

ALDER & SOUND

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TAX CHALLENGES OF MULTINATIONAL ENTERPRISES

Aalto University, 9 May 2023

WHO ARE WE?



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- ▶ Wide expertise on advising both multinational corporations and individuals regarding global mobility and the obligations in cross-border employment situations.
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MOBILE EMPLOYEES & RELATED CORPORATE RISKS

MOBILE EMPLOYEES & RELATED CORPORATE RISKS



DOMESTIC RULES AND TAX TREATIES

Domestic rules and tax treaties

Domestic rules

Taxation is always based on domestic law

Tax liability; registrations; compliance obligations

→ Local legislation and rules must be analysed



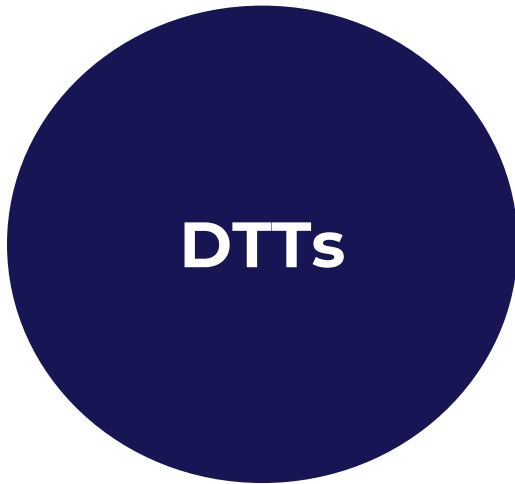
Double tax treaties

Double tax treaties can only limit taxing rights; taxing rights are never based on double tax treaties

DTTs divide taxing rights in a specific situation

→ Local interpretation of the DTTs must be analysed

Double tax treaties



- ▶ Finland has extensive Double Tax Treaty (“DTT”) network; Finland has a DTT in force with approximately 80 countries.
- ▶ All DTTs concluded by Finland are based on the OECD Model Tax Convention (“OECD Model”). OECD Model Commentary (“OECD Commentary”) can be used to interpret the DTTs.
 - All Finland’s DTT partners are not members of the OECD, and all DTT partners do not follow guidelines of the OECD Commentary.
 - Thus, interpretation of the applicable DTT may differ in Finland and in the contracting state.
- ▶ If there is no DTT in place, operating country’s right to tax is based solely on the local tax legislation

EMPLOYEE & EMPLOYER OBLIGATIONS

Employee obligations

Employee's personal tax status

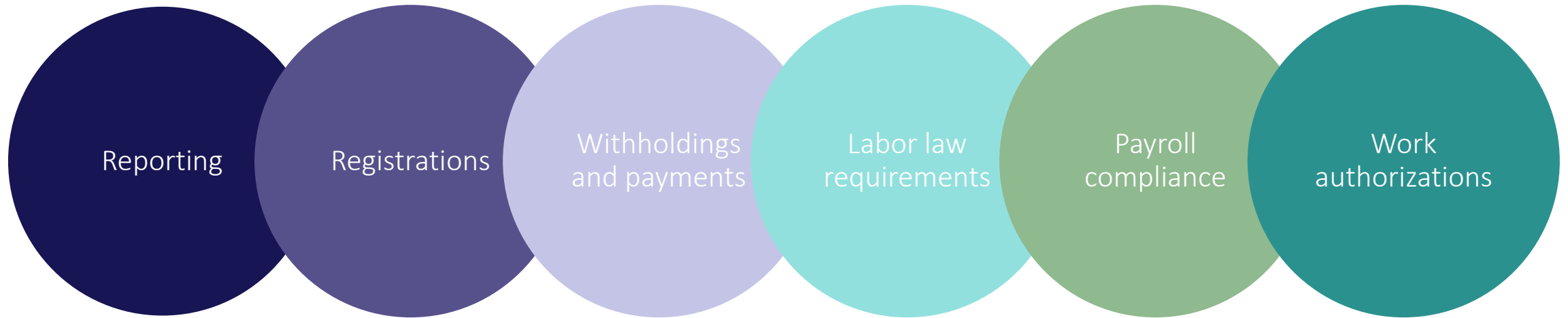
- ▶ Domestic legislation sets the base for the individual's status and regulates the taxation rights.
 - In cross-border situations, all working countries' legislations to be considered.
- ▶ Double tax treaties between the countries may limit the tax liabilities.
- ▶ Double taxation issues and **abolishment on double taxation** based on double tax treaty – exemption or crediting.
- ▶ Example: Finnish employee on assignment in Norway for seven months. Family, home and the permanent employment relationship remains in Finland.
 - Tax residency in both of the countries (domestic rules).
 - Tax treaty resident in Finland.
 - Depending on the exact number of days spent (under/over 183) and the company's status in Norway, the salary may become taxable in Norway or not.
 - If both countries impose tax on same income, the country of residency (Finland) will exempt the income taxable in Norway too.

