

4. Permanent Establishment

30 October 2024

Business Profits

➤ Article 7§1 OECD MC

1. **Profits** of an enterprise of a Contracting State *shall be taxable only* in that State unless the enterprise carries on business in the other Contracting State through a **permanent establishment** situated therein. **If** the enterprise carries on business as aforesaid, the profits that are **attributable** to the permanent establishment in accordance with the provisions of paragraph 2 *may be taxed* in that other State.

Business Profits

- Article 7§1 OECD MC
 - RULE → exclusive right to the state of residence (shall be taxable only)
 - *EXCEPTION* → *UNLESS activity* is carried out in the other state through a PERMANENT ESTABLISHMENT (PE) → What constitutes a PE? → see **Article 5**
 - IF there is a PE under Article 5 → these profits may be taxed **AND** in the PE state (*may be taxed*) (= source state) – **DOUBLE taxation** → elimination of such double taxation → see **Article 23**
 - **WHICH** profits? → the **ATTRIBUTION** of profits to a PE see **Article 7§2 AND → Article 9**

Business Profits

➤ Article 7§2 OECD MC

2. For the purposes of *this Article* and *Article [23 A] [23 B]*, the **profits that are attributable** in each Contracting State to the permanent establishment referred to in paragraph 1 are the profits it might be expected to make, in particular in its dealings with other parts of the enterprise, if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the enterprise through the permanent establishment and through the other parts of the enterprise.

Business Profits – Transfer Pricing aspects

- Article 7§2 OECD MC – Attribution of Profits to a PE
 - Methodology = apply the transfer pricing (TP) rules = in the same way as under Article 9.
 - **Authorized OECD Approach (AOA)**: establishes a FICTION; a PE is treated AS IF IT WERE (it is not in fact) a **SEPARATE AND INDEPENDENT** enterprise
 - This is the “separate and independent entity fiction” and it is described in the following way:
 - profits *it might be expected to make* (in particular in its dealings with other parts of the enterprise) *if it were* a **separate and independent enterprise**

Business Profits – Transfer Pricing aspects

➤ TP is based on one principle: **the arm's length principle (ALP)**

➤ **In the core of the ALP** → comparability analysis. Examine:

- functions performed,
- assets used and
- risks assumed

By the PE in its dealings with the other parts of the enterprise (e.g. its head office).

➤ **How is it drafted in Art. 7§2:** engaged in the *same or similar* activities under the *same or similar* conditions taking into account the functions performed, assets used and risks assumed by the enterprise through the permanent establishment and through the other parts of the enterprise

Business Profits – Transfer Pricing aspects

- Article 7§3 OECD MC – Adjustment of profits according to ALP → how to eliminate double taxation
- Article 7§4 OECD MC – Article 7 is general, in relation to other provisions of the Convention
 - «4. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article»
 - Αν κάποιο στοιχείο εισοδήματος καταλαμβάνεται από το πεδίο εφαρμογής άλλου άρθρου, τότε εφαρμόζεται το ειδικότερο άρθρο (π.χ. άρθρο 8 για τα κέρδη από ναυτιλιακές και αεροπορικές επιχειρήσεις)

Business Profits – Transfer Pricing aspects

➤ Article 7§§2-3 OECD MC = Article 9 MTC = article 50 ITC

Definition of
associated
enterprises

1. Where

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State,

or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

The ALP

and in either case **conditions** are made or imposed between the two enterprises

in their commercial or financial relations **which differ** from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of

those conditions, have not so accrued, **may be included in the profits of that enterprise and taxed accordingly.**

Adjustment of profits

Business Profits – Transfer Pricing aspects

➤ Άρθρο 50 ΚΦΕ

Νομικά πρόσωπα ή νομικές οντότητες όταν πραγματοποιούν **συναλλαγές**, μία ή περισσότερες, διεθνείς ή και εγχώριες, **με συνδεδεμένα πρόσωπα κατά την έννοια του άρθρου 2 του Κ.Φ.Ε. με οικονομικούς ή εμπορικούς όρους διαφορετικούς από εκείνους που θα ίσχυαν μεταξύ μη συνδεδεμένων προσώπων (ανεξάρτητων επιχειρήσεων) ή μεταξύ συνδεδεμένων προσώπων και τρίτων, οποιαδήποτε κέρδη τα οποία χωρίς τους όρους αυτούς θα είχαν πραγματοποιηθεί από το νομικό πρόσωπο ή νομική οντότητα, αλλά τελικά δεν πραγματοποιήθηκαν λόγω των διαφορετικών όρων (αρχή των ίσων αποστάσεων) περιλαμβάνονται στα κέρδη του νομικού προσώπου ή της νομικής οντότητας μόνον στο βαθμό που δεν μειώνουν το ποσό του καταβλητέου φόρου**

