

PE Watch: 2020 in review

Go inside



EY

Building a better
working world

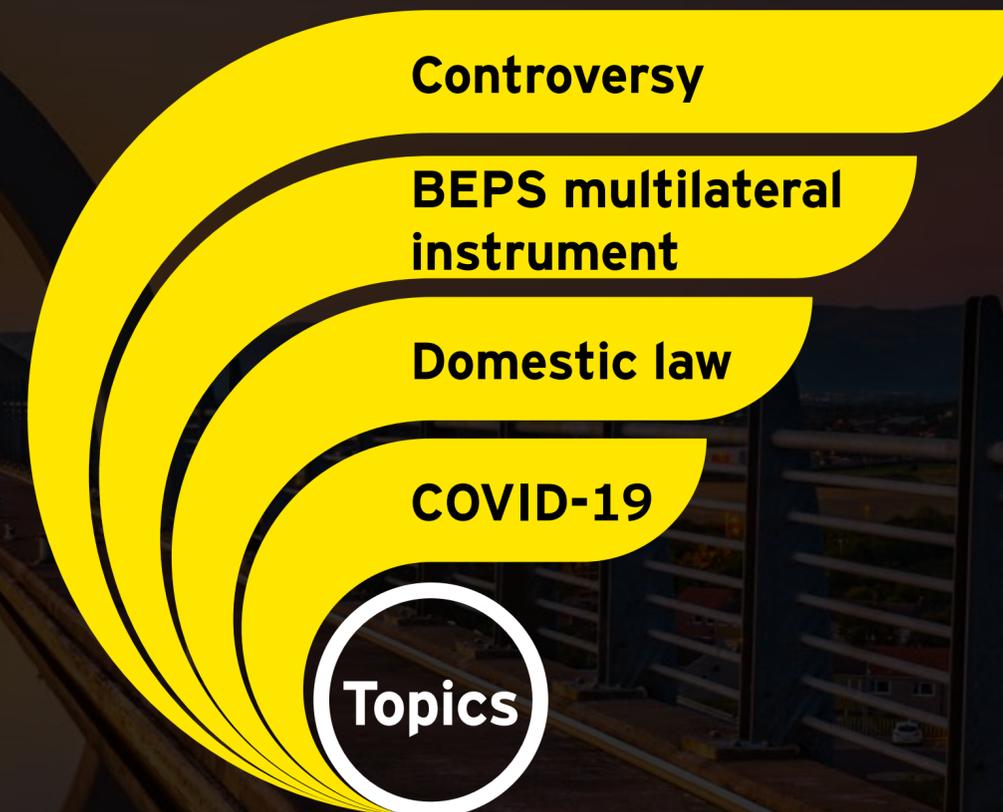
The permanent establishment (PE) concept is a core element of the global international tax framework. Its relevance has increased in the past year due to globalization, digitalization of the economy, and the ease of carrying on business worldwide. Consequently, tax authorities have placed potential PEs under increased scrutiny.

Over the last several years, EY has carried out Transfer Pricing and International Tax Surveys,¹ which make it clear that companies anticipate encountering increased controversy on PE matters. This in turn, translates into companies requiring more resources and time to manage their PE risks.

The international tax landscape continues to change. Tax uncertainty will significantly increase as governments respond to the health, economic and social threats of the COVID-19 pandemic, with new tax measures sparked by a growing need for revenues. Moreover, tax transparency is expected to continue to expand, both by introduction of new reporting requirements and the enhanced exchange and use of reported information by tax administrations. In an era where tax transparency is the norm, new business models and the complexity of tax systems are likely to result in increased controversy, including with respect to the determination of PEs.

A preview of tax priorities for 2021 indicate that the coming year will be crucial for the global international tax system. The BEPS 2.0 project² that the OECD/G20 Inclusive Framework on BEPS aims to deliver by mid- 2021 is expected to represent a major change to the international tax architecture and it may include certain features that diverge from the current PE principles. Moreover, if the Inclusive Framework does not reach consensus on this project, it is likely that the proliferation of unilateral measures will continue. Accordingly, more jurisdictions may consider a “Digital PE” concept, while digital services taxes may also be adopted by additional countries. Countries like Nigeria and Indonesia have already introduced “Significant Economic Presence” rules, creating a new type of PE without physical presence.

This publication covers four PE topics and each topic has two sections. The first section provides background information while the second section addresses specific country developments during 2020 with respect to each topic.



[Click on each topic to read more](#)

¹https://assets.ey.com/content/dam/ey-sites/ey-com/en_gl/topics/tax/tax-pdfs/ey-how-profound-change-transparency-and-controversy-are-reshaping-a-critical-business-function.pdf

https://assets.ey.com/content/dam/ey-sites/ey-com/en_gl/topics/tax/tax-pdfs/ey-tax-steps-into-the-light.pdf?download

²https://www.ey.com/en_gl/tax-alerts/oecd-releases-beps-2-0-pillar-one-blueprint-and-invites-public-comments

https://www.ey.com/en_gl/tax-alerts/oecd-releases-beps-2-0-pillar-two-blueprint-and-invites-public-comments



The onset of the COVID-19 pandemic significantly changed the global landscape during 2020. Authorities around the world imposed travel restrictions, implemented strict quarantine measures and encouraged teleworking. In this context, many individuals faced scenarios in which it was not possible to perform their duties in their countries of employment. Furthermore, many companies had to interrupt or adjust their activities.

In April 2020, the OECD Secretariat issued an [analysis on certain tax treaty-related issues in the context of the COVID-19 crisis](#). Among other items, the OECD provided guidance on the dislocation of cross-border workers due to the COVID-19 crisis and its effects on PEs. Additionally, in December 2020, the OECD issued guidance on the transfer pricing implications of the COVID-19 pandemic. The [guidance](#) represents the consensus view of the 137 members of the Inclusive Framework on BEPS regarding the application of the arm's-length principle. Although this guidance does not expressly make any reference to PEs, it may be helpful to address cases on the allocation of profits to PEs.

In addition to the OECD guidance, countries started releasing guidance on different international tax issues arising as a consequence of COVID-19, including the application of the PE rules. In general, most of the countries follow a similar approach on the different types of PE (home office, agency PE and construction PE) as included in the OECD analysis. However, some countries differ from the general approach and set forth their own positions. For example, Germany and China differ from the general approach on construction PEs, i.e., days spent on the construction site are not taken into account for calculating the time threshold, as long as certain requirements are met.

Throughout the year in review, some countries reacted to the prolonged pandemic and updated their guidance on PEs to reflect the non-temporary nature of the COVID-19 crisis. For example, Australia, Canada, Singapore, and Germany updated their guidance to extend the application period.

As the crisis continues to unfold in 2021, the OECD Secretariat has [updated](#) the earlier guidance considering some additional fact patterns not addressed before, and examines whether the analysis and the conclusions outlined in earlier guidance continue to apply where the circumstances persist for a significant period. In addition, the guidance contains references to country practices and their guidance during the COVID-19 pandemic. Likewise, a number of countries may revisit their guidance and adjust accordingly.

Tax authorities may likely focus more on workers or other personnel operating remotely during 2021 due to COVID restrictions.

[Click on each flag to read more](#)



Australia



Austria



Canada



China



Cyprus



Denmark



Germany



Greece



Ireland



Malaysia



Malta



New Zealand



Philippines



Singapore



United Kingdom (UK)



United States (US)





The onset of the COVID-19 pandemic significantly changed the global landscape during 2020. Authorities around the world imposed travel restrictions, implemented strict quarantine measures and encouraged teleworking. In this context, many individuals faced scenarios in which it was not possible to perform their duties in their countries of employment. Furthermore, many companies had to interrupt or adjust their activities.

In April 2020, the OECD Secretariat issued an [analysis on certain tax treaty-related issues in the context of the COVID-19 crisis](#). Among other items, the OECD provided guidance on the dislocation of cross-border workers due to the COVID-19 crisis and its effects on PEs. Additionally, in December 2020, the OECD issued guidance on the transfer pricing implications of the COVID-19 pandemic. The [guidance](#) represents the consensus view of the 137 members of the Inclusive Framework on BEPS regarding the application of the arm's-length principle. Although this guidance does not expressly make any reference to PEs, it may be helpful to address cases on the allocation of profits to PEs.

In addition to the OECD guidance, countries started releasing guidance on different international tax issues arising as a consequence of COVID-19, including the application of the PE rules. In general, most of the countries follow a similar approach on the different types of PE (home office, agency PE and construction PE) as included in the OECD analysis. However, some countries differ from the general approach and set forth their own positions. For example, Germany and China differ from the general approach on construction PEs, i.e., days spent on the construction site are not taken into account for calculating the time threshold, as long as certain requirements are met.

Throughout the year in review, some countries reacted to the prolonged pandemic and updated their guidance on PEs to reflect the non-temporary nature of the COVID-19 crisis. For example, Australia, Canada, Singapore, and Germany updated their guidance to extend the application period.

As the crisis continues to unfold in 2021, the OECD Secretariat has [updated](#) the earlier guidance considering some additional fact patterns not addressed before, and examines whether the analysis and the conclusions outlined in earlier guidance continue to apply where the circumstances persist for a significant period. In addition, the guidance contains references to country practices and their guidance during the COVID-19 pandemic. Likewise, a number of countries may revisit their guidance and adjust accordingly.

Tax authorities may likely focus more on workers or other personnel operating remotely during 2021 due to COVID restrictions.

Australia

In March 2020, the Australian Taxation Office (ATO) provided guidance on PEs considering the impact of the COVID-19 crisis. The guidance indicates that the unplanned presence of employees in Australia due to COVID-19 travel restrictions will not give rise to a PE in Australia where: i) the foreign entity did not have a PE in Australia before COVID-19; and ii) the presence of employees in Australia is due to travel restrictions.

In November 2020, the ATO updated its guidance. The updated guidance is largely consistent with the earlier guidance, however two new conditions have been added and need to be satisfied in order for any unplanned presence of employees in Australia to not give rise to a PE in Australia. The new conditions are: i) the employees staying temporarily in Australia will relocate overseas as soon as possible following the relaxation of travel restrictions; and ii) the foreign company has not recognized those employees as creating a PE in Australia or generating Australian source income for the purposes of the tax laws of another jurisdiction. This guidance applies from March 2020 until 31 January 2021. **More details on the guidance are available [here](#). Link to the official guidance [here](#).**

Contact: [David Burns](#)



The onset of the COVID-19 pandemic significantly changed the global landscape during 2020. Authorities around the world imposed travel restrictions, implemented strict quarantine measures and encouraged teleworking. In this context, many individuals faced scenarios in which it was not possible to perform their duties in their countries of employment. Furthermore, many companies had to interrupt or adjust their activities.

In April 2020, the OECD Secretariat issued an [analysis on certain tax treaty-related issues in the context of the COVID-19 crisis](#). Among other items, the OECD provided guidance on the dislocation of cross-border workers due to the COVID-19 crisis and its effects on PEs. Additionally, in December 2020, the OECD issued guidance on the transfer pricing implications of the COVID-19 pandemic. The [guidance](#) represents the consensus view of the 137 members of the Inclusive Framework on BEPS regarding the application of the arm's-length principle. Although this guidance does not expressly make any reference to PEs, it may be helpful to address cases on the allocation of profits to PEs.

In addition to the OECD guidance, countries started releasing guidance on different international tax issues arising as a consequence of COVID-19, including the application of the PE rules. In general, most of the countries follow a similar approach on the different types of PE (home office, agency PE and construction PE) as included in the OECD analysis. However, some countries differ from the general approach and set forth their own positions. For example, Germany and China differ from the general approach on construction PEs, i.e., days spent on the construction site are not taken into account for calculating the time threshold, as long as certain requirements are met.

Throughout the year in review, some countries reacted to the prolonged pandemic and updated their guidance on PEs to reflect the non-temporary nature of the COVID-19 crisis. For example, Australia, Canada, Singapore, and Germany updated their guidance to extend the application period.

As the crisis continues to unfold in 2021, the OECD Secretariat has [updated](#) the earlier guidance considering some additional fact patterns not addressed before, and examines whether the analysis and the conclusions outlined in earlier guidance continue to apply where the circumstances persist for a significant period. In addition, the guidance contains references to country practices and their guidance during the COVID-19 pandemic. Likewise, a number of countries may revisit their guidance and adjust accordingly.

Tax authorities may likely focus more on workers or other personnel operating remotely during 2021 due to COVID restrictions.

Austria

In May 2020, the Austrian Ministry of Finance provided guidance on home office PEs and construction PEs. This guidance was replaced and updated by new guidance in July 2020, which is largely consistent with the earlier guidance. For a home office PE, the guidance clarifies that employees of nonresident companies will not constitute a PE unless the home office becomes the new norm. For a construction PE, the guidance states that if a construction project is interrupted due to COVID-19, the interruption period should be taken into account for calculating the time threshold. **More details on the guidance are available [here](#). Link to the official guidance [here](#).**

Contact: [Markus Stefaner](#)



The onset of the COVID-19 pandemic significantly changed the global landscape during 2020. Authorities around the world imposed travel restrictions, implemented strict quarantine measures and encouraged teleworking. In this context, many individuals faced scenarios in which it was not possible to perform their duties in their countries of employment. Furthermore, many companies had to interrupt or adjust their activities.

In April 2020, the OECD Secretariat issued an [analysis on certain tax treaty-related issues in the context of the COVID-19 crisis](#). Among other items, the OECD provided guidance on the dislocation of cross-border workers due to the COVID-19 crisis and its effects on PEs. Additionally, in December 2020, the OECD issued guidance on the transfer pricing implications of the COVID-19 pandemic. The [guidance](#) represents the consensus view of the 137 members of the Inclusive Framework on BEPS regarding the application of the arm's-length principle. Although this guidance does not expressly make any reference to PEs, it may be helpful to address cases on the allocation of profits to PEs.

In addition to the OECD guidance, countries started releasing guidance on different international tax issues arising as a consequence of COVID-19, including the application of the PE rules. In general, most of the countries follow a similar approach on the different types of PE (home office, agency PE and construction PE) as included in the OECD analysis. However, some countries differ from the general approach and set forth their own positions. For example, Germany and China differ from the general approach on construction PEs, i.e., days spent on the construction site are not taken into account for calculating the time threshold, as long as certain requirements are met.

Throughout the year in review, some countries reacted to the prolonged pandemic and updated their guidance on PEs to reflect the non-temporary nature of the COVID-19 crisis. For example, Australia, Canada, Singapore, and Germany updated their guidance to extend the application period.

As the crisis continues to unfold in 2021, the OECD Secretariat has [updated](#) the earlier guidance considering some additional fact patterns not addressed before, and examines whether the analysis and the conclusions outlined in earlier guidance continue to apply where the circumstances persist for a significant period. In addition, the guidance contains references to country practices and their guidance during the COVID-19 pandemic. Likewise, a number of countries may revisit their guidance and adjust accordingly.

Tax authorities may likely focus more on workers or other personnel operating remotely during 2021 due to COVID restrictions.

Canada

In May 2020, the Canada Revenue Agency (CRA) published guidance covering different situations regarding PEs such as: home office PE, agency PE and service PE. For a home office and agency PE, the CRA will not consider the existence of a PE provided that such activities would not have been performed in Canada but for the travel restrictions. For a service PE, the CRA will exclude from the 183-day threshold for any days of physical presence in Canada that are solely the result of travel restrictions.

In June 2020, Canada extended the application period until 31 August 2020. After, in August 2020, Canada again extended the application period until 30 September 2020 but noted that it did not anticipate further extensions of the guidance.

More details on the guidance are available [here](#). [Link to the official guidance here](#).

Contact: [Rene Fleming](#)



The onset of the COVID-19 pandemic significantly changed the global landscape during 2020. Authorities around the world imposed travel restrictions, implemented strict quarantine measures and encouraged teleworking. In this context, many individuals faced scenarios in which it was not possible to perform their duties in their countries of employment. Furthermore, many companies had to interrupt or adjust their activities.

In April 2020, the OECD Secretariat issued an [analysis on certain tax treaty-related issues in the context of the COVID-19 crisis](#). Among other items, the OECD provided guidance on the dislocation of cross-border workers due to the COVID-19 crisis and its effects on PEs. Additionally, in December 2020, the OECD issued guidance on the transfer pricing implications of the COVID-19 pandemic. The [guidance](#) represents the consensus view of the 137 members of the Inclusive Framework on BEPS regarding the application of the arm's-length principle. Although this guidance does not expressly make any reference to PEs, it may be helpful to address cases on the allocation of profits to PEs.

In addition to the OECD guidance, countries started releasing guidance on different international tax issues arising as a consequence of COVID-19, including the application of the PE rules. In general, most of the countries follow a similar approach on the different types of PE (home office, agency PE and construction PE) as included in the OECD analysis. However, some countries differ from the general approach and set forth their own positions. For example, Germany and China differ from the general approach on construction PEs, i.e., days spent on the construction site are not taken into account for calculating the time threshold, as long as certain requirements are met.

Throughout the year in review, some countries reacted to the prolonged pandemic and updated their guidance on PEs to reflect the non-temporary nature of the COVID-19 crisis. For example, Australia, Canada, Singapore, and Germany updated their guidance to extend the application period.

As the crisis continues to unfold in 2021, the OECD Secretariat has [updated](#) the earlier guidance considering some additional fact patterns not addressed before, and examines whether the analysis and the conclusions outlined in earlier guidance continue to apply where the circumstances persist for a significant period. In addition, the guidance contains references to country practices and their guidance during the COVID-19 pandemic. Likewise, a number of countries may revisit their guidance and adjust accordingly.

Tax authorities may likely focus more on workers or other personnel operating remotely during 2021 due to COVID restrictions.

China

In August 2020, the Chinese State Taxation Administration (STA) published a set of Questions and Answers (Q&A guidance) which provide that a home office and conclusion of contracts in China do not create a PE if the activity is intermittent or occasional during the pandemic. However, the Q&A guidance clarifies that if an agent was already concluding contracts in China before the pandemic for a considerable period of time, an agency PE may arise. Further, the Q&A guidance provides that the STA will disregard the COVID-19 related interruptions of construction projects when calculating the time threshold of construction PEs. **More details on the Q&A guidance are available [here](#). Link to the official guidance [here](#).**

Contact: [Min Fei](#)



The onset of the COVID-19 pandemic significantly changed the global landscape during 2020. Authorities around the world imposed travel restrictions, implemented strict quarantine measures and encouraged teleworking. In this context, many individuals faced scenarios in which it was not possible to perform their duties in their countries of employment. Furthermore, many companies had to interrupt or adjust their activities.

In April 2020, the OECD Secretariat issued an [analysis on certain tax treaty-related issues in the context of the COVID-19 crisis](#). Among other items, the OECD provided guidance on the dislocation of cross-border workers due to the COVID-19 crisis and its effects on PEs. Additionally, in December 2020, the OECD issued guidance on the transfer pricing implications of the COVID-19 pandemic. The [guidance](#) represents the consensus view of the 137 members of the Inclusive Framework on BEPS regarding the application of the arm's-length principle. Although this guidance does not expressly make any reference to PEs, it may be helpful to address cases on the allocation of profits to PEs.