Employee's social security coverage

- ▶ Different categories of social security coordination between the countries:
 1. **Full coordination** in EU area
 2. **Partial coordination** with the countries with which Finland has concluded a social security agreement
 3. **No coordination** between the countries – domestic legislation fully applicable
- ▶ Level of social security coordination depends on the country combination in question and the overall circumstances.
- ▶ Finally the local authorities make the decision of social security coverage.
- ▶ Generally, a certificate of coverage is issued by the authorities to prove the applicability of country's SS legislation.

Employer obligations

Regardless of the fact if the employee is liable for tax, social security or any other statutory payments in the country, often the employer has some obligations in the working countries.



PERMANENT ESTABLISHMENTS

Legislative framework – corporate income taxation

Permanent establishment in corporate income taxation

- ▶ Foreign business operations of a Finnish company may be subject to tax in the operating countries. Foreign country's right to tax is determined by **domestic tax legislation**.
- ▶ If Finland and the country of foreign business operations have a **DTT** in place, the operating country has a right to tax the business operations only if the operations qualify as a **PE** under the applicable DTA.
- ▶ The concept of a PE can be seen as a tool to divide taxing rights between two countries.

Permanent establishment in corporate income taxation

- ▶ In summary, activities which may lead to a PE according to the DTTs are:
 - **Fixed place of business that is used to carry on business activities,**
 - **Construction and installation activities,** and
 - **Sales activities.**
- ▶ Preparatory and auxiliary activities do not constitute a PE. In addition, activities of an independent agent do not constitute a PE.

Permanent establishments in corporate income taxation

The risk of a PE in corporate income taxation depends on local tax legislation and applicable tax treaty. OECD model tax treaty includes general guidelines for analysing the risk of a PE.

Fixed place of business

- A fixed place of business through which the business of an enterprise is wholly or partly carried on.
- Requires a place of business, i.e. a space, facilities, premises, installations, machinery or equipment, available for its use in the state. Also place of management.
- It is sufficient that employees use another company's facilities.
- The place of business must be fixed with a certain degree of permanence.
- *Art. 5(1-2) of the OECD Model*

Building and construction sites

- Building site or a construction or installation project.
- Requires a specific time period in order to constitute a PE. The time depends on the applicable tax treaty. Usually 6-12 months.
- The time test applies to each individual site or project separately. Projects which are unconnected with each other are treated separately even when carried out in the same state by the same constructor.
- *Art. 5(3) of the OECD Model*

Agents and representatives (sales)

- Broker, general commission agent or any other agent of an independent status acting in the ordinary course of their business do not create a PE.
- The agent must be independent both legally and economically. E.g. instructions and risk position are analysed.
- An agent may constitute a PE if the agent is not independent or does not act in the ordinary course of its business, e.g. concludes contracts, receives orders etc.
- *Art. 5(5) of the OECD Model*

Auxiliary and preparatory activities

- A fixed place, through which an enterprise carries on mere preparatory or auxiliary activities does not constitute a permanent establishment.
- Such activities may include the use of facilities solely for the purposes of storage, display or delivery of goods or collecting information for the enterprise.
- It should be analysed whether the operations of the PE are auxiliary or preparatory compared to the main business activities.
- *Art. 5(4) of the OECD Model Tax*

Risk indicators of a PE

The risk of a PE depends on the activities performed and permanence of the arrangement

Fixed place of business

Are there any kind of premises?
Are the group entity's core business activities carried out in these premises?
Is the arrangement permanent?
Do the activities include management level decisions?
If yes, the risk of a PE is higher

Building and construction sites

Does the project last longer than 6 months?
Does the project relate to construction or installation work?
Is the project connected to other projects in the same jurisdiction?
Are there multiple different employees consecutively longer than 6 months?
If yes, the risk of a PE is higher

Dependent agents and representatives

Does the representative have a right to conclude contracts in the name of the entity or receive orders that are binding?
If yes, the risk of a PE is higher