Ορισμός συνδεδεμένων

Αρχή ίσων αποστάσεων

Διόρθωση κερδών

Business Profits – Transfer Pricing aspects

- **One principle:** Arm's Length Principle (ALP)
- **Several methods** to determine the arm's length range :
 - Comparable uncontrolled price method (CUP)
 - Cost plus
 - Resale Minus
 - TNMM
 - Profit split
 - Any other method, under the condition that is compatible with the ALP

Business Profits – The concept of PE

➤ Article 5 OECD MC at a glance

§1: the rule / definition of PE

§2: indicative list of characteristic cases

§3: special rule for construction site

§4: EXCEPTIONS: what does not constitute a PE (negative list)

§5: The dependent-agent PE

§6: The independent agent (not a PE)

§7: a **holding** in a company does not constitute a PE

§8: definition of «closely related persons»

Business Profits – The concept of PE

➤ Article 5§1 OECD MC – the rule

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.*

➤ Σχόλια

- Η ΜΕ είναι κανόνας «πηγής», είναι ένα κατώφλι. ΑΝ το όριο αυτό ξεπεραστεί, δημιουργούνται φορολογικές υποχρεώσεις του κατοίκου αλλοδαπής στη χώρα της ΜΕ. Η χώρα της ΜΕ έχει πλέον δικαίωμα να φορολογήσει τα κέρδη που αποδίδονται σε αυτήν την ΜΕ.

- **Η ΜΕ δεν είναι ξεχωριστό ΝΠ, δεν είναι «κάτοικος»**

Business Profits – The concept of PE

- Άρθρο 5§1 OECD MC – ο κανόνας
- **fixed place** → σταθερό, ορισμένο γεωγραφικά σημείο και αρκετή διάρκεια (συνήθως πάνω από 6 μήνες αλλά δεν είναι απόλυτο, βλ. και την υπόθεση “Formula 1 India”) ώστε να προκύπτει η συμμετοχή στην οικονομική ζωή της χώρας. Η βούληση του φορολογούμενου να ιδρύσει ΜΕ είναι επίσης κρίσιμη
- **place of business** → τόπος άσκησης δραστηριότητας, εννοείται «core business», αντιδιαστολή με §4 (τόπος που ασκούνται βοηθητικές ή προπαρασκευαστικές λειτουργίες ή εργασίες).
- through which the **business of an enterprise is wholly or partly carried on** → δεν απαιτείται η ΜΕ να ασκεί όλο το εύρος της δραστηριότητας του κεντρικού

Business Profits – The concept of PE

- Article 5§1 OECD MC – the rule
- New digital business models have disrupted the application of the PE rules
 - From “brick-and-mortar” to “click-and-order” to “scale without mass”
 - **G**(oogle)**A**(pple)**F**(acebook)**A**(mazon) : where are they taxed? Do they have a PE, under Article 5 OECD MC?
- The OECD Rules are under revision; first through the Action Plan on Base Erosion and Profit Shifting (BEPS - 2015-2017), and now under the two Pillar Agreement (Pillar 1 and Pillar 2).

The 'Zimmer Case' (France)

- How it started...
 - Zimmer [Conseil d'État, N° 304715, ECLI:FR:CESSR:2010:304715.20100331]
 - [and a previous case, CE Interhome AG, 20 June 2003, RJF 10/03 n°1147]

The 'Zimmer Case' (France)

Zimmer Ltd, Conseil d'Etat, 31-3-2010, No 304715 and 308525

FACTS OF THE CASE

- Zimmer SAS (F) distributed orthopedic products to French clinics and hospitals acting as commissionaire of Zimmer Ltd (GB)
- Before the **commissionaire** arrangement it was a **distributor**. Commissionaire fee was lower than the distributor gross margin.
- Tax audit in **Zimmer SAS** AND issued a **notice to Zimmer Ltd** considering it had a **PE in France through the activity of Zimmer SAS**. Taxable profits of Zimmer Ltd in France were computed by the French Tax Administration on a pro rata basis (sales in France over total sales).

