

Table of Contents

About the Editors	v
List of Abbreviations	xxxi
Preface	xli
General Perspective	
Permanent Establishment in the OECD Model Tax Convention	
<i>Ekkehart Reimer</i>	3
Part 1. Fundamentals	3
[A] Domestic Law	5
[1] Why Domestic Law Matters	6
[a] <i>No Taxation Unless National Rules Impose a Tax</i>	6
[b] <i>Impact of Domestic Law on the Interpretation of Terms Used in a DTC</i>	6
[c] <i>Impact of Domestic Law for All Issues Left Open by the DTCs</i>	6
[2] Specific Domestic Concepts	7
[a] <i>Variances in PE Definition</i>	7
[b] <i>Direct or Indirect Assignment of Profits</i>	8
[c] <i>Territorial Scope of PE Taxation</i>	8
[d] <i>Types of Taxable Transactions</i>	9
[B] Tax Treaty Law	10
[1] Evolution of the PE Concept	10
[2] Justification of the PE Threshold Concept	11
[3] Relationship and Interactions Between Articles 5 and 7 OECD MC	13
[4] Articles 5 and 7 OECD MC in the Context of the OECD Model	14
[5] Particularities of Specific DTCs	15

[6]	Methodology: The Interpretation of Articles 5 and 7 OECD MC	16
	[a] <i>Functions of the Methodological Rules on the Interpretation of Treaty Terms</i>	16
	[b] <i>Autonomous DTC Interpretation as the Starting Point</i>	18
	[c] <i>General Rules of Treaty Interpretation</i>	19
	[d] <i>Reference to Domestic Law as an Exception</i>	22
[7]	Approaches to Procedural Coordination	24
	[a] <i>Advance Rulings</i>	24
	[b] <i>Article 25 OECD MC</i>	24
	[c] <i>Compulsory Arbitration under Bilateral DTCs</i>	25
	[d] <i>EU Arbitration Convention</i>	25
	[e] <i>EU Dispute Settlement Directive</i>	26
[C]	European Union Law	26
	[1] <i>Merger Directive</i>	26
	[2] <i>Parent-Subsidiary Directive</i>	27
	[3] <i>Interest Royalty Directive</i>	27
	[4] <i>COM Recommendation of 28 January 2016 on the PE Definition</i>	28
[D]	PE Taxation as a Subject of International Tax Research	28
Part 2.	Is There a PE? (Article 5 OECD MC)	33
[A]	The Basic Definition (Article 5(1) OECD MC)	41
	[1] 'Place'	41
	[a] <i>Purpose of the Term</i>	41
	[b] <i>Definitions</i>	42
	[2] 'Business' and 'Enterprise'	43
	[a] <i>Purpose of the Terms</i>	44
	[b] <i>Definitions</i>	46
	[3] 'Fixed'	49
	[a] <i>Purpose of the Term</i>	49
	[b] <i>Definition</i>	50
	[c] <i>Relative Standards</i>	51
	[d] <i>Relocation and Roaming of POBs</i>	52
	[4] 'Permanent'	54
	[a] <i>Purpose of the Term</i>	54
	[b] <i>Definition</i>	54
	[c] <i>Beginning and End of a PE</i>	57
	[d] <i>Insignificant Interruptions</i>	58
	[e] <i>Activities of a Recurrent Nature</i>	59
	[f] <i>Relative Standards</i>	60
	[5] 'Through': Control by the Taxpayer	62
	[a] <i>Purpose of the Term</i>	62
	[b] <i>Definition</i>	62
	[c] <i>Source of Control</i>	62

	[d] <i>Relative Standards</i>	63
	[e] <i>Joint Control</i>	64
[6]	'Through': Functional Integration	66
[7]	Aggregation	68
	[a] <i>Contraction of Two or More Synchronous POBs</i>	69
	[b] <i>Contraction of Two or More Short-Term Activities at the Same POB</i>	70
	[c] <i>Diagonal Contractions</i>	70
	[d] <i>Intertemporal Force of Attraction</i>	71
[B]	Typical PEs (Article 5(2) and (3) OECD MC)	71
	[1] List of Typical Examples (Article 5(2) OECD MC)	72
	[a] <i>Relation to Article 5(1) OECD MC</i>	72
	[b] <i>Connections Between the Examples in Article 5(2) OECD MC</i>	74
	[c] <i>Article 5(2) and the Requirement of a Fixed Place</i>	74
	[d] <i>Article 5(2) and the Requirement of Permanence</i>	75
	[e] <i>Deviations in State Practice</i>	75
	[2] Building Sites, Construction and Installation Projects (Article 5(3) OECD MC)	75
	[a] <i>Relation to Article 5(1) and (2) OECD MC</i>	76
	[b] <i>Relation to the Other Paragraphs of Article 5 OECD MC</i>	78
	[c] <i>Relation to Service PE Clauses</i>	78
	[d] <i>Mixed Activities or Facilities</i>	79
	[e] <i>Persons Covered</i>	79
	[f] <i>Objects Covered</i>	80
	[g] <i>Activities Covered</i>	80
	[h] <i>Aggregation</i>	82
	[i] <i>Minimum Period</i>	86
	[j] <i>Deviations in State Practice</i>	89
[C]	Exclusion of Subordinate POBs (Article 5(4) OECD MC)	89
	[1] Functions of Article 5(4) OECD MC	89
	[2] The Systematic Relevance of Article 5(4) OECD MC	90
	[a] <i>Relationship vis-à-vis Article 5(1) OECD MC</i>	90
	[b] <i>Relationship vis-à-vis Article 7 OECD MC</i>	90
	[c] <i>Impact on the Issue of 'Service PEs'</i>	91
	[3] The Internal Structure of Article 5(4)(a) to (f) OECD MC	91
	[a] <i>Use and Maintenance as Visible Activities</i>	92
	[b] <i>Facilities, Stocks and Fixed Places of Business as Visible Locations</i>	92
	[c] <i>Goods, Merchandise and Information as Imaginary Objects</i>	93
	[d] <i>Intended Activities</i>	94

