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|  | **Memorandum** |
| Subject: | **Analysis regarding a risk of existence of a permanent establishment for \_\_\_\_\_\_ due to the planned hiring of the individual in Poland** |
| To: |  |
| From: |  |
| Date: |  |

* Further to our arrangements, below we present tax comments regarding a risk of existence of a permanent establishment (hereinafter: **PE**) for \_\_\_\_\_\_ (hereinafter: **\_\_\_\_\_\_** or **the Company**) due to planned hiring of the individual in Poland for the position of \_\_\_\_\_\_ for \_\_\_\_\_\_ region – Mr. \_\_\_\_\_\_ (hereinafter: **the Employee** or **the Individual**).
* Our analysis is based on:
  + The Act of 15 February 1992 on Corporate Income Tax (Journal of Laws of 2014, position 851 with changes,\_\_\_\_\_\_reinafter: **the CIT Act**),
  + Convention of 4 Maj 1987 between the Government of the Polish People’s Republic and the Government of \_\_\_\_\_\_ for the avoidance of double taxation with respect to taxes on income on capital (Journal of Laws of 2013 position 1371,\_\_\_\_\_\_reinafter: **the Polish – \_\_\_\_\_\_ DTT**),
  + Commentary of OECD Model Tax Convention on Income and on Capital (Condensed version – 2014;\_\_\_\_\_\_reinafter: **Commentary of OECD Convention**).
* In addition, within our analysis, we have also taken into account the most recent approach of the tax authorities presented in available tax rulings issued by the Ministry of Finance in the individual cases of taxpayers as well as the respective OECD’s recommendations on implementation of BEPS Actions relating to PE.
* While preparing our analysis, our understanding of the statement of facts was based on:
  + information received from the Company’s representatives in email correspondence,
  + information and background’s confirmation received during a call with the Company’s representatives,
  + documents provided to us, i.e.:
* draft offer letter to the Employee to the position of \_\_\_\_\_\_ Research & Development Project Manager with \_\_\_\_\_\_,
* \_\_\_\_\_\_ non-disclosure, non-solicitation & non-competition agreement (draft)[[1]](#footnote-2).

and further updates of these documents under the review and consultations with EY Law Team.

1. **EXECUTIVE SUMMARY**

* Based on the background provided to us, in our view it could be argued that the activities of the Individual performed for the Company should not create a PE in Poland on the basis of any of the PE’s concepts provided by the Polish-\_\_\_\_\_\_ DTT.
* In particular, in our view, there are arguments to claim that the Company has no “place of business” in Poland due to the nature of work performed by the Individual (e.g. work that might be performed from any other \_\_\_\_\_\_ country and not necessarily physically from Poland, meeting the customers across \_\_\_\_\_\_ region as the main responsibility of the Individual, task-based working hours not dependent on the exact place they should be performed at) as well as the fact that the Company will not provide any premises in Poland for the purpose of the Individual’s work (home-office model of performing\_\_\_\_\_\_ duties).
* However, we cannot entirely exclude the risk that the tax authorities will apply a different approach and will try to verify other conditions for existence / non-existence of PE in the case at hand.
* In such a case, it might be argued that the activities of the Individual could fall under one of the exceptions from PE’s existence provided by the Polish-\_\_\_\_\_\_ DTT, i.e. auxiliary or preparatory nature of such activities. In this context, we see the arguments to claim that the Individual’s activities will not be an essential and significant part of the main business activity of the Company.\_\_\_\_\_\_ activities also will not have a direct impact on generating revenues by the Company. Moreover, the Individual’s duties will be to support and\_\_\_\_\_\_lp the customers in the field of recognition and understanding the advantages of the Company’s products and not to arrange or execute the commercial co-operation with the customers. Therefore, we see the arguments that the Individual’s duties are of auxiliary and preparatory nature.
* For completeness, in our view, the activities performed by the Individual should not create a PE based on the agency PE concept (i.e. the Individual will not have and will not habitually exercise any authority to act on the Company’s behalf).
* In addition, to fully exclude the risk of creation of a PE, companies apply for individual tax rulings. The statutory waiting period for a ruling is 3 months from submission of the respective application to the Ministry of Finance.