The 'Zimmer Case' (France)

The Decision of the Conseil d' Etat

- The Conseil d' Etat held that Zimmer SAS (F) was not a PE of Zimmer Ltd (GB), because a company acting as a commissionaire may not constitute a PE of another company acting as principal where it does not have the authority to conclude contracts with third parties which are legally binding for the principal.
- Priority of legal analysis over economic approach of the relationship between the commissionaire and the principal
- No evidence that the contracts the commissionaire signed (in its own name) created obligations **personally** for the principal
- Reliance on the concept of 'fixed place of business' was also rejected by the court. The offices and employees of Zimmer SAS were used by Zimmer SAS for the sole purpose of carrying on its own commissionaire activities.

The 'Zimmer Case' (France)

COMMENTS

- Conseil D' Etat precedent → *Ste Interhome AG* case: a sub may constitute a PE if it acts as a dependent agent; the **authority to conclude contracts** in the name of the principal could be exercised de jure or de facto.
- 'para 32.1 of the OECD Commentaries was introduced in 1995 while the DTC between F-GB was concluded in 1968; it cannot be taken into account'.
- However: **irrelevant** since under French civil law a commissionaire does not bind its principal.
- Decision consistent with TP guidelines (para. 9.11, restructurings) on the importance of the contractual arrangements
- Commissionaire arrangement is a widely spread vehicle for developing a commercial network in France

After 'Zimmer'

- Όμως η φορολογική αρχή βλέπει κίνδυνο διάβρωσης της φορολογικής βάσης. Κάτι πρέπει να γίνει
- Η απάντηση: το σχέδιο δράσης **BEPS (Base Erosion and Profit Shifting – Διάβρωση Φορολογικής Βάσης και Μετατόπιση Κερφδών)** για την καταπολέμηση της φοροδιαφυγής
 - Το σχέδιο **ΟΟΣΑ / G20 BEPS** δημιουργεί ένα ενιαίο σύνολο διεθνών φορολογικών κανόνων που βασίζονται στη **συναίνεση** για την προστασία της φορολογικής βάσης, προσφέροντας παράλληλα αυξημένη ασφάλεια και προβλεψιμότητα.

BEPS Action Plan

Coherence

Harmful or inappropriate use of international tax legislation to obtain unintended tax benefits

Action 2:
Hybrid mismatch arrangements

Action 3:
CFC rules

Action 4:
Interest deductions

Action 5:
Harmful tax practices

Substance

Mismatches in where profits are being taxed vs. where people responsible for generating these profits are located

Action 6:
Preventing tax treaty abuse

Action 7:
Avoidance of PE status

Action 8:
Transfer pricing aspects of intangibles

Action 9:
Transfer pricing and risk and capital

Action 10:
Transfer pricing and high risk transactions

Transparency

Provide tax authorities with the information to enable audits to be carried out more easily

Action 11:
Methodologies and data analysis

Action 12:
Disclosure rules

Action 13:
Transfer pricing documentation and country-by-country reporting

Action 14:
Dispute Resolution

Action 1: Digital economy

Action 15: Multilateral instrument

BEPS Action Plan

Minimum standards

- ▶ Action 5 – Harmful tax practices
- ▶ Action 6 – Treaty abuse
- ▶ Action 13 – Country-by-country reporting
- ▶ Action 14 – Dispute resolution

Reinforced standards

- ▶ OECD Transfer Pricing Guidelines
 - ▶ Actions 8-10 (transfer pricing)
 - ▶ Action 13 (transfer pricing documentation)
- ▶ OECD Model Tax Convention
 - ▶ Action 2 (hybrid mismatch arrangements)
 - ▶ Action 6 (treaty abuse)
 - ▶ Action 7 (permanent establishment status)
 - ▶ Action 14 (dispute resolution)

Common approaches and best practices

- ▶ Action 2 – Hybrid mismatch arrangements
- ▶ Action 3 – Controlled foreign company (CFC) rules
- ▶ Action 4 – Interest deductions and other financial payments
- ▶ Action 12 – Mandatory disclosure rules

