



Belgrade, 6-7 October 2022

**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



**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

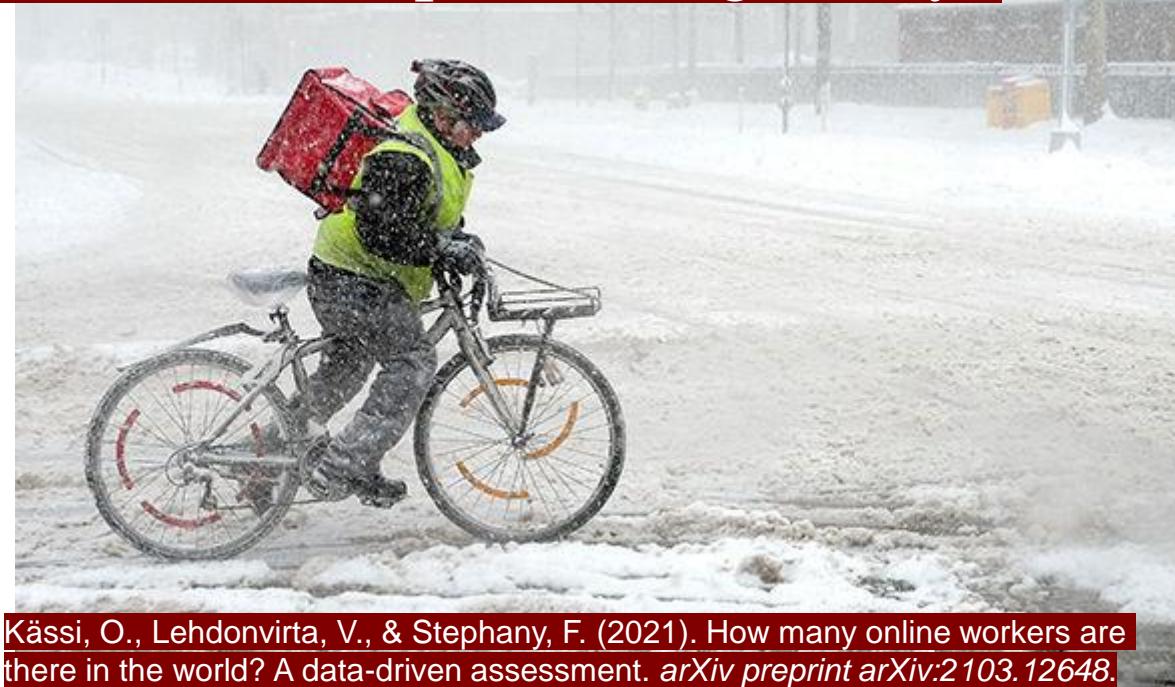
- ✓ Benefit test: strategic value and risks
- ✓ Cost-plus for routine
- ✓ TNMM and Profit split for non-routine (risks control)
- ✓ Profit split, e.g. TMC Italy SpA (n. 18436)
- ✓ NL: Cost+

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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