In addition to the OECD guidance, countries started releasing guidance on different international tax issues arising as a consequence of COVID-19, including the application of the PE rules. In general, most of the countries follow a similar approach on the different types of PE (home office, agency PE and construction PE) as included in the OECD analysis. However, some countries differ from the general approach and set forth their own positions. For example, Germany and China differ from the general approach on construction PEs, i.e., days spent on the construction site are not taken into account for calculating the time threshold, as long as certain requirements are met.

Throughout the year in review, some countries reacted to the prolonged pandemic and updated their guidance on PEs to reflect the non-temporary nature of the COVID-19 crisis. For example, Australia, Canada, Singapore, and Germany updated their guidance to extend the application period.

As the crisis continues to unfold in 2021, the OECD Secretariat has [updated](#) the earlier guidance considering some additional fact patterns not addressed before, and examines whether the analysis and the conclusions outlined in earlier guidance continue to apply where the circumstances persist for a significant period. In addition, the guidance contains references to country practices and their guidance during the COVID-19 pandemic. Likewise, a number of countries may revisit their guidance and adjust accordingly.

Tax authorities may likely focus more on workers or other personnel operating remotely during 2021 due to COVID restrictions.

Cyprus

In October 2020, the Tax Department of Cyprus issued guidance providing that persons working remotely from Cyprus and agents concluding contracts in Cyprus due to COVID-19 related travel restrictions will not create a PE in Cyprus. Moreover, the guidance provides that, in cases where persons that would otherwise be in Cyprus but due to travel restrictions are conducting activities abroad, the time spent abroad will not be taken into account to determine whether there is a PE in Cyprus. **More details on the guidance are available [here](#). [Link to the official guidance here](#).**

Contact: [Petros Krasaris](#)



The onset of the COVID-19 pandemic significantly changed the global landscape during 2020. Authorities around the world imposed travel restrictions, implemented strict quarantine measures and encouraged teleworking. In this context, many individuals faced scenarios in which it was not possible to perform their duties in their countries of employment. Furthermore, many companies had to interrupt or adjust their activities.

In April 2020, the OECD Secretariat issued an [analysis on certain tax treaty-related issues in the context of the COVID-19 crisis](#). Among other items, the OECD provided guidance on the dislocation of cross-border workers due to the COVID-19 crisis and its effects on PEs. Additionally, in December 2020, the OECD issued guidance on the transfer pricing implications of the COVID-19 pandemic. The [guidance](#) represents the consensus view of the 137 members of the Inclusive Framework on BEPS regarding the application of the arm's-length principle. Although this guidance does not expressly make any reference to PEs, it may be helpful to address cases on the allocation of profits to PEs.

In addition to the OECD guidance, countries started releasing guidance on different international tax issues arising as a consequence of COVID-19, including the application of the PE rules. In general, most of the countries follow a similar approach on the different types of PE (home office, agency PE and construction PE) as included in the OECD analysis. However, some countries differ from the general approach and set forth their own positions. For example, Germany and China differ from the general approach on construction PEs, i.e., days spent on the construction site are not taken into account for calculating the time threshold, as long as certain requirements are met.

Throughout the year in review, some countries reacted to the prolonged pandemic and updated their guidance on PEs to reflect the non-temporary nature of the COVID-19 crisis. For example, Australia, Canada, Singapore, and Germany updated their guidance to extend the application period.

As the crisis continues to unfold in 2021, the OECD Secretariat has [updated](#) the earlier guidance considering some additional fact patterns not addressed before, and examines whether the analysis and the conclusions outlined in earlier guidance continue to apply where the circumstances persist for a significant period. In addition, the guidance contains references to country practices and their guidance during the COVID-19 pandemic. Likewise, a number of countries may revisit their guidance and adjust accordingly.

Tax authorities may likely focus more on workers or other personnel operating remotely during 2021 due to COVID restrictions.

Denmark

In July 2020, Denmark launched guidance stating that the Danish Tax Authorities follow the OECD Secretariat analysis on PEs released in April 2020. [More details on the guidance are available here.](#) [Link to the official guidance here.](#)

Contact: [Malte Soegaard](#)



The onset of the COVID-19 pandemic significantly changed the global landscape during 2020. Authorities around the world imposed travel restrictions, implemented strict quarantine measures and encouraged teleworking. In this context, many individuals faced scenarios in which it was not possible to perform their duties in their countries of employment. Furthermore, many companies had to interrupt or adjust their activities.

In April 2020, the OECD Secretariat issued an [analysis on certain tax treaty-related issues in the context of the COVID-19 crisis](#). Among other items, the OECD provided guidance on the dislocation of cross-border workers due to the COVID-19 crisis and its effects on PEs. Additionally, in December 2020, the OECD issued guidance on the transfer pricing implications of the COVID-19 pandemic. The [guidance](#) represents the consensus view of the 137 members of the Inclusive Framework on BEPS regarding the application of the arm's-length principle. Although this guidance does not expressly make any reference to PEs, it may be helpful to address cases on the allocation of profits to PEs.

In addition to the OECD guidance, countries started releasing guidance on different international tax issues arising as a consequence of COVID-19, including the application of the PE rules. In general, most of the countries follow a similar approach on the different types of PE (home office, agency PE and construction PE) as included in the OECD analysis. However, some countries differ from the general approach and set forth their own positions. For example, Germany and China differ from the general approach on construction PEs, i.e., days spent on the construction site are not taken into account for calculating the time threshold, as long as certain requirements are met.

Throughout the year in review, some countries reacted to the prolonged pandemic and updated their guidance on PEs to reflect the non-temporary nature of the COVID-19 crisis. For example, Australia, Canada, Singapore, and Germany updated their guidance to extend the application period.

As the crisis continues to unfold in 2021, the OECD Secretariat has [updated](#) the earlier guidance considering some additional fact patterns not addressed before, and examines whether the analysis and the conclusions outlined in earlier guidance continue to apply where the circumstances persist for a significant period. In addition, the guidance contains references to country practices and their guidance during the COVID-19 pandemic. Likewise, a number of countries may revisit their guidance and adjust accordingly.

Tax authorities may likely focus more on workers or other personnel operating remotely during 2021 due to COVID restrictions.

Germany

In May 2020, the German Federal Central Tax Office released guidance covering construction PEs to clarify that the interruption period should not be considered for calculating the time threshold provided the company meets certain conditions.

In December 2020, the guidance published in May 2020 was updated and continues to only cover, construction PE situations. [More details on the guidance are available here](#). [Link to the official guidance here](#).

Contact: [Tobias Appl](#)



The onset of the COVID-19 pandemic significantly changed the global landscape during 2020. Authorities around the world imposed travel restrictions, implemented strict quarantine measures and encouraged teleworking. In this context, many individuals faced scenarios in which it was not possible to perform their duties in their countries of employment. Furthermore, many companies had to interrupt or adjust their activities.

In April 2020, the OECD Secretariat issued an [analysis on certain tax treaty-related issues in the context of the COVID-19 crisis](#). Among other items, the OECD provided guidance on the dislocation of cross-border workers due to the COVID-19 crisis and its effects on PEs. Additionally, in December 2020, the OECD issued guidance on the transfer pricing implications of the COVID-19 pandemic. The [guidance](#) represents the consensus view of the 137 members of the Inclusive Framework on BEPS regarding the application of the arm's-length principle. Although this guidance does not expressly make any reference to PEs, it may be helpful to address cases on the allocation of profits to PEs.

In addition to the OECD guidance, countries started releasing guidance on different international tax issues arising as a consequence of COVID-19, including the application of the PE rules. In general, most of the countries follow a similar approach on the different types of PE (home office, agency PE and construction PE) as included in the OECD analysis. However, some countries differ from the general approach and set forth their own positions. For example, Germany and China differ from the general approach on construction PEs, i.e., days spent on the construction site are not taken into account for calculating the time threshold, as long as certain requirements are met.

Throughout the year in review, some countries reacted to the prolonged pandemic and updated their guidance on PEs to reflect the non-temporary nature of the COVID-19 crisis. For example, Australia, Canada, Singapore, and Germany updated their guidance to extend the application period.

As the crisis continues to unfold in 2021, the OECD Secretariat has [updated](#) the earlier guidance considering some additional fact patterns not addressed before, and examines whether the analysis and the conclusions outlined in earlier guidance continue to apply where the circumstances persist for a significant period. In addition, the guidance contains references to country practices and their guidance during the COVID-19 pandemic. Likewise, a number of countries may revisit their guidance and adjust accordingly.

Tax authorities may likely focus more on workers or other personnel operating remotely during 2021 due to COVID restrictions.

Greece

In July 2020, Greece published a circular that provides that employees will not constitute a home office PE during the COVID-19 pandemic and especially during the travel restrictions, unless the home office becomes the new norm. Likewise, the risk of creating an agency PE would be low as long as the agent's activity is temporary and would not have been performed in Greece but for the travel restrictions. However, the tax authorities may take a different approach if the agent was habitually concluding contracts on behalf of the nonresident enterprise in his home country before (or even, after) COVID-19. Further, if a construction project is interrupted due to COVID-19, the interruption period should be included when calculating time threshold. **More details on the guidance are available [here](#). Link to the official guidance [here](#).**

Contact: [Constantina Nicolaou](#)



The onset of the COVID-19 pandemic significantly changed the global landscape during 2020. Authorities around the world imposed travel restrictions, implemented strict quarantine measures and encouraged teleworking. In this context, many individuals faced scenarios in which it was not possible to perform their duties in their countries of employment. Furthermore, many companies had to interrupt or adjust their activities.

In April 2020, the OECD Secretariat issued an [analysis on certain tax treaty-related issues in the context of the COVID-19 crisis](#). Among other items, the OECD provided guidance on the dislocation of cross-border workers due to the COVID-19 crisis and its effects on PEs. Additionally, in December 2020, the OECD issued guidance on the transfer pricing implications of the COVID-19 pandemic. The [guidance](#) represents the consensus view of the 137 members of the Inclusive Framework on BEPS regarding the application of the arm's-length principle. Although this guidance does not expressly make any reference to PEs, it may be helpful to address cases on the allocation of profits to PEs.

In addition to the OECD guidance, countries started releasing guidance on different international tax issues arising as a consequence of COVID-19, including the application of the PE rules. In general, most of the countries follow a similar approach on the different types of PE (home office, agency PE and construction PE) as included in the OECD analysis. However, some countries differ from the general approach and set forth their own positions. For example, Germany and China differ from the general approach on construction PEs, i.e., days spent on the construction site are not taken into account for calculating the time threshold, as long as certain requirements are met.

Throughout the year in review, some countries reacted to the prolonged pandemic and updated their guidance on PEs to reflect the non-temporary nature of the COVID-19 crisis. For example, Australia, Canada, Singapore, and Germany updated their guidance to extend the application period.

As the crisis continues to unfold in 2021, the OECD Secretariat has [updated](#) the earlier guidance considering some additional fact patterns not addressed before, and examines whether the analysis and the conclusions outlined in earlier guidance continue to apply where the circumstances persist for a significant period. In addition, the guidance contains references to country practices and their guidance during the COVID-19 pandemic. Likewise, a number of countries may revisit their guidance and adjust accordingly.

Tax authorities may likely focus more on workers or other personnel operating remotely during 2021 due to COVID restrictions.

Ireland

In March 2020, the Irish Revenue Commissioners published guidance covering PE issues and provide that: where an individual is present in Ireland or another jurisdiction (and would otherwise have been present in Ireland) as a result of COVID-19 related travel restrictions, the Irish Revenue Commissioners will be prepared to disregard such presence in Ireland or another jurisdiction (where relevant) for corporation tax purposes in relation to which the individual is an employee, director, service provider or agent. [Link to the official guidance here.](#)

Contact: [Micheal Bruen](#)



The onset of the COVID-19 pandemic significantly changed the global landscape during 2020. Authorities around the world imposed travel restrictions, implemented strict quarantine measures and encouraged teleworking. In this context, many individuals faced scenarios in which it was not possible to perform their duties in their countries of employment. Furthermore, many companies had to interrupt or adjust their activities.

In April 2020, the OECD Secretariat issued an [analysis on certain tax treaty-related issues in the context of the COVID-19 crisis](#). Among other items, the OECD provided guidance on the dislocation of cross-border workers due to the COVID-19 crisis and its effects on PEs. Additionally, in December 2020, the OECD issued guidance on the transfer pricing implications of the COVID-19 pandemic. The [guidance](#) represents the consensus view of the 137 members of the Inclusive Framework on BEPS regarding the application of the arm's-length principle. Although this guidance does not expressly make any reference to PEs, it may be helpful to address cases on the allocation of profits to PEs.

In addition to the OECD guidance, countries started releasing guidance on different international tax issues arising as a consequence of COVID-19, including the application of the PE rules. In general, most of the countries follow a similar approach on the different types of PE (home office, agency PE and construction PE) as included in the OECD analysis. However, some countries differ from the general approach and set forth their own positions. For example, Germany and China differ from the general approach on construction PEs, i.e., days spent on the construction site are not taken into account for calculating the time threshold, as long as certain requirements are met.

Throughout the year in review, some countries reacted to the prolonged pandemic and updated their guidance on PEs to reflect the non-temporary nature of the COVID-19 crisis. For example, Australia, Canada, Singapore, and Germany updated their guidance to extend the application period.

As the crisis continues to unfold in 2021, the OECD Secretariat has [updated](#) the earlier guidance considering some additional fact patterns not addressed before, and examines whether the analysis and the conclusions outlined in earlier guidance continue to apply where the circumstances persist for a significant period. In addition, the guidance contains references to country practices and their guidance during the COVID-19 pandemic. Likewise, a number of countries may revisit their guidance and adjust accordingly.

Tax authorities may likely focus more on workers or other personnel operating remotely during 2021 due to COVID restrictions.

Malaysia

In May 2020, the Inland Revenue Board of Malaysia (IRB) published guidance providing that the IRB will consider that the temporary presence of employees of a nonresident company does not result in the creation of a PE, if certain conditions are met, such as not having a PE before the travel restrictions and that the economic circumstances of the nonresident company have not changed. In October 2020, the IRB updated its guidance to clarify that it would also apply to companies that are residents in countries which do not have a double tax agreement with Malaysia. The updated guidance also provides that the guidance will only apply from 18 March 2020 to 31 December 2020. **More details on the guidance are available [here](#). [Link to the official guidance here](#).**

Contact: [Anil Kumar Puri](#)



The onset of the COVID-19 pandemic significantly changed the global landscape during 2020. Authorities around the world imposed travel restrictions, implemented strict quarantine measures and encouraged teleworking. In this context, many individuals faced scenarios in which it was not possible to perform their duties in their countries of employment. Furthermore, many companies had to interrupt or adjust their activities.

In April 2020, the OECD Secretariat issued an [analysis on certain tax treaty-related issues in the context of the COVID-19 crisis](#). Among other items, the OECD provided guidance on the dislocation of cross-border workers due to the COVID-19 crisis and its effects on PEs. Additionally, in December 2020, the OECD issued guidance on the transfer pricing implications of the COVID-19 pandemic. The [guidance](#) represents the consensus view of the 137 members of the Inclusive Framework on BEPS regarding the application of the arm's-length principle. Although this guidance does not expressly make any reference to PEs, it may be helpful to address cases on the allocation of profits to PEs.

In addition to the OECD guidance, countries started releasing guidance on different international tax issues arising as a consequence of COVID-19, including the application of the PE rules. In general, most of the countries follow a similar approach on the different types of PE (home office, agency PE and construction PE) as included in the OECD analysis. However, some countries differ from the general approach and set forth their own positions. For example, Germany and China differ from the general approach on construction PEs, i.e., days spent on the construction site are not taken into account for calculating the time threshold, as long as certain requirements are met.

Throughout the year in review, some countries reacted to the prolonged pandemic and updated their guidance on PEs to reflect the non-temporary nature of the COVID-19 crisis. For example, Australia, Canada, Singapore, and Germany updated their guidance to extend the application period.

As the crisis continues to unfold in 2021, the OECD Secretariat has [updated](#) the earlier guidance considering some additional fact patterns not addressed before, and examines whether the analysis and the conclusions outlined in earlier guidance continue to apply where the circumstances persist for a significant period. In addition, the guidance contains references to country practices and their guidance during the COVID-19 pandemic. Likewise, a number of countries may revisit their guidance and adjust accordingly.

Tax authorities may likely focus more on workers or other personnel operating remotely during 2021 due to COVID restrictions.

Malta

In May 2020, Malta announced that it adheres to the OECD guidance on tax implications due to the COVID-19 crisis.

Contact: [Silvio Camilleri](#)



The onset of the COVID-19 pandemic significantly changed the global landscape during 2020. Authorities around the world imposed travel restrictions, implemented strict quarantine measures and encouraged teleworking. In this context, many individuals faced scenarios in which it was not possible to perform their duties in their countries of employment. Furthermore, many companies had to interrupt or adjust their activities.

In April 2020, the OECD Secretariat issued an [analysis on certain tax treaty-related issues in the context of the COVID-19 crisis](#). Among other items, the OECD provided guidance on the dislocation of cross-border workers due to the COVID-19 crisis and its effects on PEs. Additionally, in December 2020, the OECD issued guidance on the transfer pricing implications of the COVID-19 pandemic. The [guidance](#) represents the consensus view of the 137 members of the Inclusive Framework on BEPS regarding the application of the arm's-length principle. Although this guidance does not expressly make any reference to PEs, it may be helpful to address cases on the allocation of profits to PEs.

In addition to the OECD guidance, countries started releasing guidance on different international tax issues arising as a consequence of COVID-19, including the application of the PE rules. In general, most of the countries follow a similar approach on the different types of PE (home office, agency PE and construction PE) as included in the OECD analysis. However, some countries differ from the general approach and set forth their own positions. For example, Germany and China differ from the general approach on construction PEs, i.e., days spent on the construction site are not taken into account for calculating the time threshold, as long as certain requirements are met.

Throughout the year in review, some countries reacted to the prolonged pandemic and updated their guidance on PEs to reflect the non-temporary nature of the COVID-19 crisis. For example, Australia, Canada, Singapore, and Germany updated their guidance to extend the application period.

As the crisis continues to unfold in 2021, the OECD Secretariat has [updated](#) the earlier guidance considering some additional fact patterns not addressed before, and examines whether the analysis and the conclusions outlined in earlier guidance continue to apply where the circumstances persist for a significant period. In addition, the guidance contains references to country practices and their guidance during the COVID-19 pandemic. Likewise, a number of countries may revisit their guidance and adjust accordingly.

Tax authorities may likely focus more on workers or other personnel operating remotely during 2021 due to COVID restrictions.

New Zealand

In April 2020, the Inland Revenue confirmed that COVID-19 will not cause a foreign company to have a PE in New Zealand due to foreign employees being stranded or confined in New Zealand. This is provided that certain conditions are met. [Link to the official guidance here.](#)

Contact: [Dean Madsen](#)



The onset of the COVID-19 pandemic significantly changed the global landscape during 2020. Authorities around the world imposed travel restrictions, implemented strict quarantine measures and encouraged teleworking. In this context, many individuals faced scenarios in which it was not possible to perform their duties in their countries of employment. Furthermore, many companies had to interrupt or adjust their activities.

