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GMS Flash Alert

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OECD – Updates to Fixed Place of Business in Remote Work

On November 19, 2025, the Organisation for Economic Co-operation and Development (OECD) published long-awaited updates to the Commentary on the Model Tax Convention (the "Commentary 2025").[1]

The updated guidance is focused on the concept of a permanent establishment (PE) when employees work remotely from home in a country or location that is not linked to the employer, providing clarifications to the Commentary 2025 on Article 5 of the Convention.

This article will focus exclusively on the clarifications regarding PE in the context of work from a home office or other relevant location.

WHY THIS MATTERS

With remote work requests on the rise—whether from an employee's home or another location—businesses have faced significant uncertainty regarding potential tax risks and how to set effective policies.

The OECD's newly released guidance delivers long-awaited clarity: in most cases, remote work from another country will not trigger unwanted tax consequences for the company. Two key factors now stand out. First, if an employee works from home or another non-company location for less than 50% of their total working time in a 12-month period, this generally will not create a fixed place of business for the company. Second, even if the 50% threshold is exceeded, a permanent establishment is not automatically triggered; it must also be shown that the employee's activities at that location are of a commercial nature.

In short, the OECD's update provides much-needed certainty and flexibility for businesses managing cross-border remote work arrangements, making this an ideal time for companies to review their policies and guidelines for remote working to promote modern and balanced workplaces.

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Updates to the Commentary to Article 5 of the OECD Model Tax Convention

Often driven by employees, work from home or another location in another country presents challenges when the employer company must consider whether such arrangements constitute establishing the company's fixed place of business and trigger tax liability for the company.

The Commentary 2025 stresses that an assessment of whether an enterprise has a permanent establishment is based on specific facts and circumstances applicable "**during a given period and not those applicable during a past or future period in which the way of business of the enterprise is carried on is different**."

The Commentary 2025 then clarifies that the individual who works from home or another location in another country will typically be different from the use of other places by a company. Another relevant location in this context is described as a second home, holiday rental, or another form of residential establishment, for example the home of a friend or a relative. The main point is that the place of work is not related to a company.

Here, it is elaborated that most homes or other relevant locations are not accessible to other employees and are under (greater) **control of the individual**. This aspect of the individual's control over the home or another relevant location can then make it difficult to assess whether the activities performed there constitute a fixed place of business through which the business of that enterprise or company is carried out.

Consideration for a fixed place of business

- The location must be fixed, meaning it is used with sufficient permanence for business activities. The business activity must be productive and must be carried out on a regular basis. The operations can be interrupted, but the productive activity must occur with regularity.
- Even if a place is fixed, it will not be permanent establishment if the activities there are only preparatory or auxiliary (supportive) in nature.
- Simply working from a home or another relevant location does not automatically make it a place of business for the company; each case must be assessed individually.
- Occasional or incidental business activities at home or another relevant location usually do not create a place of business.
- If an individual works from home or other relevant location for less than 50% of their total working time in a year, it is generally not considered a place of business for the company.
- If the individual works from that location for at least 50% of their working time, further analysis of facts and circumstances is required.
- A key factor is whether there is a commercial reason for the individual's presence in that country, such as facilitating business with local customers or suppliers. Brief minor engagements, like occasional client visits, do not establish a commercial reason.
- There must be a clear link between the individual's presence and the location and the company's business activities in that country. Allowing someone to work from home only to retain their services or reduce costs do not count as commercial reasons.

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Individual Is the Main Person Conducting Business

An individual may be the only or primary person running the business of an enterprise. For example, a non-resident consultant who spends a long period of time in a country and carries out most of her consulting business from a home office in that country would have that home office treated as a place of business for her enterprise.

Examples for Cross-Border Home Offices

- **Example A:**
  An individual works from a rented place in another country for three months in a year. This location is not considered "fixed" because the business activities there lack permanence.

- **Example B:**
  An employee works from her home in another country for 30% of her working time over a year. The home is "fixed" due to regular use, but because she works there less than 50% of her time, it is not a place of business for the company.

- **Example C:**
  An employee works from his home in another country for 80% of his working time and regularly visits local clients. The home is "fixed" and, because there is a commercial reason (serving local clients), it is considered a place of business and a permanent establishment for the company.

- **Example D:**
  An employee works from his home in another country for 60% of his time, providing services remotely to clients in multiple countries. He only occasionally visits a local client. Despite spending more than 50% of his time at home, there is **no commercial reason for his presence**, so the home is not a place of business for the company.

- **Example E:**
  An employee works almost exclusively from her home in another country, providing virtual services to customers in different time zones. The home is "fixed" and there is a commercial reason (serving customers in those time zones), so it is a place of business and a permanent establishment for the company.

Examples of Commercial Reasons for Business Activities in Another Country:

- The individual holds meetings with customers of the company.
- The individual helps build a new customer base or identify business opportunities.
- The individual finds new suppliers, manages supplier relationships, or oversees supplier contracts.
- The individual interacts with customers or suppliers in real time or near real time, including call center, IT support, or medical services across time zones.
- The individual accesses business-relevant expertise, such as regular meetings with university researchers.
- The individual collaborates with other businesses.
- The individual performs services for customers in the other country that require their physical presence (e.g., training or repairs at the customer's premises).
- The individual interacts with employees or personnel of the company or associated enterprises.

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Simply having customers, suppliers, or related companies in the country where the home or other relevant place is located **does not automatically mean there is a commercial reason to use that place for business activities.** Similarly, **just being in a different time zone is not enough**. If there is no genuine commercial reason for working from that location, it generally will not be considered a place of business for the company, unless other specific facts suggest otherwise.

KPMG INSIGHTS

The OECD's recent update provides important clarity for businesses regarding the tax implications of remote work and permanent establishment (PE). The guidance indicates that temporary remote work from another country generally does not create a fixed place of business or trigger tax liability for the company. Only in specific cases, depending on the facts and circumstances, could a PE arise—and such instances are considered rare. In these cases, it is important to assess whether the activities conducted are commercial in nature, as well as their extent and impact.

For longer-term remote working arrangements, if an employee works from home or another non-company location for less than 50% of their total working time in a 12-month period, this will not result in a fixed place of business for the company. Even if the 50% threshold is exceeded, a PE is not automatically triggered; it must also be demonstrated that the employee's activities at that location are of a commercial nature.

KPMG recommends that companies use this opportunity to review and update their remote working policies to achieve policies that are modern and balanced. For organizations with cross-border remote work arrangements, consulting a KPMG advisor is recommended to receive tailored guidance and to achieve compliance with the latest OECD standards.

FOOTNOTE:

1 OECD: "The 2025 Update to the OECD Model Tax Convention," adopted, 18 November 2025.

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