

## What future for the attribution of profits to permanent establishments?

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### 1. Introduction

This article was written in the context of the International Taxation Summer School, which took place at the University of Minho in July 2016. It is meant to offer not only a brief description of the current standards for the attribution of profits to a permanent establishment, as prescribed by the OECD, along with related fundamental concepts of international tax law, but to also look beyond that, within the pre-established limitations for the article and presentation. We will briefly touch upon more advanced issues, such as aspects of the arm's length principle in the attribution of profits to permanent establishments, transfer pricing, pending fiscal State aid cases concerning transfer pricing and the Common Consolidated Corporate Tax Base (CCCTB), as well as the recent developments within the Base Erosion and Profit Shifting (BEPS) project. We will not have space to address the ongoing work to reconcile customs' and transfer pricing's results under the arm's length principle between the OECD and the World Customs Organization (WCO) and possible issues in EU negative integration.

The notion of the permanent establishment (PE) of an enterprise has existed in international tax law since the late 19<sup>th</sup> century, when the first double tax conventions were negotiated<sup>1</sup>. The need to address transfer pricing issues – that is, transactions between related parties or between parts of the same entity that carry on an activity in different jurisdictions – was recognized early on, but

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<sup>1</sup> See Klaus Vogel on *Double Tax Conventions*, Wolters Kluwer, 4<sup>th</sup> Edition, 2015, 'A. Double Taxation and Its Avoidance', para. 20.