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Page status: **not legally binding**

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Ruling Compendium – TR 2014/3

This is a compendium of responses to the issues raised by external parties to Draft Taxation Ruling TR 2013/D8 *Income tax: satisfying the 'carrying on a business at or through a permanent establishment' requirement in section 23AH where a company is taken to have a permanent establishment (PE) in relation to substantial equipment*

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft ruling.

Summary of issues raised and responses

Issue No.	Issue raised	ATO Response/Action taken
1	Example 1 relies on <i>McDermott's case</i> , decided in the context of the Singaporean Agreement, for the application of the UK Convention. The UK Convention is different in that it requires the enterprise to 'maintain' the equipment.	The example has been changed to refer to the Singaporean Agreement.
2	Example 2 relates to the US Convention. There are insufficient facts to determine whether: • the equipment is 'maintained' in the US and • business is not carried on in the US.	Additional facts have been added in to address these concerns.
3	Example 3 is confusing as the rental office constitutes a permanent establishment under the primary meaning yet the conclusion is that the enterprise is carrying on business through the deemed permanent establishment.	The purpose of the example is to illustrate the application of the principle in the Ruling where there is actually business activity carried on at the place where the deemed permanent establishment is present. To avoid any confusion and considerations of whether there is more than one permanent establishment, the facts have been changed to make it clear that the activity is being carried on at or through the deemed permanent establishment.

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Issue No.	Issue raised	ATO Response/Action taken
4	In paragraph 30 it should be noted that not all treaties follow this same wording.	A footnote has been added to this effect.
5	In paragraph 40 the words 'at or through that place so that the primary meaning of the term is met' should be deleted as the excerpt from TR 2007/10 quoted immediately following relates only to whether a business is carried on, not to whether business is carried on at or through the permanent establishment.	The paragraph has been adjusted so that the requirement of carrying on business at or through the permanent establishment is separately addressed.
6	Paragraph 46 is incomplete as it does not refer to the requirement in the UK Convention that the substantial equipment be maintained for at least 12 months.	This paragraph has been amended accordingly.