Managing indirect taxes in the digital age

VAT/GST: fixed establishment in the digital age
Fixed establishment for VAT/GST

When a company does business cross-border, what are its obligations and rights in the foreign jurisdictions where it operates? Often, the answer depends on whether it is treated as an established or non-established entity. For taxes on consumption — such as value-added tax (VAT) and goods and services tax (GST) — one important test is whether the foreign entity has a fixed establishment (FE). While the FE concept is similar to the well-known permanent establishment (PE) concept for direct taxes, important differences apply.

Increasingly, companies that do business in multiple locations need to be aware of how FE is defined for VAT/GST purposes, what their VAT/GST obligations are, and how different definitions of “establishment” used for VAT/GST and for direct tax purposes may interact and develop to respond to the challenges of doing business cross-border in a digital world.

Our 2016 VAT/GST fixed establishment survey

In 2016, we surveyed EY Indirect Tax professionals in 67 countries and asked them how the term “fixed establishment” for VAT/GST is defined in their local tax legislation, whether the concept of FE for VAT/GST is aligned with the concept of permanent establishment for direct taxes in their countries and whether the current definition of FE is under review as a result of projects such as the Base Erosion and Profit Shifting (BEPS) Actions or Court of Justice of the European Union (CJEU) case law.

Read the detailed survey results for more information.

Survey highlights

In the digital age, the FE concept for VAT/GST is more important than ever:

- Globalization has transformed supply chains and increased the scope and range of cross-border trade in goods and services.
- Digitization has led to an explosion in international e-commerce and is transforming the very nature of many supplies and how they are supplied.
- The BEPS Actions of the Organisation for Economic Co-operation and Development (OECD) and the G20, as well as other projects aimed at preventing tax avoidance, have strongly focused on the establishment concept and how it may need to evolve in the digital age.
- “FE” and “PE” are not always interchangeable terms. In 36 countries surveyed, a foreign company must determine its FE and PE status using different criteria for each type of taxation.
- The FE concept is changing as a result of these trends. The concepts of a “passive” FE and of a “virtual” FE are evolving in response to developments in how goods and services are supplied using advanced technologies. Multinational companies must keep abreast of changes.
- The existence of an FE does not automatically determine a company’s PE status. In 41 countries surveyed, having an FE does not automatically create a PE. However, in 32 countries, the existence of an FE could influence the tax administration’s decision about PE status.
- In 46 countries surveyed, a nonresident company may be obliged to register for VAT/GST without having an FE. Increasingly, nonresident VAT/GST registration applies to foreign providers of e-services.
- Foreign companies may struggle to meet their VAT/GST obligations in multiple jurisdictions. The risks of noncompliance and the administrative burden of VAT/GST obligations increase costs and tax risk and may influence business decisions such as pricing and market penetration.
- Multinational companies must stay apprised of changes. Our Digital Tax Updates Map has an up-to-date list of digital tax developments.
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Is the term fixed or permanent establishment for VAT/GST purposes defined your country’s domestic VAT/GST law?

The term “FE” for VAT/GST purposes is specifically defined in the primary legislation of only 13 of 67 countries surveyed; however, 35 of these countries rely on another source to define the term (e.g., EU legislation, case law and regulations). Therefore, in total, the term “FE” for VAT/GST is defined in legislation in 48 countries.

Spotlight on the EU

In the EU Regulations, the term “fixed establishment” for a taxable person is characterized by a “sufficient degree of permanence and a suitable structure” relating to “human and technical resources to enable it to (i) provide the service which it supplies or (ii) receive and use the services supplied to it for its own needs.” The EU defines the concept of a fixed establishment both at the supplier side and at the recipient side.”¹

¹ Article 11, EU Regulation 282/2011.
Is this definition under current review or likely to change (e.g., as a result of BEPS or CJEU case law, changes in the digital economy, etc.)?

Forty of 67 countries responded that the definition is not currently under review. However, this is not the whole story. In 5 countries (Belgium, Brazil, Israel, Lithuania and South Korea) respondents said that the definition is under review and another 11 countries indicated that the definition could well come under scrutiny (Armenia, Australia, Austria, Canada, Egypt, Jamaica, Malta, the Philippines, Turkey, the UK and Uruguay).