1. **BACKGROUND**

Based on the information provided to us in e-mail correspondence and during calls with \_\_\_\_\_\_ and \_\_\_\_\_\_, we understand that:

* \_\_\_\_\_\_ Inc. (hereinafter: the “**Company**”) is a \_\_\_\_\_\_ entity (\_\_\_\_\_\_ tax resident). Main business of the Company is the design and manufacture of technical textiles for Protective and Composite applications. Its growth strategies are based on developing technologically advanced solutions for its customers, including fiber reinforcements, prepregs & laminates, coating adhesives and core materials.
* The Company already has the customers for its products / textiles in \_\_\_\_\_\_ region (according to the information provided by the Company, currently only one customer is seated in Poland).
* The Company is interested in maintaining the relationships with the current \_\_\_\_\_\_ customers as well as fit its products and technologies to the customers’ expectations and needs and explaining / training how the products might be used by the customers with benefits.
* The Company plans to hire the Individual (\_\_\_\_\_\_ for \_\_\_\_\_\_ region) – Mr \_\_\_\_\_\_.\_\_\_\_\_\_ is a Polish citizen living in Poland (with\_\_\_\_\_\_ center of vital interests in Poland). The Individual was chosen by the Company for this position due to the fact that\_\_\_\_\_\_ has expertized knowledge and experience in this field. According to the information provided by the Company, the fact that\_\_\_\_\_\_ happens to live in Poland is not important in terms of the choice made (in other words,\_\_\_\_\_\_ could live in other \_\_\_\_\_\_ country and – in such a case – the scope of\_\_\_\_\_\_ duties as well as the scheme of rendering\_\_\_\_\_\_ work would be the same).
* The Company does not have any presence on the territory of Poland (i.e. office, branch, other employees, etc.).
* The basis for hiring the Individual will be employment arrangements (according to the Polish Labour Law). The respective legal documents are currently under consultations and drafting.
* The Employee will work solely for the benefit of the Company. The Individual will not have any other contractual arrangements with any other entities.
* In general, the Individual’s responsibility will be to \_\_\_\_\_\_.
* In more detail, according to the employment letter which we received (and additional clarifications) the Employee should reportaccountabilities as outlined below:
* \_\_\_\_\_\_
* The Employee will not have any authority and will not actually act as authorized to act on behalf of the Company. In particular, the Employee will not conclude any contracts (in Poland / \_\_\_\_\_\_) for the Company.
* The Individual duties will not directly influence the Company’s profit generated from the \_\_\_\_\_\_ region.\_\_\_\_\_\_ work, however, may have an indirect impact on the Company’s business (his suggestions, addressing the needs of the customers, etc. may result in the customers’ decision for purchasing the goods from the Company). Nevertheless, according to the information from the Company,\_\_\_\_\_\_ will not be a part of negotiations of the contracts or the terms of co-operation between the Company and the potential customers (this will be handled by the Company’s sales department).
* The Company will not provide to the Individual any office space, the customers’ premises, the premises rented out in Poland (or any other \_\_\_\_\_\_ country) by the Company for this purpose.
* The Individual will be working from\_\_\_\_\_\_ home (home office). In practice, from the Company’s perspective it is not important where the duties will be performed. Nevertheless,\_\_\_\_\_\_ scope of work will require also work/travels to meet the customers (travels outside Poland with the assumed frequency up to 7 days per month).
* The Company / the Company’s representatives will not have any right to use or to freely access individual’s house / flat where the work is performed. The individual will use the equipment provided him by the Company for the purpose of performing\_\_\_\_\_\_ duties (i.e. computer, phone cell). Any expenses incurred by the individual in this respect will be reimbursed to him by the Company.
* The Individual will obtain the Company’s email address and business cards which would display the Company’s name, logo and the \_\_\_\_\_\_ Company’s address.
* Any other documents (such as order confirmations or invoices to the customers) will have the applicable Company’s details (the Individual will not be engaged in this process).
* In terms of contacts with the \_\_\_\_\_\_ customers, the \_\_\_\_\_\_and the \_\_\_\_\_\_will provide him with the information about \_\_\_\_\_\_that the Individual should meet with.
* The Individual will perform\_\_\_\_\_\_ duties (including the way of communication with the customers) based on\_\_\_\_\_\_ expertise in the area of armor design.
* The Individual’s \_\_\_\_\_\_will give him guidance on projects and\_\_\_\_\_\_\_\_\_\_\_\_ him define the scope of the project but it will be the Individual working on the details of each project.
* The Individual will report to\_\_\_\_\_\_ \_\_\_\_\_\_ \_\_\_\_\_\_, especially\_\_\_\_\_\_ will report to\_\_\_\_\_\_ \_\_\_\_\_\_ the status of each project that will include\_\_\_\_\_\_ objective, and update and the next steps. The frequency of reports should be weekly notes and monthly summaries.
* The Individual will be entitled to receive a fixed remuneration provided by\_\_\_\_\_\_ employment arrangements.\_\_\_\_\_\_ will be also eligible to participate in the Company’s profit sharing plan once the one year of service is completed (the outcome from the plan depends on the overall results of the Company’s and it is not related to particular regions or the Employee’s efforts). Additionally, the plan refers to all of the Company’s employees.
* The Individual will not be entitled to any additional bonuses, grants, benefits – especially, dependent on the Individual results.
* The individual will not be entitled to company car or private insurance (it is planned that\_\_\_\_\_\_ will bear the costs and afterwards will be reimbursed by the Company).
* The individual will work within task-based working hours.

