



Papers on Selected Topics in Protecting the Tax Base of Developing Countries

Draft Outline - Paper No. 8

May 2013

Preventing Artificial Avoidance of PE Status

Adolfo Martín Jiménez
University of Cádiz Spain

Draft papers and outlines on selected topics in protecting tax base of developing countries, are preliminary documents for circulation at the workshop on “Tax base protection for developing countries” (New York, 4 June 2014) to stimulate discussion and critical comments. The views and opinions expressed herein are those of the authors and do not necessarily reflect those of the United Nations Secretariat. The designations and terminology employed may not conform to United Nations practice and do not imply the expression of any opinion whatsoever on the part of the Organization.

United Nations
Department of Economic and Social Affairs
United Nations Secretariat, DC2/78
New York, N.Y. 10017, USA
Tel: (1-212) 9638762 • Fax: (1-212) 9630443
e-mail: TaxffdCapDev@un.org
<http://www.un.org/esa/ffd/tax/2014TBP>
© United Nations

PROTECTING THE TAX BASE OF DEVELOPING COUNTRIES: ACTION 7 BEPS PLAN ON PREVENTING ARTIFICIAL AVOIDANCE OF PE STATUS

Adolfo Martín Jiménez (University of Cádiz, Spain)

1. Introduction to the context of BEPS Action 7 and the reasons why the PE problem is catching the attention of tax administrations and taxpayers:

- a. The works of the OECD on attribution of profits to PEs (increase in potential profits attributed to PEs makes this issue more relevant for tax administrations)
- b. Business restructuring (Chapter 9 OECD TP Guidelines and PEs) and tax competition for headquarters / principals of multinationals
- c. The need to clarify the concept of PE (a fundamental threshold of tax treaties is not clear for tax administrations and taxpayers):
 - i. 'Changing mood' of some tax authorities and judicial decisions in some countries supporting a more or less aggressive concept of PE for source countries (e.g. Mred, Borax, Roche, Dell, Honda in Spain, or decisions in India –Bay, Nokia, v. Boston Scientific in Italy, Zimmer, France, Dell in Norway etc¹

rationale), specific rules on valuation of business restructuring and transactions after the restructuring

- e. System of advance rulings on PE concept/ compacts in specific sectors (e.g. extractive industries) / improvement of systems of resolution of disputes
- f. Changes in tax treaty policy / models (connection of Action 7 and 15)
- g. Other suggestions or specific solutions by officials from different countries?