Significantly, these countries include EU Member States and countries that are actively reviewing the impact of the digital economy on the local VAT/GST system.

Changing FE rules and interpretations

In the past, the generally accepted basis for an FE was that a supplier must have both the “human and technical resources” necessary in a place to provide the service from that location. However, in the digital economy, human resources are becoming less necessary to providing cross-border services (e.g., in the cloud), causing this definition to be looked at more critically.

For example, some countries (e.g., Italy, Israel and Saudi Arabia) are beginning to explore the concept of a digital company having a “virtual FE”, arising not from any physical presence in a country but from its online presence there, for example, represented by a website accessed by large numbers of users based in that country.

Many more digital businesses are likely to be drawn into the VAT/GST net in multiple countries if this concept becomes widespread, which will greatly increase their compliance and reporting obligations.

Recent EU developments: in addition to the possible impact of the digital economy on the concept of FE, recent case law from the CJEU has made it clear that a third party can constitute an FE for a supplier. For business-to-business (B2B) supplies of services, the concept of FE extends to the purchaser as well as the supplier, as was clarified per 1 July 2011 in EU Regulation 282/2011.

- **FE for suppliers:** following the CJEU judgment in the case of Welmary (C-605/12), issued in October 2014, certain tax authorities are interpreting the phrase “fixed establishment” more broadly than what’s outlined in the preceding EU case law – to include third parties. Some EU tax administrations are pursuing businesses that utilize assets or other resources of an affiliate or third party located in their Member State and declaring that they have an FE.

- **FE for B2B customers:** the concept of “fixed establishment of the recipient” of a service was introduced in the VAT directive in 2010 (and the EC Regulation of March 15, 2011). In Welmary, the CJEU issued its first decision on the place of location and the existence of a fixed establishment of the customer. As a matter of importance, any business that provides B2B digital services should consider where its customers have an FE with sufficient substance to receive the services supplied.
Is the definition used for fixed or permanent establishment for VAT/GST purposes the same as that used for direct taxation in your country under domestic tax law and double tax treaties?

In 36 countries surveyed, the definition of FE used for VAT/GST purposes is not the same as that used for PE for direct tax purposes. These differences can confuse nonresidents who may be caught by one establishment rule but not by another.

Countries surveyed that do use the same definition for PE and FE are: Algeria, Argentina, Chile, Czech Republic, Estonia, Indonesia, Jamaica, Kenya, Mauritius, Slovak Republic, South Korea, Switzerland, Uruguay and Vietnam.

In the remaining jurisdictions, companies that operate from multiple locations must consider how their activities are covered by the separate FE and PE definitions to determine their obligations under each set of criteria.

If a foreign company has a fixed or permanent establishment for VAT/GST purposes in your country, is it effectively treated as a domestic VAT/GST payer (e.g., with regard to VAT/GST registration, VAT/GST compliance, VAT/GST refunds)?

In 46 countries surveyed, if a foreign company has an FE for VAT/GST, it is effectively treated as a resident VAT/GST payer.

Generally, if a foreign business is found to have an FE in a country, it is responsible for registering for VAT/GST and accounting for the tax in the country where it is established (effectively, as a resident business). Where an FE exists, the supplier’s customers are not generally obliged (or permitted) to self-assess for VAT/GST. Failure to register for VAT/GST may result in severe financial penalties, even when there has been no effective tax loss because the customer has accounted for tax under a “reverse charge” (self-assessment) mechanism.

A foreign business with an FE must meet all related VAT/GST compliance obligations, such as invoicing, keeping appropriate books and records, submitting VAT/GST returns, making VAT/GST payments, and submitting any supplementary information that the tax administration may require. On the other hand, once a foreign business has an FE, it is generally permitted to recover VAT/GST on costs and overhead in the same way as all other resident businesses. In countries that do not refund VAT/GST paid by nonresidents, VAT/GST recovery can be an important benefit of achieving FE status.
Can a foreign company be required to register for VAT/GST in your country if it does not have a fixed or permanent establishment for VAT/GST purposes?