1. **TAX COMMENTS**
2. **PE analysis – general information**
   1. **PE under the Polish CIT Act**

* Under the general Polish CIT Act provisions[[2]](#footnote-3), Polish tax residents are subject to taxation in Poland on their worldwide income. If a taxpayer does not have its registered office or management in the territory of the Republic of Poland, only income earned by them in the territory of the Republic of Poland is subject to tax obligation (so-called limited tax liability in Poland).
* Given that \_\_\_\_\_\_ does not have its registered office nor place of management in Poland (it is a \_\_\_\_\_\_ tax resident), the profits of the Company could be taxed in Poland only if they are derived from the Polish source, e.g. through a PE situated therein.
* According to the CIT Act[[3]](#footnote-4), a PE means:
  + a permanent agency used by an entity whose registered office or management is located in the territory of one state to perform all or part of its activities in the territory of another state, in particular a branch, representation, office, factory, workshop or a natural resource extraction site,
  + a construction site, construction, assembly or system operated in the territory of one state by an entity that has its registered office or management in the territory of another state,
  + a person who acts in the territory of one state for and on behalf of an entity that has its management in the territory of another state, if\_\_\_\_\_\_ is authorized to conclude agreements on behalf of that entity and actually exercises that authority.
* The CIT Act neither specifies the meaning of “income earned in Poland”, nor provides any further guidelines on taxation of income from business activity in Poland earned by foreign enterprises[[4]](#footnote-5).
* The above definition can be applied under condition that a relevant agreement on avoiding double taxation to which Poland is a party does not stipulate otherwise. Therefore, the issue should be analyzed by reference to DTTs concluded by Poland. The Polish tax authorities generally rely in practice on the PE definition from the DTTs and OECD approach as regards its interpretation.
  1. **PE under the Polish–\_\_\_\_\_\_ DTT – general comments**
* According to the general rules resulting from the OECD Model Convention and the DTTs concluded by Poland, business income generated by an enterprise of one contracting state (home country) in another contracting state (host country) is taxable in the latter state only if the enterprise carries on business in the other contracting state through a PE situated therein.
* Generally, the Polish–\_\_\_\_\_\_ DTT follows OECD Model Convention. According to article 5 Paragraph 1 and 5 Paragraph 2 of the Polish – \_\_\_\_\_\_ DTT, PE means a fixed place of business through which the business of an enterprise is wholly or partly carried on. The term “PE” includes especially a place of management, a branch, an office where the trading activity is performed, a factory a workshop and a mine, an oil or gas well, a quarry or any other place of extraction of natural resources as well as construction site or assembly performed for a period exceeding 12 months[[5]](#footnote-6).
* Additionally, Article 5 Paragraph 4 of the Polish–\_\_\_\_\_\_ DTT provides that regardless of the above definition, PE may also exist if a person, other than an agent of an independent status, is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those which, if exercised through a fixed place of business, would not make this fixed place of business a PE (for exclusions, see the comments below).
* There are also exclusions from PE provided directly by the Polish-\_\_\_\_\_\_ DTT and resulting in no PE with respect to certain types of activities performed in Poland. According to Article 5 Paragraph 3 of the Polish – \_\_\_\_\_\_ DTT, PE shall be deemed not to include:

1. the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
2. the maintenance of a stock of goods or merchandize belonging to the enterprise solely for the purpose of storage, display or delivery;
3. the maintenance of a stock of goods or merchandize belonging to the enterprise solely for the purpose of processing by another enterprise;
4. the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandize or of collecting information, for the enterprise;
5. the maintenance of a fixed place of business solely for the purpose of preparatory or auxiliary character, for the enterprise;
6. the maintenance of a fixed place of business solely for a combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

* In sum, the analysis of the existence / non-existence of a PE should be performed in the context of the potential:

1. fixed place of business existing in Poland (including construction site or assembly in Poland);
2. dependent agent acting on the foreign enterprise’s behalf in Poland

as well as applicability of the above indicated exclusions from the PE concepts[[6]](#footnote-7).

1. **PE concepts**

**2.1. Fixed place of business constituting a PE**

* Pursuant to Article 5 Paragraph 1 of the Polish-\_\_\_\_\_\_ DTT, the following characteristics could create a PE in Poland under the concept of the fixed place of business:
  + existence of a “place of business” such as e.g. premises, certain amount of space that serves the business activity or machines used for the purpose of performing business activity, employees,
  + fixed nature of the place of business, i.e. the place of business must be established at a distinct place with a certain degree of permanence, not temporary,
  + carrying on of the business of the enterprise through this fixed place of business; the activity performed through the place of business must be within the scope of the core business activity of the foreign resident (i.e. not of auxiliary or preparatory nature).
* Based on the practice of the tax authorities we are aware of, existence of a place of business should be defined, among others, as having (owning) the premises and resources in the territory of the particular country, having rights to such premises (i.e. renting out the premises in Poland for the purpose of carrying out business activity therein), having the premises at disposal for carrying out business activity (even without ownership or other rights to such premises). It also includes the situation where the premises are owned by another entity (e.g. the client in Poland) but the Company’s employees / representatives have the access to them and / or perform their duties there.
* As regards home office work of the employee of the foreign entity, we are aware of the tax rulings issued by the Polish tax authorities saying that it should not automatically lead to creation of “a place of business” in Poland. The taxpayer’s argumentation confirmed by the tax authorities was that the foreign entity would not provide the individual with the company’s premises for performing its duties and the company would not have any rights and the access to the place where the individual would work (i.e. home).
* Bearing in mind the background provided, we understand that \_\_\_\_\_\_ will not have any premises on the territory of Poland, i.e. office, branch, factory, etc.
* The Company will not provide to the Individual any office space, the customers’ premises, the premises rented out in Poland (or any other \_\_\_\_\_\_ country) by the Company for this purpose. The only infrastructure provided by the Company to the individual will be a computer and a phone cell – required for\_\_\_\_\_\_ work. Any expenses incurred by the Individual with respect to performing\_\_\_\_\_\_ work will be reimbursed to him by the Company.
