



The concept of permanent establishment in the insurance business

Doctoral student: Daniele Frescurato, LL.M.

Thesis supervisor: Prof. Dr. iur. Madeleine Simonek

Faculty of Law, University of Zurich

Insurance regulatory law

The regulatory landscape and its latest developments significantly affect the way insurance companies conduct their business in foreign jurisdictions (for instance, by influencing the decision of whether setting up a subsidiary, establishing a branch or operating through an insurance agent). As most entities operating in the financial markets, insurance companies carry on their business in a highly regulated environment that constrains both operational and capital structures. This is particularly the case in the EU, where the Member States have agreed on a legal and regulatory framework outlining a separate definition of permanent establishment for regulatory purposes.

Question

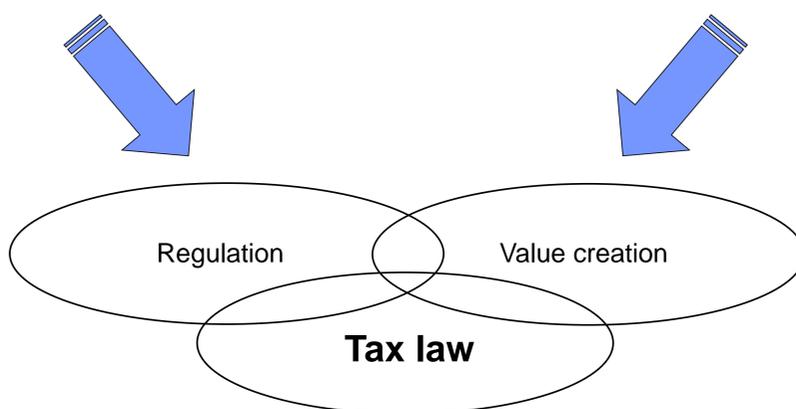
Should the definition of permanent establishment for tax purposes and the definition of permanent establishment adopted for regulatory purposes be eventually aligned?

Insurance value chain

A functional and factual analysis of the insurance value chain (with a specific focus on the KERT functions) may provide significant guidance in order to identify where such value is being created, to which entity and / or part of an enterprise such value should be attributed and – therefore – where such value should be subject to tax. When doing so, it may be possible to find some guidance with regard to the elements that may give rise to the existence of a permanent establishment.

Question

May the identification of KERT functions within the framework of a functional and factual analysis performed for the purposes of attributing profits to a permanent establishment under Art. 7 of the model treaties potentially affect the currently existing standards for determining the existence of a permanent establishment under Art. 5 of the model treaties?



Model treaties

Analysis of the concept of permanent establishment enshrined in the main model treaties with a particular focus on the specific insurance provision.

Swiss practice

Analysis of the definition of permanent establishment adopted in tax treaties concluded by Switzerland with a particular focus on the insurance business.

Insurance business models

Description of the (most common) business models adopted by global insurance companies with a particular focus on the specific features of such models that may give rise to the existence of a permanent establishment in a foreign country.

Insurance agent provision

When negotiating tax treaties, a number of countries are inclined to introduce a specific provision dealing with insurance business which stipulates that insurance companies are deemed to have a permanent establishment in the other country in the event that they collect premiums in that other country through an agent established therein – other than an agent who already constitutes a permanent establishment – or insure risks situated in that country through such an agent.

Question

Should this specific insurance agent provision be considered when negotiating Art. 5 of a tax treaty?

Comparative analysis

Comparison with the definition of permanent establishment adopted by other countries (particularly, Italy and other major EU and OECD Member States) in order to assess different approaches adopted when dealing with this specific issue.

Analysis of the main rules and principles underlying such a specific insurance agent provision

Alternative approaches tailored to the way insurance companies conduct their business in foreign jurisdictions

Contact

Daniele Frescurato, LL.M.
E-mail: daniele.frescurato@uzh.ch