The FE concept is not as decisive for determining tax chargeability for indirect taxes as the concept of PE is for direct taxes. In many cases, the charge to VAT/GST depends on criteria other than whether the supplier has an establishment (such as the location of goods when they were sold). In some cases, if VAT/GST applies, the nonresident’s tax obligation may be fulfilled through obligations on the resident customer.

Increasingly, a nonresident supplier may be liable to register for VAT/GST in a country where it has no FE, generally for supplies of goods and services to private consumers who are not taxable persons for VAT/GST purposes.

In 46 countries surveyed, a nonresident may be required to register for VAT/GST purposes even if it has no FE.

This aspect of the VAT/GST system represents a significant difference from how most other taxes operate in a cross-border context. In particular, it has far-reaching implications for remote sellers of goods and services, many of whom may be unaware of their obligations in countries where they have no physical presence.

Further, the activities that create an obligation for a nonresident to register for VAT/GST differ among countries with no formal harmonization outside of the EU itself. Common activities that create an obligation to register for VAT/GST without an FE include:

- Sales of goods (e.g., sales made by a group procurement company to a local distributor)
- E-commerce sales of goods to EU consumers
- Services related to immovable goods (e.g., repairs)
- Supplies of digital services to end consumers (e.g., downloaded games, e-books and music)

Increasingly, the costs of complying with VAT/GST obligations in a foreign jurisdiction are likely to be a factor in evaluating business opportunities for nonresidents in the digital economy. Businesses that do not comply with their obligations risk incurring severe financial penalties, disrupting their business and damaging their reputation.

However, many nonresident companies struggle to meet these obligations, and for some, doing so may present a significant barrier to doing business. Generally, if an overseas business is obliged to register for VAT/GST, it must account for the tax in the country and it must generally meet all the VAT/GST compliance obligations in that country (e.g., invoicing, keeping appropriate books and records, submitting VAT/GST returns, making VAT/GST payments and submitting supplementary information).

Nonresidents may face additional requirements that differ from those imposed on residents. These obligations are generally not harmonized and may vary by country. For example, in many countries, a nonresident must appoint a resident fiscal representative to act on its behalf, or it may be required to set up a local bank account or bank guarantee.

In some jurisdictions, such as the EU and South Korea, simplified VAT/GST returns may be available for nonresidents (e.g., the EU Mini One Stop Shop for remote sellers), but other restrictions may apply to businesses that use the simplified scheme (such as restrictions on VAT recovery).
Some VAT/GST registration triggers for nonresidents

**Australia**
A foreign company that supplies accounting or legal services to an Australian entity, which are performed in Australia, is making supplies that are “connected with the indirect tax zone” (as provided by Section 9-25(5)(a) of the GST Act). The foreign company is required to register for GST if the supplies “connected with the indirect tax zone” equal or exceed AU$75,000. The requirement for nonresidents to register for business-to-consumer (B2C) digital activity may also be expected to apply from 1 July 2017.

**Canada**
A person who supplies taxable property or services in Canada to the extent that they demonstrate a significant presence in Canada (as determined by applying a number of indicators) will be considered to carry on business in Canada and will be required to register for GST/HST (harmonized sales tax) irrespective of whether they maintain a permanent establishment in Canada. In addition, nonresident persons who supply admissions to public speaking engagements, sports events, concerts, stage performances, seminars, and other activities and events are specifically required to register, whether or not they carry on a business in Canada or have a permanent establishment. In addition, vendors who solicit orders for publications to be delivered by mail or courier in Canada must register unless they are small suppliers.

**Congo**
A nonresident must register when supplying services to a resident entity or when selling export goods to a resident.

**Curacao**
A nonresident must register for B2C services provided by non-established businesses and considered to be enjoyed in Curacao.

**Dominican Republic**
Registration is required if a foreign company carries out any of the following activities within the Dominican territory: sale of industrialized goods, importation of goods and provision of services. The VAT treatment applicable to the supply of digital services by a nonresident is not clear in local legislation.

