

1. Fixed Place PE (General Clause in DTAA) versus Installation PE (specific clause)

As discussed earlier, the fact that clause (i) of para 2 is a part of inclusive definition whereas para 1 is the primary and main definition of PE does not mean that these two paras should be read distinctly, independent of each other. We reiterate that these two paras should be read harmoniously as part of the same concept. In relation to a building site and construction/assembly project, the prescribed minimum period should be read into the expression ‘fixed place of business’ occurring in para 1. As clarified earlier, it is implicit in the very concept of PE and the expression ‘fixed place of business’ that it should be in existence for a fairly long time and merely carrying on some activities intermittently or for a short while do not impress the place with the character of a fixed place through which the business of the enterprise is carried on. That being so, when clause (i) of para 2 sets out a minimum period for the continuance of the construction or installation project, it stands to reason that the said period has to be projected into paragraph 1 for the purpose of judging whether there is fixed place of business within the meaning of para 1

2. Starting and End Point for computing time length of Installation PE under DTAA

8. The next question is whether the construction/installation project continues for a period beyond 9 months. It raises the issue as to how to calculate the duration of the project. What is the starting point of the 9 month period envisaged by clause (i) of Art.5.2? ...

8.1. It seems to us that it would be too narrow a view to take if the commencement of active phase of construction/installation is held to be the starting point. The preparatory stages leading to the actual commencement of the work such as gathering the equipment and arranging the infrastructure for carrying out the work in full swing can legitimately fall within the ambit of the project duration. In this context, we may refer to the pertinent observations made and the opinion expressed by Mr. Arvid A.Skaar in the Chapter on Permanent Establishment[^].2. The learned author has succinctly stated the legal position which strikes a balance between the extreme and narrow views. As indicated by him, preparatory work for starting the project has to be distinguished from purely preliminary activities. Occasional short visits of contractor’s personnel for negotiations or doing some paper work in connection with the project or for taking the soil samples, broadly speaking, will not trigger the start of the time-limit.

8.3. As regards the termination of the construction project, Mr. Skaar observed thus:

“The end of the construction project determines the end of the source state’s jurisdiction over the contractor’s activity. The point of departure is that the construction task is terminated when the work is completed, permanently discontinued, or the building site is permanently abandoned. The end of the “physical” work could be an alternative end of the construction period.”