

# GMS Flash Alert



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## Belgium/Netherlands - Agreement Clarifies Permanent Establishment When Home-Working

On 23 November 2023, Belgium and the Netherlands signed a Competent Authority Agreement<sup>1</sup> (“the Agreement”) concerning the interpretation of Article 5 of the Belgium-Netherlands Income Tax Treaty.<sup>2</sup>

This Agreement offers clear guidance to employers in Belgium and the Netherlands regarding the evaluation of whether employees working from their home country establish a permanent establishment for their employer in their home country.

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### WHY THIS MATTERS

The significance of the issue is paramount due to the increasing importance of remote work.<sup>3</sup>

The temporary COVID-19 arrangements have ended, yet the hybrid-work model persists, causing uncertainty for employers.

The question of whether working from home leads to a permanent establishment for the employer in the country of the residence of the employee is significant for both corporate tax as well as wage/income taxes.

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## Content of Agreement

The Agreement categorises cross-border home-working scenarios:

1. Occasional working from home does not create a permanent establishment due to the lack of continuity and the employer not having access to the space.
2. Regular working from home with the possibility to work at the employer's offices generally doesn't establish a permanent establishment either.
3. Consistent home-working may create a permanent establishment depending on whether the employer has actual control over the workplace as well as the activities conducted at the location.

This needs to be assessed at the level of the individual employee.

Additionally, as a practical guideline, the Agreement establishes that if an employee works 50 percent or less of his or her working time from home during a year, there is no permanent establishment in any case. If 50 percent or more of the working time is spent working from home in a year, the presence of a permanent establishment depends on the factors mentioned in the Agreement.

The Agreement is applicable from its publication date of 8 December 2023.

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## KPMG INSIGHTS

The Agreement does not cover income allocation, maintaining taxation for home-work days in the country of residence based on Article 15 of the Belgium-Netherlands Income Tax Treaty. Discussions on income tax implications for cross-border commuters are ongoing between Belgium and the Netherlands. Furthermore, the Agreement does not cover situations of a permanent representative. Therefore, it remains important to also assess whether an employee that works from home and has the authority to conclude or negotiate contracts can be considered a permanent representative.

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## FOOTNOTES:

1 See "[Overeenkomst tussen de bevoegde autoriteiten van Nederland en België over de interpretatie van artikel 5 van het belastingverdrag \(vaste inrichting\) bij thuiswerkende werknemers](#)" in *Staatscourant van het Koninkrijk der Nederlanden* (online) (08-12-2023).

2 Belgium-Netherlands Income Tax Treaty, signed 5 June 2001. Verdrag tussen het Koninkrijk der Nederlanden en het Koninkrijk België tot het vermijden van dubbele belasting en tot het voorkomen van het ontgaan van belasting inzake belastingen naar het inkomen en naar het vermogen, met Protocollen.

3 For more insights and analysis on remote working, see this KPMG [website](#).

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## Contact us

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