[4]	Preparatory or Auxiliary Character	96
	[a] <i>As a General Requirement for Article 5(4)(a) to (f)</i>	
	OECD MC	96
	[b] <i>Confinement to Internal and Administrative Activities</i>	98
[5]	Combinations of Non-qualifying POBs: Article 5(4)(f)	99
	OECD MC	99
[6]	Deviations in State Practice	100
[D]	The Anti-fragmentation Rule in Article 5(4.1) OECD MC	100
	[1] PE Plus Non-PE (Subparagraph a)	101
	[2] Non-PE Plus Non-PE (Subparagraph a)	102
	[3] Complementary Functions	102
	[4] One Cohesive Business Operation	102
[E]	Agent PEs (Article 5(5) to (7) OECD MC)	102
	[1] Person (Articles 5(5), 3(1)(a) and (b) OECD MC)	104
	[a] <i>Individuals (Article 3(1)(a) OECD MC)</i>	104
	[b] <i>Companies and Other Bodies Corporate (Article 3(1)(b) OECD MC)</i>	105
	[c] <i>Partnerships and Hybrid Entities as Agents</i>	106
	[d] <i>No Identity with the Taxpayer</i>	106
	[2] Activity (Article 5(5) OECD MC)	107
	[3] Authority to Conclude Contracts (Article 5(5) OECD MC)	107
	[4] Habitual Exercise of Contracting Authority (Article 5(5) OECD MC)	108
	[5] Exclusion of Short-Term Agents	109
	[6] Exclusion of Independent Agents (Article 5(6) OECD MC)	110
	[a] <i>Persons Covered</i>	110
	[b] <i>Acting in the Ordinary Course of One's Business</i>	112
	[c] <i>Deviations in State Practice</i>	113
	[7] Exclusion of Subordinate and Auxiliary Activities	113
	[8] Legal Consequences	114
	[a] <i>Scope of Profits Assigned to the Agent PE</i>	114
	[b] <i>Remuneration of the Agent and Deduction of Expenses</i>	114
	[9] The 2017 Update of Article 5(5)&(6)	115
	[a] <i>Agents and Commissionaires</i>	115
	[b] <i>Exclusion of Independent Agents</i>	118
[F]	PEs Within Groups of Controlling/Controlled Companies (Article 5(7) OECD MC)	119
	[1] The Textual Elements of Article 5(7) OECD MC	120
	[2] Object and Purpose of Article 5(7) OECD MC	120

[3]	Consequences for Different Types of Group Taxation Schemes	121
	[a] <i>Full Consolidation Schemes</i>	121
	[b] <i>Other Group Taxation Schemes</i>	122
[4]	Constellations of Cases	123
	[a] <i>Sharing Locations</i>	123
	[b] <i>Principle-Agent Tandems</i>	124
[5]	Participation in Controlled Foreign Corporations (CFCs)	124
[G]	'Closely Related to an Enterprise' (Article 5(8) OECD MC)	124
[H]	Fixed Bases (Article 14 of the Pre-2000 OECD MC)	125
[I]	The Broadened Concept of 'Service PEs'	126
	[1] Overview	126
	[2] Service PEs under Article 5(1) OECD MC	127
	[3] Alternative OECD Proposal (No. 42.23 OECD MC Comm.)	128
	[a] <i>Relation to the Other Paragraphs of Article 5 OECD MC</i>	129
	[b] <i>183 Day Rules</i>	129
	[c] <i>Project</i>	130
	[d] <i>Significant People</i>	131
	[e] <i>50% Rule</i>	131
	[4] Article 5(3)(b) UN MC	132
[J]	Examples A-Z	133
	[1] Affiliated Companies	133
	[2] Agents	133
	[3] Branch (Article 5(2)(b) OECD MC)	133
	[4] Building Site (Article 5(3) OECD MC)	135
	[5] Computer	135
	[6] Container Leasing	135
	[7] Controlled Foreign Corporations	135
	[8] Extraction of Natural Resources (Article 5(2)(f) OECD MC)	135
	[9] Factory (Article 5(2)(d) OECD MC)	136
	[10] Gas Well (Article 5(2)(f) OECD MC)	136
	[11] Head Office	137
	[12] Insurance Companies	137
	[13] Internet Server	138
	[14] Mass Storage	142
	[15] Mine (Article 5(2)(f) OECD MC)	142
	[16] Natural Resources	142
	[17] Office (Article 5(2)(c) OECD MC)	142
	[18] Oil Well (Article 5(2)(f) OECD MC)	143
	[19] Quarry (Article 5(2)(f) OECD MC)	143

