



15 februari 2018

PG Global Mobility Solutions, Marbella
February 21, 2018

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Program

- Introduction/developments PG Global Mobility Solutions
- Explanation article 15 OECD, employees
- Explanation article 16 OECD, directors
- International issues/panel discussion
 - Ingo Prang, Germany
 - Sergio Finulli, Italy
 - Vijesh Zinzuwadia, India
 - Huub Kapel, the Netherlands

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Goals PG

- Exchange information to find better approaches and solutions to clients' issues
- Exchange ideas, experiences and views to further strengthen communication among fellow members
- Stay connected to international information and issues relevant to areas of their practice
- Gain insight into specialised issues

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Chairpersons

Global Chairperson	-	Huub Kapel
Global Vice Chairperson	-	Veerle Triempont
Regional Chairperson Asia Pacific	-	Vijesh Zinzuwadia
Regional Chairperson Latin America	-	Seres Baum
Regional Chairperson Middle East Africa	-	Helen Ijewere
Regional Chairperson North America	-	Steve Braun
	-	Asher Frankel

Members

2016	:	66
2017	:	130
2018	:	191



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PG Global Mobility Solutions meetings 2018

Global Tax Summit, Marbella,	February 22 – February 25
European Regional Conference, Berlin,	April 19 – April 22
North American Regional Conference, Denver,	June 21 – June 24
World Conference, Buenos Aires,	October 18 – October 21
Asia-Pacific Regional conference, Bali,	November 29 – December 2

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Business opportunities

Compliance requirements (first employee)

- Permits
- Employment contract/Letter of Assignment
- Payroll
- A1-statement
- Application expat regime
- Entrance/exit meeting
- Income tax returns

OECD tax treaty

Income from labour

- employees (art. 15)
- director (art. 16)



OECD tax treaty, article 15

Article 15, employees

- resident of one Contracting State/resident State
- works in the other Contracting State/work State
- tax levy allocated to work State if
 - present in work State of more than 183 days, or
 - remuneration paid by or on behalf employer of the work State, or
 - remuneration borne by permanent establishment of employer in work State

OECD tax treaty, article 15

183 days rule

- Any twelve months period commencing or ending in the fiscal year concerned (or calendar year or tax year) of the work State
- Which do (not) count? Physical presence:
 - Part of a day
 - Day of arrival or departure
 - Non-working days, holidays
 - Sickness days
 - Days in transit?



OECD tax treaty, article 15

Treaty employer

- Formal employer
- Not applicable to 'hiring out of labour'
- Substance over form, based on domestic law
- Domestic law classification
- Substance prevails over form
- Qualification employment relationship by employment State
- Not applicable in abuse situation despite formal concept
- Resident State follows qualification employment State
- Objective criteria for disregarding the form

OECD tax treaty, article 15

Treaty employer

- Objective criteria for disregarding the form
 - risk analysis to determine the nature of the services
 - integral part of business activities employer or client enterprise
 - who bears responsibility or risk

OECD tax treaty, article 15

Treaty employer

- Additional criteria
 - Authority to instruct
 - Control and responsibility work place
 - Remuneration directly charged (not conclusive)
 - Materials used
 - Determination number and qualification of individuals
 - Selection of individual
 - Termination of contractual relation with individual
 - Right to impose disciplinary actions
 - Determination of holidays and work schedule

- Financial arrangement
 - Relation with individual's remuneration or not

OECD tax treaty, article 15

Permanent establishment

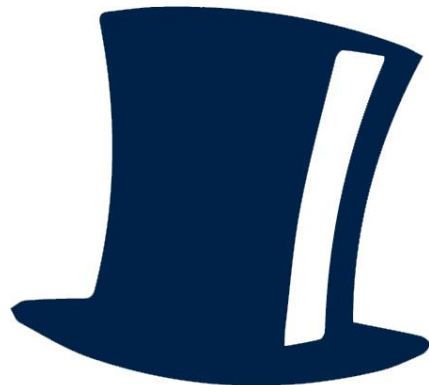
- Allocation in accordance with article 7 (business profits)
- Allocation is conclusive, not deduction of expenses
- Permanent representative
- BEPS Action point 7



OECD tax treaty, article 16

Director's fees

- Resident of one contracting State/resident State
- Director's fees and similar payments
- Received in his capacity as board member
- A company resident in the other contracting State



OECD tax treaty, article 16

Director's fees

- Applicable to individuals and legal persons
- Including benefits in kind, eg stock options
- Other functions excluded (capacity)

OECD tax treaty, practical issues

1. Calculation relief for double taxation, article 15

- Exemption method (possible advantage) or credit method?
 - Germany
 - India
 - Italy
 - Netherlands, exemption method
 - ??

OECD tax treaty, practical issues

2. Calculation relief for double taxation, article 16

- Exemption method (possible advantage) or credit method?
 - Germany
 - India
 - Italy
 - Netherlands, credit method unless taxed as employee
 - ??

OECD tax treaty, practical issues

3. Interpretation employer, article 15

- Formal or economic employer?
 - Germany
 - India
 - Italy
 - Netherlands, yes, economic employer unless < 60 work days intra-group
 - Sweden, formal but may be changed as per 2019
 - USA, no, multi-factor substance over form test applied
 - Singapore, formal
 - Japan, formal
 - Thailand, if Thai entity absorbs the remuneration
 - ??

OECD tax treaty, practical issues

4. Interpretation employer, article 15

- Conditions economic employer?
 - Germany
 - India
 - Italy
 - Netherlands, explicit i/c charge
 - ??

OECD tax treaty, practical issues

5. Permanent establishment

- Conditions “borne by”?
 - Germany
 - India
 - Italy
 - Netherlands, allocation / no explicit charge
 - ??

OECD tax treaty, practical issues

6. Permanent representative

- Interpretation/implementation BEPS action point 7
 - Germany
 - India
 - Italy
 - Netherlands, new treaties / MLI (no reservation)
 - ??

OECD tax treaty, practical issues

7. Allocation salary

- Proof of allocation salary to foreign work days
 - Germany
 - India
 - Italy
 - Netherlands, travel calendar signed by employer
 - ??

OECD tax treaty, practical issues

8. Allocation salary

- Allocation salary foreign work days
 - Germany
 - India
 - Italy
 - Netherlands, functional allocation or work days
 - ??

OECD tax treaty, practical issues

9. Allocation salary

- Allocation international redundancy payment
 - OECD, allocation based on previous 12 months
 - Germany
 - India
 - Italy
 - Netherlands, allocation based on 4+ years
 - ??

OECD tax treaty, practical issues

10. Director's fee

- Who is considered to be a director?
 - Germany
 - India
 - Italy
 - Netherlands, registered as such with Chamber of Commerce
 - France, only SA?
 - ??

OECD tax treaty, practical issues

11. Director's fee

- Does the director's fee have to be split according to national law (attraction principle) and for tax treaty purposes?
 - Germany
 - India
 - Italy
 - Netherlands, no / yes (i/c charge seems relevant)
 - ??

OECD tax treaty, practical issues

12. Planning opportunities/risks

- Formal versus economic employer
- I/c charges decisive or not
- Other?

OECD tax treaty, practical issues

13. Case studies

- Position German resident director of foreign company, allocation based on article 15 or 16?
- Thailand, allocation is based on what is paid in Thailand

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Various topics

Topics for future meetings. Suggestions?

- International labour law
- European social security
- Global Mobility trends, external speaker

Elections in 2018. Candidates?

Evaluation form

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Thank you!



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