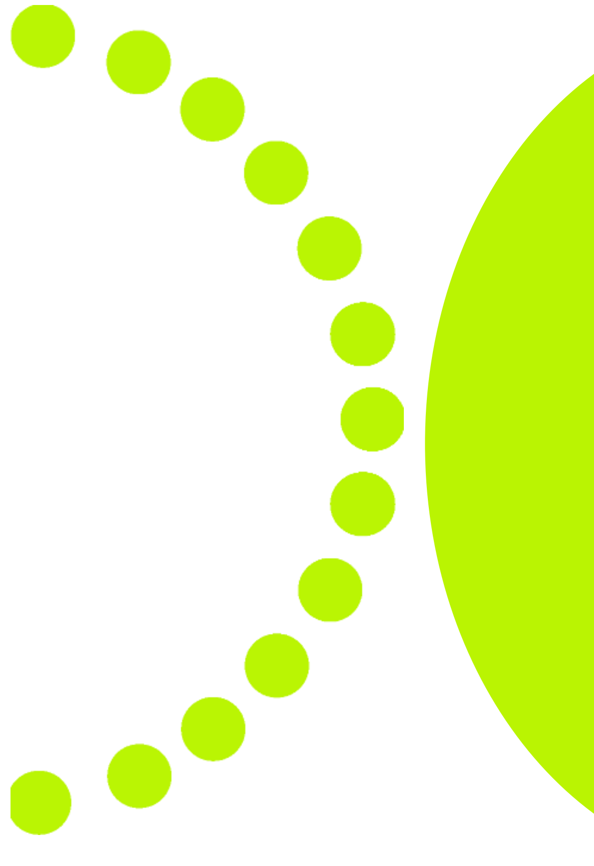

TAX UPDATE 2023

FEBRUARY 2023

PRESENTED BY

Auther Mutikori

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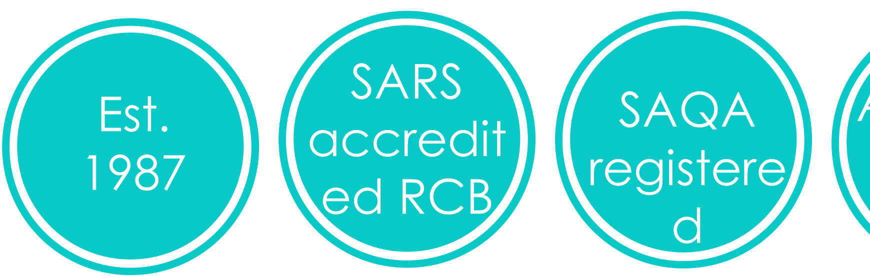

ABOUT THE PRESENTER

AUTHER MUTIKORI

Auther Mutikori is an accomplished Certified Tax and Financial Accountant with over 12 years of experience in corporate tax as well as financial reporting. He runs his own practice Capital Edge Accountants since 2010. He has vast experience in financial reporting and corporate tax. He is a member of CIBA BAP (SA), PAAB Zimbabwe, and Certified Tax Accountants of Zimbabwe. He has presented at many conferences/seminars on the issues of financial reporting, fraud, taxation and auditing. He holds several qualifications in accounting and taxation.

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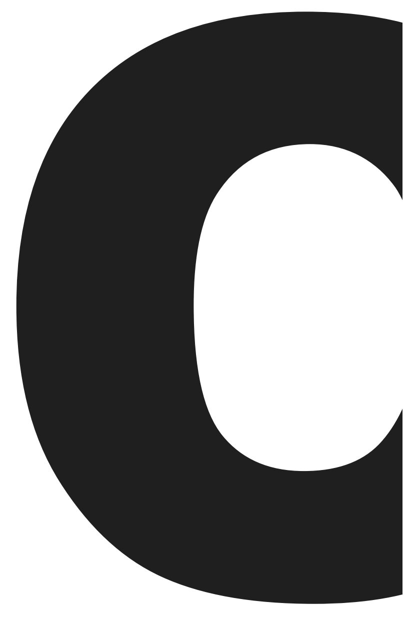

