



Permanent Establishment in Corporate Tax Planning

Presentation by:

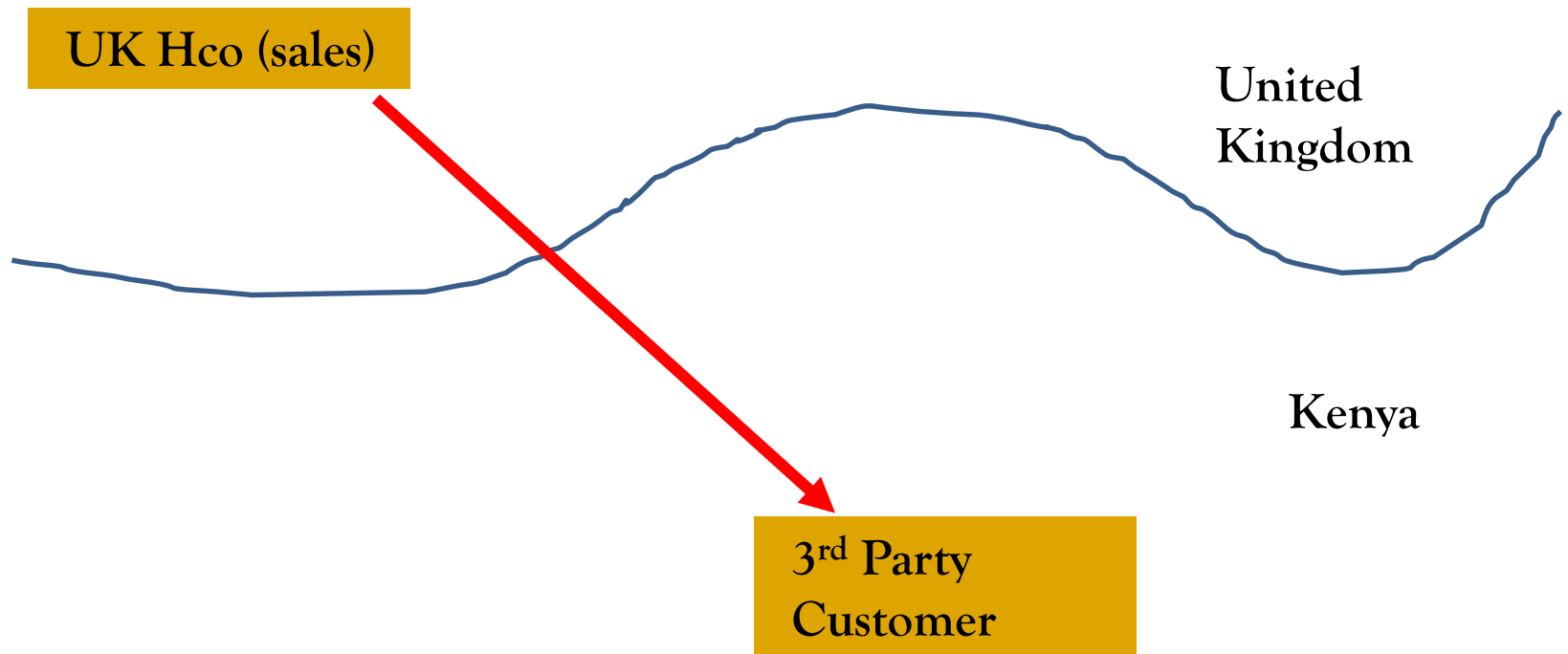
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Friday, 17th August 2018

Outline



- ☐ Background
- ☐ Types of PE
- ☐ PE Triggers & Risks
- ☐ What has Changed - BEPS & PE
- ☐ Attribution of Profit
- ☐ Case Study
- ☐ Q & A

Background



- ❑ What is the point of taxation of the UK entity ?