[20]	Partnerships	144
[21]	Pipeline	144
[22]	Place of Management (Article 5(2)(a) OECD MC)	144
	[a] <i>Literal Interpretation</i>	145
	[b] <i>Linking and Delimitation to Other Articles of the OECD MC</i>	145
	[c] <i>The POM Concept in the Context of Article 5 OECD MC</i>	147
[23]	Representatives	148
[24]	Studios	148
[25]	Workshop (Article 5(2)(e) OECD MC)	148
Part 3.	Taxation of Business Profits in PE Cases (Article 7 OECD MC)	149
[A]	Fundamentals	149
	[1] The Evolution of the Rules: Once Steady, Now by Leaps and Bounds	149
	[a] <i>The 1977 Version of Article 7 OECD MC</i>	149
	[b] <i>Genesis of the Authorized OECD Approach (AOA): 1977–2008</i>	151
	[c] <i>The 2010 Version of Article 7 OECD MC</i>	153
	[d] <i>Retrospective Effect of the AOA?</i>	155
	[2] Article 7 in the Context of the OECD MC	156
	[3] Business Profits	160
	[4] The Relevant Entity	164
	[a] <i>Enterprise</i>	164
	[b] <i>Permanent Establishment</i>	164
	[c] <i>Separate Spheres Within a PE as the Relevant Entities (Article 7(5) OECD MC 1977)</i>	167
	[5] Authority Competent for the Application of Article 7(2) OECD MC	168
[B]	The Basic Rule: Exclusive Taxation by the State of Residence (Article 7(1) OECD MC)	168
[C]	The PE Case: Fractioning the Tax Base Between the States (Article 7(1) and (2) OECD MC)	169
	[1] Direct Versus Indirect Methods	171
	[2] Focal Width	173
	[3] Issues of Quantification	175
	[a] <i>Direct Methods</i>	175
	[b] <i>Indirect Methods (Article 7(4) OECD MC 1977)</i>	177
	[4] Continuity of Choice (Article 7(6) OECD MC 1977)	179
[D]	The Functionally Separate Entity Approach (FSEA) in Detail	179
	[1] Identifying Transactions and Dealings	181
	[2] Assigning Transactions/Dealings to a PE	182
	[a] <i>Assignment of Assets and Liabilities</i>	183
	[b] <i>Assignment of Functions, Opportunities and Risks</i>	185

	[c] <i>Assignment of Operational Transactions</i>	188
	[d] <i>Assignment of Overhead Costs (Article 7(3) OECD MC 1977)</i>	190
	[e] <i>Carve-Out of De Minimis Functions (Article 7(5) OECD MC 1977)</i>	191
	[f] <i>Temporal Aspects</i>	192
[3]	Quantifying Transactional Profits	192
	[a] <i>Fractioning Transactions</i>	193
	[b] <i>Selection of Methods</i>	195
[E]	Obligations of the State of Residence in the Case of Article 7(1), 2nd Sentence	195
	[1] Exemption Versus Credit Method	195
	[2] Triangular Cases	197
[F]	Corresponding Adjustment (Article 7(3) OECD MC 2010)	199
	[1] State Symmetry	199
	[2] Constellations Covered by Article 7(3) OECD MC 2010	200
	[3] Deviations in State Practice	201
[G]	Procedural Aspects	202
	[1] Advance Pricing Agreements	202
	[2] Documentation Duties	203
	[3] Settlement of Disputes	204
[H]	Obligation of the PE State to Grant Non-discriminatory Treatment (Article 24(3) OECD MC)	204
	[1] Treatment of Earnings and Expenses	204
	[2] Treatment of Profits and Losses	205
Part 4.	Tax Planning and Policy Perspectives	206
[A]	The Tax Planning Perspective	206
[B]	The Treaty Policy Perspective	206
	[1] Presence of an Individual as a PE	207
	[2] G20/OECD Proposals on BEPS Action Item 7	207
	[3] Other Changes and Policy Options	208

Country Perspectives

Australia

<i>Peter Collins & Hamish McElwee</i>	1
§1.01 Introduction	3
§1.02 Basic Principles	5
[A] Relevance of PEs	5
[B] Legal Principles and Resources	6
[C] Key Features of Taxation	7
[D] Tax Rulings	22

