

INTRODUCTION

According to the OECD Model Convention, the business profits of an enterprise carried on by a resident of a contracting state are taxable only in that state. This rule is subject to an exception when the enterprise has a permanent establishment ("PE") in another contracting state; the profits that are "attributable" to the PE may be taxed in the other contracting state, i.e. where the PE is situated.

The profits attributable to a PE should be determined, for treaty purposes, from a twofold perspective:

- (a) *from the perspective of the PE/source state*, in order to ascertain how much of the profits may be taxed in that state according to Art. 7 of the relevant treaty; and
- (b) *from the perspective of the residence state of the person carrying on the enterprise*, in order to determine the amount of income with respect to which double taxation relief must be granted according to Art. 23 of the treaty.

The OECD Model Convention offers some guidance as to how the profits attributable to a PE should be determined. According to Art. 7(2), the profits attributable to a PE are the profits which it might be expected to make if it were a distinct and separate enterprise, engaged in the same or similar activities, under the same or similar conditions, and dealing entirely independently with the enterprise of which the PE is a part. Art. 7(3) further specifies that the expenses incurred by the PE, including executive and general administrative expenses, whether in the PE state or elsewhere, are to be allowed as deductions.

This contribution deals with the attribution of profits to PEs, from both a treaty and domestic law perspective. *Part I* examines the interpretation of the term "attributable" and, more specifically, how the dealings between a PE and the enterprise of which it is a part should be taxed. In light of the above, an overview is provided of the historical development of Art. 7, starting from the Draft Conventions prepared by the League of Nations and spanning the

current OECD Model and Commentary, taking into account the recent OECD drafts on the subject. *Part II* includes a country survey, where the tax consequences of dealings between different parts of the same enterprise are analyzed on the basis of the domestic law of the countries covered. Finally, *Part III* deals with some selected issues in the taxation of intra-company dealings.