

Appendix 3: 2017 Updated Article 5(5) and Article 5(6) – OECD Model Tax Convention

5. Notwithstanding the provisions of paragraphs 1 and 2 **but subject to the provisions of paragraph 6**, where a person – ~~other than an agent of an independent status to whom paragraph 6 applies~~ – is acting **in a Contracting State** on behalf of an enterprise and ~~has, and habitually exercises, in a Contracting State, an authority to conclude contracts, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are~~

a) in the name of the enterprise, or

b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or

c) for the provision of services by that enterprise,

that enterprise shall be deemed to have a PE in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business (**other than a fixed place of business to which paragraph 4.1 would apply**), would not make this fixed place of business a PE under the provisions of that paragraph.

6. ~~An enterprise shall not be deemed to have a PE in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. Paragraph 5 shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the first- mentioned State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.~~