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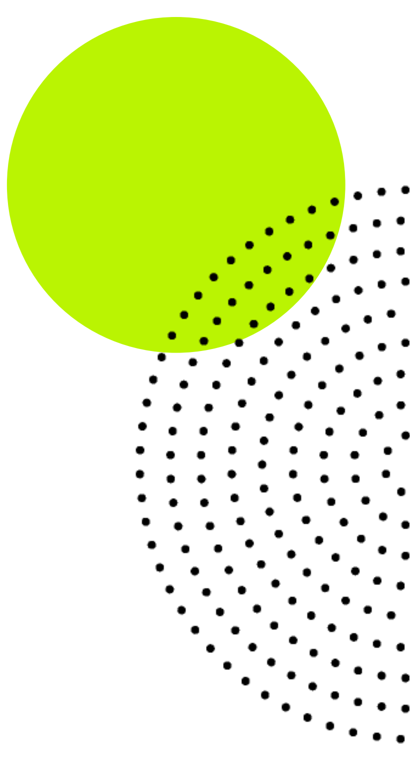

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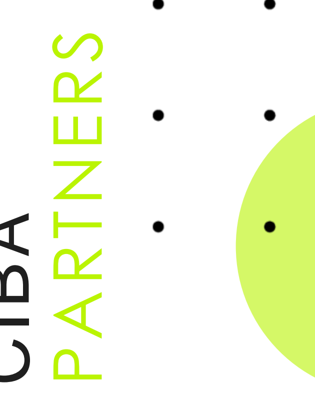
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1. Capital allowances & Deduction
2. Recoupments
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1. Capital Allowances & Deductions

S17: GENERAL DEDUCTIONS ALLOWED IN DETERMINATION OF TAXABLE INCOME

- Sect 17 (1) (a) stipulate the requirements trade expenditure must meet in order to be deductible. Those are general requirements applicable to all expenditure. If a specific expenditure does not meet the general requirements, it is necessary to look to the rest of S17 where the Act makes provisions for specific deductions, which do not qualify as deductions under the general deduction formula.

1. Capital Allowances & Deductions

The Act reads as follows

"(1) For the purpose of determining the taxable income derived by any person from carrying on any trade within Namibia, there shall be allowed as deductions from the income of such person so derived -

(a) expenditure and losses actually incurred in Namibia in the production of the income, provided such expenditure and losses are not of a capital nature;"

1. Capital Allowances & Deductions

Deductibility: Loss (expenses) & Definition of trade

Following the lodgment of the appeal to the Tax Tribunal, the Appellant subsequently withdrew the appeal without stating any reasons, therefore. NamRA requested for a ruling notwithstanding the withdrawal of the appeal.

A taxpayer was engaged in the business of a "general dealer, retailer and wholesaler, import and export, fishing, mining, consulting, general investments including property, property development and all related activities". In a certain year of assessment (which it indicated a loss of amount), the taxpayer received dividend income and had no other income for that year. In the following two years, the taxpayer derived interest from its investment's activities. NamRA disallowed the deduction of the loss/expenses for a year in question on the basis that taxpayer did not trade in a year in question.

1. Capital Allowances & Deductions

Deductibility: Loss (expenses) & Definition of trade

The taxpayer initially noted an appeal on the grounds that:

The definition of trade in the Income Tax Act 1981 included investment activities generating interest income entitling the taxpayer to deducts its loss for the year in question;

Whereas the taxpayer did not have any other income, this did not imply that its boards of directors no longer had the intention to trade and make a profit; and

Its investment activities for the following two years constituted trade entitling it to set off its year in question loss against the following two years income..

NamRA disallowed the taxpayer's objection on the basis that section 17 of the Income Tax Act 1981 did not allow the deduction of expenses where the taxpayer did not trade during the year in question and section 21(1) of the Income Tax Act 1981 did not allow setting off of losses of a previous year, if there was no trade in the current year of assessment.

1. Capital Allowances & Deductions

Deductibility: Loss (expenses) & Definition of trade

The issues that had to be determined were the following:

Whether or not the taxpayer 's dividend payment in a year in question amounted to income generated through trade as defined in the Income Tax Act 1981, that would entitle the taxpayer to deduct the year in question expenses;

Whether an intention to trade and make a profit, absent actual trading entitled a taxpayer to deduct
expenditures; and

Whether taxpayer's investment activities in the two following years constituted trade entitling the taxpayer to set off loss for the year in question.