In April 2020, the OECD Secretariat issued an [analysis on certain tax treaty-related issues in the context of the COVID-19 crisis](#). Among other items, the OECD provided guidance on the dislocation of cross-border workers due to the COVID-19 crisis and its effects on PEs. Additionally, in December 2020, the OECD issued guidance on the transfer pricing implications of the COVID-19 pandemic. The [guidance](#) represents the consensus view of the 137 members of the Inclusive Framework on BEPS regarding the application of the arm's-length principle. Although this guidance does not expressly make any reference to PEs, it may be helpful to address cases on the allocation of profits to PEs.

In addition to the OECD guidance, countries started releasing guidance on different international tax issues arising as a consequence of COVID-19, including the application of the PE rules. In general, most of the countries follow a similar approach on the different types of PE (home office, agency PE and construction PE) as included in the OECD analysis. However, some countries differ from the general approach and set forth their own positions. For example, Germany and China differ from the general approach on construction PEs, i.e., days spent on the construction site are not taken into account for calculating the time threshold, as long as certain requirements are met.

Throughout the year in review, some countries reacted to the prolonged pandemic and updated their guidance on PEs to reflect the non-temporary nature of the COVID-19 crisis. For example, Australia, Canada, Singapore, and Germany updated their guidance to extend the application period.

As the crisis continues to unfold in 2021, the OECD Secretariat has [updated](#) the earlier guidance considering some additional fact patterns not addressed before, and examines whether the analysis and the conclusions outlined in earlier guidance continue to apply where the circumstances persist for a significant period. In addition, the guidance contains references to country practices and their guidance during the COVID-19 pandemic. Likewise, a number of countries may revisit their guidance and adjust accordingly.

Tax authorities may likely focus more on workers or other personnel operating remotely during 2021 due to COVID restrictions.

Philippines

In August 2020, the Philippine Bureau of Internal Revenue (BIR) published a circular clarifying that temporary interruptions of construction activities due to COVID-19 should be included for calculating the time threshold. The circular also explains that working from home would not create a PE if used on a temporary basis. Further, the circular provides that where an employee, partner or agent of a foreign enterprise continues to be present in the Philippines and that presence in the Philippines is shown to result from travel restrictions related to COVID-19, the BIR will disregard such presence in determining the existence of a PE as long as certain requirements are met. [More details on the guidance are available here](#). [Link to the official guidance here](#).

Contact: [Fidela Francisca I Reyes](#)



The onset of the COVID-19 pandemic significantly changed the global landscape during 2020. Authorities around the world imposed travel restrictions, implemented strict quarantine measures and encouraged teleworking. In this context, many individuals faced scenarios in which it was not possible to perform their duties in their countries of employment. Furthermore, many companies had to interrupt or adjust their activities.

In April 2020, the OECD Secretariat issued an [analysis on certain tax treaty-related issues in the context of the COVID-19 crisis](#). Among other items, the OECD provided guidance on the dislocation of cross-border workers due to the COVID-19 crisis and its effects on PEs. Additionally, in December 2020, the OECD issued guidance on the transfer pricing implications of the COVID-19 pandemic. The [guidance](#) represents the consensus view of the 137 members of the Inclusive Framework on BEPS regarding the application of the arm's-length principle. Although this guidance does not expressly make any reference to PEs, it may be helpful to address cases on the allocation of profits to PEs.

In addition to the OECD guidance, countries started releasing guidance on different international tax issues arising as a consequence of COVID-19, including the application of the PE rules. In general, most of the countries follow a similar approach on the different types of PE (home office, agency PE and construction PE) as included in the OECD analysis. However, some countries differ from the general approach and set forth their own positions. For example, Germany and China differ from the general approach on construction PEs, i.e., days spent on the construction site are not taken into account for calculating the time threshold, as long as certain requirements are met.

Throughout the year in review, some countries reacted to the prolonged pandemic and updated their guidance on PEs to reflect the non-temporary nature of the COVID-19 crisis. For example, Australia, Canada, Singapore, and Germany updated their guidance to extend the application period.

As the crisis continues to unfold in 2021, the OECD Secretariat has [updated](#) the earlier guidance considering some additional fact patterns not addressed before, and examines whether the analysis and the conclusions outlined in earlier guidance continue to apply where the circumstances persist for a significant period. In addition, the guidance contains references to country practices and their guidance during the COVID-19 pandemic. Likewise, a number of countries may revisit their guidance and adjust accordingly.

Tax authorities may likely focus more on workers or other personnel operating remotely during 2021 due to COVID restrictions.

Singapore

In April 2020, the Inland Revenue Authority of Singapore (IRAS) published guidance providing that IRAS will not consider the unplanned presence of employees of a nonresident taxpayer, that may need to stay in Singapore due to travel restrictions relating to COVID-19, as the creation of a PE, provided it meets certain conditions set forth in the guidance.

In October 2020, the IRAS updated its guidance to extend its application period through 31 December 2020. Before the update, the guidance was limited to an unplanned presence not exceeding more than 183 days in the year 2020 from the date of arrival in Singapore. [More details on the guidance are available here](#). [Link to the official guidance here](#).

Contact: [Chester Wee](#)



The onset of the COVID-19 pandemic significantly changed the global landscape during 2020. Authorities around the world imposed travel restrictions, implemented strict quarantine measures and encouraged teleworking. In this context, many individuals faced scenarios in which it was not possible to perform their duties in their countries of employment. Furthermore, many companies had to interrupt or adjust their activities.

In April 2020, the OECD Secretariat issued an [analysis on certain tax treaty-related issues in the context of the COVID-19 crisis](#). Among other items, the OECD provided guidance on the dislocation of cross-border workers due to the COVID-19 crisis and its effects on PEs. Additionally, in December 2020, the OECD issued guidance on the transfer pricing implications of the COVID-19 pandemic. The [guidance](#) represents the consensus view of the 137 members of the Inclusive Framework on BEPS regarding the application of the arm's-length principle. Although this guidance does not expressly make any reference to PEs, it may be helpful to address cases on the allocation of profits to PEs.

In addition to the OECD guidance, countries started releasing guidance on different international tax issues arising as a consequence of COVID-19, including the application of the PE rules. In general, most of the countries follow a similar approach on the different types of PE (home office, agency PE and construction PE) as included in the OECD analysis. However, some countries differ from the general approach and set forth their own positions. For example, Germany and China differ from the general approach on construction PEs, i.e., days spent on the construction site are not taken into account for calculating the time threshold, as long as certain requirements are met.

Throughout the year in review, some countries reacted to the prolonged pandemic and updated their guidance on PEs to reflect the non-temporary nature of the COVID-19 crisis. For example, Australia, Canada, Singapore, and Germany updated their guidance to extend the application period.

As the crisis continues to unfold in 2021, the OECD Secretariat has [updated](#) the earlier guidance considering some additional fact patterns not addressed before, and examines whether the analysis and the conclusions outlined in earlier guidance continue to apply where the circumstances persist for a significant period. In addition, the guidance contains references to country practices and their guidance during the COVID-19 pandemic. Likewise, a number of countries may revisit their guidance and adjust accordingly.

Tax authorities may likely focus more on workers or other personnel operating remotely during 2021 due to COVID restrictions.

United Kingdom (UK)

In April 2020, Her Majesty's Revenue and Customs (HMRC) updated released guidance providing that HMRC does not consider that a nonresident entity will automatically have a fixed place of business PE after a short period of time as a degree of permanence is required. Further, HMRC acknowledges that while the habitual conclusion of contracts in the UK would also create a dependent agent PE in the UK, it is a matter of fact and degree as to whether that habitual condition is met.

In May 2020, HMRC updated the guidance to note that HMRC believes its guidance is consistent with the OECD Secretariat analysis published in April 2020. [More details on the guidance are available here](#). [Link to the official guidance here](#).

Contact: [Paul Macdonald](#)



The onset of the COVID-19 pandemic significantly changed the global landscape during 2020. Authorities around the world imposed travel restrictions, implemented strict quarantine measures and encouraged teleworking. In this context, many individuals faced scenarios in which it was not possible to perform their duties in their countries of employment. Furthermore, many companies had to interrupt or adjust their activities.

In April 2020, the OECD Secretariat issued an [analysis on certain tax treaty-related issues in the context of the COVID-19 crisis](#). Among other items, the OECD provided guidance on the dislocation of cross-border workers due to the COVID-19 crisis and its effects on PEs. Additionally, in December 2020, the OECD issued guidance on the transfer pricing implications of the COVID-19 pandemic. The [guidance](#) represents the consensus view of the 137 members of the Inclusive Framework on BEPS regarding the application of the arm's-length principle. Although this guidance does not expressly make any reference to PEs, it may be helpful to address cases on the allocation of profits to PEs.

In addition to the OECD guidance, countries started releasing guidance on different international tax issues arising as a consequence of COVID-19, including the application of the PE rules. In general, most of the countries follow a similar approach on the different types of PE (home office, agency PE and construction PE) as included in the OECD analysis. However, some countries differ from the general approach and set forth their own positions. For example, Germany and China differ from the general approach on construction PEs, i.e., days spent on the construction site are not taken into account for calculating the time threshold, as long as certain requirements are met.

Throughout the year in review, some countries reacted to the prolonged pandemic and updated their guidance on PEs to reflect the non-temporary nature of the COVID-19 crisis. For example, Australia, Canada, Singapore, and Germany updated their guidance to extend the application period.

As the crisis continues to unfold in 2021, the OECD Secretariat has [updated](#) the earlier guidance considering some additional fact patterns not addressed before, and examines whether the analysis and the conclusions outlined in earlier guidance continue to apply where the circumstances persist for a significant period. In addition, the guidance contains references to country practices and their guidance during the COVID-19 pandemic. Likewise, a number of countries may revisit their guidance and adjust accordingly.

Tax authorities may likely focus more on workers or other personnel operating remotely during 2021 due to COVID restrictions.

United States (US)

In April 2020, the Internal Revenue Service (IRS) published frequently asked questions (FAQs) that provide relief for certain US business activities conducted by a nonresident alien or foreign corporation when the activities were only conducted in the US due to COVID-19-related travel disruptions. In particular, the FAQs provide that activities will not be taken into account for a period of up to 60 consecutive calendar days beginning on or after 1 February 2020, and on or before 1 April 2020 for purposes of determining whether the individual or entity is engaged in a US trade or business or has a US PE. The activities must have been performed by one or more individuals temporarily present in the US who would otherwise not have performed them in the US but for COVID-19-related travel disruptions. **More details on the guidance are available [here](#). Link to the official guidance [here](#).**

Contact: [Arlene S. Fitzpatrick](#)

While businesses may act globally, the right to tax resides in domestic law. The OECD has updated the definition of PE as a result of the BEPS project and the updated definition has been included in the 2017 OECD Model Tax Convention (OECD MTC 2017). The work from the OECD on PEs has significantly motivated a large number of jurisdictions to implement a similar definition for PEs as well as domestic rules on attribution of profits to a PE. In particular, Denmark and Portugal updated their PE definition, respectively. However, it is important to note that the PE definition still varies from country to country.

During the next year, COVID-19 may prompt some countries to update their PE definition to capture situations that are currently not covered or are unclear (e.g., home office PE and service PE).

An interesting fact to highlight during the year in review is that some OECD member countries, such as Hungary and Portugal, implemented certain elements from the PE definition included in the United Nations (UN) Model Tax Convention (UN MTC) into their domestic law. Hungary included a service PE clause in its domestic definition of place of business. Portugal went further and also updated its list of preparatory and auxiliary activities in line with the UN MTC. This means that Portugal removed the exception for use of facilities for the purpose of delivering goods or merchandise of the enterprise and broadened the agency PE definition to include an agent that maintains a deposit of goods in Portugal for their delivery on behalf of the company, even though it does not usually conclude contracts in relation to those goods nor has any intervention in the conclusion of such contracts.

Another recurrent development in 2020 relates to allocation of profits to PEs and remittance of profits. Several countries (e.g., Colombia, Ecuador, and Egypt) updated their domestic law, respectively, to deem the remittance of profits by a PE to its head office as a dividend distribution, and consequently tax such profits through a withholding tax. Moreover, a number of jurisdictions also published guidance or circulars on PEs addressing various key issues concerning the existence of a PE or the allocation of profits to a PE, e.g., Hong Kong provided guidance on e-commerce transactions and digital assets and Belgium provided its positions on the relevance of the transfer pricing guidelines for PEs.

[Click on each flag to read more](#)

Definition of PE



Taxation of PEs



Guidance on PEs



Digital PE



While businesses may act globally, the right to tax resides in domestic law. The OECD has updated the definition of PE as a result of the BEPS project and the updated definition has been included in the 2017 OECD Model Tax Convention (OECD MTC 2017). The work from the OECD on PEs has significantly motivated a large number of jurisdictions to implement a similar definition for PEs as well as domestic rules on attribution of profits to a PE. In particular, Denmark and Portugal updated their PE definition, respectively. However, it is important to note that the PE definition still varies from country to country.

During the next year, COVID-19 may prompt some countries to update their PE definition to capture situations that are currently not covered or are unclear (e.g., home office PE and service PE).

An interesting fact to highlight during the year in review is that some OECD member countries, such as Hungary and Portugal, implemented certain elements from the PE definition included in the United Nations (UN) Model Tax Convention (UN MTC) into their domestic law. Hungary included a service PE clause in its domestic definition of place of business. Portugal went further and also updated its list of preparatory and auxiliary activities in line with the UN MTC. This means that Portugal removed the exception for use of facilities for the purpose of delivering goods or merchandise of the enterprise and broadened the agency PE definition to include an agent that maintains a deposit of goods in Portugal for their delivery on behalf of the company, even though it does not usually conclude contracts in relation to those goods nor has any intervention in the conclusion of such contracts.

Another recurrent development in 2020 relates to allocation of profits to PEs and remittance of profits. Several countries (e.g., Colombia, Ecuador, and Egypt) updated their domestic law, respectively, to deem the remittance of profits by a PE to its head office as a dividend distribution, and consequently tax such profits through a withholding tax. Moreover, a number of jurisdictions also published guidance or circulars on PEs addressing various key issues concerning the existence of a PE or the allocation of profits to a PE, e.g., Hong Kong provided guidance on e-commerce transactions and digital assets and Belgium provided its positions on the relevance of the transfer pricing guidelines for PEs.

Definition of PE

Belgium

In the 2017 corporate tax reform, Belgium broadened the PE definition to align it to the OECD MTC 2017 definition with respect to the concept of “dependent agent.” This change is effective from 1 January 2020).

Contact: [Peter Moreau](#)

While businesses may act globally, the right to tax resides in domestic law. The OECD has updated the definition of PE as a result of the BEPS project and the updated definition has been included in the 2017 OECD Model Tax Convention (OECD MTC 2017). The work from the OECD on PEs has significantly motivated a large number of jurisdictions to implement a similar definition for PEs as well as domestic rules on attribution of profits to a PE. In particular, Denmark and Portugal updated their PE definition, respectively. However, it is important to note that the PE definition still varies from country to country.

During the next year, COVID-19 may prompt some countries to update their PE definition to capture situations that are currently not covered or are unclear (e.g., home office PE and service PE).

An interesting fact to highlight during the year in review is that some OECD member countries, such as Hungary and Portugal, implemented certain elements from the PE definition included in the United Nations (UN) Model Tax Convention (UN MTC) into their domestic law. Hungary included a service PE clause in its domestic definition of place of business. Portugal went further and also updated its list of preparatory and auxiliary activities in line with the UN MTC. This means that Portugal removed the exception for use of facilities for the purpose of delivering goods or merchandise of the enterprise and broadened the agency PE definition to include an agent that maintains a deposit of goods in Portugal for their delivery on behalf of the company, even though it does not usually conclude contracts in relation to those goods nor has any intervention in the conclusion of such contracts.

Another recurrent development in 2020 relates to allocation of profits to PEs and remittance of profits. Several countries (e.g., Colombia, Ecuador, and Egypt) updated their domestic law, respectively, to deem the remittance of profits by a PE to its head office as a dividend distribution, and consequently tax such profits through a withholding tax. Moreover, a number of jurisdictions also published guidance or circulars on PEs addressing various key issues concerning the existence of a PE or the allocation of profits to a PE, e.g., Hong Kong provided guidance on e-commerce transactions and digital assets and Belgium provided its positions on the relevance of the transfer pricing guidelines for PEs.

Definition of PE

Cape Verde

In April 2020, the Cape Verde Government modified the PE definition to include some of the elements from BEPS Action 7, including: an anti-fragmentation clause, the new wording of agency PE, and the definition of closely-related enterprise. These changes are applicable as from 29 April 2020.

Contact: [Antonio Neves](#)



While businesses may act globally, the right to tax resides in domestic law. The OECD has updated the definition of PE as a result of the BEPS project and the updated definition has been included in the 2017 OECD Model Tax Convention (OECD MTC 2017). The work from the OECD on PEs has significantly motivated a large number of jurisdictions to implement a similar definition for PEs as well as domestic rules on attribution of profits to a PE. In particular, Denmark and Portugal updated their PE definition, respectively. However, it is important to note that the PE definition still varies from country to country.

During the next year, COVID-19 may prompt some countries to update their PE definition to capture situations that are currently not covered or are unclear (e.g., home office PE and service PE).

An interesting fact to highlight during the year in review is that some OECD member countries, such as Hungary and Portugal, implemented certain elements from the PE definition included in the United Nations (UN) Model Tax Convention (UN MTC) into their domestic law. Hungary included a service PE clause in its domestic definition of place of business. Portugal went further and also updated its list of preparatory and auxiliary activities in line with the UN MTC. This means that Portugal removed the exception for use of facilities for the purpose of delivering goods or merchandise of the enterprise and broadened the agency PE definition to include an agent that maintains a deposit of goods in Portugal for their delivery on behalf of the company, even though it does not usually conclude contracts in relation to those goods nor has any intervention in the conclusion of such contracts.

Another recurrent development in 2020 relates to allocation of profits to PEs and remittance of profits. Several countries (e.g., Colombia, Ecuador, and Egypt) updated their domestic law, respectively, to deem the remittance of profits by a PE to its head office as a dividend distribution, and consequently tax such profits through a withholding tax. Moreover, a number of jurisdictions also published guidance or circulars on PEs addressing various key issues concerning the existence of a PE or the allocation of profits to a PE, e.g., Hong Kong provided guidance on e-commerce transactions and digital assets and Belgium provided its positions on the relevance of the transfer pricing guidelines for PEs.

Definition of PE



Chile

In February 2020, Chile introduced a definition of PE into domestic law. The definition includes the following: general definition, list of examples of what might constitute a PE, agency PE (similar to the OECD MTC 2017), the independent agent exception (similar to the OECD MTC 2014), and the specific activity exemption.

Contact: [Mariela Gonzalez](#)

While businesses may act globally, the right to tax resides in domestic law. The OECD has updated the definition of PE as a result of the BEPS project and the updated definition has been included in the 2017 OECD Model Tax Convention (OECD MTC 2017). The work from the OECD on PEs has significantly motivated a large number of jurisdictions to implement a similar definition for PEs as well as domestic rules on attribution of profits to a PE. In particular, Denmark and Portugal updated their PE definition, respectively. However, it is important to note that the PE definition still varies from country to country.