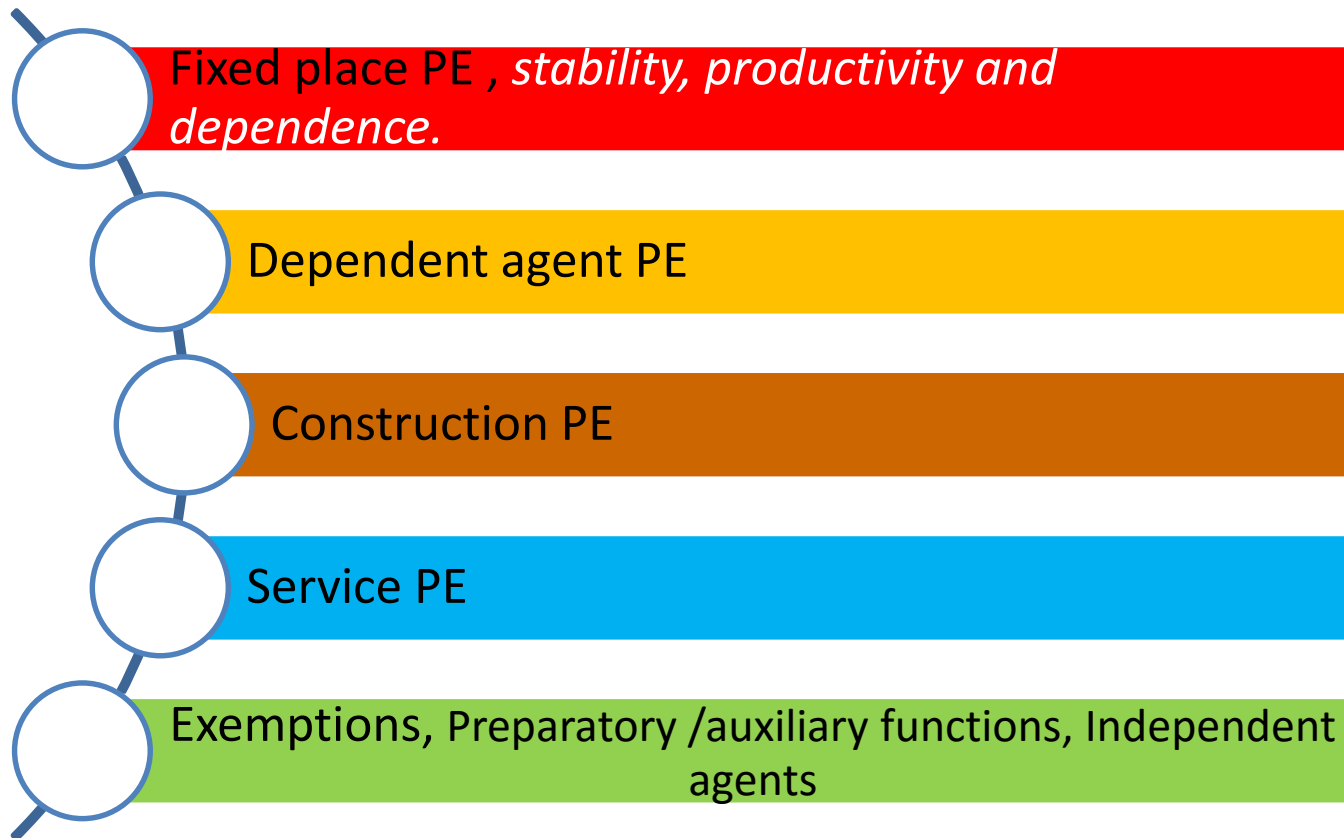
Background



ITA definition

- ❑ a fixed place of business and includes a place of management, a branch, an office, a factory, a workshop, and a mine, an oil or gas well, a quarry or any other place of extraction of natural resources, a building site, or a construction or installation project, which has existed for six months or more, where that person wholly or partly carries on business
- ❑ Business, includes ‘any trade, profession or vocation, and every manufacture, adventure and concern in the nature of trade, but does not include employment’.