BEPS Action Plan

- Μια από τις δράσεις BEPS στόχευσε περιπτώσεις σαν αυτή στην *Zimmer* : Δράση 7 η αντιμετώπιση περιπτώσεων τεχνητής αποφυγής δημιουργίας μόνιμης εγκατάστασης [BEPS Action 7 – Prevent the Artificial Avoidance of PE Status] σε τρεις περιπτώσεις:
 - Η αντικατάσταση ενός διανομέα από σύμβαση συνεργασίας με αμοιβή την προμήθεια στη βάση των παραγγελιών
 - Η εκμετάλλευση των εξαιρέσεων ιδίως μέσω της τεχνητής κατάτμησης της επιχειρηματικής δραστηριότητας (**artificially fragmenting** business activities between parts of an MNE)
 - Κατάτμηση συμβάσεων κατασκευής έργων (Splitting-up construction contracts)

BEPS Action 7

(....) 6. **BEPS concerns** arising from commissionnaire arrangements may be illustrated by the following **example**, which is based on a court decision that dealt with such an arrangement and found that the foreign enterprise did not have a permanent establishment:

The Zimmer Case!

- XCO is a company resident of State X. It specialises in the sale of medical products.
- Until 2000, these products are sold to clinics and hospitals in State Y by YCO, a company resident of State Y. XCO and YCO are members of the same multinational group.
- In 2000, the status of YCO is changed to that of commissionnaire following the conclusion of a commissionnaire contract between the two companies. Pursuant to the contract, YCO transfers to XCO its fixed assets, its stock and its customer base and agrees to sell in State Y the products of XCO in its own name, but for the account of and at the risk of XCO.
- **As a consequence, the taxable profits of YCO in State Y are substantially reduced.**

BEPS Action 7

- It is clear that in **many cases** commissionnaire arrangements and similar strategies **were put in place primarily in order to erode the taxable base** of the State where sales took place. **Changes to the wording of Art. 5(5) and 5(6)** are therefore needed in order to address such strategies.
- **Changes to Art. 5(5) and 5(6)** included in the Report on Action 7 will address *commissionnaire* arrangements and similar strategies by **ensuring that the wording of these provisions better reflect this underlying policy**
- How will these changes be implemented;

The MLI

- BEPS Action 15 → Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("Multilateral Instrument" or "MLI") [super-treaty]
- Οι θέσεις των συμβαλλομένων κρατών ως προς τις ρήτρες του MLI → <http://www.oecd.org/tax/treaties/beps-mli-signatories-and-parties.pdf>
- Οι αλλαγές στο άρθρο 5 ΣυμβΟΟΣΑ για τον εξαρτημένο πράκτορα (BEPS Action 7) περιλαμβάνονται στο **Άρθρο 12 MLI**
 - Ελλάδα → επιφύλαξη («not to apply»)
 - Γαλλία → όχι επιφύλαξη
 - ΗΒ → επιφύλαξη («not to apply»)

The MLI

➤ Τι σημαίνει αυτή η επιφύλαξη στο Άρθρο 12 MLI;

Reservations:

Does either Contracting Jurisdiction to the Covered Tax Agreement make a reservation on the application of a provision of the MLI?

- ☐ YES: *The MLI provision for which the reservation is made does not apply and does not modify the Covered Tax Agreement.*
- ☐ NO: *The MLI Article could apply and modify the Covered Tax Agreement.*

PE Case Law

Is a Home
Office a PE?



Tax Board ruling of 28 February 2017 (SKM2017.213.SR) - Denmark

- Home office of sales manager creates PE for German company
- Facts of the case
- A **German corporation** is engaged in delivering software and hardware solutions; it hired a **Danish resident** sales manager to carry out sales activities and customer service in Denmark and the other Scandinavian countries.
- **The main tasks** of the sales manager include:
 - Sales of software solutions in Scandinavia;
 - Management of key accounts and distributors;
 - Customer visits and ongoing care, including drafting of quotations;
 - Identification of new clients and business development;
 - Market analysis and promotion of products through trade shows, fairs, etc.;
 - Competitor analysis;
 - Management of internal customer relations management system;
 - Forecasting and promotion/introduction of new products to the Scandinavian markets