Auxiliary and preparatory activities

Are the activities merely preparatory or auxiliary in nature?
Are the activities just supporting activities and not core business activities?
If yes, the risk of a PE is lower

Building and construction sites

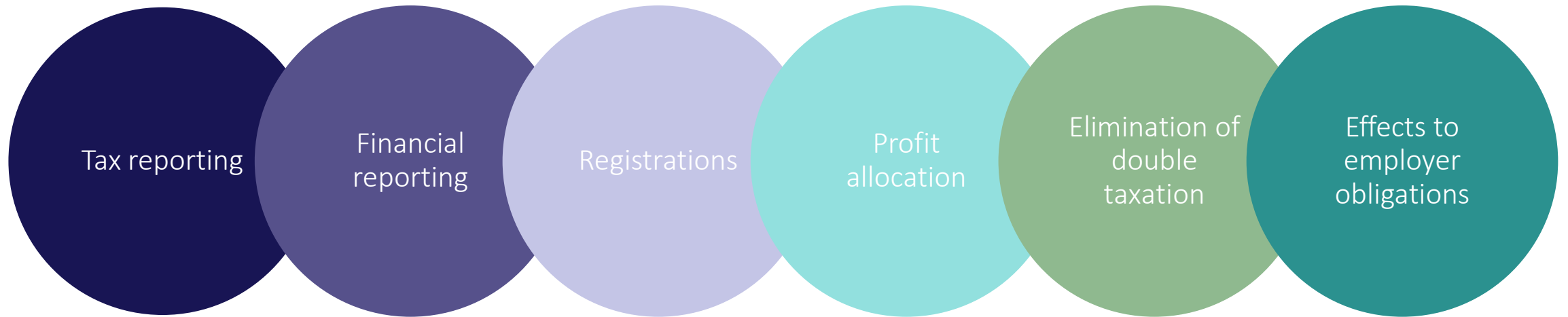
Does the project last less than 6 months?
If yes, the risk of a PE is lower

Independent agents and representatives

Does the agent operate in its own name?
Does the agent operate independently without instructions of the Group entity?
If yes, the risk of a PE is lower



