

Permanent Establishment in Ireland



HLB Sheehan Quinn are experts in helping global businesses to navigate the Irish regulatory systems, providing practical and solution-based advice.

Permanent Establishment in Ireland

A Permanent Establishment is an important concept in deciding if Irish Corporation Tax will apply to a company that is not resident in Ireland. We have set out some of the more important principles below.

Permanent Establishment (PE)

Most of Ireland's Double Taxation Agreements broadly follow the approach taken in Article 5 of the OECD model. The article sets out what is to be included and examples of what is not included and provides that a person acting on behalf of an enterprise can be deemed to be a PE. Revenue note that each case must be considered on its own facts. The following are key considerations.

- Is there a place of business?
- Is the place of business fixed?
- Is the business wholly or partly carried on in the fixed place of business?
- Is there a dependent agent of an enterprise who has and habitually exercises in the State, an authority to conclude contracts in the name of the enterprise?
- Is the agent dependent on the enterprise he/she represents?
- Does the dependent agent have authority to conclude contracts in the name of the enterprise he/she represents?
- Does the agent habitually exercise in the State his/her authority to conclude contracts in the name of the enterprise? Is there a certain degree of permanence?
- Where a person has a PE in the State, but is a foreign resident, they are often entitled to a credit in their home state for tax paid in Ireland in respect of profits attributable to the PE. If there is a disagreement between the Irish and the home Revenue Authority, then mutual agreement procedures should usually apply

Examples of PE

The following examples are provided for the existence of PE

- A place of management
- A branch
- An office
- A factory,
- A workshop
- A mine, oil or gas well, quarry or other place of extraction of natural resources.

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The following examples are specifically **excluded** from creating a PE:

- The use of facilities for the purpose of storage display or delivery of goods
- The maintenance of a stock of goods solely for the purpose of storage, display or delivery
- The maintenance of a stock of goods solely for the purpose of processing by another enterprise
- The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for example market research.
- The maintenance of a fixed place of business solely for the purpose of advertising supply of information, for scientific research or similar activities which have a preparatory or auxiliary character for the enterprise.

Summary Notes on PE

Do

- Consider incorporating a separate subsidiary in the relevant country when it is probable that a PE will be created. This company then acts as a firewall and should protect the rest of the group from foreign tax.
- Comply with local registration requirements as appropriate, and seek advice on what these are.
- Seek tax advice regarding the likelihood of an activity or a contract creating a PE.

Don't

- Establish a separate company without seeking further advice -the possibility of loss relief in the home country should be considered.
- Risk tainting other activities: where there is a risk of a PE arising, the overseas tax authorities may try to tax other, unrelated activities carried on by the parent legal entity separate from the PE. This could include enquiries into a major contract where the activities of the PE are simply a support function.
- Start a contract or an activity overseas without seeking a view as to whether it might create a PE.

How we can help:

- Advise on the requirements for creation of a permanent establishment and how this can potentially benefit your business.
- Process any required registrations with the Companies Registrations Office and Irish Revenue Commissioners.
- Provide a registered office and company secretarial services where required.
- Assistance with opening bank accounts.
- Provide a fully outsourced finance function with expert knowledge of Irish tax and reporting requirements.

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