Types of PE



PE Triggers



**Provision
of
services**

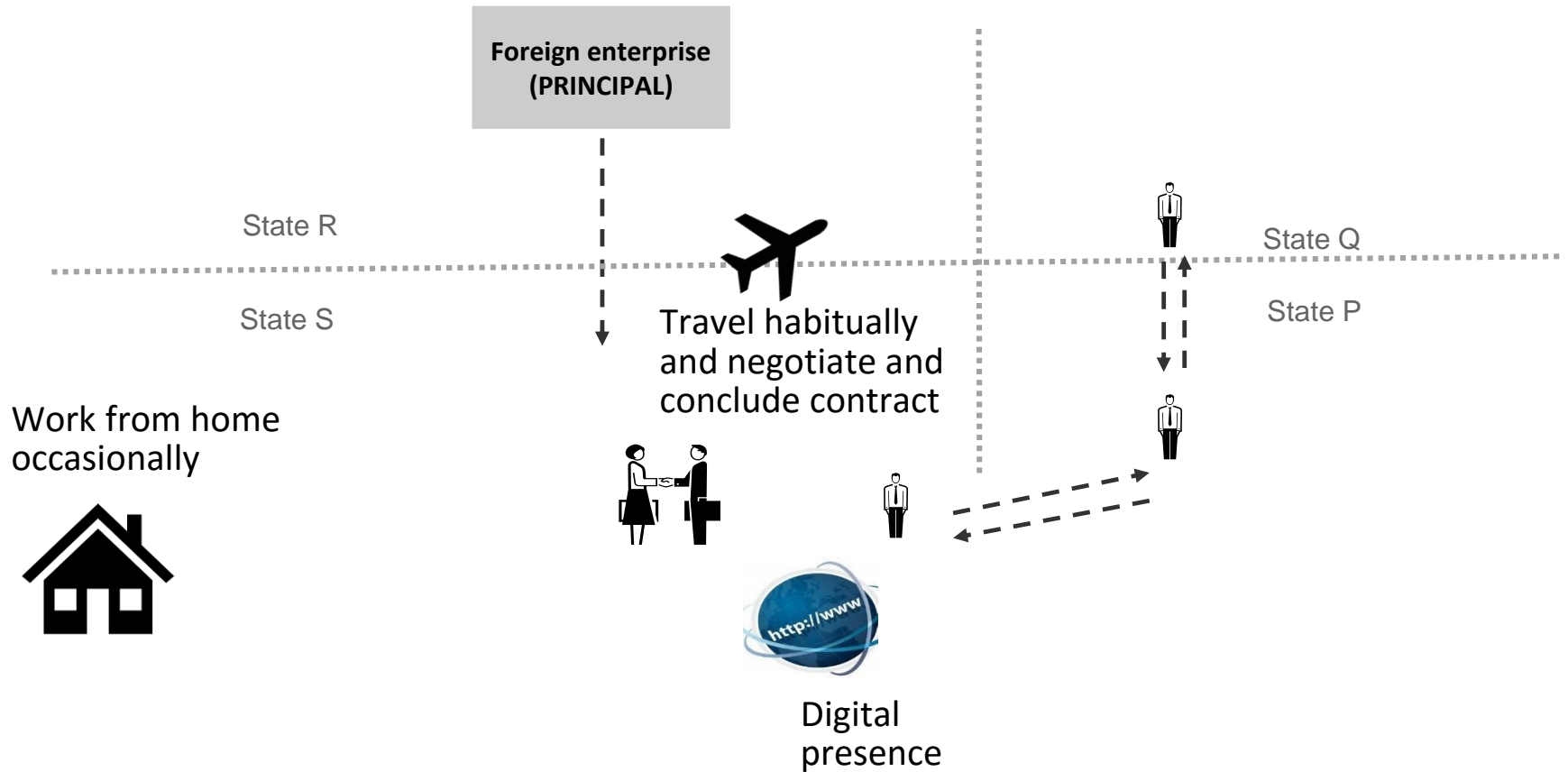
**Business
travellers
or
seconded
employee
s**