1. Capital Allowances & Deductions

Deductibility: Loss (expenses) & Definition of trade

The Tax Tribunal found that:
The income earned by the taxpayer was from dividends and it did not appear that the taxpayer was in the business of buying and selling shares. The dividend payment was therefore earned passively rather than actively. The expenses in the year in question were not incurred in the "production of the income" in the sense of section 17(1)(a), since the taxpayer was not engaged in the carrying out of any trade in the year in question;

The fact that taxpayer intended to trade but did not, could not and did not assist the taxpayer;

The taxpayer did not attempt to explain what investment activities it was engaged in during the two following years, what the extent of such activities was and why such should be considered trading within the meaning of the Income Tax Act 1981.

As indicated, the taxpayer withdrew the appeal before adjudication, but the Tax Tribunal rendered a ruling regardless.

1. Capital Allowances & Deductions

Since s17 deals with more of General deductions however Capital Allowances falls within S17 (1)(e) (eA), (f)

(e) "expenditure incurred during the year of assessment in respect of the acquisition of vehicles, aircraft, sea-going craft, machinery, implements, utensils and articles used by the taxpayer for the purpose of the taxpayer's trade: Provided that the amount of any such expenditure shall not be fully deductible in the same year of assessment, but shall be deducted, one-third in the year of assessment in which the expenditure is incurred, one-third in the first ensuing year of assessment and one-third in the second ensuing year of assessment, but if any such vehicle, aircraft, sea-going craft, machinery, implement, utensil or article is sold or otherwise disposed of by the taxpayer during any of such years of assessment, no such deduction shall be allowed in respect of such vehicle, aircraft, sea-going craft, machinery, implement, utensil or article in that year of assessment or any such ensuing year of assessment which may remain:"

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1. Capital Allowances & Deductions

Various Capital Allowances in relation to class of assets

- Moveable assets used for trade purposes 33⅓% (One third)
- Buildings used for trade purposes (On cost of erection):

(a) in year brought into use 20%

(b) subsequent 20 years 4%

- Certain farming capital expenditure 100% (Limited to farming taxable income)
- Intellectual property period of use
- Lease premiums period of lease
- Leasehold improvements period of lease

1. Capital Allowances & Deductions

Wear & Tear Allowances S17 (1) (e) (eA)

The allowance is based on:

- The cost of acquisition
- During the year of assessment of
- Motor vehicles, machinery, implements, utensils, aircraft, and sea going craft
- Used by the taxpayer in his trade

The allowance is

(1) 1/3 in the year of acquisition

(2) 1/3 in the first ensuing year

(3) 1/3 in the 2nd ensuing year

1. Capital Allowances & Deductions

Example

X (Pty) Ltd renders a delivery service.
On 1 January 2023 buy a new delivery truck at a cost of N$580 000.00

Required
Calculate wear and tear allowances in terms of S17(1)(e)

1. Capital Allowances & Deductions

Sect 17 (1) (f) Building Allowance

- The allowance is in respect of buildings used for purposes of the taxpayer's trade and amounts to
- 20% of the cost of erection in the tax year the building is brought into use and
- 4% of such cost for the following 20 year provided that the building is used only for trade purposes.

If the building is used for manufacturing purposes by a registered manufacturer, the annual allowance will amount to:

- 8% of such cost for the following 10 years after the building is brought into use

Provided that no allowance under this paragraph shall be granted –

- if an allowance under paragraph 17(1) (h) was already granted or
- in respect of buildings used as housing for employees or where the taxpayer is a company, to the employees or directors of such a company.

1. Capital Allowances & Deductions

S 17(1)(g)Premium allowance

This allowance is in respect of any lease premium paid for the right of use of
- Land & buildings or
- Plant & Machinery or
- Motion picture film or sound or recording or advertising matter or
- Patent designs or trademarks or
- Knowledge in respect of such assets

The allowance for any tax year is equal to =

The premium divided by the numbers of years of the lease agreement with a maximum of 25 years.
If the lease is for indefinite period, the premium is spread over such a period as the secretary considers represents its probable duration.

NOTE: A lease premium is only payable once in a lease lifetime.

