

AGENCY PERMANENT ESTABLISHMENT (PE)

Swipe



BACKGROUND



Multi-national corporations, carrying on business in another country are liable to pay tax on the business profits in that country, if the business is being conducted through a PE.

In this tax byte, let us understand the concept of Agency PE, by drawing guidance from a Danish tax ruling.



FACTS OF THE CASE

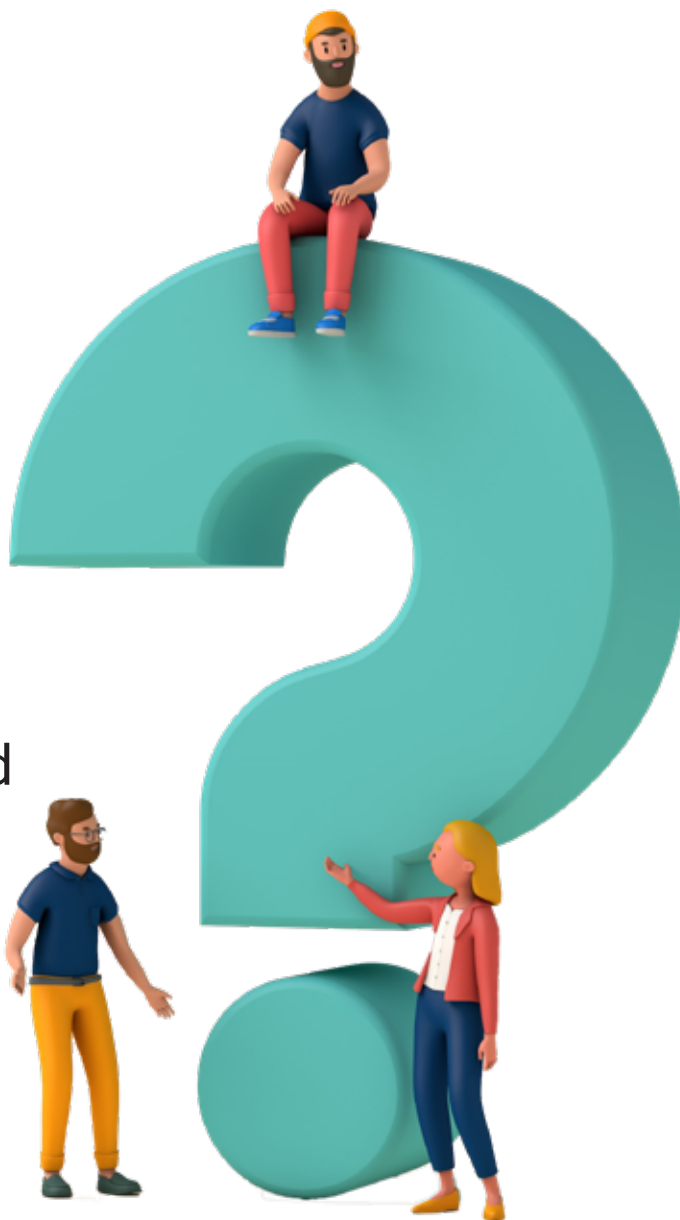


- ✓ A **Danish subsidiary** of a German company employs a Danish resident sales manager to roll-out the specific products handled by the German company in the Nordic region.
- ✓ **Role of the sales manager** included market research, establishing contact with customers, presentation of products and services, and project management.
- ✓ Sales manager collected customer's needs and passed these to the **German company**.
- ✓ **German company** prepared a customized offer for the customer, negotiated price, and then engaged with the customer.



WHAT WAS THE ISSUE?

Whether the employee acted as a dependent agent and created an agency PE of the German company.



WHAT DID THE COURT SAY?



The Court held that the Danish employee didn't constitute a PE for the German company given the following:

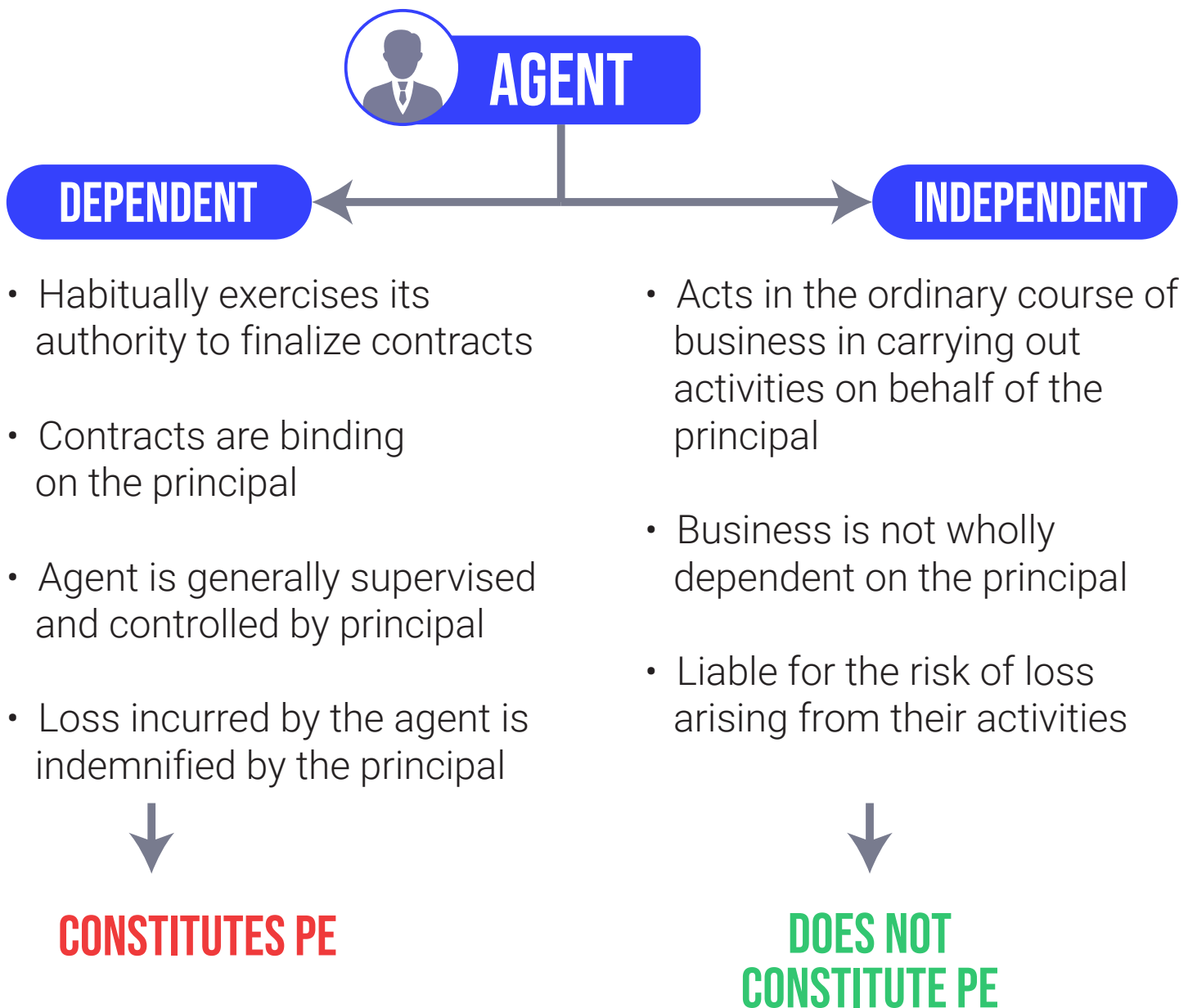
- ✓ the employee wasn't authorized to negotiate prices, enter into contracts, or otherwise enter into legal obligations on behalf of German company
- ✓ the activity carried out by the employee for the German company was preparatory or auxiliary in nature



DEPENDENT VS INDEPENDENT AGENT



There are some fundamental differences between dependent and independent agent. Interesting to note that independent agents do not constitute PE.



RELEVANCE IN UAE CT



UAE has proposed to tax non-residents having an agency PE in the UAE where business travelers or UAE-based persons

- ✓ act on behalf of non-residents
- ✓ negotiate and conclude contracts in the name of the non-residents without the material intervention of the non-resident

Also, important to look at respective tax treaty to determine agency PE of a non-resident in UAE.



PARTING THOUGHTS



Are you conducting your business in the UAE through an agent?

If yes, critical to evaluate whether the agent would constitute agency PE. An analysis would be required in line with following :

- ✓ Who bears entrepreneurial risks of the transaction?
- ✓ Whether the agent is acting in the ordinary course of its business?
- ✓ Whether the agent performs similar activities for other parties?
- ✓ What is agent's role in price negotiation and contract conclusion?

With corporate tax becoming a reality in the UAE, it is time to evaluate agency relationship.



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