**Constructi
on
,assembly
or
installatio
n projects**

**Sales
through
agents**

**Arrangem
ent
involving
sub-
contracto
rs**

PE Risks



BEPS & PE



Fragmentation
of cohesive
business
functions

Commissionair
e arrangements

Preparatory or
auxiliary
activities

Contracts
finalized
abroad

BEPS Action Plan 7



- ❑ Tackles common tax avoidance strategies used to prevent the existence of a PE, including through agency or commissionaire arrangements instead of establishing related distributors.
- ❑ prevent the misuse of specific exceptions to the PE definition, which relate to activities of a preparatory and auxiliary character.

Action 7 Proposals



Areas of focus	Anti- avoidance provisions
Commissionaire arrangements	<ul style="list-style-type: none">❑ Commissionaire acts in “its own name,” but on behalf of the principal❑ Art. 5(5) and Art. 5(6) are amended to lower the PE threshold.❑ The need for acting not connected to the principal
Specific activity exemptions	<ul style="list-style-type: none">❑ PE is deemed not to exist when a place of business is engaged solely in certain activities (such as maintenance of stocks of goods for storage, display, delivery or processing, purchasing of goods or merchandise, collection of information)❑ To safe guard abuse this has been limited to activities of a preparatory or auxiliary nature only

Action 7 Proposals



Areas of focus

Anti- avoidance provisions

Fragmentation of activities

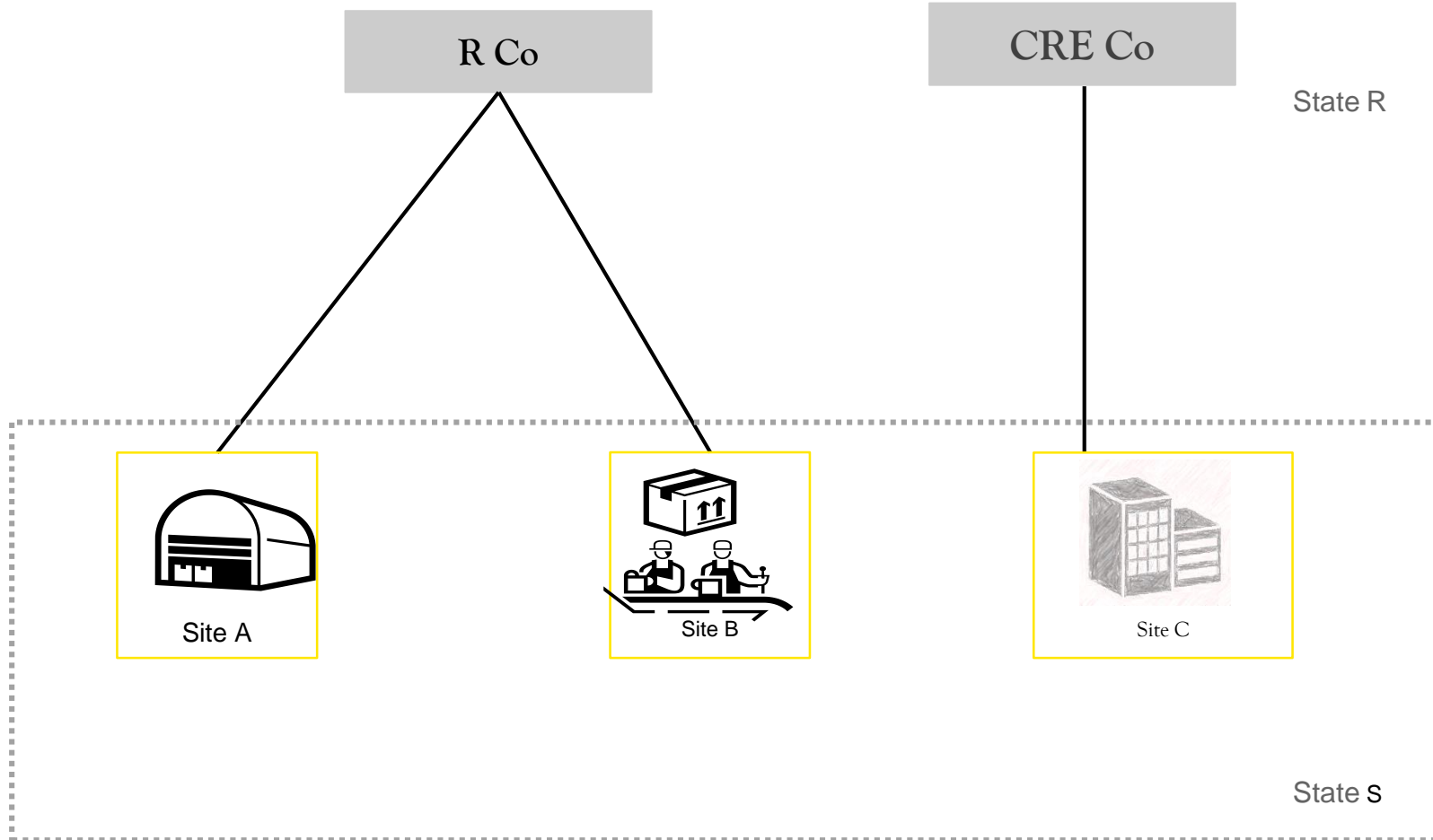
- ❑ Introduction of Article 5(4.1) anti fragmentation rules , mitigate breakup of an operating business into several small business units in order to benefit from the preparatory or auxiliary exemption.
- ❑ **Preparatory:** carried on in contemplation of “essential and significant part of the activity as a whole”
Auxiliary: carried on to support the essential and significant part of the activity as a whole, without itself being part of that essential and significant activity