**European Union**
A nonresident company may be obliged to register for VAT purposes for a number of activities, including the supply of goods within the EU; intra-Community acquisitions or intra-Community supplies; work on immovable goods; B2C distance sales of goods; the sale of tickets to events and exhibitions; B2C supplies of digital services; and services in connection with immovable property supplied to non-business customers.

**India**
Registration may be required, for instance, for goods imported into the country for sale and related services through an agent in India.

**Japan**
Registration may apply for the B2C supply of digital services to Japanese customers.

**Kenya**
Registration may be required for taxable supplies made within Kenya, such as the supervision of a project within the country.

**New Zealand**
GST registration will be required by nonresidents if supplies are made in New Zealand to individuals who are not registered for GST, or to business customers that make exempt supplies. In addition, the supply of remote services (such as software, music or other content over the internet) made by nonresidents will likely be deemed to be made in New Zealand. This rule is expected to take effect 1 October 2016.

**Peru**
Foreign companies involved in importing goods may have to register an FE or corporation within Peru to deal with any importation declarations and formalities. A foreign company selling movable goods or assets located within the country may also be obliged to register; however, this scenario is not specifically regulated.

**Philippines**
Withholding VAT applies when payments are made to nonresidents for services rendered in the Philippines, or the lease or use of properties or rights in the Philippines (i.e., the nonresident is the lessor or payee of the rental or royalties). Singapore: a nonresident may be required to register for VAT if goods that belong to the foreign company are located in Singapore and are supplied locally or are exported from Singapore to another country.
South Africa
A foreign company could have a registration liability if it has a contractual obligation to supply goods or services in South Africa. VAT registration is also required for the supply of electronic services made by a person from a place in an export country, where at least two of the following circumstances are present: (i) the recipient of those electronic services is a resident of the republic; (ii) any payment to that person originates from a South African bank account; (iii) the recipient of those electronic services has a business address, residential address or postal address in the Republic. A person becomes liable to be registered at the end of the month when the total value of taxable supplies made by that person has exceeded R50,000. The supply of digital services in South Africa is taxed on B2B as well as B2C transactions.

South Korea
Effective 1 July 2015, foreign B2C digital service providers are required to register for VAT in South Korea.

Switzerland
A foreign company is liable to register for Swiss VAT if turnover from taxable supplies carried out in Switzerland exceeds CHF100,000 in one calendar.

Thailand
A foreign company must register for Thai VAT if it carries on a VAT-able business in Thailand through its agent or representative in Thailand and its VAT-able revenue meets or exceeds the VAT registration threshold (currently THB1.8million, or approximately US$51,000 per year).

Uruguay
A nonresident may be required to register for VAT, for example, when it provides services in the country and there is no withholding agent.

If a foreign company has a fixed or permanent establishment for VAT/GST purposes in your country, does it automatically have a permanent establishment for direct tax purposes?
In defining an FE for VAT/GST purposes, most countries apply different criteria from those used to define a PE for direct tax purposes (see Question 3). In 41 countries surveyed, the existence of an FE for VAT/GST does not mean that a foreign business automatically has a PE for direct tax purposes. However, in 17 countries surveyed, the tax administration does automatically link FE and PE (Algeria, Argentina, Egypt, Estonia, Greece, Indonesia, Jamaica, Kenya, Malawi, Mauritius, Peru, Slovak Republic, South Korea, Switzerland, Turkey, Uruguay and Zambia).

In an additional 15 countries, the existence of an FE for VAT/GST is influential in determining PE status (Bulgaria, Congo, Croatia, Cyprus, Czech Republic, Hungary, India, Luxembourg, Malta, Portugal, Romania, Singapore, Spain, Sweden and the United Kingdom). The link between FE and PE is particularly strong in the EU.
If a foreign company is registered for VAT/GST in your country, does it automatically have a permanent establishment for direct tax purposes?

