



Permanent Establishment Provision

TAX DEPARTMENT

Do you have business operations, cross-border activity, or digital presence in Egypt?

Does your company use facilities, factories, workshops, branches, offices, or warehouses in Egypt?

Are you using employees who are conducting business deals in Egypt?

Do you use sales/commission agents in Egypt for your business?

Is your business model in Egypt at risk of creating a permanent establishment?

Are you planning future investments in Egypt?

KPMG

Do you have long-term construction projects, exploration or extraction activities in Egypt?

This alert will enable you to identify recent updates by comparing them with previous one, offering valuable insights to address your inquiries.

An Overview of the Permanent Establishment in Egypt

Introduction

Permanent Establishment "PE" provisions were first introduced as per Law 91 for the year 2005. The Egyptian tax law depended heavily on the model tax convention of The Organization for Economic Co-operation and Development "OECD"

Although the Egyptian income tax law has gone through multiple amendments, the PE provisions have not changed since the inception of the law until Law 30 came into force on 16 June 2023.

The provisions of Article 4 - PE before the amendments were as follows:

- The term "permanent establishment," as employed in the application of the provisions of this legislation, refers to any fixed place of business through which the business activities of a person not resident in Egypt are wholly or partly carried out. This encompasses, notably:

- (a) The place of management.
- (b) A branch.
- (c) A building used as a sales outlet.
- (d) An office.
- (e) A factory.
- (f) A workshop.
- (g) A mine, oil or gas well, quarry, or any other location for the extraction of natural resources, including timber or other forest products.
- (h) A farm or plantation.
- (i) A construction site or project, assembly or installation project, or supervisory activities associated therewith.

- To determine the existence of a permanent establishment, a person working for the account of a dependent enterprise is deemed as such if they possess the authority to conclude contracts on behalf of the enterprise and habitually exercises such authority, provided the activities do not solely consist of the purchase of goods or merchandise for the enterprise.

- However, the following shall not be considered as constituting a permanent establishment:

1. The use of facilities solely for the purpose of storage or display of goods or merchandise owned by the enterprise.
2. The maintenance of a stock of goods or merchandise owned by the enterprise for the purposes of storage or display.
3. The holding of a stock of goods and merchandise owned by the enterprise for the sole purpose of processing by another enterprise.

4. The maintenance of a fixed place of business for the purpose of purchasing goods or merchandise or collecting information for the enterprise.
 5. The maintenance of a fixed place of business solely for the purpose of carrying out any preparatory or auxiliary activities for the enterprise.
 6. Maintaining a fixed place of business where any combination of the activities referred to in the preceding provisions is carried out, provided that the overall activity of the fixed place of business resulting from this combination of activities is of a preparatory or auxiliary nature only.
 7. The conduct of industrial or commercial activities by a foreign enterprise through a commission agent, general commission agent, or any other agent of an independent status, unless it can be shown that such agent is acting exclusively or almost exclusively on behalf of the foreign enterprise.
- The fact that a resident of Egypt is controlled by a non-resident enterprise does not of itself render the resident a permanent establishment of the non-resident.
 - The new amendments then introduced two main articles 4 and 4 BIS that reshaped the PE concept in the Egyptian tax law.

The PE definition after the provision of Article 4 – of the Law 30 is as follows:

The term of a "permanent establishment" as employed in the application of the provisions of this legislation refers to any fixed place of business through which all or part of the activities of a person not resident in Egypt are conducted, this encompasses, notably:

- (a) A place of management.
- (b) A branch.
- (c) An office.
- (d) A factory.
- (e) A workshop.
- (f) A mine, oil or gas well, quarry, or any other location for the extraction of natural resources, including timber or other forest products.
- (g) A farm or plantation.
- (h) Buildings, facilities, and warehouses utilized as sales outlets.
- (i) The site of construction or installation projects, or activities of supervision related thereto, should such sites or projects persist in Egypt for a duration or durations exceeding ninety days within any twelve-month period.

