



UNIVERSITY OF AMSTERDAM
Amsterdam Centre for Transfer Pricing and Income Allocation



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Mobility of workers and remote work after the global pandemic:
Is there still a need to stay at arm's length?

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Wind-farm PE with no employees

A photograph of a wind farm at sunset. The sky is a mix of orange, yellow, and purple, with clouds catching the low light. Numerous wind turbines are visible, their dark silhouettes standing against the bright horizon. The water in the foreground is calm, reflecting the colors of the sky.

**Significant people functions under the OECD AOA:
Can assets be attributed to a PE maintained from a remote location?**
Bundesfinanzhof, No I B 44/2, November 2021

Attribution of profits to a ‘home office’ PE

Controlling services

- ✓ Operative management of certain routine processes; no assets and risks
- ✓ Routine activities
- ✓ Cost-plus method
- ✓ NL: Cost+

Software development

- ✓ Product or support software
- ✓ DEMPE analysis (e.g., Austria)
- ✓ Contract R&D – most common arrangement
- ✓ Relative contribution assessment: Cost+, TNMM, Profit split
- ✓ NL: Cost+

Distribution of products

- ✓ (i) a full-fledged distributor, (ii) a limited-risk distributor, (iii) an agent, or (iv) a commissionaire
- ✓ Resale price, TNMM, Cost+
- ✓ Profit split, e.g. FR: Engie SA (n.1812789)
- ✓ NL: Cost+

Management functions

- ✓ Benefit test: strategic value and risks
- ✓ Cost-plus for routine
- ✓ TNMM and Profit split for non-routine (risks control)
- ✓ Profit split, e.g. TMC Italy SpA (n. 18436)
- ✓ NL: Cost+

Self-employment: Freedom or modern slavery?

- ✓ ILO 2018: – ‘Dependent contractors’ category
- ✓ EU 2021: A proposal for a Directive on improving working conditions in platform work
- ✓ ‘Workforce’ PE? (See, Kostic S. 2021)
- ✓ FAR analysis under the OECD AOA
- ✓ E.g., Routine activities – Cost+



163 million freelancer profiles registered on online labour platforms globally*



Secondment of employees: Article 9 of the OECD MTC

- ✓ The concept of ‘economic employer’ more popular
 - Sweden: 15 days in a row or 45 days
 - US: 90 days in a calendar years (ALP remuneration)
 - Germany: day 1 (ALP remuneration)

Key concerns:

- ✓ Compensation for intra-group services
- ✓ PE risks
- ✓ Transfer of know-how
- ✓ Business restructuring: Yes or no?



France vs Bluestar Silicones, 9 Feb. 2021

- No management fees from the affiliated entities in Brazil, China, and Hong Kong
- Management services agreement with the UK and Italy

Justification:

- ? The commercial need and interest of the company to develop the partner companies
- ? A direct benefit to the parent company

The Court:

- x The renunciation of invoice management fees is an abnormal act of management
- x No evidence of the direct benefit

Considerations:

- The importance of the benefit analysis
- Shareholders' activities





Thank you!

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