Most countries do not automatically connect VAT/GST registration and PE status. However, such a link is automatic in 14 countries (Armenia, Brazil, Dominican Republic, Egypt, Jamaica, Kenya, Malawi, Mauritius, Peru, the Philippines, South Korea, Thailand, Turkey and Vietnam). And the existence of VAT/GST registration would be influential in deciding PE status in 10 others (Congo, Croatia, India, Jordan, Malta, New Zealand, Portugal, Russia, Singapore and Zambia).

If a foreign company has a permanent establishment for direct tax purposes in your country, does it automatically have a fixed establishment for VAT purposes?

In most countries surveyed, the existence of a PE for direct tax purposes does not automatically confer FE status, although this link is automatic in 20 countries (Algeria, Angola, Argentina, Australia, Chile, Croatia, Curacao, Egypt, India, Indonesia, Jamaica, Kenya, Malawi, Mauritius, Peru, Portugal, South Korea, Switzerland, Turkey and Uruguay). And the existence of a PE is considered influential in deciding FE status in 23 other countries (Armenia, Austria, Brazil, Bulgaria, Congo, Cyprus, Czech Republic, Dominican Republic, France, Hungary, Kazakhstan, Latvia, Malta, New Zealand, Poland, Romania, Russia, Singapore, Slovenia, South Africa, Spain, Sweden and Zambia). These responses indicate that the presumption of FE status is stronger if a taxpayer already has a PE.
Can a foreign company have a fixed or permanent establishment for VAT purposes in your country for receiving supplies of goods or services?

In recent years, the concept of an FE to receive supplies for VAT/GST purposes has been developing within international VAT/GST legislation and CJEU case law. It is directly linked to the increase in cross-border intra-company activity and to the spread of e-services – where the concept is being used, in particular, to distinguish the liability to tax and place of supply for cross-border services supplied B2C and B2B. This is sometimes called a “passive” FE.

Thirty-one of 67 countries responded that a business may have a VAT/GST FE for receiving supplies (Austria, Belgium, Brazil, Canada, Chile, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Hungary, Indonesia, Ireland, Italy, Jamaica, Kenya, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden and the UK).

One country (Australia) indicated that this status may be possible. Because this is still a developing concept, the practical consequences and potential risks of having a passive FE are not clearly defined in many countries. The general assumption is that the “passive” FE is likely to trigger the same rights and obligations as an “active” FE – to register for VAT/GST, to account for VAT/GST (e.g., on reverse-charge services), to submit all VAT/GST declarations and reports, and to recover input tax.

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On 5 October 2015, the Organisation for Economic Co-operation and Development (OECD) released its final recommendations on tax policies and treaties as part of its Base Erosion and Profit Shifting (BEPS) Project. Action 7 relates to preventing the artificial avoidance of permanent establishment (PE) status.

This Action has caught the attention of corporate income tax professionals, but what does this mean (if anything) from the perspective of indirect taxes such as value-added tax (VAT) and goods and services tax (GST)?

### Corporate tax PE and the impact of BEPS

Corporate income tax (CT) is generally chargeable on profits only to the extent that the business has a permanent establishment (PE) in the country to which the profits are attributable. The definition of PE is therefore crucial in determining whether a business must pay CT in a country.

In recent years, many jurisdictions have been concerned that multinational enterprises have been avoiding tax by artificially avoiding the creation of a PE. To address this, the final BEPS report includes recommended changes to the definition of PE.

The main changes center on preventing the avoidance of PE status through:

- Using a local sales agent (such as through commissionaire structures)
- Using specific-activity exemptions for warehousing, “preparatory and auxiliary” activities and similar items
- Splitting up a contract (for example, by having several separate contracts covering subsequent months of a project or covering separate elements so that each individual contract does not in itself confer PE status)

The overall effect of the BEPS recommendations appears to be to lower the threshold for having a CT PE. But do these changes affect the VAT/GST position?

### VAT/GST FE

The concept of fixed establishment (FE) for VAT/GST is still a crucial factor in deciding whether (and where) the supplier is liable to account for VAT/GST on many cross-border services. In most countries, the establishment definition used for VAT/GST is slightly different from (and often broader than) the one used for CT.