1. Capital Allowances & Deductions

S17(1)(h) Lease improvements

Where a lease agreement impose the obligations on a lease to effect improvements on leased property used in the production of income, the lessee can claim an allowance equal to:

The amount spent on improvements (limited to the amount as stipulated in the lease agreement) divided by the number of years calculated from the date of on which the improvements are completed until the end of the lease contract with a maximum of 25 years.

If the lease is for an indefinite period, the amount spent on the improvements will be spread over such a period as the secretary considers represents its probable duration.

2. Recoupments

2. Recoupments

Sec 14 (4) RECOUPMENT OF ALLOWANCES & DEDUCTIONS

(4) There must be included in the income of the taxpayer all amounts allowed to be deducted or set off under subsection (1) and sections 17 to 21, inclusive, except sections17(1)(n), (q), (qA) and (s) and section 18(1)(a), or under the corresponding provisions of any previous income tax law, whether in the current or any previous year of assessment, which have been recovered or recouped during the current year of assessment, including recovery or recoupment by means of -

2. Recoupments

(a) the disposal or withdrawal from trade for use for non-trade purposes; or

(b) the removal from Namibia of any item in respect of which deductions were allowed against the income from the trade of such taxpayer in respect of such item, but any item so disposed of, withdrawn from trade or removed from Namibia is valued at market value for the purpose of calculating the amount of any deduction recouped or recovered.

2. Recoupment

There shall be included in the taxpayer's income all amounts allowed to be deducted or set off under Sec 14 (1) and S17 to 21 which are recovered or recouped in the tax year as a result of-

- disposal
- withdrawal from trade for use for non-trade purposes
- removal from Namibia

The recoupment is limited to the amount previously allowed as wear and tear on the asset. Market values of the asset must be used to determine the amount to be recouped other than disposals.

2. Recoupment

When a taxpayer disposes of an asset on which allowances were granted for normal tax purposes, there might be certain normal tax consequences:

Proceeds of disposal **Exceed** Tax Value of an Asset = Recoupment

Proceeds of disposal **Less than** Tax Value of an Asset = Allowance

Therefore if :

Proceeds (limited to original cost price) – Tax Value = Positive : add recoupment to income, gross income

Proceeds (limited to original cost price) – Tax Value = Negative: claim an allowance

2. Recoupment

Examples of where recoupments may occur

- Cessation of trade
- Donations of assets
- Assets in specie distributions
- Disposal of assets to connected persons
- Change of use to trading stock

3. Cross Border Transactions

3. Cross Border Transactions

Sec95A- Transfer Pricing

What is transfer pricing?

Transfer pricing is a profit allocation method used to attribute a Multi-National Enterprises net income (profit or loss) to the tax jurisdictions where it operates its subsidiary controlled foreign corporations (CFCs). The transfer price is defined as the price charged between related corporate entities for goods or services in an inter-company transaction.

Transfer pricing refers to the mechanism by which cross boarder intra-group transactions are priced. In itself, it is a normal incident of MNE operations – it allows MNE to determine which parts of the group are profit- or loss-making, for example. However, if the method used to determine the price of such transactions, for whatever reason, does not reflect their true value, profits might effectively be shifted to low-tax or no-tax jurisdictions and losses and deductions to high-tax jurisdictions.

3. Cross Border Transactions

Transfer pricing refers to the rules and methods of pricing inter-company transactions within and between affiliated enterprises. Involves the pricing of goods or services outside normal commercial parameters so as to gain some tax advantages.

The Namibian transfer pricing framework broadly follows the OECD transfer pricing guidelines and the UN practical manual on transfer pricing for developing countries. S95A has adopted much of the transfer pricing mechanisms from the OECD framework.

3. Cross Border Transactions

Sec 95A- Transfer Pricing

Determination of taxable income of certain persons in respect of international transactions

95A. (1) For the purposes of this section - "goods" means any goods, whether tangible or intangible, and includes, without limiting the generality of the foregoing, any corporeal movable thing, fixed property and any real right in any such thing or fixed property;
"international transaction" means a transaction, operation or scheme entered into between connected persons.

Connected persons in relation to a company:
Any other company that would be part of the same group of companies as that company if the expression "at 70% of the equity shares or voting rights.

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3. Cross Border Transactions

Sec 95A- Transfer Pricing

OECD Model Convention on Transfer Pricing Guidelines

(Organisation for Economic Cooperation & development)

The OECD countries developed the concept of Transfer pricing which was then adopted by UN as well as most other countries. The OECD countries designed an Arm’s length principle.

