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PERMANENT ESTABLISHMENT RISK GUIDE

**Cross-border hiring &
international operations**

**How people, place and activity can
create a taxable business presence**





People, place and activity: what creates PE risk

A company does not need to open an office, register an entity or sign a lease to create a taxable business presence in another country. People can create that presence through the work they perform, the authority they exercise, the places they use and the business they advance.

That makes Permanent Establishment (PE) a practical consideration whenever companies hire, deploy or move people across borders. A remote employee, country manager, secondee or travelling team does not carry a fixed level of risk.

The answer changes with the facts: what the person does, how continuously they operate in the country, whether they generate or negotiate business, and whether local premises are effectively available to them.

This guide looks at the main PE tests, the factors that raise or lower risk in common cross-border arrangements.



Permanent Establishment (PE) Risk



A visual guide for cross-border hiring and international operations



DECIDED BY WHAT PEOPLE DO, NOT BY WHAT CONTRACTS SAY

Permanent Establishment risk arises when a company's activities in another country create a taxable business presence there. It is not created by a decision to open an office. It is created by where people work, what they do, whose business they advance, and how business is actually carried on locally.



THE COST ARRIVES LATE, AND IT COMPOUNDS



Corporate tax registration and filing

The company becomes liable to register, file and pay corporate tax in a country where it never intended to hold an entity.



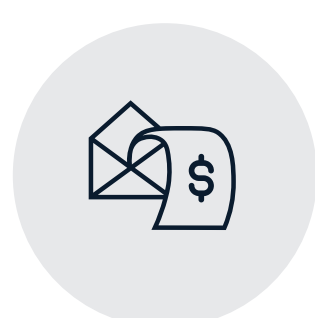
Profit attribution

A share of profit is attributed to the local presence and taxed there. This applies even where the group as a whole is loss-making.



Back taxes, interest and penalties

Assessments are usually retrospective and reach into years already closed and reported.



Payroll and withholding knock-ons

A PE finding commonly pulls employment tax, withholding and director-level obligations along with it.



Exposure in diligence

Unresolved PE positions surface in funding rounds and M&A, where buyers price them as risk or hold back consideration.



General guidance only. PE analysis depends on the facts, local law and the applicable tax treaty.

Five tests, and one needs no premises at all



What tax authorities examine when they assess a presence



1. Fixed place / disposal of space

Is there a distinct place through which the enterprise carries on business? Ownership and a lease are not required. What matters is whether the space is effectively at its disposal.



2. Permanence / continuity

Is the presence commercially stable and continuous rather than isolated? Repeated, coordinated use of a location supports PE even where each individual visit is short.



3. Business activity

Are the activities core to revenue generation or operations? Genuinely preparatory or auxiliary work is less likely to create PE, but that exemption is narrow.



4. Agency / authority

Does someone habitually conclude contracts, or play the principal role leading to their conclusion? Since 2017, formal signing authority is not the dividing line.

5. Service PE: no fixed place required



Many treaties that follow the UN Model (India, China and Indonesia among them) create a permanent establishment where personnel furnish services in-country beyond a stated day threshold. No premises and no agent are needed. Thresholds and wording differ treaty by treaty.



No single fact decides the answer, and most PE exposure is settled in a tax audit long before a court sees it. The analysis is fact-specific and treaty-specific.



General guidance only. PE analysis depends on the facts, local law and the applicable tax treaty.

The same arrangement can be safe or exposed



Common cross-border scenarios, and the facts that move them

1

Employee working remotely abroad

- ↑ **Raises risk** Client-facing work, seniority, an employer-funded workspace, or the location serving a business need.
- ↓ **Lowers risk** A personal choice of location, support or back-office duties, no local customers or revenue.

2

Team based at client premises

- ↑ **Raises risk** Dedicated desks or rooms, an extended engagement, core delivery work carried out on site.
- ↓ **Lowers risk** A short defined project, shared or ad hoc space, most work performed remotely.

3

Local sales lead or country manager

- ↑ **Raises risk** Negotiating commercial terms, pricing discretion, routinely driving local revenue.
- ↓ **Lowers risk** Lead generation and introductions only, with all terms set and approved abroad.

4

Group company or secondee arrangement

- ↑ **Raises risk** The secondee advancing the foreign entity's business, or that entity directing the work.
- ↓ **Lowers risk** Genuine integration into the host entity, which bears the cost, control and risk.

5

Short visits and travelling personnel

- ↑ **Raises risk** Regular coordinated visits and operational control exercised while on site. Brevity is not a safe harbour.
- ↓ **Lowers risk** Genuinely occasional attendance, with no continuing access to local premises.



None of these scenarios carries a fixed risk rating. What the person does, and for whose business, decides it.



What Hyatt ruling clarifies about Permanent Establishment



Control, continuity and the use of premises in cross-border activity

COURT CASE SPOTLIGHT

Hyatt International Southwest Asia Ltd v ADIT

Supreme Court of India, 24 July 2025
2025 INSC 891 · India–UAE DTAA, Article 5(1)

- Hyatt neither owned nor leased an office in India, and said its services were delivered from Dubai.
- Its people made regular, coordinated visits and controlled branding, staffing, training and financial oversight.
- The Court held that ownership and long presence are not required. Control and continuity decide it.
- The premises were treated as at Hyatt's disposal — a fixed place PE, with profit attributed regardless of global losses.



The absence of a lease did not end the analysis. Nor did the brevity of each visit.



WHAT THE RULING CLARIFIED

- **No lease does not mean no PE.** Hyatt neither owned nor leased an office in India, and said its services were delivered from Dubai.
- **Short visits are not automatically low risk.** Repeated and coordinated activity can establish continuity even when individual visits are brief.
- **What people do matters more than where the contract was signed.** Control, commercial activity and the business being advanced are central to the analysis.
- **Assess the risk before activity builds up.** The relevant facts develop through day-to-day operations, not simply through the contractual set-up.



BEFORE CROSS-BORDER ACTIVITY STARTS

- ✓ Define the role by activity, not job title.
- ✓ Avoid dedicated space at client sites long term.
- ✓ Record preparatory or auxiliary work as you go.
- ✓ Keep pricing and contract authority abroad.
- ✓ Check the treaty. Service PE thresholds vary.
- ✓ Reassess when a role grows in seniority.



PE risk is rarely created by one fact alone. It emerges from the combined reality of people, place and activity.



General guidance only. PE analysis depends on the facts, local law and the applicable tax treaty.



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