Compliance obligations re PEs



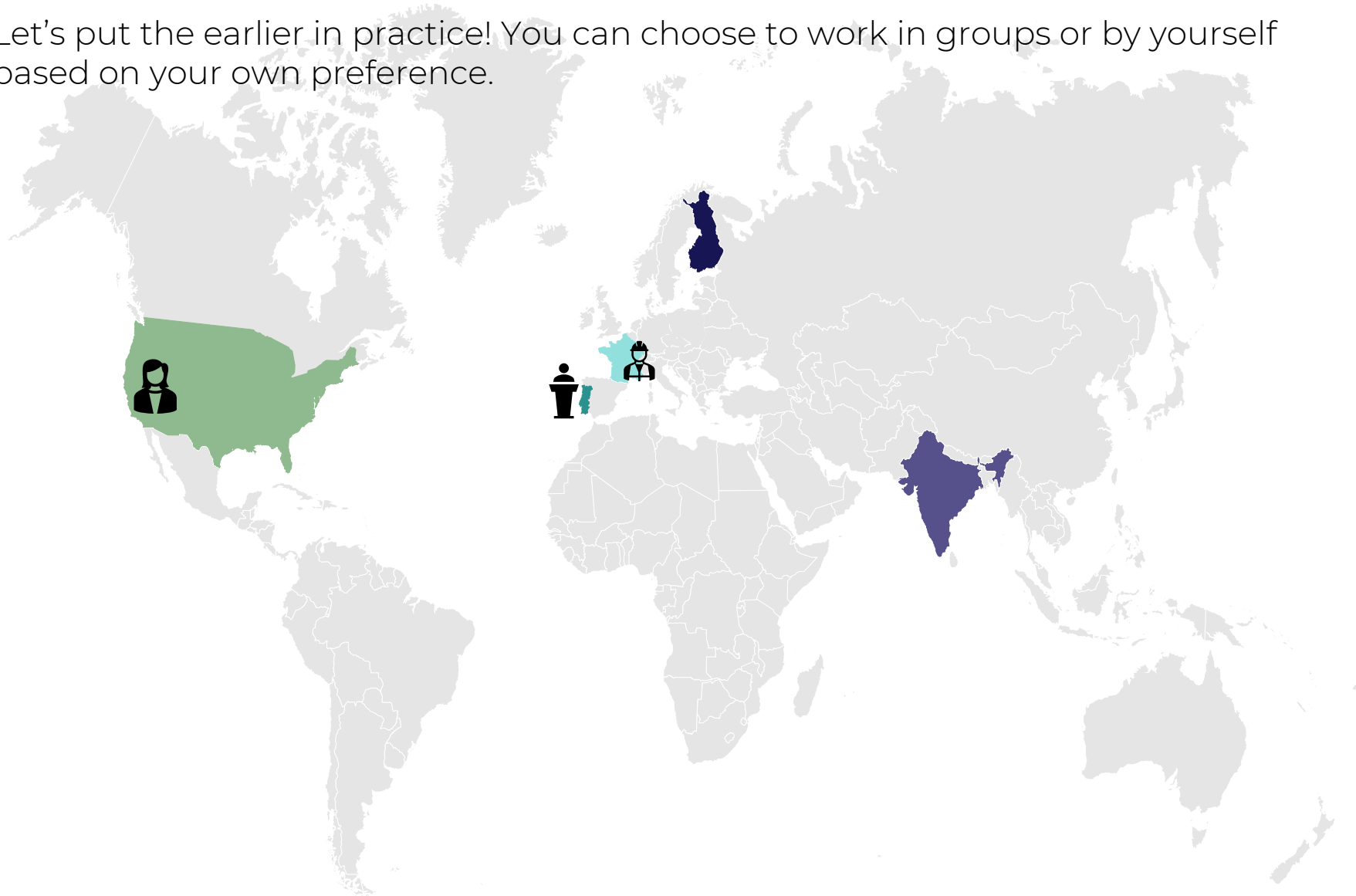
Potential changes in the future

- ▶ The PE concept has historically been associated with physical presence in the source state.
 - Thus, PE has usually required that a foreign company has employees, office premises etc. in the source state.
- ▶ International tax rules are old and do not reflect the change from industrial production to digitalized economy.
 - Therefore, formation of a PE through digital services is subject to various interpretations.
 - There are both global, EU level and local initiatives to tax digital services. Therefore, taxation of digital services could change in the future.
- ▶ The exchange of data between countries has developed a lot during the past years.
- ▶ Nowadays, the authorities use technology in inspections, hence the level of control globally is a lot higher than before.

CASE STUDIES

CASE STUDY

Let's put the earlier in practice! You can choose to work in groups or by yourself based on your own preference.



Suomi Oy

USA Ltd.

India Ltd.



Construction site in France



Sales in the USA



CEO in Portugal

Questions



Case studies

Corporate income tax

- How would you analyse the risk of a PE? What needs to be taken into account?
- How high is the risk of a PE? Which facts and circumstances are most critical?
- As a tax consultant, what information would you need to analyse the PE risk?
- If there will be a PE, what kind of compliance obligations needs to be taken into consideration?

Employee & employer obligations

- Which factors would you consider when analyzing to which country employee pays taxes for salary income?
- How about social security status - is there social security coordination between the countries?
- What kind of employer obligations should we consider in such set-up?
- What other important aspects would you clarify as an employee in such cross-border employment scenario?

Case studies

1

Construction site in France

- Suomi Oy has construction project in France;
- The project will last for 15 months;
- Suomi Oy utilizes local subcontractor, but 5 Suomi Oy's employees will work in France during the 15 months;
- In addition, 20 employees from the Indian group company will work in France during the 15 months – they work in France in Suomi Oy's project and their salary is paid by India Ltd.
- Employees from Suomi Oy and the Indian group company will mostly work at the construction site; in addition, they will utilize the subcontractors office premises;
- Each employee from Suomi Oy and the Indian group company will be in France 1-4 months.

Case studies

2

CEO in Portugal

- Suomi Oy's CEO moved to Portugal in December 2021.
- The CEO has an apartment in Helsinki, but the CEO mostly spends time and works in Portugal.
- The CEO is planning to retire during the year 2024.
- CEO's compensation is paid by Suomi Oy.

3

Sales in the USA

- ▶ Suomi Oy has hired a local sales agent from the USA to perform sales activities on behalf of the Finnish business.
 - The employee in question is a US citizen and lives in California with her family.
 - The employment contract is permanent.
 - Salary is paid by Suomi Oy.

4

Relocation from Indian group entity

- ▶ Finance manager from India is permanently relocated to Suomi Oy.
 - Concludes a permanent employment contract with Suomi Oy.
 - Family will move along to Finland.



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