§1.03	Definition of 'PE'	23
	[A] Definition of PE According to Domestic Law: General Definition	23
	[B] National Double Tax Treaties	24
	[C] Implication of BEPS Including the Multilateral Instrument	30
	[D] Special Cases	32
	[E] Discrepancies Between Local Law and Tax Treaties	35
	[F] Practical Approach	37
§1.04	Profit Allocation	37
	[A] Applicability of Allocation Method	39
	[B] Mechanism of the Direct Allocation Method	41
	[C] Mechanism of the Indirect Allocation Method	41
	[D] Details on the Transfer of Assets or Functions	41
	[E] Details on Losses	41
	[F] Practical Considerations	41
§1.05	Summary and Outlook	41
Austria		
	<i>Herbert Greinecker, Martin Jann & Veronika Daurer</i>	1
§2.01	Introduction	3
§2.02	Basic Principles	3
	[A] Relevance of PEs	3
	[B] Legal Principles and Resources	4
	[C] Key Features of Taxation	4
	[D] Tax Rulings	6
§2.03	Definition of 'PE'	7
	[A] Definition of PE According to Domestic Law: General Definition	7
	[B] National Double Tax Treaties	9
	[C] Implications of BEPS Project in Austria	9
	[D] Special Cases	11
	[E] Discrepancies Between Local Law and Tax Treaties	14
	[F] Practical Approach	15
§2.04	Profit Allocation	15
	[A] Applicability of Allocation Method	15
	[B] Mechanism of the Direct Allocation Method	16
	[C] Mechanism of the Indirect Allocation Method	19
	[D] Details on the Transfer of Assets or Functions	20
	[E] Details on Losses	21
	[F] Practical Considerations	21
§2.05	Summary and Outlook	22

Belgium		
	<i>Maarten Temmerman, Tom Stuer & Dennis Matthijs</i>	1
§3.01	Introduction	3
§3.02	Basic Principles	4
	[A] Relevance of PEs	4
	[1] Previous Regime	4
	[2] New Regime	5
	[B] Legal Principles and Resources	7
	[C] Key Features of Taxation	7
	[D] Tax Rulings	13
§3.03	Definition of 'PE'	14
	[A] Definition of PE According to Domestic Law: General Definition	14
	[B] National Double Tax Treaties	17
	[C] Belgian (Draft) Position on the MLI	20
	[D] Special Cases	21
	[E] Discrepancies Between Local Law and Tax Treaties	29
	[F] Practical Approach	29
§3.04	Profit Allocation	29
	[A] Applicability of Allocation Method	29
	[B] Mechanism of the Direct Allocation Method	30
	[C] Mechanism of the Indirect Allocation Method	35
	[D] Details on the Transfer of Assets or Functions	35
	[E] Details on Losses	36
	[1] Tax-Free Mergers/Demergers	37
	[2] Migrations	37
	[3] Contributions	37
	[F] Practical Considerations	39
	[G] Implication of BEPS	39
§3.05	Summary and Outlook	39
China		
	<i>Matthew Mui, Alan Yam, Raymond Wong, Frank Feng & Jessica Ma</i>	1
§4.01	Introduction	3
§4.02	Basic Principles	4
	[A] Relevance of PEs	4
	[B] Legal Principles and Resources	5
	[C] Key Features of Taxation	5
	[D] Tax Rulings	10
§4.03	Definition of 'PE'	11
	[A] Definition of PE According to Domestic Law: General Definition	11
	[B] National Double Tax Treaties	11
	[C] Implication of BEPS	14
	[D] Special Cases	15
	[E] Discrepancies between Local Law and Tax Treaties	17
	[F] Practical Approach	17

§4.04	Profit Allocation	18
	[A] Applicability of Allocation Method	18
	[B] Mechanism of the Direct Allocation Method	19
	[C] Mechanism of the Indirect Allocation Method	20
	[D] Details on the Transfer of Assets or Functions	21
	[E] Details on Losses	22
	[F] Practical Considerations	22
§4.05	Summary and Outlook	22
Denmark		
<i>Søren Jesper Hansen, Lene Munk Rasmussen, Martin Poulsen & Lars Ellegård Holst</i>		
		1
§5.01	Introduction	3
§5.02	Basic Principles	3
	[A] Relevance of PEs	3
	[B] Legal Principles and Resources	4
	[C] Key Features of Taxation	5
	[D] Tax Rulings	11
§5.03	Definition of 'PE'	12
	[A] Definition of PE According to Domestic Law: General Definition	12
	[B] National Double Tax Treaties	15
	[C] Implication of BEPS (Either Planned, Implemented or Implications under Discussion)	15
	[D] Special Cases	16
	[E] Discrepancies between Local Law and Tax Treaties	19
	[F] Practical Approach	19
§5.04	Profit Allocation	20
	[A] Applicability of Allocation Method	20
	[B] Mechanism of the Direct Allocation Method	20
	[C] Mechanism of the Indirect Allocation Method	27
	[D] Details on the Transfer of Assets or Functions	27
	[E] Details on Losses	27
	[F] Implication of BEPS (Either Planned, Implemented or Implications under Discussion)	28
	[G] Practical Considerations	28
§5.05	Summary and Outlook	29
Estonia		
<i>Iren Lipre & Maret Ansperi</i>		
		1
§6.01	Introduction	3
§6.02	Basic Principles	4
	[A] Relevance of PEs	4
	[B] Legal Principles and Resources	4
	[C] Key Features of Taxation	5
	[D] Tax Rulings	8

