



NEWS INTERNATIONAL

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Dear Sir/Madam,

The ability to be available any place, any time and to complete one's work at any conceivable location opens up scope for fiscal questions and situations at an international level.

In concrete terms, we would like to draw your attention to the topic of providing services in external premises. If a client works in external premises on an inbound basis, this may result in the creation of permanent establishments at the place of service provision. In cross-border cases, in addition to the national standard (Section 12 of the Tax Code), the provisions of Art. 5 Paragraph 1 of the OECD Model Tax Convention, based on the appropriate double taxation convention, must also be considered: if the independent work is carried out over a period of more than six months, for example, at the customer's premises, it may be deemed that the client has permanent establishments at the customer's premises. The client's control of the premises at the customer's site is an important indication for the next stage of the check. According to precedent from the Federal Finance Court, the taxable person has a certain level of control if they are granted a legal position by the provision of the premises which cannot then be withdrawn without their involvement. Whether a legal title exists is of no consequence.

Therefore, control of the key for the premises at the customer's site may be adequate to indicate control (Düsseldorf Finance Court verdict dated 19 January 2016 - 13 K 952/14 E), whilst simply providing engineering services on a long-term construction site does not indicate

Reference should also be made to the verdict by the Saxony Finance Court that the provision of a locker in which to store work materials may result in the creation of contractor's permanent establishments (at the location of the locker) (Saxony Finance Court verdict dated 30 November 2017 - 1 K 123/17 NV).

There is no tried and tested method of preventing the creation of permanent establishments, but it is nevertheless possible to be guided by the following points:

- External premises must not be used for independent work (in the absence of the customer and for the provision of services to third parties);
- If the property where the work is being carried out is also regarded as business premises, it should not be regarded as permanent establishments (for example, a security contractor on a site for which it is providing security services);
- If the client is only providing support services, in other words, they are not involved in the customer's core business (for example, IT maintenance for tradespeople), this should also not be regarded as permanent establishments.

On an outbound basis, it is possible to relocate income to permanent establishments if specific action is taken to create this situation.

We will be delighted to provide further advice regarding this matter and the

specific control (Münster Finance Court verdict dated 22 June 2016 - 7 K 2297/14 E).

obligations arising from it in both a national and international context.

Best regards,

René Teresiak



The author

After completing his training as an assistant tax advisor in June 2009, Mr Teresiak began working for Michels Simon Rottländer Groß GmbH (now DORNACH GmbH) in Cologne and therefore represented a successful "home grown" of the Cologne location of DORNACH. In 2013, he completed an extra-occupational tax law course of study and achieved a Bachelor of Arts (BA) degree. As part of the corporate tax law postgraduate programme at the University of Cologne, he acquired the academic degree of Magister Legum (LL.M.) in 2015.

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After taking the tax advisor's exam, Mr Teresiak was appointed as a tax advisor by the Cologne Chamber of Tax Advisors in March 2016. As of 1 January 2018 he became part of the management of the company in Cologne.

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Company presentation



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