* The Individual will be working from\_\_\_\_\_\_ own home (home office) using\_\_\_\_\_\_ desk. In practice, from the Company’s perspective it is not important where the duties will be performed. Now, it is home office from Poland as\_\_\_\_\_\_ lives in Poland. According to the information from the Company, if\_\_\_\_\_\_ lives in any other \_\_\_\_\_\_ country,\_\_\_\_\_\_ likely will perform\_\_\_\_\_\_ duties from\_\_\_\_\_\_ flat / house in that other country with the unchanged scope of duties. This is because the reason for hiring the individual was\_\_\_\_\_\_ expertise and experience for the position of \_\_\_\_\_\_ for the \_\_\_\_\_\_ region and not territory of the particular country (here: Poland) where / from which the work should be performed.
* The Company / the Company’s representatives will not have any right to use or to freely access Individual ‘s house / flat where the work is performed. The Individual also will not use any company car provided to him by the Company (he will use\_\_\_\_\_\_ own car being reimbursed by the Company with the expenses).
* His scope of work will require also work/travels to meet the customers (travels outside Poland). Additionally,\_\_\_\_\_\_ working time schedule is planned to be task-based (i.e.\_\_\_\_\_\_ work will be evaluated and monitored in the context of the tasks completed and not particular numbers of hours spent each day in the particular place).
* In addition, in the context of the Company’s activity in Poland it should be noted that there should be only one customer based in Poland, when the main potential portfolio of the Company’s customers to be assisted by the Individual will be based in other \_\_\_\_\_\_ country. It may support the Company’s standpoint that its presence in Poland (via concluding employment contract with the Polish citizen) is only because of the Individual’s living in Poland and not due to the Company’s business reasons relating to its activities in \_\_\_\_\_\_.
* All of the above may lead to the conclusion that from the Company’s perspective, there is no particular place where the Individual should perform\_\_\_\_\_\_ duties (except for the meetings with the customers across \_\_\_\_\_\_ region that should be taken in the agreed place).
* **In sum, based on the background provided, in our view there are arguments to claim that the Individual’s activities do not constitute PE in Poland under PE fixed place of business concept as it might be argued that the Company will not have a place of business in the meaning of the Polish-\_\_\_\_\_\_ DTT (which is the condition for determining whether other PE conditions are met, i.e. whether a place of business is fixed and whether the Company carries out its business activity through it).**
* **However, as the Company will conclude the employment contract with the Individual under the Polish law and the Individual will actually stay in Poland and perform\_\_\_\_\_\_ duties for the Company’s benefit, we cannot entirely exclude the risk that the tax authorities will try to apply a different approach and will try to verify further conditions for PE’s existence in the case at hand.**

*Exemptions from PE*

* Even if the tax authorities would question the argumentation for no PE in Poland (as mentioned above), there are some additional arguments for claiming no PE in Poland.
* As indicated above, there are certain exclusions from PE in Poland (based on the DTT) relating to the specific types of activities. One of the exclusion is the case when the foreign entity has a fixed place of business in Poland through which it carries out business activity in Poland, but such an activity is of auxiliary or preparatory nature.

