

# The Role of Permanent Establishment in the International Community

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Arvid Aage Skaar

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# Permanent establishment (PE):

- PE is a compromise between residence state taxation and source state taxation.
- The "home" of a foreign enterprise abroad

# The Core of PE

- The Fixed Place of Business
  - The Location
  - The Permanence
  
- The Business Activity
  
- The Connection between the Business and the Place of Business

# Elements of the History of PE:

Year	International business	Tax treaty	Year
1700- 1800- 1900	Industrial revolution: <ul style="list-style-type: none"> <li>■ Immobile production factors</li> <li>■ Itinerant craftsmen and salesmen</li> </ul>	<ul style="list-style-type: none"> <li>■ A fixed place of business</li> <li>■ Agency rule</li> </ul>	1850- 1920
1920- 1930	International construction projects	<ul style="list-style-type: none"> <li>■ The 12-month rule</li> </ul>	1930- 1940
1950--	Improved international communications	<ul style="list-style-type: none"> <li>■ The duration test</li> </ul>	1960- 1970
1970- 1980	Offshore oil industry	<ul style="list-style-type: none"> <li>■ The peripatetic "fixed" place of business</li> </ul>	1980- 1980 2002
1990- 2000	E-commerce	<ul style="list-style-type: none"> <li>■ End of "fixed" place?</li> </ul>	?

# The "Location Test" for PE

- The Base Theory

OECD 1963:

*"distinct situs"*

- The Support Theory

OECD 1977:

*"a link ...[to] a spesific geographical point"*

- The Peripatetic Place of Business

OECD 2002:

*"a location within which the activities are moved [that] may be identified as ... a ... whole commercially and geographically with respect to that business".*

# The "Duration Test" for PE

The "nature of the business" theory

Indefinite duration, i.e. nature of the business decided

The "duration of the use" theory

A certain duration is sufficient

OECD 2002: 6 months or shorter

Seasonal business

The "nature of the business"

# The "Right of Use Test" for PE

- Legal Right or Factual Use?
  - Older doctrine: Legal Right
  - OECD 2002: Factual Use
  
- OECD: *"the mere presence is not enough..."*
  - Examples:
    - Salesman's visit,
    - dispatched employee,
    - delivery dock,
    - painter

# The Agency PE

- Presence of the Agent
- Implied Contractual Authority



# The Construction PE

- Construction work at different sites may be PE

# The Integration PE

- Agent-Principal relationship
- Contract manufacturing
- Service PE
- Case Law

# The Role of PE in the International Community

## Conclusions:

PE used to be the home abroad of a foreign enterprise

It became a reflection of the mobility of international business

It is heading towards becoming a picture of the level of integration in international business