

Committee of Experts
on International Cooperation in Tax Matters
11th Session: Geneva, 19-23 October 2015

Agenda Item 3 (a) (ii):
Article 5 (Permanent
establishment): the meaning of
“connected projects”

Purpose of suggested changes to the Commentary on Article 5

- Is physical presence required?
 - Which factors are relevant to determine whether there is a connected project?
 - Should the condition 'for the same or a connected project' be determined from the perspective of the enterprise or the customer?
 - How should the 183-days threshold be calculated in situations where different associated enterprises are involved in the same or a connected project?
- 12.1/12.2: physical presence is required
 - 12.2 Has been redrafted in 10th session
 - Minority view that physical presence requirement is obsolete due to digital economy
 - review other paras. to clarify the issues raised
 - Simplify language
 - Reduce number of examples

Factors for determining whether there is a connected project

- single master contract
- single contract if no tax planning considerations
- contracts with the same person or related persons
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Perspective of the enterprise or the customer?

- : both the perspective of the enterprise and the customer have to be taken into account
- :
 - it is enough if EITHER from the perspective of the customer or the enterprise activities are part of the same or connected projects
 - Subjective perception of the parties should be irrelevant
 - Which conclusions would a reasonable person draw from the relevant circumstances?
- Example 2 has been substantially changed – to show that it is enough that there is a connected project only from the perspective of the customer

Points to be discussed

- 12.3 Factors for determining whether there is a connected project
- 12.5 reference to treaty's object and purpose
- 12.5 term "associated enterprises"
- 12.7 employees kept available for client count towards the 183-day threshold?