Tax Board ruling of
28 February 2017
(SKM2017.213.SR)
- Denmark

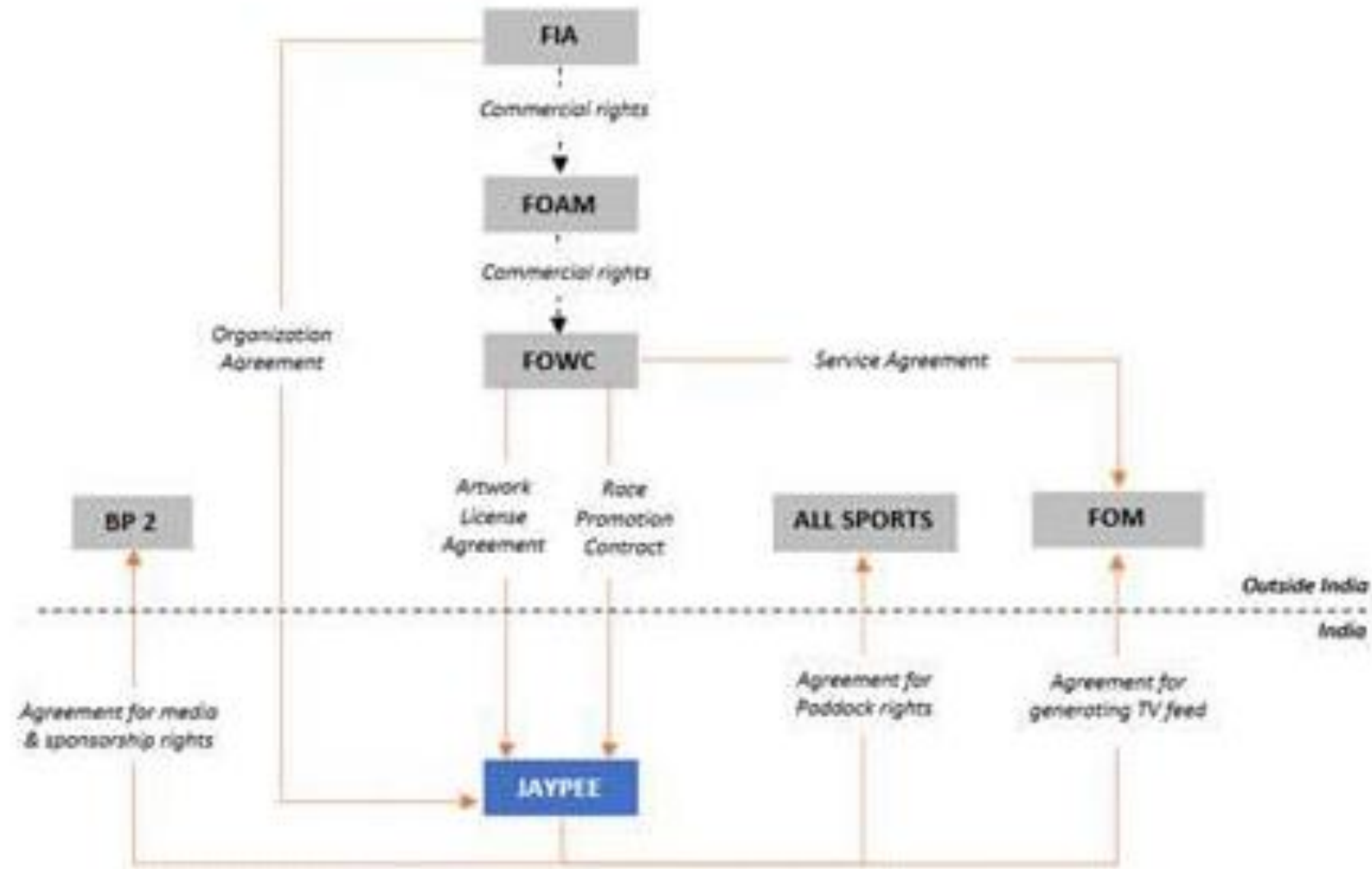
- The sales manager →
- **reports** directly to the German company;
- will have no permanent office, shop or a similar premise made available in Denmark;
- will receive a laptop & mobile phone;
- will have his travel expenses reimbursed;
- work will be carried out at the premises of the clients, partners and suppliers;
- not reimbursed for furnishing or in other ways for setting up a home office, no requirement to work from home, only modest amount of administrative work;
- not entitled to enter into binding agreements on behalf of the German corporation or in other ways negotiate details of sales contracts or other agreements that is binding for the German corporation. All delivery will be carried out from the German corporation straight to the clients.