§6.03	Definition of 'PE'	9
	[A] Definition of PE According to Domestic Law: General Definition	9
	[B] Double Tax Treaties	10
	[C] Special Cases	12
	[D] Discrepancies between Local Law and Tax Treaties	15
	[E] Practical Approach	16
§6.04	Profit Allocation	16
	[A] Applicability of Allocation Method	16
	[B] Mechanism of the Direct Allocation Method	17
	[C] Details on the Transfer of Assets or Functions	18
	[D] Details on Losses	18
	[E] Practical Considerations	19
§6.05	Summary and Outlook	19
France		
<i>Renaud Jouffroy & Sandra Fleurier</i>		
		1
§7.01	Introduction	3
§7.02	Basic Principles	3
	[A] Relevance of PEs	3
	[B] Legal Principles and Resources	4
	[C] Key Features of Taxation	4
	[1] Tax Treaty Network	4
	[2] Inbound Cases	5
	[a] Corporate Income Tax	5
	[b] Branch Tax	6
	[c] Other Tax	6
	[3] Outbound Cases	6
	[4] Double Tax Avoidance: Credit System versus Exemption	7
	[5] Legal Compliance in Connection with a PE	8
	[6] Accounting and Tax Compliance	10
	[D] Ruling Practice	11
§7.03	Definition of 'PE'	12
	[A] Definition of PE According to Domestic Law: General Definition	12
	[1] Establishment	12
	[2] Dependant Representative	12
	[3] Complete Cycle of Commercial Activities	13
	[B] Double Tax Treaties (DTTs) of France	13
	[1] Deviation of the DTTs to the OECD Model Tax Conventions	13
	[a] Article 5§1 of the OECD Model	13
	[b] Article 5§2 of the OECD Model	14
	[c] Article 5§3 of the OECD Model	15
	[d] Article 5§4 of the OECD Model	16
	[e] Article 5§5 to Article 5§7 of the OECD Model	16

[C]	Implication of BEPS	17
[D]	Special Cases	18
	[1] Services PE	18
	[2] Agent PE	19
	[3] Server PE	21
	[4] Affiliated Companies as PEs	22
	[5] Building Sites PE	22
	[6] Mobile Phone Masts	23
	[7] Market Stand	23
	[8] Broadcasting Trucks	23
[E]	Discrepancies between Local Law and Tax Treaties	23
[F]	Practical Approach	25
§7.04	Profit Allocation	25
[A]	Applicability of the Direct or Indirect Allocation Method	25
[B]	Mechanism of the Direct Allocation Method	26
	[1] Determination of Taxable Income	26
	[2] Allocation of Assets, Liabilities, Income and Expenses between Head Office and PE	27
	[3] Application of the Direct Method in Certain Industries/Businesses	28
	[4] Inbound versus Outbound Cases when Applying the Direct Allocation Method	28
	[5] Restrictions under DTTs	28
[C]	Mechanism of the Indirect Allocation Method	28
	[1] Determination of Taxable Income	28
	[2] Application of the Indirect Method in Certain Industries/Businesses	29
	[3] Inbound versus Outbound Cases when Applying the Indirect Allocation Method	29
	[4] Restrictions under the DTTs	30
[D]	Details on the Transfer of Assets or Functions	30
	[1] Transfer of Assets	30
	[2] Transfer of Functions	30
	[3] Restructuring	31
	[a] Conversion of the PE into a Subsidiary	31
	[b] Transfer of the Assets of a French PE by a French Company to Its Non-resident Parent	32
[E]	Details on Losses	32
[F]	Practical Considerations	33
§7.05	Summary and Outlook	33

Germany		
<i>Dr. Huili Wang & Mathias Schreiber</i>		1
§8.01	Introduction	3
§8.02	Basic Principles	3
	[A] Relevance of PEs	3
	[B] Legal Principles and Resources	4
	[C] Key Features of Taxation	4
	[D] Tax Rulings	9
§8.03	Definition of 'PE'	10
	[A] Definition of PE According to Domestic Law: General Definition	10
	[B] Double Tax Conventions	12
	[C] Implication of BEPS	15
	[D] Special Cases	16
	[E] Discrepancies between Domestic Law and Tax Treaties	21
	[F] Practical Approach	21
§8.04	Profit Allocation	21
	[A] Introduction	21
	[B] Profit Allocation Prior to AOA	22
	[C] The AOA in Germany	23
	[D] Details on the Transfer of Assets or Functions	23
	[E] Details on Losses	25
§8.05	Summary and Outlook	26
Hungary		
<i>Ákos Burján & Eszter Turcsik</i>		1
§9.01	Introduction	3
§9.02	Basic Principles	3
	[A] Relevance of PEs	3
	[B] Legal Principles and Resources	4
	[C] Key Features of Taxation	5
	[D] Tax Rulings	12
§9.03	Definition of 'PE'	13
	[A] Definition of PE According to Domestic Law: General Definition	13
	[B] National Double Tax Treaties	15
	[C] Special Cases	18
	[D] Discrepancies Between Local Law and Tax Treaties	24
	[E] Practical Approach	25
§9.04	Profit Allocation	26
	[A] Applicability of Allocation Method	26
	[B] Mechanism of the Direct Allocation Method	26
	[C] Mechanism of the Indirect Allocation Method	29
	[D] Details on the Transfer of Assets or Functions	30