During the next year, COVID-19 may prompt some countries to update their PE definition to capture situations that are currently not covered or are unclear (e.g., home office PE and service PE).

An interesting fact to highlight during the year in review is that some OECD member countries, such as Hungary and Portugal, implemented certain elements from the PE definition included in the United Nations (UN) Model Tax Convention (UN MTC) into their domestic law. Hungary included a service PE clause in its domestic definition of place of business. Portugal went further and also updated its list of preparatory and auxiliary activities in line with the UN MTC. This means that Portugal removed the exception for use of facilities for the purpose of delivering goods or merchandise of the enterprise and broadened the agency PE definition to include an agent that maintains a deposit of goods in Portugal for their delivery on behalf of the company, even though it does not usually conclude contracts in relation to those goods nor has any intervention in the conclusion of such contracts.

Another recurrent development in 2020 relates to allocation of profits to PEs and remittance of profits. Several countries (e.g., Colombia, Ecuador, and Egypt) updated their domestic law, respectively, to deem the remittance of profits by a PE to its head office as a dividend distribution, and consequently tax such profits through a withholding tax. Moreover, a number of jurisdictions also published guidance or circulars on PEs addressing various key issues concerning the existence of a PE or the allocation of profits to a PE, e.g., Hong Kong provided guidance on e-commerce transactions and digital assets and Belgium provided its positions on the relevance of the transfer pricing guidelines for PEs.

Definition of PE

Curacao

The updated PE definition became applicable as from 1 January 2020. The updated definition includes the following provisions from the OECD MTC 2017: list of examples of what might constitute a PE, construction PE if it lasts more than 183 days, splitting-up contracts, specific activity exemptions, anti-fragmentation clause, agency PE, and independent agent exception. According to the explanatory notes underlying to the Curaçao profit tax legislation, the OECD MTC 2017 and its commentary can be relied upon to interpret Curaçao's domestic PE definition. In addition, activities carried out in the territorial waters or the Exclusive Economic Zone of Curaçao are deemed to be carried out through a PE, unless such activities do not exceed a duration of 30 days in a 12-month period or fall within the scope of the specific activity exemptions.

Contact: [Terrence Melendez](#)

While businesses may act globally, the right to tax resides in domestic law. The OECD has updated the definition of PE as a result of the BEPS project and the updated definition has been included in the 2017 OECD Model Tax Convention (OECD MTC 2017). The work from the OECD on PEs has significantly motivated a large number of jurisdictions to implement a similar definition for PEs as well as domestic rules on attribution of profits to a PE. In particular, Denmark and Portugal updated their PE definition, respectively. However, it is important to note that the PE definition still varies from country to country.

During the next year, COVID-19 may prompt some countries to update their PE definition to capture situations that are currently not covered or are unclear (e.g., home office PE and service PE).

An interesting fact to highlight during the year in review is that some OECD member countries, such as Hungary and Portugal, implemented certain elements from the PE definition included in the United Nations (UN) Model Tax Convention (UN MTC) into their domestic law. Hungary included a service PE clause in its domestic definition of place of business. Portugal went further and also updated its list of preparatory and auxiliary activities in line with the UN MTC. This means that Portugal removed the exception for use of facilities for the purpose of delivering goods or merchandise of the enterprise and broadened the agency PE definition to include an agent that maintains a deposit of goods in Portugal for their delivery on behalf of the company, even though it does not usually conclude contracts in relation to those goods nor has any intervention in the conclusion of such contracts.

Another recurrent development in 2020 relates to allocation of profits to PEs and remittance of profits. Several countries (e.g., Colombia, Ecuador, and Egypt) updated their domestic law, respectively, to deem the remittance of profits by a PE to its head office as a dividend distribution, and consequently tax such profits through a withholding tax. Moreover, a number of jurisdictions also published guidance or circulars on PEs addressing various key issues concerning the existence of a PE or the allocation of profits to a PE, e.g., Hong Kong provided guidance on e-commerce transactions and digital assets and Belgium provided its positions on the relevance of the transfer pricing guidelines for PEs.

Definition of PE



Denmark

In December 2020, Denmark amended the definition of PE to align it with the new definition set out in Article 5 of the OECD MTC 2017, inter alia, broadening the agency PE rule and establishing an anti-fragmentation rule. The Law is effective from 1 January 2021.

Contact: [Malte Soegaard](#)

While businesses may act globally, the right to tax resides in domestic law. The OECD has updated the definition of PE as a result of the BEPS project and the updated definition has been included in the 2017 OECD Model Tax Convention (OECD MTC 2017). The work from the OECD on PEs has significantly motivated a large number of jurisdictions to implement a similar definition for PEs as well as domestic rules on attribution of profits to a PE. In particular, Denmark and Portugal updated their PE definition, respectively. However, it is important to note that the PE definition still varies from country to country.

During the next year, COVID-19 may prompt some countries to update their PE definition to capture situations that are currently not covered or are unclear (e.g., home office PE and service PE).

An interesting fact to highlight during the year in review is that some OECD member countries, such as Hungary and Portugal, implemented certain elements from the PE definition included in the United Nations (UN) Model Tax Convention (UN MTC) into their domestic law. Hungary included a service PE clause in its domestic definition of place of business. Portugal went further and also updated its list of preparatory and auxiliary activities in line with the UN MTC. This means that Portugal removed the exception for use of facilities for the purpose of delivering goods or merchandise of the enterprise and broadened the agency PE definition to include an agent that maintains a deposit of goods in Portugal for their delivery on behalf of the company, even though it does not usually conclude contracts in relation to those goods nor has any intervention in the conclusion of such contracts.

Another recurrent development in 2020 relates to allocation of profits to PEs and remittance of profits. Several countries (e.g., Colombia, Ecuador, and Egypt) updated their domestic law, respectively, to deem the remittance of profits by a PE to its head office as a dividend distribution, and consequently tax such profits through a withholding tax. Moreover, a number of jurisdictions also published guidance or circulars on PEs addressing various key issues concerning the existence of a PE or the allocation of profits to a PE, e.g., Hong Kong provided guidance on e-commerce transactions and digital assets and Belgium provided its positions on the relevance of the transfer pricing guidelines for PEs.

Definition of PE

Hungary

In November 2020, Hungary introduced a service PE provision for the furnishing of services by a nonresident entity in Hungary, but only if the services continue for a period of more than 183 days in any 12-month period. Further, Hungary included a contract splitting rule for services whereby contracts for related projects are artificially split to prevent meeting the time threshold. The Law is effective from 1 January 2021.

Contact: [Miklos Santa](#)



While businesses may act globally, the right to tax resides in domestic law. The OECD has updated the definition of PE as a result of the BEPS project and the updated definition has been included in the 2017 OECD Model Tax Convention (OECD MTC 2017). The work from the OECD on PEs has significantly motivated a large number of jurisdictions to implement a similar definition for PEs as well as domestic rules on attribution of profits to a PE. In particular, Denmark and Portugal updated their PE definition, respectively. However, it is important to note that the PE definition still varies from country to country.

During the next year, COVID-19 may prompt some countries to update their PE definition to capture situations that are currently not covered or are unclear (e.g., home office PE and service PE).

An interesting fact to highlight during the year in review is that some OECD member countries, such as Hungary and Portugal, implemented certain elements from the PE definition included in the United Nations (UN) Model Tax Convention (UN MTC) into their domestic law. Hungary included a service PE clause in its domestic definition of place of business. Portugal went further and also updated its list of preparatory and auxiliary activities in line with the UN MTC. This means that Portugal removed the exception for use of facilities for the purpose of delivering goods or merchandise of the enterprise and broadened the agency PE definition to include an agent that maintains a deposit of goods in Portugal for their delivery on behalf of the company, even though it does not usually conclude contracts in relation to those goods nor has any intervention in the conclusion of such contracts.

Another recurrent development in 2020 relates to allocation of profits to PEs and remittance of profits. Several countries (e.g., Colombia, Ecuador, and Egypt) updated their domestic law, respectively, to deem the remittance of profits by a PE to its head office as a dividend distribution, and consequently tax such profits through a withholding tax. Moreover, a number of jurisdictions also published guidance or circulars on PEs addressing various key issues concerning the existence of a PE or the allocation of profits to a PE, e.g., Hong Kong provided guidance on e-commerce transactions and digital assets and Belgium provided its positions on the relevance of the transfer pricing guidelines for PEs.

Definition of PE

Mexico

As from 1 January 2020, the updated PE definition becomes applicable. The updated PE definition is consistent with the PE definition in the OECD MTC 2017.

Contact: [Enrique Perez Grovas](#)



While businesses may act globally, the right to tax resides in domestic law. The OECD has updated the definition of PE as a result of the BEPS project and the updated definition has been included in the 2017 OECD Model Tax Convention (OECD MTC 2017). The work from the OECD on PEs has significantly motivated a large number of jurisdictions to implement a similar definition for PEs as well as domestic rules on attribution of profits to a PE. In particular, Denmark and Portugal updated their PE definition, respectively. However, it is important to note that the PE definition still varies from country to country.

During the next year, COVID-19 may prompt some countries to update their PE definition to capture situations that are currently not covered or are unclear (e.g., home office PE and service PE).

An interesting fact to highlight during the year in review is that some OECD member countries, such as Hungary and Portugal, implemented certain elements from the PE definition included in the United Nations (UN) Model Tax Convention (UN MTC) into their domestic law. Hungary included a service PE clause in its domestic definition of place of business. Portugal went further and also updated its list of preparatory and auxiliary activities in line with the UN MTC. This means that Portugal removed the exception for use of facilities for the purpose of delivering goods or merchandise of the enterprise and broadened the agency PE definition to include an agent that maintains a deposit of goods in Portugal for their delivery on behalf of the company, even though it does not usually conclude contracts in relation to those goods nor has any intervention in the conclusion of such contracts.

Another recurrent development in 2020 relates to allocation of profits to PEs and remittance of profits. Several countries (e.g., Colombia, Ecuador, and Egypt) updated their domestic law, respectively, to deem the remittance of profits by a PE to its head office as a dividend distribution, and consequently tax such profits through a withholding tax. Moreover, a number of jurisdictions also published guidance or circulars on PEs addressing various key issues concerning the existence of a PE or the allocation of profits to a PE, e.g., Hong Kong provided guidance on e-commerce transactions and digital assets and Belgium provided its positions on the relevance of the transfer pricing guidelines for PEs.

Definition of PE



Portugal

In December 2020, Portugal updated its PE definition to include, among others, the following: i) Introduction of a Service PE clause; ii) Agency PE (similar to the OECD MTC 2017); iii) Introduction of an anti-fragmentation rule; iv) Removal from the list of preparatory and auxiliary "the use of facilities for the purpose of delivering goods or merchandise of the enterprise. The Law is effective from 1 January 2021. [More details are available here.](#)

Contact: [Antonio Neves](#)

While businesses may act globally, the right to tax resides in domestic law. The OECD has updated the definition of PE as a result of the BEPS project and the updated definition has been included in the 2017 OECD Model Tax Convention (OECD MTC 2017). The work from the OECD on PEs has significantly motivated a large number of jurisdictions to implement a similar definition for PEs as well as domestic rules on attribution of profits to a PE. In particular, Denmark and Portugal updated their PE definition, respectively. However, it is important to note that the PE definition still varies from country to country.

During the next year, COVID-19 may prompt some countries to update their PE definition to capture situations that are currently not covered or are unclear (e.g., home office PE and service PE).

An interesting fact to highlight during the year in review is that some OECD member countries, such as Hungary and Portugal, implemented certain elements from the PE definition included in the United Nations (UN) Model Tax Convention (UN MTC) into their domestic law. Hungary included a service PE clause in its domestic definition of place of business. Portugal went further and also updated its list of preparatory and auxiliary activities in line with the UN MTC. This means that Portugal removed the exception for use of facilities for the purpose of delivering goods or merchandise of the enterprise and broadened the agency PE definition to include an agent that maintains a deposit of goods in Portugal for their delivery on behalf of the company, even though it does not usually conclude contracts in relation to those goods nor has any intervention in the conclusion of such contracts.

Another recurrent development in 2020 relates to allocation of profits to PEs and remittance of profits. Several countries (e.g., Colombia, Ecuador, and Egypt) updated their domestic law, respectively, to deem the remittance of profits by a PE to its head office as a dividend distribution, and consequently tax such profits through a withholding tax. Moreover, a number of jurisdictions also published guidance or circulars on PEs addressing various key issues concerning the existence of a PE or the allocation of profits to a PE, e.g., Hong Kong provided guidance on e-commerce transactions and digital assets and Belgium provided its positions on the relevance of the transfer pricing guidelines for PEs.

Taxation of PEs



Egypt

In September 2020, Egypt amended its Income Tax Law to increase the withholding tax rate on net profits realized by a nonresident company through a PE in Egypt from 5% to 10%. The net profits are deemed to be distributed, and subject to tax, within 60 days from the PE's financial year end. The law is effective from 30 September 2020.

Contact: [Vuk Vuksanovic](#)

While businesses may act globally, the right to tax resides in domestic law. The OECD has updated the definition of PE as a result of the BEPS project and the updated definition has been included in the 2017 OECD Model Tax Convention (OECD MTC 2017). The work from the OECD on PEs has significantly motivated a large number of jurisdictions to implement a similar definition for PEs as well as domestic rules on attribution of profits to a PE. In particular, Denmark and Portugal updated their PE definition, respectively. However, it is important to note that the PE definition still varies from country to country.

During the next year, COVID-19 may prompt some countries to update their PE definition to capture situations that are currently not covered or are unclear (e.g., home office PE and service PE).

An interesting fact to highlight during the year in review is that some OECD member countries, such as Hungary and Portugal, implemented certain elements from the PE definition included in the United Nations (UN) Model Tax Convention (UN MTC) into their domestic law. Hungary included a service PE clause in its domestic definition of place of business. Portugal went further and also updated its list of preparatory and auxiliary activities in line with the UN MTC. This means that Portugal removed the exception for use of facilities for the purpose of delivering goods or merchandise of the enterprise and broadened the agency PE definition to include an agent that maintains a deposit of goods in Portugal for their delivery on behalf of the company, even though it does not usually conclude contracts in relation to those goods nor has any intervention in the conclusion of such contracts.

Another recurrent development in 2020 relates to allocation of profits to PEs and remittance of profits. Several countries (e.g., Colombia, Ecuador, and Egypt) updated their domestic law, respectively, to deem the remittance of profits by a PE to its head office as a dividend distribution, and consequently tax such profits through a withholding tax. Moreover, a number of jurisdictions also published guidance or circulars on PEs addressing various key issues concerning the existence of a PE or the allocation of profits to a PE, e.g., Hong Kong provided guidance on e-commerce transactions and digital assets and Belgium provided its positions on the relevance of the transfer pricing guidelines for PEs.

Taxation of PEs



Colombia

In July 2020, Colombia issued a Decree that, among other items, clarifies that profits attributable to a PE and distributed to its head office are subject to dividend tax. Further, the Decree amends a number of regulations to adjust the taxation of PEs to not only cover Colombian source income attributable to the PE but also foreign source income.

Contact: [Luis Sanchez](#)

While businesses may act globally, the right to tax resides in domestic law. The OECD has updated the definition of PE as a result of the BEPS project and the updated definition has been included in the 2017 OECD Model Tax Convention (OECD MTC 2017). The work from the OECD on PEs has significantly motivated a large number of jurisdictions to implement a similar definition for PEs as well as domestic rules on attribution of profits to a PE. In particular, Denmark and Portugal updated their PE definition, respectively. However, it is important to note that the PE definition still varies from country to country.

During the next year, COVID-19 may prompt some countries to update their PE definition to capture situations that are currently not covered or are unclear (e.g., home office PE and service PE).

An interesting fact to highlight during the year in review is that some OECD member countries, such as Hungary and Portugal, implemented certain elements from the PE definition included in the United Nations (UN) Model Tax Convention (UN MTC) into their domestic law. Hungary included a service PE clause in its domestic definition of place of business. Portugal went further and also updated its list of preparatory and auxiliary activities in line with the UN MTC. This means that Portugal removed the exception for use of facilities for the purpose of delivering goods or merchandise of the enterprise and broadened the agency PE definition to include an agent that maintains a deposit of goods in Portugal for their delivery on behalf of the company, even though it does not usually conclude contracts in relation to those goods nor has any intervention in the conclusion of such contracts.

Another recurrent development in 2020 relates to allocation of profits to PEs and remittance of profits. Several countries (e.g., Colombia, Ecuador, and Egypt) updated their domestic law, respectively, to deem the remittance of profits by a PE to its head office as a dividend distribution, and consequently tax such profits through a withholding tax. Moreover, a number of jurisdictions also published guidance or circulars on PEs addressing various key issues concerning the existence of a PE or the allocation of profits to a PE, e.g., Hong Kong provided guidance on e-commerce transactions and digital assets and Belgium provided its positions on the relevance of the transfer pricing guidelines for PEs.

Taxation of PEs



Ecuador

In July 2020, Ecuador published a Decree which, inter alia, deems the remittance of profits by a PE in Ecuador to its head office as a dividend distribution, and consequently such profits are subject to withholding tax at a 10% rate and 14% when the reporting of the ownership structure of the group is not fulfilled. The deemed dividend distributions from PEs to their head offices occur at the time the corporate income tax return of the PE is due (i.e., every year in April).

Contact: [Carlos Cazar](#)

While businesses may act globally, the right to tax resides in domestic law. The OECD has updated the definition of PE as a result of the BEPS project and the updated definition has been included in the 2017 OECD Model Tax Convention (OECD MTC 2017). The work from the OECD on PEs has significantly motivated a large number of jurisdictions to implement a similar definition for PEs as well as domestic rules on attribution of profits to a PE. In particular, Denmark and Portugal updated their PE definition, respectively. However, it is important to note that the PE definition still varies from country to country.

During the next year, COVID-19 may prompt some countries to update their PE definition to capture situations that are currently not covered or are unclear (e.g., home office PE and service PE).

An interesting fact to highlight during the year in review is that some OECD member countries, such as Hungary and Portugal, implemented certain elements from the PE definition included in the United Nations (UN) Model Tax Convention (UN MTC) into their domestic law. Hungary included a service PE clause in its domestic definition of place of business. Portugal went further and also updated its list of preparatory and auxiliary activities in line with the UN MTC. This means that Portugal removed the exception for use of facilities for the purpose of delivering goods or merchandise of the enterprise and broadened the agency PE definition to include an agent that maintains a deposit of goods in Portugal for their delivery on behalf of the company, even though it does not usually conclude contracts in relation to those goods nor has any intervention in the conclusion of such contracts.

Another recurrent development in 2020 relates to allocation of profits to PEs and remittance of profits. Several countries (e.g., Colombia, Ecuador, and Egypt) updated their domestic law, respectively, to deem the remittance of profits by a PE to its head office as a dividend distribution, and consequently tax such profits through a withholding tax. Moreover, a number of jurisdictions also published guidance or circulars on PEs addressing various key issues concerning the existence of a PE or the allocation of profits to a PE, e.g., Hong Kong provided guidance on e-commerce transactions and digital assets and Belgium provided its positions on the relevance of the transfer pricing guidelines for PEs.