If the supplier is found to have an FE, it is generally responsible for registering for VAT/GST and accounting for the tax in the country where it is established (effectively as a resident business). In the past, it has generally been accepted that to constitute an FE, a supplier must have both the human and technical resources necessary to provide/receive the services in question.

However, in the digital economy, human resources are becoming less necessary to providing cross-border services (e.g., in the cloud), causing this FE definition to be examined more critically. For example, some countries (such as Italy and Saudi Arabia) are exploring the concept of a “digital PE,” arising from a business’s online presence in that country (e.g., through online advertising to a local user base).

If this concept becomes widespread, many more digital businesses with no physical presence in a country are likely to be drawn into the local VAT/GST net, greatly increasing their compliance and reporting burden.

In addition, some EU Member States have interpreted the decision from the Court of Justice of the European Union (CJEU) in the case of Welmory (C-605/12, October 2014) to mean that a third party can constitute an FE for a supplier. On this basis, some Member States are now actively pursuing businesses that utilize assets or other resources of an affiliate or third party located in their local Member State.
Impact of BEPS PE changes on VAT/GST

As the definition of a VAT/GST FE is generally different from a CT PE definition, you might think BEPS Action 7 is not relevant for VAT/GST. However, there are important points to note:

**PE/FE interconnectivity**

Some countries will automatically deem a business with a PE to have a VAT/GST FE, and vice versa. EY recently carried out a survey across 67 countries on the interaction of VAT/GST FE and CT PE:

- The tax authorities in 28% of the countries surveyed have the same definition for a CT PE as for a VAT/GST FE, including Argentina, the Czech Republic, South Korea and Switzerland.
- Where a business has a VAT/GST FE, just under a third of countries would automatically treat the company as having a CT PE, including Greece and Turkey.
- In 24% of countries surveyed, having a VAT/GST registration automatically results in a CT PE, including Brazil, Egypt, Kenya and Turkey. For an additional 17%, a VAT/GST registration would be considered an influential factor in deciding whether a business has a CT PE.
- In 33% of countries surveyed, having a CT PE automatically results in a VAT/GST FE, including Australia, India and Portugal. For an additional 38%, a CT PE would be considered an influential factor in deciding whether a business has a VAT/GST FE.

Because the CT PE definition can have a direct impact on the VAT/GST position in several countries, increased instances of a CT PE may lead businesses to alter their operating models, change supply chains or shift business functions from one jurisdiction to another (especially for businesses operating “higher risk” practices, such as a commissioner operating model, local warehousing, etc.). These changes almost certainly will have an indirect tax impact.

**Implications for businesses**

Besides understanding the tax technical position when a change is introduced, businesses should consider a number of practical matters when any changes are anticipated, including:

- Should the business model be reconsidered to accommodate the new PE environment (e.g., moving away from a commissioner structure)?
- If any supply chains are changing, do they need to be remapped for indirect taxes?
- How should enterprise resource planning (ERP) systems be updated to reflect the changes?
- Is there a reporting impact? For example, if the business was previously not established but will be now, the VAT/GST domestic reverse charge may no longer apply in certain countries.
- Will there be any new indirect tax registrations required or additional/changing compliance obligations?
- Will the input tax deduction mechanism change? For example, in some countries, you may not be entitled to register for VAT/GST if you are not established there. If you are not eligible to register, your means of recovering any local VAT/GST incurred on costs would be through a separate local claim (such as through the EU reclaim process). However, not all countries refund VAT/GST to nonresidents. And in countries such as Italy, Greece and Spain, the process might take years, even for EU claimants. For some businesses, this level of cost or cash flow delay may far outweigh the corporate tax benefits of not having a PE.
- Is there a mismatch in the recognition of business establishments for direct and indirect tax purposes? If so, businesses may need to account for sales and purchase transactions in different countries for direct and indirect taxes. This would immediately impact tax determination logic, accounting and reporting, and might raise red flags with tax authorities comparing country-by-country reporting documentation with VAT returns.
- Does the business need to obtain rulings from the tax administration in countries with an unclear distinction between PE and FE?
- What is the likely impact of regulatory and contractual changes?
- Are there any operational or customs benefits from establishing a PE for non-EU entities operating in the EU?

