A BRIEF NOTE ON PERMANENT ESTABLISHMENT

The issue of Permanent Establishment or PE arises while deciding the taxing jurisdiction of an entity.

The contemporary world is multipolar in nature and the economic leaders are multinational in presence. The state gets a right to tax a person only when the person is connected with the state. This connection may be of various types, and includes citizenship of an individual, place of incorporation of a company, place of effective management of the affairs, physical presence or even concepts such as personal attachment.

The analysis of PE helps one avoid double taxation, i.e. the phenomenon wherein the same taxpayer would be required to pay taxes on the same income more than once, since the income arises in more than one tax jurisdiction.

To avoid such issues, tax treaties came into picture. The aims of these treaties include avoidance of double taxation, preventing shifting of profits to favorable jurisdictions and avoiding fiscal evasion.

A PE differs from business connection. While the latter connotes a wider scope of activities and relations that could invite taxation in the source state, the former comprises of a compromise between two states that takes into account the issues of commerce and trade. Hence, there could be some jurisdiction wherein even a single visit of a person may establish a business connection and attract taxation in the source country. PE, on the other hand, is a more concrete and mutually acceptable concept between the signatory jurisdictions.

Article 5 of the OECD Model Income Tax Treaty defines Permanent Establishment as: “a fixed place of business through which the business of an enterprise is wholly or partly carried on”.

Thus, to constitute a PE, the following requirements have to be fulfilled:

1. **Fixed**, that includes the existence of link between the business and spatio-temporal domain;
2. **Place,** that includes the tangible assets that are used for carrying on of a business;
3. **Business**

This concept ensures minimum stability in the location and duration of the activities that could lead to establishment of rights of taxation over an enterprise.

References:

1. OECD (2014), Model Tax Convention on Income and on Capital: Condensed Version 2014, OECD Publishing, Paris
2. United Nations Model Double Taxation Convention between Developed and Developing Countries, 2011, United Nations, New York