Taxation of PEs



Portugal

In December 2020, Portugal extended the PE “force of attraction” by including income earned by a nonresident entity from the sale of goods to Portuguese residents identical or similar to those sold through a PE in Portugal in the calculation of the profit attributable to the PE of the nonresident entity. The Law is effective from 1 January 2021.

Contact: [Antonio Neves](#)

While businesses may act globally, the right to tax resides in domestic law. The OECD has updated the definition of PE as a result of the BEPS project and the updated definition has been included in the 2017 OECD Model Tax Convention (OECD MTC 2017). The work from the OECD on PEs has significantly motivated a large number of jurisdictions to implement a similar definition for PEs as well as domestic rules on attribution of profits to a PE. In particular, Denmark and Portugal updated their PE definition, respectively. However, it is important to note that the PE definition still varies from country to country.

During the next year, COVID-19 may prompt some countries to update their PE definition to capture situations that are currently not covered or are unclear (e.g., home office PE and service PE).

An interesting fact to highlight during the year in review is that some OECD member countries, such as Hungary and Portugal, implemented certain elements from the PE definition included in the United Nations (UN) Model Tax Convention (UN MTC) into their domestic law. Hungary included a service PE clause in its domestic definition of place of business. Portugal went further and also updated its list of preparatory and auxiliary activities in line with the UN MTC. This means that Portugal removed the exception for use of facilities for the purpose of delivering goods or merchandise of the enterprise and broadened the agency PE definition to include an agent that maintains a deposit of goods in Portugal for their delivery on behalf of the company, even though it does not usually conclude contracts in relation to those goods nor has any intervention in the conclusion of such contracts.

Another recurrent development in 2020 relates to allocation of profits to PEs and remittance of profits. Several countries (e.g., Colombia, Ecuador, and Egypt) updated their domestic law, respectively, to deem the remittance of profits by a PE to its head office as a dividend distribution, and consequently tax such profits through a withholding tax. Moreover, a number of jurisdictions also published guidance or circulars on PEs addressing various key issues concerning the existence of a PE or the allocation of profits to a PE, e.g., Hong Kong provided guidance on e-commerce transactions and digital assets and Belgium provided its positions on the relevance of the transfer pricing guidelines for PEs.

Guidance on PEs

Belgium

In February 2020, the Belgian Tax Authorities ('BTA') issued a circular (Circular 2020/C/35) with guidance on transfer pricing matters, generally applicable to transactions as of 1 January 2018. Among other items, the circular provides confirmation that the BTA follows the Authorized OECD Approach (AOA) for the attribution of profits between the head office and its PE(s). For the attribution of free capital to a PE, the BTA expresses its preference for the use of the "capital allocation approach" from the several methods suggested by the OECD. In addition, the circular also highlights some key differences in the treatment of interest and royalty payments between the head office and PE. **More details are available [here](#).**

Contact: [Peter Moreau](#)

While businesses may act globally, the right to tax resides in domestic law. The OECD has updated the definition of PE as a result of the BEPS project and the updated definition has been included in the 2017 OECD Model Tax Convention (OECD MTC 2017). The work from the OECD on PEs has significantly motivated a large number of jurisdictions to implement a similar definition for PEs as well as domestic rules on attribution of profits to a PE. In particular, Denmark and Portugal updated their PE definition, respectively. However, it is important to note that the PE definition still varies from country to country.

During the next year, COVID-19 may prompt some countries to update their PE definition to capture situations that are currently not covered or are unclear (e.g., home office PE and service PE).

An interesting fact to highlight during the year in review is that some OECD member countries, such as Hungary and Portugal, implemented certain elements from the PE definition included in the United Nations (UN) Model Tax Convention (UN MTC) into their domestic law. Hungary included a service PE clause in its domestic definition of place of business. Portugal went further and also updated its list of preparatory and auxiliary activities in line with the UN MTC. This means that Portugal removed the exception for use of facilities for the purpose of delivering goods or merchandise of the enterprise and broadened the agency PE definition to include an agent that maintains a deposit of goods in Portugal for their delivery on behalf of the company, even though it does not usually conclude contracts in relation to those goods nor has any intervention in the conclusion of such contracts.

Another recurrent development in 2020 relates to allocation of profits to PEs and remittance of profits. Several countries (e.g., Colombia, Ecuador, and Egypt) updated their domestic law, respectively, to deem the remittance of profits by a PE to its head office as a dividend distribution, and consequently tax such profits through a withholding tax. Moreover, a number of jurisdictions also published guidance or circulars on PEs addressing various key issues concerning the existence of a PE or the allocation of profits to a PE, e.g., Hong Kong provided guidance on e-commerce transactions and digital assets and Belgium provided its positions on the relevance of the transfer pricing guidelines for PEs.

Guidance on PEs



Hong Kong

In March 2020, Hong Kong issued guidance on e-commerce PEs and the attribution of profits to those PEs. The Practice Note provides that a server or datacenter in Hong Kong, at the disposal of a nonresident enterprise, may constitute a PE if such equipment is capable of concluding contracts, processing payments or delivering digital goods in Hong Kong even without the involvement of human activities in Hong Kong. [More details are available here.](#)

Contact: [Rex Lo](#)

While businesses may act globally, the right to tax resides in domestic law. The OECD has updated the definition of PE as a result of the BEPS project and the updated definition has been included in the 2017 OECD Model Tax Convention (OECD MTC 2017). The work from the OECD on PEs has significantly motivated a large number of jurisdictions to implement a similar definition for PEs as well as domestic rules on attribution of profits to a PE. In particular, Denmark and Portugal updated their PE definition, respectively. However, it is important to note that the PE definition still varies from country to country.

During the next year, COVID-19 may prompt some countries to update their PE definition to capture situations that are currently not covered or are unclear (e.g., home office PE and service PE).

An interesting fact to highlight during the year in review is that some OECD member countries, such as Hungary and Portugal, implemented certain elements from the PE definition included in the United Nations (UN) Model Tax Convention (UN MTC) into their domestic law. Hungary included a service PE clause in its domestic definition of place of business. Portugal went further and also updated its list of preparatory and auxiliary activities in line with the UN MTC. This means that Portugal removed the exception for use of facilities for the purpose of delivering goods or merchandise of the enterprise and broadened the agency PE definition to include an agent that maintains a deposit of goods in Portugal for their delivery on behalf of the company, even though it does not usually conclude contracts in relation to those goods nor has any intervention in the conclusion of such contracts.

Another recurrent development in 2020 relates to allocation of profits to PEs and remittance of profits. Several countries (e.g., Colombia, Ecuador, and Egypt) updated their domestic law, respectively, to deem the remittance of profits by a PE to its head office as a dividend distribution, and consequently tax such profits through a withholding tax. Moreover, a number of jurisdictions also published guidance or circulars on PEs addressing various key issues concerning the existence of a PE or the allocation of profits to a PE, e.g., Hong Kong provided guidance on e-commerce transactions and digital assets and Belgium provided its positions on the relevance of the transfer pricing guidelines for PEs.

Guidance on PEs

Malaysia

In May 2020, Malaysia published Guidelines on determining the “place of business” (permanent establishment in Malaysia) of a person in Malaysia. The Guidelines provide guidance and examples on the determination of a place of business in the following categories: (a) a physical place of business; (b) preparatory or auxiliary activities; (c) a building site, construction, installation, assembly and supervisory activities; and, (d) an agent as place of business. **More details are available [here](#).**

Contact: [Anil Kumar Puri](#)



While businesses may act globally, the right to tax resides in domestic law. The OECD has updated the definition of PE as a result of the BEPS project and the updated definition has been included in the 2017 OECD Model Tax Convention (OECD MTC 2017). The work from the OECD on PEs has significantly motivated a large number of jurisdictions to implement a similar definition for PEs as well as domestic rules on attribution of profits to a PE. In particular, Denmark and Portugal updated their PE definition, respectively. However, it is important to note that the PE definition still varies from country to country.

During the next year, COVID-19 may prompt some countries to update their PE definition to capture situations that are currently not covered or are unclear (e.g., home office PE and service PE).

An interesting fact to highlight during the year in review is that some OECD member countries, such as Hungary and Portugal, implemented certain elements from the PE definition included in the United Nations (UN) Model Tax Convention (UN MTC) into their domestic law. Hungary included a service PE clause in its domestic definition of place of business. Portugal went further and also updated its list of preparatory and auxiliary activities in line with the UN MTC. This means that Portugal removed the exception for use of facilities for the purpose of delivering goods or merchandise of the enterprise and broadened the agency PE definition to include an agent that maintains a deposit of goods in Portugal for their delivery on behalf of the company, even though it does not usually conclude contracts in relation to those goods nor has any intervention in the conclusion of such contracts.

Another recurrent development in 2020 relates to allocation of profits to PEs and remittance of profits. Several countries (e.g., Colombia, Ecuador, and Egypt) updated their domestic law, respectively, to deem the remittance of profits by a PE to its head office as a dividend distribution, and consequently tax such profits through a withholding tax. Moreover, a number of jurisdictions also published guidance or circulars on PEs addressing various key issues concerning the existence of a PE or the allocation of profits to a PE, e.g., Hong Kong provided guidance on e-commerce transactions and digital assets and Belgium provided its positions on the relevance of the transfer pricing guidelines for PEs.

Digital PE



Indonesia

In March 2020, the Indonesian Government introduced a new concept of digital permanent establishment. International sellers, international service providers, or international e-commerce platform providers meeting the significant economic presence criteria can be deemed to have a PE and subject to income tax in Indonesia. If the permanent establishment definition under a treaty overrides this domestic law, an electronic transaction tax (ETT) is imposed to tax income sourced from Indonesia. Implementing regulations in respect of the types of transactions, significant economic presence criteria, rate of ETT and other administrative arrangements have not been issued yet. **More details are available [here](#).**

Contact: [Puspitasari Sahal](#)

While businesses may act globally, the right to tax resides in domestic law. The OECD has updated the definition of PE as a result of the BEPS project and the updated definition has been included in the 2017 OECD Model Tax Convention (OECD MTC 2017). The work from the OECD on PEs has significantly motivated a large number of jurisdictions to implement a similar definition for PEs as well as domestic rules on attribution of profits to a PE. In particular, Denmark and Portugal updated their PE definition, respectively. However, it is important to note that the PE definition still varies from country to country.

During the next year, COVID-19 may prompt some countries to update their PE definition to capture situations that are currently not covered or are unclear (e.g., home office PE and service PE).

An interesting fact to highlight during the year in review is that some OECD member countries, such as Hungary and Portugal, implemented certain elements from the PE definition included in the United Nations (UN) Model Tax Convention (UN MTC) into their domestic law. Hungary included a service PE clause in its domestic definition of place of business. Portugal went further and also updated its list of preparatory and auxiliary activities in line with the UN MTC. This means that Portugal removed the exception for use of facilities for the purpose of delivering goods or merchandise of the enterprise and broadened the agency PE definition to include an agent that maintains a deposit of goods in Portugal for their delivery on behalf of the company, even though it does not usually conclude contracts in relation to those goods nor has any intervention in the conclusion of such contracts.

Another recurrent development in 2020 relates to allocation of profits to PEs and remittance of profits. Several countries (e.g., Colombia, Ecuador, and Egypt) updated their domestic law, respectively, to deem the remittance of profits by a PE to its head office as a dividend distribution, and consequently tax such profits through a withholding tax. Moreover, a number of jurisdictions also published guidance or circulars on PEs addressing various key issues concerning the existence of a PE or the allocation of profits to a PE, e.g., Hong Kong provided guidance on e-commerce transactions and digital assets and Belgium provided its positions on the relevance of the transfer pricing guidelines for PEs.

Digital PE



Nigeria

In May 2020, Nigeria issued an Order to introduce the concept of “Significant Economic Presence” (SEP). The Order provides guidance on how to determine whether a foreign entity has a SEP, i.e., the scope of activities and the threshold revenue to exceed.

In December 2020, the Finance Act was signed into law with an effective date of 1 January 2021. The Finance Act extends the application of SEP provisions to nonresident individuals, executors or trustees deriving profit from trade or businesses, such as provision of technical, management, consultancy or professional services to individual’s resident in Nigeria. However, the Ministry of Finance is yet to issue further regulations on the SEP provisions, including what constitutes a SEP of a nonresident individual, executor or trustee to nonresident individuals. **More details are available [here](#).**

Contact: [Akinbiyi A Abudu](#)

BEPS Multilateral instrument and Model Tax Conventions

In 2020, neither the [OECD](#) nor the UN published an updated version of their respective MTCs. However, the UN Committee of Experts on International Cooperation in Tax Matters, during the 21st session in October 2020, approved a number of changes to the UN MTC, including a clarification that registration for Value Added Tax/Goods and Services Tax purposes is not relevant for determining a PE for corporate income tax purposes under a tax treaty, as well as the suggestions for future work on the UN MTC, e.g., insurance activities.

There were also developments with respect to the BEPS Multilateral Instrument (MLI). The MLI includes rules to prevent the avoidance of PEs, such as: i) commissionaire arrangements; ii) exploitation of the specific activity exceptions to the PE definition; and iii) abuse of splitting-up contracts. The MLI will be applied alongside existing tax treaties, modifying their application in order to implement the BEPS measures.

For the MLI to apply to a tax treaty, a number of matches or combinations are required. For example, both tax treaty parties must have signed the MLI, deposited the instrument of ratification and listed the

respective treaty as a covered tax agreement (CTA). Further, there needs to be a match between the positions of both countries with respect to the relevant MLI provision and at the level of the notification.

As of the end of 2020, the MLI has been signed by 95 jurisdictions and has entered into force for 49 jurisdictions. In relation to the PE positions made by the countries signing the MLI, 31 jurisdictions chose to apply all of the PE articles of the MLI, 30 jurisdictions chose some of the PE articles of the MLI and 34 jurisdictions made a reservation on all the PE articles of the MLI. A closer look at the PE positions shows that only 49% of jurisdictions chose to apply Article 12 (agency PE), 58% of jurisdictions chose to apply Article 13 (specific activity exemptions) and only 36% of jurisdictions chose to apply Article 14 (splitting-up of contracts).

During the next year, it is anticipated that more jurisdictions will sign the MLI and also will be depositing their instrument of ratification of the MLI with the OECD. This will significantly increase the number of CTAs that the MLI may apply to.



[Click on the map for more details on the MLI](#)



BEPS multilateral instrument

[Deposits](#)

[Entry into force](#)

[General overview PE positions](#)

[Article 12 \(agency PE\)](#)

[Article 13 \(specific activity exemptions\)](#)

[Article 14 \(contract splitting rule\)](#)

Click on each box to read more



Deposits

Entry into force

General overview
PE positions

Article 12
(agency PE)

Article 13
(specific activity
exemptions)

Article 14
(contract splitting
rule)

Countries that have deposited their instrument of ratification of the MLI in 2020

Jurisdiction	Date of deposit
Albania	22 September 2020
Barbados	21 December 2020
Bosnia and Herzegovina	16 September 2020
Burkina Faso	30 October 2020
Chile	26 November 2020
Costa Rica	22 September 2020
Cyprus	23 January 2020
Czech Republic	13 May 2020
Egypt	30 September 2020
Germany	18 December 2020
Indonesia	28 April 2020
Jordan	29 September 2020
Kazakhstan	24 June 2020
Korea	13 May 2020
Oman	7 July 2020
Pakistan	18 December 2020
Panama	5 November 2020
Portugal	28 February 2020
San Marino	11 March 2020
Saudi Arabia	23 January 2020
Uruguay	6 February 2020



Deposits

Entry into force

General overview
PE positions

Article 12
(agency PE)

Article 13
(specific activity
exemptions)

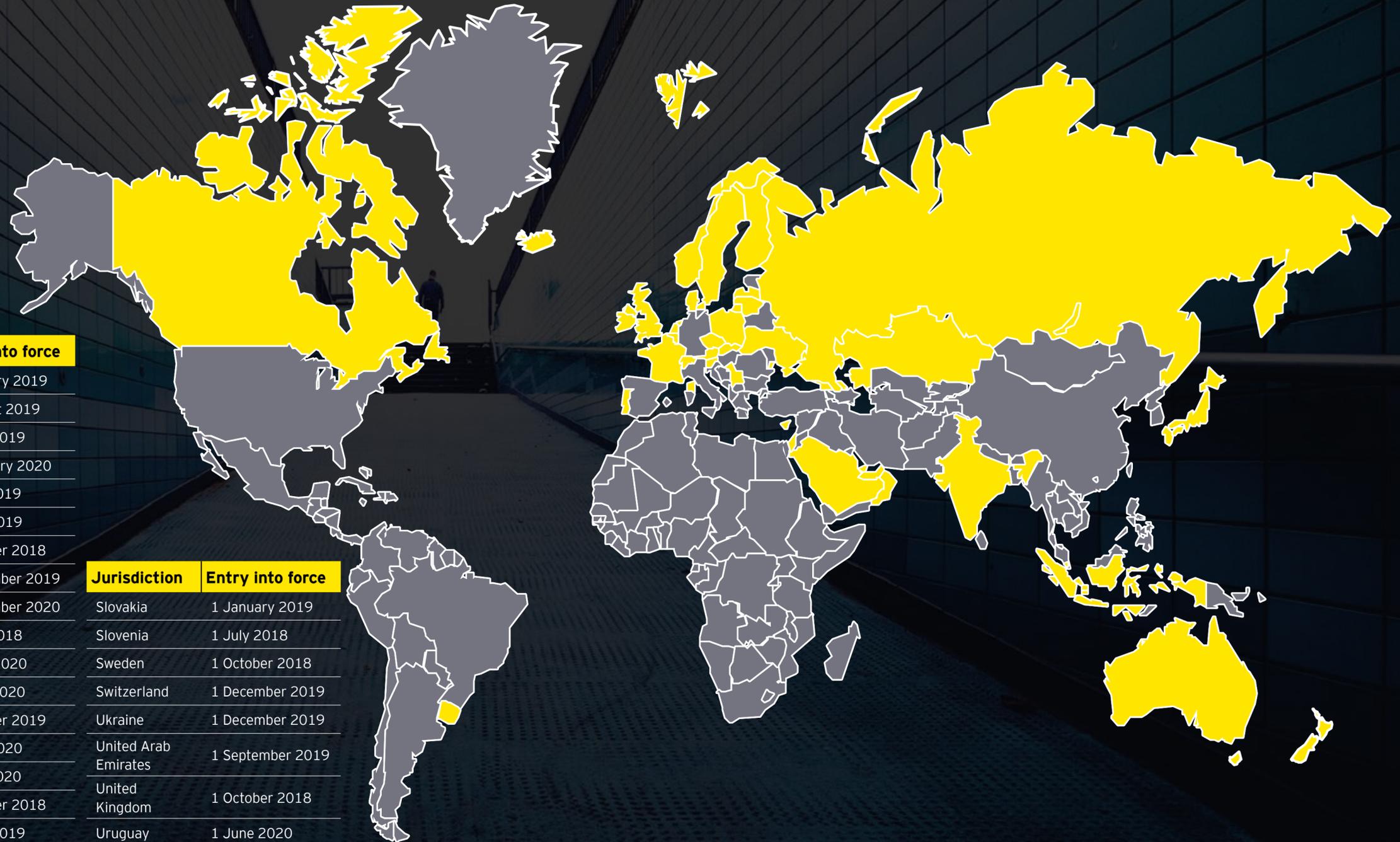
Article 14
(contract splitting
rule)

