

## **Interpretation and Application of Article 5 (Permanent Establishment) of the OECD Model Tax Convention**

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### **1 Introduction**

- 1.1 We refer to the public discussion draft on the Interpretation and Application of Article 5 (Permanent Establishment (PE)) of the OECD Model Tax Convention published in October 2011 and set out the comments of the Chartered Institute of Taxation (CIOT) below.

### **2. Vertical Functions**

#### **2.1 Background**

Global organisations are increasing the scope of centralised functions or ‘vertical functions’ (i.e. IT, HR Finance Services, etc) and they have consequently redesigned their organisations in such a way that line/function management reporting relationships span legal entities and countries.

*For example, an IT line manager, based and subject to payroll in Country A, manages a geographically distributed team comprising direct reports who are employees of Countries B, C and D.*

Line/Function manager approval is required as the transaction value exceeds the band limit of the cost centre owner or the powers assigned locally.

The centralised functions have business requirements which are function-based and not geography-based, in order to allow transactions to operate across countries and legal entities.

#### **2.2 Suggested clarifications to the draft**

We believe that Vertical Functions do not particularly represent *per se* a potential issue from a PE perspective, therefore, for the sake of clarity, it should be clarified at paragraph 24.1:

1. To what extent the combination of said functions might be seen as part of a cohesive business and therefore relevant for the purposes of local PE existence;

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2. If the people from Country B, C and D who report to a different legal entity in the jurisdiction of Country A might be seen as *local dependent agents* (personal PE) acting on behalf of Country A;
3. When the band limit of the cost centre owner or the attribution of powers and authorization to line/Function managers cross-border might lead to PE issues: i.e. Country A manager would be allowed to take decisions directly affecting the P&L of companies from Country B, C and D.

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