



## Transfer Pricing Switzerland Insights

Dear Sir or Madam,

We are pleased to present you a special edition of Transfer Pricing Insights – Deloitte Switzerland’s bi-monthly newsletter focusing on ‘hot’ topics and economic related news.

## Deloitte awarded Transfer Pricing Firm of the Year in Switzerland again in 2015

For the third time in four years, the International Tax Review awarded Deloitte in Switzerland the title of "Transfer Pricing Firm of the Year". Furthermore, Deloitte in Switzerland received the award of "Tax Firm of the Year" for the third time in a row. The awards were judged according to the size, innovation, complexity and impact of the submitted work.



This achievement positively reflects the fundamental and sustainable transformation of Deloitte’s position in the Swiss market place and demonstrates its Transfer Pricing expertise across a broad range of industries.

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## Release of a Revised Discussion Draft on BEPS Action 7 - Preventing Artificial Avoidance of PE Status

On 15 May 2015, the OECD Committee on Fiscal Affairs released a revised

discussion draft of BEPS Action 7 - Preventing the Artificial Avoidance of PE Status. The revised discussion draft, which is not a consensus document, shortlists the preferred options of the October 2014 discussion draft of Action 7 and proposed amendments to Article 5 of the OECD Model Tax Convention and its associated Commentary.

The table below outlines the affected provisions of Article 5 and the options chosen. In each case, the option is expanded upon via proposed Commentary language.

| ¶   | Topic  | Option chosen | Description  |
|-----|--|---------------|--|
| 5.6 | Agency permanent establishments (PEs) in general                       | B             | An agency PE requires the conclusion of contracts or the negotiation of material contract elements, where the contract is in the name of the principal or relates to property or services of the principal.  |
| 5.6 | Agency PEs for insurance   | N             | No separate treaty provision, but the rules for the sales agency PE should apply.  |
| 4   | Specific activity exemptions in general                                | E             | No change to the enumerated exceptions, but all are contingent on preparatory or auxiliary character of the overall activity of the fixed place of business.   |
| 4   | Anti-fragmentation rule for specific activity exemptions               | J             | No specific activity exemptions when the "overall activity resulting from the combination of the activities carried on by the same enterprise or connected enterprises is not of preparatory or auxiliary character" provided that the activities constitute "complementary functions that are part of a cohesive business operation". The example provided in the discussion draft indicates that the OECD would consider the anti-fragmentation rule to be applied in an extensive manner. |
| 3   | Splitting-up of contracts for PE exemptions based on fixed time period | L             | No treaty provisions.  |

The G20/OECD Working Party acknowledges that further guidance and examples are required in respect of the attribution of profit to PEs. In addition, the outcome of the BEPS work on transfer pricing, in particular intangibles, risk and capital, will also need to be taken into account.

Public comments on the revised discussion draft are invited by 12 June 2015. The OECD has agreed to undertake follow-up work on application of the principles for the attribution of profit to PEs after final recommendations on transfer pricing are released in September 2015. The work on the new guidance is expected to be completed by the end of 2016, in line with the timetable for negotiation of the multilateral instrument that will implement changes to the PE threshold in tax treaties.

The revised discussion draft may entail significant challenges for multinational companies, in particular with regard to agency PE and anti-fragmentation rules (e.g. the warehouse of a Swiss company in another country with further activities of the group, e.g. limited risk distributor, might create a PE). We therefore invite taxpayers to study the implications of the proposed changes on their current business structure. In this respect, our team is available to answer any questions you may have and provide support in the assessment of PE risk for your company.

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## EU-JTPF Published the Final Report on Improving the Functioning of the Arbitration Convention

In April 2015, the EU Joint Transfer Pricing Forum (“EU-JTPF”) released the Final Report on Improving the Functioning of the Arbitration Convention, which includes a revised Code of Conduct for the effective implementation of the Arbitration Convention (“AC”).

The report and the revised Code of Conduct are the result of a monitoring exercise carried out by the EU-JTPF and provide clarification on several topics, as the application of the AC in certain cases, implications of the new Article 7 OECD Model Tax Convention (2010), transparency in cases where access to the AC is denied, the functioning of the AC or the deadline for requesting a multilateral agreement procedure under the AC.

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We hope you have enjoyed this special edition of Transfer Pricing Switzerland Insights. If you have questions in relation to one of the above topics or you would like to discuss your situation and receive a professional opinion on any transfer pricing related topics, please feel free to contact us directly via phone or email.

Best regards,

**Hans Rudolf Habermacher**  
Transfer Pricing Practice Leader, Partner

### Author



Hans Rudolf Habermacher

Transfer Pricing Practice Leader, Partner  
T +41 (0)58 279 6327

[Send email](#)



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