Table of Contents

	[E] Details on Losses	31
	[F] Implication of BEPS	32
	[G] Practical Considerations	33
§9.05	Summary and Outlook	33
India		
	<i>Vishal J. Shah, Smit Sheth & Kunal Mehta</i>	1
§10.01	Introduction	3
§10.02	Basic Principles	4
	[A] Relevance of PEs	4
	[B] Legal Principles and Resources	5
	[C] Key Features of Taxation	5
	[D] Advance Rulings	13
§10.03	Definition of 'PE' 'Business Connection' According to Domestic Law: General Definition	14
	[A] Definition of PE According to Domestic Law: General Definition	14
	[B] National Double Tax Treaties	16
	[C] Special Cases	16
	[D] Implications of BEPS	22
	[E] Discrepancies Between Local Law and Tax Treaties	29
	[F] Practical Approach	30
§10.04	Profit Allocation	31
	[A] Applicability of Allocation Method	34
	[B] Mechanism of the Direct Allocation Method	34
	[C] Mechanism of the Indirect Allocation Method	34
	[D] Details on the Transfer of Assets or Functions	34
	[E] Details on Losses/Disallowance of Head Office Expenses	35
	[F] Practical Considerations	36
§10.05	Summary And Outlook	36
Italy		
	<i>Fabrizio Acerbis & Francesco Nuzzolo</i>	1
§11.01	Introduction	3
§11.02	Basic Principles	3
	[A] Relevance of PEs	3
	[B] Legal Principles and Resources	4
	[C] Key Features of Taxation	4
	[D] Tax Rulings	10
§11.03	Definition of 'PE'	11
	[A] Definition of PE According to Domestic Law: General Definition	11
	[B] National Double Tax Treaties	13
	[C] Implications of BEPS	15
	[D] Special Cases	16
	[E] Discrepancies between Local Law and Tax Treaties	21
	[F] Practical Approach	21

Table of Contents

§11.04	Profit Allocation	22
	[A] Applicability of Allocation Method	22
	[B] Mechanism of the Direct Allocation Method	23
	[C] Mechanism of the Indirect Allocation Method	28
	[D] Details on the Transfer of Assets or Functions	28
	[E] Details on Losses	28
	[F] Implication of BEPS (Practical Considerations on BEPS)	29
	[G] Practical Considerations	30
§11.05	Summary and Outlook	30
Japan		
	<i>Yoshiyasu Okada & Yumiko Arai</i>	1
§12.01	Introduction	3
§12.02	Basic Principles	3
	[A] Relevance of PEs	3
	[B] Legal Principles and Resources	4
	[C] Key Features of Taxation	5
	[D] Tax Rulings	17
§12.03	Definition of 'PE'	17
	[A] Definition of PE According to Domestic Law: General Definition	17
	[B] Double Tax Treaties	20
	[C] Special Cases	20
	[D] Discrepancies between Local Law and Tax Treaties	25
	[E] Practical Approach	25
§12.04	Profit Allocation	25
	[A] Basic Principles Underlying the AOA	25
	[B] Domestic Source Income	26
	[C] Applicability of Allocation Method	27
	[D] Mechanism of the Direct Allocation Method	28
	[E] Mechanism of the Indirect Allocation Method	29
	[F] Details on the Transfer of Assets or Functions	30
	[G] Details on Losses	30
	[H] Tax Credits	30
	[I] Documentation	31
	[J] Practical Considerations	31
§12.05	Summary and Outlook	31
Mexico		
	<i>Mauricio Hurtado, David Cuellar, Luis Felipe Muñoz & Jose Antonio Gonzalez</i>	1
§13.01	Introduction	3
§13.02	Basic Principles	4
	[A] Relevance of PEs	4
	[B] Legal Principles and Resources	5
	[C] Key Features of Taxation	5
	[D] Ruling Practice	7