**2.2. Auxiliary or preparatory nature of the Individual’s activities**

* As regards the exception relating to the auxiliary and preparatory activities, in accordance to Article 5 Paragraph 3 item e) of the Polish–\_\_\_\_\_\_ DTT, PE should not arise if the activities performed are of a preparatory or auxiliary nature. The OECD Model Convention distinguishes two different requirements in this respect:
  + the character of the activity must be of preparatory or auxiliary nature,
  + the activity must be performed solely in favor of the enterprise to which the place of business belongs i.e. not aimed at directly benefiting any other third party.
* The Polish-\_\_\_\_\_\_ DTT does not provide for a definition of ,,preparatory” and “auxiliary”. According to Paragraph 23 of Commentary on Article 5 of OECD Convention: “*the decisive criterion is whether or not the activity of the fixed place of business in itself forms an essential and significant part of the activity of the enterprise as a whole. (…) In any case, a fixed place of business whose general purpose is one which is identical to the general purpose of the whole enterprise, does not exercise a preparatory or auxiliary activity*” and according to Paragraph 24: ,,*The decisive criterion is whether or not the activity of the fixed place of business in itself forms an essential and significant part of the activity of the enterprise as a whole*”.
* In the light of the above, it should be determined if the activities performed by the Employee are the essential and significant part of the main \_\_\_\_\_\_’s activities and whether there is a significant link between the Employee’s activities performed in Poland and the revenues received by \_\_\_\_\_\_ as a whole (from its core manufacturing and trade business).
* Bearing in mind the above as well as the background presented to us, we see the arguments to claim that the Employee’s activities should not be treated as the core business activity of the Company (that could be the essential and significant part of the Company’s activities), i.e. that they could be considered auxiliary and preparatory to the main business activity of the Company.
* In particular, as stated in the background section, the Individual’s duties are not related to the operational or sale activity of the Company.\_\_\_\_\_\_ responsibilities will be - in general – presenting the products to the Company’s \_\_\_\_\_\_ customers,\_\_\_\_\_\_lping them to understand how the products could be used in the customers’ business / manufacture as well as identifying the customers’ needs and feedbacks in this area to be considered by the Company.
* The individual will not manage the commercial side of the relationships with the customers and commercial co-operation between the Company and the customers. Consequently, the Individual will not conclude contracts, execute of sales or will not be involved in negotiations. The Employee will not have any authority and will not actually act as authorized to act on behalf of the Company.
* The Individual duties will not directly influence the Company’s profit generated from the \_\_\_\_\_\_ region (no sale or negotiations activities performed).\_\_\_\_\_\_ work, however, may have an indirect impact on the Company’s business (his suggestions, addressing the needs of the customers, etc. may result in the customers’ decision for purchasing the goods from the Company). Nevertheless, according to the information from the Company,\_\_\_\_\_\_ will not be a part of negotiations of the contracts or the terms of co-operation between the Company and the potential customers (this will be handled by the Company’s sales department). Also, executing of the contracts, invoicing, other sales arrangements will be outside of the scope of activities of the Individual.
* **Bearing the above in mind, it can be argued that the activities performed by the Company in Poland should fall under the exception provided by the Polish-\_\_\_\_\_\_ DTT (i.e. the exception for auxiliary and preparatory activities).**

**2.3. Dependent agent acting in Poland and creating a PE**

* As indicated above, according to the Polish-\_\_\_\_\_\_ DTT, a PE in Poland may also be created if there is an agent (a person or a company) acting on the Company’s behalf based on the respective power of attorney to conclude contracts in the name of the enterprise and actually\_\_\_\_\_\_/she performs this power of attorney.
* Based on the background provided, we understand that the Employee will not be granted with any power of attorney from \_\_\_\_\_\_ enabling\_\_\_\_\_\_ to act on \_\_\_\_\_\_’s behalf. Further, also in practice,\_\_\_\_\_\_ will not perform any factual activities relating to negotiating of the contracts or concluding the contracts on \_\_\_\_\_\_’s behalf[[7]](#footnote-8).
* **Based on the above, the Individual’s work performed for the Company should not result in creating a PE on a basis of an agency PE.**

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*Any legal, accounting and foreign tax implications, if any, are beyond the scope of this memorandum and should be subject to a separate analysis.*

