Papers on Selected Topics in Protecting the Tax Base of Developing Countries

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Preventing Artificial Avoidance of PE Status

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PROTECTING THE TAX BASE OF DEVELOPING COUNTRIES: ACTION 7 BEPS PLAN ON PREVENTING ARTIFICIAL AVOIDANCE OF PE STATUS

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1. ***Introduction to the context of BEPS Action 7 and the reasons why the PE problem is catching the attention of tax administrations and taxpayers:***
    a. The works of the OECD on attribution of profits to PEs (increase in potential profits attributed to PEs makes this issue more relevant for tax administrations)
    b. Business restructuring (Chapter 9 OECD TP Guidelines and PEs) and tax competition for headquarters / principals of multinationals
    c. The need to clarify the concept of PE (a fundamental threshold of tax treaties is not clear for tax administrations and taxpayers):
        i. ‘Changing mood’ of some tax authorities and judicial decisions in some countries supporting a more or less aggressive concept of PE for source countries (e.g. Mred, Borax, Roche, Dell, Honda in Spain, or decisions in India – Ebay, Nokia, v. Boston Scientific in Italy, Zimmer, France, Dell in Norway etc[1]

rationale), specific rules on valuation of business restructuring and transactions after the restructuring

e. System of advance rulings on PE concept/ compacts in specific sectors (e.g. extractive industries) / improvement of systems of resolution of disputes
f. Changes in tax treaty policy / models (connection of Action 7 and 15)
g. Other suggestions or specific solutions by officials from different countries?