

News Flash

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Construction site as a permanent establishment in Poland

Construction site as a permanent establishment in double taxation avoidance agreements

Economic activity conducted by entrepreneur from one country on the territory of other country often causes doubts concerning settlement of tax. In this area the double taxation avoidance agreements have a material impact. In typical agreements concluded by Poland, the concept of permanent establishment is defined. Permanent establishment should be understood as permanent institution, in which the entrepreneurs business activity is completely or partially performed.

It should be noted that specific regulations are applicable, based on which construction site or installation project should be considered as permanent establishment. In such case occurrence of permanent establishment is restricted by time factor. In accordance with most of agreements concluded by Poland, the construction site will be treated as permanent establishment if conducted works last longer than 12 months. It should be emphasized that particular double taxation avoidance agreements may stipulate different periods of time.

Occurrence of permanent establishment has significant tax consequences for entrepreneur. Profits generated with reference to conducted construction works will be taxed in the country, in

which the permanent establishment (construction site) is placed. In the country of residency that income will be exempted from taxation.

According to the Commentary of OECD Model Tax Convention “building site or construction or installation project” should be understood not only as construction of buildings, but also as:

- construction of roads, bridges or channels;
- renovation (including important construction works, not only connected with maintenance or decoration) of those buildings, roads, bridges or channels;
- conducting of ground works;
- installation works connected with building site;
- installation of new devices.

In order to examine if time factor have been fulfilled, the duration of construction site should be examined. Its beginning should be recognized as the day, in which the entrepreneur commenced business activity and its ending as completion or termination of works. Temporary breaks in works (for example connected with bad weather conditions or expectation for materials)

are counted into the duration of construction works.

The time factor is applicable for every separate building site or project and it is applied each time individually for each building. However, if construction arises based on several contracts and constitutes entirety in economic and commercial respect, it should be treated as a single building.

Fulfillment of time factor in relation to construction results with creation of the permanent establishment retroactively from the first day of construction works. The tax obligation connected with permanent establishment arises from the day of creation of the permanent establishment as well.

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