

**§ 8 The Artificial Avoidance of the
Permanent Establishment Status after the BEPS Project:
An International and Domestic Perspective
- Master Thesis Abstract -**

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The Permanent Establishment (“PE”) concept is central in international tax law. The OECD undertook a project, in 2013, aimed at addressing Base Erosion and Profit Shifting (“BEPS”) issues and reporting the profits where the activities that generate them are carried on. In particular, BEPS Action 7 addressed the issue of the Artificial Avoidance of the PE Status.

Among the outcomes emerging from the Final Report of BEPS Action 7, published in 2015, two are the ones which I decided to focus on: the amendment of the negative list contained in Article 5(4) of the OECD Model Tax Convention and the introduction of the anti-fragmentation rule.

The thesis carries out two different analyses: the first one with respect to the so-called pre-BEPS era, and the second with respect to the post-BEPS era.

Indeed, BEPS Action 7 implied significant amendments to the PE concept, that are going to dramatically change the way businesses operate internationally. More precisely, the thesis starts with the analysis of the concept of PE, the PE exemptions and their ratio, as they were elaborated by the “founding fathers” of international tax law.

After that, the legal background related to Article 5(4) of the OECD Model Tax Convention, in the version existing before the publication of BEPS Action 7 is analysed and confronted with the one arising after it.

This is done in order to understand if the work undertaken by the OECD could effectively be considered in line with its original intention, which was just to adapt the PE concept to the new economy and not to create a brand-new rule.

The two questions that this thesis wants to raise provocatively are:

- Do we really need new rules to counter the avoidance of the PE status or the ones we already have are broad enough?
- If new rules are necessary, are they sufficient or, maybe, a complete reinterpretation of the nexus rules is more appropriate to face the “digital revolution”?

In order to answer those questions, the thesis addresses also some possible alternatives to the PE concept, which the OECD addressed in the context of BEPS Action 1. The last Chapter of the work points out the Italian perspective of the problem.

Indeed, the Italian legislator, in 2018, amended the Italian Tax Code accordingly to the work done by the OECD in the context of BEPS Action 7. The work focuses also on the interaction between these domestic provisions with the international ones.

The final conclusion of the thesis is that the work undertaken by the OECD was, in any case, necessary: the confusion that was reigning in the pre-BEPS era was unbearable.

It is not clear if the outcomes of BEPS Action 7 will be able to provide the certainty that taxpayers required: the impression is that the final word on the issues has yet to be spoken. In other words, the OECD succeeded in preparing the ground for a future deeper reform, that will require international consensus and courageous stances.

Therefore, the present *status quo* could be considered a good (albeit improvable) transitory solution, waiting for the ultimate and stable one, which, however, cannot take too long.