**Business changes**

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- Is there a reporting impact? For example, if the business was previously not established but will be now, the VAT/GST domestic reverse charge may no longer apply in certain countries.
- Will there be any new indirect tax registrations required or additional/changing compliance obligations?
- Will the input tax deduction mechanism change? For example, in some countries, you may not be entitled to register for VAT/GST if you are not established there. If you are not eligible to register, your means of recovering any local VAT/GST incurred on costs would be through a separate local claim (such as through the EU reclaim process). However, not all countries refund VAT/GST to nonresidents. And in countries such as Italy, Greece and Spain, the process might take years, even for EU claimants. For some businesses, this level of cost or cash flow delay may far outweigh the corporate tax benefits of not having a PE.
- Is there a mismatch in the recognition of business establishments for direct and indirect tax purposes? If so, businesses may need to account for sales and purchase transactions in different countries for direct and indirect taxes. This would immediately impact tax determination logic, accounting and reporting, and might raise red flags with tax authorities comparing country-by-country reporting documentation with VAT returns.
- Does the business need to obtain rulings from the tax administration in countries with an unclear distinction between PE and FE?
- What is the likely impact of regulatory and contractual changes?
- Are there any operational or customs benefits from establishing a PE for non-EU entities operating in the EU?
What should businesses do?

Given the potential changes as a result of BEPS, businesses should introduce a governance framework that takes a structured and methodical approach to managing the impact and risk (as much as possible) of these types of business changes. It is vital that the VAT/GST considerations are properly integrated into the wider BEPS business action plan, including the following areas:

- Have tax teams closely engage with their legal and commercial counterparts so that the growing overlaps covered by more than one tax or business area do not fall through the cracks.
- Proactively monitor changes – not just VAT/GST changes, but wider tax, legal, regulatory and commercial changes. Gone are the days when ignorance might have been an acceptable excuse.
- Perform impact assessments, including data analytics to understand the potential financial and risk implications.
- Lobby and work with governments and tax authorities to highlight the potentially unintended consequences for other taxes or business areas, as well as the practical challenges.
- Examine whether to proceed with any proposed changes to operating models or supply chains, and whether to do business in new territories where the potential cost, risk or compliance burden outweighs the commercial upside.
- Implement or update processes and controls (both human and automated).

Summary

The BEPS Actions and any possible changes to the definition of PE are not only direct tax issues. Increasingly, multinational businesses need to be mindful of the interaction between different forms of taxation and between tax and their broader business issues. These connections are likely to become stronger.

Already, we are seeing a shift in direct taxation toward taxation at the place of consumption – traditionally a largely indirect tax concept. As the BEPS Project evolves, how long it will be before distinctions between direct and indirect taxation blur and disappear altogether?
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Excerpt from Managing indirect taxes in the digital age. Read the full report and access interactive content at ey.com/indirectdigital.
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Indirect taxes, ranging from value-added tax (VAT) and customs duties to environmental levies, affect the supply chain and the financial system. They pose unique challenges to multinational tax functions since they must be managed accurately and in real time. These often invisible taxes can have significant impacts — on cash flow, absolute costs and risk exposures.

Thanks to our network of dedicated Indirect Tax professionals, who share knowledge and ideas, we can provide seamless, consistent service throughout the world and help you deal effectively with cross-border issues. These include advising on the VAT treatment of new and complex transactions and supplies, and helping resolve classification or other disputes and issues with the authorities.

We provide assistance in identifying risk areas and sustainable planning opportunities for indirect taxes throughout the tax life cycle. We can provide you with effective processes to help improve your day-to-day reporting for indirect tax, reducing attribution errors and costs, and making certain indirect taxes are handled correctly.

We can support full or partial VAT compliance outsourcing, help identify the right partial exemption method and review accounting systems. Our customs and international trade teams can help you manage customs declarations, audit and review product classifications, and evaluate import and export documentation. Our globally integrated teams can give you the perspective and support you need to manage indirect taxes effectively.

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