**As of 31 December 2020,
the MLI has entered into
force for 49 jurisdictions**

Jurisdiction	Entry into force
Australia	1 January 2019
Austria	1 July 2018
Belgium	1 October 2019
Canada	1 December 2019
Curaçao	1 July 2019
Cyprus	1 May 2020
Czech Republic	1 September 2020
Denmark	1 January 2020
Finland	1 June 2019
France	1 January 2019
Georgia	1 July 2019
Guernsey	1 June 2019
Iceland	1 January 2020
India	1 October 2019
Indonesia	1 August 2020
Ireland	1 May 2019
Isle of Man	1 July 2018
Israel	1 January 2019
Japan	1 January 2019
Jersey	1 July 2018
Kazakhstan	1 October 2020
Korea	1 September 2020
Latvia	1 February 2020
Liechtenstein	1 April 2020

Jurisdiction	Entry into force
Lithuania	1 January 2019
Luxembourg	1 August 2019
Malta	1 April 2019
Mauritius	1 February 2020
Monaco	1 May 2019
Netherlands	1 July 2019
New Zealand	1 October 2018
Norway	1 November 2019
Oman	1 November 2020
Poland	1 July 2018
Portugal	1 June 2020
Qatar	1 April 2020
Russia	1 October 2019
San Marino	1 July 2020
Saudi Arabia	1 May 2020
Serbia	1 October 2018
Singapore	1 April 2019

Jurisdiction	Entry into force
Slovakia	1 January 2019
Slovenia	1 July 2018
Sweden	1 October 2018
Switzerland	1 December 2019
Ukraine	1 December 2019
United Arab Emirates	1 September 2019
United Kingdom	1 October 2018
Uruguay	1 June 2020



Entry into force

Deposits

Entry into force

**General overview
PE positions**

Article 12
(agency PE)

Article 13
(specific activity
exemptions)

Article 14
(contract splitting
rule)

As of 31 December 2020

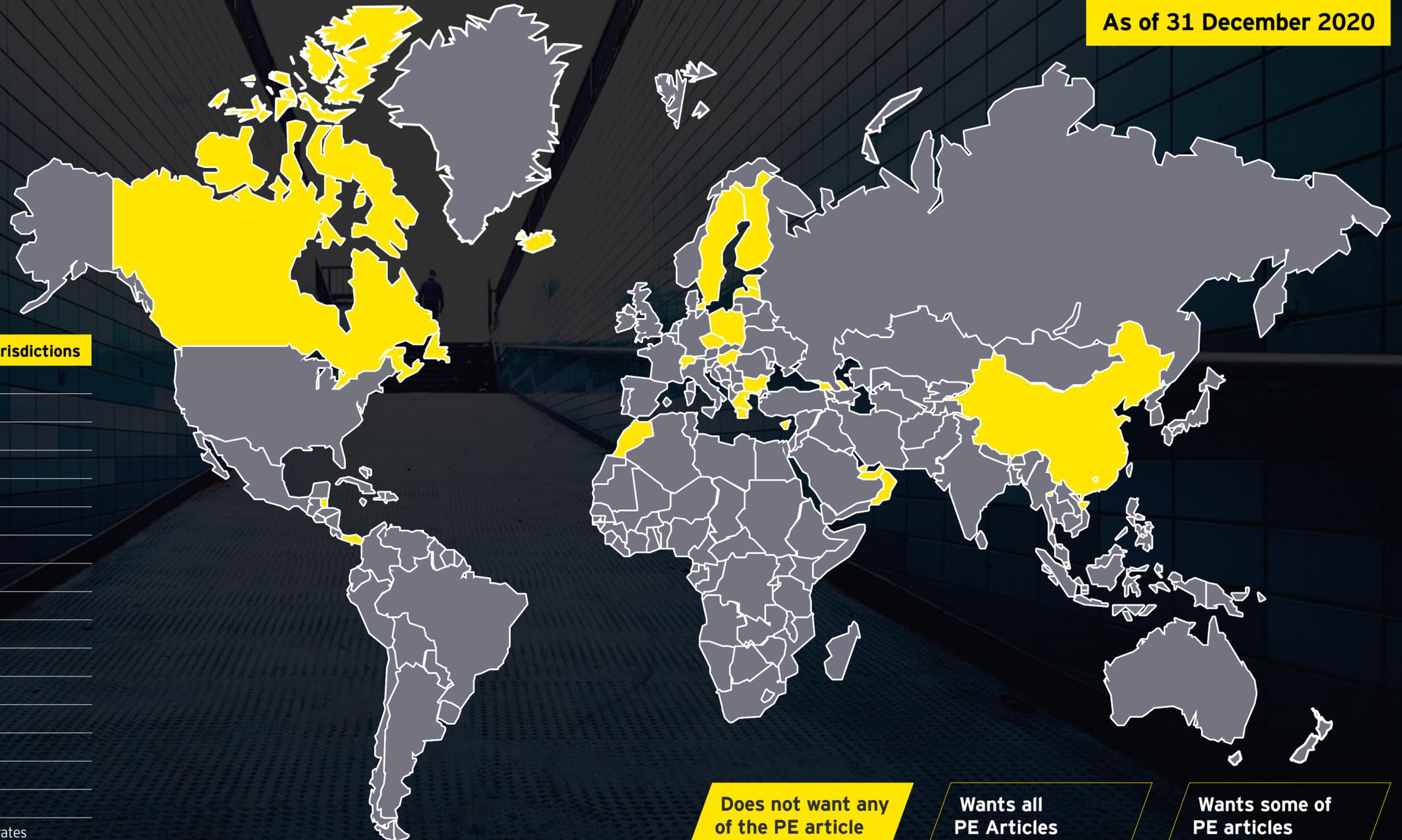
General overview PE positions of the MLI

Highlighted Jurisdictions

- Andorra
- Bahrain
- Barbados
- Belize
- Bulgaria
- Canada
- China
- Cyprus
- Czech Republic
- Estonia
- Finland
- Georgia
- Greece
- Guernsey
- Hong Kong
- Hungary
- Iceland

Highlighted Jurisdictions

- Isle of Man
- Jersey
- Korea
- Latvia
- Liechtenstein
- Malta
- Mauritius
- Monaco
- Morocco
- Oman
- Panama
- Poland
- Qatar
- Seychelles
- Sweden
- Switzerland
- United Arab Emirates



**Does not want any
of the PE article**

**Wants all
PE Articles**

**Wants some of
PE articles**

Deposits

Entry into force

General overview
PE positions

Article 12
(agency PE)

Article 13
(specific activity
exemptions)

Article 14
(contract splitting
rule)

As of 31 December 2020

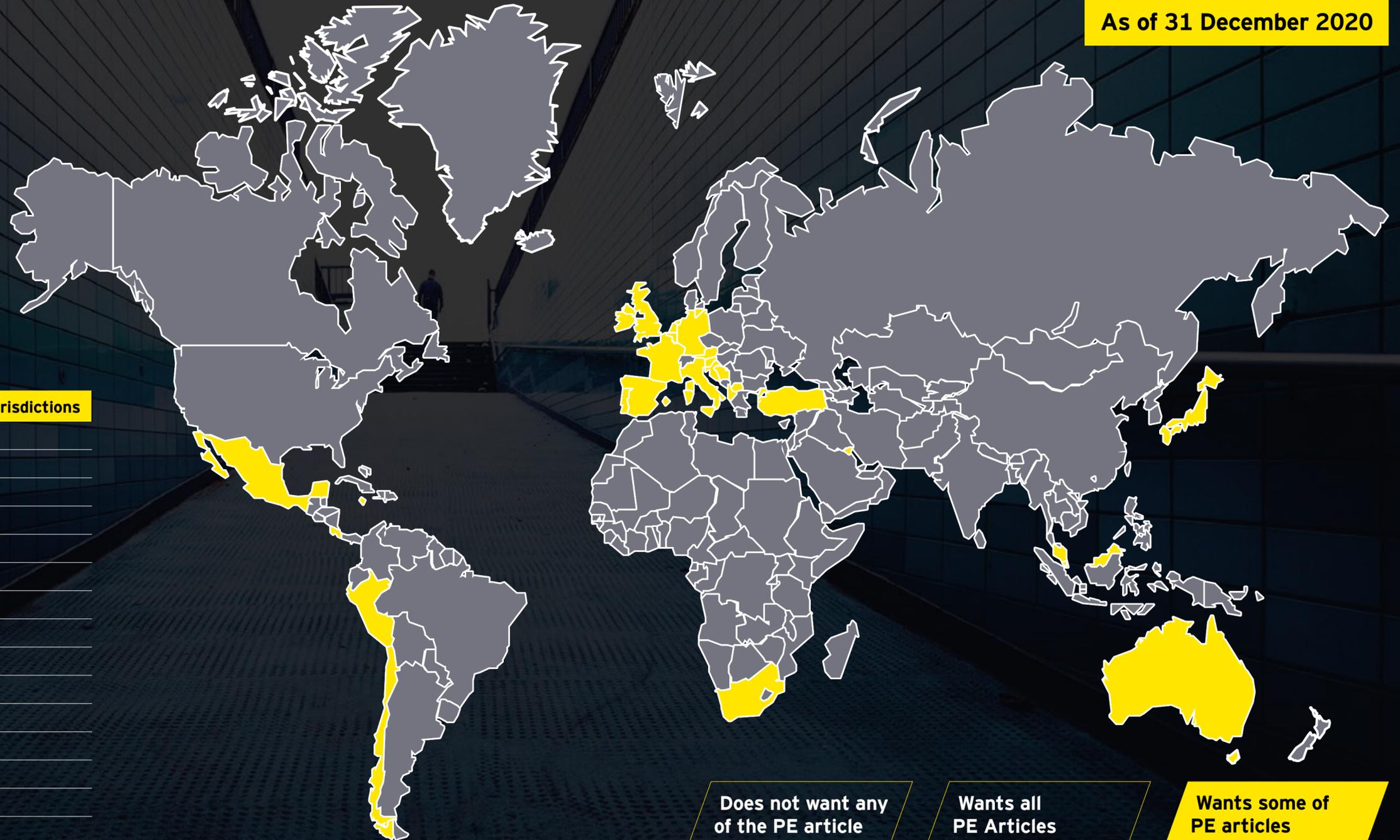
General overview PE positions of the MLI

Highlighted Jurisdictions

Albania
Australia
Austria
Belgium
Bosnia and Herzegovina
Chile
Costa Rica
Croatia
Curaçao
France
Germany
Ireland
Italy
Jamaica
Japan

Highlighted Jurisdictions

Kuwait
Luxembourg
Macedonia
Malaysia
Mexico
Netherlands
Peru
Portugal
San Marino
Singapore
Slovenia
South Africa
Spain
Turkey
United Kingdom



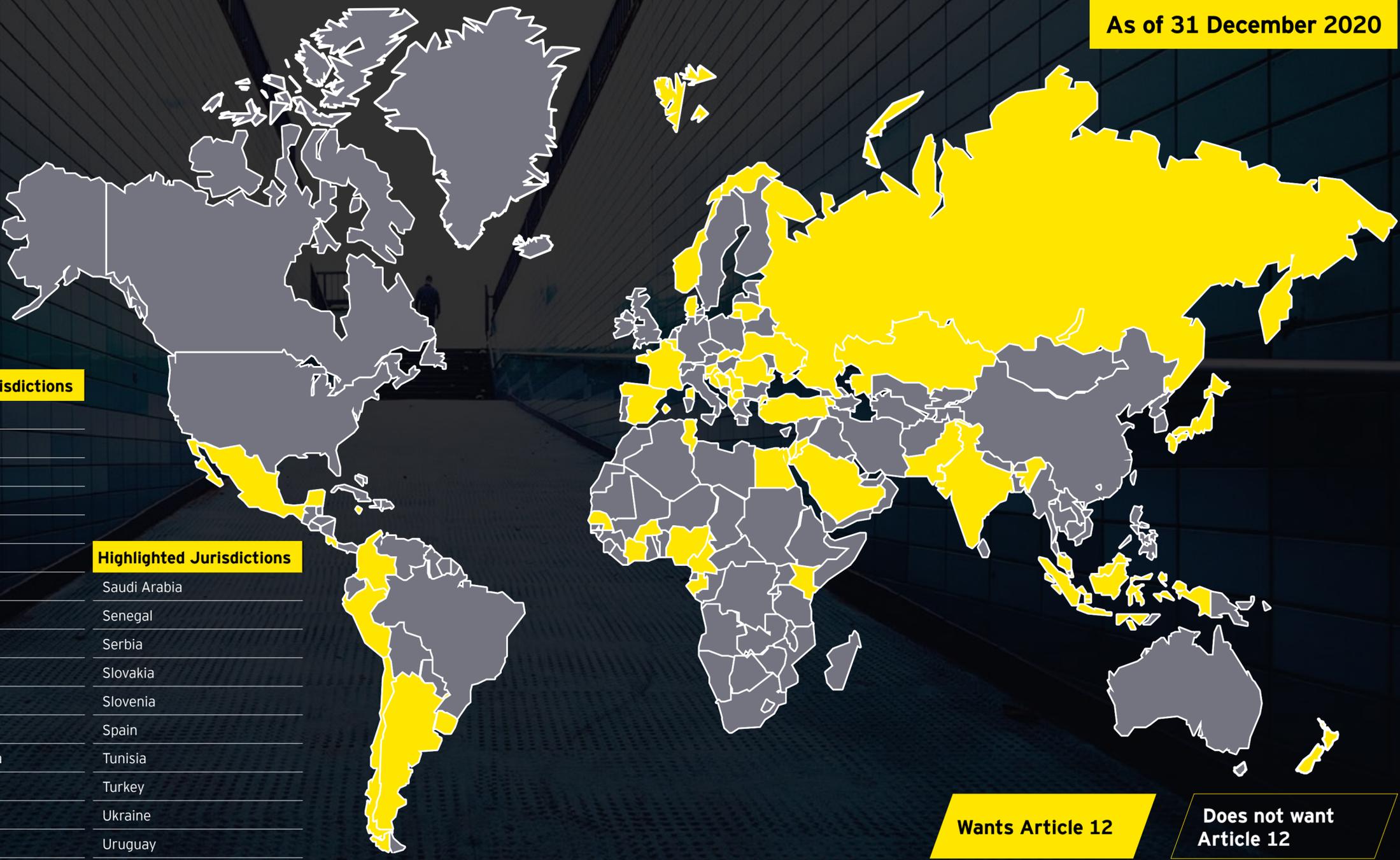
Does not want any
of the PE article

Wants all
PE Articles

Wants some of
PE articles

[Deposits](#) |
 [Entry into force](#) |
 [General overview PE positions](#) |
 [Article 12 \(agency PE\)](#) |
 [Article 13 \(specific activity exemptions\)](#) |
 [Article 14 \(contract splitting rule\)](#)

As of 31 December 2020



Highlighted Jurisdictions

- Albania
- Argentina
- Armenia
- Belgium
- Bosnia and Herzegovina
- Burkina Faso
- Cameroon
- Chile
- Colombia
- Costa Rica
- Cote d'Ivoire
- Croatia
- Denmark
- Egypt
- Fiji
- France
- Gabon
- India
- Indonesia
- Israel
- Jamaica

Highlighted Jurisdictions

- Japan
- Jordan
- Kazakhstan
- Kenya
- Lithuania
- Macedonia
- Malaysia
- Mexico
- New Zealand
- Nigeria
- Norway
- Pakistan
- Papau New Guinea
- Peru
- Romania
- Russia

Highlighted Jurisdictions

- Saudi Arabia
- Senegal
- Serbia
- Slovakia
- Slovenia
- Spain
- Tunisia
- Turkey
- Ukraine
- Uruguay

Wants Article 12

Does not want Article 12

Article 12 (agency PE)

Deposits

Entry into force

General overview
PE positions

Article 12
(agency PE)

Article 13
(specific activity
exemptions)

Article 14
(contract splitting
rule)

As of 31 December 2020

Article 12 (agency PE)

Highlighted Jurisdictions

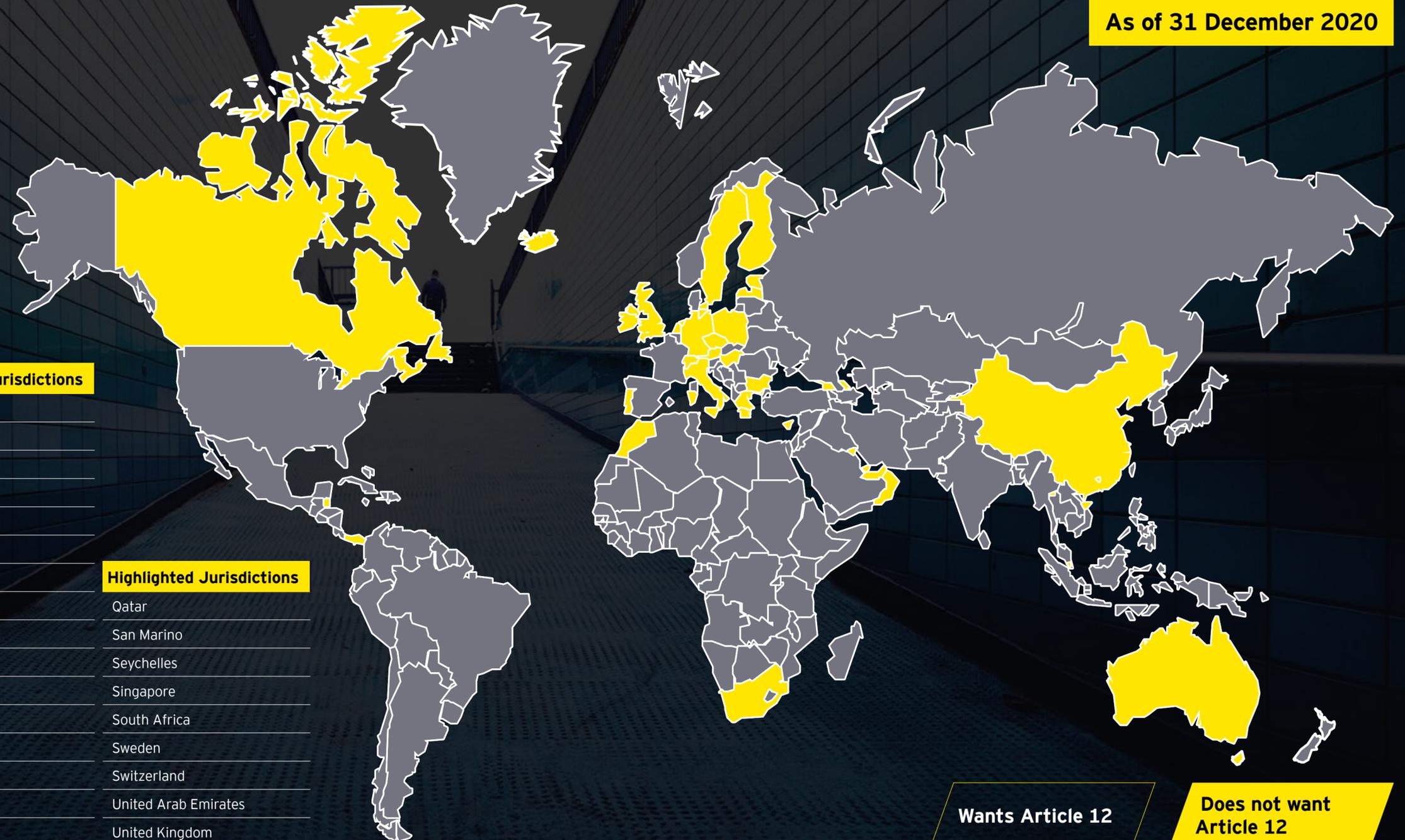
Andorra
Australia
Austria
Bahrain
Barbados
Belize
Bulgaria
Canada
China
Curaçao
Cyprus
Czech Republic
Estonia
Finland
Georgia
Germany
Greece
Guernsey
Hong Kong
Hungary
Iceland
Ireland
Isle of Man