§13.03	Definition of 'PE'	8
[A]	Definition of PE According to Domestic Law:	
	General Definition	8
[B]	Double Taxation Treaties	9
	[1] General Deviations of Tax Treaties from the OECD	10
	[2] Deviations of Specific Tax Treaties from the OECD Model	11
	[3] United States (US)	11
	[4] United Kingdom (UK)	11
	[5] Italy	11
	[6] Germany	12
	[7] Canada	12
[C]	Implications of BEPS	12
[D]	Special Cases	13
[E]	Discrepancies Between Domestic Law and Tax Treaties	13
[F]	Practical Approach	14
§13.04	Profit Allocation	15
[A]	Applicability of Allocation Method	15
[B]	Mechanism of the Direct Allocation Method	15
	[1] Allocation of Assets, Liabilities, Income, and Expenses Between the Head Office and PE	17
[C]	Mechanism of the Indirect Allocation Method	17
[D]	Details on the Transfer of Assets or Functions	18
[E]	Details on Losses	18
§13.05	Summary and Outlook	18
The Netherlands		
<i>Hein Vermeulen & Ciska Wisman</i>		
§14.01	Introduction	3
§14.02	Basic Principles	4
	[A] Relevance of PEs	4
	[B] Legal Principles and Resources	5
	[C] Key Features of Taxation	6
	[D] Tax Rulings	10
§14.03	Definition of 'PE'	11
	[A] Definition of PE According to Domestic Law: General Definition	11
	[B] National Double Tax Treaties	15
	[C] Implications of BEPS	16
	[D] Special Cases	17
	[E] Discrepancies between Local Law and Tax Treaties	20
	[F] Practical Approach	21
§14.04	Profit Allocation	21
	[A] Applicability of Allocation Method	22
	[B] Mechanism of the Direct Allocation Method	23
	[C] Mechanism of the Indirect Allocation Method	26

	[D] Details on the Transfer of Assets or Functions	27
	[E] Details on Losses	28
	[F] Implications of BEPS	29
	[G] Practical Considerations	30
§14.05	Summary and Outlook	30
Russia		
<i>Mikhail Filinov</i>		
§15.01	Introduction	3
§15.02	Basic Principles	5
	[A] Relevance of PEs	5
	[B] Legal Principles and Sources	6
	[C] Key Features of Taxation	7
	[D] Tax Rulings	18
§15.03	Definition of 'PE'	19
	[A] Definition of PE According to Domestic Law:	
	General Definition	19
	[B] National Double Tax Treaties	25
	[C] Implication of BEPS	28
	[D] Special Cases	30
	[E] Discrepancies Between Local Law and Tax Treaties	38
	[F] Practical Approach	38
§15.04	Profit Allocation	39
	[A] Applicability of Allocation Method	39
	[B] Mechanism of the Direct Allocation Method	40
	[C] Mechanism of the Indirect Allocation Method	45
	[D] Details on the Transfer of Assets or Functions	46
	[E] Details on Losses	46
	[F] Implication of BEPS	46
	[G] Practical Considerations	47
§15.05	Summary and Outlook	47
South Africa		
<i>(Prof) Osman Mollagee & David Lerner</i>		
§16.01	Introduction	3
§16.02	Basic Principles	4
	[A] Relevance of PEs	4
	[B] Legal Principles and Resources	5
	[C] Key Features of Taxation	6
	[1] Tax Treaties	6
	[2] Inbound Cases (PE Located in South Africa)	7
	[3] Outbound Cases (Head Office Located in South Africa)	8
	[4] Double Tax Avoidance	9

	[5] Legal and Tax Compliance in Connection with a PE	9
	[a] Corporate Law Registration as an 'External Company'	9
	[b] Financial Statement Requirements	11
	[c] Income Tax Returns	11
	[d] Exchange Control Regulations	11
	[e] Transfer Pricing and Thin Capitalization	12
	[D] Ruling Practice	13
§16.03	Definition of 'PE'	14
	[A] Definition of PE According to Domestic Law	14
	[1] General Definition	14
	[2] Special Provisions Concerning Partnerships, Foreign Partnerships and Trusts	16
	[B] Double Taxation Treaties	18
	[1] General Deviations of South Africa's DTTs from the OECD Model Tax Convention	18
	[a] Facts	18
	[b] Issues	19
	[c] The Court's Decision	19
	[d] Deviations in Specific DTTs from the OECD Model Tax Convention	20
	[C] Special Cases	21
	[1] Services PE	21
	[2] Agency PE	22
	[3] Server PE	23
	[4] Affiliated Companies as PEs	24
	[5] Building Sites PE	24
	[D] Discrepancies Between Local Law and Tax Treaties	24
	[E] Practical Approach	25
§16.04	Profit Allocation	26
	[A] Applicability of Allocation Method	26
	[B] Mechanism of the Direct Allocation Method	27
	[1] Determination of Taxable Income	27
	[2] Allocation of Assets, Liabilities, Income and Expenses between Head Office and PE	30
	[3] Application of the Direct Method in Certain Industries / Businesses	32
	[C] Mechanism of the Indirect Allocation Method	32
	[D] Details on the Transfer of Assets or Functions	32
	[1] Transfer of Assets	33
	[a] Transfer of Assets: From a South African Resident to a Foreign PE	33
	[b] Transfer of Assets: From a Foreign PE to a South African Resident	34