*We express no opinion other than as stated\_\_\_\_\_\_rein****,*** *and neither this opinion nor any prior statements are intended to imply or to be an opinion on any other matters and**EY assumes no responsibility for the tax consequences of the transactions beyond the issues to which this memorandum is devoted.*

*This memorandum represents our opinions only and should not be taken as an assurance of the ultimate tax treatment.*

*This memorandum is not binding on the Tax Authorities, and there can be no assurance that the Tax Authorities would not take positions contrary to such memorandum and would not be successful in sustaining such contrary positions.*

*The suggestions in this memorandum are provided by EY in its purely advisory role. Any decision to adopt some orall of these suggestions is the exclusive responsibility of the client and the implementation of these suggestions will be entirely executed and overseen by qualified client personnel.*

*Should there be any change, including any change having retroactive effect, in the tax legislation being subject to our analysis presented\_\_\_\_\_\_rein, the regulations thereunder, and the administrative guidance issued thereunder, or in the prevailing judicial interpretation of the foregoing, the tax advice expressed\_\_\_\_\_\_rein would necessarily have to be re-evaluated in light of such change.*

*Our analysis is as of \_\_\_\_\_\_\_and we have no responsibility to update our comments for events, transactions, circumstances or changes in any of the facts, assumptions or representations occurring after this date of this memorandum.*

*In rendering our advice, we have relied upon the accuracy and completeness of the facts, assumptions and representation (without regard to any limitation based on knowledge or belief, or any similar limitation) as set forth or referenced in the Background section of this memorandum.*

*We have not independently audited or otherwise verified any of these facts, assumptions or representations. A misstatement or omission of any fact or a change or amendment in any of the facts, assumptions; or representations we have relied upon may require a modification of all or a part of this memorandum.*

*In addition, the memorandum is based on such facts, assumptions, and representations as represented to us as of the date of this letter.*

*This memorandum is provided solely for the information and internal use and may not be relied upon by anyone else (other than tax authorities who may rely on the information provided to them) for any purpose without EY’s prior written consent.*

1. At the stage of preparing this memorandum, we do not have the employment contract for the Individual (currently under drafting). [↑](#footnote-ref-2)
2. Article 3 of the CIT Act [↑](#footnote-ref-3)
3. Article 4a Paragraph 11 of the CIT Act [↑](#footnote-ref-4)
4. There are some amendments planned to the Polish CIT Act regarding source of income in Poland. The bill was signed by the President of Poland on 22 September and will come in force from 2017. Generally, the source of income in Poland will be extended. [↑](#footnote-ref-5)
5. As we understand, the construction site / assembly PE is not applicable in the analyzed case. [↑](#footnote-ref-6)
6. Additionally, it should be noted that there are discussions and actions taken by the OECD aiming at – in general - preventing from avoiding the tax regulation / paying the taxes. For that purpose, OECD has announced recommendations regarding the particular tax issues (summarized in so-called BEPS Action Plans, i.e. Base Erosion and Profit Shifting Action Plans). One of the OECD’s report in this respect relates specifically to permanent establishment issues (i.e. *Action 7 Preventing the Artificial Avoidance of Permanent Establishment Status*). The report includes the changes that will be made to the definition of PE in Article 5 in the OECD Model Tax Convention, which is widely used as the basis for negotiating tax treaties. The report refers in particular to: artificial avoidance of PE status through commissionaire arrangements and similar strategies, artificial avoidance of PE status through the specific exceptions in Article 5 Paragraph 5, other strategies for the artificial avoidance of PE status. Even if currently it seems that the considered discussions do not directly relate to \_\_\_\_\_\_’s case at hand, further actions of OECD and the final recommendations should be carefully monitored and verified (whether they are applicable / affect the analyzed case). [↑](#footnote-ref-7)
7. For completeness, we also understand that \_\_\_\_\_\_ have and will have no other employees / personnel assigned to work in Poland and acting on \_\_\_\_\_\_’s behalf in Poland with respect to concluding contracts. [↑](#footnote-ref-8)