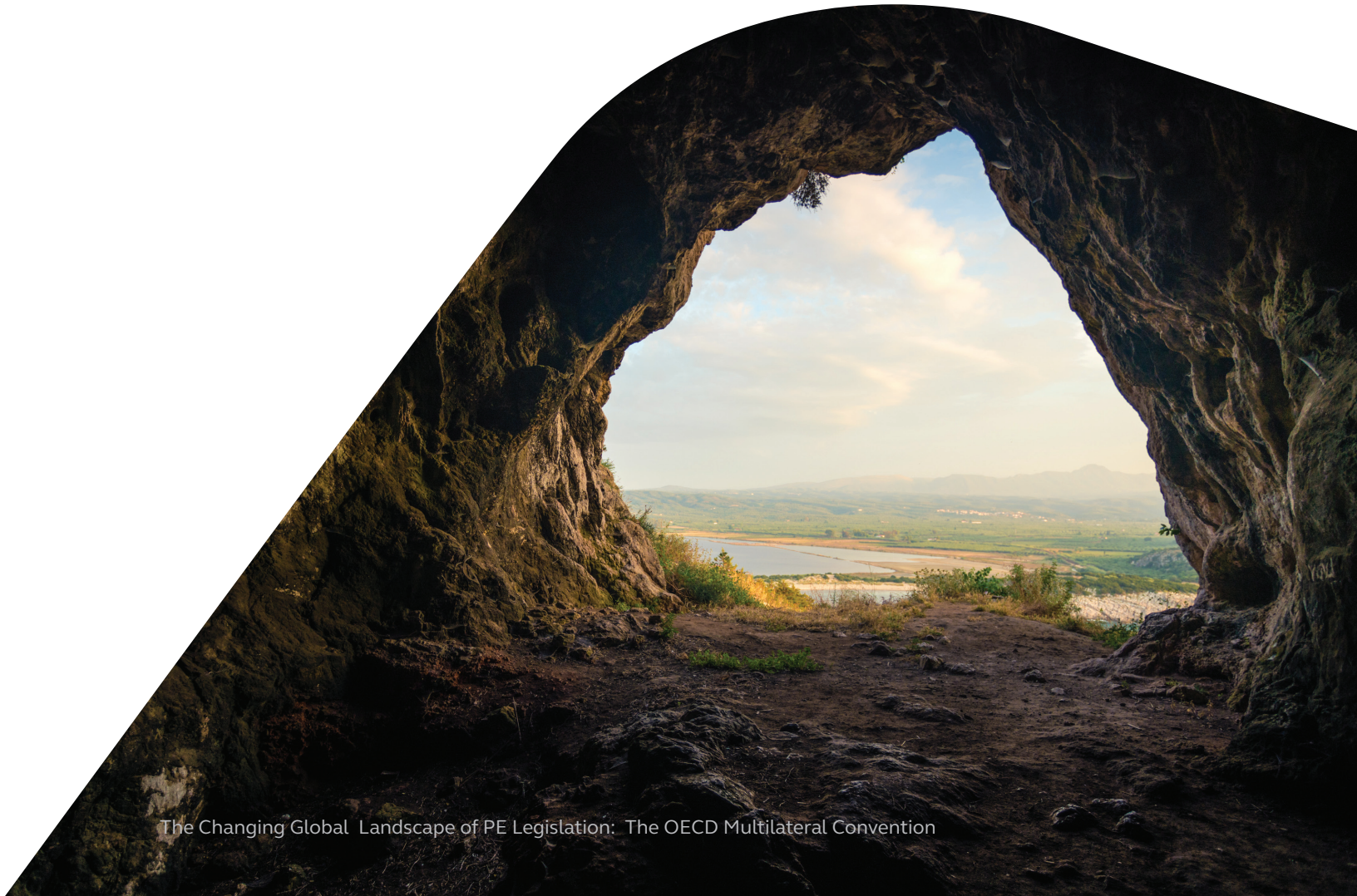
Multilateral Convention and Fixed Places of Business

The Multilateral Convention amends the "fixed place of business" PE rule. To reiterate, under the Model Convention a PE exists where a nonresident has a fixed place of operations through which the business of an enterprise is carried out. The Model Convention does state, however, that "the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character" will *not* trigger a PE.

In light of current commercial practices — which include storing intellectual property "in the cloud" and transferring that property electronically across borders — the Multilateral Convention clarifies that the "overall activity" of the fixed place of business must be preparatory or auxiliary in nature in order for the exemption to apply. Basically, the Multilateral Convention makes it more difficult to apply the "preparatory or auxiliary" exemption. For example, certain marketing activities under previous guidance might have been deemed "auxiliary" and therefore exempt. Under the Multilateral Convention, those same activities could now trigger a PE, since the Multilateral Convention accounts for cross-border electronic commerce and could tie the marketing activities more directly to revenue generation.

The Multilateral Convention also includes an anti-fragmentation rule that can be used to target organizations that artificially separate their activities to create PE exemptions. Basically, when making PE determinations under the rule, tax authorities will consider all the activities conducted by closely-related entities within the relevant jurisdiction, including activities performed by various operations of a business.

The Multilateral Convention also increases restrictions on construction and installation projects so that organizations can't separate contracts into multiple parts to avoid triggering a PE.



Country-Specific Examples: The UK's and Australia's Unilateral Anti-Avoidance Actions

As we've noted, the OECD's changes to PE guidance are being implemented on a jurisdiction-by-jurisdiction basis. Certain countries have already started taking measures to curtail PE avoidance. These measures in some cases exceed the OECD's recommendations and in other cases depart from them altogether, adding to the uncertainty.