	[c] Transfer of Assets: From a Domestic PE to a Non-resident	35
	[d] Transfer of Assets: From a Non-resident to a Domestic PE	36
	[2] Transfer of Functions	37
	[3] Restructuring	37
	[E] Details on Losses	38
	[F] Practical Considerations	39
§16.05	Summary and Outlook	39
Spain		
	<i>Ramón Mullerat & Anna Mallol</i>	1
§17.01	Introduction	3
§17.02	Basic Principles	3
	[A] Relevance of PEs	3
	[B] Legal Principles and Resources	3
	[C] Key Features of Taxation	4
	[D] Tax Rulings	6
§17.03	Definition of 'PE'	7
	[A] Definition of PE According to Domestic Law: General Definition	7
	[B] National Double Tax Treaties	8
	[C] Implication of BEPS	9
	[D] Special Cases	9
	[E] Discrepancies between Local Law and Tax Treaties	13
	[F] Practical Approach	14
§17.04	Profit Allocation	14
	[A] Applicability of Allocation Method	14
	[B] Mechanism of the Direct Allocation Method	15
	[C] Mechanism of the Indirect Allocation Method	17
	[D] Details on the Transfer of Assets or Functions	18
	[E] Details on Losses	18
	[F] Practical Considerations	18
§17.05	Summary and Outlook	19
Sweden		
	<i>Peter Lindblad & Anna Berglund</i>	1
§18.01	Introduction	3
§18.02	Basic Principles	4
	[A] Relevance of PEs	4
	[B] Legal Principles and Resources	4
	[C] Key Features of Taxation	4
	[D] Tax Rulings	6

§18.03	Definition of 'PE'	7
	[A] Definition of PE According to Domestic Law: General Definition	7
	[B] National Double Tax Treaties	8
	[C] Implications of BEPS (Either Planned, Implemented or Implications under Discussion)	8
	[D] Special Cases	8
	[E] Discrepancies between Local Law and Tax Treaties	11
	[F] Practical Approach	11
§18.04	Profit Allocation	12
	[A] Applicability of Allocation Method	12
	[B] Mechanism of the Direct Allocation Method	12
	[C] Mechanism of the Indirect Allocation Method	12
	[D] The relevance of the Arm's Length Principle and the OECD TP Guidelines	13
	[E] Details on the Transfer of Assets or Functions	13
	[F] Details on Losses	14
§18.05	Summary and Outlook	14
Switzerland		
<i>Stefan Schmid & Marianne Orell</i>		
		1
§19.01	Introduction	3
§19.02	Basic Principles	4
	[A] Relevance of PEs	4
	[B] Legal Principles and Resources	4
	[C] Key Features of Taxation	5
	[D] Ruling Practice	8
§19.03	Definition of 'PE'	9
	[A] Definition of PE According to Domestic Law: General Definition	11
	[B] Double Taxation Treaties	13
	[C] Implication of BEPS	14
	[D] Special Cases	15
	[E] Discrepancies between Domestic Law and Tax Treaties	16
	[F] Practical Approach	17
§19.04	Profit Allocation	17
	[A] Applicability of Allocation Method	17
	[B] Mechanism of the Direct Allocation Method	20
	[C] Mechanism of the Indirect Allocation Method	21
	[D] Details on the Transfer of Assets or Functions	21
	[E] Details on Losses	21
	[F] Practical Considerations	22
§19.05	Summary and Outlook	22

United Kingdom		
<i>Mike Cooper & Sonia Watson</i>		
		1
§20.01	Introduction	3
§20.02	Basic Principles	3
	[A] Relevance of Permanent Establishments	3
	[B] Legal Principles and Resources	5
	[C] Key Features of Taxation	6
	[D] Tax Rulings	12
§20.03	Definition of 'PE'	13
	[A] Definition of PE According to Domestic Law: General Definition	13
	[B] National Double Tax Treaties	16
	[C] Implications of BEPS	16
	[D] Special Cases	17
	[E] Discrepancies between Local Law and Tax Treaties	19
	[F] Practical Approach	19
§20.04	Profit Allocation	19
	[A] Applicability of Allocation Method	19
	[B] Mechanism of the Direct Allocation Method	20
	[C] Mechanism of the Indirect Allocation Method	21
	[D] Details on the Transfer of Assets or Functions	21
	[E] Details on Losses	24
	[F] Implications of BEPS	24
§20.05	Summary and Outlook	25
United States		
<i>Oren Penn, Stephen Nauheim & Daniel Rinke</i>		
		1
§21.01	Introduction	3
§21.02	Basic Principles	4
	[A] Relevance of PEs	4
	[B] Legal Principles and Resources	4
	[C] Key Features of Taxation	5
	[D] Tax Rulings	8
§21.03	Definition of 'PE'	8
	[A] Definition of PE According to the US Model Income Tax Convention: General Definition	8
	[B] National Double Tax Treaties	11
	[C] Implication of BEPS	12
	[D] Special Cases	13
	[E] Discrepancies between Local Law and Tax Treaties	20
	[F] Practical Approach	20

Table of Contents

§21.04	Profit Allocation	21
	[A] Applicability of Allocation Method	21
	[B] Mechanism of the Direct Allocation Method	23
	[C] Mechanism of the Indirect Allocation Method	25
	[D] Details on the Transfer of Assets or Functions	25
	[E] Details on Losses	27
	[F] Implication of BEPS	27
	[G] Practical Considerations	28
§21.05	Summary and Outlook	28
	Index	1

<http://www.pbookshop.com>