



Mobility and Post-BEPS substance requirements

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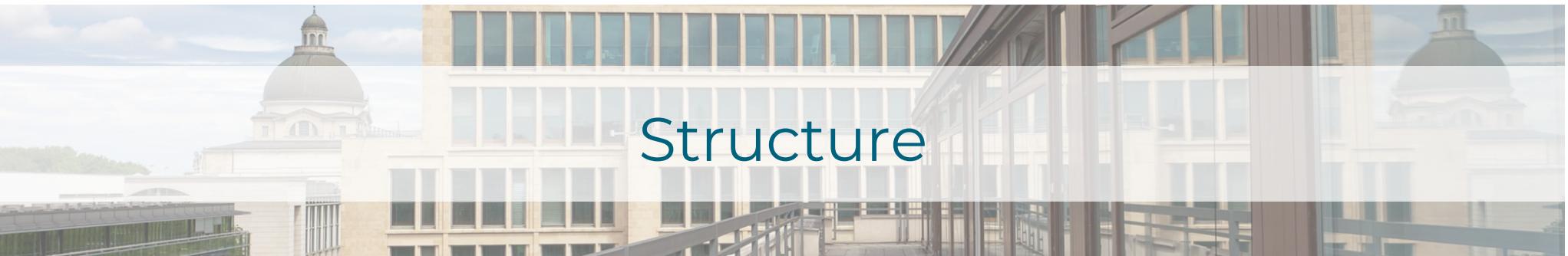
International tax challenges raised by mobility of individuals / workforce as a result of digitalization

Belgrade, 7.10.22



Relevant question

May entities achieve substance through remote working?

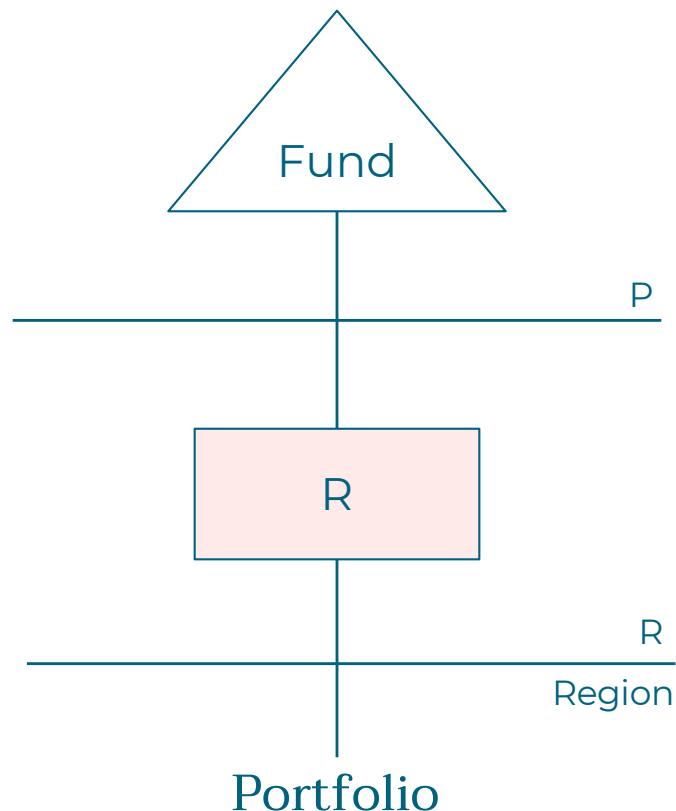


Structure

- Mobility and the lack of efficiency (robustness) of the international tax regime
- Mobility and substance in the allocation of business profits
 - Attribution of profits to PEs
 - Transfer pricing
- Mobility and substance in the access to selected cross-border tax benefits
 - PPT
 - ATAD 3

PPT examples and remote work

OECD Comm. art. 29, par. 182, example K



- “Availability of directors with knowledge of regional business practices and regulations”
- “The existence of a skilled multilingual workforce”
- The entity “employs an experienced local management team to review investment recommendations”
- “Majority of State R resident directors”



ATAD 3 and remote work

Art. 6(1)(c) (reporting conditions)	No outsource of the administration of day-to-day operations and the decision-making on significant functions.
Art. 6(2)(e) (carve out)	Undertakings with at least five own full-time equivalent employees or members of staff exclusively carrying out the activities generating the relevant income
Art. 7(1)(c) (substance indicators)	One or more directors / majority of FTEs are <u>resident for tax purposes in the Member State of the undertaking</u> , or <u>at no greater distance</u> from that Member State insofar as such distance is compatible with the <u>proper performance of their duties</u> ;
Art. 9(2) (Rebuttal)	Concrete evidence that decision-making concerning the activity generating the relevant income is <u>taking place in the Member State of the undertaking</u> .



Thank you

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