An Overview of the Permanent Establishment in Egypt

- Deemed to constitute a permanent establishment are the following:
 - a. Any activities conducted in Egypt regarding the exploration, extraction, or exploitation of natural resources, including the use or installation of essential equipment, for a cumulative period surpassing ninety days within any twelve-month period.
 - b. The provision of services, including consultancy services rendered by a project through employees or other individuals engaged by the project for this purpose, provided that such services are rendered for the same project or a related project in Egypt for a total period exceeding ninety days within any twelve-month period.
 - c. An insurance enterprise belonging to a foreign state, excluding reinsurance activities, when it collects premiums in Egypt or insures risks occurring therein through a person other than an independent agent.
 - d. Where a person in Egypt acts on behalf of an enterprise in another jurisdiction by conducting activities in Egypt as an independent agent and operating within the scope of their customary duties. However, should such a person operate exclusively or almost exclusively on behalf of one or more closely related enterprises, they shall not be considered an independent agent within the purview of this provision with respect to any such project.
 - e. A person working for the account of a dependent enterprise who possesses the authority to conclude contracts on behalf of the enterprise and has not limited his activities solely to the procurement of goods or merchandise for the enterprise. Additionally, should such a person routinely conclude contracts or habitually play a primary role in the conclusion of contracts repeatedly entered into without substantial modification by the enterprise, and where these contracts:
 - Are concluded in the name of the enterprise.
 - Involve the transfer of ownership or the granting of the right to use property owned by the enterprise or in its possession.
 - Are for the provision of services offered by the enterprise.
 - f. Projects or activities exceeding a period of ninety days if:
 1. A non-resident company project conducts activities in Egypt at a specific location constituting a construction site, construction project, installation, or other specified project mentioned in the preceding paragraph, or carries out supervisory or consultancy activities related thereto.
 2. Connected activities in Egypt are undertaken at the same construction site, construction project, installation, or other specified location mentioned in the preceding paragraph applicable to supervisory or related consultancy activities, during different time periods, by one or more projects closely associated with the project.
 - These various time periods are aggregated with the total duration during which the aforementioned project initially engages in its activities at the construction site, construction project, installation, or other specified location referred to in the preceding paragraph.
- Article 4 BIS of the Law was introduced to add to the PE definition the following:**
- Subject to the provisions of Article 4 of this Law, a permanent establishment shall not include:
 - a. The use of facilities solely for the purpose of storage or display of goods or merchandise owned by the enterprise.
 - b. The maintenance of a stock of goods or merchandise owned by the enterprise solely for the purpose of storage or display.
 - c. The maintenance of a stock of goods or merchandise owned by the enterprise solely for the purpose of processing by another enterprise.
 - d. The use of a fixed place of business solely for the purpose of purchasing goods or merchandise or collecting information for the enterprise.
 - e. The use of a fixed place of business solely for any other preliminary or auxiliary activity for the enterprise.
 - f. The use of a fixed place of business solely for combining any of the activities mentioned in subparagraphs (a), (b), (c), (d), or (e) of this paragraph, provided that the overall activity of the fixed place of business resulting from the combination of these activities is of a preparatory or auxiliary nature.