Action 7 Proposals



Areas of focus	Anti- avoidance provisions
Splitting-up of contracts	<ul style="list-style-type: none"><li data-bbox="484 479 1508 529">❑ Application of a principal purposes test rule<li data-bbox="484 565 1640 615">❑ Aggregation of time spent on connected activities<li data-bbox="484 644 1692 694">❑ To control break up of contracts into shorter periods

Fragmentation of functions



Case Study



- ❑ the recurring activities were considered sufficient to constitute a “fixed place of business.” Sweden Court of Appeal Ruling. Testing of the software in the unique winter environment in Sweden appeared to be of great importance for the development and production of the company’s product.
 - ❑ Development, production, marketing and sales activities are carried out in Germany
 - ❑ Where a Germany company develops and sells software for tire inflations
 - ❑ No assets in Sweden
 - ❑ Employees travel annually to Sweden to test (3-4 months)
 - ❑ The company rent a premise for the relevant period

Attribution of Profit



- ❑ Paragraph 19 ...changes in definition “*do not require substantive modifications to the existing rules and guidance concerning the attribution of profits to a PE under Article 7 [of the MTC], but ... there is a need for additional guidance on how the rules of Article 7 would apply to PEs resulting from the changes in this report*”
- ❑ **Approaches used**
 - ❑ Force of Attraction Rule - going beyond profits derived by PE
 - ❑ Authorised OECD Approach – 2 step approach functional and factual analysis (performing comparability analysis) and performing an hypothesis appropriately (PE treated as functionally separate)

Attribution of Profit



- ❑ Under Article 7 of the MTC, the profits to be attributed to a PE are those that the PE would have derived if it were a separate and independent enterprise performing the activities that cause it to be a PE
- ❑ **Art. 5(4.1)** The profits attributable to each PE so arising are those that would have been derived from the profits made by each activity of the cohesive business operation as carried on by the PE if it were a separate and independent enterprise performing the corresponding activities, taking into account in particular the potential effect on those profits of the level of integration of these activities.





Thank You!

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