3. Cross Border Transactions

2. Arm's length rule

The authoritative statement of the arm's length principle is given in paragraph 1 of Article 9 of the OECD Model Tax Convention, which forms the basis of bilateral tax treaties involving OECD member countries and an increasing number of non-member countries.

According to Article 9: '[Where] conditions are made or imposed between the two [associated] enterprises in their commercial or financial relations which differ from those which would have been made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of the enterprise and taxed accordingly." [OECD, 2017:35]

3. Cross Border Transactions

Thus, the aim of transfer pricing provisions is to adjust prices in order to reflect an arm's length price which would have applied had the transaction been concluded on normal commercial grounds between independent enterprises. Arm's length principle is the international transfer pricing standard agreed to by OECD member states for use by multinational enterprises and tax administrations. An arm's length price is generally considered to be the price that would exist if the related parties to the transaction were dealing with each other as independent parties.

3. Cross Border Transactions

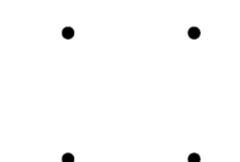
Methods used to determine Transfer prices

The OECD transfer pricing methods are:
1. Comparable Uncontrolled Price (CUP)
2. Resale price
3. Cost-plus
4. Profit-splits
5. Profit-Comparison (TNNM)

3. Cross Border Transactions

(1) Comparable uncontrolled price method (CUP)

The CUP method compares the price charged for a property or services transferred in a controlled transaction to the price charged for property or services transferred in a comparable uncontrolled transaction in comparable circumstances.
This method is reliable where an independent enterprise sells the same product as that sold between two associated enterprises.



3. Cross Border Transactions

(2) Resale price method

The resale-price method is used to determine price to be paid by reseller for a product purchased from an associated enterprise and resold to an independent enterprise.

The purchase price is set so that the margin earned by reseller is sufficient to allow it to cover its selling and operating expenses and make an appropriate profit.

What is left after subtracting the gross margins can be regarded, after adjustments for other costs associated with the purchase of the product, like custom duties, as an arm's-length price for the original transfer of property between the associated enterprises.

This method is usually applied to marketing operations.

3. Cross Border Transactions

(3) Cost-plus method

The cost-plus method is used to determine the price to be charged by a supplier of property or services to a related purchaser.

The price is determined by adding to costs the supplier incurred an appropriate gross margin so that the supplier will make an appropriate profit in the light of market of conditions and functions he performed.

What is obtained after adding markup to costs may be regarded as arm's-length price of the original controlled transactions.

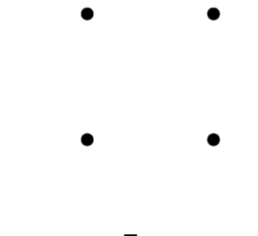
When semi-finished goods are sold between related parties on the basis of joint agreements or for the provision of services in controlled transactions this method is used.

3. Cross Border Transactions

(4) Profit-split methods

Profit-split methods take the combined profits earned by two related parties from one or a series of transactions and then divide the profits using a defined basis that is aimed at replicating the division of profits that would have been anticipated in an agreement made at arm's length.

Arm's-length pricing is derived from both parties by working back from profit to price.
Both the OECD and US allow for profit-split methods and the main ways of applying profit split are as follows:



3. Cross Border Transactions

(i) Contribution profit-split (OECD)

Under the contribution profit split method the relative contribution of each member of a controlled group to the profits derived from integrated transactions is valued on the basis of the activities and risks undertaken by each member. The combined profits are then allocated among the members of the controlled group on a pro-rata basis according to their contributions; to determine their relative contributions the transactional methods may be used.

(ii) Residual profit-split

This applies typically when the combined profits of the controlled group because of mutual economies of scale or become unique and valuable assets owned by the group. This method involves 2 stages: first each member of the controlled group is allocated sufficient profit to provide it with a basic return appropriate to type of transactions it undertook (primarily measured by traditional methods). Then next stage is calculating residual profits based on analysis of how it might have been allocated among independent enterprises

3. Cross Border Transactions

(5) Profit-Comparison Methods (TNNM)

These methods seek to determine the level of profits that would have resulted from controlled transactions if return realized on the transaction had been equal to the return realized by the comparable independent enterprise.

