

## THE PERMANENT ESTABLISHMENT: WHAT IS CHANGING?

The permanent establishment is an office or a business center not temporary by which non-resident commercial company conducts its economic activity, producing income in another country's territory. In this regulatory concept it is illustrated by art. 162 of the Income Tax Code and Article. 5 of the OECD Model Convention. The permanent establishment is an articulation of the head office, is not presented as an autonomous subject and the main legal requirements are:

### - **An objective element**

1. Presence of a place of business

### - **Temporal- Space element**

2. The organization must be permanent

### - **Link element**

3. Conduct of activity through the place of business

The geographical identification of the Permanent Establishment is not a simple matter because it determines the name of the State which has the right to exercise the "taxing" (so the State which has the right to levy taxes) charged to the subject "non-resident" in a State that has still put in place commercial operations through a structure dependent and there located permanently. With the **Final Report of Action 7 of Beps** (Base Erosion and Profit Shifting) published by the OECD it is possible to discover what changes were made to the concept of "permanent establishment." The main changes relate to the following themes:

- The so-called regulation. "Commissionaire agreement", the configuration of the sales commission agreement and the existence of any tools artificially taken to avoid the incorporation of a permanent establishment in the foreign country;
- The definition of preparatory and / or auxiliary activities, with particular reference to contrast against any maneuvers aimed at fragmenting the business artificially (Anti fragmentation rule) always in order to circumvent the configuration of the permanent establishment of the foreign entity.