Highlighted Jurisdictions

Italy
Jersey
Korea
Kuwait
Latvia
Liechtenstein
Luxembourg
Malta
Mauritius
Monaco
Morocco
Netherlands
Oman
Panama
Poland
Portugal

Highlighted Jurisdictions

Qatar
San Marino
Seychelles
Singapore
South Africa
Sweden
Switzerland
United Arab Emirates
United Kingdom



Wants Article 12

Does not want
Article 12

Deposits

Entry into force

General overview
PE positions

Article 12
(agency PE)

Article 13
(specific activity
exemptions)

Article 14
(contract splitting
rule)

As of 31 December 2020

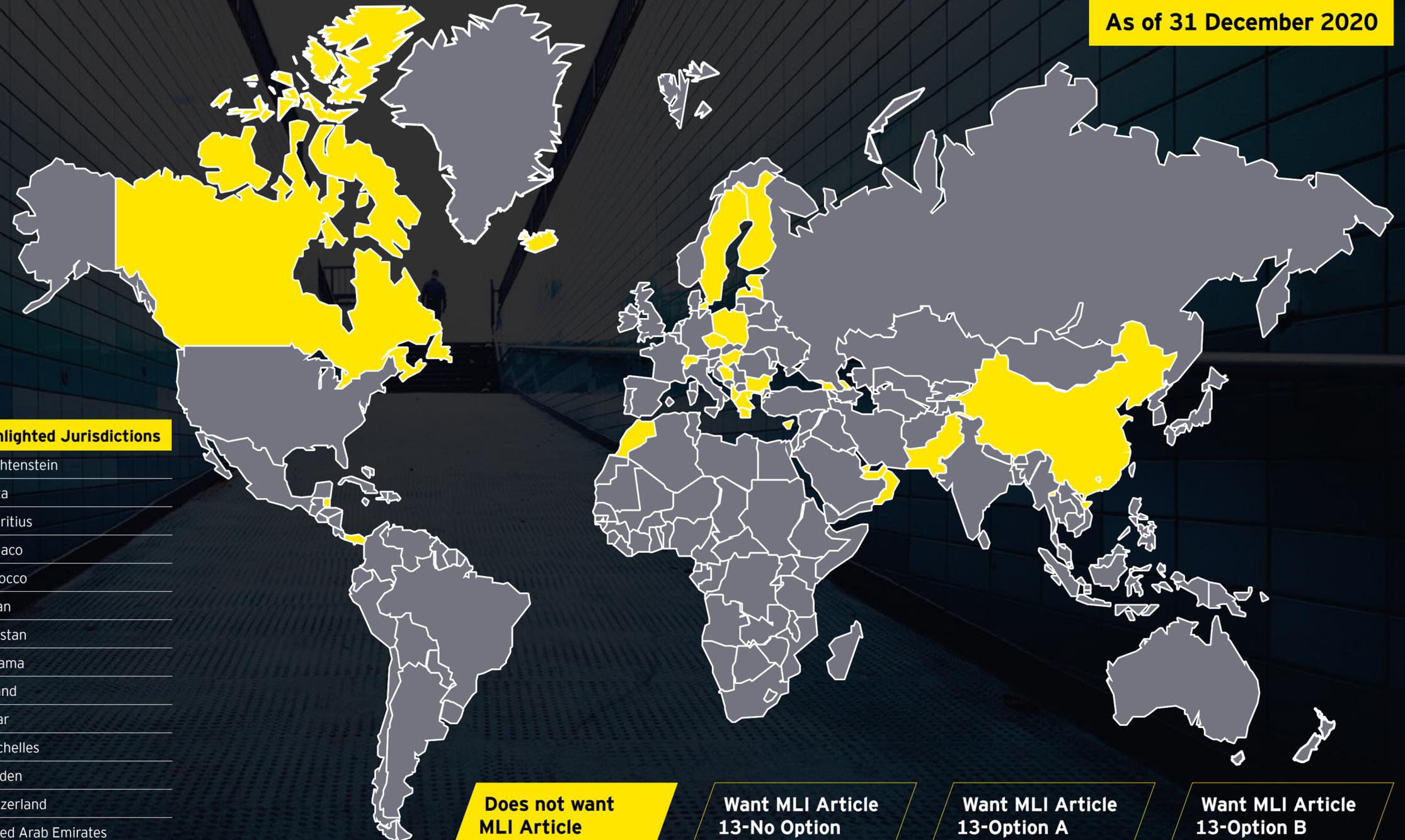
Article 13 (specific activity exemptions)

Highlighted Jurisdictions

Andorra
Albania
Bahrain
Barbados
Belize
Bosnia and Herzegovina
Bulgaria
Canada
China
Cyprus
Czech Republic
Estonia
Finland
Georgia
Greece
Guernsey
Hong Kong
Hungary
Iceland
Isle of Man
Jersey
Korea
Latvia

Highlighted Jurisdictions

Liechtenstein
Malta
Mauritius
Monaco
Morocco
Oman
Pakistan
Panama
Poland
Qatar
Seychelles
Sweden
Switzerland
United Arab Emirates



Does not want
MLI Article

Want MLI Article
13-No Option

Want MLI Article
13-Option A

Want MLI Article
13-Option B

Deposits

Entry into force

General overview
PE positions

Article 12
(agency PE)

Article 13
(specific activity
exemptions)

Article 14
(contract splitting
rule)

As of 31 December 2020

Article 13 (specific activity exemptions)

Highlighted Jurisdictions

Chile
Portugal
United Kingdom



Deposits

Entry into force

General overview
PE positions

Article 12
(agency PE)

Article 13
(specific activity
exemptions)

Article 14
(contract splitting
rule)

Option A: The list of activities, or the combination thereof, is restricted to activities of a preparatory or auxiliary character.

Highlighted Jurisdictions

- Argentina
- Armenia
- Australia
- Austria
- Burkina Faso
- Cameroon
- Colombia
- Costa Rica
- Cote d'Ivoire
- Croatia
- Curaçao
- Denmark
- Egypt
- Fiji
- Gabon
- Germany
- India
- Indonesia
- Israel
- Italy
- Jamaica
- Japan
- Jordan
- Kazakhstan
- Kenya
- Kuwait
- Macedonia
- Malaysia
- Mexico

Highlighted Jurisdictions

- Netherlands
- New Zealand
- Nigeria
- Norway
- Papua New Guinea
- Peru
- Romania
- Russia
- Saudi Arabia
- Senegal
- Serbia
- Slovakia
- Slovenia
- South Africa
- Spain
- Tunisia
- Turkey

Highlighted Jurisdictions

- Ukraine
- Uruguay

Jurisdictions that chose not to apply an anti-fragmentation clause:
Austria and Germany

As of 31 December 2020

Article 13 (specific activity exemptions)

Does not want MLI Article 13-No Option | Want MLI Article 13-Option A | Want MLI Article 13-Option B

Deposits

Entry into force

General overview
PE positions

Article 12
(agency PE)

Article 13
(specific activity
exemptions)

Article 14
(contract splitting
rule)

Option B: The list of activities are considered intrinsically preparatory or auxiliary.

As of 31 December 2020

Article 13 (specific activity exemptions)

Highlighted Jurisdictions

Belgium

France

Ireland

Lithuania

Luxembourg

San Marino

Singapore

Jurisdictions that chose not to apply an anti-fragmentation clause:
Luxembourg and Singapore

Does not want MLI Article

Want MLI Article 13-No Option

Want MLI Article 13-Option A

Want MLI Article 13-Option B

Deposits

Entry into force

General overview
PE positions

Article 12
(agency PE)

Article 13
(specific activity
exemptions)

Article 14
(contract splitting
rule)

As of 31 December 2020

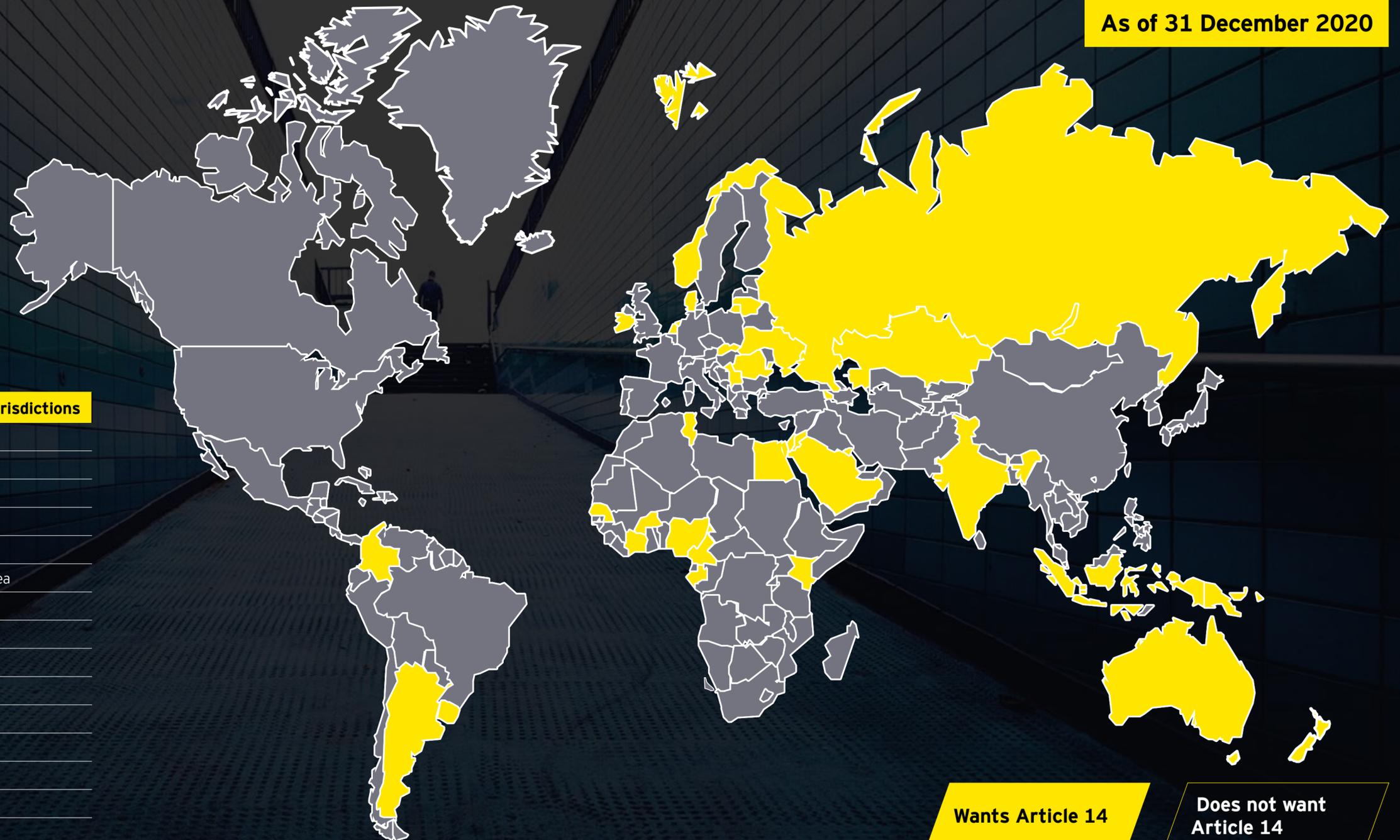
Article 14 (contract splitting rule)

Highlighted Jurisdictions

Argentina
Armenia
Australia
Burkina Faso
Cameroon
Colombia
Cote d'Ivoire
Denmark
Egypt
Fiji
Gabon
India
Indonesia
Ireland
Israel
Jordan
Kazakhstan
Kenya
Kuwait

Highlighted Jurisdictions

Lithuania
Netherlands
New Zealand
Nigeria
Norway
Papua New Guinea
Romania
Russia
Saudi Arabia
Senegal
Serbia
Slovakia
Tunisia
Ukraine
Uruguay



Wants Article 14

Does not want Article 14

Deposits

Entry into force

General overview
PE positions

Article 12
(agency PE)

Article 13
(specific activity
exemptions)

Article 14
(contract splitting
rule)

Article 14 (contract splitting rule)

As of 31 December 2020

Highlighted Jurisdictions

Andorra
Albania
Austria
Bahrain
Barbados
Belgium
Belize
Bosnia and Herzegovina
Bulgaria
Canada
Chile
China
Costa Rica
Croatia
Curaçao
Cyprus
Czech Republic
Estonia
Finland
France
Georgia
Germany
Greece
Guernsey
Hong Kong
Hungary
Iceland
Isle of Man
Italy

Highlighted Jurisdictions

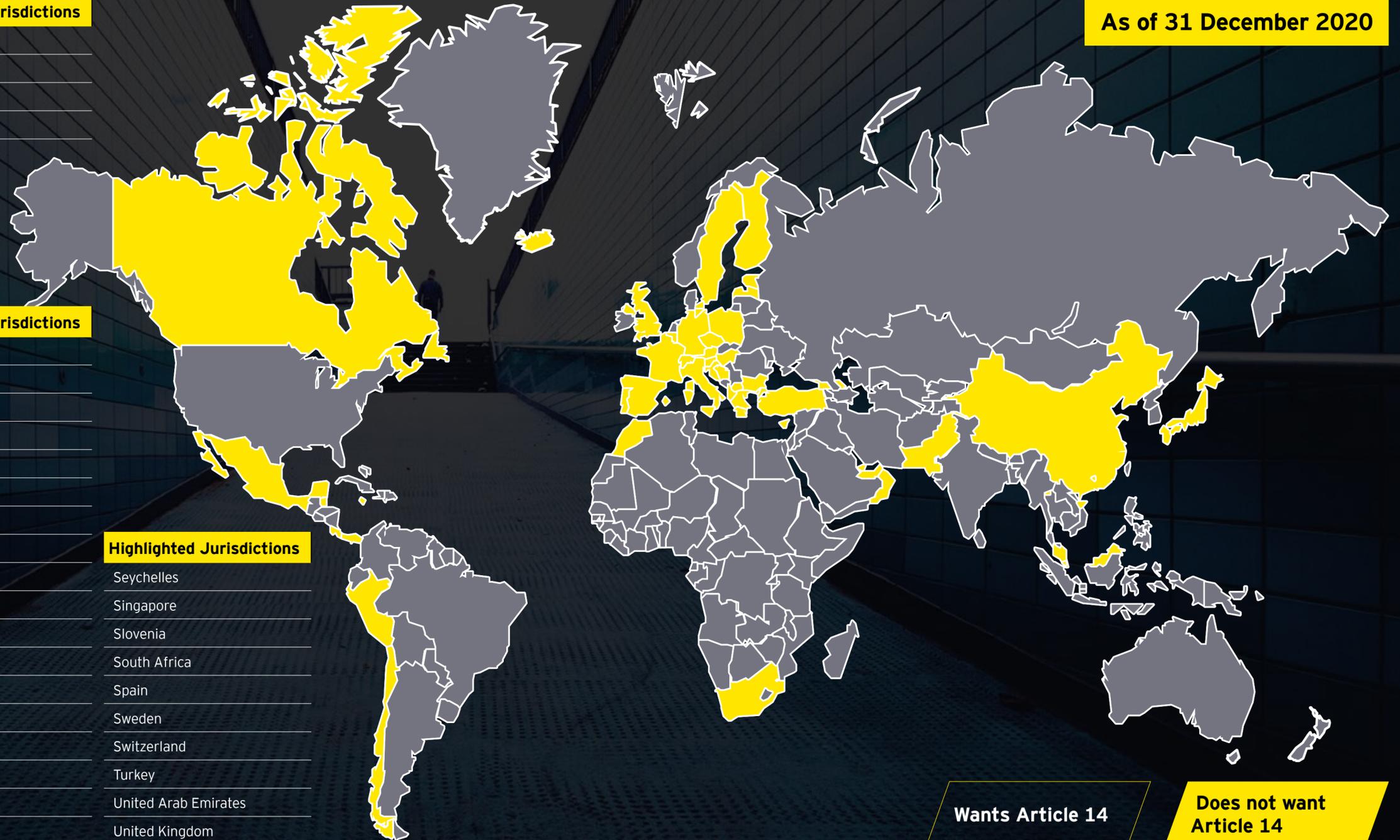
Jamaica
Japan
Jersey
Korea

Highlighted Jurisdictions

Latvia
Liechtenstein
Luxembourg
Macedonia
Malaysia
Malta
Mauritius
Mexico
Monaco
Morocco
Oman
Pakistan
Panama
Peru
Poland
Portugal
Qatar
San Marino

Highlighted Jurisdictions

Seychelles
Singapore
Slovenia
South Africa
Spain
Sweden
Switzerland
Turkey
United Arab Emirates
United Kingdom



Wants Article 14

Does not want Article 14

Over the past years, there has been an increase in the number of tax audits, tax assessments and court cases for cross-border transactions. This increase in controversy has also impacted the concept of PE.

Multiple court cases have provided precedence not only to the country in dispute but potentially also to foreign courts or tax authorities that may use the precedence as support for similar cases.

With respect to case law, cases have been highly focused on the existence of a PE, in particular with respect to cases dealing with the conclusion of contracts on behalf of the nonresident company. Some of these cases may have significant implications and set new precedence. For example, in a French case, the Supreme Administrative Court decided in favor of the tax authorities as if the tax treaty followed the new language from agency PE included in the OECD MTC 2017. However, the tax treaty in dispute does not include the new agency PE provision. Therefore, the outcome of this case is a very important development in the interpretation and application of tax treaties from a French perspective, in particular tax treaties that do not follow the language from the MLI or the OECD MTC 2017.

In the coming years, companies may encounter more controversy on PE as a result of both the initial BEPS project that recommended a number of changes to the PE definition included in the OECD MTC as well as the MLI. Consequently, these changes may impact how tax authorities assess taxing rights and the existence of a PE. Also, as mentioned in the latest [Transfer Pricing and International Tax Survey](#) from EY, the attribution of profits to a PE is predicted to be the most important area of PE controversy through 2021. Finally, the new OECD project (BEPS 2.0) aims at addressing situations where the traditional PE definition would not create a nexus for the nonresident, which may lead to changes in the domestic and international rules.