In April 2015, the UK introduced the Diverted Profits Tax (widely known as the "Google tax"). As HM Revenue & Customs guidance explains, the Diverted Profits Tax (DPT) is "designed to counter the use of aggressive tax planning techniques used by multinational enterprises to divert profits from the UK." It specifically targets arrangements involving large non-UK multinationals that HMRC deems to be using artificial or contrived arrangements "to circumvent rules on permanent establishment and transfer pricing." If certain conditions are met, the Diverted Profits Tax of 25 percent may be levied.

Needless to say, there is a strong incentive to avoid paying the DPT. And it is no coincidence that the DPT rate is higher than the UK's corporate tax rate.

In a similar move, Australia passed the Multinational Anti-Avoidance Law (MAAL), which became effective January 2016. Like the DPT, the MAAL specifically targets large multinationals creating value in Australia that seek to avoid triggering a PE.

The DPT and the MAAL are at present directed only at larger multinationals. Over time, however, it's almost certain that the relevant thresholds will be lowered and that a wider spectrum of companies will be forced to comply.

Perhaps more importantly, the DPT and the MAAL are real-life examples of the changing international tax landscape. They clearly demonstrate the commitment of governments to adhere to the broad tenets of OECD guidance and to ensure that profits are taxed where economic value is generated.

Evolving Permanent Establishment Risks: A Summing Up

All businesses want to avoid creating a taxable presence where possible under applicable laws. It's fair to say that some multinationals have too aggressively pushed the boundaries of global tax legislation and shifted profits away from the jurisdictions where they created the value. In its 2016 Multilateral Convention press release, the OECD estimates that artificial profit shifting has resulted in income-tax revenue losses of $100 to $240 billion annually, or about four to 10 percent of the global total.

It's also fair to say that tax authorities in many jurisdictions are pushing the boundaries of legislative interpretation equally aggressively. After the European Commission's €13 billion Apple ruling mentioned earlier, Apple CEO Tim Cook strongly defended the company's tax dealings, claiming the Commission's decision "has no basis in fact or in law" and that his company suddenly found itself "in the unusual position of being ordered to retroactively pay additional taxes to a government that says we don't owe them any more than we've already paid." At the least, the second of these observations is inarguable.

It's also inarguable that the stakes for noncompliance with PE legislation have never been higher. The BEPS initiative and stories like Apple's keep corporate taxation compliance in the news, of course, but they also perhaps give small and medium enterprises a false sense of security related to their own permanent establishment obligations. These organizations may assume that tax authorities are primarily or exclusively interested in ensuring PE compliance from large multinationals.

It is true that large multinationals (and, some have argued, large US multinationals in particular) are targeted by tax authorities. We've already noted that recent UK and Australian legislation only applies to larger multinationals. And in 2015, the OECD released transfer pricing documentation requirements that apply only to multinationals with consolidated group revenue of more than €750 million. But multinationals of all sizes must be mindful that revenue authorities are not exclusively focused on the world's largest organizations.

Tax authorities have in fact accumulated deep experience reviewing cases of perceived tax avoidance for companies of all sizes. They have greater resources and are backed by more stringent anti-avoidance laws and powers. As a result, they have the capacity and appetite to focus on the cross-border activities of small and medium enterprises, in addition to the activities of larger multinationals. They are aware that many of these SME taxpayers have experienced rapid cross-border growth in recent years. They know, moreover, that businesses in this situation often do not have the time or resources to devote to documenting their cross-border related-party transactions and may have triggered taxable presences but failed to pay taxes.

You should also be aware that foreign entities often bear the evidentiary burden in tax disputes. The new OECD transfer pricing rules, for example, state that without adequate documentation, a taxpayer cannot have a reasonably arguable position. Fair or not, tax authorities in virtually all jurisdictions know that SMEs often don't have the financial resources to defend their positions against tax reviews.

As a result, if your business has existing activities abroad — including any cross-border electronic transactions — you should review them in light of evolving permanent establishment legislation, including the OECD's Multilateral Convention. In addition, you should fully consider the permanent establishment laws (including domestic legislation and applicable treaties) of any countries where you plan to engage in activities (again, this includes cross-border electronic transactions). This will involve researching the ramifications of triggering a PE, including whether or not your organization will need to establish a legal entity and, if so, the optimal legal-entity type based on the nature of your activities, the planned duration of your activities and other factors.

It should be clear that permanent establishment laws are changing to meet the realities of the global economy, and in general those laws are becoming more restrictive. In the face of these changes and heightened public awareness of corporate tax obligations, many multinationals are taking a proactive approach to protecting their bottom lines and reputations. These organizations have little appetite for expensive litigation and negative publicity and are working with tax authorities from a number of jurisdictions to unwind their global tax structures and cease operations perceived as overly aggressive.

Your organization almost certainly doesn't have the visibility of Apple, Facebook or Google, but all businesses must jealously guard their reputations, particularly if they want to succeed abroad. Even without the resources of a big multinational, you can protect your organization from PE-related risks by developing an understanding of what constitutes a PE in your target countries and then working with trusted experts to develop informed strategies based on the actual risks involved.

About Vistra

Ranked among the top three corporate service providers globally, Vistra is a versatile group of professionals, providing a uniquely broad range of services and solutions. Our capabilities span across international incorporations to trust, fiduciary, private client services, and fund administration. We employ over 4,000 professionals across 46 jurisdictions throughout the Americas, Europe, Middle East, and Asia Pacific.

As a leading global player with expert industry knowledge and location specialists, Vistra has a deep understanding of the professional worlds of our clients, and a proven track record of offering highly versatile solutions, providing the people, processes, and products that help our clients get the most from their international business.

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