

IRS Releases Practice Units on Permanent Establishments

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On January 29 and 30, 2019, the Internal Revenue Service's Large Business and International (LB&I) division released new Practice Units on Permanent Establishments, which can be found [here](#) and [here](#). Permanent Establishments create taxing nexus for foreign businesses doing business in the United States and for those who have "effectively connected income." The Practice Units provide the IRS's LB&I audit teams with a general guide on the tax concepts related to permanent establishments. The Practice Units provide examples of the analysis necessary to determine whether a foreign company has a permanent establishment, for example, as a result of its agent concluding contracts on its behalf in the United States. Additionally, the Practice Unit on treaty exemptions describes whether an activity has a preparatory or auxiliary character for purposes of determining whether a foreign enterprise has a US permanent establishment. LB&I auditors will use the Practice Units as tools to help analyze whether a US permanent establishment exists and an income tax adjustment is necessary.

Practice Point: If you have potential PE issues, it is a good idea to look at what your auditors are looking at. The Practice Units are helpful to understand the perspective of IRS auditors on these issues, the types of questions they are likely to ask and the information that they will request.

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