An Overview of the Permanent Establishment in Egypt

- g. A company resident in another State under the control of a company resident in Egypt, or carrying on business in that other State.
- Furthermore, a permanent establishment shall not be deemed to exist if the activities mentioned in this Article are carried out by a person who is acting on behalf of an enterprise and who is not empowered to conclude contracts in the name of the enterprise.
- The provisions of this Article shall not apply to any fixed place of business used or maintained by an enterprise or a closely related enterprise solely for the purpose of carrying on either an identical or a closely related activity, within Egypt:
 - a. Where that place or any other place of business constitutes a permanent establishment of the enterprise or of the closely related enterprise under the provisions of this Article.
 - b. Where the aggregate activities of the enterprises in the same place or of the same enterprise or closely related enterprises in the two places are not of a preparatory or auxiliary nature provided that the activities carried out by the enterprises in the same place or by the same enterprise or closely related enterprises in the two places constitute complementary functions forming part of a cohesive commercial operation.
- A person shall be deemed to be closely related to an enterprise if, based on all relevant facts and circumstances, one has control of the other, or both are under the control of the same persons or enterprises and in any case, a person shall be considered to be closely related to an enterprise if such person directly or indirectly owns more than 50% of the total shares or voting rights or ownership rights in the enterprise.
- Regarding construction sites, installation projects, or related supervision activities, the provision now stipulates a time limit for the constituting of a permanent establishment, defined as a period or aggregate periods of exceeding 90 days within any twelve-month period. Previously, the text did not specify a defined period, whereas the practice followed a six-month timeframe based on the United Nations model.
- Service provision, if such services are to be rendered to a project or a closely related project located in Egypt for a period or aggregate periods of 90 days within any twelve-month period. This can lead to a deemed permanent establishment irrespective of the place from which the service is rendered as the clause does not specify the place of rendering the service as long as it is furnished to an Egyptian enterprise or an enterprise/project based in Egypt.
- The provisions also identified situations in which the company is deemed to have a permanent establishment. The most important ones are as follows:
 - An insurance project associated with an offshore jurisdiction may be considered a permanent establishment if it collects insurance premiums or insures risks located in Egypt, regardless of the project's physical location. The law, however, excludes re-insurance activities from creating a permanent establishment.
 - The law also has put restrictions on the independent agents operating within the scope of their customary duties, if they are working exclusively or almost exclusively for an offshore entity or a closely related entity to that offshore entity. In that case, a permanent establishment may be constituted.
- New rules for the dependent agent were put in place to clear the confusion of the work of the dependent agent which can create PE in Egypt that he plays the primary role in the conclusion of contracts that are:
 - Repeatedly entered into by the enterprise.
 - No major modifications are done to such contracts or deals by the enterprise.
 - The contracts are concluded in the name of the enterprise.
 - The contracts involve the transfer of ownership or the granting of the right to use property owned by the enterprise or in its possession.
 - The contracts are for the provision of services offered by the enterprise.

Attributes of the new permanent establishment provisions:

- The new provision has slightly reshaped the definition of the permanent establishment by adding facilities, and warehouses to what were originally buildings utilized as sales outlets.
- The inclusion of facilities broadens the scope of the provision to encompass other types of sales channels such as internet servers, cables, and pipelines. This adjustment aims to align with the guidelines outlined by the UN and the OECD in their commentaries, which were previously agreed upon. However, the practical implementation by the Egyptian Tax Authority remains uncertain.

A Comparison between Models and New Egyptian Legislations

Particulars	Law 30/2023	United Nation model	OECD Model
Threshold of Construction Projects	90 days	6 months	12 months
Service Permanent Establishment threshold	90 days	183 days	N/A
Close Relationship Percentage	50%	50%	50%
Special Provision for Insurance			
Exclusivity Criteria for Independent agent			

Frequently Asked Questions

Q: What is the effect of the new legislation on the activity of an independent agent?

A: Agents now have to evaluate their relationship with the offshore company to determine the degree of exclusivity in the contracts as it matters now in the PE test.

Q: Will the new law change the tax treatment for companies that operate on a sales commission basis?

A: The new law has put some restrictions related to agents when the agent is closely related to the offshore company and works exclusively for that company. This situation may create a PE for the said offshore company.

Q: For services fully rendered outside Egypt by a non-resident company to a resident company in Egypt does it deemed to have a PE?

A: This can lead to a deemed permanent establishment, taking into consideration that such services are to be rendered for a period of 90 days or more. Therefore, careful planning of offshore activities is essential.

Q: Are there any change on the joint venture companies Article 4 – PE after the amendments to Law 30

A: The project has to observe the auxiliary activities needed to establish the JV to avoid creating PE status too soon prematurely before the actual start of the project.

Q: What are some of the newly identified situations for electronic activities (such as publicity, consulting, and digital marketing)?

A: Offshore service-providing companies were not classified as having a permanent establishment. However, after the amendments to Article 4 of Law 30, such companies may now be considered to have a permanent establishment in Egypt.

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