[Click on each flag to read more](#)

Case Law



France



India



Korea



United Kingdom (UK)

Tax rulings



Chile



Denmark



Peru



Turkey



Over the past years, there has been an increase in the number of tax audits, tax assessments and court cases for cross-border transactions. This increase in controversy has also impacted the concept of PE.

Multiple court cases have provided precedence not only to the country in dispute but potentially also to foreign courts or tax authorities that may use the precedence as support for similar cases.

With respect to case law, cases have been highly focused on the existence of a PE, in particular with respect to cases dealing with the conclusion of contracts on behalf of the nonresident company. Some of these cases may have significant implications and set new precedence. For example, in a French case, the Supreme Administrative Court decided in favor of the tax authorities as if the tax treaty followed the new language from agency PE included in the OECD MTC 2017. However, the tax treaty in dispute does not include the new agency PE provision. Therefore, the outcome of this case is a very important development in the interpretation and application of tax treaties from a French perspective, in particular tax treaties that do not follow the language from the MLI or the OECD MTC 2017.

In the coming years, companies may encounter more controversy on PE as a result of both the initial BEPS project that recommended a number of changes to the PE definition included in the OECD MTC as well as the MLI. Consequently, these changes may impact how tax authorities assess taxing rights and the existence of a PE. Also, as mentioned in the latest [Transfer Pricing and International Tax Survey](#) from EY, the attribution of profits to a PE is predicted to be the most important area of PE controversy through 2021. Finally, the new OECD project (BEPS 2.0) aims at addressing situations where the traditional PE definition would not create a nexus for the nonresident, which may lead to changes in the domestic and international rules.

Case Law



France

In December 2020, the French Administrative Supreme Court (Supreme Court) ruled that an Irish resident entity performing digital marketing activities has a PE in France. In the case at hand, a French subsidiary of the Irish entity did not formally have the authority to sign contracts on behalf of the Irish entity, but the decision to conclude a contract with a client, as well as all related tasks, were actually made and performed by the employees of the French subsidiary.

The Supreme Court ruled that the French entity is a dependent agent PE (DAPE) of the Irish entity since the French entity habitually makes all preparations and decisions to enter into contracts with clients in the name of the Irish entity. **More details are available [here](#).**

Contact: [Philippe Legentil](#)

Over the past years, there has been an increase in the number of tax audits, tax assessments and court cases for cross-border transactions. This increase in controversy has also impacted the concept of PE.

Multiple court cases have provided precedence not only to the country in dispute but potentially also to foreign courts or tax authorities that may use the precedence as support for similar cases.

With respect to case law, cases have been highly focused on the existence of a PE, in particular with respect to cases dealing with the conclusion of contracts on behalf of the nonresident company. Some of these cases may have significant implications and set new precedence. For example, in a French case, the Supreme Administrative Court decided in favor of the tax authorities as if the tax treaty followed the new language from agency PE included in the OECD MTC 2017. However, the tax treaty in dispute does not include the new agency PE provision. Therefore, the outcome of this case is a very important development in the interpretation and application of tax treaties from a French perspective, in particular tax treaties that do not follow the language from the MLI or the OECD MTC 2017.

In the coming years, companies may encounter more controversy on PE as a result of both the initial BEPS project that recommended a number of changes to the PE definition included in the OECD MTC as well as the MLI. Consequently, these changes may impact how tax authorities assess taxing rights and the existence of a PE. Also, as mentioned in the latest [Transfer Pricing and International Tax Survey](#) from EY, the attribution of profits to a PE is predicted to be the most important area of PE controversy through 2021. Finally, the new OECD project (BEPS 2.0) aims at addressing situations where the traditional PE definition would not create a nexus for the nonresident, which may lead to changes in the domestic and international rules.

Case Law



India

In October 2020, the Income Tax Appellate Tribunal (ITAT) of India rendered its decision in a case where a nonresident entity was engaged in the business of selling advertisement time from Mauritius. An entity in India entered into agreement with the nonresident entity to purchase ad time and subsequently allot it to various Indian advertisers or agencies in India. Further, the transaction between the nonresident entity taxpayer and entity in India was at arm's length and the nonresident entity had no other office or operations in India. The Assessment Officer contended that the entity in India exclusively worked as an agent for the nonresident entity and therefore the nonresident entity had a dependent agent PE (DAPE) and sought to attribute 30% of gross revenue to the deemed DAPE. The ITAT, without determining whether the taxpayer created a DAPE in India, held that if the entity in India is remunerated at arm's length, then no further attribution of profits can be made in the hands of the taxpayer, even where a PE is created. **More details are available [here](#).**

In July 2020, the Supreme Court of India rendered a decision where a company incorporated in South Korea, set up a project office (PO) in India to act as a "communication channel" between the company in South Korea and its customer. The activities undertaken by the PO comprised coordinating and executing the delivery of documents in connection with the construction of an offshore platform modification. The PO was not involved in the coordination or execution of the entire project itself and had just two employees, neither of whom was qualified to perform any core activities of the taxpayer.

The Supreme Court ruled in favor of the taxpayer that the activities performed by the PO did not give rise to a fixed place PE and were of a preparatory or auxiliary character. The Supreme Court reasoned that the PO was not a fixed place of business through which the core business of the taxpayer was wholly or partly carried on; the PO was an auxiliary office meant to act as a liaison office between the taxpayer and its customer. **More details are available [here](#).**

Contact: [Aastha Jain](#)

Over the past years, there has been an increase in the number of tax audits, tax assessments and court cases for cross-border transactions. This increase in controversy has also impacted the concept of PE.

Multiple court cases have provided precedence not only to the country in dispute but potentially also to foreign courts or tax authorities that may use the precedence as support for similar cases.

With respect to case law, cases have been highly focused on the existence of a PE, in particular with respect to cases dealing with the conclusion of contracts on behalf of the nonresident company. Some of these cases may have significant implications and set new precedence. For example, in a French case, the Supreme Administrative Court decided in favor of the tax authorities as if the tax treaty followed the new language from agency PE included the OECD MTC 2017. However, the tax treaty in dispute does not include the new agency PE provision. Therefore, the outcome of this case is a very important development in the interpretation and application of tax treaties from a French perspective, in particular tax treaties that do not follow the language from the MLI or the OECD MTC 2017.

In the coming years, companies may encounter more controversy on PE as a result of both the initial BEPS project that recommended a number of changes to the PE definition included in the OECD MTC as well as the MLI. Consequently, these changes may impact how tax authorities assess taxing rights and the existence of a PE. Also, as mentioned in the latest [Transfer Pricing and International Tax Survey](#) from EY, the attribution of profits to a PE is predicted to be the most important area of PE controversy through 2021. Finally, the new OECD project (BEPS 2.0) aims at addressing situations where the traditional PE definition would not create a nexus for the nonresident, which may lead to changes in the domestic and international rules.

Case Law



Korea

In June 2020, the Supreme Court of South Korea rendered a decision addressing the attribution of profits to a PE in South Korea. In this case, a nonresident entity operating as a junket operator, was engaged by a South Korea casino operator to bring in overseas high rollers to play at the casino. Some employees of the Philippines company provided guidance to the high rollers and exchanged casino tokens in an office forming part of the casino.

The Supreme Court ruled in favor of the taxpayer and upheld that although the business activities of the Philippines company can constitute a PE in South Korea, the amount of profits attributable to the PE should be assessed under a functional analysis. The Korean tax authorities failed to prove through an objective analysis that the main activities performed by the Philippines company, were performed in South Korea. Therefore, the Supreme Court ordered annulment of the tax authorities' assessment in its entirety. **More details are available [here](#).**

Contact: [Nam Wun Jang](#)

Over the past years, there has been an increase in the number of tax audits, tax assessments and court cases for cross-border transactions. This increase in controversy has also impacted the concept of PE.

Multiple court cases have provided precedence not only to the country in dispute but potentially also to foreign courts or tax authorities that may use the precedence as support for similar cases.

With respect to case law, cases have been highly focused on the existence of a PE, in particular with respect to cases dealing with the conclusion of contracts on behalf of the nonresident company. Some of these cases may have significant implications and set new precedence. For example, in a French case, the Supreme Administrative Court decided in favor of the tax authorities as if the tax treaty followed the new language from agency PE included the OECD MTC 2017. However, the tax treaty in dispute does not include the new agency PE provision. Therefore, the outcome of this case is a very important development in the interpretation and application of tax treaties from a French perspective, in particular tax treaties that do not follow the language from the MLI or the OECD MTC 2017.

In the coming years, companies may encounter more controversy on PE as a result of both the initial BEPS project that recommended a number of changes to the PE definition included in the OECD MTC as well as the MLI. Consequently, these changes may impact how tax authorities assess taxing rights and the existence of a PE. Also, as mentioned in the latest [Transfer Pricing and International Tax Survey](#) from EY, the attribution of profits to a PE is predicted to be the most important area of PE controversy through 2021. Finally, the new OECD project (BEPS 2.0) aims at addressing situations where the traditional PE definition would not create a nexus for the nonresident, which may lead to changes in the domestic and international rules.

Case Law



United Kingdom

In August 2020, the UK Court of Appeal held that HMRC could use a Capital Attribution Tax Adjustment (CATA) to determine the profits of two British branches of Irish banks. According to the Court, the use of a CATA was consistent with the provisions of the tax treaty between Ireland and the UK. The taxpayers failed to demonstrate that the provisions of the tax treaty prevented the use of a CATA. **More details are available [here](#).**

Contact: [Paul Macdonald](#)

Over the past years, there has been an increase in the number of tax audits, tax assessments and court cases for cross-border transactions. This increase in controversy has also impacted the concept of PE.

Multiple court cases have provided precedence not only to the country in dispute but potentially also to foreign courts or tax authorities that may use the precedence as support for similar cases.

With respect to case law, cases have been highly focused on the existence of a PE, in particular with respect to cases dealing with the conclusion of contracts on behalf of the nonresident company. Some of these cases may have significant implications and set new precedence. For example, in a French case, the Supreme Administrative Court decided in favor of the tax authorities as if the tax treaty followed the new language from agency PE included the OECD MTC 2017. However, the tax treaty in dispute does not include the new agency PE provision. Therefore, the outcome of this case is a very important development in the interpretation and application of tax treaties from a French perspective, in particular tax treaties that do not follow the language from the MLI or the OECD MTC 2017.

In the coming years, companies may encounter more controversy on PE as a result of both the initial BEPS project that recommended a number of changes to the PE definition included in the OECD MTC as well as the MLI. Consequently, these changes may impact how tax authorities assess taxing rights and the existence of a PE. Also, as mentioned in the latest [Transfer Pricing and International Tax Survey](#) from EY, the attribution of profits to a PE is predicted to be the most important area of PE controversy through 2021. Finally, the new OECD project (BEPS 2.0) aims at addressing situations where the traditional PE definition would not create a nexus for the nonresident, which may lead to changes in the domestic and international rules.

Tax rulings



Chile

In August 2020, the Chilean Internal Revenue Service (IRS) published a tax ruling analyzing the tax treatment of the termination of a PE in Chile. In this ruling, a nonresident company carries out activities in Chile through a PE and decided to incorporate a new company in Chile via its PE, after which, the PE would cease to exist.

The Chilean IRS indicated that after the termination of a PE, the nonresident company should consider the following: i) any accumulated profits of the PE will be subject to corporate income tax; ii) notwithstanding that the tax authority understands that there is no transfer upon the assignment of shares, since the head office and the PE configure the same legal entity, the assessment faculty by the Chilean IRS if the assignment is substantially lower than fair market value would still apply; and iii) upon termination of the PE, a withholding tax will apply on the distribution of profits made by the new incorporated company to the nonresident company.

Contact: [Mariela Gonzalez](#)

Over the past years, there has been an increase in the number of tax audits, tax assessments and court cases for cross-border transactions. This increase in controversy has also impacted the concept of PE.

Multiple court cases have provided precedence not only to the country in dispute but potentially also to foreign courts or tax authorities that may use the precedence as support for similar cases.

With respect to case law, cases have been highly focused on the existence of a PE, in particular with respect to cases dealing with the conclusion of contracts on behalf of the nonresident company. Some of these cases may have significant implications and set new precedence. For example, in a French case, the Supreme Administrative Court decided in favor of the tax authorities as if the tax treaty followed the new language from agency PE included in the OECD MTC 2017. However, the tax treaty in dispute does not include the new agency PE provision. Therefore, the outcome of this case is a very important development in the interpretation and application of tax treaties from a French perspective, in particular tax treaties that do not follow the language from the MLI or the OECD MTC 2017.

In the coming years, companies may encounter more controversy on PE as a result of both the initial BEPS project that recommended a number of changes to the PE definition included in the OECD MTC as well as the MLI. Consequently, these changes may impact how tax authorities assess taxing rights and the existence of a PE. Also, as mentioned in the latest [Transfer Pricing and International Tax Survey](#) from EY, the attribution of profits to a PE is predicted to be the most important area of PE controversy through 2021. Finally, the new OECD project (BEPS 2.0) aims at addressing situations where the traditional PE definition would not create a nexus for the nonresident, which may lead to changes in the domestic and international rules.

Tax rulings



Denmark

In September 2020, the Danish Tax Board (DTB) published a binding tax ruling analyzing whether a data center in Denmark, owned and operated by a Danish company, constitutes a PE in Denmark for a nonresident company. In this tax ruling, the Danish company owns, leases and operates servers and other equipment. The servers and other equipment will be used by the nonresident company for hosting the website and related activity. Moreover, the Danish company's employees are responsible for installation, operation, maintenance under the instructions of the Danish company and do not conclude contracts on behalf of the nonresident company. The DTB indicated that the nonresident company would not create a PE in Denmark under the fixed place of business or agency PE provision of the relevant tax treaty. **More details are available [here](#).**

In October 2020, the DTB published a binding tax ruling analyzing whether an employee of a UK company working once a week from his home office in Denmark constitutes a PE for the UK company. As per the tax ruling, the UK company allowed the employee to work from his home office in Denmark on Fridays, whereas he would continue to work from the office in the UK for four days a week. The employee's move to Denmark is not required by the UK company and the employee will still be working from UK most of his time. Further, the UK company does not have any business interest in the employee performing part of his work in Denmark, since the sole purpose of working from there is due to the employee's personal reasons. Therefore, the DTB found that the UK company does not have a PE in Denmark. **More details are available [here](#).**

Contact: [Malte Soegaard](#)

Over the past years, there has been an increase in the number of tax audits, tax assessments and court cases for cross-border transactions. This increase in controversy has also impacted the concept of PE.

Multiple court cases have provided precedence not only to the country in dispute but potentially also to foreign courts or tax authorities that may use the precedence as support for similar cases.

With respect to case law, cases have been highly focused on the existence of a PE, in particular with respect to cases dealing with the conclusion of contracts on behalf of the nonresident company. Some of these cases may have significant implications and set new precedence. For example, in a French case, the Supreme Administrative Court decided in favor of the tax authorities as if the tax treaty followed the new language from agency PE included the OECD MTC 2017. However, the tax treaty in dispute does not include the new agency PE provision. Therefore, the outcome of this case is a very important development in the interpretation and application of tax treaties from a French perspective, in particular tax treaties that do not follow the language from the MLI or the OECD MTC 2017.

In the coming years, companies may encounter more controversy on PE as a result of both the initial BEPS project that recommended a number of changes to the PE definition included in the OECD MTC as well as the MLI. Consequently, these changes may impact how tax authorities assess taxing rights and the existence of a PE. Also, as mentioned in the latest [Transfer Pricing and International Tax Survey](#) from EY, the attribution of profits to a PE is predicted to be the most important area of PE controversy through 2021. Finally, the new OECD project (BEPS 2.0) aims at addressing situations where the traditional PE definition would not create a nexus for the nonresident, which may lead to changes in the domestic and international rules.

Tax rulings



Peru

In October 2020, the Peruvian tax authorities published a tax ruling addressing the tax consequences of a merger between two nonresident entities in which the absorbed entity has a PE in Peru. The ruling concludes that: (i) The PE will not have to obtain a new tax ID; (ii) The merger of the two nonresident entities will not have tax effects for the PE in Peru; and (iii) The absorbed entity will be taxed in Peru on the income from the transfer of the PE because the income qualifies as Peruvian-sourced income. **More details are available [here](#).**

Contact: [Ramon Bueno-Tizon](#)

Over the past years, there has been an increase in the number of tax audits, tax assessments and court cases for cross-border transactions. This increase in controversy has also impacted the concept of PE.

Multiple court cases have provided precedence not only to the country in dispute but potentially also to foreign courts or tax authorities that may use the precedence as support for similar cases.

With respect to case law, cases have been highly focused on the existence of a PE, in particular with respect to cases dealing with the conclusion of contracts on behalf of the nonresident company. Some of these cases may have significant implications and set new precedence. For example, in a French case, the Supreme Administrative Court decided in favor of the tax authorities as if the tax treaty followed the new language from agency PE included the OECD MTC 2017. However, the tax treaty in dispute does not include the new agency PE provision. Therefore, the outcome of this case is a very important development in the interpretation and application of tax treaties from a French perspective, in particular tax treaties that do not follow the language from the MLI or the OECD MTC 2017.

In the coming years, companies may encounter more controversy on PE as a result of both the initial BEPS project that recommended a number of changes to the PE definition included in the OECD MTC as well as the MLI. Consequently, these changes may impact how tax authorities assess taxing rights and the existence of a PE. Also, as mentioned in the latest [Transfer Pricing and International Tax Survey](#) from EY, the attribution of profits to a PE is predicted to be the most important area of PE controversy through 2021. Finally, the new OECD project (BEPS 2.0) aims at addressing situations where the traditional PE definition would not create a nexus for the nonresident, which may lead to changes in the domestic and international rules.

Tax rulings



Turkey

In April 2020, the Turkish Revenue Administration (TRA) published a tax Ruling to determine if an individual would have a taxable presence in Turkey for the provision of digital services to his Turkey customers. The TRA responded that the activities carried out on a continuous basis by the individual may potentially earn income, and therefore, the individual would be considered to be engaged in commercial activities in Turkey. Further, the TRA clarified that the domestic definition of a place of business is not exhaustive and a website could also be a place for the purposes of performing commercial activities. In light of this, the TRA concluded that the individual has a taxable presence in Turkey and would be subject to tax in Turkey.

More details are available [here](#).

Contact: [Ates Konca](#)



Jose A. Bustos

EY International Tax Policy
Desk Leader



Ronald van den Brekel

EY Global Transfer Pricing
Market and Innovation Leader



Marlies de Ruiter

EY Global International Tax &
Transaction Services Policy Leader



Chester Wee

EY International Tax & Transaction
Services Partner- Singapore



Roberto Aviles

EY International Tax Policy
Desk



David Corredor Velásquez

EY International Tax Policy
Desk



Maikel Evers

EY International Tax Policy
Desk



Konstantina Tsimiligka

EY International Tax Policy
Desk



EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit ey.com.

© 2021 EYGM Limited.
All Rights Reserved.

EYG No. 000549-21Gbl
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax or other professional advice. Please refer to your advisors for specific advice.

ey.com

