



# NEWS INTERNATIONAL

E-MAIL NEWSLETTER  
Sixth edition of 2020

**Dear Sir or Madam,**

On April 3rd 2020, the OECD published guidelines regarding a number of issues relating to the application of double taxation treaties in connection with the coronavirus crisis. This particularly relates to the formation of ‘permanent establishments’ (PE) as a result of the coronavirus lockdown as well as the effects of the increase in working from home (home office).

With regards to working from home, the OECD emphasises that the COVID-19 crisis is of an exceptional nature. The associated business activities of a company’s employees in their own homes are not intended to be carried out on a continuous basis and therefore do not meet the time-based criteria for permanent establishments. Furthermore, this type of working is the result of governmental measures and is not based on the requirements of the company in question. Therefore, the company does not have power of disposition over the employee’s premises. This requirement is of fundamental importance for assessing the existence of permanent establishments. Tax authorities in other countries may take the view that business activities performed from a home office may constitute a permanent establishment. This applies not at least to the Austrian tax authorities.

The OECD’s view according to Article 5(5) OECD Model Tax Convention is that working from home also does not give rise to the formation of an agency permanent establishment. In this case, the requirement would be that the employee usually concludes contracts for the company

The OECD is of the opinion that it is extremely unlikely an employee’s work activity can be considered ‘habitual’ if they are working from home for a short period as a result of force majeure and/or governmental measures.

According to Article 5(3) OECD Model Tax Convention, a building site or construction or installation project constitutes a permanent establishment only if it lasts more than 12 months. If the coronavirus lockdown leads to delays in the completion of a building site or construction or installation project, the OECD’s view is that these short-term interruptions should be taken into account when determining the 12-month period, i.e. ‘the clock keeps ticking’.

Other topics covered by the OECD guidelines include the residency of companies and individuals. However, repercussions due to the coronavirus crisis are unlikely. The tax situation of border commuters is also discussed. In this respect, we refer to our newsletter ‘Edition 01 special’.

The OECD guidelines are not legally binding. Ultimately, the fiscal treatment by the tax authorities in the relevant countries is paramount. Please feel free to contact us with any queries you may have regarding this matter. Together with our partners abroad, we can examine your specific questions.

**Best regards,**

or habitually plays a leading role in the conclusion of contracts for the company.



Prof. Dr. René Schäfer



## The author

## Prof. Dr. René Schäfer

Tax Advisor, Specialist Advisor for International Tax Law, Managing Partner

Dr. René Schäfer completed his degree in Business Administration at Saarland University in Saarbrücken in 1999 as a Business Administrator. At the same time, he received the Diploma of the Ecole Supérieure de Commerce, Lyon after one year of study in France.

In July 2007, Dr. Schäfer was made a person with full commercial power of attorney and on January 1st, 2011, he was accepted as a partner.

In 2003, he received a doctorate at the Chair for Business Management Studies, particularly Business Taxation from Univ. Prof. Dr. Heinz Kussmaul on the subject of "Taxation of a German-French company". Dr. Schäfer completed the examination for Tax Advisor in 2005. Since 2008, he has also possessed the title of "Specialist Advisor in International Tax Law".

In July 2015, he was made an Honorary Professor in the subject of Business Administration at the Saarland University.

### Specialisation

International tax law /  
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In mid-February 2005, Dr. Schäfer began working as an employee in the tax department of DORNBACH GmbH, Saarbrücken branch.

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