Tax Board ruling of 28 February 2017 (SKM2017.213.SR) - Denmark

- The Board's decision:
 - the sales manager's occasional use of a home office for administrative work would constitute a PE of his employer, the German corporation.
 - It is irrelevant whether the premises are owned, rented or in other ways made available for the non-resident corporation, as long as business activities of the foreign corporation is effectively and habitually carried out at the premises and that the business activities does not qualify as preparatory or auxiliary, cf. the OECD Model Tax Convention Art. 5(4).
 - The administrative work carried out at the sales manager's home was carried out in connection with his work for his employer and qualified as core business of the German corporation.
 - The work to be carried out at the home office must be regarded as occurring on a regular basis, and thus not sporadic and occasional, simply due to the fact that the work at home can be planned as part of the regular course of carrying out his work as sales manager.
 - In relation to paragraph 24 of the commentary to the OECD MTC art. 5, the work carried out at the home office is considered an important and material part of the core business activities, thus beyond what can be deemed preparatory and auxiliary to the core business of the German corporation.

PE – Case Law





Formula One World Championship Ltd v. Commissioner of Income Tax – 2016 (India)

*Formula One
World
Championship
Ltd v.
Commissioner
of Income Tax
– 2016 (India)*

➤ **Facts of the Case**

- Federation Internationale de l'Automobile (FIA), the international motor sports events regulating authority originally owned all commercial rights in the F1 Championship. These rights were initially transferred to Formula One World Championship's (FOWC) parent company, subsequently transferred to Formula One Asset Management Limited (FOAM) and ultimately transferred to FOWC by way of an agreement between FIA, FOAM and FOWC, effective from 1 January 2011. Under this agreement, **FOAM licensed all commercial rights in the F1 Championship to Formula One World Championship Ltd, a tax resident of the United Kingdom, for a 100-year term.**
- Various **F1 race teams** also signed a “Concorde Agreement” with FOWC and FIA, **undertaking to participate in every F1 event included in the official annual F1 racing calendar.** They also bound themselves to an unequivocal negative covenant with FOWC under which they would not participate in any other similar motor racing event whatsoever, nor would they promote in any manner any rival event.

*Formula One
World
Championship
Ltd v.
Commissioner
of Income Tax
– 2016 (India)*

- FOWC entered into a race promotion contract (RPC) dated 13 September 2011 (RPC 2011), by which it granted the right to host, stage and promote the Formula One Grand Prix of India event to **Jaypee Sports International Limited (Jaypee) for a consideration of USD 40 million**. An Artworks License Agreement (ALA) contemplated in RPC 2011 was also entered into between FOWC and Jaypee on the same day, permitting the use of certain marks and intellectual property (IP) belonging to FOWC, for a consideration of USD 1.
- RPC 2011 was preceded by another race promotion contract signed between the parties in 2007 (RPC 2007). Both race promotion contracts contained a clause whereby **Jaypee was bound to enter into contracts with three of FOWC's subsidiaries, relating to exploitation of certain rights in the F1 Championship**.

*Formula One
World
Championship
Ltd v.
Commissioner
of Income Tax
– 2016 (India)*

- The issue before the court concerned inter alia the issue of **whether** FOWC (a UK tax resident) maintained a fixed place of business in India through which business activity was carried out
- **Analysis of the Court :**
 - (a) whether FOWC had a **fixed place PE** under article 5(1) of the treaty;
 - (b) whether FOWC carried on **business and commercial activity** in India; and
 - (c) whether FOWC carried **on business through its agents** in terms of article 5(4) or article 5(5) of the treaty.

*Formula One
World
Championship
Ltd v.
Commissioner
of Income Tax
– 2016 (India)*

➤ **The decision of the Court : the circuit is a PE**

- **The PE issue:** the main features of article 5(1) OECD Model are:
 - (1) the existence of an enterprise;
 - (2) its carrying on a business;
 - (3) the existence of a place of business, the nature of such place being fixed; and
 - (4) through which (i.e. through that place) the business should be carried on.
- The Court held that it was evident that **FOWC had full access to the circuit for the duration of the event, as well as for the two weeks prior to it and the week succeeding it.** RPC 2011 and other agreements between Jaypee and related entities of FOWC showed **that Jaypee's capacity to act was extremely restricted.** At all material times, FOWC had exclusive access to the circuit and all spaces where the competing teams were located.