The TNNM under OECD guidelines compares the net profit margin of controlled transactions with the net profit margins of uncontrolled transactions.

The OECD does not recommend this method because it allows only comparison of net margins on a transactional basis and only in last-resort situations I.e places where “transaction methods cannot be reliably applied alone or exceptionally cannot be applied at all”.

The OECD clearly prefers transactional methods over profit-based methods. The hierarchy of methods is using the transactional methods first and if they don't fit then apply profit-based methods next. The OECD does prescribe a hierarchy of results which contrasts with the 'best-method rule' adopted by the USA which allows any of the methods which best represent the transfer price to be chosen.

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4. Double Tax Agreements

4. Double Tax Agreements

Double taxation

Refers to **income tax being paid twice on the same source of income**. Double taxation occurs when income is taxed at both the corporate level and personal level, as in the case of stock dividends. Double taxation also refers to the same income being taxed by two different countries.

To avert the situation most countries have entered into tax treaties to deal with the matter. United Nations Model Double Taxation Convention
between Developed and Developing Countries 2017 encourages developing countries to have more of these tax treaties as a way of encouraging investment

4. Double Tax Agreements

Double taxation

Countries with DTA agreements with Namibia

These are the countries with which Namibia has double taxation agreements with. Double tax agreements may reduce withholding taxes.

Botswana	France
Germany	India
Malaysia	Mauritius
Mauritius	Romania
Russia	South Africa
Sweden	The United Kingdom

4. Double Tax Agreements

Double taxation

Which type of income is subject to double taxation?

Most commonly, double taxation happens when a company earns **a profit in the form of dividends**.

The company pays the taxes on its annual profits first.

Then, after the company pays its dividends to shareholders, shareholders pay a second tax in the country of residents.

If Namibia has entered into a double tax agreement with a country where the foreign company resides, such entity will only be taxable in Namibia if it has established a permanent establishment (PE) in Namibia.

Since Namibia operates a source-based tax system, meaning the income from a source within Namibia or deemed to be within Namibia will be subject to tax in Namibia, unless a specific exemption is available.

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4. Double Tax Agreements

Double taxation

As a result of the source rules and the exempt status of dividends, few items subject to foreign tax are liable to Namibian taxation.

There is no general unilateral provision for relief from double taxation, although a specific provision prevents double taxation of royalties.

4. Double Tax Agreements

Double taxation

The concept of Permanent Establishment

Multinational corporations doing business in foreign countries are typically subject to the domestic tax laws of the countries where they are engaged in business activities.

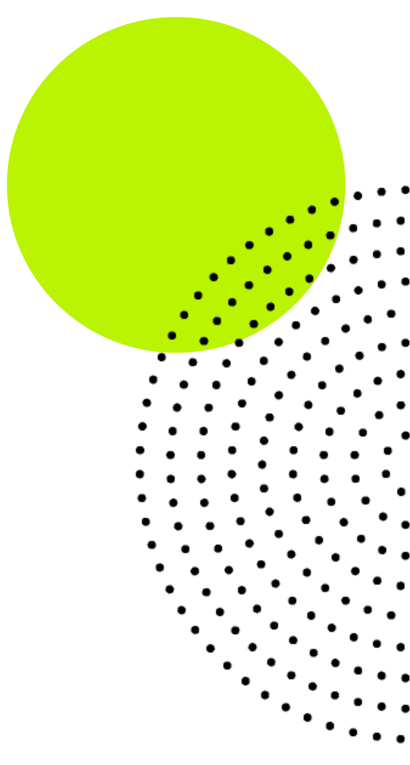
The permanent establishment concept creates a minimum threshold below which the source country does not attempt to tax a foreign enterprise's business income.

That threshold is set in terms of a minimum physical connection to the jurisdiction.

There are two means by which an enterprise may cross that threshold and thereby come to have a permanent establishment in a country:

- by maintaining a fixed place of business in that country, or
- by means of a dependent agent.

QUESTIONS & ANSWERS



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Administrative	Financial Administrator	CFAdmin - Chartered Financial Administrator	5
Functional	Bookkeeper	CBK - Chartered Bookkeeper	4
Practice			
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