

MEMO# 28652

January 9, 2015

Submission to OECD on BEPS Action 7: Preventing the Artificial Avoidance of Permanent Establishment (PE) Status

[28652]

January 9, 2015

TO: TAX MEMBERS No. 1-15

ADVISER DISTRIBUTOR TAX ISSUES TASK FORCE No. 1-15

ICI GLOBAL TAX COMMITTEE No. 1-15

INTERNATIONAL MEMBERS No. 1-15 RE: SUBMISSION TO OECD ON BEPS ACTION 7:
PREVENTING THE ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT (PE) STATUS

The attached ICI Global comment letter responds to the discussion draft document that was released last December by the Organisation for Economic Co-operation and Development (OECD) entitled “BEPS Action 7: Preventing the Artificial Avoidance of PE Status.” [\[1\]](#) The discussion draft identified several proposals under consideration for expanding the circumstances in which a country could assert that a company has a “permanent establishment” or “PE.” A company with a PE in another country can be subject to substantial additional tax obligations and liabilities.

The comment letter first describes the global fund industry and explains the relationship between funds and their managers. The letter then explains that the PE rules appropriately limit unproductive tax liability assertions. Finally, the letter makes the following specific recommendations:

- The information collection exception should be retained.
- The collection of information exception should not be limited to preparatory or auxiliary activities.
- Separate entities created for sound business reasons should be respected for PE purposes.
 - PE Rules never should attribute activities of a fund manager to a fund.
 - PE Rules should respect separate business entities created by a fund manager.
- Any expansion of the PE rules should be accompanied by clear and appropriate rules for attributing income and expense and by mandatory binding arbitration.

Keith Lawson
Senior Counsel - Tax Law

[Attachment](#)

endnotes

[1] The OECD's BEPS 7 discussion draft is available at:
<http://www.oecd.org/ctp/treaties/action-7-pe-status-public-discussion-draft.pdf>.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.