*Formula One
World
Championship
Ltd v.
Commissioner
of Income Tax
– 2016 (India)*

➤ **The decision of the Court : the circuit is a PE**

- The PE issue: Although FOWC's access, or right of access, **was not permanent (in the sense of its being everlasting)**, the model of commercial transactions it chose was such that its exclusive circuit access was for up to six weeks at a time during the F1 Championship season. In the Court's opinion, considering the **nature of activity and FOWC's exclusive right** of access to the circuit, and the period that it was accessed, made the presence of a kind contemplated under article 5(1), i.e. **it was a fixed place. In other words, the presence was not ephemeral, fleeting or sporadic**. The fact that the tenure of RPC 2011 was five years meant that there **was repetition**. In the event of termination, FOWC was entitled to two years' payment of the assured consideration of USD 40 million. As long as the presence is in a physically defined geographical area, permanence of a fixed place could be **relative** having regard to the **nature of the business**, it was held that the circuit itself constituted a fixed place of business.

*Formula One
World
Championship
Ltd v.
Commissioner
of Income Tax
– 2016 (India)*

➤ **The decision of the Court : the circuit is a PE**

- **The PE issue:** carrying on business in India → The Court found that:
 - (a) FOWC had the exclusive right to include a venue in any FIA annual calendar and that FIA was bound to grant permission for such inclusion.
 - (b) FOWC had the exclusive rights to make sound, television and other recordings, and to exploit of its media rights.
 - (c) By virtue of the Concorde Agreement, participating teams were bound to engage in every race with two cars on any circuit chosen by FOWC.
 - (d) If Jaypee was the event promoter (owned the title to the circuit in the sense that it owned the land), FOWC was the commercial rights owner of the event. The bulk of the revenue earned was through media, television and other related rights.
→ All of the above: FOWC carried on business in India for the duration of the race and for two weeks before the race and one week thereafter → FOWC had a PE in India.

*Formula One
World
Championship
Ltd v.
Commissioner
of Income Tax
– 2016 (India)*

- The decision of the Court : the circuit is a PE
- A win for the Indian Tax Authorities



The image shows the official Formula One 2024 calendar. It features the F1 logo at the top left, followed by the text '2024 CALENDAR' in large, bold, white letters. Below this, the calendar is presented in two columns, each with a red header containing the race number (R1 to R24). Each row includes a national flag, the race dates, the country name in red, and the circuit name in black.

Race	Dates	Country	Circuit
R1	29 FEB-02 MAR	BAHRAIN	SAKHIR
R2	07-09 MAR	SAUDI ARABIA	JEDDAH
R3	22-24 MAR	AUSTRALIA	MELBOURNE
R4	05-07 APR	JAPAN	SUZUKA
R5	19-21 APR	CHINA	SHANGHAI
R6	03-05 MAY	MIAMI	MIAMI
R7	17-19 MAY	EMILIA ROMAGNA	IMOLA
R8	24-26 MAY	MONACO	MONACO
R9	07-09 JUN	CANADA	MONTREAL
R10	21-23 JUN	SPAIN	BARCELONA
R11	28-30 JUN	AUSTRIA	SPIELBERG
R12	05-07 JUL	UNITED KINGDOM	SILVERSTONE
R13	19-21 JUL	HUNGARY	BUDAPEST
R14	26-28 JUL	BELGIUM	SPA-FRANCORCHAMPS
R15	23-25 AUG	NETHERLANDS	ZANDVOORT
R16	30 AUG-01 SEP	ITALY	MONZA
R17	13-15 SEP	AZERBAIJAN	BAKU
R18	20-22 SEP	SINGAPORE	SINGAPORE
R19	18-20 OCT	USA	AUSTIN
R20	25-27 OCT	MEXICO	MEXICO CITY
R21	01-03 NOV	BRAZIL	SAO PAULO
R22	21-23 NOV	LAS VEGAS	LAS VEGAS
R23	29 NOV-01 DEC	QATAR	LUSAIL
R24	06-08 DEC	ABU DHABI	YAS MARINA

PE case law

Construction site PE – Article 5(3)
OECD MC



ΣτΕ 838/2011 (16-3-2011)

- Austrian Company participates in a Consortium with a Greek company (1996)
- They jointly undertook a public contract that included the maintenance of a construction site for 12 months in Greece → “Μελέτη - προμήθεια και εγκατάσταση συστήματος μεταφοράς υγρής και ιπτάμενης τέφρας ΑΗΣ Μεγαλόπολης και Πτολεμαΐδας - Μελέτη - προμήθεια και εγκατάσταση ελαστικών ταινιών μεταφοράς υγρής τέφρας από τις κεφαλές των μεταλλικών ταινιών στα σιλό υγρής τέφρας με ‘pipe conveyors’”
- Joint liability of the members of the consortium
- **The Austrian partner:** study and development of design of the system & supply of (part of) equipment
- **The Greek partner:** supply of (part of) equipment and installation and supervision of installation of equipment

ΣτΕ 838/2011 (16-3-2011)

- Remuneration of Austrian company: 433.000 euros, withholding tax of 17,5% paid to the tax authorities and claimed back by the Austrian company as unduly paid.
- Greek tax authorities: denied the refund, claiming that the Austrian company had acquired a PE in Greece
- Is participation to the consortium a PE?
- Is the existence of Joint and several liability “carrying on business”?

ΣτΕ 838/2011 (16-3-2011)

- **COMMENTS**
- The Austrian company had no physical presence in Greece
- The existence of a PE: is a question of fact
- Members of transparent entity: must be judged individually (para. 8 Comm. Art. 1 and para. 8.8 Comm. Art. 4)
- The Austrian Company did not acquire a PE in Greece

PE – Case Law



- The interesting case of Google Greece - ΔΕφΑΘ 4818/2019

PE – Case Law

- **Google Greece - ΔΕΦΑΘ 4818/2019 →**
- Προέκυψε (κατά την άποψη του ελέγχου) ότι η επιχείρηση της προσφεύγουσας δεν προσέφερε απλώς υπηρεσίες εκπαίδευσης και υποστήριξης πελατών για λογαριασμό της συνδεδεμένης Ιρλανδικής Εταιρείας, αλλά παρείχε ευρύ πλέγμα υπηρεσιών ολοκληρωμένης και εξειδικευμένης διαχείρισης των μεγάλων πελατών της (Ελληνικών Επιχειρήσεων) στο πλαίσιο της διαφημιστικής τους προβολής μέσω του διαδικτύου, πέραν αυτών που προέβλεπε η σύμβαση που είχε υπογράψει με την τελευταία, και ειδικότερα, παρείχε υπηρεσίες επικοινωνίας και ενημέρωσης και εκπαίδευσης των στελεχών τους για τα διαφημιστικά προϊόντα της «Google».

PE – Case Law

- Google Greece - ΔΕΦΑΘ 4818/2019 →
- Ακόμα, παρείχε, κατά τις απόψεις πάντα του ελέγχου, εξατομικευμένες υπηρεσίες σχετικές με δημιουργία και παρακολούθηση διαφημιστικής καμπάνιας, δημιουργία και προώθηση διαφημιστικών «baners και video», απολογισμό ενεργειών διαφημιστικής προβολής και περαιτέρω καθόριζε από κοινού με τις επιχειρήσεις τον διαφημιστικό προϋπολογισμό τους, παρακολούθησε την έγκαιρη εξόφληση των οφειλών τους, και συμμετείχε στην επίλυση θεμάτων που αφορούσαν την τιμολόγηση των εν γένει παρεχόμενων υπηρεσιών.

ΡΕ – Case Law

- Google Greece - ΔΕΦΑΘ 4818/2019 →
- Κατόπιν τούτου, ο έλεγχος θεώρησε ότι η προσφεύγουσα εν προκειμένω ενήργησε **ως εξαρτημένος αντιπρόσωπος της συνδεδεμένης «Google Ireland»**, έχοντας, μεταξύ άλλων, την εξουσία, την οποία άσκησε αδιάλειπτα και συστηματικά να προσελκύει, εκπαιδεύει και να υποστηρίζει – διαχειρίζεται συνολικά πελάτες και να συνάπτει ουσιαστικά, με την δική της μεσολάβηση, συμβάσεις για λογαριασμό της εν λόγω αλλοδαπής εταιρείας, χωρίς να έχει σημασία, ποιος τελικά υπέγραφε τυπικά τις συμβάσεις που καταρτίζονταν (στην εξεταζόμενη περίπτωση η «Google Ireland »), καθόσον αυτές υπεγράφησαν με την **ενεργή, συστηματική και καθοριστική συμμετοχή της προσφεύγουσας**

PE – Case Law

- Google Greece - ΔΕφΑθ 4818/2019 → απορρίπτει την προσφυγή

Φορολογία
Κερδών
Επιχειρήσεων -
Μόνιμη
Εγκατάσταση –
Ενδοομιλικές
Συναλλαγές

➤ Further Reading

1. ΣτΕ 838/2011 – construction site PE
2. ΔΕΦΑΘ 4812, 4814, 4816-4819/2019 – Google Greece